



## DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Tandara Lodge Community Care Inc.**  
(AG2015/6037)

### **THE TANDARA LODGE COMMUNITY INC. GENERAL STAFF ENTERPRISE AGREEMENT 2015**

Tasmania

COMMISSIONER GREGORY

MELBOURNE, 13 NOVEMBER 2015

*Application for approval of The Tandara Lodge Community Inc. General Staff Enterprise Agreement 2015.*

[1] An application has been made for approval of an enterprise agreement known as *The Tandara Lodge Community Inc. General Staff Enterprise Agreement 2015* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Tandara Lodge Community Care Inc. The Agreement is a single enterprise agreement.

[2] The Applicant has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

[3] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[4] The Health and Community Services Union and Australian Nursing and Midwifery Federation 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 these organisations.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 20 November 2015. The nominal expiry date of the Agreement is 30 June 2017.



COMMISSIONER

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Annexure A



**TANDARA LODGE COMMUNITY CARE INC.**

**ABN: 21 723 628 502**

**Commissioner Gregory**  
**Fair Work Commission**  
GPO Box 1994, Melbourne  
VICTORIA 3001

Dear Commissioner Gregory,

**RE: Matter Number: AG 2015/6037**

**Section 190 of the Fair Work Act 2009-Undertaking for the**

**Tandara Lodge Community Care Inc. General Staff Enterprise Agreement 2015**

In the interest of meeting the requirements under Division 4 –Approval of Enterprise Agreements, the employer offers the below listed undertaking.

The existing clause of the **Tandara Lodge Community Care Inc. General Staff Enterprise Agreement 2015** is amended with the wording represented in the following undertaking:


**Clause 7 Individual Flexibility Clause**

The below wording is to be added to the clause 7 above in the EA.

(j) The employer must ensure that the terms of the individual flexibility arrangement:

- (a) are about permitted matters under section 172 of the Fair Work Act 2009 ; and
- (b) are not unlawful terms under section 194 of the Fair Work Act 2009 .

**FOR THE EMPLOYER**

Signed: 

(for and on behalf of Tandara Lodge Community Care Inc. by its authorised representative)

Date:

13.11.2015

Name in full (printed):

PAUL CRANTOCK

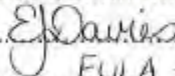
Position:

CEO

Employer's Address:

10 NIGHTINGALE AVENUE  
SHEFFIELD TAS 7306

Witnessed by (signature):



Witness name in full (printed):

EULA-JANE DAVIES

Witness address:

C/- 10 NIGHTINGALE AVE SHEFFIELD TAS 7306

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.



**Tandara Lodge  
Community Care Inc.**

**GENERAL STAFF  
Enterprise Agreement  
2015**



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## **PART 1 - PRELIMINARIES**

### **1. INTRODUCTION**

This Agreement is made under section 172 of the *Fair Work Act 2009*.

### **2. TITLE**

This Agreement shall be known as the:

The Tandara Lodge Community Inc. General Staff Enterprise Agreement 2015

### **3. PARTIES TO THE AGREEMENT**

The parties to this agreement are as follows:

(a) TANDARA LODGE COMMUNITY CARE INC. ABN: 21 723 628 502

(‘the employer’),

(b) The Health Services Union, Tasmania Branch;

(c) The Australian Nursing and Midwifery Federation, Tasmanian Branch

(d) Employees who are employed by the employer and are engaged in work in classifications contained within this Agreement.

This agreement intentionally excludes Registered and Enrolled Nurses; community service staff and management staff that would not normally be covered by or have application to, the Aged Care Award 2010.

### **4. COMMENCEMENT**

The agreement will commence 7 days after the date of approval by the Fair Work Commission (FWC).

### **5. NOMINAL EXPIRY**

The Agreement has a nominal expiry date of June 30th 2017 and shall remain in operation until at least that date, unless otherwise terminated or varied beforehand 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.

### **6. AGREEMENT- COMPLETE CONDITIONS OF EMPLOYMENT**

This Agreement is intended to cover all matters pertaining to the employment relationship, underpinned by the Fair Work Act 2009 and the associated National Employment Standards (NES). In this regard, it represents a complete statement of the mutual rights and obligations between the employer and the employees to the exclusion (to the extent permitted by law) of, awards, agreements (whether registered or unregistered), custom and practice and like instruments or arrangements.



## 7. INDIVIDUAL FLEXIBILITY CLAUSE

- (a) The employer and the employee may agree to vary the application of certain terms of this Agreement to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:
- The taking of annual leave;
- (b) The employer and the individual employee must have genuinely made the individual flexibility arrangement without coercion or duress.
- (c) The Employer will not make the signing of an individual flexibility arrangement a condition of employment.
- (d) The Employer will not:
- (i) discriminate against an employee on the basis they are, or are not, a party to an individual flexibility arrangement.
  - (ii) exert any undue pressure on an employee to sign, or to terminate, an individual flexibility arrangement.
- (e) 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 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
    - (4) The employee has an opportunity to seek advice from a representative or the union.
  - (v) states the day on which the arrangement commences.
- (f) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (g) The employer or employee may terminate the individual flexibility arrangement:
- (i) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (ii) if the employer and employee agree in writing — at any time.
- (h) The Employer is responsible for ensuring that all of the requirements of subclause (e) of this Clause are met.



- (i) The Employer must provide copies of all flexibility arrangements made under this Clause to the Union, upon request from the Union and with the authorisation of the individual employee concerned.

## **PART 2 - ENGAGEMENT**

### **8. EMPLOYEE ENGAGEMENT-Classifications, Wages**

#### **8.1 Employee Categories**

Employees under this Agreement will be employed in one of the following categories:

- (i) Full-time;
- (ii) Part-time; or
- (iii) Casual.

At the time of engagement the employer will inform each employee whether they are employed on a full-time, part-time or casual basis. An employer may direct an employee to carry out such duties that are within the limits of the employee's skill, competence and training, consistent with the respective classification.

#### **8.2 Minimum Employment Period:**

- (a) Employees (other than casual employees) will be on a period of probation for the first six months of engagement for the purpose of determining the employee's suitability for ongoing employment.
- (b) At any time during the probation period, the employer or the employee can terminate the employment by providing written notice in accordance with Termination of Employment clause of this agreement.

#### **8.3 Full-time Employees:**

A full-time employee is one who is engaged to work an average of 38 hours per week in accordance with clause 10.1 of this agreement.

#### **8.4 Part-time Employees:**

- (a) A part-time employee is an employee who is engaged to work less than full-time hours per week and has reasonably predictable hours of work each week.
- (b) Before commencing employment, the employer and employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day.
- (c) Any agreed variation to the hours of work will be in writing.
- (d) The terms of this agreement will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-time employees are an average of 38.
- (e) Payment in respect of personal/carer's leave (where an employee has accumulated an entitlement) for a part-time employee will be on a pro rata



basis made according to the number of hours the employee would have worked on the day or days on which the leave was taken.

- (f) At the request of a part time employee, the hours worked by the employee will be reviewed and where the employee is regularly working (on a consistent and systematic basis) more than their guaranteed minimum number of hours (c) then the part-time employees minimum number of hours of work shall be renegotiated. Where the Employer is in a position to provide these hours on a permanent basis to the part-time employee such hours shall be adjusted and recorded in writing to reflect the hours regularly worked.
- (g) Any adjusted guaranteed minimum number of hours resulting from a review by the employer should, however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace. Additional hours worked in the following circumstances will not be considered for changing the part timers regular contracted hours;
  - (i) if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, maternity leave, workers compensation; or
  - (ii) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a resident or client.

#### 8.5 **Casual Employees:**

- (a) A casual employee is an employee engaged as such on an hourly basis, other than as a part-time, full-time or fixed term employee, to work up to and including an average of 38 ordinary hours per week. The work pattern will be irregular and unpredictable except in the case where the casual employee is replacing another employee on leave.
- (b) A casual employee will be paid per hour worked at the rate of 1/38th of the weekly rate appropriate to the employee's classification. In addition, a loading of 25% will be paid instead of the paid leave entitlements accrued by full-time and part-time employees.

Loading is in lieu of and is in compensation for paid leave (annual, personal, compassionate/bereavement).

- (c) Casual employees must be paid the applicable penalty rates for working Saturday, Sunday and Public Holidays as fulltime and part time employees.

Casuals will receive the applicable penalties in addition to the casual loading for all hours however overtime penalties will be in substitution of the casual loading and not cumulative. Where casual loading is in addition to penalty rates then the penalty is added to casual loading and then multiplied to the applicable base rate of pay for the appropriate classification rate of a full time hourly rate. The penalty rate is not compounded to the base rate and casual loading figure.

EG: Penalty rate 150% plus casual loading 25% equals 175% of the applicable base fulltime hourly rate.

- (d) The minimum engagement for a casual employee is two hours.
- (e) Casual Conversion



- (i) A casual employee who has been rostered on a regular and systematic basis over a period of 26 weeks has the right to request conversion to permanent employment:
  - a) on a full-time contract where the employee has worked on a full-time basis throughout the period of casual employment; or
  - b) on a part-time contract where the employee has worked on a part-time basis throughout the period of casual employment. Such 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.
- (ii) The employer may consent to or refuse the request, but shall not unreasonably withhold agreement to such a request.
- (iii) Casual conversion will not apply where a casual has covered absences of permanent staff that are expected to return to work.

(f)

#### 8.6 National Criminal History Record Check

- (a) Operators of aged care services are required to ensure staff, contractors and volunteers, who have, or are reasonably likely to have access to care recipients undergo a National Criminal History Record Check, commonly known as a Police Check.
- (b) All costs associated with providing such evidence (Police Checks) are the responsibility of the individual employees and prospective employees
- (c) Where the employer is in the possession of an employee Police Check, that Police Check will not be provided to any third party without the employees express and written permission.

#### 8.7 Classifications

Schedule A- Attached to this Agreement

#### 8.8 Wage Rates

Schedule B – Attached to this Agreement

#### 8.9 Annual Wage Increases

During the nominal life of this agreement wage rates outlined in Schedule B will increase annually from the same time as the FWC's Minimum Wage Panel's decision or its successor/equivalent indicates, currently the first full pay period occurring after the 1<sup>st</sup> of July each year, commencing with July 1<sup>st</sup> 2014

The rates of such increases will be the following percentage amounts:

July 2014	July 2015	July 2016
3%	3%	3%
(paid prior to agreement commencement)		



### **Beyond the Nominal Expiry of Agreement**

In the circumstance that this Enterprise Agreement is not replaced prior to the implementation of the FWC Minimum Wage Panel's national wage decision applicable to July 2016 (and all subsequent decisions until the EA is replaced), the FWC decision (amount or percentage) will apply only, without any additional percentage or amount applied, provided this Enterprise Agreement is still operational by law.

#### **8.10 Supported Wage**

Schedule C- Attached to this Agreement

### **9 PAYMENT OF WAGES**

(a) Wages are to be paid fortnightly and not later than Thursday of the week of payment.

(b) Method of payment

Wages must be paid by electronic funds transfer or some other method agreed by the employer into the bank or financial institutional account nominated by the employee.

(c) Delay

The employer will not be held liable for any unforeseen event outside the control of the employer which prevents the employer's ability to meet the requirements of (a), for example bank error or delay.

(d) Termination

When notice of termination of employment has been given by an employee or an employee's services have been terminated by an employer, payment of all wages and other moneys owing to an employee will be made to the employee by no later than the last day of the notice period (where applicable) or the next immediate pay day following the last day of work where a period of notice was not given.

### **10. HOURS**

#### **10.1 Hours of Work**

(a) The ordinary hours of work for employees will be an average of 38 hours per week, worked over 76 hours per 2 week period, or 114 hours over a 3 week period or 152 hours per 4 week period or 228 hours over a 6 week period.

(b) The ordinary hours of work for employees (other than shiftworkers) are between the hours of 6.00 am and 6.00 pm, Monday to Friday and will be worked up to 8 hours on any day.

(c) Work performed outside of the ordinary hours is paid as overtime (other than for shiftworkers).

(d) Shiftworkers are employees required to work on a roster outside the spread of hours in 11.1 (a) and (b), up to 8 hours on any shift other than a night shift, and up to 10 hours on a night shift.

- (e) Employees (other than a shift worker) employed to work outside the spread of hours will be paid at the applicable over time rates.

## 10.2 Arrangement of Hours

- (a) Each employee shall be entitled to not less than four full days in each fortnight free from duty, or by agreement, two full days in each week free from duty (rostered days off), and such rostered days off to be consecutive, unless otherwise agreed.
- (b) Each shift shall consist of no more than 8 hours of work (up to 10 for night shifts) at ordinary time (not including unpaid breaks).
- (c) Except for unpaid meal breaks and the periods not worked in broken shifts, all time from the commencement to the cessation of duty each shift shall count as working time.
- (d) Unless agreed otherwise an employee shall not be required to start a shift unless there has been a break of at least nine hours since the employee's previous shift.

## 11. SHIFT WORK, SATURDAYS and SUNDAYS

Shiftworkers are employees required to work on a roster outside the spread of hours 6.00 am and 6.00 pm Monday to Friday.

Employees working afternoon or night shift will be paid the following percentages in addition to the applicable base rate for such shift in lieu of overtime payments.

**Afternoon shift** – Those employees rostered to work outside of the ordinary hours of a day worker, not fitting the definition of night shift- specifically any shift that ends after 6.00 pm and at or before 11.00 pm. **15%** shift loading

**Night shift** -Rostered to work some or all hours between 11.00 pm and 6.00 am. **17.5%** shift loading

- (e) An employee entitled to a shift allowance under this clause will be paid the shift allowance for the entire shift.
- (f) A casual employee will be paid the shift allowance calculated on the ordinary pay excluding the casual loading with the casual loading component then added to the shift penalty rate of pay. EG: Casual loading 25% plus shift loading 15% equals a total casual shift penalty of 40% on the applicable classification for the equivalent full time employee base rate of pay.

Saturday work-150%

Employees, for working ordinary hours on a Saturday, will be paid at the rate of time and one half of the employees base rate for all hours worked on that day, however, the rates are in substitution for and not cumulative upon any other shift penalty.

Sunday work-200%

Employees, for working ordinary hours, on a Sunday, will be paid at the rate of double time of the employees base rate for all hours worked on that day, however the rates are in substitution for and not cumulative upon any other shift penalty.



A casual shiftworker is paid the weekend penalty plus the casual loading, the penalty rate does not compound on the casual loaded rate. EG: Casual loading 25% plus weekend penalty loading 150% equals a total casual shiftworker weekend penalty of 175% of the applicable classification for the equivalent full time employee base rate of pay. The weekend casual shiftworker rates are in substitution of other shift penalties and not cumulative.

## 12. ROSTERS

The roster will be documented setting out clearly the names of the employees required to work on that roster, the days, dates and hours during which each employee is required to work.

- (a) The roster will be based on a 42 day cycle and will be displayed at least two weeks prior to the commencing date of the first working period in any roster, however it is not obligatory for the employer to display any roster of the ordinary hours of work of casual or relieving staff.
- (b) Rostered employees will be entitled to a minimum of 2 consecutive days off in each 7 day period, unless by mutual agreement between the employer and employee concerned, alternative arrangements are made. Provided that not more than eight shifts are worked in any nine consecutive days,
- (c) There will be at least 10 hours between the completion of a shift and the commencement of another shift for any employee except a casual, unless changed by mutual agreement between the employer and employee on any individual occasion.
- (d) In recognition of interruptions, Personal Care Workers are entitled to a paid 30 minute meal break for any rostered shift with a duration of 5 hours or greater for those on a roster. Administration and Services employees are entitled to an unpaid meal break after 5 hours of work.
- (e) Broken shifts are by mutual agreement between the employer and part time or casual employees only; payment is for time worked only. All work performed beyond a maximum span of 12 hours for a broken shift will be paid at double time.

### Changes to Rosters

- (a) Unless mutually agreed, 14 days' notice will be given by the employer of a change in a roster. Mutually agreed includes where a part time employee accepts more hours to cover shift requirements.
- (b) Where occasion arises that due to illness or in an emergency or for any other reason beyond the employer's control an employee is absent and no replacement employee has volunteered to accept additional hours or change roster times, then the roster may be altered at any time in consultation with affected staff to enable the service of the organisation to be carried out.
- (c) Employees wishing to swap a rostered shift with another employee may do so provided:
  - 1) They identify a willing replacement staff member at the same or suitable classification level. A casual employee is not to be considered as suitable for shift swapping. Casuals should not have an expectation of guaranteed shifts, they form a vital role in supplementing ongoing (permanent) staff rosters when necessary.
  - 2) The employer is not disadvantaged by paying the replacement employee overtime or penalty rates that would not have occurred with the original rostered shift



- 3) Shift swaps are limited to single shifts only (1day). Swapping that requires consecutive days off work does not fit the category of shift swapping under this clause and is to be dealt with by annual leave application.
- 4) Written notice is given to the Director of Nursing or Senior RN on the shift at the time, of such a shift swap.

Employer authorisations of shift swaps that are organised by the employee that fit the above criteria are restricted to 8 per calendar year. Swaps to rostered shifts are for non-usual occurrences and/or events that would be considered by a reasonable person having regard to all the circumstances, important to the individual employee. Annual leave requests can also be used to accommodate potential perceived necessary shift changes.

- (d) Requests for shift changes above 8 per calendar year will need to have sufficient notice (2 weeks) and also need to be made in writing stating the reason for requested shift change. Such changes will be at the discretion of management (DON or delegate) and will be considered on a case by case basis.

### **Daylight Savings**

Upon the changeover of time as a result of daylight saving in October and March each year the following shall apply:

- (a) Employees shall be paid for actual time worked irrespective of the length of the shift.
- (b) Employees paid in accordance with sub-clause (a) are not entitled to claim for the 1 hour lost, and those working the additional hour will be paid at the ordinary rate plus applicable shift rate.

## **13. BREAKS**

- (a) Meal breaks

Each Personal Care Worker rostered employee who works in excess of five hours will be entitled to a paid meal break of 30 minutes, to be taken at a mutually agreed time after commencing work. By mutual agreement between the employer and the employee, an employee will be allowed to extend their paid 30 minute meal break by up to a further unpaid 30 minutes each day. Administration and Services employees are entitled to an unpaid meal break after 5 hours of work, between 30 minutes and one (1) hour duration, as agreed between the employee and employer.

- (b) Tea breaks

- (i) Two separate 10 minute intervals (in addition to meal breaks) will be allowed to each employee on duty during each ordinary shift of 7.6 hours or more.
- (ii) Where less than 7.6 ordinary hours are worked, employees will be allowed one 10 minute interval in each complete four hour period.
- (iii) Subject to mutual agreement, such intervals may alternatively be taken as one 20 minute interval.

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

## 14. OVERTIME

The employer may require any employee to work reasonable overtime. An employee may refuse to work overtime if the additional hours are unreasonable including, but not limited to, having regard to the employee's personal circumstances, including family responsibilities. No overtime may be worked without prior approval of the employer.

### 14.1 Overtime is paid where an employee:

- (i) works in excess of 8 hours per day/shift; or in the case of a shift worker, 10 hours on a night shift
- (ii) works in excess of 76 hours per fortnight
- (iii) For a part-time employee, all time worked in excess of their rostered ordinary hours on any one day unless there is agreement in writing to vary the ordinary hours, provided that such variation does not conflict with (i) and (ii) above.

### 14.2 Overtime shall be paid at the base rate of pay in accordance with the following:

- (a) Monday to Saturday - Overtime shall be paid time and one half up to two (2) hours each day and thereafter double time;
- (b) Sunday - Overtime shall be paid at double time;
- (c) Public Holidays - Overtime shall be paid double time and one-half (2 ½). Note: shiftworkers working rostered days on public holidays is not overtime and is paid at double time (2).
- (d) Overtime rates under this clause will be in substitution for and not cumulative upon shift, weekend amounts prescribed in this Enterprise Agreement.
- (e) Overtime does not apply where arrangements for a swap of hours have been made between two or more employees at their own instigation.
- (f) Time off instead of payment for overtime

By mutual agreement, a full time or a part-time employee may be compensated by way of time off instead of payment of overtime (time for time) on the following basis:

- (i) Time off instead of payment for overtime must be taken at ordinary rates within three months of it being accrued.
- (ii) Where it is not possible for an employee to take the time off, instead of payment for overtime, within the three month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
- (iii) Employees cannot be compelled to take time off in lieu of overtime and an employer cannot be compelled to agree to provide the employee with time off in lieu of overtime.
- (iv) The employer must maintain records of all time in lieu of overtime owing and taken by employees.
- (v) Where no election is made the employee shall be paid overtime rates in accordance with this Agreement.



(g) Eight Hour Break-Overtime

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

(ii) Where directed by the employer the employee resumes or continues work without having had eight consecutive hours off duty the shift will be paid at overtime time rates until released from duty for such period, and will then be entitled to be absent until they have eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(iii) Where the employee is not directed by the employer, but elects to work a shift with less than eight consecutive hours off duty between the previous shift, the time will be paid as ordinary time and will also be counted as ordinary hours for the purpose of contracted hours.

14.3 Recall to Work Overtime

An employee recalled to work overtime after leaving the employer's premises will be paid for a minimum of four hours' work at the appropriate rate. A recalled employee who is required to work for more than four hours will be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours overtime; all such time will be counted as time worked. The meals referred to in this clause will be provided to the employee free of charge. Where the employer is unable to provide such meals, a meal allowance of \$11.96 will be paid to the employee concerned.

**15. PUBLIC HOLIDAYS**

15.1 Employees are entitled to leave on public holidays in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 10 of the Act).

(a) All employees (other than casuals) are entitled to the following public holidays with pay:

Christmas Day, Boxing Day, New Year's Day, Australia Day, Eight Hours' Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (Devonport), Recreation Day; and shall be applied as prescribed by the Tasmanian Statutory Holidays Act 2000 as amended. Any future additional days that are recognised under the Statutory Holidays Act 2000 shall apply, except those that are identified as government holidays or applying only to certain persons.

To avoid any doubt, the Devonport Cup and Easter Tuesday do not fall as public holidays to the employees covered by this agreement.

(b) Payment for the public holidays with pay mentioned in subclause (a) above which are taken and not worked, will be at the normal rate of pay which would have applied to the employees concerned, had they been at work.

(c) Where an employee who is entitled to a public holiday with pay and is required to work, either for part or the whole of the day they will be paid as follows:



(i) Non-shift worker  
In the case of a non-shift worker who works their ordinary hours Monday to Friday between the hours of 6.00 am and 6.00 pm – double time and a half.

(ii) Shift worker  
In the case of a shift worker who regularly works outside the span of ordinary hours – double time.

A shift worker will only be entitled to double time payment for those public holidays that fall on days they work.

Payments under this subclause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

(iii) Casual

A casual employee will be paid only for those public holidays they work at the rate of double time for hours worked replacing a shift worker, or double time and one half in all other cases.

Payments under this subclause are instead of and replace any casual loading otherwise payable under this Agreement.

(d) Payments under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday. To avoid doubt, an employee who is required to and does work on any public holiday prescribed in this clause shall be paid in lieu of all other shift penalties, weekend penalties, casual loading.

(e) The employer and individual employees may agree to substitute another day for a public holiday observed.

## 15.2 Public Holiday Entitlement

(a) An employee is entitled to be absent from his or her employment on a day or part day that is a public holiday, however due to the nature of the industry and services provided, it is an explicit expectation of this agreement that employees will be requested to work on public holidays, this will be particularly so for shiftworkers.

(b) The employee may refuse the request (and take the day off) if the employer's request is not reasonable or the employee's refusal to work on the public holiday is reasonable. In determining whether the employer's request, or an employee's refusal of a request, is reasonable, regard must be had to the matters set out in section 114 of the Act.

(c) Where the request is reasonable an employee who, without the consent of the employer or without reasonable cause (i.e. personal/carers leave), is absent from work on a public holiday after agreeing to work on a public holiday, is not entitled to any payment for such public holiday.

## 16. ALLOWANCES

### 16.1 Uniforms, Protective Clothing, Equipment and Materials



- (a) Employees required by the employer to wear uniforms will be paid a uniform allowance at the rate of \$1.28 per shift on duty or \$6.47 per week, whichever is the lesser amount. Where such employee's uniforms are not laundered by or at the expense of the employer, the employee will be paid a laundry allowance of \$0.33 per shift or part thereof on duty or \$1.53 per week, whichever is the lesser amount.
- (b) The uniform allowance, but not the laundry allowance, will be paid during all absences on paid leave, except absences on long service leave and absence on personal/carer's leave beyond 21 days. Where, prior to the taking of leave, an employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave will be the average of the allowance paid during the four weeks immediately preceding the taking of leave.
- (c) Where an employer requires an employee to wear rubber gloves, special clothing or where safety equipment is required for the work performed by an employee, the employer must provide such clothing or equipment or reimburse the employee for the cost of purchasing such special clothing or safety equipment.

## **16.2 Travelling Allowance**

Where an employee with approval from the employer uses their own motor vehicle in connection with the business of the employer, they are to be paid an allowance on a per kilometre travelled basis of \$0.78 per kilometre.

Travel to and from home to work is not considered using a vehicle in connection with the business of the employer.

In addition to the per kilometre travel allowance, employees are to be reimbursed for all reasonable travel costs associated with work related travel authorised by the employer. The employer and the employee will agree prior to travel, the amount that is reasonable in respect of travel costs relating to fares, meals and accommodation.

All such costs must be approved by the employer prior to the expense being incurred.

## **16.3 Nauseous work allowance**

a) An allowance of .41 cents per hour or part thereof will be paid to an employee if they are engaged in handling linen of a nauseous nature other than linen sealed in airtight containers which is of an unusually dirty or offensive nature having regard to the duty normally performed by such employee in such classification.

b) For the purpose of clarity and to avoid doubt, laundry staff will only be eligible for the nauseous work allowance when alginate bags or similar are not in use; carers and service staff will only be eligible when directly involved with providing resident service care during a period of declared "lockdown" due to gastro outbreak or similar.

## **16.4 Training Orientation**

Employees providing training/mentoring on identified orientation shifts for new staff will be eligible for a payment of \$1 per hour in addition to their base rate of pay for time spent training on such shifts. Payment for induction/orientation shifts is limited to 3 shifts per each individual new employee.

## **16.5 Part-time and Casuals**



All weekly based allowance amounts will be paid pro-rata to part-time and casual employees for the number of ordinary hours worked in the week the allowance was applicable, on the basis that the ordinary weekly hours of work for full-time employees are 38.

#### **16.6 Allowance Increases**

All allowances and figures in the allowance clause of this agreement and the meal allowance referred to in 14.3 Recall to Work Overtime, will increase at the same time and at the same percentage as agreed for wages increases.

### **PART 3 - LEAVE**

#### **17. ANNUAL LEAVE**

- 17.1 (a) Employees are entitled to annual leave in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 6 of the Act).
- (b) Casual employees have no entitlement to annual leave.

#### **17.2 Accrual of Annual Leave**

- (a) Excluding casuals, all employees are entitled to 4 weeks paid annual leave. Shiftworkers as defined in (b) are eligible for 1 weeks additional leave

- (b) Additional leave (Shiftworkers)

If a shiftworker as defined in this agreement (clause 11 ) is regularly rostered to work their ordinary hours outside the ordinary hours of work as a day worker as defined in this agreement and/or works for more than four ordinary hours on not less than 10 weekends during any one year – 5 weeks of paid leave (1 additional week annually). For the purposes of this clause, a weekend means rostered work in ordinary time on a Saturday and/or a Sunday in any one calendar week.

- (c) The entitlement to additional leave is based on the employee's average ordinary days per week and day.

To avoid any doubt, 38 hours per week or 7.6 hours per day, for a full time employee or such lesser hours as the average weekly hours (over 12 month period) for a part time employee.

- (d) An employee's entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work.
- (e) If an employee's employment ends during what would otherwise have been a year of service, the employee accrues paid annual leave up to the time when the employment ends.

#### **17.3 Payment of Annual Leave**

If, in accordance with this clause, an employee takes a period of paid annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that

would have been payable to the employee if the employee had taken that period of leave.

### **Annual Leave Loading**

- (i) In addition to their base rate of pay, an employee other than a shift worker will be paid an annual leave loading of 17.5% of their ordinary rate of pay.
- (ii) Shift workers, in addition to their base rate of pay, will be paid the higher of the below for all annual leave taken in weekly blocks (minimum of 7 calendar days):
  - a. Annual leave loading of 17.5% of their base rate of pay; or
  - b. The weekend and shift penalties the employee would have received had they not been on leave during the relevant period.
- (iii) Shift workers taking an annual leave period less than 1 week, will be paid an annual leave loading of 17.5% of their ordinary rate of pay. Projected roster shift loadings and weekend penalty rates are not considered for leave loading purposes, for periods less than 1 week.

### **Payment in Lieu of Annual Leave (Cashing Out)**

Payment in lieu of Annual Leave may only be made as allowed by the NES, meaning:

- (i) Each agreement to cash out a particular amount of paid annual leave must be a separate agreement in writing.
- (ii) The employer and the employee must not agree to the employee cashing out an amount of paid annual leave if the agreement would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (iii) The employer must pay the employee at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

### **17.4 Taking of Annual Leave**

- (a) An employee is entitled to take an amount of annual leave during a particular period if:
  - (i) at least that amount of annual leave is credited to the employee; and
  - (ii) the employer has authorised the employee to take the annual leave during that period.
- (b) In the taking of leave, the employee shall make written application to the employer, giving timely notice of the desired period of such leave.
- (c) Annual leave shall be taken in an amount and at a time which is approved by the employer subject to the operational requirements of the workplace. The employer shall not unreasonably withhold or revoke such approval.
  - (i) Generally annual leave will be taken in blocks of not less than 1 week (5 working days-7 calendar days), however requests for less than a



- weeks' leave including single days will be considered and generally granted unless it is not reasonably practical to do so.
- (ii) Reasonably practical includes the period of notice of request for leave (6 weeks minimum ideally in line with rosters and not less than 7 days before the intention to take leave) and weekend days will be considered as less practical (harder and more expensive to find replacement staff) for single day requests.
  - (iii) Requests for single day annual leave periods with less than 7 days' notice will generally be refused by the employer for roster replacement reasons. Requests by an individual employee for greater than 5 single days leave in any given 12 month period is also unlikely to be approved due to the impractical nature of managing this practice for rostering.
- (d) **Extensive accumulated annual leave:** An employee must take an amount of annual leave if directed to do so by the employer if:
- at the time the direction is given, the employee has 2 years or more accrued annual leave which equates to 8 weeks (10 weeks in the case of a shiftworker) annual leave credited to him or her; provided the amount of annual leave left to the employees credit after direction is at least 4 weeks (5 weeks in the case of a shiftworker)

## 18. PERSONAL/CARER'S LEAVE

### 18.1 Entitlement to paid Personal/Carers Leave

Employees are entitled to Personal Leave in accordance with the provisions of the NES, (refer to Chapter 2, Part 2-2, Division 7 of the Act).

- (a) For each year of service with the employer the employee is entitled to 10 days of paid personal/carer's leave.
- (b) An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.

### 18.2 Taking of Personal/Carer's Leave

An employee may take paid personal/carer's leave:

- (a) where the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or
- (b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
  - (i) a personal illness, or personal injury, affecting the member; or
  - (ii) an unexpected emergency affecting the member.
- (c) The notice and evidence requirements of this clause below must be complied with.

### 18.3 Payment of Paid Personal/Carer's Leave

If an employee takes a period of paid personal/carer's leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

#### **Meaning of base rate of pay**

The *base rate of pay* is the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:

- (a) loadings;
- (b) monetary allowances (with the exclusion of the uniform allowance);
- (c) overtime or penalty rates;
- (d) any other separately identifiable amounts.

### 18.4 Notice and Evidence Requirements

#### (i) Notice

(a) An employee must give the employer notice of the taking of leave under this Clause.

(b) The notice:

- must be given to the employer as soon as reasonably practicable (which may be at a time before or after the leave has started); and
- must advise the employer of the period, or expected period, of the leave.

#### (ii) Evidence

Paid Personal leave

(a) An employee who has given the employer notice of the taking of leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that if it is paid personal leave – the leave is taken for reason of a personal illness, or personal injury, affecting the employee;

(b) Five days per year, shall be accessible without the onus of proof on the employee, except at the discretion of the employer where prior written notification was given to the employee requesting that proof of personal leave will be required for each absence or as otherwise advised.

(c) The Employer shall accept a medical certificate, as required to be provided by an employee in subclause 18.4(ii)(a), that is signed by a 'registered health practitioner'. A 'registered health practitioner' means a health practitioner that is registered as such with a recognised authority and includes, but not limited to the occupation of a medical practitioner, a pharmacist, an osteopath, a nurse practitioner, a psychologist, a podiatrist, a physiotherapist, a dental practitioner, a chiropractor, and an optometrist. (excluding a nurse with any association with Tandara Lodge Community Care Inc. to avoid conflict of interest situations, either real or perceived),

Paid carers leave



To be entitled to carer's leave during the period, the employee may be required to give the employer as soon as reasonably practicable (which may be at a time before or after the carer's leave has started) either:

- (i) a medical certificate from a health practitioner stating that in their opinion the member requires or required care and support during the period due to personal illness or injury; or
- (ii) a statutory declaration made by the employee stating that the employee requires or required leave during the period to provide care or support to the member because the member requires or required care or support during the period because of personal illness, or injury, of the member or an unexpected emergency affecting the member.

(iii) **Compliance**

An employee is not entitled to take leave under this clause unless the employee complies with the notice and evidence subclause.

### **18.5 Lockdown-Contagious Sick (Personal) Leave**

As a result of contracting a sickness in a period directly preceding, including or immediately post a site "lockdown" or at any time an employee is directed by the employer to remain absent from work due to the risk of contagious sickness spreading to the residents (periods of lockdown and post lockdown) the time absent will not be deducted from the employees personal leave accrual.

The contagious sickness leave associated with a period of lockdown will be for a maximum of 4 days, per occasion.

An employee claiming contagious sick leave as opposed to Personal Leave may be required to provide evidence of such claim when requested by the employer. Evidence can include presenting either a medical certificate clearly identifying the transmittable/contagious sickness, or other such evidence that the employer is satisfied with.

### **18.6 Unpaid Carer's Leave**

- (a) An employee is entitled to 2 days unpaid carer's leave for each occasion when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of:
  - (i) a personal illness, or personal injury, affecting the member; or
  - (ii) an unexpected emergency affecting the member.
- (b) An employee may take unpaid carer's leave as:
  - (i) a single continuous period of up to 2 days: or
  - (ii) any separate periods agreed with the employer.
- (c) An employee is entitled to unpaid carer's leave for a particular occasion only if the employee cannot take an amount of paid personal/carer's leave.

### **18.7 Service**

- (a) A period of paid personal/carer's leave does not break an employee's continuity of service and counts as service for all purposes.

- (b) A period of unpaid personal/carer's leave does not break an employee's continuity of service, but does not count as service.

## 19. COMPASSIONATE AND BEREAVEMENT LEAVE

Compassionate leave is as provided for under NES.

For the purposes of this clause, the following are members of an employee's immediate family:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee;
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

A spouse includes a former spouse.

De facto partner of a national system employee:

- (a) 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
- (b) includes a former de facto partner of the employee.

### (a) **Compassionate Leave**

Employees, other than a casual employee, will be entitled to two days paid compassionate leave when an immediate family member or member of an employee's household:

- (i) contracts or develops a personal illness that poses a serious threat to his or her life; or
- (ii) sustains a personal injury that poses a serious threat to his or her life; or
- (iii) dies. (In the case of death, there is an additional day of paid leave under the bereavement leave sub clause below)

The leave can be taken in two (2) consecutive days, two (2) single days or any separate periods if the employer and employee agree.

Additional leave may be granted at the discretion of the employer.

Proof of illness, injury or death, in the form of a medical certificate, death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer when requested.

### (b) **Bereavement Leave**

- (i) Employees, other than a casual employee on the death of an immediate family member or member of the employee's household be entitled to leave without deduction of pay not exceeding the number of ordinary hours worked by the employee in three (3) ordinary days, provided that no payment shall



be made in respect to that employee's rostered days off. This leave is in lieu of compassionate leave and not additional to the two (2) days of compassionate leave.

- (ii) Where the death of an immediate family member requires the employee to travel interstate or further, the employer will consider granting an additional 2 days bereavement leave without loss of pay or personal leave entitlements to account for such necessary travel.
- (iii) Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer when requested, provided furthermore that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of leave.

**(c) Payment for Compassionate/Bereavement Leave**

If, in accordance with this clause, an employee, other than a casual employee, takes a period of compassionate leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

For casual employees, compassionate and bereavement leave is unpaid leave.

**Service**

- (a) A period of paid compassionate/bereavement leave does not break an employee's continuity of service and counts as service for all purposes.
- (b) A period of unpaid compassionate/bereavement leave does not break an employee's continuity of service, but does not count as service.

**20. COMMUNITY SERVICE LEAVE**

**General**

Community Service Leave is as per the NES, summarised in this clause. Each of the following is an **eligible community service activity**:

- (a) jury service (including attendance for jury selection); or
- (b) a voluntary emergency management activity.

**1. Voluntary Emergency Management Activity**

A voluntary emergency management activity is one where the activity:

- (i) involves dealing with an emergency or natural disaster; and
- (ii) the employee is a member of, or has a member-like association with, a recognised emergency management body; and
- (iii) the employee engages in the activity on a voluntary basis; and
- (iv) the employee was requested by or on behalf of the body to engage in the activity.

An employee who wants an absence from his or her employment to be covered by this clause must give his or her employer notice of the absence.

- (1) The notice:

- (a) must be given to the employer as soon as practicable (which may be a time after the absence has started); and
- (b) must advise the employer of the period, or expected period, of the absence.

(2) Evidence

An employee who has given his or her employer notice of an absence under subsection (1) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in an eligible community service activity.

Absence under the voluntary emergency management activity clause is treated as unpaid leave

## 2. Jury Service

If an employee is absent from his or her employment for a period because of jury service; and the employee is not a casual employee the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

### *Evidence*

The employer may require the employee to give the employer evidence that would satisfy a reasonable person:

- (a) that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and
- (b) of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable, to the employee for the period.

The employee is not entitled to payment under this subsection unless the employee provides the evidence requested; and if the employee provides the evidence—the amount payable to the employee is reduced by the total amount of jury service pay that has been paid, or is payable, to the employee, as disclosed in the evidence.

If an employee is absent because of jury service in relation to a particular jury service summons for a period of more than 10 days in total, the employer is only required to pay the employee for the first 10 days of absence.

An employee who engages in an eligible community service activity is entitled to be absent from employment for a period consisting of:

- time when the employee engages in the activity;
- and in the case of voluntary emergency management activity:
- reasonable travelling time associated with the activity;
  - reasonable rest time immediately following the activity.

## 21. PARENTAL LEAVE

Employees who have been employed for 12 months may be eligible for unpaid parental leave (birth related leave and adoption related leave) in accordance with the provisions



contained in the National Employment Standards (NES) (Division 5 – Parental Leave and Related Entitlements of the Fair Work Act 2009 ).

A copy of the relevant section of the Act is available from the employer on request.

## **22. LONG SERVICE LEAVE**

Long Service Leave entitlements shall be in accordance with the Long Service Leave Act Tasmania 1976 (as amended). Transitional arrangements referring to staggering of taking accrued LSL do not apply under this Agreement. Employees with 10 or more years of continuous employment as defined under the LSL Act 1976 as amended, are eligible immediately to take long service leave subject to application and subject to the organisational needs of the employer.

## **PART 4 - OTHER PROVISIONS**

### **23. TERMINATION OF EMPLOYMENT**

- 23.1. Prior to reaching any decision to terminate the employment of an employee, the employer will:
- (a) inform the employee that the termination of their employment is being considered;
  - (b) advise the employee of the reasons or allegations, including providing relevant details, and /or specific particulars of such reasons or allegations; and
  - (c) provide the employee with an opportunity to respond to the allegations prior to a final decision being made.
- 23.2 An employee shall be given reasonable time to respond, and shall be provided with details of any relevant material. Where a meeting is held with the employee, the employee is entitled to have a witness/support person present. The witness/support person may be e.g. a co-worker, a workplace union delegate, an officer of the union, a family member, or any other person.
- 23.3 Subject to dismissal for serious misconduct, employment, other than the employment of a casual, will be terminated by the employer or the employee on the provision of the applicable notice as set out in this agreement, or by the payment by the employer, or forfeiture by the employee, of wages in lieu of notice.
- 23.4 The employer may, without notice, summarily dismiss an employee at any time for serious misconduct or wilful disobedience. Payment is up to the time of dismissal only.
- 23.5 Provided that employment may be terminated by part of the period of notice specified, and part payment or part forfeiture, in lieu of the period of notice specified.
- 23.6 In respect of the requirement for an employer to provide or pay notice under this clause, nothing in this clause shall exclude the application of Subdivision C of Division 11 of Part 2-2 of the *Fair Work Act 2009*.
- 23.7 It is the intention of this clause that both the employer and the employee provide appropriate notice upon termination, or pay or forfeit such notice in wages. The application and interpretation of this clause shall give this intention full effect.



## 23.8 Notice of termination

(a)	<u>Period of Continuous Service</u>	<u>Minimum Period of Notice</u>
-----	-------------------------------------	---------------------------------

	1 year or less	1 week
	More than 1 year but 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

(b) Notice of termination or payment in lieu is provided for in the NES. Employees (other than casuals) aged 45 years or older will be entitled to an additional one week's notice if the employee has completed at least two years continuous service for the employer.

(c) Casuals are to be given notice to the end of the current shift worked.

(d) Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of the employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.

## 24. CONSULTATION REGARDING MAJOR WORKPLACE CHANGE

(1) This term applies if the employer:

- (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
- (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

(2) For a major change referred to in paragraph (1)(a):

- (a) the employer must notify the relevant employees of the decision to introduce the major change; and
- (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.

(4) If:

- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- (b) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.

(5) As soon as practicable after making its decision, the employer must:

- (a) discuss with the relevant employees:
  - (i) the introduction of the change; and
  - (ii) the effect the change is likely to have on the employees; and
  - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
- (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
  - (i) all relevant information about the change including the nature of the change proposed; and
  - (ii) information about the expected effects of the change on the employees; and
  - (iii) any other matters likely to affect the employees.



- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) 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 (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is likely to have a significant effect on employees if it results in:
  - (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.
- Change to regular roster or ordinary hours of work
- (10) For a change referred to in paragraph (1)(b):
  - (a) the employer must notify the relevant employees of the proposed change; and
  - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (12) If:
  - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
  - (a) discuss with the relevant employees the introduction of the change; and
  - (b) for the purposes of the discussion—provide to the relevant employees:
    - (i) all relevant information about the change, including the nature of the change; and
    - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
    - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - (c) 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).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:
  - (i) relevant employees means the employees who may be affected by a change referred to in subclause (1)..

## 25. REDUNDANCY

Redundancy occurs where the employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour



Redundancy does not apply to any employee employed for a specified period of time or to a casual that is not employed as a regular and systematic casual.

For the purposes of this clause, "continuous service" has the same meaning as contained in the Fair Work Act 2009 – section 22 Meanings of service and continuous service.

(a) Requirement to Consult

For the purpose of this clause redundancy includes a situation where the employer believes for operational reasons that it is necessary to make one or more positions redundant, or to reduce the number of employees.

Where the employer believes that it may be necessary to implement a redundancy, the employer is to notify the affected employee(s) and commence a process of consultation with the affected employees and their representatives.

(b) Redeployment and Retraining

Consideration will be given to redeployment and re-training options where possible and practical, prior to the final decision regarding termination of employment due to genuine redundancy.

(c) Notice of Redundancy

The employer is to provide as much notice as is reasonably practicable of an intended redundancy.

The minimum period of notice to be given to an employee affected by a redundancy is the same as contained in the table for termination of employment referenced in this agreement, including the additional weeks' notice where an employee is over 45 years of age and has been employed for 2 years or more.

(d) Voluntary Redundancy

(i) Before a redundancy is implemented, the employer in the first instance will seek expressions of interest for voluntary redundancy from all employees.

PROVIDED THAT the employer is only required to seek such expressions of interest from employees employed at the same classification level and at the same worksite in which the redundancy is being affected.

(ii) In assessing expressions of interest for voluntary redundancy the employer will take into account the skill and operational requirements of the organisation.

(iii) The employer will further consult with the affected employee(s) where a decision to proceed with involuntary redundancy has been made either due to insufficient voluntary redundancies being identified, and/or after declining an expression of interest for voluntary redundancy.

(e) Redundancy Package



Where retraining and/or redeployment opportunities are not available, the redundancy package to be paid to redundant employees is based on the years of service of the individual employees.

Employee's period of continuous service with the employer on termination	Redundancy pay
At least 1 year but less than 2 years	4 weeks pay
At least 2 years but less than 3 years	6 weeks pay
3 years or greater	2 weeks for each completed year of service pro-rata for any incomplete year of service, (minimum of 7 weeks) capped to a maximum of 20 weeks redundancy pay.

**Exclusions-** where the employer facilitates acceptable alternative employment for a redundant employee, including the transfer of all entitlements, the provisions of this clause shall not apply.

Acceptable alternative employment will be deemed to be where the employee has gained employment in a position which reflects the skills of that employee and which provides substantially the same financial and employment benefits, as the position from which the employee was made redundant

The exclusions to redundancy payment under the Fair Work Act 2009 still apply to the redundancy clause of this agreement, namely sections 120-123

(f) Partial Redundancy Package for Changed or Decreased Hours

Where an employees' hours are to decrease or there is a reduction in wage as a result of operational or structural change, then a partial redundancy could be considered where agreed by the employee instead of a full redundancy.

Partial redundancy is calculated in the same way as a full redundancy would under this clause; however it is the difference between the pre-partial redundancy weekly wage to the post partial redundancy wage that is used to determine the "weekly wage" for the purpose of calculating the redundancy pay.

EG:

Weekly wage of employee pre-partial redundancy based on 38 hours per week plus allowances = \$920.40

Weekly wage of employee post-partial redundancy revised position based on 25 hours per week plus allowances = \$502.50

Partial Redundancy figure is:

$\$920.40 - \$502.50 = \$417.90$  X redundancy pay week figure based on years of service.

Leave accruals (days accrued) remain as they were in situations of partial redundancy.



(g) Definition-week's wage

For the purposes of this clause a week's pay means the relevant rate, and any loadings and all-purpose on going allowances to which the employee is normally entitled.

(h) Paid Time off to Seek Alternative Employment

Employees who are made redundant are to be given assistance by the employer in seeking suitable alternative employment, including being granted paid time off to look for work. With consent from the employer (which may include evidence of job seeking activity) up to one day per week during the notice period may be accessed for the purpose of job seeking.

## 26. SALARY PACKAGING AND SACRIFICE

The rate of pay applicable to each classification specified in the wage rates of this Enterprise Agreement may be packaged in accordance with the employer's salary packaging program.

By agreement with the Employer, Employees who elect in writing to do so may convert a component of their weekly ordinary time wage to packaged benefits.

The terms and conditions of such a package are subject to the following provisions;

- (a) the employer shall ensure that the structure of any package complies with taxation and other relevant laws;
- (b) the employer shall confirm in writing to the employee the classification level and the current salary payable as applicable to the employee under this Agreement;
- (c) the employer shall advise the employee in writing of his or her right to choose payment of that salary referred to in sub-clause (b) above instead of a remuneration package;
- (d) the employer shall advise the employee, in writing, that all Agreement conditions, other than the salary and those conditions as agreed in sub-clause (e) below shall continue to apply;
- (e) when determining the remuneration package, the non-salary fringe benefit shall be in accordance with relevant Australian Taxation Office legislation;
- (f) a copy of the agreement shall be made available to the employee;
- (g) the employee shall be entitled to inspect details of the payments made under the terms of this agreement;
- (h) the configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer;
- (i) where at the end of the agreed period the full amount allocated to a specific benefit has not been utilised, by agreement between the employer and the employee, an unused amount may be carried forward to the next period, or paid as salary which will be subject to usual taxation requirements;
- (j) remuneration packaging is only offered on the strict understanding and agreement that in the event existing taxation law is changed regarding Fringe Benefit Tax or personal tax arrangements, and that change may impact on this agreement, all salary packaging arrangements may at the discretion of the employer be terminated. Upon



termination in these circumstances the employee's rate of pay will revert to the rate of pay that applied immediately prior to a salary packaging agreement made pursuant to this clause, or the appropriate Agreement rate of pay whichever is greater;

- (k) where changes are proposed to salary packaging arrangements other than to flow on wage increases, or salary packaging arrangements are to be cancelled for reasons other than legislative requirements, then the employer and/or the employee must give three months' notice of the proposed change;
- (l) in the event that an employee ceases to be employed by the employer this agreement will cease to apply as at the date of termination and all leave entitlements due on termination shall be paid at the rates in accordance with sub-clause (b) above. Any outstanding benefit shall be paid on or before the date of termination; and
- (m) any pay increases granted to employees under this Agreement shall also apply to employees subject to remuneration packaging arrangements within this clause.

## **27. SUPERANNUATION**

### General

The employer will make superannuation contributions into an approved Superannuation Fund nominated by the employee in accordance with the Superannuation Guarantee (Administration) Act 1992 (SG) legislation as varied from time to time. Superannuation contributions shall be made as a minimum, on a monthly basis. In addition to the requirements of the Superannuation Guarantee obligations, the employer will pay contributions without regard for any age cap.

In circumstances where eligible employees do not inform the employer of their choice of superannuation fund, the employer will remit the appropriate contributions for such employees to the nominated fund.

For the purpose of this clause and this Agreement the nominated fund means the Health Employees Superannuation Trust Australia (HESTA) or any successor.

### Salary Sacrifice to Superannuation

- (a) An employee can elect to sacrifice a portion of salary to superannuation. Such election must be made prior to the commencement of the period of service to which the earnings relate and be in accordance with relevant legislation.
- (b) Salary sacrifice to superannuation means the option of making additional superannuation contributions by electing to sacrifice a portion of the gross earnings (pre-tax dollars). This will give the effect of reducing the taxable income by the amount for salary sacrifice.
- (c) Employers will not use any amount that is salary sacrificed by an employee to count towards the employer's obligation to pay contributions under the SG legislation.
- (d) Contributions payable by the employer in relation to the SG legislation shall be calculated by reference to the salary which would have applied to the employee under this Agreement in the absence of any salary sacrifice.



- (e) Any additional superannuation contributions made in accordance with this clause shall be paid into the same superannuation fund that receives the employer's SG contributions.
- (f) Any allowance, penalty rate, overtime payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any salary sacrifice to superannuation. Payment for leave taken whilst employed will be at the post-salary sacrificed amount.

## 28. TRAINING

The parties to this Agreement recognise the benefits that flow to employees and to the employer from appropriate training and personal development

All training opportunities will be identified prior to the training commencing as either compulsory (required by the employer for the employee to attend) or discretionary (non-compulsory), so as there is no confusion as to whether payment must be provided or not

### **Non-Compulsory Training**

Where practical the employer will schedule all personal development training during an employee's rostered shift, whereby employees will be paid as if the shift was worked and not spent in training. Where it is not practical to schedule training during rostered shifts the employee can attend the training after work hours at the employees discretion. This discretionary training attendance will generally not be paid. In some cases the employer may make the decision to treat this discretionary out of hours training as paid, in these instances employees will be notified prior to the commencement of the training. In these instances additional hours for the purpose of attending training will be paid at base rates of pay, overtime, shift or penalty rates will not apply.

### **Compulsory Training**

Compulsory training is exclusive of professional development hours.

- (i) Employees must attend compulsory training where indicated as such by the employer, including fire and emergency training, OHS training and manual handling training or any other training as may be required by regulatory bodies or the employer.
- (i) Employees required to attend compulsory training shall be paid at the base rate of pay for the period of training. Paid compulsory training shall not be counted as time worked for the purposes of calculating overtime or shift penalties in the agreement.

## 29. GRIEVANCE AND DISPUTE RESOLUTION PROCEDURES

This dispute resolution procedure will apply to disputes about:

- i. matters arising under this agreement;
- ii. matters in relation to the NES;
- iii. a workplace right as defined in the Fair Work Act 2009 subsection 341(1)



- (a) If a dispute arises about this agreement, the NES or workplace right, 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 arising under this agreement, or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under (a) have been taken, a party to the dispute may refer the dispute to FWC. The parties may agree on the process to be utilised by FWC including mediation, conciliation and consent arbitration.
- (c) The employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- (d) The parties to the dispute and their representatives must act in good faith in relation to the dispute.
- (e) The parties agree that FWC shall have the power to do all such things as are necessary for the just resolution of the dispute including mediation, conciliation and arbitration;
- (f) While the dispute is being resolved, work must continue in accordance with this agreement and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

### **30. NOTICE BOARD**

The employer is to permit a notice board to be erected in the workplace(s) for the use of employees and their unions.

The employer must ensure that copies of this Agreement and the NES are available to all employees to whom they apply either on a noticeboard located at each of the employer's workplaces and/or through electronic means, whichever makes them more accessible.

### **31. UNION DELEGATES**

- (a) It is recognised that union delegates or elected workplace representatives, with approval of the Union and authorisation of the employer will participate in the following duties free from any discrimination in their employment when it is appropriate to do so:
  - represent the interests of members to the employer;
  - consult with union members and other employees for whom the delegate is a bargaining representative;
  - participate in the operation of the Union which includes representing members on workplace issues;
  - represent members on any relevant consultative committee at the workplace;



- attend union education, subject upon application to and approval from the employer;
  - 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, subject upon application to and approval from the employer;
  - attend union annual Delegates Conference, subject upon application to and approval from the employer.
- (b) It is recognised that union training leave is unpaid, however an employee can make application to the employer for paid union training leave. Paid union training leave will be only granted by the discretion of the employer. 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 14 days notice of the proposed training.
- (c) An employee can also make application for non-paid training leave. This leave is subject to the employer agreeing to release the delegate from their normal roster if the delegate was rostered to work during the time of leave. Normally, 14 days notice of the proposed training is required.
- (d) The granting of any leave pursuant to this clause shall be subject to the employer being able to make adequate staffing arrangements amongst current employees during the period of such leave. The employer shall not use this subclause to avoid an obligation under this clause.
- (e) Leave of absence granted pursuant to this clause, shall count as service for all purposes of this Agreement.
- (f) Each employee on paid leave approved in accordance with this clause, shall be paid all ordinary time earnings. For the purpose of this subclause "ordinary time earnings" for an employee means the classification rate, over-award payment, superannuation and shift loading, which otherwise would have been payable.
- (g) All expenses (such as travel, accommodation and meals) associated with or incurred by the employee attending a training course as provided in this clause shall be the responsibility of the employee or the Union.
- (h) An employee may be required to satisfy the employer of attendance at the course to qualify for leave.
- (i) An employee granted leave pursuant to this clause shall, upon request, inform the employer of the nature of the course attended and their observations on it.
- (j) 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.



### **32. FAMILY/DOMESTIC VIOLENCE**

Tandara Lodge recognises that some employees may face situations of family violence or abuse that not only affects the employee's personal and general way of life, but may also affect their attendance or performance at work. Tandara lodge encourages any such affected employee to contact the DON or CEO directly to discuss in confidence their situation and needs, so that options and practical support can be explored and considered. Without limiting the type of support that may be considered or committing to provision of any such support, which will be determined on a case by case basis, options may include;

- Referral to professional counselling;
- Changes to hours of work, in addition to or including requests for flexible work hours;
- Consideration in mitigating unexplained work absence or underperformance issues;
- Time off work (unpaid or paid) including access to annual or personal leave.

Proof of family violence may be required and can be in the form of an agreed document issued by the Police Service, a court, a doctor, a Family Violence Support Service or Lawyer.

All personal information concerning family violence will be kept confidential.

### **33. NO EXTRA CLAIMS**


The parties bound by this Agreement acknowledge that this Agreement settles all claims in relation to the terms and conditions of employment of the employees to whom it applies and agree that they will not pursue any extra claims during the term of this Agreement.

Without limiting the generality of the foregoing, there shall be no industrial action for the purpose of supporting or advancing claims against the employer until the nominal expiry date has passed and the requirements of the Act have been satisfied.

Where any disagreement arises, the parties shall follow the Dispute Settlement Procedure contained in this Agreement. The parties acknowledge that the terms of this Agreement represent the totality of all matters in the employment relationship and that no industrial action shall be taken in support of any matter(s) whatsoever which is (are) covered or not covered by this Agreement until its nominal expiry date has passed and the requirements of the Act have been satisfied.

**SIGNATORIES:**

**FOR THE EMPLOYER**

Signed: 


(for and on behalf of Tandara Lodge Community Care Inc.: by its authorised representative)

Date: 26.11.2015

Name in full (printed): PAUL CRANTOCK

Position: CEO

Employer's Address: 10 NIGHTINGALE AVENUE  
SHEFFIELD TAS 7306

Witnessed by (signature): 

Witness name in full (printed): JUDEN TURNER

Witness address: 10 NIGHTINGALE AVENUE  
SHEFFIELD TAS 7306

**EMPLOYEE REPRESENTATIVE (HACSU)**

Signed: 

Name in full (printed): TIM JACOBSON (STATE SECRETARY)

Address: 11 CLARE ST NEW TOWN 7008

Date: 21.11.15

Witnessed by (signature): 

Witness name in full (printed): JAMES EDINGTON

Witness address: 11 CLARE ST  
NEW TOWN TAS 7008

**EMPLOYEE REPRESENTATIVE (ANMF)**

Signed: 

Name in full (printed): NERYS ELLIS

Address: 182 MALQUARIE ST  
HOBART

Date: 28.11.15

Witnessed by (signature): 

Witness name in full (printed): Jessica Louise Baldwin

Witness address: Cl-182 Macquarie Street, Hobart



## SCHEDULE A - EMPLOYMENT CLASSIFICATIONS

### CLASSIFICATIONS

#### Aged care employee—level 1

**Entry level:** An employee who has less than three months' work experience in the industry and performs basic duties.

An employee at this level:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.

Indicative tasks performed at this level are:

<b>Administration</b>	<b>General and Food services</b>
General clerk	Food services assistant
	Laundry hand
	Cleaner
	Assistant gardener

#### Aged care employee—level 2

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

Indicative tasks performed at this level are:

<b>Administration</b>	<b>General and Food services</b>	<b>Personal care</b>
General clerk/Typist (between 3 months' and less than 1 years' service)	Food services assistant	Personal care worker grade 1
	Laundry hand	
	Cleaner	
	Gardener (non-trade)	
	Maintenance/Handyperson (unqualified)	
	Driver (less than 3 ton)	

#### Aged care employee—level 3

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative tasks performed at this level are:

<b>Administration</b>	<b>General and Food services</b>	<b>Personal care</b>
General clerk/Typist (second and subsequent years of service)	Cook	Personal care worker grade 2
Receptionist		Recreational/Lifestyle activities officer (unqualified)
Pay clerk		
	Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate	

#### **Aged care employee—level 4**

An employee at this level:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.
- In the case of a Personal care worker, is required to hold a relevant Certificate III qualification.

Indicative tasks performed at this level are:

<b>Administration</b>	<b>General and Food services</b>	<b>Personal care</b>
Senior clerk	Senior cook (trade)	Personal care worker grade 3
Senior receptionist		
	Maintenance/Handyperson (qualified)	
	Driver (3 ton and over)	



	Gardener (trade or TAFE Certificate III or above)	
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### Aged care employee—level 5

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

Administration	General and Food services	Personal care
Secretary interpreter (unqualified)	Chef	Personal care worker grade 4

### Aged care employee—level 6

An employee at this level:

- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at post-trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

<b>General and Food services</b>
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Maintenance tradesperson (advanced)
Gardener (advanced)
Senior chef

### **Aged care employee—level 7**

An employee at this level:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses developed administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

<b>Administration</b>	<b>General and Food services</b>	<b>Personal care</b>
Clerical supervisor	Chef /Food services supervisor	Personal care worker grade 5
Interpreter (qualified )	Gardener Superintendent	
	General services supervisor	



**SCHEDULE B - PAY RATES**

<b>% Increases</b>		<b>3%</b>	<b>3%</b>
	Wage rate at time of lodgement of Agreement \$ Per hour	Wage rate FFPP on or after 1 July 2015 \$ Per hour	Wage rate FFPP on or after 1 July 2016 \$ Per hour
<b>Classification</b>			
Level 1 Aged Care Employee	18.30	18.85	19.42
Level 2 Aged Care Employee	19.09	19.66	20.25
Level 3 Aged Care Employee	19.84	20.43	21.04
Level 4 Aged Care Employee	20.06	20.67	21.29
Level 5 Aged Care Employee	20.75	21.38	22.02
Level 6 Aged Care Employee	21.86	22.51	23.19
Level 7 Aged Care Employee	22.26	22.93	23.62

## SCHEDULE C - SUPPORTED WAGE SYSTEM

**C.1** This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this Agreement.

**C.2** In this schedule:

**approved assessor** means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

**assessment instrument** means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

**disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme

**relevant minimum wage** means the minimum wage prescribed in this Agreement for the class of work for which an employee is engaged

**supported wage system** means the Commonwealth Government system to promote employment for people who cannot work at full Agreement wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: [www.jobaccess.gov.au](http://www.jobaccess.gov.au)

**SWS wage assessment agreement** means the document in the form required by the Department of Education, Employment and Workplace Relations that records the employee's productive capacity and agreed wage rate

### **C.3 Eligibility criteria**

**C.3.1** Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

**C.3.2** This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this Agreement relating to the rehabilitation of employees who are injured in the course of their employment.

### **C.4 Supported wage rates**

**C.4.1** Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

<b>Assessed capacity (clause C5)</b>	<b>Relevant minimum wage</b>
%	%
10	10
20	20



<b>Assessed capacity (clause C5)</b>	<b>Relevant minimum wage</b>
<b>%</b>	<b>%</b>
30	30
40	40
50	50
60	60
70	70
80	80
90	90

C.4.2 Provided that the minimum amount payable must be not less than \$80 per week.

C.4.3 Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

### **C.5 Assessment of capacity**

C.5.1 For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

C.5.2 All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

### **C.6 Lodgement of SWS wage assessment agreement**

C.6.1 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with FWC.

C.6.2 All SWS wage assessment agreements (SWSA) must be agreed and signed by the employee and employer parties to the assessment. Where a union, party to this agreement, is not a party to the SWSA, the assessment will be referred by FWC Australia to the union by certified mail and the SWSA will take effect unless an objection is notified to FWC within 10 working days.

### **C.7 Review of assessment**

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

### **C.8 Other terms and conditions of employment**

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this Agreement on a pro rata basis.

## **C.9 Workplace adjustment**

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

## **C.10 Trial period**

C.10.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

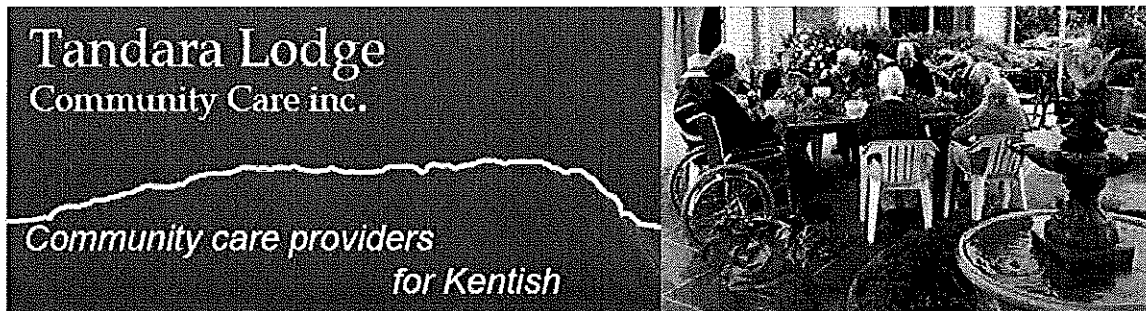
C.10.2 During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

C.10.3 The minimum amount payable to the employee during the trial period must be no less than \$75 per week.

C.10.4 Work trials should include induction or training as appropriate to the job being trialled.

C.10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.





**TANDARA LODGE COMMUNITY CARE INC.**

**ABN: 21 723 628 502**

**Commissioner Gregory  
Fair Work Commission  
GPO Box 1994, Melbourne  
VICTORIA 3001**

Dear Commissioner Gregory,

**RE: Matter Number: AG 2015/6037**

**Section 190 of the Fair Work Act 2009-Undertaking for the**

**Tandara Lodge Community Care Inc. General Staff Enterprise Agreement 2015**

In the interest of meeting the requirements under Division 4 –Approval of Enterprise Agreements, the employer offers the below listed undertaking.

The existing clause of the **Tandara Lodge Community Care Inc. General Staff Enterprise Agreement 2015** is amended with the wording represented in the following undertaking:

**Clause 7 Individual Flexibility Clause**

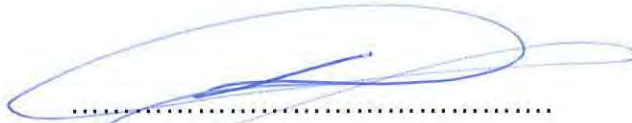
The below wording is to be added to the clause 7 above in the EA.

(j) The employer must ensure that the terms of the individual flexibility arrangement:

- (a) are about permitted matters under section 172 of the *Fair Work Act 2009* ; and
- (b) are not unlawful terms under section 194 of the *Fair Work Act 2009* .

**FOR THE EMPLOYER**

Signed:



(for and on behalf of Tandara Lodge Community Care Inc. by its authorised representative)

Date:

13 / 11 / 2015

Name in full (printed):

PAUL CRANTOCK

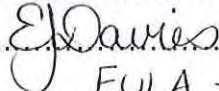
Position:

CEO

Employer's Address:

10 NIGHTINGALE AVENUE  
SHEFFIELD TAS 7306

Witnessed by (signature):



Witness name in full (printed):

EULA-JANE DAVIES

Witness address:

C/- 10 NIGHTINGALE AVE SHEFFIELD TAS 7306