



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Hobart Day Surgery Pty Ltd
(AG2014/7899)

HOBART DAY SURGERY PTY LTD NURSES ENTERPRISE AGREEMENT 2014

Tasmania

DEPUTY PRESIDENT GOSTENCNIK

MELBOURNE, 31 OCTOBER 2014

Application for approval of the Hobart Day Surgery Pty Ltd Nurses Enterprise Agreement 2014.

[1] An application has been made for approval of an enterprise agreement known as the *Hobart Day Surgery Pty Ltd Nurses Enterprise Agreement 2014 (Agreement)*. The application was made pursuant to s.185 of the *Fair Work Act 2009 (Act)*. It has been made by Hobart Day Surgery Pty Ltd. The Agreement is a single enterprise agreement.

[2] I am satisfied that each of the requirements of ss.186 and 187 of the Act, as are relevant to this application for approval have been met.

[3] The Australian Nursing and Midwifery Federation and the Health Services Union, being bargaining representatives for the Agreement, have given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) I note that the Agreement covers the organisations.

[4] The Agreement was approved on 31 October 2014 and, in accordance with s.54, will operate from 7 November 2014. The nominal expiry date of the Agreement is 30 March 2017.



DEPUTY PRESIDENT

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Hobart Day Surgery

**HOBART DAY SURGERY PTY LTD
NURSES ENTERPRISE
AGREEMENT 2014**

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1. AGREEMENT TITLE

This Agreement shall be known as the Hobart Day Surgery Pty Ltd Nurses Enterprise Agreement 2014.

2. PARTIES TO THE AGREEMENT

The parties to this Agreement are:

- Hobart Day Surgery Pty Ltd (ABN 37 065 718 989), the Employer;
- Nurses employed by Hobart Day Surgery Ltd as classified in Schedule 1 of this Agreement, the Employees;
- Australian Nursing and Midwifery Federation ('ANMF'), Tasmanian Branch; and
- Health and Community Services Union ('HACSU')

3. SCOPE AND PURPOSE OF THE AGREEMENT

This Agreement contains all the terms and conditions of employment for Employees covered by the Agreement and shall apply to nurses employed by the Employer as classified in Schedule 1 of this Agreement.

The purpose of this Agreement is to:

- (a) Acknowledge that the nature of the business is conducting a Day Surgery facility based on meeting Surgeons' operating requirements. A principal factor in meeting these requirements is the ability to be able to respond to the availability of Surgeons and Patients to complete the intended lists. Subsequently, the Employer and its Employees are responsive to these factors and have little control on the conduct of these lists. It is paramount therefore that flexibility in meeting these requirements are mutually acknowledged to ensure the business operates effectively and that the Employees have a reasonable expectation of being provided work regularly and ongoing in either the Theatre or Recovery aspects of the Day Surgery facility;
- (b) Increase the productivity, efficiency, flexibility and competitiveness of the Employer;
- (c) Recognise the contribution of Registered and Enrolled Nurses to ensuring the quality of services provided by the Employer;
- (d) Maintain ongoing consultation between management and nursing staff;
- (e) Maintain commitment of the Employer and its nursing staff to the provision of quality care services to the client; and
- (f) Acknowledge the commitment of the parties to on-going continuous improvement

and participation in the organisation's Quality management System and accreditation with The AS/NZS ISO 9001-2008 incorporating the core standards for safety and quality in healthcare and continuous improvement in Occupational Health and Safety;

- (g) During the life of the Agreement, the rates of pay shall not fall below the minimum required under the applicable award and conditions shall be maintained to the National Employment Standards.

4. DATE AND PERIOD OF OPERATION

- (a) This Agreement shall operate from the seventh day after the date specified on the notice from the Fair Work Commission.
- (b) The Agreement shall remain in force until 30/03/2017, unless terminated or varied by the mutual agreement of the parties or operation of law. The Agreement will continue beyond the nominal expiry date, until replaced, or terminated in accordance with the *Fair Work Act 2009*.

5. POSTING OF THE AGREEMENT

A copy of this Agreement shall be displayed in a conspicuous and convenient place at the workplace so as to be easily read by all Employees.

6. CONSULTATION

- (a) This term applies if the Employer:
 - (i) Has made a definite decision to introduce a major change to productions, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the Employees; or
 - (ii) Proposes to introduce a change to the regular roster or ordinary hours of work of Employees.

Major Change

- (b) For major change referred to in 6(a):
 - (i) The Employer must notify the relevant Employees of the decision to introduce the major change; and

- (ii) Subclauses (c) to (i) apply.
- (c) The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- (d) If:
- (i) The relevant Employee/s appoints a representative for the purposes of consultation; and
- (ii) The Employee/s advise the employer of the identity of the representative; the Employer must recognise the representative.
- (e) As soon as practicable after making its decision, the Employer must:
- (i) Discuss with the relevant employees:
- the introduction of the change; and
 - the effect the change is likely to have on the Employees; and
 - measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees; and
- (ii) For the purposes of the discussion—provide, in writing, to the relevant Employees:
- all relevant information about the change including the nature of the change proposed; and
 - information about the expected effects of the change on the Employees; and
 - any other matters likely to affect the Employees.
- (f) However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (g) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- (h) If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Employer, the requirements set out in paragraph (b)(i) and subclauses (c) and (e) are taken not to apply.
- (i) In this term, a major change is *likely to have a significant effect* on Employees if it results in:
- (i) the termination of the employment of Employees; or

- (ii) major change to the composition, operation or size of the Employer's workforce or to the skills required of Employees; or
- (iii) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (iv) the alteration of hours of work; or
- (v) the need to retrain Employees; or
- (vi) the need to relocate Employees to another workplace; or
- (vii) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- (j) For a change referred to in paragraph (a)(ii):
 - (i) The Employer must notify the relevant Employees of the proposed change; and
 - (ii) Subclauses (k) to (o) apply.
- (k) The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- (l) If:
 - (i) The relevant employee/s appoints a representative for the purposes of consultation; and
 - (ii) The Employee or Employees advise the Employer of the identity of the representative;

the Employer must recognise the representative.
- (m) As soon as practicable after proposing to introduce the change, the Employer must:
 - (i) Discuss with the relevant Employees the introduction of the change; and
 - (ii) For the purposes of the discussion—provide to the relevant Employees:
 - all relevant information about the change, including the nature of the change; and
 - information about what the Employer reasonably believes will be the effects of the change on the Employees; and
 - information about any other matters that the Employer reasonably believes are likely to affect the Employees; and
 - (iii) Invite the relevant Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

- (n) However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- (o) The Employer must give prompt and genuine consideration to matters raised about the change by the relevant Employees.
- (p) In this term: **relevant Employees** means the Employees who may be affected by a change referred to in subclause (a).

7. DISPUTE RESOLUTION PROCEDURE

- (a) If a dispute arises about this Agreement, the National Employment Standards (NES) (including subsections 65(5) or 76(4) of the Act), or any other work-related matter (including a dispute about whether workplace rights have been breached), the parties to the dispute will attempt to resolve the dispute at the workplace by discussions between the Employee or Employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the Employee or Employees concerned and more senior levels of management as appropriate.
- (b) If the matter cannot be resolved, a party may refer the dispute to the Fair Work Commission for resolution using any of its powers (including powers under section 595(3) and 739(4) of the Act). The Fair Work Commission may deal with the dispute in two (2) stages:
 - (i) First attempt to resolve the dispute as it considers appropriate, including mediation, conciliation, expressing an opinion or making a recommendation; and
 - (ii) If the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
 1. Arbitrate the dispute; and
 2. Make a determination that is binding on the parties.

Note: If the Fair Work Commission arbitrated the dispute, it may also use the powers that are available to it under the Act.

A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

- (c) An Employee/s who is a party to the dispute may appoint a representative for the purposes of the procedures in this Clause.
- (d) The parties to the dispute and their representatives must act in good faith in relation to the dispute.
- (e) While the dispute is being resolved, the parties will respect the status quo. However, the Employer may direct an Employee to perform different work or work at a different location, on full pay, if it is reasonable to do so to protect the safety, health or welfare of Employees.
- (f) The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.

8. FLEXIBILITY TERM

- (a) An Employer and Employee covered by this Enterprise Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (i) The agreement deals with one (1) or more of the following matters:
 1. arrangements about when work is performed;
 2. overtime rates;
 3. penalty rates;
 4. allowances;
 5. leave loading; and
 - (ii) The arrangement meets the genuine needs of the Employer and Employee in relation to one (1) or more of the matters mentioned in paragraph (i); and
 - (iii) The arrangement is genuinely agreed to by the Employer and Employee.
- (b) The Employer must ensure that the terms of the individual flexibility arrangement:
 - (i) Are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (ii) Are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (iii) Result in the Employee being better off overall than the Employee would be if no arrangement was made.
- (c) The Employer must ensure that the individual flexibility arrangement:

- (i) Is in writing; and
 - (ii) Includes the name of the Employer and Employee; and
 - (iii) Is signed by the Employer and Employee and if the Employee is under eighteen (18) years of age, signed by a parent or guardian of the Employee; and
 - (iv) Includes details of:
 1. the terms of the Enterprise Agreement that will be varied by the arrangement; and
 2. how the arrangement will vary the effect of the terms; and
 3. 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
 - (v) States the day on which the arrangement commences.
- (d) The Employer must give the Employee a copy of the individual flexibility arrangement within fourteen (14) days after it is agreed to.
- (e) The Employer or Employee may terminate the individual flexibility arrangement:
- (i) By giving no more than twenty eight (28) days written notice to the other party to the arrangement; or
 - (ii) If the Employer and Employee agree in writing – at any time.
- (f) The Employer recommends the Employee seek advice from their Union representative, accountant or other party before entering into an individual flexibility agreement.

9. WAGES INCREASES

The following cumulative increases of wage rates reflected in Schedule 1 will apply:

- 3% from the first full pay period on or after 1 April 2014
- 3% from the first full pay period on or after 1 April 2015
- 3% from the first full pay period on or after 1 April 2016

10. DEFINITIONS

Act shall mean the *Fair Work Act 2009*.

Afternoon shift means a shift terminating after 6.00 p.m. but before midnight.

Agreement shall mean the Hobart Day Surgery Pty Ltd Nurses Enterprise Agreement 2014.

AHPRA means the Australian Health Practitioner Regulation Agency.

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Award means Nurses Award 2010.

Casual Employee means a person who either:

- (i) Relieves a full-time or part-time Employee;
- Or
- (ii) Is generally engaged temporarily.

Clinical unit means an area of nursing practice, as agreed between the parties, and without limiting the foregoing shall include a ward, area or place of nursing practice with a patient/client population.

Day shift means a shift worked between the hours of 7.00 a.m. and 6.00 p.m. Monday to Friday.

Day worker means an Employee whose weekly ordinary hours of work are performed between the period 7.00 a.m. and 6.00 p.m. on the days Monday to Friday inclusive.

De facto partner means a person who, although not legally married to the Employee, lives with the Employee in a relationship as a couple on a genuine domestic basis (whether the Employee and the person are of the same sex or different sexes) and includes a former de facto partner of the Employee.

Employee shall mean any nurse employed by the Employer.

Executive staff means Director of Nursing.

Full-time Employee means a person engaged to work for the full ordinary hours prescribed in the hours of work clause of this Agreement.

Immediate Family of an employee means:

- (a) A spouse, de facto partner, child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the Employee; or
- (b) A child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Employee.

Member of employee household in respect of an Employee means any person or persons who usually reside with the Employee.

NES means the National Employment Standards from the *Fair Work Act 2009*.

Parties shall mean the parties referred to in **Clause 2** in this Agreement.

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Part-time Employee means an Employee, other than a full-time Employee or casual Employee, engaged to work regularly in each pay period for less hours than an equivalently classified full-time Employee and who are regularly rostered for shifts and have an expectation of ongoing employment.

Part-time shift worker means a part-time Employee who holds a position on a roster prescribed in **Clause 12**.

Reasonable business grounds include, but are not necessarily limited to the following:

- Any expense involved
- Whether the change would result in a significant loss in efficiency or productivity
- Any negative impacts the change may have on customer service
- Whether the change would be impractical
- Business performance and forecast
- Trading patterns ie rosters
- The likelihood of ongoing work

This is by no means a comprehensive list, but are indicative of possible factors that may be taken into account

Relevant Agreement rate means the rate specified for the appropriate year of service applicable to the Employee in the appropriate classification in **Schedule 1**, excluding all allowances, pre-payments etc.

Roster means a documented arrangement setting out clearly the names of the Employees required to work in accordance with such roster, the days, dates and hours during which each Employee is required to attend for duty.

Regular Roster shall mean shifts allocated on the fortnightly roster to an Employee on a regular basis that would see the Employee have established some form of work pattern that would see a reasonable expectation of hours of work being rostered on an ongoing basis, although the hours may vary on a fortnight to fortnight basis either due to an Employee or hours of work not being available. Regularity is to be based over a preceding twelve (12) month period.

Shift worker means an Employee other than a day worker.

Spouse includes a former spouse.

Year of service shall mean 1976 hours of actual service in an approved establishment, including public holidays, paid annual leave, and paid sick leave.

11. CONTRACT OF EMPLOYMENT

- (a) Except as hereinafter provided, employment shall be by the fortnight. Any Employee not specifically engaged as a casual Employee shall be deemed to be employed by the fortnight.
- (b) An Employee (other than a casual employee) who is subject to this Agreement, is entitled to be paid in respect of any week, their normal weekly wage at a rate fixed by the Agreement, including overtime and other penalty rates, if any, if:
 - (i) Due to the act, default or order of the Employer, the Employee does not work for the maximum number of ordinary working hours specified in the Agreement (in the case of a full-time employee) and the maximum number of ordinary working hours which the employee is contracted to work (in the case of part-time employees); and
 - (ii) The Employee is ready and willing to work during those ordinary working hours (specified in 11(b)(i)) in that week.

12. EMPLOYMENT CATEGORIES

(a) Casual Employees

- (i) A Casual Employee is an Employee engaged as such on an hourly basis.
- (ii) A Casual Employee will be paid on hourly rate equal to 1/38th of the weekly rate appropriate to the Employee's classification plus a casual loading of 25%.
- (iii) A Casual Employee will be paid a minimum of two (2) hours pay for each engagement.
- (iv) Casual conversion:

A Casual Employee who has been rostered on a regular and systematic basis over a period of twenty six (26) weeks has the right to request conversion to permanent employment. An Employee, who does not make a request within four (4) weeks of the right to request falling due, is deemed not to have elected to convert.

The new Contract would generally be on the basis of the same number of hours as previously worked; however, the hours must be capable of fitting within the existing shift and rostering arrangements. Other arrangements may be implemented by agreement between the Employer and the Employee.

The Employer may consent to or refuse the request, but shall not unreasonably withhold agreement to such a request and may refuse such a request on reasonable business grounds.

(b) Full-time Employees

- (i) A Full-time Employee is an Employee who is engaged to work an average of thirty eight (38) ordinary hours per week.
- (ii) Full-time employees for working ordinary time shall be paid the annual rates prescribed in Schedule 1 for the work he/she performs.

(c) Part-time Employees

- (i) A part-time Employee is an Employee who is engaged to work less than an average of thirty eight (38) ordinary hours per week and whose hours of work are generally reasonably predictable, or modified by mutual agreement.
- (ii) Before commencing part-time employment, the Employer and Employee will agree in writing the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours. The terms of the agreement may be varied by agreement and recorded in writing.
- (iii) Part-time Employees shall be entitled to leave and other benefits on a pro rata basis.
- (iv) Part-time employees will be engaged for a minimum of three (3) hours per shift.
- (v) A Part-time Employee for working ordinary time shall be paid per hour 1/1976th of the annual rates prescribed for the work which he/she performs.
- (vi) Part-time Conversion

Where an Employee is regularly working more than their guaranteed contracted hours the Employee may request to have their hours reviewed annually.

The hours worked in the following circumstances will not be incorporated in any adjustments:

- If the increase in hours is as a direct result of an Employee being absent on leave, for example, annual leave, long service leave, parental leave, workers compensation; and
- If the increase in hours is due to a temporary increase in hours only

due, for example, to the specific needs of a client.

If a review establishes that a consistent pattern of greater hours is being worked, the Employer may offer the Employee those additional hours as part of their guaranteed minimum number of hours.

The Employer may consent to or refuse the request, but shall not unreasonably withhold agreement to such a request and may refuse such a request on reasonable business grounds.

13. CLASSIFICATIONS

- (a) **Nurse** means a nurse registered as such with the Australian Health Practitioner Regulation Agency (AHPRA) under the provisions of the Health Practitioner Regulation National Law (Tasmania) Act 2010.
- (b) **Enrolled Nurse** means an Employee registered as a Health Practitioner by the Australian Health Practitioner Regulation Agency (AHPRA) as an Enrolled Nurse (Division 2) under the provisions of the Health Practitioner Regulation National Law (Tasmania) Act 2010.
- (c) **Registered Nurse** means an Employee registered as a Health Practitioner by the Australian Health Practitioner Regulation Agency (AHPRA) as a Registered Nurse (Division 1) under the provisions of the Health Practitioner Regulation National Law (Tasmania) Act 2010.
- (d) **Registered Nurse - Level 1** means a Registered Nurse who is not otherwise classified within a level of Registered Nurse positions.
- (e) **Registered Nurse - Level 2** means a Registered Nurse who is appointed as such, and:
 - (i) Has demonstrated competence in basic nursing practice and the ability to provide direct care in more complex nursing care situations; and
 - (ii) Has the ability and skills to provide guidance to Registered Nurses - Level 1; and
 - (iii) Is employed within a clinical unit;
- (f) **Registered Nurse - Level 3** means a Registered Nurse who is appointed as such, and may be referred to as: Clinical Nurse Consultant or Nurse Manager or Staff Development Nurse.
 - (i) **Clinical Nurse Consultant**

Coordinates the delivery of care in a clinical unit and may provide direct care to selected patients/clients/resident with complex care requirements and is accountable for standards of nursing care in a clinical unit;

(II) **Nurse Manager**

Is responsible and accountable for the management of resources within a management unit;

(iii) **Staff Development Nurse**

Is responsible for the conduct, evaluation and planning of education programmes and/or staff development for a specified group of nurses, or education programmes for patients/clients and others.

- (g) **Registered Nurse - Level 5** means a Registered Nurse who is appointed as Director of Nursing, and who is a member of the executive management team, responsible and accountable for the overall coordination of the Nursing Division.

14. ACCELERATED ADVANCEMENT

(a) **Entitlement**

Subject to 14(b) a Registered Nurse - Level 1 shall be entitled to progress one increment on that person's first appointment following registration with the Australian Health Practitioner Regulation Agency, or at any one time during the person's employment history as a Registered Nurse - Level 1, on attainment of the following:

- a UGI degree in nursing; or
- registration in another branch of nursing or on another nursing register maintained by the Australian Health Practitioner Regulation Agency where the Employee is working in a particular practice setting which required the additional registration; or
- successful completion of a post-registration course of at least twelve (12) months duration, by an Employee required to perform the duties of a position to which the course is directly relevant.

- (b) A Registered Nurse - Level 1 who has been advanced once in accordance with 14(a) shall not be entitled to further advancement under this Clause.

15. MIXED FUNCTIONS

- (a) On occasions when a position classified above that of Registered Nurse Level 1 is vacant for a period in excess of three (3) days, the Director of Nursing will negotiate the requirement for the duties of that position to be performed in either a full or partial manner.
- (b) Subject to those negotiations, an Employee identified to perform that Higher Classification will be paid at the 1st increment of the higher Classification for the agreed period of absence.
- (c) Where the Director of Nursing has determined that replacement is not required on either a full or part time basis, Level 1 nurses shall not undertake any additional duties.
- (d) On occasions where the Director of Nursing and Level 2 and/or Level 3 are absent during the same period, the Director of Nursing position shall be replaced for the entire period. On such occasions the Employee required to act in the position of Director of Nursing will be paid at the rate of Registered Nurse Level 5 Grade 1 reflected in Schedule 1 – Wage Rates.

16. PAYMENT OF WAGES

(a) Time and interval of payment

- (i) Wages including overtime shall be paid at intervals of not more than two (2) weeks and not later than Thursday.
- (ii) When a public holiday falls on a normal pay day wages shall be paid on the last working day prior to the public holiday.
- (iii) The present pay day and time of payment shall not be varied, except after consultation with the Employee(s) concerned and an agreed phasing-in period.

(b) Method of Payment

- (i) Payment of wages shall be by direct bank deposit or some other method agreed by the Employer, provided that any Employee may nominate which bank or financial institution shall receive the payment of wages.
- (ii) The present method of payment shall not be varied, except after consultation with the Employee(s) concerned and an agreed phasing-in period.

(c) Statement of wages

On or the day immediately after pay day the Employer shall provide to the Employee, particulars in writing (pay slip), setting out full details of the wages the Employee received.

(d) Late payment of wages

- (i) Except in circumstances beyond the control of the Employer and subject to **16(e)** an Employee kept waiting for wages on the normal pay day after the usual time for ceasing work for more than a quarter of an hour shall be paid at overtime rates after that quarter of an hour with a minimum payment for a quarter of an hour and payment shall continue on that day until advised that payment will not be forthcoming on that day.
- (ii) Further, such payment at overtime rates shall continue during all ordinary hours of work on each succeeding day or days, including rostered days off, up to a maximum of 7.6 hours per day, until such time as payment is affected.
- (iii) Provided that, in no circumstances will the aggregate of ordinary time wages, and overtime penalty for waiting time on any day exceed 2.5 times the ordinary rate of salary.
- (iv) For the purposes of this clause the ordinary rates shall be exclusive of premiums, pre-payments or penalties.

(e) Agreed alternative arrangements - no penalty to apply

The provisions of **16(d)** shall have no effect in circumstances whereby payment cannot be effected on pay day but the Employer and Employee agree to an alternative arrangement for payment.

(f) Alternative arrangement broken - penalty to apply

Should however, the Employer fail to discharge payment in accordance with the terms of the alternatively agreed arrangement, the Employee shall be deemed to have been kept waiting for payment since pay day and shall thereby be entitled to payment in accordance with **16(d)** until such time as payment is affected.

(g) Allowances not taken into account

- (i) Allowances prescribed by this Agreement other than higher duties allowance, certificate and/or diploma allowance shall not be taken into account in the compilation of overtime and penalty rates prescribed herein.
- (ii) Notwithstanding the foregoing, the loading payable to casual Employees

shall be taken into account before calculating penalty rates payable for weekend and public holiday shifts, but shall not be taken into account when calculating overtime payments.

(h) Payment on termination

- (i) Where employment is terminated summarily or on the giving of the prescribed notice all moneys owing shall, where practical, be paid to the Employee on termination.
- (ii) If payment on termination is not practical the Employer shall, on the next working day of the pay office send to the Employee's recorded home address all moneys due by registered post, or, if agreed between the Employer and Employee, the Employer shall make the moneys available at a nominated location.
- (iii) Except in circumstances beyond the Employer's control if the money is not posted within that time, or is not available at the nominated location, then any time spent waiting after the date of termination shall be paid for at ordinary rates up to a maximum of 7.6 hours per day for each day that they are deemed to be kept waiting and shall continue until such time as payment is affected.
- (iv) Provided further that no waiting time is payable where the Employee nominates to pick up his/her moneys at a location and then does not report to pick up those moneys.

17. LONG SERVICE LEAVE

Long Service Leave will be in accordance with the *Long Service Leave Act 1976* (as amended).

18. HOURS OF WORK

(a) Ordinary hours of work

The ordinary hours of work for Employees shall be a maximum of thirty eight (38) hours per week.

(b) Spread of hours – Day Workers

- (i) The ordinary hours as defined in **18(a)** are to be worked in five (5) days Monday to Friday inclusive in continuous periods of no more than eight (8) hours per day respectively, except for a meal break of not more than one (1) hours duration, between 7.00 a.m. and 6.00 p.m. on such days.

- (ii) Provided always that the spread of hours or daily hours prescribed may be altered as to all or a section of the Employees by mutual agreement between the Employer, the majority of Employees involved in the area concerned. By mutual agreement ten (10) hour shifts may be worked. Such shifts will be paid at ordinary time.
- (iii) Work performed beyond eight (8) hours per day will be defined as overtime.

(c) Spread of hours - Shift Workers

Afternoon shift means a shift where ordinary hours are terminating after 6.00 p.m. but before midnight.

- (i) The ordinary hours as defined in 18(a) are to be worked in five (5) days Monday to Friday inclusive in continuous periods of no more than eight (8) hours per day respectively, except for a meal break of not more than one (1) hour's duration.
- (ii) Provided always that the spread of hours or daily hours prescribed may be altered as to all or a section of the Employees by mutual agreement between the Employer, the majority of Employees involved in the area concerned. By mutual agreement ten (10) hour shifts may be worked. Such shifts will be paid at ordinary time.

(d) Afternoon shift allowances

Shift workers shall be paid the following loading on their ordinary rate for such shifts:

- Afternoon shift - 12.5%;

- (e) The Business Hours of the Employer to provide Theatre services to Surgeons and subsequent Recovery services will generally occur Monday to Friday 0700 to 2300.
- (f) Rostering will continue as per current practices in relation to generally a Day and Afternoon shift format.
- (g) Shifts will have a start time and finishing time identified on all rosters.
 - (i) The finishing time may be earlier or later subject to the surgical requirements and mutual agreement between the Employee and Employer.
- (h) All shifts will be rostered as necessary with a minimum of three (3) hours and a maximum of eight (8) hours. In the event Employees are requested to work beyond eight (8) hours to complete Surgical, Theatre or Recovery requirements,

overtime will be provided as per the Agreement. Alternatively the TOIL provisions contained in this Agreement may be accessed by mutual agreement.

- (i) A roster will be displayed two (2) weeks in advance based on Employees regular or preferred pattern, although it is acknowledged that the proposed preferred pattern requests may not be able to be met due to the booked surgical lists.
- (ii) Provided that an Employee's place on such roster shall not be changed except on one (1) weeks' notice of such change, or payment of the penalty set out in Clause 20, provided further that by mutual agreement between the Employer and the Employee the one week's notice may be reduced.
- (iii) If a Surgical List is either varied or cancelled seven (7) days or more before it is due to commence, no recompense for that shift being cancelled will occur.
- (iv) In the event less than seven (7) days' notice is available to be provided for the cancellation of a Rostered Shift, alternative duties will be provided to the Employee which may include Nursing Administration duties not necessarily directly in the Theatre or Recovery areas, however the duties shall be within the position description and scope of practice, unless it is mutually agreed that the shift will be cancelled without compensation.
- (v) The parties acknowledge that as much notice as possible will be provided if a shift is to be cancelled or varied. The above provisions are to be used as preferred guidelines in these circumstances.
- (vi) So far as employees present themselves for work in accordance therewith, shifts shall be worked according to the roster.

(i) Calculation of penalties etc.

In the calculation of overtime rates and afternoon shift allowances, the hourly rate shall be calculated at 1/38 of the weekly rate.

(j) Minimum days off

Provide for a minimum of two (2) consecutive days off each week except where by mutual agreement between the Employer and the Employee(s) concerned, alternative arrangements are made.

(k) Twenty-eight day accounting period

Clearly stipulate a 28 day accounting period which shall include an accrued day off in addition to eight rostered days off:

- (i) Provided always that staff engaged to provide relief on accrued days off pursuant to **22(k)** while engaged in such capacity shall be regarded as shift workers for all purposes of the Agreement (except additional annual leave);
- (ii) Rosters covering such relief employees shall not be required to rotate.

19. BREAKS

(a) Meal breaks

- (i) An Employee who works in excess of four hours will be entitled to an unpaid meal break of not less than thirty (30) minutes.
- (ii) Where an Employee is required to remain available or on duty during a meal break, the Employee will be paid overtime for all time worked until the meal break is taken.

Where an Employee is interrupted during their meal break by a call to duty, such meal break shall be counted as time worked and the Employee shall be allowed a meal break as soon as practicable. The Employee shall receive overtime pay for the interrupted meal break.

- (iii) The meal break shall be taken between the beginning of the fourth hour and the end of the sixth hour;

Provided that a day shift worker shall have his/her meal break not later than between the hours of 12.00 midday to 2.00pm;

Provided **19 (iii)** can be altered by mutual agreement.

(b) Meal breaks when required to work overtime

An Employee working overtime of at least one and half hours will take a paid rest break of twenty (20) minutes.

(c) Tea Breaks

- (i) Every Employee will be entitled to a paid ten (10) minute tea break in each four (4) hours worked at a time to be agreed between the Employee and Employer.
- (ii) Where an Employee is entitled to two (2) ten (10) minute breaks, the Employee must request and the Employer must approve the change if, such breaks may alternatively be taken as one (1) twenty (20) minute tea break.

- (iii) Tea breaks will count as time worked.

20. OVERTIME

(a) Requirement to work reasonable overtime

- (i) Subject to 20(b) an Employer may require an Employee to work reasonable overtime at overtime rates.

(b) An Employee may refuse to work overtime in circumstances where the working of such overtime would result in the Employee working hours which are unreasonable having regard to:

- (i) any risk to Employee health and safety;
- (ii) the Employee's personal circumstances including any family responsibilities;
- (iii) the needs of the workplace or enterprise;
- (iv) the notice (if any) given by the Employer of the overtime and by the Employee of his or her intention to refuse it; and
- (v) any other relevant matter.

(c) No overtime shall be worked without the prior approval of the Employer.

(d) Payment for working overtime

For all time worked in excess of the ordinary hours of work the following payments shall be made:

- (i) Monday to Friday inclusive - time and a half for the first two (2) hours and double time thereafter;
- (ii) Saturday - time and a half for the first two (2) hours and double time thereafter;
- (iii) Sunday - double time.

(e) Time off in lieu of overtime and additional hours worked

- (i) Provided that where there is agreement between the Employer and the Employee, time off in lieu (TOIL) of overtime may be taken at the penalty rate

equivalent.

- (ii) Any agreed ordinary time hour's works in excess of an Employee's contracted hours may be either taken as time off in lieu (TOIL) or will be paid at the ordinary rate.
- (iii) Provided further that such agreement involves the Employee indicating that he/she has had an opportunity to seek advice which may include an Employee representative.
- (iv) Provided always that such agreement may be discontinued by mutual consent of both parties or at the request of one such party.
- (v) TOIL hours will not accumulate from one (1) financial year to the next year. Outstanding TOIL Hours not accessed will be paid out at the end of each financial year.
- (vi) An Employee is not permitted to accrue in excess of the equivalent of one (1) week based on their ordinary hours of work - for example for a Full Time Employee this would be thirty eight (38) hours.

(f) Make up time

An Employee may elect, with the consent of their Employer, to work **make-up time**, under which the Employee takes off ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in the Agreement.

(g) Overtime meals

Where an Employee is required to work overtime of at least one and half (1.5) hours the Employee will be provided with a meal.

Where a meal is not provided the employee will be paid an overtime meal allowance of \$11.76.

(h) On Call and Call Back

(i) On Call Allowance

The rate for being on call shall be \$3.60 per hour Monday to Friday and \$4.68 per hour Saturdays, Sundays and public holidays for all hours of the agreed on call period, irrespective of whether the employee is called back or not.

This amount is to be increased by 3% in 2015 and 3% in 2016 as follows:

	1 April 2014	1 April 2015	1 April 2016
Monday to Friday	\$3.60	\$3.71	\$3.82
Saturday, Sundays and public holidays	\$4.68	\$4.82	\$4.96

(ii) Call Back

An Employee recalled to work overtime after leaving his/her Employer's premises (whether notified before or after leaving such premises) shall be paid at the appropriate overtime rate applicable to his/her salary:

- (A) For the first recall a minimum payment of four (4) hours work; and
- (B) For each subsequent recall a minimum payment of three (3) hours worked.

Provided that:

- Time reasonably spent in getting to and from work shall be regarded as time worked for a period of up to thirty (30) minutes to and thirty (30) minutes from the workplace; and
- An Employee who is recalled to work within two (2) hours of his or her normal starting time shall be paid at overtime rates with a minimum payment of three (3) hours at double time and then would be paid at ordinary rates for that shift.

(iii) 8 Hour Break

An Employee shall be entitled to an eight (8) hour break immediately following the cessation of call back duty without loss of pay, prior to be required to commencing their normal rostered shift.

If the Employee, on the instructions of the Employer resumes or continues work without having had such eight (8) consecutive hours off duty, the Employee shall be paid at double time until released from duty for such period, and shall then be entitled to be absent until he/she has eight (8) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

When overtime work is necessary it shall, wherever reasonably practicable, be so arranged so that Employees have at least eight (8) consecutive hours off duty between the work of successive days.

21. ANNUAL LEAVE

(a) Period of leave

For each year of service with the Employer, a full time Employee is entitled to 190 hours (five (5) weeks) annual leave per annum. An Employee's entitlement to paid annual leave accrues progressively during a year of service according to the Employee's ordinary hours of work, and accumulates from year to year.

Part-time Employees accrue pro-rata of the 190 hours annual leave entitlements of full-time Employees based on the ordinary hours worked (including any paid leave) by a part-time Employee relative to full-time Employees. The entitlement shall accrue at the rate of 0.096154 hours for each hour.

(b) Shift workers

Employees under this Agreement are not defined as shift workers for the purposes of the NES and Award and therefore will accrue leave based upon 21(a) above.

(c) Employee not taken to be on paid annual leave at certain times as follows:

(i) Subject to this Clause the annual leave prescribed by this Clause shall be exclusive of any of the holidays prescribed by **Clause 26 - Public Holidays**, and if any such holiday falls within an Employee's period of annual leave and is observed on a day which in the case of that Employee would have been an ordinary working day there shall be added to that period of annual leave time equivalent to the ordinary time which the Employee would have worked if such day had not been a holiday.

(ii) If the period during which an Employee takes paid annual leave includes a period of any other leave (other than unpaid parental leave or community service leave), the Employee is taken not to be on paid annual leave for the period of that other leave of absence.

(d) Annual leave required by the Employer

The Employer may direct an Employee to take annual leave in reasonable circumstances. Those reasonable circumstances could include a Christmas shutdown, or any shutdown of a section of the business, or where the Employee

has accumulated an excessive value of annual leave. Excessive annual leave is defined as leave accrued beyond eight (8) weeks.

(e) **Payment in lieu prohibited**

(i) Except as provided in 12(c) payment shall not be made or accepted in lieu of annual leave.

(f) **Payment for period of leave**

(i) An eligible Employee may elect prior to commencing a period of leave in excess of five (5) days, be paid that period of leave prior to commencing leave. The election must be made to the Employer and at least fourteen (14) days prior to the commencement of such leave.

(ii) Payment in accordance with this provision shall be calculated in respect of the ordinary time which the Employee would have worked had the Employee not been on leave during the period and made for the entire leave period, unless otherwise specified by the Employee.

(iii) Payment shall be made not later than twelve (12) noon on the last day of work prior to going on leave.

(g) **Annual Leave Loading**

(i) During a period of annual leave an Employee shall be paid a loading by way of additional salary calculated on the value of annual leave to be paid. Employees shall be paid at 17.5% of the value of annual leave.

(ii) Annual leave loading is also payable on termination of employment on the value of accrued annual leave.

(h) **Calculation of continuous service**

(i) For the purpose of this Clause, service shall be deemed to be continuous notwithstanding any absence from work on account of personal sickness or accident or any period of unpaid leave.

(ii) **Continuous service** is as defined in Section 22 of the *Fair Work Act 2009*. That is, where the Employee is employed by the Employer, but does not include any period (an excluded period) that does not count as service which includes:

- Any period of unauthorised absence;
- Any period of unpaid leave or unpaid unauthorised absence other than community service leave, a period of stand down under an Enterprise Agreement or under the Employee's Contract of

Employment, or a period of leave or absence of a kind prescribed by the regulations;

- Any other period of a kind prescribed by the regulations.

(iii) An excluded period does not break continuous service but does not count towards the length of the Employee's continuous service.

(i) **Broken leave**

- (i) Leave allowed under the provisions of this Clause shall be given and taken in one (1) consecutive period, or if the Employer and the Employee so agree, in any combination of periods.
- (ii) An Employee and Employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five (5) consecutive days have been taken.

(j) **Time of taking leave**

- (i) Annual leave shall be taken at a time mutually agreed by the parties within a period not exceeding six (6) months from the date when the right to annual leave accrued and after not less than two (2) weeks' notice to the Employee.
- (ii) By mutual agreement by the Employer and the Employee the period of six (6) months may be amended.

(k) **Leave allowed before due date**

- (i) Where leave had been granted to an Employee in advance prior to it being accrued and the Employee subsequently leaves or is discharged from the service of the Employer, the Employer reserves the right to deduct from any monies due to the Employee all leave paid but not accrued, which amount shall not include any sums paid for any of the holidays prescribed by Clause 26 - Public Holidays.

22. PERSONAL/CARER'S LEAVE

- (a) Except for unpaid carer's leave, the provisions of this Clause apply to Employees, other than casual Employees, who are entitled to paid personal leave for absences from work due to-

- (i) personal illness or injury (sick leave); or

- (ii) caring or supporting a member of the Employee's immediate family, or a member of the Employee's household, who requires care or support because of:
 - (A) a personal illness or injury affecting the member; or
 - (B) An unexpected emergency affecting the member.

Amount of personal leave

- (b) A full-time Employee is entitled to 114 hours referenced to a thirty eight (38) hour week of personal leave, per annum.
- (c) Notwithstanding **22(b)** above, a full-time or part-time Employee who does not receive a loading for annual leave, personal leave and public holidays and who was employed by the Employer prior to the commencement of the Hobart Day Surgery Pty Ltd Nurses Enterprise Agreement 2011 will continue to accrue 174.8 hours of personal leave per annum.

The rates of accrual for part-time Employees who do not receive a loading for annual leave, personal leave and public holidays shall accrue on a pro rata basis.

- (d) Personal leave accrues as it is worked and untaken personal leave accumulates from year to year without limitation.
- (e) Immediate family or household as defined in definitions:
 - (i) The entitlement to carer's leave is subject to the person in respect of whom the leave is taken being either:
 - A member of the Employee's immediate family; or
 - A member of the Employee's household.

Sick leave

- (f) An Employee who is absent from work because of personal illness or injury, is entitled to paid sick leave at the Employee's base rate of pay for the Employee's ordinary hours of work in the period.
- (g) Employees must, as soon as practicable and where able to, prior to going on sick leave, inform the Employer of their inability to attend for duty, and as far as reasonable advise the Employer of the period, or expected period, of the leave.

- (h) An Employee who has given his or her Employer notice of the taking of the leave must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person that the leave is taken for the purpose outlined in Clause 22(a).
- (i) Employees shall be allowed four (4) single days of personal leave per fiscal year without certification or statutory declaration and those days may be taken at any time including either side of days off or ADO's.
- (j) An Employee who is certified as unfit for duty because of personal illness by a medical practitioner approved by the Employer during a period of annual leave shall be extended by the number of days that the Employee has been so certified as unfit for duty.

Carer's leave

- (k) Wherever practicable Employees are to give the Employer prior notice of their inability to attend for duty and their intention to take carer's leave, and as far as reasonable advise the Employer of the period, or expected period, of the leave.
- (l) If required by the Employer, Employees are to provide a medical certificate or some other form of proof that would satisfy a reasonable person that the leave is taken for the purposes of carer's leave.

Unpaid Carer's Leave

- (m) An Employee, including a casual employee, is entitled to unpaid carer's leave in accordance with the NES.

23. COMPASSIONATE LEAVE

- (a) All eligible full-time and part-time Employees are entitled to compassionate leave.
- (b) "Compassionate leave" is provided to enable the Employee to spend time with the member of the Employee's immediate family or household who has contracted or developed a personal illness, or sustained a personal injury, which poses a serious threat to his or her life or dies.
- (c) The entitlement to Compassionate leave is as follows:

- (l) Employees (other than casual Employees) are entitled to three (3) days paid leave per occasion.
- (d) The Employer may approve paid compassionate leave for other persons not mentioned above who have contracted or developed a personal illness, or sustained a personal injury, which poses a serious threat to his or her life, or dies, where it can be established that a significant relationship exists.
- (e) The Employer shall have the discretion to grant paid leave in addition to that described in Sub-clause (c) above.
- (f) Casual Employee will be entitled to take the same leave periods as detailed in Sub-clause (c) above as unpaid leave.
- (g) An Employee may take unpaid compassionate leave by agreement with the Employer.
- (h) Proof of the death or serious illness, in the form of a medical certificate, death notice or other written evidence, must be provided by the Employee to the Employer if requested to do so.

24. PARENTAL LEAVE

Parental Leave (birth related leave and adoption related leave) will be in accordance with the provisions contained in the National Employment Standards (NES) (Division 5 - Parental Leave and Related Entitlements).

In addition to the Parental Leave provisions contained in the NES and Paid Parental Leave paid by the Australian Government from 1 January 2011, the following shall apply:

Full-time Employees and permanent part-time Employees are eligible for paid parental leave in accordance with the following provisions:

Employees are eligible for twelve (12) weeks paid parental leave when they have completed at least fifty two (52) weeks of continuous service prior to the expected date of birth or prior to the date of taking custody of the child.

- (a) Maternity leave may commence up to nine weeks prior to the expected date of birth. It is not compulsory for an Employee to take this period off work. However, if an Employee decides to work during this period, it is subject to the Employee being able to satisfactorily perform the full range of normal duties. A request for evidence to support the health and well-being of the parent and the expected child may be requested by the Employer if the Employee would like to continue to work beyond the nine (9) weeks pre-birth.

- (b) Such leave may be paid:
- (i) On a normal fortnightly basis; or
 - (ii) At the rate of half pay over a period of twenty four (24) weeks on a regular fortnightly basis.
 - (iii) Annual and/or long service leave credits can be combined with periods of parental leave on half pay to enable an Employee to remain on full pay for that period.
- (c) An Employee must give their Employer written notice of the taking of parental leave. The notice must be given to the Employer at least ten (10) weeks before starting the leave, or if that is not practicable - as soon as practicable. The notice must specify the intended start and end dates of the leave.
- (d) Any person who occupies the position of an Employee on parental leave must be informed that the Employee has the right to return to their former position. Additionally, since an Employee also has the right to vary the period of her maternity leave or adoption leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should also be set down clearly, to a fixed date or until the Employee elects to return to duty, whichever occurs first.
- (e) Unpaid Leave
- (i) Unpaid Maternity leave – An Employee is entitled to a further period of unpaid maternity leave of not more than twelve (12) months after the actual date of birth of the child.
 - (ii) Unpaid Paternity Leave – An Employee is entitled to a further period of unpaid paternity leave of not more than three (3) weeks, to be taken in conjunction with a period of paid paternity leave, unless otherwise agreed by the Employer and Employee.
 - (iii) Unpaid Adoption Leave – An Employee is entitled to unpaid adoption leave as follows:
 - A. Where the child is under the age of twelve (12) months - a period of not more than twelve (12) months from the date of taking custody;
 - B. Where the child is over the age of twelve (12) months - a period of up to twelve (12) months, such period to be agreed upon by both the Employee and the Employer.

- (f) An Employee who has once met the conditions for paid paternal leave and/or paid adoption leave will be required to again work the forty (40) weeks' continuous service in order to qualify for a further period of paternal leave or adoption leave; unless:
- (i) There has been a break in service where the Employee has been re-employed or re-appointed after a resignation, medical retirement or after her services have been otherwise dispensed with; or
 - (ii) The Employee has completed a period of leave without pay of more than forty (40) weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Rehabilitation Compensation Act*.
- (g) An Employee who intends to proceed on maternity or paternity leave should formally notify the Employer of such intention as early as possible, so that arrangements associated with the absence can be made. Written notice of not less than eight weeks prior to the commencement of the leave should accordingly be given. This notice must include a medical certificate stating the expected date of birth and should also indicate the period of leave desired.
- (h) In the case of notification of intention to take adoption leave, due to the fact that an Employee may be given little notice of the date of taking custody of a child, Employees who believe that, in the reasonably near future, they will take custody of a child, should formally notify their employer as early as practicable of the intention to take adoption leave. This will allow arrangements associated with the adoption leave to be made.
- (i) After commencing maternity leave or adoption leave, an Employee may vary the period of maternity leave or adoption leave, once, without the consent of the Employer and otherwise, with the consent of the Employer. A minimum of four (4) weeks' notice must be given, although an Employer may accept less notice if convenient.
- (j) Any person who occupies the position of an Employee on parental leave must be informed that the Employee has the right to return to her former position. Additionally, since an Employee also has the right to vary the period of her maternity leave or adoption leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should also be set down clearly, to a fixed date or until the employee elects to return to duty, whichever occurs first.
- (k) When an Employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual and long service leave and any period of maternity

leave or adoption leave on half pay is taken into account to the extent of one-half thereof when determining the accrual of annual and long service leave.

- (l) Except in the case of Employees who have completed ten (10) years' service the period of parental leave without pay does not count as service for long service leave purposes. Where the Employee has completed ten (10) years' service the period of parental leave without pay shall count as service for long service leave purposes provided such leave does not exceed six (6) months.
- (m) Parental leave without pay does not count as service for incremental purposes. Periods of parental leave on full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.
- (n) Where public holidays occur during a period of paid parental leave, payment is at the rate of parental leave received, that is the public holidays occurring in a period of full pay parental leave are paid at the full rate and those occurring during a period of half pay leave are paid at the half rate.
- (o) If because of an illness associated with her pregnancy an Employee is unable to continue to work then she can elect to use any available paid leave (sick, annual and/or long service leave) or to take sick leave without pay.
- (p) Where an Employee is entitled to paid maternity leave, but because of illness, is on sick, recreation, long service leave, or sick leave without pay prior to the birth, such leave ceases nine (9) weeks prior to the expected date of the birth. The Employee then commences maternity leave with the normal provisions applying.
- (q) Where, because of an illness or risk associated with her pregnancy, an Employee cannot carry out the duties of her position, an Employer is obliged, as far as practicable, to provide employment in some other position that she is able to satisfactorily perform. A position to which an Employee is transferred under these circumstances must be as close as possible in status and salary to her substantive position.
- (r) In the event of a miscarriage any absence from work is to be covered by the current sick leave provisions.
- (s) In the case of stillbirth, an Employee may elect to take sick leave, subject to the production of a medical certificate, or maternity leave. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.
- (t) An Employee who gives birth prematurely and prior to proceeding on maternity leave shall be treated as being on maternity leave from the date leave is commenced to have the child. Should an Employee return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.

- (u) An Employee returning from parental leave has the right to resume their former position. Where this position no longer exists the Employee is entitled to be placed in a position nearest in status and salary to that of her former position and for which the Employee is capable or qualified.
- (v) Employees may make application to their Employer to return to duty for less than the full-time hours they previously worked by taking weekly leave without pay. Such return to work is to be according to the following principles:
 - (i) the period is to be limited to twenty-four (24) months;
 - (ii) the Employee is to make an application for leave without pay to reduce her full-time weekly hours of work. This application should be made as early as possible to enable the employer to make suitable staffing arrangements. At least four (4) weeks' notice must be given;
 - (iii) the quantum of leave without pay to be granted to individual Employees is to be at the absolute discretion and convenience of the Employer;
 - (iv) salary and conditions of employment are to be adjusted on a basis proportionate to the Employee's full-time hours of work, that is for long service leave the period of service is to be converted to the full-time equivalent and credited accordingly.
 - (v) Full-time Employees who return to work under this arrangement remain full-time Employees.
- (w) Where an Employee becomes pregnant whilst on maternity leave, a further period of maternity leave may be granted. Should this second period of maternity leave commence during the currency of the existing period of maternity leave, then any residual maternity leave from the existing entitlement lapses.
- (x) All requirements under the NES for return to work and flexible working requests are applicable to Employees.

25. COMMUNITY SERVICES LEAVE

Community Services leave including Jury Duty will be provided to Employees as per the NES. Where there is an inconsistency between this Clause and the NES, the NES provision will apply to the extent of the inconsistency.

- (a) An Employee who is a registered volunteer in a specified emergency service organisation and attends an emergency response situation, or is involved in a voluntary emergency management activity during normal working hours may be entitled to unpaid leave on application.

- (b) Community Service Leave arrangements apply in respect to Employees who are registered volunteers with the following emergency service organisations:
- Tasmania Fire Service;
 - Tasmanian Ambulance Service; and
 - State Emergency Service.
 - Other emergency service consistent with the NES definition.
- (c) The leave applies where a registered volunteer is requested to respond to an emergency situation involving volunteer assistance during normal working hours. Regular rostered activities/events or training are not included.
- (d) The Employer will grant approval or an Employee to be absent from duty so the Employee can assist with an emergency situation, providing the following conditions are met:
- (i) the Employee has informed the management and their direct supervisor as soon as practicable regarding the requirement for the absence and its likely length;
 - (ii) the Employee is able without undue disruption to the operational requirements of the organisation to be released to assist in responding to the emergency; and
 - (iii) if required by the Employer, the Employee can obtain from the relevant emergency organisation proof of the request for and duration of the attendance in response to the emergency situation.
- (e) The Employer will not unreasonably refuse a request of absence to attend an emergency situation.
- (f) When an Employee has attended and rendered assistance as a volunteer in response to an emergency situation, the following leave and related arrangements will apply:
- (i) the attendance will not affect entitlements for leave accruals and related benefits;
 - (ii) an injury sustained by the Employee whilst attending an emergency situation will not form the basis of a claim against the Employer; and the return to normal work duties by the Employee should be as soon as practicable following the completion of functions associated with the emergency situation including, where relevant, debriefing or counselling. Furthermore, the timing of the return to work should be managed consistent with appropriate health and safety considerations such as the fatigue status of the Employee.

(g) **Jury Service**

- (i) Subject to the following, absence from normal duties as a result of approved Jury Service Leave will not affect the fortnightly salary of the Employee;
- (ii) Any Employee who receives payment in compensation for lost wages as a result of providing Jury Service must produce to the Employer documentation showing the amount the Employee has received for compensation of loss of wages.
- (iii) On production of the required documentation, the Employee will receive their fortnightly gross wage minus the amount received in (i) above. All superannuation normally paid by the Employer in a normal pay period, including salary sacrifice and the Superannuation Guarantee Contribution will remain the same as if the employee had been at work. Payment for Jury Service will be provided by the employer for a maximum of ten (10) ordinary days the Employee would have worked had they not attended Jury Service.

26. PUBLIC HOLIDAYS

- (a) All Employees are entitled to be absent from their employment on public holidays. These days include;

Christmas Day, Boxing Day, New Year's Day, Australia Day, Cup Day (half day), Hobart Regatta Day (South of Oatlands), Eight Hours Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day and the first Monday in November in those districts where Hobart Regatta Day is not observed, or such other day as may be observed in the locality in lieu of or made additional to any of the aforementioned holidays pursuant to the *Tasmanian Statutory Holidays Act 2000* as amended

- (b) **Show day** means not more than one local show day observed in the city, town or district in which the Employee is employed; or such other day which, in the absence of such a local show day, is agreed on by the Employee and the Employer.
- (c) Where a Casual Employee is required to work on a declared public holiday they shall receive double time and one half for all hours of work performed on that day.
- (d) Where an Employee, other than a casual is required to work on a declared public holiday they shall receive double time for all hours of work performed on that day.
- (e) For variable roster Employees to be entitled to a public holiday they must have worked on 50% or more of the occasions on that particular day of the week in the six (6) months (i.e. 26 weeks) immediately preceding the public holiday. Calculations for new employees with less than six (6) months of service at the time of a public holiday will be reduced accordingly.

- (f) Subject to subclause (e) for Part-time Employees to be entitled to a public holiday they must ordinarily work on the day that the public holiday falls.
- (g) For those Employees entitled to a public holiday the number of hours paid is the average number of hours they would have worked in the absence of a public holiday.
- (h) The average number of hours is calculated on that particular day of the week in the previous six (6) months (i.e. 26 weeks) immediately preceding the public holiday. Annual leave of one (1) week or more taken during the calculation period is deducted from the overall calculation.
- (i) Payment for the holidays mentioned in 26(a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the Employee concerned where, if it were not for such holiday, he/she had been at work.
- (j) An Employee required to work on any of the holidays mentioned in 26(a), where such holiday applies at his/her normal place of work but because his/her duties requires the Employee to work at a place where the holiday does not apply, shall have the time in lieu of such holiday added to his/her annual leave entitlement.

27. TRAVELLING AND EXCESS FARES

Travelling

An Employee who is required to travel for work purposes will have reasonable expenses paid for by the Employer. This travel does not include training for which an alternative arrangement has been made.

28. CLOTHING

Uniforms to be provided

Sufficient, suitable and serviceable uniforms shall be provided free of cost to all Employees who are required by the Employer to wear uniforms.

29. TERMINATION OF EMPLOYMENT

Notice of Termination by the Employer

- (a) In order to terminate the employment of the Employee, where employed on a full-time or part-time basis, the Employer shall give to the Employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

- (b) In addition to this notice, where the Employee is over forty five (45) years of age at the time of the giving of the notice with not less than two (2) years continuous service, they will be entitled to an additional week's notice.
- (c) The Employer reserves the right to elect to pay the Employee in lieu of notice.
- (d) In calculating any payment in lieu of notice, the wages the Employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated will be used.
- (e) The period of notice in this Clause shall not apply in the case of dismissal for serious misconduct, or in the case of casual Employees or Employees engaged for a specific period of time or for a specific task or tasks.

Notice of Termination by the Employee

- (f) The notice of termination required to be given by the Employee is the same as that required of the Employer, save and except that there is no requirement on the Employee to give additional notice based on the age of the Employee concerned.
- (g) If the Employee fails to give notice the Employer has the right to withhold monies due to the Employee to a maximum amount equal to the ordinary time rate of pay for the unserved period of notice.

Instant Dismissal

- (h) The Employer shall have the right to dismiss the Employee without notice for serious misconduct as defined by the *Fair Work Act 2009*.

30. QUALIFICATION RECOGNITION

- (a) An Employee who has completed a relevant post-graduate study shall receive the following allowance:
- I. Graduate Certificate: 3% of hourly rate

- II. Graduate diploma or degree: 3% hourly rate
 - III. Masters of Doctorate: 3% of hourly rate
- (b) Only one qualification allowance at any time applies for each Employee. It must be demonstrated that the qualification must be relevant to current area of practice and is being utilised.
 - (c) The post graduate allowance shall be paid on overtime worked in a relevant area of practice.
 - (d) Approval of the qualification will be considered upon application to the Employer.

31. PROFESSIONAL DEVELOPMENT

- (a) The Employer recognises that training/education is essential for the maintenance and development of nursing practices. The objectives of staff development will be to enhance the skills of the nurse so they may perform at optimum levels and meet best practice objectives. The Employer will continue to provide and support training/education opportunities equitably to ensure its nurses are able to deliver appropriate services to the Surgeons and Patients and to perform other related duties in accordance with relevant standards.
- (b) The responsibility for staff development is shared between Employees and the Employer. Nurses are expected to participate in professional skill development to ensure that they perform at a standard consistent with nursing competences relevant to their classification and registration.
- (c) On the basis of the assessed needs of the practice, the Employer will continue its current practice of supporting the Professional Development of its Nurses by providing up to three (3) days paid per year to allow employees to attend training which includes all mandatory training.

Such training is to firstly be approved by the Employer, in writing, following an application, in writing, being made by the employee. Such proposals will be assessed on a case by case basis by the Employer.

- (d) The provision of mandatory training and skill updates as per State and Federal Legislation is the responsibility of the Employer. Attendance at such mandatory training and skills update sessions is the responsibility of the Nurse for a minimum of eight (8) hours per year regardless of employment status.
- (e) Mandatory training will be paid at the appropriate rate as per the Agreement rate for those on duty and at the ordinary rate of pay for those attending in their own time.

32. SUPERANNUATION

(a) Superannuation legislation

- (i) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of Employers and Employees. Under superannuation legislation individual Employees generally have the opportunity to choose their own superannuation fund. If an Employee does not choose a superannuation fund, any superannuation fund nominated in this Agreement covering the Employee applies.
- (ii) The rights and obligations in this clause supplement those in superannuation legislation.

(b) Employer contributions

- (i) The Employer must pay applicable employer contributions to the relevant superannuation fund on a monthly basis.

(c) Voluntary Employee contributions

- (i) Subject to the governing rules of the relevant superannuation fund, an Employee may, in writing, authorise their Employer to pay on behalf of the Employee a specified amount from the post-taxation wages of the Employee into the same superannuation fund as the Employer makes the superannuation contributions provided for in subclause (b).
- (ii) An Employee may adjust the amount the Employee has authorised their Employer to pay from the wages of the Employee from the first of the month following the giving of one months' written notice to their Employer.
- (iii) The Employer must pay to the relevant superannuation fund the amount authorised under paragraphs (i) or (ii) of this subclause on a monthly basis.

(d) Superannuation fund

Unless, to comply with superannuation legislation, the Employer is required to make the superannuation contributions provided for in subclause (b) to another superannuation fund that is chosen by the Employee, the Employer must make the superannuation contributions provided for in subclause (b) and pay the

amount authorised under subclauses (c)(i) or (d)(ii) to either the Health Employees Superannuation Trust of Australia (HESTA) or Tasplan.

33. SALARY SACRIFICE

- (a) The Employer shall provide salary sacrifice for superannuation only as a means by which remuneration is payable under this Agreement.
- (b) Salary sacrifice is an arrangement for the payment of wages or salary and any other component of remuneration payable under this Agreement whereby the total remuneration is broken into a cash and a non-cash component.
- (c) The total remuneration shall not be less than the cumulative entitlements provided for in this Agreement. Employer payments in the form of superannuation contributions will be the only form of salary sacrifice available. Other forms of salary sacrifice will not be introduced without prior consultation with the Employee/s. The amount an Employee can salary sacrifice for superannuation will be limited to the aged based limit under Section 82AAC(2) of the Income Tax Assessment Act 1936.
- (d) Salary sacrifice is to be entered into on a voluntary basis. Employees should be aware that Employer contributed Occupational Superannuation entitlements may be adversely affected by salary sacrifice arrangements.
- (e) It is the intention of the Employer, as far as possible, to maintain a worthwhile salary sacrificing program for eligible staff. Where legislative (eg Fringe Benefits Tax Act 1986 and/or Income Tax Assessment Act) or other changes have the effect of reducing or withdrawing the personal benefits identified/resulting from the Agreement, the Employer will not be liable to make up the salary benefits lost by a staff member as an Employer.
- (f) Access to financial counselling and advice in relation to this clause shall be the responsibility of the Employee.

34. REDUNDANCY PROVISIONS

(a) Commitment to Consult

The parties to this Agreement recognise that redundancy, when it occurs, is both sensitive and traumatic and needs to be handled in a delicate manner.

Where the Employer believes that it may be necessary to make one or more positions within the enterprise redundant, the Employer agrees to immediately notify the Employee/s and to commence a process of ongoing consultation.

(b) Notice of Redundancy

Hobart Day Surgery Pty Ltd
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The Employer undertakes to provide the maximum possible notice of the need to make a position(s) redundant. In all cases however, the minimum period of notice for Employees subject to termination will be two (2) weeks.

The required period of notice in the event that a position is made redundant is in accordance with the table below;

Employee's Period of continuous service	Notice Period
Not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

The period of notice will be increased by one (1) week if the Employee is over forty-five years of age at the time of termination.

(c) **Voluntary Redundancy**

In the event that it is necessary for the Employer to make a position(s) redundant, the Employer will, in the first instance, seek expressions of interest from all staff, in volunteering for a redundancy package.

Provided that the Employer will only be required to seek such expressions of interest from staff employed at the same worksite and in the same classification as the position being made redundant.

In assessing applications for voluntary redundancy, the parties acknowledge that the Employer will take into account the skill and operational requirements of the enterprise.

(d) **Redundancy Payment**

In addition to the Period of Notice as prescribed in subclause (b) of this clause, an Employee whose employment is terminated by reason of redundancy is entitled to the following amounts of Redundancy / Severance pay in respect of continuous service.

Employee's Period of Continuous Service	Severance Pay
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks

At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

(e) **Financial Counseling**

The Employer undertakes to provide access in paid time for each employee who is offered redundancy to consult with a financial adviser, for a maximum of two (2) days.

The Employer will provide to each Employee a fully detailed statement at the time when the offer of redundancy is made.

(f) **Week's Pay**

A week's pay shall mean what the Employee would have earned had the employment continued including:

- The weekly base rate for the classification; and
- Any applicable penalties; and
- Any applicable pre-payment; and
- Any all purpose work related allowances.

35. DISCIPLINARY PROCEDURE

- (a) Where disciplinary action may be necessary for performance or behaviour issues, the management representative shall notify the Employee of the issues in writing and the Employee will be given an opportunity to respond to these issues. In the event that the Employee's response is unsatisfactory, a warning in writing may be issued. This warning will be recorded on the employee's personnel file.
- (b) If performance or behaviour issues continue, the Employee will again be notified in writing of the matter and a response requested from the Employee. If appropriate, a second warning in writing will be given to the Employee and recorded on the Employee's personnel file.
- (c) In the event of performance or behaviour issues continuing, the Employee will again be notified in writing of the matter and a response requested from the employee. If appropriate, a final warning will be issued to the Employee and recorded on the Employee's personnel file.
- (d) In the event of the matter recurring, then the Employee may be terminated after the matters have been investigated and reasons sought from the Employee.
- (e) The disciplinary procedure process is not limited to the same performance/behaviour issue.

- (f) Summary dismissal of an Employee may still occur for acts of 'serious misconduct' (as defined in the *Fair Work Act 2009*).
- (g) During all steps in the Disciplinary Procedure, the Employee has the right to representation of his or her choice.

36. NO EXTRA CLAIMS

The parties undertake that during the life of this Agreement there shall be no further wage increases or claims sought or granted except as provided under the terms of this Agreement.

37. UNION DELEGATE RIGHTS

- (a) Union delegates or elected workplace representatives, with approval of the Union and upon application in writing, will be granted up to five (5) days unpaid leave each calendar year, non-cumulative, to:
 - represent members in bargaining;
 - represent the interests of members to the Employer and Industrial tribunals;
 - consult with union members and other Employees for whom the delegate is a bargaining representative;
 - participate in the operation of the Union;
 - attend union education;
 - address new Employees about the benefits of union membership at the time that they enter employment;
 - attend courses conducted by an approved training provider, that are designed to provide skills and competencies that will assist the delegate or workplace representative contribute to the prompt resolution of disputes and or grievances in the workplace;
 - attend union annual Delegates Conference
- (b) Provided that the Employer will offer approved union delegates additional shifts to 'backfill' to prevent loss of wages. For example, if a union delegate is away from the workplace for one shift, the Employer will offer one additional shift to the union delegate.
- (c) The application to the Employer must be in writing, include the nature, content and duration of the course to be attended, and normally be provided with twenty eight (28) days' notice of the proposed training.

- (d) The granting of leave pursuant to this clause will be subject to the Employer being able to make adequate staffing arrangements amongst current Employees during the period of such leave. The Employer will not use this Sub-clause to avoid an obligation under this Clause.
- (e) Leave of absence granted pursuant to this clause, will count as service for all purposes of this Agreement.
- (f) All expenses (such as travel, accommodation and meals) associated with or incurred by the Employee attending a training course as provided in this clause will be the responsibility of the Employee or the Union.
- (g) An Employee may be required to satisfy the Employer of attendance at the course to qualify for payment of leave.
- (h) An Employee granted leave pursuant to this clause will, upon request, inform the Employer of the nature of the course attended and their observations on it.
- (i) In the event of a disagreement arising from the outcome of this Clause, the matter may be settled using the dispute settlement procedures of the agreement.
- (j) Where the Employer elects to pay the Employee for the absence under this provision, no backfill requirements will be required of the Employer.

38. NOTICEBOARDS

The Employer shall permit Employees and Employees' representative (Unions) to post formal notices on a designated notice board within the establishment. Without diminishing the rights of Unions and Employees to communicate with staff on workplace issues, the notices must maintain the standards appropriate to the workplace.

39. SUPERSESSON AND SEVERANCE PROVISIONS

- (a) All existing awards, federal award, transitional federal award, pre-reform federal award, pre-reform certified agreement, a modern award, a preserved state agreement and a notional agreement preserving a state award (NAPSA), which but for this Agreement coming into force would have applied to Employees classified in accordance with this Agreement are replaced entirely by this Agreement.
- (b) It is the intention of those covered by the Agreement that the agreement contains only permitted matters under the *Fair Work Act 2009*. It is also the intention of

those covered by the Agreement that the Agreement contains no matters that are unlawful.

- (c) Any term of this Agreement that is, in whole, or in part, not a permitted matter is, to the extent it is not a permitted matter, severed from this agreement and of no legal effect.
- (d) Any term of this Agreement that is, in whole, or in part, an unlawful term is, to the extent it is an unlawful term, severed from this agreement and of no legal effect.
- (e) To the extent it is possible, all terms in this Agreement should be interpreted in a manner that would make them permitted matters.

40. CEREMONIAL LEAVE

- (a) An Employee who is legitimately required by Aboriginal tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to ten (10) working days unpaid leave in any one (1) year, with the approval of the Employer.

This Agreement is made at _____ on the _____ day of _____ 2014

Signed for and on behalf of the Employer

Name JOHN MASTERS
Position EXECUTIVE DIRECTOR
Address 91. NATIONAL DAY SURGERIES, 57 KING WILLIAM RD
Signature [Signature] UNLEY SA
Witness [Signature]
Date _____

Signed for and on behalf of the Australian Nursing and Midwifery Federation, Tasmanian Branch

Name NORON ELS
Position BRANCH SECRETARY
Address 182 MALCOLMIE ST HOBART
Signature [Signature]
Witness [Signature] (A. STANISLAUS-LARGE)
Date 15 October 2013

Signed for and on behalf of the Health and Community Services Union

Name TIM JACOBSON
Position STATE SECRETARY
Address 11 CLARE ST NEW TOWN TAS 7008
Signature [Signature] 16/10/14
Witness JAMES EDDINGTON [Signature]

Hobart Day Surgery Pty Ltd
Nurses Enterprise Agreement 2014

11 CLARE ST NEW TOWN TAS 7008

 Hobart Day Surgery

Date _____

Signed for and on behalf of the Employee nominated representatives, verifying that a majority of Employees have accepted the Hobart Day Surgery Enterprise Agreement 2014.

Name _____

Address _____

Signature _____

Witness _____

Date _____

Name _____

Address _____

Signature _____

Witness _____

Date _____

SCHEDULE 1- WAGE RATES

An Employee appointed or promoted to a position within a classification or level prescribed by this Agreement shall be paid the salary rate determined for the relevant classification or level as hereinafter set forth.

Year of Service progression is determined by 1976 ordinary hours of work which includes all paid leave.

Classification	Current Rate \$ Per annum	Wage rate FFPP' on or after	Wage rate FFPP' on or after	Wage rate FFPP' on or after
		1/05/2014 3.00% \$ Per annum	1/05/2015 3.00% \$ Per annum	1/05/2016 3.00% \$ Per annum
Enrolled Nurses				
Re-entry	\$51,333.13	\$52,873.12	\$54,459.31	\$56,093.10
EN 1st year of service (certificate)	\$52,878.79	\$54,465.15	\$56,099.10	\$57,782.07
EN 2nd year of service (diploma)	\$53,380.75	\$54,982.17	\$56,631.64	\$58,330.59
Registered Nurses				
RN Level 1				
1 st Year of Service	\$51,924.95	\$53,482.70	\$55,087.18	\$56,739.80
2 nd Year of Service	\$54,369.37	\$56,000.45	\$57,680.46	\$59,410.87
3 rd Year of Service	\$56,788.08	\$58,491.72	\$60,246.47	\$62,053.86
4 th Year of Service	\$59,361.17	\$61,142.01	\$62,976.27	\$64,865.56
5 th Year of Service	\$61,857.07	\$63,712.78	\$65,624.16	\$67,592.89
6 th Year of Service	\$64,378.70	\$66,310.06	\$68,299.36	\$70,348.34
7 th Year of Service	\$66,900.32	\$68,907.33	\$70,974.55	\$73,103.79
8 th Year of Service & thereafter	\$69,396.22	\$71,478.11	\$73,622.45	\$75,831.12
RN Level 2				
1 st Year of Service	\$71,737.73	\$73,889.86	\$76,106.56	\$78,389.76
2 nd Year of Service	\$73,384.51	\$75,586.05	\$77,853.63	\$80,189.24
3 rd Year of Service	\$75,057.01	\$77,308.72	\$79,627.98	\$82,016.82
4 th Year of Service & thereafter	\$76,729.53	\$79,031.42	\$81,402.36	\$83,844.43
RN Level 3				
1 st Year of Service	\$80,394.74	\$82,806.58	\$85,290.78	\$87,849.50
2 nd Year of Service	\$82,282.23	\$84,750.70	\$87,293.22	\$89,912.02
3 rd Year of Service & thereafter	\$84,216.76	\$86,743.26	\$89,345.56	\$92,025.93
RN Level 5 Grade 1	\$91,691.31	\$94,442.05	\$97,275.31	\$100,193.60

