



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

DHB Consulting Pty Ltd T/A DHB Consulting
(AG2016/1623)

EYE HOSPITAL NURSES ENTERPRISE AGREEMENT 2016

Tasmania

COMMISSIONER LEE

MELBOURNE, 24 AUGUST 2016

Application for approval of the Eye Hospital Nurses Enterprise Agreement 2016.

[1] An application has been made for approval of an enterprise agreement known as the *Eye Hospital Nurses Enterprise Agreement 2016* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by DHB Consulting Pty Ltd T/A DHB Consulting. The Agreement is a single enterprise agreement.

[2] The Employer 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] Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[5] The Australian Nursing and Midwifery Federation being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 31 August 2016. The nominal expiry date of the Agreement is 30 August 2019.



COMMISSIONER

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Annexure A



DHB Consulting



Working for Australia's Employers

Commissioner Lee
Fair Work Commission

20 August 2016

Dear Commissioner,

Matter AG2016/1623 – Undertaking

I am writing in my capacity as the appointed Bargaining Representative of the Applicant, The Eye Hospital Pty Ltd, in relation to the above-mentioned application for approval of an Enterprise Agreement.

Consistent with the requirements of Section 190 of the *Fair Work Act 2009* and Regulation 2.07 of the *Fair Work Regulations 2009*, the Applicant now submits the following undertakings in relation to the proposed Enterprise Agreement:

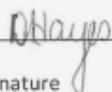
1. "Clause 34.2 of the Agreement contains the words '*3 years or less*'. The employer undertakes to read and apply those words as though drafted to read '*less than 3 years*'."
2. "The employer undertakes to pay overtime rates to part-time employees when such employees perform work in excess of the rostered daily ordinary full-time hours of work."

Faithfully,

David Bates BA(Govt), LL.B(Hons)

Managing Director

Signed below by Denise Hayes, CEO, The Eye Hospital


Signature

19.8.2016
Date



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THE EYE HOSPITAL
NURSES
ENTERPRISE AGREEMENT
2016

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 the agreement.

Note - the model flexibility term is taken to be a term of this agreement and can be found at the end of the agreement.

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1. TITLE

This Enterprise Agreement will be known as the *Eye Hospital Nurses Enterprise Agreement 2016* ("the Agreement").

2. APPLICATION

2.1 This Agreement is made in accordance with the requirements of the *Fair Work Act 2009* (Cth) ("the Act") between The Eye Hospital Pty Ltd (ABN 621 203 149 81) of 262 Charles Street, Launceston, Tasmania ("The Eye Hospital") and the employees of The Eye Hospital employed within the classifications set out in this Agreement and who carry out their employment at the premises of The Eye Hospital described within this Agreement ("the Employees").

2.2 This Agreement replaces the *Eye Hospital Nurses Enterprise Agreement 2012*.

2.3 The Australian Nursing and Midwifery Federation, Tasmanian Branch (ANMF) may be covered by this Agreement upon application to the Fair Work Commission ("The Commission").

3. INTERACTION WITH MODERN AWARDS AND NES

3.1 Subject to the Act, and except where this Agreement expressly provides otherwise, this Agreement operates to the exclusion of any other agreement, award, or industrial instrument.

3.2 The National Employment Standards (NES), as contained in the *Fair Work Act 2009* and as varied from time-to-time, are a set of minimum standards which cannot be displaced. Where this Agreement also has provisions regarding matters dealt with under the NES, and the provisions in the NES are more favourable to an employee in a particular respect than those provisions, then the NES will prevail in that respect and the provisions dealing with the matter in this Agreement will not have effect in respect of that employee. The provisions in this Agreement otherwise apply.

4. COMMENCEMENT AND NOMINAL EXPIRY

4.1 This Agreement takes effect seven (7) days after its approval by the Commission.

4.2 The nominal expiry date of this Agreement is three (3) years from the date of commencement.

4.3 Subject to the requirements of the *Fair Work Act 2009*, this Agreement may be varied by application made to the Commission.

5. PREMISES AT WHICH THIS AGREEMENT APPLIES

5.1 This Agreement operates at The Eye Hospital, located at 262 Charles Street, Launceston, Tasmania, 7250.

5.2 The Eye Hospital may require the Employees to work at different locations to suit the needs of its business.

6. DUTIES

6.1 Each employee covered by this Agreement:

(a) must carry out all lawful and reasonable instructions.

(b) must serve The Eye Hospital faithfully, efficiently and diligently and exercise all due care and skill in the performance of the employment.

- (c) must refrain from acting or giving the appearance of acting contrary to the interests of The Eye Hospital.
- (d) must not solicit or attempt to persuade any clients of The Eye Hospital to use the services of any other business.
- (e) must keep confidential all know how and trade secrets acquired during the employment with The Eye Hospital, including, but not limited to, techniques, product information, client lists and any other information which is confidential to The Eye Hospital.
- (f) must carry out any other duties reasonably required by The Eye Hospital that are consistent with the employees' respective skills and abilities.

7. NO FURTHER CLAIMS

- 7.1 The persons covered by this Agreement undertake that during the life of the Agreement there will be no further wage increases or other claims sought or granted, except as provided under the terms of this Agreement.

8. WORKPLACE FLEXIBILITY

- 8.1 Notwithstanding any other provision of this Agreement, The Eye Hospital and an individual Employee may agree to vary the application of any of the terms of this Agreement to meet the genuine individual needs of The Eye Hospital and the individual Employee. Any such agreement will be known as an *Individual Flexibility Agreement* ("IFA").

- 8.2 The IFA must:

- (a) state each term of this Agreement that The Eye Hospital and the individual Employee have agreed to vary;
- (b) detail how the application of each term has been varied by the IFA;
- (c) require The Eye Hospital to ensure the IFA results in the Employee being '*better off overall*' than the Employee would have been if no IFA had been made;
- (d) require The Eye Hospital to ensure the IFA is about matters that would be '*permitted matters*' if the IFA was an Enterprise Agreement;
- (e) require The Eye Hospital to ensure the IFA does not include a term that would be an '*unlawful term*' if the IFA was an Enterprise Agreement;
- (f) be genuinely made without coercion or duress;
- (g) be in writing, name the parties to the IFA and be signed by The Eye Hospital and the individual Employee and, if the Employee is under 18 years of age, by the Employee's parent or guardian;
- (h) require The Eye Hospital to give the individual Employee a copy of the IFA and to keep the original IFA in the Employee's time and wages records;
- (i) require The Eye Hospital to ensure that the IFA can be terminated by The Eye Hospital or the individual Employee by giving the other four weeks' notice of termination in writing, or at any time by mutual agreement in writing between The Eye Hospital and the individual Employee;
- (j) state the date the IFA takes effect; and

(k) not result in a reduction to any of the entitlements protected by the NES.

9. CONSULTATION

9.1 This clause applies if The Eye Hospital:

- (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to the Hospital 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.

9.2 For a major change referred to in paragraph 9.1(a) above:

- (a) The Eye Hospital must notify the relevant Employees of the decision to introduce the major change; and
- (b) subclause 9.4 will apply.

9.3 For a change referred to in paragraph 9.1(b) above:

- (a) The Eye Hospital must notify the relevant employees of the proposed change; and
- (b) subclause 9.5 will apply.

9.4 Consultation Regarding Major Changes

9.4.1 The relevant Employees may appoint a representative for the purposes of the procedures in this term.

9.4.2 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 Eye Hospital of the identity of the representative;

The Eye Hospital will recognise the representative.

9.4.3 As soon as practicable after making its decision, The Eye Hospital will:

- (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 Eye Hospital 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.

9.4.4 However, The Eye Hospital is not required to disclose confidential or commercially sensitive information to the relevant Employees.

9.4.5 The Eye Hospital will give prompt and genuine consideration to matters raised about the major change by the relevant Employees.

9.4.6 If a term in this Agreement provides for a major change to organisation, structure or technology in relation to The Eye Hospital, the requirements set out above do not apply.

9.4.7 For the purposes of this clause, 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 Eye Hospital'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.

9.5 Consultation Regarding Changes to Rosters

9.5.1 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 Eye Hospital of the identity of the representative;

The Eye Hospital will recognise the representative.

9.5.2 As soon as practicable after proposing to introduce the change, The Eye Hospital will:

- (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 Eye Hospital reasonably believes will be the effects of the change on the Employees; and
 - (iii) information about any other matters that The Eye Hospital 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).

9.5.3 However, The Eye Hospital is not required to disclose confidential or commercially sensitive information to the relevant Employees.

9.5.4 The Eye Hospital will give prompt and genuine consideration to matters raised about the change by the relevant Employees.

9.6 In this term, 'relevant employees' means the employees who may be affected by a change referred to in subclause 9.1.

10.0 EMPLOYMENT CATEGORIES

10.1 Full Time Employees

10.1.1 Full time employees:

- (a) Will be required to work 38 ordinary hours per week ("Ordinary Hours"); and
- (b) May be required to work reasonable additional hours.

10.2 Part Time Employees

10.2.1 Part time Employees:

- (a) Will be required to work less than 38 ordinary hours per week ('Ordinary Hours'); and
- (b) May be required to work reasonable additional hours.

10.2.2 Before commencing part-time employment, the Eye Hospital and an Employee will agree, in writing, the guaranteed minimum number of hours to be worked and the rostering arrangements that which will apply to those hours. The terms of this agreement may be varied by agreement and recorded in writing.

10.2.3 The terms and conditions of this Agreement will apply on a pro rata basis to part time employees.

10.3 Casual Employees

10.3.1 A casual Employee is an employee engaged and paid as a casual employee. A casual employee will be provided with hours of work on an '*as-and-when required*' basis. From time to time a casual Employee may be rostered on a regular basis but such roster does not provide an entitlement to regular or continuous work.

10.3.2 A casual Employee, whilst working ordinary hours, will be paid a loading of 25% in addition to the relevant ordinary hourly rate of pay for a full-time employee, as specified in this Agreement. The casual loading is paid in lieu of entitlements to paid annual leave, paid personal/carer's leave, paid compassionate leave, public holidays and redundancy entitlements.

10.4 Employees will be advised of the status of their employment prior to starting work with The Eye Hospital.

11. CLASSIFICATIONS, SALARIES, PAYMENTS AND BENEFITS

11.1 Salaries

11.1.1 Employees' salaries will increase during the life of this Agreement as follows:

- (a) from the date this Agreement is approved by a valid majority of Employees: 5%
- (b) from the date 12 months and 7 days after this Agreement is approved by the Commission: 3%
- (c) from the date 24 months and 7 days after this Agreement is approved by the Commission: 3%

11.1.2 Full time and part time employees will be paid the applicable annualised salary for their classification in accordance with the table below:

Agreement Classification	First Increase (5%)	Second Increase (3%)	Third Increase (3%)
Enrolled Nurse	\$	\$	\$
1st Year of Service	51,372	52,913	54,501
2nd Year of Service	52,458	54,031	55,652
3rd Year of Service	53,549	55,156	56,810
4th Year of Service	54,640	56,279	57,967
5th Year of Service	55,732	57,404	59,127
Medication Endorsed			
1st Year of Service (Cert IV Entry)	58,834	60,599	62,417
2nd Year of Service (Diploma Entry)	59,954	61,752	63,605
3rd Year of Service	60,780	62,604	64,482
Registered Nurse- Level 1			
1st year of service	56,273	57,962	59,700
2nd year of service	58,993	60,763	62,585
3rd year of service	61,718	63,570	65,477
4th year of service	64,439	66,372	68,363
5th year of service	67,160	69,175	71,250
6th year of service	69,880	71,976	74,135
7th year of service	72,600	74,778	77,022
8th year of service	74,960	77,209	79,525
9th year of service	76,096	78,379	80,731
Registered Nurse - Level 2			
1st year of service	77,672	80,002	82,402
2nd year of service	79,480	81,864	84,320
3rd year of service	79,726	82,118	84,581
4th year of service	83,090	85,583	88,150
Clinical Nurse Manger Level 3			
1st year of service	88,595	91,253	93,991
2nd year of service	90,725	93,446	96,250
3rd year of service	92,756	95,539	98,405
4th year of service	94,839	97,684	100,614

11.2 Classifications

11.2.1 *Registered Nurse* means a nurse registered as such with the Australian Health Practitioner Regulation Agency (AHPRA) under the provisions of the *Health Practitioners Regulation National Law Act (Tasmania) 2010*.

11.2.2 *Enrolled Nurse* means a nurse enrolled as such with the Australian Health Practitioner Regulation Agency under the provisions of *the Health Practitioners Regulation National Law Act (Tasmania) 2010*.

11.2.3 *Enrolled Nurse (Medication Endorsed)* means an Enrolled Nurse that is authorised to administer medications and who is required by The Eye Hospital to administer medication will be paid as an Enrolled Nurse (Medication Endorsed).

11.3 Australian Health Practitioner Regulation Agency (AHPRA)

11.3.1 Both Enrolled and Registered Nurses are required to maintain their enrolment/registration to practice through AHPRA, are accordingly bound by the professional and ethical boundaries stipulated in the policy documents set by the Australian Nursing and Midwifery Council of Australia, or however titled.

11.4 Pay Point Advancement

11.4.1 Employees will advance through pay points within a classification level on the completion of 1786 hours of experience, exclusive of time spent on annual leave.

11.5 Payment of Wages

11.5.1 The net cash amount of an Employee's wage will be paid fortnightly in arrears, by electronic funds transfer, to an account of the Employee's choosing, or by any other method agreed between The Eye Hospital and an individual Employee.

11.5.2 For each hour of work performed, a casual Employee will be paid on an hourly basis at 1/1976th of the annual rate prescribed for a full time employee for the classification in which the casual Employee is engaged, plus the applicable casual loading.

11.5.3 The net cash amount of a relevant Employee's casual wage will be paid fortnightly.

11.5.4 An Employee will be notified in writing of any changes to his/her ordinary hourly rate of pay, as may be agreed between the Employee and The Eye Hospital.

11.6 Multiple Benefits

11.6.1 Where an Employee is entitled to receive more than one loading, overtime rate, penalty rate etc, the Employee will be entitled to receive only one of those benefits. The benefit which will be paid to the Employee in this situation will be the one which provides the greatest financial benefit to the Employee. For example, if the Employee is required to work overtime on an afternoon shift, on a Monday, which also happens to be a Public Holiday, the Employee will be paid the greater of the three penalty rates, and not all three.

12. HOURS OF WORK

12.1 All full time and part time Employees will be engaged as day workers, and may be required to work whenever The Eye Hospital is open for business, which will

generally be Monday to Friday 07:00 to 20:00 hrs. Where an employee is required to work outside of these times, the applicable overtime rate will apply.

- 12.2 An Employee's finishing time may be varied to either earlier or later subject to the surgical requirements and mutual agreement between an employee and The Eye Hospital. Provided that the above span of ordinary hours cannot be altered and overtime (where applicable) will be paid in accordance with this Agreement.
- 12.3 The ordinary hours of work for a full time or part time Employee may be worked to a maximum of eight (8) ordinary hours of any day. Provided that by mutual agreement, in writing, between The Eye Hospital and an individual Employee, an Employee's ordinary hours of work may be extended to a maximum of ten (10) ordinary hours per day. The ability to extend ordinary hours to a maximum of ten (10) on any day will not be a condition of employment for any new Employee.
- 12.4 Casual Employees may be rostered for shifts of a minimum of three (3) hours in length on weekday or weekend shifts.

13. ROSTER ARRANGEMENTS

- 13.1 The Eye Hospital will display a roster in a place accessible to Employees covered by the roster. The roster will set out relevant Employees' starting shift time. The roster will be posted at least two weeks before its commencement.
- 13.2 Rostering will continue as per current practices in relation to generally a day and afternoon shift format.
- 13.3 As far as reasonably practicable, rosters will be prepared at least four (4) weeks in advance, and will take into account an Employee's regular or preferred pattern of work.
- 13.4 Subject to other clauses of this Agreement, Employees will work at such times and on such days as required by The Eye Hospital. The Eye Hospital will not change the roster without providing an Employee whose hours are changed at least seven (7) days' notice (excluding casual employees), except in an emergency or as agreed at a any time between The Eye Hospital and the Employees whose rostered hours are to be changed. Roster arrangements may be altered by mutual agreement between The Eye Hospital and an individual employee at any time.
- 13.5 Time will be allocated to staff who have responsibilities outside of direct clinical care for example (but not limited to) education, quality initiatives and research applicable to their position

14. TRAINING/PROFESSIONAL DEVELOPMENT

- 14.1 Employees will, if directed by The Eye Hospital, attend training sessions. The training sessions may be in the workplace or such other locations as necessary for the purposes of the training.
- 14.2 Mandatory training will be paid at the appropriate rate as per this Agreement to an Employee on duty, and at the ordinary rate of pay for an Employee attending in their own time.
- 14.3 Each nurse will be eligible to apply to attend one (1) conference each financial year. Approval of The Eye Hospital must be granted prior to enrolment. If the Employee identifies a conference which is relevant to their employment, and if

attendance is approved by The Eye Hospital, The Eye Hospital will provide payment of the conference registration fees. The employee will receive paid leave of up to a maximum of eight (8) hours per day to attend the conference if it takes place during normal working hours.

- 14.4 The Eye Hospital will provide all full-time nursing staff with a minimum of 3 study days per year (pro-rata for part-time employees) to attend in-house training as provided by The Eye Hospital, which may utilise external presenters. Staff attending these study days will be paid at their ordinary rate of pay.
- 14.5 In addition to the study day entitlements prescribed by subclause 14.4 above, new graduate nurses will be provided with four (4) 'study shifts' during the first twelve (12) months of employment following their graduation.

15. OVERTIME

15.1 Overtime rates will be paid as follows:

- 15.1.1 For hours worked in excess of eight (8) hours on any one day (or ten (10) hours on any day where mutually agreed as per clause 12.3 of this Agreement), an Employee will be paid an additional 50% of their ordinary hourly rate for the first 2 hours of overtime, and then an additional 100% of their ordinary hourly rate thereafter.
- 15.1.2 In calculating overtime, each day stands alone.
- 15.1.3 Despite the above, an Employee may, with the agreement of The Eye Hospital, elect to bank overtime hours in accordance with the rates contained in this Agreement.
- 15.1.4 When overtime work is necessary it will, wherever reasonably practicable, be arranged so that Employees have at least eight (8) consecutive hours off duty between the work of successive days.
- 15.1.5 For Workplace Health and Safety reasons, wherever possible all Employees (including casual employees) will be afforded an eight (8) hour break between finishing one shift, (inclusive of overtime) and the beginning of the next.
- 15.1.6 Where due to unforeseen circumstances it is not possible to comply with clause 15.1.5, hours worked will be paid at double time until an eight (8) hour break occurs. Alternatively, an Employee (other than a casual Employee) that has not had at least eight (8) consecutive hours off duty, may be released after completion of such overtime, until they have had eight (8) consecutive hours off duty without loss of pay for rostered ordinary time
- 15.1.7 An Employee working overtime will be entitled to a paid rest break of 15 minutes after each four (4) hours of overtime worked

16. CALL BACK ARRANGEMENTS

- 16.1 Except where otherwise specifically provided, an Employee recalled to work after leaving The Eye Hospital's premises (whether notified before or after leaving such premises) - or an Employee called to work for an emergency with less than 24 hours' notice - will be paid at the appropriate overtime rate applicable to their salary:
 - (a) For the first recall, a minimum payment of four (4) hours' work; and
 - (b) For each subsequent recall, a minimum of three (3) hours' work.

- 16.2 Reasonable time spent in getting to and from work will be regarded as time worked.
- 16.3 For workplace health and safety reasons, wherever possible Employees will be afforded an eight (8) hour break after finishing a call back. Where this is not possible, hours worked will be paid at the applicable overtime rates as per this Agreement, until the Employee is provided an eight (8) hour break.

17. ON CALL ROSTER

- 17.1 Employees may volunteer to be placed on an on call roster between the hours of 7am Saturday and 7 am Monday.
- 17.2 Payment for being on-call will be as follows:
 - (a) During the first year of this Agreement: \$4.73 per hour
 - (b) During the second year of this Agreement: \$4.96 per hour
 - (c) During the third year of this Agreement: \$5.21 per hour.
- 17.3 The minimum payments referred to above recognise the requirement for an Employee to be rostered for a minimum of eight (8) hours on call. Such minimum payment may be reduced to four hours by mutual agreement in writing between The Eye Hospital and an individual Employee, where an Employee requests to be rostered for less than eight (8) hours on call
- 17.4 An Employee who elects to be included on the on-call roster, when rostered for on-call duty, must remain ready for work and in a suitable condition to commence work.
- 17.5 Employees will have two (2) consecutive on call free days each week, unless mutually agreed.

18. BANKING OF HOURS

- 18.1 Full time or part time Employees may, by agreement with The Eye Hospital:
 - (a) work less than their daily, weekly or fortnightly rostered or contracted hours and work those hours at a later date; or
 - (b) work more than their daily, weekly fortnightly rostered or contracted hours and take time off in lieu (TOIL) of payment for the additional hours worked; or
 - (c) set off the additional hours worked against any hours banked under the sub clause above.
- 18.2 Employees who work less than their rostered or contracted hours will nevertheless be paid as if those rostered or contracted hours had been worked during the roster cycle or contract period.
- 18.3 Hours banked under this provision will be banked on the basis of their ordinary time equivalent. (for example, two hours overtime normally paid at double time will be banked as 4 hours).
- 18.4 Hours worked under this provision outside of the spread of ordinary hours will be converted to the applicable penalty rate (for example 4 hours worked on a public holiday paid at the rate of double time and a half will be banked as 10 hours).
- 18.5 An Employee may not accumulate more than 76 hours in their bank at any one

time under the provisions of this clause.

- 18.6 Employees who have accumulated hours to be worked must be given first option to work additional hours prior to the use of on-call or casual employees.
- 18.7 The Eye Hospital must keep proper records of all hours accrued and worked by each Employee. Employees will be entitled to full access to their record of hours accrued and worked under this provision.
- 18.8 Where on termination of employment an Employee has not worked all of his/her banked hours, The Eye Hospital may deduct monies paid to the employee for those banked hours from any entitlements owing to the employee by The Eye Hospital, including from payment due for accrued annual leave and long service leave at the ordinary rate of pay.
- 18.9 Where on termination of employment an Employee has a remaining TOIL balance, the Employee will be paid for those hours at the ordinary rate of pay.
- 18.10 Banked hours will be taken at times mutually agreed between The Eye Hospital and the Employee. If mutual agreement cannot be reached, The Eye Hospital may require an Employee to take banked hours at certain times to ensure efficient use of resources.
- 18.11 For the avoidance of doubt, part-time Employees may bank hours worked on any day in excess of their contracted daily hours and up to a maximum of eight (8) hours or 10 hours by agreement at their ordinary rate. Hours worked in excess of 8 hours (or 10 hours by agreement – see subclause 12.3) in any day may be converted to the applicable overtime rate and banked.

19. SALARY SACRIFICE

- 19.1 The Eye Hospital will allow all Employees to choose to salary sacrifice in accordance with this clause.
- 19.2 Salary sacrifice is an arrangement for the payment of wages or salary and any other component of remuneration payable under this Agreement whereby the total remuneration is broken into a cash and a non-cash component.
- 19.3 The total remuneration will not be less than the cumulative entitlements provided for in this Agreement. Employer payments in the form of superannuation contributions will be the only form of salary sacrifice available. The amount an Employee can salary sacrifice for superannuation will be limited to the aged based limit under Section 82AAC(2) of the *Income Tax Assessment Act 1936*, as amended from time-to-time.
- 19.4 Salary sacrifice is to be entered into on a voluntary basis. Employees are hereby advised that employer-contributed Occupational Superannuation entitlements may be adversely affected by salary sacrifice arrangements.
- 19.5 It is the intention of The Eye Hospital, as far as possible, to maintain a worthwhile salary sacrificing program for eligible Employees. Where legislative (e.g. *Fringe Benefits Tax Act 1986* and/or *Income Tax Assessment Act*) or other changes have the effect of reducing or withdrawing the personal benefits identified/resulting from the Agreement, The Eye Hospital will not be liable to make up the salary benefits lost by a staff member as an Employee.

19.6 Employees are solely responsible for obtaining their own financial advice and/or counselling.

20. MEAL BREAKS

20.1 Employees are entitled to a paid break of 30 minutes if they are required to work more than four (4) continuous hours in any one (1) day.

20.2 Payment of the meal break is in recognition that employees are not able to leave the hospital during a meal break and that they may be interrupted during their meal break.

20.3 For the avoidance of doubt, the overtime provisions of the Modern Award for work during meal breaks do not apply.

20.4 It is the intention of the parties that, notwithstanding the provisions of this clause, employees are able to take a meal break at some stage during each shift.

21. UNIFORMS

21.1 The Eye Hospital will continue to provide, and launder, uniforms for all staff who work in the theatre and recovery areas.

22. OTHER ALLOWANCES

22.1 Post Graduate Qualification Allowance

22.1.1 A Registered Nurse who holds a Hospital/Graduate certificate or equivalent will be paid in addition to their ordinary rate of pay an allowance equivalent to 4.0% of the hourly rate of pay. Only one qualification allowance will be payable to each Employee. It must be demonstrated that the qualification must be relevant to current area of practice and is being utilised.

22.1.2 A Registered Nurse who holds a post graduate diploma or a degree (other than a nursing under graduate degree) will be paid in addition to their ordinary rate of pay, an allowance equivalent to 6.5% of the hourly rate of pay.

22.1.3 A Registered Nurse who holds a Masters or Doctorate, will be paid, in addition to their ordinary rate of pay and allowance equivalent to 7.5% of the hourly rate of pay.

22.1.4 An Enrolled Nurse who holds a post graduate certificate or diploma will be paid, in addition to their ordinary rate of pay, an allowance equivalent to 4% of the hourly rate of pay. It must be demonstrated that the qualification is deemed to be higher than the initial qualification of an Enrolled Nurse, such as an advanced diploma and must be relevant to current area of practice and is being utilised.

22.2 In Charge Allowances

22.2.1 In the absence of the Theatre Manager and 2IC, a Level 1 Nurse who is appointed by The Eye Hospital and who assumes the in-charge role for four (4) hours or more will be paid an in-charge allowance as follows:

- (a) During the first year of this Agreement: \$3.29 per hour
- (b) During the second year of this Agreement: \$3.45 per hour
- (c) During the third year of this Agreement: \$3.62 per hour.

22.2.2 This allowance will not be payable where a Level 2 Nurse is appointed by The Eye

Hospital and assumes the in-charge role of a clinical or management unit.

22.3 Higher Duties Allowance

- 22.3.1 In the absence of the Theatre Manager for a period of five (5) or more consecutive days, a Level 1 or Level 2 Nurse assigned to fill the Theatre Manager role will be entitled to a Higher Duty Allowance, subject to the following:
- (a) The Eye Hospital appoints the Nurse into such role and such appointment is accepted by the Nurse;
 - (b) The Nurse will be paid for the full period he/she is performing such duties at the minimum ordinary rate prescribed for such higher position under the Agreement;
 - (c) To receive this allowance, the Nurse will be required to assume some of the managerial responsibilities associated with the position, for example, attendance at management meetings and dealing with day-to-day staffing issues, etc as would be required by the Theatre Manager and/or 2IC on a daily basis.

23. ANNUAL LEAVE

- 23.1 For each year of continuous service, full time and part time employees will accrue 4 weeks' annual leave (to a maximum of 152 hours per year for a full time employee) with such leave once taken, to be paid at the Employee's ordinary time rate of pay that the Employee would receive for working ordinary hours in the period of leave.
- 23.2 Except for the amount of annual leave, Employees' annual leave entitlements are in all other respects, in accordance with the relevant provisions of the Act. Annual leave is cumulative and will accrue on a pro rata basis throughout the year.
- 23.3 The Eye Hospital may direct Employees to take any annual leave accrued to the Employees, in circumstances where there is a close down of that part of The Eye Hospital's business in which the Employees work, such as during the Christmas/New Year period. If an Employee does not have enough accrued annual leave to cover all or part of the close down period, the relevant Employees agree that he/she will take leave without pay. Employees may use their banked hours during periods where there is a close down.
- 23.4 The Eye Hospital is also able to direct an Employee to take up to a quarter of their annual leave entitlement if the Employee has an annual leave credit greater than eight (8) weeks.
- 23.5 Employees will be paid an additional 17.5% loading on top of their ordinary pay for the period that the Employee is on annual leave. This loading is not payable for annual leave taken in advance.
- 23.6 An Employee may elect to forgo some of their paid annual leave and receive a payment instead of actually taking that paid annual leave or continuing to accrue it, subject to The Eye Hospital's approval. The amount of annual leave an Employee can forgo and receive a payment for is any leave accrued which is in excess of the protected amount of paid annual leave prescribed by the Act. Leave cannot be cashed out in advance of it being accrued. For a full-time employee, the protected amount referred to in the above sub-clause is 4 weeks. Accordingly, an Employee will only be entitled to cash-out paid annual leave if the Employee retains an accrual of at least four (4) weeks of paid annual leave immediately following the cash out.

- 23.7 To make an election under clause 23.6, an Employee must give The Eye Hospital a notice in writing. The notice must be in a form acceptable to The Eye Hospital. The Eye Hospital will consider the election and may authorise the relevant Employee to forgo actually taking the period of paid annual leave. Each cashing out of a particular amount of accrued annual leave must be by a separate agreement in writing between The Eye Hospital and the Employee.
- 23.8 If the Eye Hospital authorises an Employee to forgo taking a period of paid annual leave, The Eye Hospital will pay that Employee, at a mutually agreed time of The Eye Hospital's authorisation, the amount of pay that Employee is entitled to receive in lieu of the Employee taking (or continuing to accrue) the amount of annual leave.
- 23.9 "Pay" in this clause means an Employee's base rate of pay.

24. PERSONAL/CARER'S LEAVE

- 24.1 For each year of continuous service, full time and part time employees will accrue 20 days' personal leave (to a maximum of 152 hours per year for a full time employee) with such leave once taken, to be paid at the basic ordinary time rate of pay (i.e. the ordinary rate exclusive of any shift loading or other penalty rate) that the employee would receive for working ordinary hours in the period of leave.
- 24.2 Except for the amount of personal leave and the terms of clause 24.3, an Employees' personal leave entitlement in all other respects, is in accordance with the relevant provisions of the Act. Personal leave is cumulative and will accrue on a pro rata basis throughout the year.
- 24.3 An Employee may request access to their accrued personal/carer's leave if they are experiencing domestic violence or caring for a member of their immediate family or household who is experiencing domestic violence. The Eye Hospital will not unreasonably refuse requests for leave made under this clause, and encourages Employees to speak in confidence with their Manager without hesitation.
- 24.4 Personal/carer's leave includes personal sick leave (paid and unpaid) and carer's leave (paid and unpaid), in accordance with the Act.
- 24.5 The Eye Hospital requires that an Employee provides reasonable evidence, such as a doctor's certificate or statutory declaration, of the Employee's need to take personal/carer's leave.
- 24.6 An Employee must also comply with The Eye Hospital's personal leave policy which includes notification requirements.
- 24.7 Each Employee will be provided with certificate/statutory declaration free personal (sick) days of 5 days per year to reflect the nature of their work (e.g. exposure to illness) and the professional knowledge base of the Employees.
- 24.8 "Pay" in this clause means an Employee's base rate of pay.

25. COMPASSIONATE LEAVE

- 25.1 Employees are entitled to take up to two (2) days' compassionate leave on each occasion a member of the Employee's household or immediate family, contracts or develops a personal illness or injury that poses a serious threat to their life, or dies.
- 25.2 Full time and part time Employees may take paid compassionate leave. Casuals may

take unpaid compassionate leave.

- 25.3 The leave can be taken in two (2) consecutive days, two (2) single days or in two distinctly separate periods if the Eye Hospital and the Employee agree.
- 25.4 Additional leave may be granted at the discretion of The Eye Hospital. Such leave will be unpaid.
- 25.5 For the purposes of this Agreement:
- (a) "Immediate family member" means: a Spouse, Child, parent, grandparent, grandchild or sibling of an Employee; and a Child, parent, grandparent, grandchild or sibling of an Employee's Spouse.
 - (b) "Child" includes an adopted child, a stepchild, an ex-nuptial child and an adult child.
 - (c) "Spouse" includes a former spouse, a de-facto partner and a former de-facto partner irrespective of whether the persons are of the same sex or different sex.

26. PARENTAL LEAVE

- 26.1 Employees are entitled to parental leave in accordance with the provisions of Division 5 of the Act as varied from time to time.

27. LONG SERVICE LEAVE

- 27.1 Employees are entitled to Long Service leave in accordance with the provisions of the *Long Service Leave Act 1976* (Tas), as amended from time to time.

28. PUBLIC HOLIDAYS

- 28.1 Employees are entitled to a day off on a Public Holiday (as defined in this clause).
- 28.2 For the purpose of this clause, the following days, unless substituted by or under a law of the State or Territory in which the relevant Employee is principally engaged to perform work, will be Public Holidays:
- (a) New Year's Day;
 - (b) Australia Day;
 - (c) Launceston Cup Day (half day from 11am)
 - (d) Eight Hour Day (Labour Day)
 - (e) Good Friday
 - (f) Easter Monday
 - (g) ANZAC Day
 - (h) Queen's Birthday
 - (i) Royal Launceston Show Day
 - (j) Recreation Day
 - (k) Christmas Day
 - (l) Boxing Day
- 28.3 Arrangements for the public holidays listed above will be in accordance with the *Statutory Holidays Act 2000* (Tas), including where a public holiday is declared to be in substitution of, or in addition to the above public holidays.

28.4 Where a public holiday falls on a day a part-time or full-time Employee would ordinarily work, and the Employee does not work because of the public holiday, that Employee will be paid for that day at that their ordinary rate of pay.

28.5 The Eye Hospital will not roster Employees so as to avoid payment to eligible Employees in accordance with clause 28.4.

29. INSPECTION OF PERSONAL PROPERTY

29.1 The Eye Hospital may request to inspect an Employees' property (including bags, lockers (which has been provided to each individual on the day) and pockets) on the Eye Hospital's premises, at any time, as part of an investigation into an Employee's performance or conduct, as well as for security, safety and other related reasons. Such employee has the right to be present.

29.2 The Employee has the right to have a representative of their choice present during the inspection.

30. SUPERANNUATION

30.1 The subject of superannuation is dealt with extensively by federal legislation and the Award. That legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

30.2 Where The Eye Hospital is obliged to make superannuation contributions in compliance with the legislation, those contributions will be paid into a complying superannuation fund as notified by an Employee to The Eye Hospital, or to The Eye Hospital's default fund, Hesta Super Fund - Core Pool should an Employee fail to make a nomination.

31. LICENCE / REGISTRATION

31.1 It is a requirement of an Employee's employment that they hold a current nursing registration with the Australian Health Practitioner Regulation Agency (AHPRA).

31.2 An Employee must notify The Eye Hospital immediately if charged with any offence in relation to the operation of maintain nursing registration with the Australian Health Practitioner Regulation Agency (AHPRA), or if his/her licence or registration is suspended or cancelled.

32. EMPLOYMENT POLICIES AND PROCEDURES

32.1 From time to time The Eye Hospital has (and will continue to) put in place, various policies and procedures which The Eye Hospital has introduced in its prerogative. If a policy or procedure affects an Employee and the Employee's employment, the Employee must comply with that policy and/or procedure.

32.2 As these policies and procedures are introduced by The Eye Hospital in its prerogative, they may be varied by The Eye Hospital from time to time. In view of this, these policies and procedures do not form part of this Agreement, nor do they form part of the Employees' respective contracts of employment.

33. RECOVERY OF OVERPAYMENT

33.1 The Eye Hospital may recover any previous overpayment of an Employee's salary by making a deduction (or deductions) from any monies due to be paid to the Employee. Any deduction will be subject to the requirements of the Act and subject to consultation with the individual employee.

34. NOTICE OF TERMINATION

34.1 This clause applies only to full-time and part-time Employees.

34.2 In order to terminate an Employee's employment, The Eye Hospital must give notice to the Employee. The applicable period of notice is based on the Employee's period of continuous service, and is as follows:

Period of Continuous Service	Period of Notice
3 years or less	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

34.3 An Employee aged over 45 and who has completed at least two (2) years' continuous service will receive one (1) additional week of notice.

34.4 With respect to any period of notice, The Eye Hospital may do any of the following:

- (a) pay the Employee in lieu of any part or all of the notice period;
- (b) require the Employee not to report to work during the whole or any part of the notice period;
- (c) provide the Employee with duties different from those which the Employee would ordinarily perform.

34.5 The required amount of payment in lieu of notice is the amount the affected Employee would have earned, and The Eye Hospital would have been liable to pay, if the Employee's employment had continued until the end of the required period of notice. That total must be calculated taking into account:

- (a) the Employee's Ordinary Hours of work (as it relates to the Employee's employment status); and
- (b) the amounts ordinarily payable to the Employee in respect of those hours, including (for example, allowances, loadings and penalties, (not including overtime)).

34.6 The period of notice in this clause does not apply in the case of an Employee's dismissal for serious misconduct.

34.7 The notice of termination required to be given by an Employee is the same as that required of The Eye Hospital, except that there is no requirement on an Employee to give additional notice based on the Employee's age.

34.8 Where an Employee provides The Eye Hospital with less than the required amount of notice of termination of the Employee's employment, The Eye Hospital may deduct from any remaining payment due to the Employee from The Eye Hospital under this Agreement or the National Employment Standards, a monetary amount equal to the amount of notice which the Employee failed to provide The Eye Hospital.

34.9 If an Employee and The Eye Hospital agree, an Employee may be released prior to the expiry of the notice period with payment of wages or salary to the date of termination only.

35. REDUNDANCY

35.1 This clause applies only to full-time and part-time Employees.

- 35.2 The parties to this Agreement recognise that redundancy, when it occurs, is both sensitive and traumatic and needs to be handled in a delicate manner. Where the Eye Hospital believes that it may be necessary to make one or more positions within the business redundant, the Eye Hospital agrees to commence a process of ongoing consultation with the Employees.
- 35.3 Subject to the exceptions outlined below, if The Eye Hospital terminates an Employee's employment because of redundancy, then in addition to the required period of notice provided in this Agreement the affected Employee will be entitled to a severance payment based upon the period of the Employee's continuous service with The Eye Hospital, as at the time of termination. The particular payment is to be determined from the following table:

Period of Continuous Service	Severance Pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

- 35.4 A severance payment will not be payable in any of the following circumstances:
- (a) If an Employee's period of continuous service with The Eye Hospital is less than 12 months.
 - (b) The Eye Hospital does not employ 15 or more employees at the earlier of the following times:
 - (i) the time the Employee is given notice of the redundancy.
 - (ii) immediately prior to the Employee's employment being terminated.
 - (c) The Employee's employment is terminated as a consequence of misconduct, performance issues, negligence, abandonment, neglect or refusal of duty, or voluntary resignation by the Employee at any time prior to the expiry of the notice of redundancy.
 - (d) The Employee's employment is terminated due to the ordinary and customary turnover of labour, such as, but not limited to, circumstances in which The Eye Hospital loses a contract, upon which the continuing employment of certain Employees with The Eye Hospital, is reliant.
 - (e) If The Eye Hospital offers the Employee alternative employment or obtains an offer of alternative employment from another employer and in the opinion of The Eye Hospital, the Employee unreasonably declines to accept such an offer.
 - (f) Where the transfer of business rules under relevant legislation does not require

The Eye Hospital to provide severance pay.

- (g) The Employee is a casual Employee.
- (h) The Employee is a trainee or apprentice.
- (i) The Employee is an Employee engaged for a specified period of time or for a specified task or tasks.
- (j) The Employee is serving a period of probation or minimum employment period.
- (k) The Employee is a seasonal Employee.
- (l) The Employee is a daily or weekly hire Employee, whose employment is subject to seasonal factors and production workloads.

35.5 The Eye Hospital undertakes to provide access in paid time for each employee who is offered a redundancy, or who expresses an interest in a redundancy, to consult a financial adviser. The Eye Hospital will provide to each employee a fully detailed statement at the time when the employee is consulted regarding a redundancy.

35.6 Voluntary Redundancy

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

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

35.6.3 In assessing applications for voluntary redundancy, the parties acknowledge that the Eye Hospital will take into account the skill and operational requirements of the business.

36.7 In this Agreement:

- (a) "weeks' pay" means the Employee's ordinary hourly rate of pay multiplied by the Employee's Ordinary Hours (as it relates to the Employee's employment status) for a week and will exclude: overtime; penalty rates; disability allowances; shift allowances; special rates; fares and travelling time allowances; bonuses; superannuation; car allowances and any other ancillary payments; as well as the value of any Company vehicle provided to the Employee.
- (b) "redundancy" means circumstances where, an Employee's employment is terminated at The Eye Hospital's initiative, because The Eye Hospital no longer requires the job done by the Employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour.

36. RETURN OF PROPERTY

36.1 Immediately upon the termination of an Employee's employment for any reason, or otherwise at The Eye Hospital's request, the Employee must return to The Eye Hospital all property belonging to The Eye Hospital and any information which relates to the business of The Eye Hospital or its clients or potential clients, which is in the Employee's custody, possession or control, including, but not limited to, all confidential information, intellectual property, mobile telephones, computers, keys,

storage devices, cards, documents, records and papers (together with all copies thereof).

37. DISPUTE RESOLUTION PROCESS

- 37.1 This clause applies to the resolution of any dispute regarding a matter(s) under this Agreement, including the National Employment Standards.
- 37.2 The Employees and The Eye Hospital must genuinely attempt to resolve any disputes at the workplace level.
- 37.3 If a matter in dispute cannot be resolved at the workplace level, an Employee or The Eye Hospital may refer the matter to an alternative dispute resolution process in an attempt to resolve the matter.
- 37.4 The Eye Hospital and the Employee concerned will determine if the alternative dispute resolution process is to be conducted by the Commission in accordance with the Act, or any other provider, in accordance with the Act. If agreement cannot be reached in relation to the use of another provider, the Commission will be utilised.
- 37.5 During the alternative dispute resolution process, affected Employees and The Eye Hospital must genuinely attempt to resolve the dispute using the dispute resolution process which has been selected by The Eye Hospital.
- 37.6 While the dispute is being resolved Employees must:
- (a) continue to work in accordance with this Agreement and their contract of employment, unless an Employee has a reasonable concern about an imminent risk to their health or safety; and
 - (b) comply with any reasonable direction given by The Eye Hospital to perform other available work, either at the same workplace or another workplace.
- 37.7 In directing an Employee to work at another workplace The Eye Hospital will have regard to:
- (a) the provision (if any), of the law of the Commonwealth or of a State or Territory dealing with occupational health and safety that applies to the affected Employee or that other work; and
 - (b) whether that work is appropriate for the Employee to perform.
- 37.8 Both the Employer and the Employee(s) may be represented at any stage of the dispute resolution process.
- 37.9 If the dispute is not resolved through mediation, the parties agree to refer the matter to the Commission for arbitration, subject to usual appeal rights.

38. WORKLOAD MANAGEMENT

- 38.1 The Eye Hospital and its Employees have a shared responsibility to maintain a balanced workload, and recognise the adverse effects that excessive workloads may have on Employees and the quality of patient care.
- 38.2 The Eye Hospital will accordingly establish a regular consultative mechanism at which workload-related issues can be specifically discussed. Such matters may include, but are not limited to, rostering, work methods, skill mix and overall staffing levels.

SIGNATORIES:

Dated this day of 2016

For The Eye Hospital Pty Ltd (ABN 621 203 149 81):

Signature: _____

Full Name: _____

Position: _____

Address: _____

Witness: _____

Signature: _____

Full Name: _____

For the ANMF (Tasmanian Branch):

Signature: _____

Full Name: _____

Position: _____

Address: _____

Witness: _____

Signature: _____

Full Name: _____

SIGNATORIES:

Dated this 23 day of June 2016

For The Eye Hospital Pty Ltd (ABN 621 203 149 81):

Signature: DN Hayes
Full Name: Denise Hayes
Position: CEO
Address: 2/19 Legges Cr.
Prospect Tas

Witness: Dr. Nicholas Downie
Signature: N Downie
Full Name: Dr Nicholas Downie

For the ANMF (Tasmanian Branch):

Signature: [Handwritten Signature]
Full Name: Neroli Ellis
Position: Branch Secretary
Address: 182 Macquarie Street
Hobart 7000

Witness: Shane Rickerby
Signature: [Handwritten Signature]
Full Name: Shane Rickerby

Commissioner Lee

Fair Work Commission

20 August 2016

Dear Commissioner,

Matter AG2016/1623 – Undertaking

I am writing in my capacity as the appointed Bargaining Representative of the Applicant, The Eye Hospital Pty Ltd, in relation to the above-mentioned application for approval of an Enterprise Agreement.

Consistent with the requirements of Section 190 of the *Fair Work Act 2009* and Regulation 2.07 of the *Fair Work Regulations 2009*, the Applicant now submits the following undertakings in relation to the proposed Enterprise Agreement:

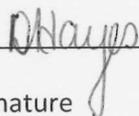
1. "Clause 34.2 of the Agreement contains the words '3 years or less'. The employer undertakes to read and apply those words as though drafted to read 'less than 3 years'."
2. "The employer undertakes to pay overtime rates to part-time employees when such employees perform work in excess of the rostered daily ordinary full-time hours of work."

Faithfully,

David Bates BA(Govt), LL.B(Hons)

Managing Director

Signed below by Denise Hayes, CEO, The Eye Hospital



Signature



Date

Schedule 2.2—Model flexibility term

(regulation 2.08)

Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) 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*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) 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
 - (d) includes details of:

- (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) 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
- (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the employer and employee agree in writing—at any time.