



FAIR WORK  
AUSTRALIA

## DECISION

*Fair Work Act 2009*

s.185 - Application for approval of a single-enterprise agreement

**Medibank Health Solutions Pty Limited T/A Medibank Health Solutions**

**The Travel Doctor - TVMC Pty Ltd T/A Medibank Health Solutions**

**Work Solutions Australia Pty Limited T/A Medibank Health Solutions**

**Medibank Health Solutions Telehealth Pty Limited T/A Medibank Health Solutions**

(AG2012/8294)

### **MEDIBANK HEALTH SOLUTIONS ENTERPRISE AGREEMENT 2012**

Health and welfare services

COMMISSIONER MCKENNA

SYDNEY, 13 DECEMBER 2012

*Application for approval of the Medibank Health Solutions Enterprise Agreement 2012.*

[1] An application has been made for approval of an enterprise agreement titled the *Medibank Health Solutions Enterprise Agreement 2012* (“the Agreement”). The application has been made pursuant to s.185 of the *Fair Work Act 2009* (“the Act”) by Medibank Health Solutions Pty Limited, The Travel Doctor - TVMC Pty Ltd, Work Solutions Australia Pty Limited and Medibank Health Solutions Telehealth Pty Limited (“the applicants”) as single interest employers.

[2] The application was lodged on 5 October 2012. The following employee organisation bargaining representatives filed Forms F18: The Australian Nursing Federation (“the ANF”); the Community and Public Sector Union; the Australian Salaried Medical Officers Federation; and the New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union, of the Australian Services Union (collectively “the unions”).

[3] Although there were some differences in the matters addressed in the Forms F18, the unions, broadly speaking, disagreed with aspects the content of the applicants’ Form F17 and otherwise opposed the approval of the Agreement. In consequence, and pursuant to a programming timetable in anticipation of contested proceedings, the applicants filed both amended and further materials in support of the application for approval of the Agreement and the unions filed materials dealing with their concerns. The materials filed by the

applicants and the unions in support of their respective contentions fairly may be described as detailed and comprehensive. In the proceedings, the applicants and the unions (principally the ANF) led evidence and advanced further argument on matters including, but not limited to, satisfaction of pre-approval steps; voting procedures; whether the signing requirements had been met; statute-mandated inclusions; and a range of better off overall-related issues. I also raised a number of issues of concern in relation to the Agreement, some of which were not otherwise initially canvassed by the applicants or the unions.

[4] In the course of the proceedings, I indicated to the applicants and the unions my preliminary view was that the better off overall issues concerning the application for the approval of the Agreement appeared to have greater substance than the range of other matters relied upon by the unions in opposing the application. On a further consideration of the matters advanced by the applicants and the unions, I have not been satisfied the application for the approval of the Agreement should be dismissed on the basis of non-better off overall issues. For instance:

- The unions raised concern about the provision of information relevant to the applicants' policies as pre-approval steps, but the policies are not incorporated as terms and conditions in the Agreement.
- The unions raised concern about the provision of information relevant to certain legislation, but as to that see *McDonald's Australia Pty Ltd v Shop, Distributive and Allied Employees' Association* [2010] FWAFB 4602.
- Although the evidence disclosed difficulties were experienced by some employees in relation to voting procedures, the evidence has not led me to conclude the employees' (admittedly slim) vote in favour of the Agreement was invalidated.
- The unions raised concern about the capacity or status of the person who signed the Agreement on behalf of employees to properly sign the Agreement. I accept there is an arguable case, for the reasons outlined in their submissions, in relation to the unions' contention that there may be some question as to the capacity or status of the employee signatory to have signed the Agreement. However, the employee signatory concerned has had long and, her evidence indicated, a committed role in the development of agreements as an employee representative and, relevantly, in the development of the Agreement - albeit not one who was formally designated as an employee bargaining representative for the Agreement. Having considered the evidence of the employee signatory as to her role in the development of the Agreement, and in the apparent absence of authoritative Full Bench guidance on the matter, I have not been satisfied a case has been established by the unions that the application for the approval of the Agreement should be dismissed for reasons going to the capacity or status of the employee signatory to sign the Agreement.

[5] I have not been satisfied that any of the other matters raised by unions, going to issues other than the better off test (which appeared, in the main, to be secondary objections to the types of objections outlined immediately above), would lead me to dismiss the application for the approval of the Agreement.

[6] I held a range of concerns about whether the Agreement could be considered to pass the better off overall test or otherwise meet the requirements of certain mandated statutory

inclusions. The Agreement contains a mix of terms and conditions of employment, some of which provide terms and conditions which are inferior to the relevant comparator instruments and some of which are superior. I would not have thought that the Agreement, as lodged, would have been capable of approval. Some matters of concern raised by the unions or by me, or both, were conceded by the applicants. Undertakings were, at an early stage, proposed by the applicants to address such matters. At my behest, the applicants and the unions further discussed the form and content of undertakings over the course of the proceedings and, most relevantly, following the adjournment of proceedings on 3 December 2012. As a result, further-revised undertakings were developed in consultation between the applicants and the unions. A set of draft undertakings was provided to my chambers and to the unions on 7 December 2012.

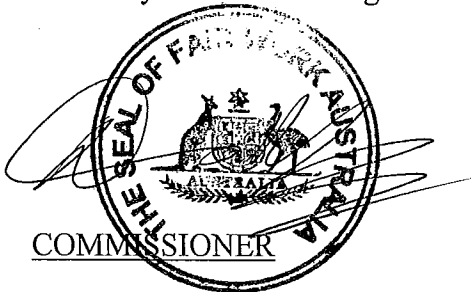
[7] The undertakings satisfactorily address the main concerns I held about the Agreement. I am satisfied that the effect of accepting the undertakings is not likely to cause financial detriment to any employee covered by the Agreement. On balance, I do not consider the undertakings would result in substantial changes to the Agreement. In this respect, I note, in particular, that a number of the undertakings operate only so as to provide greater clarification or certainty as to what, I was informed, specifically was intended as to the Agreement's practical implementation and operation. Other undertakings address matters going to better off overall issues and mandatory inclusions.

[8] I am satisfied the undertakings may be accepted. Correspondence from the unions following the circulation of the draft undertakings dated 7 December 2012 confirmed the unions' views that they either agree with, or otherwise do not oppose, the undertakings. A copy of the undertakings is attached to this decision and marked as "Annexure A". I note that, under s.191 of the Act, the undertakings are taken to be terms of the Agreement.

[9] I am now satisfied that each of the requirements of ss.186, 187 and 188 of the Act relevant to this application for approval has been met.

[10] The unions have given notice under s.183 of the Act that they wish to be covered by the Agreement. In accordance with s.201(2) of the Act, I note the Agreement covers the unions.

[11] The Agreement is approved and, in accordance with s.54 of the Act, will operate from seven days after the issuing of this decision. The nominal expiry date is 30 September 2015.



*Appearances:*

*J. Noakes* for the applicants.

*L. Hubbard* for the Australian Nursing Federation.

*P. Feltham* for the Community and Public Sector Union.

*J. Alati* for the Australian Salaried Medical Officers Federation.

*R. Oppitz* for the New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union, of the Australian Services Union.

*Hearing details:*

2012.

Sydney and Canberra (video hearing):

14 November.

Sydney:

26 November.

3 December.

**Annexure A**

**APPLICANTS' PROPOSED UNDERTAKINGS IN RELATION TO THE MEDIBANK HEALTH SOLUTIONS ENTERPRISE AGREEMENT 2012 (FWA MATTER NO: AG2012/8294)**

- 1 **Undertaking – Overtime for part-time and casual employees (Clause 11.4 and others)**
- The Employers undertake that:*
- (a) *Clause 11.4 of the Agreement shall read as follows:*  
*Hours worked by a part time employee will be paid at ordinary rates of pay, unless overtime is payable for the part time employee as provided in this Agreement.*
  - (b) *In clause 12.5 of the Agreement, the words after "... in accordance with clause 22" will not be applied.*
  - (c) *Clause 22.4 of the Agreement shall read as follows:*  
*Overtime will be payable at the rate of time and one half for the first two hours of work and double time thereafter, for additional hours worked that:*
    - (1) *for part time and casual Enrolled Nurses, Registered Nurses and Senior Nurses, exceed more than 7.5 hours per day;*
    - (2) *for part time and casual Medical Advisors, Occupational Physicians and Senior Medical Advisors:*
      - (i) *are in excess of 75 hours per fortnight (for the purpose of this clause a fortnight will correspond with a fortnightly pay period); or*
      - (ii) *exceed more than 10 hours per day; and*
    - (3) *for part time Operational administrative roles, Allied Health Professionals and Intern Health Professionals, exceed the ordinary hours of work for that employee which have been agreed in accordance with clause 11.5 of this Agreement, and for casual employees within these classifications exceed the hours they have agreed to work on any shift.*
- 2 **Undertaking – Variation of days of work for part time employees (Clause 11.5(2))**
- The Employers undertake that clause 11.5(2) will not be applied.*
- 3 **Undertaking – Annualised salary clause (Clause 16.1 and 16.2)**
- The Employers undertake that, in clause 16.1, the words "(but not as a condition precedent of employment)" will be inserted such that the first sentence of clause 16.1 shall read:*
- For employees hired after the commencement date, the Employer may offer employment (but not as a condition precedent of employment) on the basis of an Annualised Salary.*
- The Employers undertake that clause 16.2 of the Agreement shall read as follows:*
- An Annualised Salary must result in the employee being better off overall in receipt of the Annualised Salary than he or she would have been had the employee been paid those remuneration components incorporated into the Annualised Salary under the Agreement.*
- The Employers undertake that an Annualised Salary arrangement reached pursuant to clause 16 is an Individual Flexibility Agreement and the provisions of clause 39 and Schedule 2 of this Agreement apply to any such Annualised Salary arrangement.*
- 4 **Undertaking – Ordinary Hours of Work (Clause 20)**
- For clarification, the Employers undertake that in clause 20.2(b), the words "(provided that the employee agrees to work these hours as ordinary hours and these hours are not otherwise classified as overtime hours under this Agreement)" will be inserted at the end of the clause.*

*For the avoidance of doubt, the Employers undertake that in clause 20.3 of the Agreement the words after "... In any one day is 10 hours" will not be applied.*

**5 Undertaking – Shiftworker definition (Clause 30.3(2))**

*In order to clarify the intended definition of shiftworker for the purposes of the NES, the Employers undertake that clause 30.3(2) of the Agreement shall read as follows:*

*permanent employees whose regular roster includes shifts other than day shift Monday to Friday are defined as shiftworkers for the purposes of the NES and are entitled to a base entitlement of 5 weeks annual leave (pro rata for part time pursuant to clause 30.2). In addition to the 5 week entitlement (pro rata for part time) a shiftworker employee who works hours between midnight and 7am will accrue pro rata annual leave for any such hours worked on the basis of an annual leave entitlement of 6 weeks per year (pro rata for part time);*

**6 Undertaking – Dispute Settlement Procedure clause (Clause 41.5)**

*The Employers undertake that, commencing from Step 4 of the Dispute Settlement Procedure at clause 41.5 of the Agreement, the clause shall read as follows:*

*...*

**Step 4**

*On conclusion of Step 3, if the dispute remains unresolved, either party may refer the dispute for private mediation. The employer will meet the cost of the mediator. That mediator is permitted to issue a decision in order to settle the dispute, which is binding on all the parties to the dispute.*

*For the avoidance of doubt, the mediator must be a person who is independent of the Employers, employees and employee organisations covered by this Agreement.*

*Step 5 will not be applied.*

**7 Undertaking – Accident Pay**

*The Employers undertake that until 31 December 2014, they will provide accident pay to employees where required by the transitional provisions in any underlying modern award that would have applied to the employee if this Agreement did not apply.*

**UNDERTAKINGS PROPOSED TO CLARIFY THE INTENTION OF THE PARTIES**

**8 Undertaking – Classifications (Clause 14.1 and Schedule 1)**

*For clarification of the intention of the classifications, levels and definitions of employees to whom the Agreement applies, the Employers undertake that:*

- (a) 'Enrolled Nurse' means an employee who performs the duties of an enrolled nurse under the Nurses Award 2010.
- (b) 'Registered Nurse' means an employee who performs the duties of a registered nurse level 2 under the Nurses Award 2010.
- (c) 'Senior Nurse' means an employee who performs the duties of a registered nurse level 3 under the Nurses Award 2010.

**9 Undertaking – Agreement to work successive periods of work (Clause 20.6)**

*For clarification of the intention of the clause, the Employers undertake that where an employee has, at the employee's absolute discretion, agreed to work successive periods of work without a minimum of 10 hours off duty under clause 20.6 of the Agreement:*

- (a) *the period from the commencement of the first successive period of work to the end of the second successive period of work (including the period off duty) shall not exceed 12 hours;*

- 3 -

(b) following completion of the two successive periods of work, the employee must be given a minimum of 10 hours off duty; and

(c) overtime may apply pursuant to clause 22.

10 Undertaking – Flexible Working Arrangements (Clause 23.1)

For clarification of the Intention of the clause, the Employers undertake that in clause 23.1, the words "at the Employer's direction and after consultation with the employee," are excluded.

11 Undertaking – Annual Leave Loading on termination (Clause 30)

For the avoidance of doubt, where an entitlement to annual leave loading exists under this Agreement, the balance of such annual leave loading amount will be paid upon termination of employment.

12 Undertaking – Deductions (Clause 37.4)

For the avoidance of doubt, no deductions will be made pursuant to clause 37.4 of the Agreement from amounts due to an employee unless the employee authorises the deduction in writing in advance.

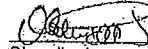
13 Undertaking – Redundancy clause (Clause 38.4)

For the avoidance of doubt, the reference to clause 36.2 in clause 38.4 of the Agreement was a typographical error and should be read as a reference to clause 38.3.

Executed in accordance with Fair Work Regulation 2.07

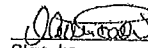
Medibank Health Solutions Pty Limited (ABN 99 078 934 791)

Signed for and on behalf of Medibank Health Solutions Pty Limited (ABN 99 078 934 791) by its authorised representative

  
Signature \_\_\_\_\_ Date 11.12.12  
Name: Maki Takken - General Manager Legal, Medibank Health Solutions  
Address: Level 3, 207 Pacific Highway, St Leonards NSW 2065


Medibank Health Solutions Telehealth Pty Limited (ABN 40 069 396 792)

Signed for and on behalf of Medibank Health Solutions Telehealth Pty Limited (ABN 40 069 396 792) by its authorised representative

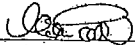
  
Signature \_\_\_\_\_ Date 11.12.12  
Name: Maki Takken - General Manager Legal, Medibank Health Solutions  
Address: Level 3, 207 Pacific Highway, St Leonards NSW 2065

The Travel Doctor – TMVC Pty Ltd (ABN 93 003 457 289)

Signed for and on behalf of The Travel Doctor – TMVC Pty Ltd (ABN 93 003 457 289) by its authorised representative

  
Signature \_\_\_\_\_ Date 11.12.12  
Name: Maki Takken - General Manager Legal, Medibank Health Solutions  
Address: Address: Level 3, 207 Pacific Highway, St Leonards NSW 2065

Work Solutions Australia Pty Limited (ABN 71 059 950 695)  
Signed for and on behalf of Work Solutions Australia Pty Limited (ABN 71 059 950 695) by its  
authorised representative

  
Signature \_\_\_\_\_ Date 11.12.12  
Name: *Maki Takkan, General Manager Legal, Medibank Health Solutions*  
Address: Address: Level 3, 207 Pacific Highway, St Leonards NSW 2065

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# Medibank Health Solutions Enterprise Agreement 2012

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of this agreement.

## 1. ARRANGEMENT

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## 2. TITLE

This Agreement shall be known as the “Medibank Health Solutions Enterprise Agreement 2012” (the Agreement).

## 3. INTRODUCTION

The terms of this Agreement recognise the Employers’ unique business model and operating arrangements, and have been developed in consultation with employees and bargaining representatives.

The objectives of this Agreement include:

- Fairer and more equitable terms and conditions for all employees
- Greater mobility to enhance career development
- Simpler processes and greater clarification of entitlements
- Rewarding performance
- An overall improvement in terms and conditions
- Flexibilities to enhance work / life balance
- Maintenance of a diverse workforce free of discrimination and harassment.

## 4. PERIOD OF OPERATION

The Agreement commences operation on the Commencement date and shall reach its nominal expiry date on 30 September 2015.

## 5. SCOPE AND PARTIES COVERED

5.1 This Agreement is made under Section 172 of the Act and covers:

- (1) Medibank Health Solutions Pty Limited (ABN 99 078 934 791); Medibank Health Solutions Telehealth Pty Limited (ABN 40 069 396 792); The Travel Doctor – TMVC Pty Ltd (ABN 93 003 457 289); and Work Solutions Australia Pty Limited (ABN 71 059 950 695), (each an **Employer** or collectively **the Employers**); and
- (2) Employees of the Employers who are employed and perform work in the following capacities:
  - (a) Clinical delivery roles; and
  - (b) Operational administrative roles.
- (3) any union recorded in Fair Work Australia’s approval notice as being covered by the Agreement.

5.2 The following employees are excluded from coverage under the Agreement:

- (1) Medical Advisors, Senior Medical Advisors and Occupational Physicians, whose full time equivalent Salary is greater than \$180,000
- (2) Corporate support classifications
- (3) Medical Advisors and Senior Medical Advisors employed by Medibank Health Solutions Telehealth Pty Limited.

## **6. DEFINITIONS**

6.1 "Act" means the Fair Work Act 2009.

6.2 "Clinical delivery roles" means the positions of:

- (1) Allied Health Professional
- (2) Enrolled Nurse
- (3) Intern Health Professional
- (4) Medical Advisor
- (5) Occupational Physician
- (6) Registered Nurse
- (7) Senior Medical Advisor
- (8) Senior Nurse.

6.3 "Clinic employees" means employees of Medibank Health Solutions Pty Limited, The Travel Doctor – TMVC Pty Ltd, or Work Solutions Australia Pty Limited.

6.4 "Commencement date" means the date Fair Work Australia's approval notice advises this Agreement comes into operation.

6.5 "Corporate support classifications" means those roles which provide Corporate support to the Employer, rather than performing Operational administrative roles. This includes practice managers, team leaders (within Medibank Health Solutions Telehealth Pty Ltd), medical directors, managers, and any employee working in roles such as auditing, business development, business support, governance, marketing, sales, finance, IT, learning and development, human resources, and project management.

6.6 "Fair Work Act" means the *Fair Work Act 2009 (Cth)*, *Fair Work (Transitional and Consequential Provisions) Act 2009 (Cth)* and any regulations made under those enactments and any legislation that replaces or supersedes those enactments.

6.7 "Operational administrative roles" means the following positions which support Clinical delivery roles:

- (1) Administrative Officer
- (2) Receptionist
- (3) Customer service representatives
- (4) Health support officers
- (5) Senior Administrative Officer.

6.8 "Ordinary rate of pay" means the annual (or hourly) salary excluding overtime, penalty rates, allowances, shift allowances, bonuses, superannuation and any other like payments.

6.9 "MHST employees" means an employee of Medibank Health Solutions Telehealth Pty Limited.

6.10 "Salary" means the annual salary paid to an employee that is no less than the relevant minimum Salary stated in Schedule 1.

6.11 "Shift" means a period of time when an employee is requested to perform work, and actually performs work.

## **7. RELATIONSHIP TO POLICIES AND PROCEDURES**

7.1 To the extent of any inconsistency, the provision of this Agreement will prevail over the Employers' policies and procedures (as varied by the Employer from time to time). The policies and procedures, do not however, form part of this Agreement.

7.2 Policies that apply from the Commencement date that provide additional benefits to employees include:

- (1) Community service leave policy
- (2) Education Assistance policy, providing up to \$1,500 per annum for permanent employees
- (3) Entertainment Book policy
- (4) Health and Wellbeing policy, providing up to \$150 per annum for permanent employees
- (5) Income protection scheme plan
- (6) Private Health Insurance Subsidy policy
- (7) Remuneration policy
- (8) Salary sacrifice policy
- (9) Service awards policy
- (10) Travel policy.

## **8. RELATIONSHIP TO THE NATIONAL EMPLOYMENT STANDARDS**

The National Employment Standards apply as minimum entitlements and have effect subject to any term of this Agreement as permitted by Section 55 of the Act.

## **9. BASIS OF EMPLOYMENT**

The preferred basis for employment is as an ongoing, permanent employee. Employees may be engaged either: as a permanent (whether that be full time or part time); for a specified term (whether that be full time or part time), or on a casual basis.

## **10. FULL TIME EMPLOYEE**

A full time employee is an employee who is engaged as a full-time employee and whose ordinary hours are 37.5 hours per week, or 75 hours per fortnight, or 150 hours per 28 day period.

## **11. PART TIME EMPLOYEE**

- 11.1 A part time employee is an employee who is engaged as a part-time employee and who works predictable hours of work that are less than a full time employee, and whose ordinary hours can be averaged over a period of up to 28 days.
- 11.2 A part time employee's Salary, annual leave, personal leave, long service leave, paid parental leave, paid special parental leave, first aid allowance and public holidays will accrue and / or be paid on a pro-rata basis based on their ordinary part time hours.
- 11.3 Part time employees will be rostered to work a minimum of 3 consecutive hours on any occasion unless otherwise agreed between the Employer and the relevant employee.
- 11.4 Additional hours worked by a part time employee, up to the level of ordinary hours of a full time employee over a fortnightly or 28 day period, will be paid at ordinary rates of pay.
- 11.5 Before commencing employment, or at any time during the employment, the Employer and the part time employee will agree in writing, the ordinary hours of work and the relevant days of work. A part time employee's days of work may be varied:
  - (1) in writing by mutual consent; or
  - (2) by the Employer giving 14 days' notice, providing there is no change in the agreed ordinary hours of work, and providing there are no exceptional circumstances in relation to carer's responsibility or other extenuating circumstances that reasonably prevent the changes being implemented.

- 11.6 Where an employee is regularly working more than their specified ordinary hours per week, and such hours are likely to continue, the employee may apply for a review of their specified ordinary hours per week.

## **12. CASUAL EMPLOYEE**

- 12.1 A casual employee is an employee who is engaged as a casual employee and is paid as such. A casual employee must be advised in writing that they are engaged and paid as a casual.
- 12.2 A casual employee is engaged on an hourly basis when required by an Employer with a minimum payment of 3 consecutive hours on any occasion, unless otherwise agreed between the Employer and the relevant employee.
- 12.3 A casual employee will be paid an hourly rate, not less than the minimum hourly Salary equivalent in **Schedule 1** for the relevant classification, plus a 20% loading. The casual loading is paid in recognition of the casual nature of the work and in lieu of entitlements under the public holidays, Good Health Day, annual leave, paid personal leave, paid compassionate leave, and parental leave provisions contained in this Agreement, except as provided for under the Act.
- 12.4 The employment of a casual employee may be terminated by either the employee or Employer on 1 hours' notice. The Employer may elect to make a payment in lieu of notice, or part thereof.
- 12.5 A casual employee will be paid overtime in accordance with clause 22, for pre-approved hours worked in excess of 75 per fortnight.
- 12.6 Where a casual employee has been working on a regular and systematic basis for over 12 months, and is likely to continue to do so in the future, the employee may apply for conversion to permanent employment.

## **13. SPECIFIED TERM EMPLOYEE**

- 13.1 Full time and part-time employees may be engaged as specified term employees.
- 13.2 A specified term employee is an employee whose letter of appointment provides that they are employed for a specified period of time or for completion of a specific project or task.

## **14. CLASSIFICATION AND SALARIES**

- 14.1 An employee's Salary from the Commencement date will be no less than the relevant amount contained in **Schedule 1**.
- 14.2 Each Employer's pay period currently operates on a fortnightly basis in arrears. Payments owing under this Agreement will be made electronically into an employee's bank account, no later than 5 days after the end of the pay period.
- 14.3 The Employers may adjust the pay period frequency or payment days on reasonable notice to employees.
- 14.4 At the Commencement date, employees will be advised in writing of their salary and any uplift components associated with the making of this Agreement, including, if applicable, the roll up into Salary of:
- (1) Productivity payments for eligible Clinic employees; and
  - (2) An additional 1 weeks base pay for MHST employees who were engaged prior to the Commencement date and only work day shift, Monday to Friday (representing the equivalent of 1 week's annual leave); and
  - (3) Transitional allowances payable to MHST employees under the predecessor enterprise agreement.

## **15. ANNUAL SALARY REVIEW**

- 15.1 There will be an annual salary review, with any resulting increase effective on the first full pay period following 1 July each year. Employees with less than 4 months service at 1 July in a particular year will not be eligible for that year's annual salary review, but will qualify for an interim review at 1 January the following year.
- 15.2 Any increase will be calculated in accordance with the Employers' Remuneration policy, which has regard to an employee's relevant position within the salary range (which is based upon market conditions) and the employee's most recent performance rating.
- 15.3 Casual employees who have worked regularly and systematically for not less than 6 months at 1 July will also participate in the annual salary review.
- 15.4 In light of the fact that Clinic employees will not have had a pay rise under their predecessor enterprise agreement since 1 July 2011, Clinic employees who were employed as at 30 June 2012 and remain employed at the Commencement date will receive a percentage increase to their Salary of 3.25% paid from the first full pay period after the Commencement date, and backdated to the first full pay period after 1 July 2012.

## **16. ANNUALISED SALARY**

- 16.1 For employees hired after the Commencement date, the Employer may offer employment on the basis of an Annualised Salary. Subject to the terms of the offer, the Annualised Salary may be inclusive of, and paid in lieu of the following provisions of this Agreement:
- (1) Overtime
  - (2) Shift penalties
  - (3) Excess travel time
  - (4) Time off in lieu
  - (5) The relevant Salary contained in Schedule 1.
- 16.2 An Annualised Salary must not be less than that which the employee would otherwise routinely earn under the applicable award (if any) and the National Minimum Wage in any 12 month period.
- 16.3 Employees engaged prior to the Commencement date, whose Salary was greater than \$80,148 per annum, are deemed to be engaged on an Annualised Salary for the purposes of this Agreement and shall include the following provisions of this Agreement (except where confirmed in writing otherwise by the Employer):
- (1) Overtime
  - (2) Shift penalties
  - (3) Excess travel time
  - (4) Time off in lieu
  - (5) The relevant actual salary for the employee.
- 16.4 Other employees engaged prior to the Commencement date, subject to agreement with the Employer, may be offered and accept an Annualised Salary in writing. Subject to the terms of the offer, the annualised salary may be inclusive of, and paid in lieu of the following provisions of this Agreement:
- (1) Overtime
  - (2) Shift penalties
  - (3) Excess travel time
  - (4) Time off in lieu
  - (5) The relevant actual salary for the employee.

## 17. SHIFT WORK

- 17.1 MHST employees are shift workers and as such, are required to work shifts in accordance with the Employer's requirements. Such shift work hours or patterns of work may be changed by the Employer to meet operational needs.
- 17.2 Shift arrangements applicable to all employees are as follows:

Shift	Hours	Penalty
Day shift	Hours worked between 7am and 6pm	Nil
Evening shift	Hours worked between 6pm and 12midnight	15%
Night shift	Hours worked between 12midnight and 7am	25%
Saturday shift	Hours worked anytime on Saturday	50%
Sunday shift	Hours worked anytime on Sunday	75%

- 17.3 Shift penalties are payable to employees who work on shifts, and are not payable when work is not performed.
- 17.4 Shift penalties are paid per hour worked within the shift period (e.g. an employee working a shift from 4pm to 11pm will not receive a penalty for the hours between 4pm to 6pm, but will then receive the evening shift penalty for all hours from 6pm to 11pm).
- 17.5 Rosters for shift workers of at least 14 days duration setting out each employee's ordinary hours of work will be made available to employees at least 14 days before they come into operation. At least 28 days notice will be given by the Employer of a change in a roster, however, a roster may be altered at any time where another employee is absent from duty on account of illness, or in an emergency. Regard will be had to carer responsibilities when considering changes in rosters.

## 18. ALLOWANCES

- 18.1 Subject to clause 11.2, the following allowances are payable:

Allowance	Application	Amount	Increase
First Aid	A trained first aider appointed by an Employer to act as such	\$13 per week	1 July each year; a % increase based on the average % salary increase under this Agreement
Meal	For approved overtime where more than 2 hours overtime is worked, a meal is not supplied and less than 24 hours' notice is provided of the overtime requirement	\$25 per occasion	1 July each year; a % increase based on the average % salary increase under this Agreement
Private vehicle	Use of private vehicle, in accordance with Travel policy	ATO rates	In line with ATO rates

## 19. SUPERANNUATION

- 19.1 Subject to clause 19.3 and compliance with relevant superannuation legislation, the Employers will, if required, contribute superannuation for all employees covered by this Agreement, on the following basis:

Employee	From the Commencement date	From 1 July 2013
Clinic employees	10% of the employee's ordinary time earnings as defined by superannuation legislation or as otherwise required from to time	10% of the employee's ordinary time earnings as defined by superannuation legislation or as otherwise required from to time
MHST employees	9.5% of the employee's ordinary time earnings as defined by superannuation legislation or as otherwise required from to time	10% of the employee's ordinary time earnings as defined by superannuation legislation or as otherwise required from to time

19.2 Superannuation will be paid into a fund of the employee's choice, which choice is exercisable in accordance with the applicable legislation. Where an employee does not nominate a fund of choice, Employer contributions will be made to the Employer's default fund from time to time. At the Commencement date, the default fund for Clinic employee will be the Australian Government Employees Superannuation Trust (AGEST), and for MHST employees will be AMP Signature Super.

19.3 Medibank Health Solutions Pty Ltd will continue to make superannuation contributions on behalf of current employees as at the Commencement date who are members of the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme in accordance with the requirements of the relevant scheme.

## 20. ORDINARY HOURS OF WORK

20.1 It is important, for the ongoing competitiveness and financial health of the business, that the Employer is able to allocate the hours of its workforce to meet client expectations and operational requirements, whilst seeking to accommodate employees' work/life balance and achieve consistency. The provisions within this part of the Agreement should be read and applied in a manner consistent with this intent.

20.2 Ordinary hours are able to be worked, subject to the penalties payable under clause 17:

(1) For MHST employees, any day or hour per week

(2) For Clinic employees, between:

(a) 7.00am and 6.00pm, Monday to Friday; and

(b) 8.00am and 5.00pm, Saturday.

20.3 The maximum number of ordinary hours of work that can be rostered in any one day is 10 hours, unless agreed otherwise between the Employer and the relevant employee.

20.4 Meal breaks are not considered as time worked, but rest breaks are counted as time worked.

20.5 The Employer may require employees to work reasonable additional hours in excess of their ordinary hours of work.

20.6 Shifts and additional hours will be organised to give employees a minimum of 10 hours off duty between successive periods of work. However, an employee may, at their absolute discretion, agree to work successive periods of work without a minimum of 10 hours off duty. If an employee agrees to work without a minimum of 10 hours off duty, no overtime will be payable despite clause 22.3(2) for any part of the successive shift, except for work in excess of 10 hours.

20.7 Employer meetings with employees and Employer provided training will occur during paid work time.

## 21. BREAKS

21.1 An employee will receive an unpaid meal break of not less than 30 minutes duration after no more than 4 hours of work, provided their scheduled hours of work during a relevant shift exceed 5 hours.



- 21.2 Where an employee works 4 hours in succession (including meal breaks) they are entitled to a paid rest break of 10 minutes duration within each 4 hour period.
- 21.3 All rest breaks must be taken at a time agreed with the Employer and take into account operational requirements. Subject to agreement between the Employer and employee, rest breaks may be combined.

## **22. OVERTIME**

- 22.1 Employees may be required to work reasonable additional hours as overtime as directed by the Employer.
- 22.2 Overtime is not payable unless it is approved by the Employer in advance of the overtime being worked.
- 22.3 Subject to other provisions of this Agreement, a full time employee will be paid overtime at the rate of time and one half for the first 2 hours work, and double time thereafter, for additional hours worked that:
- (1) Are in excess of 75 hours per fortnight (for the purpose of this clause a fortnight will correspond with a fortnightly pay period); or
  - (2) Exceed more than 10 hours per day; or
  - (3) Are beyond the employee's rostered hours for the relevant shift in any one day.
- 22.4 Subject to other provisions of this Agreement, a part time or casual employee will be paid overtime at the rate of time and one half for the first 2 hours work, and double time thereafter, for additional hours worked that:
- (1) Are in excess of 75 hours per fortnight (for the purpose of this clause a fortnight will correspond with a fortnightly pay period) or
  - (2) Exceed more than 10 hours per day.
- 22.5 The penalty rates and loadings prescribed in this Agreement, including but not limited to overtime penalties and shift penalties, do not have cumulative or concurrent effect. That is, where more than one penalty rate or loading is prescribed by this Agreement as applying to an employee, the employee is only entitled to the penalty rate or loading that provides the employee with the greatest entitlement.
- 22.6 A Clinic employee recalled to work overtime at the request of the Employer after having completed a rostered shift will receive a minimum payment of 3 hours.

## **23. FLEXIBLE WORKING ARRANGEMENTS**

- 23.1 Where an employee remains at work beyond the scheduled finishing time for their shift for up to 15 minutes, at the Employer's direction and after consultation with the employee, time off in lieu will be granted to the employee instead of overtime (if overtime is applicable).
- 23.2 Time off in lieu will equate to the additional time actually worked, and will be managed at the local level between an employee and their Manager.
- 23.3 With the agreement of the Employer, time off in lieu may be granted in advance to meet an individual employee's personal circumstances. Any outstanding advanced time off in lieu can be recovered from monies owed upon termination.
- 23.4 Time off in lieu must be taken (or repaid) within 6 weeks of being worked and the Employer and employee will use their best endeavours to facilitate this occurring.

## **24. HIGHER DUTIES**

Where an employee is required to perform the duties of a higher level position for 3 consecutive days or more, the employee will be paid an amount commensurate with the duties being performed at the payment level agreed in writing between the employee and their manager prior to the duties being performed.

The amount will be an increase on the employee's current rate of pay and not less than the appropriate minimum salary in Schedule 1.

## **25. EXCESS TRAVEL TIME**

25.1 Employees who are required to travel to regional areas or interstate away from their usual work location will be paid excess travelling time at their ordinary rate of pay for each hour (or part thereof):

- (1) in excess of 9 hours combined travel and work per day;
- (2) when required to fly and return the same day, hours prior to 7.30am or after 6.00pm.

## **26. FITNESS FOR WORK**

26.1 On all occasions, an employee must present for work ready willing and able to perform their normal work in a manner that will be safe for the employee and other people having contact with the employee. The Employer may direct an employee to either not attend or to leave the workplace if it considers the employee unfit for work.

26.2 At the Employer's request an employee will attend a medical examination by a qualified medical practitioner nominated by the Employer, who will provide a report on the employee's fitness for work to the Employer. The Employer must have reasonable cause to require such an examination. The employee will not unreasonably withhold their consent for the Employer to obtain a copy of the medical report.

## **27. UNIFORMS**

Employees required by the Employer to wear uniforms will be supplied with appropriate uniforms, as determined by the Employer.

## **28. PUBLIC HOLIDAYS**

28.1 Employees may be rostered on public holidays, in accordance with the provisions of the Act.

28.2 Payment for public holidays in respect of employees will be:

<b>Circumstance</b>	<b>Payment</b>
Rostered to work but not required to work	Ordinary rate of pay per hour rostered
Is required to work and attends work	2.5 times ordinary rate of pay per hour worked
Not rostered to work and does not work	Nil

28.3 Public holidays comprise days gazetted for the State or Territory in which the relevant employee works. If substitute days are gazetted for any of 25 December, 26 December or 1 January, such days and the substitute days will be regarded as being public holidays. Public holidays will include Easter Saturday.

28.4 Where the Employer and an employee agree, another day may be substituted for any public holiday.

## **29. GOOD HEALTH DAY**

29.1 Full-time and part-time employees are entitled to one day off per calendar year, to be known as 'Good Health Day'.

29.2 Good Health Day will be paid at an employee's ordinary rate of pay and is to be taken:

- (1) by Clinic employees, on the business day immediately following the gazetted Boxing Day public holiday each year; and
- (2) by MHST employees, on any day throughout the year agreed with their manager.

**30. ANNUAL LEAVE**

30.1 Subject to clause 30.3, annual leave will be paid at an employee’s ordinary rate of pay and will accrue progressively, and leave loading will be payable, for full time employees on the following basis:

Shift Worked	Weeks Annual Leave Accrual Per Year	Hours Annual Leave Accrual Per Year	Leave Loading
Day shift – Monday to Friday (hours worked between 7am and 6pm)	4 weeks	150 hours	Nil
Day shift – Saturday or Sunday (hours worked anytime on Saturday or Sunday)	5 weeks	187.5 hours	20%
Evening shift (hours worked between 6pm and 12midnight)	5 weeks	187.5 hours	20%
Night shift (hours worked between 12midnight and 7am)	6 weeks	225 hours	20%

30.2 Part-time employees will accrue annual leave on a pro-rata basis.

30.3 Annual leave will accrue on the following basis:

- (1) subject to sub clause 30.3(2), annual leave will accrue on a pro rata basis for each hour or part thereof, that is worked during each shift type (e.g. an employee working an evening shift from 4pm to 11pm will accrue annual leave for the hours between 4pm to 6pm on the basis of an annual leave entitlement of 4 weeks per year, and will then accrue annual leave for the hours between 6pm to 11pm on the basis of an annual leave entitlement of 5 weeks per year);
- (2) full-time MHST employees whose regular roster includes shifts other than day shift Monday to Friday and who are defined as shiftworkers for the purposes of annual leave under the Act, are entitled to accrue a base entitlement of 5 weeks annual leave. However an employee who works between midnight and 7am will accrue pro rata annual leave for any such hours worked on the basis of an annual leave entitlement of 6 weeks per year;
- (3) full-time employees who only work day shift Monday to Friday are entitled to accrue 4 weeks annual leave per year.

30.4 Subject to the Act, annual leave is to be taken at times agreed with an employee and their manager.

30.5 An Employer may direct an employee to take annual leave:

- (1) Within a period of 3 months when their accrued annual leave exceeds 8 weeks (or pro rata equivalent for part time employees);
- (2) When a part of the Employer’s business closes down associated with Christmas or Easter periods, subject to:
  - (a) a minimum of 4 weeks’ notice being provided of the close down; and

- (b) the period of close down not exceeding 2 weeks (including public holidays and weekends).

Employees with less than the required balance of leave will utilise any unused time off in lieu (in accordance with clause 23), else be provided with annual leave in advance or elect to take unpaid leave.

### **31. CASHING OUT OF ACCRUED ANNUAL LEAVE**

An employee may submit a request in writing that the Employer cash out accrued annual leave entitlements at the same amount that would have been payable if the employee had taken the leave, up to the equivalent of 2 weeks accrued annual leave per annum, subject to:

- (1) the employee having taken at least 2 weeks annual leave in the past 12 months;
- (2) the cashing out not resulting in the employee's remaining accrued annual leave balance being less than 4 weeks; and
- (3) each agreement to cash out being documented separately in writing.

### **32. PURCHASE OF ADDITIONAL ANNUAL LEAVE**

Full time, part time and specified term employees (with greater than 12 months service) may purchase a maximum of 4 weeks annual leave in addition to the entitlement in clause 30.1 above, on the basis of a regular salary deduction of the value of leave purchased over a maximum period of 12 months. Upon termination, any outstanding amounts will be either recovered by the Employer from any monies owed, or paid to the employee.

### **33. PERSONAL LEAVE**

- 33.1 Personal leave, which includes carers' leave, will be paid at an employee's ordinary rate of pay and will accrue and is to be taken in accordance with the Act.
- 33.2 Full time employees are entitled to a total accrual of 10 days paid personal leave per year of service (as defined by the Act), and subject to complying with the notification requirements of the Act, are entitled to take paid personal leave.
- 33.3 Personal leave entitlements of part-time employees accrue on a pro-rata basis in accordance with the Act and part-time employees are entitled to take paid personal leave subject to complying with the notification requirements of the Act.
- 33.4 Casual employees are entitled to unpaid personal leave in accordance with the Act.
- 33.5 Where a reasonable cause exists, the Employer may require an employee to substantiate an absence by either a medical certificate or a statutory declaration.

### **34. COMPASSIONATE LEAVE**

- 34.1 Permanent employees are entitled to take up to 5 days paid compassionate leave per occasion, paid at an employee's ordinary rate of pay and subject to meeting the eligibility criteria and notification requirements of the Act.
- 34.2 Casual employees are entitled to unpaid compassionate leave in accordance with the Act.

### **35. PARENTAL LEAVE**

- 35.1 Employees are entitled to unpaid parental leave and adoption leave in accordance with the Act.
- 35.2 Full-time and part-time employees are entitled to 14 weeks paid parental or adoption leave to be paid at their ordinary rate of pay, provided they:
  - (1) have had at least 12 months continuous service with their Employer at the expected date of birth, or placement of the child in the case of adoption; and

(2) are the child's primary care giver for the 14 weeks immediately following the birth of the child, or placement of child in the case of adoption, and they are absent from work on parental leave for this period.

- 35.3 Eligible employees can elect to receive the 14 week payment at the time of commencing parental or adoption leave, or have it paid in accordance with their usual pay cycle.
- 35.4 Full-time and part-time employees are entitled to 2 weeks paid secondary carers leave in connection with the birth of a child by their spouse or partner, or the placement of a child with them and their spouse or partner in the case of adoption. This leave may commence on or after the date of birth or placement, but must end no later than 4 weeks after such date. This payment will be paid at the employee's ordinary rate of pay.
- 35.5 At the employee's request, payment due under this clause may be paid at half rate of pay.

## **36. LONG SERVICE LEAVE**

- 36.1 Long service leave will accrue pro-rata at a rate of 1.3 weeks per annum and shall be provided to the employee as an entitlement on completion of 7 years continuous service.
- 36.2 Where an employee has completed between 5 and 7 years continuous service and the employee dies, or the employee's employment is terminated (by either the Employer or an employee) as a consequence of illness, incapacity, permanent disability, for pressing domestic necessity or other pressing necessity, redundancy, or attaining the minimum retirement age, the employee will receive payment in lieu of pro-rata long service leave. For the purpose of applying this clause "retirement" means an employee who is sixty (60) years of age, or over, and has provided the Employer with written notice of their intention to retire from their employment.
- 36.3 An employee in NSW or the ACT who has completed between 5 and 7 years continuous service and whose employment is terminated by the Employer for reasons other than serious misconduct will receive payment in lieu of pro-rata long service leave.
- 36.4 An employee who has completed 7 years continuous service will receive, upon termination of employment (by either the Employer or an employee), payment in lieu of unused pro-rata long service leave, as part of their final pay.
- 36.5 An employee may take accrued long service leave in such periods as agreed with the Employer.
- 36.6 In lieu of the period of service required in clause 36.2 above for a pro-rata long service leave payment in the event of redundancy, Clinic employees who were engaged prior to the Commencement date, will be entitled to payment in lieu of pro rata long service leave on redundancy after 1 years' service.
- 36.7 MHST employees who transferred from Australian Health Management Group Pty Limited (ABN 96 003 683 298) in 2011 and whose common law contracts contain long service leave accrual entitlements greater than those expressed in this clause will receive the long service leave accrual entitlements contained in their contracts.
- 36.8 Long service leave payments will be calculated in accordance with the long service leave legislation applicable in the State or Territory in which the employee works. The long service leave benefits provided in this clause are not intended to provide a dual benefit to employees who are entitled to benefits under the long service leave legislation in each State and Territory, or pursuant to an Award derived long service leave terms.
- 36.9 If an employee is entitled to more generous long service leave provisions for any period of service under award derived long service leave term in accordance with the Act, such as the *Nurses (Victorian Health Services) Award 2000* or *Health Services Union of Australia (Health Professional Services - Private Sector Victoria) Award 2004*, those more generous provisions shall apply in lieu of the provisions of this clause.

**37. TERMINATION OF EMPLOYMENT**

37.1 With the exclusion of summary dismissal, the Employer will provide employees with the following notice of termination:

Service when notice is given	Period
(a) During probation period	1 week
(b) After the expiration of any probation period and excluding employees covered by (c) below	4 weeks
(c) Employees 45 years of age or over and who have at least 2 years continuous service	5 weeks

37.2 The Employer may elect to pay an employee an equivalent amount in lieu of notice, or part thereof, at an employee’s relevant Salary.

37.3 The Employer may summarily dismiss an employee without notice at any time for serious misconduct.

37.4 An employee is required to give the Employer 1 weeks’ notice during probation, else 4 weeks in all other circumstances. If an employee fails to give the required notice, the Employer may withhold from monies due an amount equal to the notice not provided.

**38. REDUNDANCY, REDEPLOYMENT AND RETRENCHMENT**

38.1 The following provisions apply in conjunction with the Act.

38.2 This clause shall apply to full-time and part-time employees and, despite any other provision, to casual employees who have been employed by their Employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months immediately prior to their termination.

38.3 If the Employer terminates an employee due to redundancy, the employee will be entitled to:

- (1) the notice, or payment in lieu of notice, in clause 37; and
- (2) a redundancy payment, calculated at the employee’s ordinary rate of pay, as follows:

Years continuous service on termination	Under 45 years of age	Over 45 years of age
Less than 1 year	0	0
1 – 2 years	4 weeks’	5 weeks’
2 – 3 years	7 weeks’	8.75 week’s
3 – 4 years	10 week’s	12.5 week’s
4 – 5 years	12 weeks’	15 weeks’
5 – 6 years	14 weeks’	17.5 weeks’
6 years and over	16 weeks’	20 week’s

38.4 In lieu of the payments in clause 36.2, Clinic employees engaged prior to the Commencement date, will be entitled to a severance payment of 2 weeks’ ordinary pay per year of service, capped at 52 weeks, and at no less than the minimum redundancy pay as prescribed in the Act.

- 38.5 MHST employees who transferred from Australian Health Management Group Pty Limited (ABN 96 003 683 298) in 2011 and whose common law contracts contain redundancy entitlements greater than those expressed in this clause will receive the redundancy entitlements contained in their contracts.
- 38.6 An employee given notice of termination due to redundancy may terminate their employment during the notice period. In such circumstances, the employee will be entitled to the redundancy payment under either clause 38.3(2) but not any remaining payment in lieu of notice under clause 38.3(1).
- 38.7 An employee is not entitled to redundancy pay if:
- (1) they are a casual employee who has not been employed by their Employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months immediately prior to their termination;
  - (2) they are engaged for a specific period, for a specified task or for the duration of a specified season;
  - (3) they are subject to a training arrangement;
  - (4) they have less than one years' service;
  - (5) they are offered acceptable alternate employment;
  - (6) the employee rejects an offer of employment made by a new employer that:
    - (a) is on terms and conditions substantially similar to, and, considered on an overall basis no less favourable than, the employee's terms and conditions of employment with the Employer immediately before the termination; and
    - (b) recognises the employee's service with the Employer as service for the purposes of redundancy pay; andhad the employee accepted the offer, there would have been a transfer of employment (within the meaning of the Act) in relation to the employee;
  - (7) there is a transfer of business (within the meaning of the Act) and the new employer recognises the employee's service with the Employer as continuous service with the new employer.

## 39. EMPLOYMENT FLEXIBILITY

- 39.1 An Employer and an employee covered by this Agreement may agree to make an individual flexibility agreement as set out in **Schedule 2** of this Agreement.

## 40. CONSULTATION

- 40.1 This clause applies if:
- (1) the Employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
  - (2) the change is likely to have a significant effect on employees of the enterprise.
- 40.2 The Employer must notify the relevant employees of the decision to introduce the major change.
- 40.3 The relevant employees may appoint a representative for the purposes of the procedures in this clause.
- 40.4 If:
- (1) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (2) the employee or employees advise the Employer of the identity of the representative;
- the Employer must recognise the representative.

- 40.5 As soon as practicable after making its decision, the Employer must:
- (1) discuss with the relevant employees:
    - (a) the introduction of the change; and
    - (b) the effect the change is likely to have on the employees; and
    - (c) measures the Employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - (2) for the purposes of the discussion — provide, in writing or by other means, to the relevant employees:
    - (a) all relevant information about the change including the nature of the change proposed; and
    - (b) information about the expected effects of the change on the employees; and
    - (c) any other matters likely to affect the employees.
- 40.6 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 40.7 The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 40.8 In this clause, a major change is likely to have a significant effect on employees if it results in:
- (1) the termination of the employment of employees; or
  - (2) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - (3) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (4) the need to relocate employees to another workplace; or
  - (5) the restructuring of jobs.
- 40.9 In this clause, relevant employees mean the employees who may be affected by the major change.

#### **41. DISPUTE SETTLEMENT PROCEDURE**

- 41.1 The following is the agreed process to genuinely attempt to resolve grievances and/or disputed issues at the workplace that may arise under this Agreement. This process deals with matters which pertain to the relationship between the Employers and persons who, at any time when the Agreement is in operation, are employed by an Employer and are bound by the Agreement. For the avoidance of doubt this includes matters in relation to the National Employment Standards.
- 41.2 The parties to the dispute must genuinely attempt to resolve the dispute at the workplace level and at any subsequent step in the dispute resolution process.
- 41.3 An employee may be assisted at any stage of the process by an employee representative of their choice. The Employers may also be represented at any stage of the process.
- 41.4 The parties to the dispute and their representatives will act in good faith including (but not limited to):
- (1) Notification of the dispute;
  - (2) Speaking on behalf of the employee; and
  - (3) Advising the respective party of the nature and details of the dispute.



41.5 The Procedure

**Step 1:**

The matter will be discussed between the employee, their supervisor and, if the employee so chooses, their employee representative.

If the matter pertains to the interpretation and/or application of this Agreement, the issue will be discussed between the appropriate People & Culture representative, the relevant Manager, the employee and, if the employee has chosen a representative, the employee representative. If the matter, in this context, remains unresolved the parties should proceed to "Step 3" of the procedure.

**Step 2:**

If the disputes remains unresolved after Step 1, either party may refer the matter to a representative from the People & Culture department and a higher level Supervisor/Manager. The employee may choose to have an employee representative involved.

**Step 3:**

If the dispute remains unresolved, either party may refer the matter to the relevant representative of the Employer's executive team for resolution. The employee may choose to have an employee representative involved.

**Step 4:**

On conclusion of Step 3, if the dispute remains unresolved, the parties may agree to private mediation. Agreement in this context means (but is not limited to) mutual agreement on cost, choice of mediator and terms of reference. An attempt to reach such an agreement is not a condition precedent on proceeding to Step 5.

If the dispute remains unresolved, the parties shall proceed to the next step of the procedure.

**Step 5:**

Either party may refer the dispute to the Dispute Settlement Committee, for conciliation. The Dispute Settlement Committee will comprise an equal number of Employer representatives and employees who will meet with the parties with the aim of conciliating and resolving the dispute.

41.6 Although this procedure refers to employees in the singular the procedure also applies to collective disputes.

41.7 With the exception of reasonable concerns about an imminent risk to the health and safety of the employee, an employee must continue to work as reasonably directed by the Employer within the normal operational requirements that existed prior to the dispute while the dispute is being resolved.

**SCHEDULE 1 CLASSIFICATION AND SALARY**

**TABLE 1**

Classification	Minimum Salary		
	Annual \$	Fortnightly \$	Hourly\$
Enrolled Nurse	46,900	1,803.85	24.0513
Registered Nurse	55,200	2,123.08	28.3077
Senior Nurse	69,000	2,653.84	35.3846
Intern Health Professional	47,700	1,834.62	24.4615
Allied Health Professional	55,200	2,123.08	28.3077
Health Support Officer	40,850	1,571.15	20.9487
Administrative Officer / Receptionist	40,850	1,571.15	20.9487
Senior Admin Officer	45,000	1,730.77	23.0769
Medical Advisor	140,000	5,384.62	71.7949
Snr Medical Advisor	149,000	5,730.77	76.4103
Occupational Physician	170,000	6,538.46	87.1795

**TABLE 2**

Junior Rates	Percentage of the Minimum Salary of Administrative Officer / Receptionist
Under 18 years	60%
At 18 years	70%
At 19 years	80%
At 20 years	90%
Junior rates cease once 2 years of service has been reached.	

**SCHEDULE 2 EMPLOYMENT FLEXIBILITY ARRANGEMENTS**

1. An Employer and an employee may agree to make an individual flexibility arrangement (Arrangement) to vary the effect of terms of this Agreement if:
  - 1.1 the Arrangement deals with 1 or more of the following matters:
    - (a) arrangements about when work is performed;
    - (b) overtime rates;
    - (c) penalty rates;
    - (d) allowances;
    - (e) leave loading;

- 1.2 the Arrangement meets the genuine needs of the Employer and employee in relation to 1 or more of the matters mentioned in paragraph 1.1; and
- 1.3 the Arrangement is genuinely agreed to by the Employer and employee.
2. The Employer must ensure that the terms of the Arrangement:
  - 2.1 are about permitted matters under section 172 of the Act; and
  - 2.2 are not unlawful terms under section 194 of the Act; and
  - 2.3 result in the employee being better off overall than the employee would be if no Arrangement was made.
3. The Employer must ensure that the Arrangement:
  - 3.1 is in writing; and
  - 3.2 includes the name of the Employer and employee; and
  - 3.3 is signed by the Employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - 3.4 includes details of:
    - (a) the terms of the Agreement that will be varied by the Arrangement; and
    - (b) how the Arrangement will vary the effect of the terms; and
    - (c) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the Arrangement; and
  - 3.5 states the day on which the Arrangement commences.
4. The Employer must give the employee a copy of the Arrangement within 14 days after it is agreed to.
5. The Employer or employee may terminate the individual flexibility arrangement:
  - 5.1 by giving no more than 28 days written notice to the other party to the Arrangement; or
  - 5.2 if the Employer and employee agree in writing - at any time.

**Execution**

**1. Medibank Health Solutions Pty Limited (ABN 99 078 934 791)**

Signed for and on behalf of **Medibank Health Solutions Pty Limited (ABN 99 078 934 791)** by its authorised representative



Signature

27/9/12

Date

Name: Denise Moore

Address: Level 3, 207 Pacific Highway  
St Leonards NSW 2065

In the presence of:



Witness signature

27/9/12

Date

Witness name: John Brecht

Witness address: Level 3, 207 Pacific Highway  
St Leonards NSW 2065

**2. Medibank Health Solutions Telehealth Pty Limited (ABN 40 069 396 792)**

Signed for and on behalf of **Medibank Health Solutions Telehealth Pty Limited (ABN 40 069 396 792)** by its authorised representative



Signature



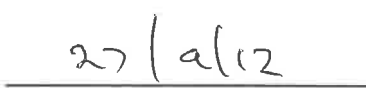
Date

Name: Denise Moore  
Address: Level 3, 207 Pacific Highway  
St Leonards NSW 2065

In the presence of:



Witness signature



Date

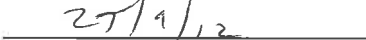
Witness name: John Brecht  
Witness address: Level 3, 207 Pacific Highway  
St Leonards NSW 2065

**3. The Travel Doctor – TMVC Pty Ltd (ABN 93 003 457 289)**

Signed for and on behalf of **The Travel Doctor – TMVC Pty Ltd (ABN 93 003 457 289)** by its authorised representative



Signature



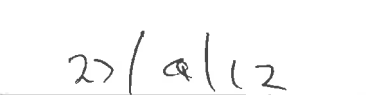
Date

Name: Denise Moore  
Address: Level 3, 207 Pacific Highway  
St Leonards NSW 2065

In the presence of:



Witness signature



Date

Witness name: John Brecht  
Witness address: Level 3, 207 Pacific Highway  
St Leonards NSW 2065

4. **Work Solutions Australia Pty Limited (ABN 71 059 950 695)**

Signed for and on behalf of **Work Solutions Australia Pty Limited (ABN 71 059 950 695)** by its authorised representative



27/9/12.

Signature

Date

Name: Denise Moore

Address: Level 3, 207 Pacific Highway  
St Leonards NSW 2065

In the presence of:



27/9/12.

Witness signature

Date

Witness name: John Brecht

Witness address: Level 3, 207 Pacific Highway  
St Leonards NSW 2065

5. **Employee Representative**

Signed for and on behalf of the employees by Maggie Lecky Thompson



4.10.12

Signature

Date

Name: Maggie Lecky Thompson

Address: Level 3, 207 Pacific Highway  
St Leonards NSW 2065

In the presence of:



4/10/12

Witness signature

Date

Witness name: John Brecht

Witness address: Level 3, 207 Pacific Highway  
St Leonards NSW 2065

## Annexure A

### APPLICANTS' PROPOSED UNDERTAKINGS IN RELATION TO THE MEDIBANK HEALTH SOLUTIONS ENTERPRISE AGREEMENT 2012 (FWA MATTER NO: AG2012/8294)

#### 1 Undertaking – Overtime for part-time and casual employees (Clause 11.4 and others)

*The Employers undertake that:*

- (a) Clause 11.4 of the Agreement shall read as follows:  
*Hours worked by a part time employee will be paid at ordinary rates of pay, unless overtime is payable for the part time employee as provided in this Agreement.*
- (b) *In clause 12.5 of the Agreement, the words after "... in accordance with clause 22" will not be applied.*
- (c) Clause 22.4 of the Agreement shall read as follows:  
*Overtime will be payable at the rate of time and one half for the first two hours of work and double time thereafter, for additional hours worked that:*
  - (1) *for part time and casual Enrolled Nurses, Registered Nurses and Senior Nurses, exceed more than 7.5 hours per day;*
  - (2) *for part time and casual Medical Advisors, Occupational Physicians and Senior Medical Advisors:*
    - (i) *are in excess of 75 hours per fortnight (for the purpose of this clause a fortnight will correspond with a fortnightly pay period); or*
    - (ii) *exceed more than 10 hours per day; and*
  - (3) *for part time Operational administrative roles, Allied Health Professionals and Intern Health Professionals, exceed the ordinary hours of work for that employee which have been agreed in accordance with clause 11.5 of this Agreement, and for casual employees within these classifications exceed the hours they have agreed to work on any shift.*

#### 2 Undertaking – Variation of days of work for part time employees (Clause 11.5(2))

*The Employers undertake that clause 11.5(2) will not be applied.*

#### 3 Undertaking – Annualised salary clause (Clause 16.1 and 16.2)

*The Employers undertake that, in clause 16.1, the words "(but not as a condition precedent of employment)" will be inserted such that the first sentence of clause 16.1 shall read:*

*For employees hired after the commencement date, the Employer may offer employment (but not as a condition precedent of employment) on the basis of an Annualised Salary.*

*The Employers undertake that clause 16.2 of the Agreement shall read as follows:*

*An Annualised Salary must result in the employee being better off overall in receipt of the Annualised Salary than he or she would have been had the employee been paid those remuneration components incorporated into the Annualised Salary under the Agreement.*

*The Employers undertake that an Annualised Salary arrangement reached pursuant to clause 16 is an Individual Flexibility Agreement and the provisions of clause 39 and Schedule 2 of this Agreement apply to any such Annualised Salary arrangement.*

#### 4 Undertaking – Ordinary Hours of Work (Clause 20)

*For clarification, the Employers undertake that in clause 20.2(2)(b), the words "(provided that the employee agrees to work these hours as ordinary hours and these hours are not otherwise classified as overtime hours under this Agreement)" will be inserted at the end of the clause.*

*For the avoidance of doubt, the Employers undertake that in clause 20.3 of the Agreement the words after "... in any one day is 10 hours" will not be applied.*

**5 Undertaking – Shiftworker definition (Clause 30.3(2))**

*In order to clarify the intended definition of shiftworker for the purposes of the NES, the Employers undertake that clause 30.3(2) of the Agreement shall read as follows:*

*permanent employees whose regular roster includes shifts other than day shift Monday to Friday are defined as shiftworkers for the purposes of the NES and are entitled to a base entitlement of 5 weeks annual leave (pro rata for part time pursuant to clause 30.2). In addition to the 5 week entitlement (pro rata for part time) a shiftworker employee who works hours between midnight and 7am will accrue pro rata annual leave for any such hours worked on the basis of an annual leave entitlement of 6 weeks per year (pro rata for part time);*

**6 Undertaking – Dispute Settlement Procedure clause (Clause 41.5)**

*The Employers undertake that, commencing from Step 4 of the Dispute Settlement Procedure at clause 41.5 of the Agreement, the clause shall read as follows:*

*...*

*Step 4*

*On conclusion of Step 3, if the dispute remains unresolved, either party may refer the dispute for private mediation. The employer will meet the cost of the mediator. That mediator is permitted to issue a decision in order to settle the dispute, which is binding on all the parties to the dispute.*

*For the avoidance of doubt, the mediator must be a person who is independent of the Employers, employees and employee organisations covered by this Agreement.*

*Step 5 will not be applied.*

**7 Undertaking – Accident Pay**

*The Employers undertake that until 31 December 2014, they will provide accident pay to employees where required by the transitional provisions in any underlying modern award that would have applied to the employee if this Agreement did not apply.*

**UNDERTAKINGS PROPOSED TO CLARIFY THE INTENTION OF THE PARTIES**

**8 Undertaking – Classifications (Clause 14.1 and Schedule 1)**

*For clarification of the intention of the classifications, levels and definitions of employees to whom the Agreement applies, the Employers undertake that:*

- (a) 'Enrolled Nurse' means an employee who performs the duties of an enrolled nurse under the Nurses Award 2010.
- (b) 'Registered Nurse' means an employee who performs the duties of a registered nurse level 2 under the Nurses Award 2010.
- (c) 'Senior Nurse' means an employee who performs the duties of a registered nurse level 3 under the Nurses Award 2010.

**9 Undertaking – Agreement to work successive periods of work (Clause 20.6)**

*For clarification of the intention of the clause, the Employers undertake that where an employee has, at the employee's absolute discretion, agreed to work successive periods of work without a minimum of 10 hours off duty under clause 20.6 of the Agreement:*

- (a) *the period from the commencement of the first successive period of work to the end of the second successive period of work (including the period off duty) shall not exceed 12 hours;*

- (b) following completion of the two successive periods of work, the employee must be given a minimum of 10 hours off duty; and
- (c) overtime may apply pursuant to clause 22.

**10 Undertaking – Flexible Working Arrangements (Clause 23.1)**

For clarification of the intention of the clause, the Employers undertake that in clause 23.1, the words "at the Employer's direction and after consultation with the employee," are excised.

**11 Undertaking – Annual Leave Loading on termination (Clause 30)**

For the avoidance of doubt, where an entitlement to annual leave loading exists under this Agreement, the balance of such annual leave loading amount will be paid upon termination of employment.

**12 Undertaking – Deductions (Clause 37.4)**

For the avoidance of doubt, no deductions will be made the pursuant to clause 37.4 of the Agreement from amounts due to an employee unless the employee authorises the deduction in writing in advance.

**13 Undertaking – Redundancy clause (Clause 38.4)**

For the avoidance of doubt, the reference to clause 36.2 in clause 38.4 of the Agreement was a typographical error and should be read as a reference to clause 38.3.

**Executed in accordance with Fair Work Regulation 2.07**

**Medibank Health Solutions Pty Limited (ABN 99 078 934 791)**

Signed for and on behalf of **Medibank Health Solutions Pty Limited (ABN 99 078 934 791)** by its authorised representative

  
Signature \_\_\_\_\_ Date 11.12.12  
Name: Maki Takken - General Manager Legal, Medibank Health Solutions  
Address: Level 3, 207 Pacific Highway, St Leonards NSW 2065

**Medibank Health Solutions Telehealth Pty Limited (ABN 40 069 396 792)**

Signed for and on behalf of **Medibank Health Solutions Telehealth Pty Limited (ABN 40 069 396 792)** by its authorised representative

  
Signature \_\_\_\_\_ Date 11.12.12  
Name: Maki Takken - General Manager Legal, Medibank Health Solutions  
Address: Level 3, 207 Pacific Highway, St Leonards NSW 2065

**The Travel Doctor – TMVC Pty Ltd (ABN 93 003 457 289)**

Signed for and on behalf of **The Travel Doctor – TMVC Pty Ltd (ABN 93 003 457 289)** by its authorised representative

  
Signature \_\_\_\_\_ Date 11.12.12  
Name: Maki Takken - General Manager Legal, Medibank Health Solutions  
Address: Address: Level 3, 207 Pacific Highway, St Leonards NSW 2065



**Work Solutions Australia Pty Limited (ABN 71 059 950 695)**

Signed for and on behalf of **Work Solutions Australia Pty Limited (ABN 71 059 950 695)** by its authorised representative



Signature

11.12.12

Date

Name: *Maki Takken, General Manager Legal, Medibank Health Solutions*

Address: Address: Level 3, 207 Pacific Highway, St Leonards NSW 2065