



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Menarock Aged Care Services (Claremont) Pty Ltd T/A The Gardens
(AG2019/962)

MENAROCK AGED CARE SERVICES (CLAREMONT) PTY LTD NON-NURSING ENTERPRISE AGREEMENT 2018-2021

Aged care industry

COMMISSIONER MCKINNON

MELBOURNE, 30 APRIL 2019

Application for approval of the Menarock Aged Care Services (Claremont) Pty Ltd Non-Nursing Enterprise Agreement 2018-2021.

[1] Application has been made for approval of a single enterprise agreement known as the *Menarock Aged Care Services (Claremont) Pty Ltd Non-Nursing Enterprise Agreement 2018-2021* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act) by Menarock Aged Care Services (Claremont) Pty Ltd T/A The Gardens.

[2] Written undertakings have been given in accordance with s.190 of the Act. 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] With 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 Agreement lodged contained errors to the cover page and an incorrect clause reference within clause 47.10. On 17 April 2019, the Applicant filed an amended version of the Agreement pursuant to s.586 of the Act. I am satisfied that the correction should be made and that it is appropriate to do so pursuant to s.586 of the Act.

[5] The Health Services Union of Australia 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 the organisations.

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 May 2019. The nominal expiry date of the Agreement is 1 August 2021.



COMMISSIONER

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG 2019/962

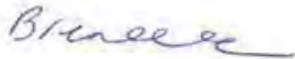
Applicant: *Menarock Aged Care Services (Claremont) Pty Ltd T/A the Gardens*

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, Brendan Coulton, Director, of Menarock Aged Care Services Group Pty Ltd, give the following undertakings with respect to the *Menarock Aged Care Services (Claremont) Pty Ltd Non-Nursing Enterprise Agreement 2019-2021* ("the Agreement"):

1. I have the authority given to me by the Menarock Aged Care Services Group to provide this undertaking in relation to the application before the Fair Work Commission.
2. Further to clause 29 of the Agreement, a 20 minute rest break will be provided during overtime in accordance with clause 25.1 (e) of the *Aged Care Award 2010* ("Award").
3. Clause 33, of the Agreement provides shift penalties. In the event that a shift is worked that is not covered in the Agreement, but is covered by the Award, payments will be made in accordance with clause 26.1 of the Award.
4. Employees do not work broken shifts at the Gardens and will not do so in the life of this Agreement.



Signature

Date 18 April 2019

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.

MENAROCK AGED CARE SERVICES

(CLAREMONT) PTY LTD

NON-NURSING

ENTERPRISE AGREEMENT

2019 - 2021

ENTERPRISE AGREEMENT

PART A –APPLICATION AND OPERATION

1 TITLE

This Agreement shall be called the *Menarock Aged Care Services (Claremont) Pty Ltd Non-Nursing Enterprise Agreement 2018-2021* (‘Agreement’) and records the terms agreed between those parties in full settlement of the claim served and shall apply for the duration of the Agreement.

2 ARRANGEMENT

This Agreement shall be arranged as follows:

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3 VARIATION OF AGREEMENT

3.1 Subject to the requirements of the *Fair Work Act 2009* (‘the Act’) an application to vary the terms of the Agreement can be made under Chapter 2-Pt2-4-Div 7 of the Act.

3.2 Such application must be in writing and agreed to by the parties.

4 BINDING FORCE OF THE AGREEMENT

This Agreement will be binding on the following parties:

- 4.1 Menarock Aged Care Services (Claremont) Pty Ltd (“the Employer”); and
- 4.2 All persons employed pursuant to this Agreement in the classifications contained in Schedule A.
- 4.3 The Health Services Union, Tasmania Branch (‘HACSU) and the Australian Nursing and Midwifery Federation, Tasmania Branch (‘ANMF’) collectively referred to as ‘the Union’ can apply to the Fair Work Commission to be party to this agreement.

5 SCOPE OF THE AGREEMENT

The National Employment Standards and this Agreement shall provide the entire conditions of employment of all employees of the employer performing work within the classifications contained in this agreement.

6 RELATIONSHIP TO NES AND AWARDS

6.1 This Agreement and the National Employment Standards constitute the entirety of the terms of agreement that exist between the parties and replaces any enterprise agreement or modern award that may have previously applied to an Employee.

6.2 This Agreement will be read and interpreted in conjunction with the NES. Where there is inconsistency between this agreement and the NES, and the NES provides greater benefit, the NES provision will apply to the extent of the inconsistency

6.3 The Schedules and Appendices attached to this Agreement form part of this Agreement.

7 DATE AND PERIOD OF OPERATION

This Agreement shall come into operation on the seventh day after the Agreement is approved by the Fair Work Commission (FWC).

The Agreement shall remain in force until 1 August 2021 and thereafter in accordance with the *Fair Work Act 2009*.

8 NO FURTHER CLAIMS

8.1 The Employees and Employer 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.

8.2 Subject to the Employer meeting its obligations to consult including those arising under this Agreement or a contract of employment binding on that Employer, it is not the intent of this provision to inhibit, limit or restrict the Employer's right or ability to introduce change at the workplace.

9 DEFINITIONS

Aged Care Employee refers to an Employee whose employment would, but for this Agreement, be covered by the *Aged Care Award 2010*.

Award means the *Aged Care Award 2010*

CEO means the Chief Executive Officer of the Menarock Aged Care Services Group

Day Worker means an employee who works between 6am and 6pm Monday to Friday.

De facto means

- (a) 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.

Employee means an Employee employed by the Employer and covered in the Classifications in this Agreement.

Employer means Menarock Aged Care Services (Claremont) Pty Ltd (ACN 613 140 506)

Experience for the purposes of appointment or progression for Personal Care Workers and Aged Care employees means experience at any such work within the last five years in a residential aged care facility covered by the *Aged Care Award 2010*, excluding any leave provisions in this Award.

Facility Manager refers to a person, employed to manage a nursing home.

Fair Work Commission (“FWC”) refers to the statutory body established under the *Fair Work Act 2009* or any successor organisation established under Commonwealth legislation which performs the functions of conciliation and arbitration.

Fair Work Act refers to the *Fair Work Act 2009 (Cth)*.

Immediate family of an employee means:

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

Ordinary Rate of Pay means the hourly rate prescribed in Schedule B of this Agreement

Projected Roster means an employee’s normal roster for the period of leave

National Employment Standards (“NES”) refers to the legislated standards for workplace conditions established under the *Fair Work Act 2009*.

Spouse includes a former spouse.

Tenancy Shift means a morning or afternoon shift on the master roster of 4 hours or less. This shift is not permanently allocated to any employee and may be removed from the roster during periods of decreased occupancy.

10 AGREEMENT FLEXIBILITY

- 10.1 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 one or more of the following matters:

- (i) arrangements about when work is performed;
- (ii) overtime rates;
- (iii) penalty rates;
- (iv) allowances; and
- (v) leave loading;

(b) The arrangement meets the genuine needs of the Employer and Employee in relation to one or more of the matters mentioned in paragraph (a); and

(c) The Employer and the individual Employee must have genuinely made the agreement without coercion or duress.

10.2 The Employer must ensure that the terms of the individual flexibility arrangement:

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

10.3 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.

10.4 The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

10.5 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.

11 ANTI DISCRIMINATION

- 11.1 It is the intention of the parties to this agreement to achieve the principal objects of ss.3(e) and 336 of the *Fair Work Act 2009* through respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 11.2 Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the respondents to this agreement must make every endeavour to ensure that neither the agreement provisions nor their operation are directly or indirectly discriminatory in their effects.
- 11.3 Nothing in this clause is taken to affect:
- (a) Any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;
 - (b) An employee, employer or registered organisation, pursuing matters of discrimination in any State or Federal jurisdiction, including any application to the Human Rights and Equal Opportunity Commission; and
 - (c) The exemptions in s.351(2) of the *Fair Work Act*.

PART B – WAGES AND ALLOWANCES

12 WAGES

12.1 The rates of pay shall be increased as follows:

- 1) First pay period on or after 1 July 2019 : 2.5%
- 2) First pay period on or after 1 July 2020 : 2.5%
- 3) First pay period on or after 1 July 2021 : 2.5%

12.2 The rates of pay are in accordance with Schedule B

12.3 In the event the minimum wage order handed down by the Fair Work Commission annually is higher than 2.5%, the higher increase will apply for the life of this Agreement.

13 PAYMENT OF WAGES

13.1 Wages will be paid fortnightly, unless otherwise mutually agreed in writing. Employees will be paid by electronic funds transfer into the bank or financial institution account nominated by the Employee.

13.2 Wages shall be paid during working hours not later than Thursday following the end of the weekly or fortnightly pay period provided that when a public holiday occurs on a Thursday or Friday, payment shall be made on the Wednesday.

13.3 At the time of making payment to the Employee, the Employer shall provide to each Employee a statement detailing the following information: name and classification of the employee; the period the pay relates to and the date of payment; the hourly rate of pay; the amount of payment including allowances; the amount of pay deductions; amounts of occupational superannuation contributions; and details of funds into which contributions are being paid.

13.4 Payment of Wages following Termination

- (a) 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 monies owing to an Employee shall be made to the employee in the following pay period, unless otherwise requested.
- (b) Termination payments will include the payment of leave loading as per the provisions of Clause 37.4.

14 SUPERANNUATION

- 14.1 The subject of superannuation is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.
- 14.2 An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee but in any event, the Employer will pay the superannuation contributions to the relevant superannuation fund no later than 28 days after the end of each month.
- 14.3 The employer must pay to the relevant superannuation fund the amount specified in subclause (b) in accordance with the Superannuation legislation.
- 14.4 'The Fund' for the purpose of this Agreement shall mean:
- (a) Health Employees Superannuation Trust of Australia ('HESTA') established and governed by a trust deed 23 July 1987, as may be amended from time to time, and includes any superannuation scheme which may be made in succession thereto;
 - (b) Any other complying fund upon a request from the Employee and with the consent of the Employer.
- 14.5 Upon commencement of employment, the Employer shall provide each Employee with membership forms for the funds listed in Clauses 14.4(a) above and shall forward the completed membership forms for the Employee's choice of fund within 28 days. In the event that the Employee has not completed an application form within 28 days, the Employer shall forward contributions and Employee details to HESTA
- 14.6 Hesta has a MySuper Product.

Voluntary Contributions

- 14.7 Where an Employee wishes to make voluntary contributions to the Fund, the Employee may authorise the Employer to deduct from the Employee's wages an amount or percentage specified by the Employee. Voluntary contributions deducted under this provision will be forwarded to the Fund by the Employer at the same time as the Employer's contributions. Where the Employer receives written authorisation from an Employee, it must commence making payments into the Fund on behalf of the Employee within fourteen days of receiving the authorisation.

14.8 An Employee may vary his or her additional contributions by a written authorisation and the Employer must alter the additional contributions within fourteen days of receiving the authorisation. An Employee may only vary his or her additional contributions once each month.

15 NAUSEOUS ALLOWANCE AND DIRTY AND OFFENSIVE WORK

15.1 An Allowance as per Schedule C will be paid to an employee in any classification if they are engaged in handling linen of a nauseous nature, other than linen sealed in airtight containers and/or for work of an unusually dirty or offensive nature having regard to the duty normally performed by such Employee in such classification. Any employee who is entitled to be paid an allowance will be paid the allowance for work performed in any week.

15.2 The employer will also provide biodegradable bags for employee use when handling linen of a foul and nauseous nature.

16 UNIFORMS, LAUNDRY AND TOOLS ALLOWANCE

16.1 Employees required by the Employer to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost to Employees. Such items are to remain the property of the Employer and be laundered and maintained by such employer free of cost to the Employee.

16.2 Instead of the provision of such uniforms, the Employer may, by agreement with the Employee, pay such Employee a uniform allowance at the rate prescribed in Schedule C. Where such Employee's uniforms are not laundered by or at the expense of the Employer, the Employee will be paid a laundry allowance as prescribed in Appendix C.

16.3 The uniform allowance, but not the laundry allowance, shall be paid during all absences on paid leave, except absence on long service leave and absence on sick leave taken (either in individual periods or consecutively) beyond a total of 21 days in any twelve month period. 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.

16.4 Where an Employer provides an Employee with uniforms, all articles so provided remain the property of the Employer.

16.5 The Employer provides and maintains all necessary tools required for Cooks and Chefs.

17 MEAL ALLOWANCE

17.1 An Employee will be supplied with an adequate meal in the following circumstances:

- (a) when required to work overtime after the usual finishing hour of work beyond one hour
- (b) provided that where such overtime work completed by an Employee exceeds four hours a further meal will be provided.
- (c) when required to work more than five hours overtime on a Saturday or on a Sunday, or more than five hours by a shift Employee on his or her rostered day or when required to work more than nine hours on such day.

18 TRAVELLING, TRANSPORT AND FARES

- 18.1 An Employee required and authorised to use their own motor vehicle in the course of their duties will be paid \$0.78 cents per km.
- 18.2 When an Employee is involved in travelling on duty, if the Employer cannot provide the appropriate transport, all reasonably incurred expenses in respect to fares, meals and accommodation will be met by the Employer on production of receipts or other evidence acceptable to the Employer including completion of the Employer Expense Reimbursement form which must be approved by the CEO.
- 18.3 An Employee who is on call is recalled to duty will be paid \$0.78 cents per km for the travel incurred.
- 18.4 An Employee must obtain prior authorization before undertaking travel or incurring travel expenses, otherwise the Employer is not liable to reimburse the Employee.

PART C – TYPES OF EMPLOYMENT, TERMINATION OF EMPLOYMENT, STAFFING AND WORKLOAD

19 MODES OF EMPLOYMENT

19.1 Employment Categories

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

- (a) full-time;
- (b) part-time; or
- (c) casual.

At the time of engagement an 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.

19.2 Full-time Employment

A full-time employee is one who is engaged to work 38 hours per week or an average of 38 hours per week.

19.3 Part-time Employment

- (a) A part-time employee is an employee who is engaged to work less than full-time hours of an average of 38 hours per week and has reasonably predictable hours of work.
- (b) A part-time employee will be rostered for a minimum of two hours on any shift.
- (c) Unless otherwise stated, 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 38.
- (d) 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. Any agreed variation to the hours of will be in writing
- (e) However, where because of work practices it is inappropriate to apply the conditions of this Subclause, such conditions may be varied by mutual agreement between the employees, the union and the employer.

19.4 Review of Part-Time Hours

- (a) Where a part-time employee is regularly working more than their average hours (assessed over a 3 month period), the employee can apply to have their hours reviewed. Upon the employee request, the employer will consider (acting reasonably and having regard to the operational needs of the business) have their roster fixed to reflect the increased hours.
- (b) The employer will take into account that the hours worked in the following circumstances will not be incorporated into the adjustments made:
 - (i) If the increased hours is a direct result of an employee being absent on leave, such as annual leave, long service leave, maternity leave, workers compensation or the like; or
 - (ii) If the increase in hours is temporary, for example, due to the specific needs of a resident.

Casual Employment

- (a) A casual employee is an employee engaged as such on an hourly basis.
- (b) A casual employee will be paid an hourly rate equal to 1/38th of the weekly rate appropriate to the employee's classification plus a casual loading of 25%.
- (c) A casual employee will be paid a minimum of two (2) hours pay for each engagement.
- (d) The entitlements to paid annual leave, paid personal leave and termination of employment, shall not apply in the case of a casual employee.

19.4 Casual Conversion

Where a casual employee has been rostered on a regular and systematic basis over 26 weeks, (provided that the rostering pattern has not resulted from coverage for extended absences such as maternity leave, long service leave, workers compensation leave and extended sick leave), either the Employer or Employee has the right to request in writing the conversion to permanent employment and that request will not be unreasonably refused by either party.

19.5 Minimum Engagement

The minimum engagement on any one day shall be two (2) hours for part-time and casual; 4 hours for full-time employees.

20 STAFF REPLACEMENT

- 20.1 The Employer is committed to ensuring efficient flexible rostering of Employees dependent on the service requirements of the residents.
- 20.2 Replacement of staff is determined on resident requirements. Replacement will occur when the Employee in charge of the shift, in consultation with the supervisor, determines that replacement is required. The final decision in respect to staff replacement is the responsibility of the CEO.
- 20.3 Where staff replacement is required, as determined above, the Employer shall endeavour to fill the position as soon as practicable. Where required, the position shall be advertised as soon as practicable from the time the Employer determines that replacement is required.

21 WORKLOAD MANAGEMENT AND FILLING OF VACANCIES

- 21.1 The Employer will ensure that supervisors and managers are aware that tasks allocated to employees must not exceed what can reasonably be performed in the hours of which they are employed.

- 21.2 The Employer is committed to ensuring that staffing levels are appropriate, thus ensuring the delivery of quality resident care and keeping within the accreditation principles which take into account the level of care appropriate for the assessed needs of the resident.
- 21.3 Should any Employee feel the workloads are unreasonably heavy on a regular basis, then they have a responsibility to discuss their concerns with their Manager. If appropriate action is not taken to address the workload issues, the Employee may utilise the dispute resolution procedure of this Agreement.
- 21.4 Where a vacancy arises in the Employer's staffing or where a change to either resident needs or numbers occurs, the Employer will consider staffing requirements based on factors including but not limited to the assessed needs of the residents.

22 POLICE CHECKS

- 22.1** The employer will cover the cost of the renewals of police checks provided that:
- (i) if the employee leaves their employment within twelve (12) months of the renewal, the employee shall repay the employer for the cost of the renewal; and
 - (ii) the employee registers for the renewal and pays for the cost of the renewal and then seeks a reimbursement from the Employer.
- 22.2** If the Employer holds a copy of the police check, then upon request by the Employee the Employer will provide a copy of the police check that is held on the file to the Employee.

23 ADDITIONAL SHIFTS

- 23.1 The Employer is committed to maximising its permanent workforce in line with its occupancy levels. The Employer will always offer additional shifts in the first instance to its permanent part-time staff where practicable. It will then offer additional shifts to its casual or bank staff, where applicable.
- 23.2 The realisation of this objective will require high levels of co-operation from Employees in ensuring the objectives of maximising the use of permanent part-time Employees and, when required, relevant bank staff.
- 23.3 Removal of rostered short shift because of decreased bed occupancy**
- (a) The short shift on morning and afternoon at the facility will be deemed on the master roster as a "tenancy shift" to be worked when occupancy is full or near full either as additional ordinary hours by part-time staff or as casual shifts.

- (b) Part-time staff will be offered these tenancy shifts before they are offered to casual staff. No staff member will be permanently allocated to these tenancy shifts in their employment contracts and they will always be regarded as additional hours.
 - (c) In the event the facility has a decreased occupancy of at least five (5) residents or more and that this situation is not temporary (i.e. cannot be resolved in an acceptable time frame through new resident admissions) the tenancy shift (4 hours or less) on the roster in the morning and afternoon may be removed to compensate for the decreased occupancy.
 - (d) These tenancy shifts will be reinstated when occupancy moves back within two (2) of full occupancy.
- 23.4** Management will meet with affected staff to explain the occupancy situation in accordance with the consultation clause on the understanding that such consultation will be completed within a 48 hour period. The affected staff will be provided no less than 24 hours' notice regarding the removal of these shifts due to occupancy issues after consultation. .

24 TERMINATION OF EMPLOYMENT

24.1 Notice of Termination by the Employer

- (a) Subject to sub-paragraphs, (b) and (c) below (and unless some other arrangement is mutually agreed between the Employer and Employee which cannot be less beneficial than the entitlements below), at the time of termination the Employer must provide the following periods of notice to all employees other than casuals:

<u>Period of Continuous Service</u>	<u>Minimum Period of Notice</u>
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
3 and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) An employee over 45 years of age is entitled to one extra weeks' notice if the employee has completed at least two years of continuous service.
- (c) Casuals are to be given notice to the end of their current shift worked.
- (d) Payment in lieu of notice prescribed above shall be made if the appropriate notice period is not given, provided that employment may be terminated by part of the period of notice specified and part in lieu thereof. The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the employees employment had continued until the end of the required notice period, the employer would have been liable to pay to the employee because of the employment continuing during that period (i.e.

payment for ordinary hours plus all allowances, loadings and penalties and any other amount under the employee's contract of employment).

- (e) The employer may dismiss an employee without notice for serious misconduct as defined under the *Fair Work Regulations 2009* and in such cases wages will be paid only up to the time of dismissal.

24.2 Notice of Termination by the Employee

- (a) An employee must give a minimum of two (2) weeks' notice of intention to terminate their employment ('the period of notice') to the employer, unless some other arrangement is mutually agreed between the employee and the employer.
- (b) If an employee does not give the period of notice specified in clause (a) above, or does not work out the period of notice, the employee will only be paid, and entitlements calculated to, the last day of work performed or, if on leave, at the end of the period of notice actually given.
- (c) At the time of termination the employee must provide to the employer the same periods of notice. Casual employees shall only be required to give notice to the end of their current shift worked.
- (d) If the employee over the age of 18 years fails to give the required notice or fails to work their allocated notice period the employer may withhold from any wages due to the employee under this Agreement an amount that is no more than one (1) weeks wages for the employee.
- (e) The employer may, without notice, summarily dismiss an employee at any time for serious misconduct or wilful disobedience. Payment is made up to the time of dismissal only.

24.3 Transmission of Business

Where a business is transmitted from one employer to another, as set out in the Redundancy clause below, the period of continuous service that the employee had with the first employer (or transferor) or any prior employer (or prior transferor) is deemed to be service with the second employer or (and taken into account when calculating notice of termination). However an employee shall not be entitled to notice of termination or payment in lieu of notice for any period of continuous service in which notice has already been given or paid for.

25 REDUNDANCY

Redundancy provisions are in accordance with the NES

25.1 The NES provides Severance Pay

- (a) In addition to the period of notice prescribed for termination, an Employee whose employment is terminated shall be paid the following amount of severance pay in respect of a period of continuous service:

<u>Period of continuous service</u>	<u>Severance pay</u>
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

25.2 Job Search Entitlement

- (a) An Employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of ordinary pay during each week of notice for the purpose of seeking other employment.
- (b) If the Employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the Employee must, at the request of the Employer, produce proof of attendance at an interview or they will not be entitled to payment for any time absent. For this purpose a statutory declaration is sufficient.

25.3 Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employers option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

PART D – CAREER STRUCTURE

26 CLASSIFICATIONS

- 26.1 The classification definitions and appointment and progression criteria are set out in Schedule A. The wage rates and allowances for the classifications are set out in Schedule B and C.

PART E – EDUCATION AND PROFESSIONAL DEVELOPMENT

27 INTERNAL/COMPULSORY EDUCATION AND TRAINING

27.1 All Employees have a responsibility to maintain and upgrade their skills commensurate with the requirements of their position. In particular every Employee must attend training required to meet statutory responsibilities including but not limited to: fire and emergency training, manual handling training, infection control, food handling provided by the Employer in each twelve month period or as required.

- (a) Compulsory Training is usually rostered during employees' ordinary hours.
- (b) Where the Employee attends compulsory training, other than during the course of a rostered shift, the minimum engagement provision of this Agreement will apply. Where the training has not been scheduled at the start or finish of a shift for which the employee is rostered and the employee has to make a separate trip to the facility the payment will be the length of the training or two hours whichever is greater.
- (c) If an employee attends 2 hours of training after the end of an 8 hour rostered shift, and they do not agree to extend their ordinary hours to 10 hour hours per day or shift, that employee is to be paid overtime for the attendance at training.
- (d) Attendance at any training course other than those referred to above may be supported by the Employer in accordance with specific policy initiatives. In particular, the parties acknowledge that it is highly desirable for Employees to attend training provided by the Employer.
- (e) Where the Employer has implemented or is participating in a no lift training program every Employee must attend the training required.

27.2 BUDDY ORIENTATION SHIFT ALLOWANCE

An employee who is required to act as a buddy as part of their role and responsibilities on each shift to assist in the training and/or orientation of new employees shall be paid an allowance of \$2.00 per shift subject to the following:

- (i) The buddy shift must be approved by the Employer
- (ii) The Employee agrees to act as a buddy; and
- (iii) The Employee will be required to provide feedback to the person in charge regarding the outcomes of the buddy shift.

PART F – HOURS OF WORK, ROSTERS AND RELATED MATTERS

28. HOURS OF WORK

- (a) The ordinary hours of work for a day worker will be worked between 6.00am and 6.00pm Monday to Friday.
- (b) The hours for an ordinary week's work shall be 38, or be an average 38 per week in a fortnight and shall be paid either:
 - (i) in a week of five days in shifts of not more than eight hours each; or
 - (ii) by mutual agreement in a week of four days in shifts of not more than ten hours each; or
 - (iii) by mutual agreement, provided that the length of any ordinary shift, shall not exceed ten hours; or
 - (iv) in 76 hours per fortnight to be worked as not more than ten days of not more than eight hours each.
- (c) An employee will be allowed a break of not less than 10 hours between rostered shifts; or 8 hours by mutual agreement.

Day/s Off in Each Week

- (d) Employees shall be entitled to four (4) days off per fortnight.

29. OVERTIME

29.1 An employee who is directed to work hours in excess of their rostered hours in any day, or seventy six (76) hours per fortnight will be paid as follows:

- (a) For a part-time employee, all time worked in excess of their rostered hours on any one day unless otherwise agreed.
- (b) For a day worker- work outside the span of hours 6am to 6pm except where agreement is reached.

29.2 The overtime rate of pay is:

Day	First 2 Hours	Thereafter
Weekday	Time and a Half	Double Time
Weekend	Double Time	Double Time
Public Holiday	Double Time and a Half.	Double Time and a Half

Weekend Public Holiday	Double Time and a half	Double Time and a Half
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(c) **All Employees: Rest Periods - Affected by Overtime (Including Saturdays and Sundays)**

(i) When overtime work (including recall to duty) is necessary it shall, wherever reasonably practicable, be so arranged that Employees have at least ten hours continuously off duty between the work of successive shifts.

(ii) An Employee (other than a casual employee) who works so much overtime between the termination of his or her last previously rostered ordinary hours of duty and the commencement of his or her next succeeding rostered period of duty that he or she would not have had at least ten hours continuously off duty between those times, shall subject to this subclause, be released after completion of such overtime worked until he or she has ten hours continuously off duty without loss of pay for rostered ordinary hours occurring during such an absence.

(iii) If on the instructions of his or her Employer such an Employee resumes or continues work without having had such ten hours continuously off duty he or she shall be paid at the rate of double time until he or she is released from duty for such rest period and he or she shall be entitled to be absent until he or she has had ten hours continuously off duty without loss of pay for rostered ordinary hours occurring during such an absence.

(iv) In the event of an Employee finishing any period of overtime or recall at a time when reasonable means of transport are not available for the Employee to return to his or her place of residence the Employer shall provide adequate transport free of cost to the Employee.

(d) 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 overtime rate for each time so recalled.

The Employer may require any Employee to work reasonable overtime at overtime rates and such Employee shall work overtime in accordance with such requirement. An Employee is entitled to refuse a request to work additional hours where that request is unreasonable taking into account the factors identified in s.62(3) of the *Fair Work Act*, including any risk to Employee health and safety, personal circumstances, family responsibilities, notice given by either party and the Employee's role and level of responsibility.

(e) **Recall to Duty**

(i) An Employee, whether required to be on call or not, and who is recalled to work after leaving the Employer's premises will be paid for a minimum of four hours work at the appropriate overtime rate for each time so recalled.

(ii) The time spent travelling to and from the place of duty will be deemed to be time worked. Except that, where an Employee is recalled within three hours of their rostered commencement time, and the Employee remains at work, only the time spent in travelling to work will be included with the actual time worked for the purposes of the overtime payment.

(iii) An Employee who is recalled to work will not be obliged to work for four hours if the work for which the Employee was recalled is completed within a shorter period.

(iv) If an Employee is recalled to work, the Employee will be provided with transport to and from their home or will be refunded the cost of such transport.

(f) Time Off in Lieu of Payment

- (i) With the consent of the Employer, an Employee may elect to take time off in lieu of payment for overtime at a time or times agreed with the Employer.
- (ii) Overtime taken as time off during ordinary time hours will be taken at the appropriate penalty rate equivalent.
- (iii) An Employer will, if requested by an Employee, provide payment at the relevant overtime rate in the Overtime Clause in this Agreement, for any overtime worked under this subclause where the time in lieu is not taken within four (4) weeks of the accrual.
- (iv) An Employee or the Employees may choose to request their union or representative of their choice to represent their interests in negotiations referred to in paragraph (a) above.
- (v) The Employer must keep accurate records of time off in lieu arrangements in the wages records. Where there is agreement between the Employer and the Employee, time off in lieu of overtime may be taken at the penalty rate equivalent. Where an agreement is made to take time off in lieu of overtime, the agreement may be concluded by agreement or at the request of either the Employer or the Employee.
- (vi) If on termination of employment, time off for overtime worked by the employee has not been taken, the employer must pay the employee for the overtime at the applicable overtime rate for when the time was worked

30. SATURDAY AND SUNDAY WORK

- 30.1** Where an employee is rostered to work ordinary hours between midnight Friday and midnight Saturday, the employee will be paid at the rate of time and a half of the Employees ordinary hourly rate for all hours worked on such day. The rate shall be in substitution for and not cumulative upon the shift premiums.
- 30.2** Where an employee is rostered to work ordinary hours between midnight Saturday and midnight Sunday the employee will be paid at the rate of double time of the Employees ordinary hourly rate for all hours worked on such day. The rate shall be in substitution for and not cumulative upon the shift premiums.

31. ROSTERS

31.1 Publication

- (a) A roster of at least fourteen days duration setting out Employees' daily ordinary working hours, commencing and finishing times and meal intervals shall be posted at least 14 days before it comes into operation in each work location and where it may be readily seen by Employees and representatives of the Employees.
- (b) Except as in emergency situations seven (7) days' notice shall be given of a change in roster. However a roster may be altered at any time to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness or in an emergency.
- (c) Provided that a part-time Employee who agrees to work shift(s) in addition to those already rostered will not be entitled to the above specified allowance for the additional shift(s) worked.
- (d) The roster or rosters shall be drawn up so as to not require an Employee to work more than 8 hours each day subject to agreement being reached between the Employer and Employee, provide for not more than 8 days to be worked in any 9 consecutive days, provide at least ten hours between successive ordinary shifts (which may be reduced to 8 with agreement) and provide a minimum of 2 consecutive days off each week except by mutual agreement between the Employer and Employee.

32. DAYLIGHT SAVING

- (i) If an Employee works on a shift during which time changes because of the introduction of, or cessation to, daylight saving, that Employee shall be paid

for the actual hours worked at the ordinary time rate of pay (including any shift penalties or allowances ordinarily payable in respect of this shift).

- (ii) No overtime is payable for the additional hour worked because of daylight saving.

33. SHIFT WORK

32.1 Shift Definitions

- (a) Afternoon shift – means a shift that finishes after 6.00pm and at or before midnight.
- (b) Night shift- means a shift finishing after midnight and before 7.00am.
- (c) Employees who are rostered within shifts specified above shall be paid a shift penalty of 15% of their ordinary rate of pay. .

34. MEAL BREAKS AND MEALS

- (a) Employees not required to work on a roster, who work in excess of four (4) hours on any day, subject to subclause (b) below, will receive an unpaid meal break of not more than one (1) hour and not less than forty five (45) minutes. The duration of the meal break may be altered by agreement between the Employer and the Employee.
- (b) Employees required to work on a roster will receive a paid meal break of thirty (30) minutes which is counted as time worked. However, by mutual agreement between the Employer and the majority of the Employees within a particular work area and with the approval of the union, those Employees will be allowed to extend their paid thirty (30) minute meal break by up to a further unpaid thirty (30) minutes each day.
- (c) An Employee receiving an unpaid meal break and who is directed to work during their meal break will be paid at the rate of time and a half of the relevant wage rate for all work performed during the meal break and after until a meal break is allowed.

35. REST INTERVALS

- (a) 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.
- (b) Where less than 7.6 ordinary hours are worked, employees will be allowed one 10 minute interval in each four hour period.
- (c) Subject to mutual agreement, such intervals may alternatively be taken as one 20 minute interval.

- (d) Rest intervals will count as time worked.

36. HIGHER DUTIES

- (a) Any employee engaged in any one day or shift for more than two hours on duties carrying a higher rate than the classification in which he or she is ordinarily employed shall be paid for the full day or shift at the minimum rate for that higher classification but if so engaged for two hours or less only the time so worked shall be paid for at that higher rate.

PART G – LEAVE AND PUBLIC HOLIDAY ENTITLEMENTS

37. ANNUAL LEAVE

The provisions of this clause apply to full-time and part-time employees (on a pro rata basis) but do not apply to casual employees. The entitlements of casual employees are set out in the casual clause of this Agreement.

(a) Basic Entitlement

- (i) All Employees will be entitled to four weeks (152 hours for full-time Employees, pro-rata for part-time Employees) of annual leave with ordinary pay as defined in this Agreement.
- (ii) Such entitlement will accrue progressively during a year of service according to the Employee's ordinary hours of work (including ordinary additional hours of work, but not overtime), and such leave will accumulate from year to year.
- (iii) Annual Leave accruals will be displayed on each Employee's pay slip.

37.1 Shift Worker

An Employee who is a shift worker shall be allowed an additional week of annual leave (38 hours for full-time Employees, pro-rata for part-time Employees). An employee is to be regarded as a shift worker for the purposes of accruing this additional week of annual leave if, during any part of the relevant twelve months period of service:

- (i) is regularly rostered to work outside of the ordinary hours of a day worker as defined in Cl 9; and/or.
- (ii) works for more than four ordinary hours on 10 or more weekends.:

Annual leave may be applied for and taken in accordance with the NES.

37.3 Payment for Annual Leave

- (a) Before going on annual leave, an employee will be paid the amount of wages they would have received for ordinary time worked had they not been on leave during that period, unless an Employee requests otherwise.
- (b) When an employee requests annual leave they will nominate on the annual leave request form when the pay is to be paid in advance or in the usual pay period.

37.4 Annual leave loading

- (a) In addition to their ordinary pay, an employee, other than a shiftworker, will be paid an annual leave loading of 17.5% of their ordinary pay on a maximum of 152 hours/four (4) weeks annual leave per annum.
- (b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:
 - (i) an annual leave loading of 17.5% of ordinary pay; or
 - (ii) all payments for ordinary hours of work, weekend and shift penalties according to roster or projected roster, in-charge allowances, uniform, laundry (if payable) the employee would have received had they not been on leave during the relevant period, whichever is higher.

37.5 Payment of annual leave on termination

On the termination of their employment, an employee will be paid their untaken annual leave and pro rata leave, inclusive of the annual leave loading as expressed in 36.8 (a) and (b)..

37.6 Cashing Out of Annual Leave

- (a) An Employee may “cash out” an amount of annual leave credited to the employee (in lieu of the amount of annual leave) subject to the following:
 - (i) No more than ten (10) days of accrued annual leave may be “cashed out” in any 12month period, provided that more leave may be cashed out in the following circumstances.
 - (ii) In the first year of this Agreement only, an Employee may cash out up to six weeks leave provided the Employee retains a leave balance of at least six weeks after the cashing out; and
 - (iii) In subsequent years an Employee may cash out up to four weeks leave provided they have taken at least two weeks leave in that calendar year and leave at least four weeks leave at the time of the cashing out.
 - (iv) On each occasion the Employee wishes to “cash out” an amount of annual leave, the Employee must advise the Employer in writing, of the Employee’s election to “cash out” an amount of annual leave and the amount of annual leave to be “cashed out”.

- (v) Any annual leave that is “cashed out” will be paid at the rate ordinarily paid for annual leave.

37.7 Employer Direction to Take Annual Leave – Excessive Annual Leave

- (b) (i) The Employer may direct an Employee take a period of annual leave where the employee has accrued excessive annual leave. Excessive annual leave is defined as accrued leave in excess of 8 weeks (or 10 weeks for a shiftworker), as defined in 37(b). The Employer will not direct the Employee to reduce the accrued leave to less than 6 weeks of their accrued annual leave entitlement.
- (c) (ii) Prior to giving the direction the employer will genuinely try to reach agreement with the employee for when the leave is to be taken.
- (d) The direction must not require an employee to take less than (one) 1 week leave.
- (e) Must not require the employee to take a period of paid annual leave beginning less than eight (8) weeks, or more than twelve months (12) after the direction is given.

38 PERSONAL LEAVE

38.1 Definitions

The provisions of this clause apply to full-time and part-time employees (on a pro rata basis) but do not apply to casual employees.

38.2 Access to Paid Personal Leave

Paid personal leave is available to an employee, when they are absent due to personal illness or injury or, for the purposes of providing care or support for an immediate family or household member who is ill or injured and requires the employee’s care or support or who requires care or support due to an unexpected emergency affecting the member.

38.3 Amount of Paid Personal Leave

The amount of personal leave to which an employee is entitled depends on how long they have worked for the employer and accrues as follows:

Twelve days in the first year which accrues progressively

Up to 106 hours and 24 minutes (14 days) in each year in the second, third and fourth years of service; and

Up to 159 hours and 36 minutes (21 days) in the fifth and following years of service.

Personal leave accrues progressively in accordance with the hours the employee works.

Part time employee:

- (a) Part time employees are entitled to personal leave on the same basis as full time employees on a pro rata basis.

38.4 Accrual of Personal Leave

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 progressively from year to year, pro rata for part time Employees.

38.5 Personal Leave Notice Requirements

- (a) An employee must provide notice of the intention to take leave within three (3) hours of the taking of the leave, or as soon as practicable.
- (b) The Notice is to be provided to the Director of Nursing or to the CEO.
- (c) The employee must advise of the period or expected period of the leave.

38.6 Personal leave—documentary evidence

- (a) To be entitled to personal leave during the period, the Employee must, in accordance with this section, give the Employer a certificate from a medical practitioner, physiotherapist or dentist.
- (b) If it is not reasonably practicable for the employee to give the employer the above evidence, the employee may take a maximum of three (3) single days in any one (1) year without providing such a certificate.
- (c) The certificate must be given to the employer within three (3) days of resuming work.
- (d) Any medical certificate must include a statement to the effect that:

In the medical practitioner's opinion, the Employee was, is, or will be unfit for work during the period because of a personal illness or injury.

- 38.7** Any instance of absence immediately preceding or following a Weekend, Rostered day off, or Public Holiday must also be evidenced by a certificate as described by this Agreement.

38.9 Personal leave to provide care or support for an immediate family or household member

- (a) An Employee is entitled to use personal leave, including accrued leave, to provide care or support for members of their immediate family or household who require care or support because of personal illness, injury, an unexpected emergency. Leave may be taken for part of a single day. Each day or part of a day of personal leave taken in accordance with this Clause is to be deducted from the amount of personal leave accrued.
- (b) Where an Employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for or to support members of their immediate family or household who have a personal illness or injury or require care or support or who require care or support due to an unexpected emergency affecting the member. The Employer and the Employee shall agree on the period. In the absence of agreement, the Employee is entitled to take up to two (2) days per occasion, provided the evidentiary requirements are met.
- (c) The Employee must, if required by the Employer, establish the reason for taking such leave production of a certificate from a medical practitioner, statutory declaration or other document as determined by the Employer.

38.10 The Employee must, where practicable, give the Employer

- (a) at least three (3) hours notice prior to taking the leave or as soon as practicable.
- (b) the name of the person requiring care or support and their relationship to the Employee, the reasons for taking such leave and the estimated length of absence.
- (c) If it is not practicable for the Employee to give prior notice of absence, the Employee must notify the Employer of such absence at the first opportunity, preferably on the day of absence.

38.11 Casual Employment- Caring responsibilities

- (a) Subject to the evidentiary and notice requirements in this clause, casual Employees are entitled to not be available to attend work, or to leave work, if they need to provide care or support for members of their immediate family or household who require care or support because of personal illness, injury, an unexpected emergency, or the birth of a child.
- (b) The Employer must not fail to re-engage a casual Employee because the Employee accessed the entitlements provided for in this clause. The rights of an Employer to engage or not to engage a casual Employee are otherwise not affected.

38.12 Termination of Employment while on Personal Leave

The Employer shall not terminate the services of an Employee during the currency of any period of paid personal leave, with the object of avoiding obligations under this subclause.

38.13 Entitlement to unpaid Carer's Leave for Employees (inclusive of casual Employees)

An Employee is entitled to two (2) days of unpaid carer's leave for each occasion (a permissible occasion) when a member of the Employee's immediate family, or a member of the Employee's household, requires care or support because of:

(a) personal illness, or personal injury, affecting the member; or, an unexpected emergency affecting the member.

38.14 Taking unpaid carer's leave

- (a) An Employee may take unpaid carer's leave for a particular permissible occasion if the leave is taken to provide care or support as permitted under this Agreement.
- (b) An Employee may take unpaid carer's leave for a particular permissible occasion as:
- (c) a single continuous period of up to two (2) days; or
- (d) any separate periods to which the Employee and his or her Employer agree.
- (e) An Employee cannot take unpaid carer's leave during a particular period if the Employee could instead take paid personal/carer's leave.

39 COMPASSIONATE LEAVE

The provisions of this clause apply to full-time and part-time Employees but do not apply to Casual Employees.

39.1 An Employee is entitled to three (3) days compassionate leave for each occasion (a *permissible occasion*) when a member of the Employee's immediate family or a member of the Employee's household:

- (a) dies; or
- (b) contracts or develops a personal illness or sustains a personal injury that poses a serious threat to their life.

39.2 An Employee may take compassionate leave for a particular permissible occasion if the leave is taken:

- (a) to spend time with the member of the Employee's immediate family or household who has contracted or developed the personal illness or sustained the personal injury that poses a serious threat to their life; or
 - (b) after the death of the member of the Employee's immediate family or household.
 - (c) Leave may be taken for a particular permissible occasion as a continuous two day period or in two or more separate periods and the leave may be taken at any time while an illness or injury persists.
 - (d) Any day or part of a day of compassionate leave is not deducted from the Employee's personal leave entitlement.
- 39.2** An employee must give his or her employer notice of the taking of leave under this clause by the employee. This notice must be given to the employer as soon as practicable (which may be a time after the leave has started) and must advise the employer of the period, or expected period, of leave.
- 39.3** Proof of death or evidence of injury or illness that poses a serious threat to life must be provided to the satisfaction of the Employer, if requested.
- 39.4** An Employee may take unpaid compassionate leave by agreement with the Employer.

40 DOMESTIC VIOLENCE LEAVE

- 40.1** The Employer is committed to ensuring that an Employee who is experiencing domestic violence is supported.
- 40.2** An Employee is entitled to five (5) days unpaid leave, non-cumulative, in any 12 month period
- 40.3** The Employee may request and (at the discretion of the Employer acting reasonably) be granted access to personal leave, leave without pay and/or annual leave.
- 40.4** Notice of taking leave should be given as soon as practicable (including time after leave is taken) and provide the period, or expected period of leave.
- 40.5** Reasonable evidence must be provided, if requested by the Employer and may include documents issued by the police, a court a family violence support service, or a Statutory Declaration.
- 40.6** The Employer will consider requests for flexible working arrangements, subject to operational needs.

- 40.7 The Employer will ensure that all information concerning any employee's experience of domestic violence is treated confidentially as far as is practicable, except if required by law, or necessary to protect the health, life and safety of the Employee or another person.; and the Employer will consult with the employee regarding the handling of this information.

41 PARENTAL LEAVE

Parental Leave is in accordance with the NES.

41.1 Pre-natal Appointments or Parenting Classes

If an Employee is required to attend pre-natal appointments or parenting classes and such appointments or classes are only available or can only be attended during the ordinary rostered shift of an Employee, then on production of satisfactory evidence of attendance at such appointment or class, the Employee may access his or her accrued personal leave. The Employee must give the Employer prior notice of the Employee's intention to take such leave.

42 LONG SERVICE LEAVE

Long Service Leave shall be in accordance with the *Tasmanian Long Service Leave Act 1976*.

43 PUBLIC HOLIDAYS

- 43.1 An Employee shall be entitled to holidays on the following days:

Christmas Day, Boxing Day, New Years Day, Australia Day, Hobart Regatta Day (south of Oatlands), Eight Hours Day, Good Friday, Easter Monday, Anzac Day, Queens Birthday, Show Day, Recreation Day in those areas where Hobart Regatta Day is not observed or any other day that is observed in the region in lieu of or made additional to any of the holidays mentioned above.

- 43.2 For full-time Monday to Friday Employees and/or part-time Employees engaged to work only on a Monday to Friday basis:

- (a) When Christmas Day is a Saturday an additional holiday will be observed on the following Monday;
- (b) When Christmas Day is a Sunday an additional holiday will be observed on the following Tuesday. When Boxing Day is a Saturday a substitute day will be observed on the following Monday.
- (c) When Boxing Day is a Sunday a substitute day will be observed on the following Tuesday.

- (d) When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.

43.3 For all other Employees, including casuals:

- (e) Christmas Day shall be observed on 25 December, if it falls on a Saturday an additional holiday will be observed on the following Monday; or a Sunday, in which case an additional holiday will be observed on the following Tuesday;
- (f) Boxing Day shall be observed on 26 December; if it falls on a Saturday or Sunday a substitute day shall be observed on the following Monday or Tuesday, as in 43.2 (b) and (c) above.

43.4 Where any additional public holidays are declared or prescribed on days other than those set out in Clauses 42, those days shall constitute additional holidays and public holiday penalty rates and rostered-off benefit provisions shall apply on that additional day. For example: where Christmas Day falls on a Sunday 25 December but there is an additional public holiday under the Statutory Holidays Act on Tuesday 27 December, then a shift worker who works both days will be paid penalty rates on each day.

43.5 Payment for work on a Public Holiday

Any Employee who works on a day referred to in accordance with Clauses 42 above shall be entitled to be paid double time and a half for the time worked. For casual employees this payment is instead of and shall replace the casual loading.

43.6 Payment for a public holiday not worked.

A full time employee who does not work on a public holiday will be paid their ordinary pay for that day. A part time employee who is rostered off on a public holiday they would ordinarily work will be paid their ordinary pay for that day.

43.7 Public Holidays occurring during Annual Leave or Personal Leave

If the period during which an employee takes paid annual leave or paid personal leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid annual leave or paid personal leave on that public holiday.

43.8 Part-time Employees

A part-time employee who is ordinarily not required to work on the day of the week on which a particular holiday is observed shall not be entitled to any benefit for any such public holiday.

44 CEREMONIAL LEAVE

An employee who is legitimately required by Aboriginal tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to ten working days of unpaid leave in any one year with the approval of the Employer.

45 COMMUNITY SERVICES LEAVE

Community Services Leave is in accordance with the NES

- (a) An employee who is a member of a recognised voluntary emergency relief organisation (such as the Country Fire Authority, Red Cross, St John Ambulance and the State Emergency Service) is entitled to be released from duty to engage in a voluntary emergency management activity in accordance with the provisions of the *Fair Work Act 2009*, subject to the employee providing to the Employer:-
 - (i) prior notice of such attendance (unless this is not practicable due to the nature of the emergency); and
 - (ii) evidence that would satisfy a reasonable person that the employee has been or will be engaging in an eligible emergency management activity.
- (b) Payment for such attendance shall be restricted to a maximum of three shifts per annum (non-cumulative), at the employee's ordinary base rate of pay. Casual employees shall not be entitled to payment under this sub-clause, but shall still have the right to be absent from work subject to complying with the notice requirements under paragraph (a).
- (c) Employees on Jury service will be reimbursed the difference between their ordinary days pay and the statutory payment provided for attending to jury duty

PART H – ANCILLARY AND DISPUTE SETTLEMENT

46 Dispute Resolution

46.1 If a dispute relates to:

- (a) a matter arising under the agreement; or
- (b) the National Employment Standards; then

this term sets out procedures to settle the dispute.

- 46.2** An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- 46.3** In the first instance, the parties to the dispute must use their best endeavours to try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- 46.4** If discussions at the workplace level do not resolve the dispute a party to the dispute can refer the matter to the Fair Work Commission.
- 46.5** The Fair Work Commission may deal with the dispute in 2 stages:
- (a) the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - (b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.

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

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

- 46.6** While the parties are trying to resolve the dispute using the procedures in this term:
- (a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
 - (b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
 - (i) the work is not safe; or
 - (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
 - (iii) the work is not appropriate for the employee to perform; or
 - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.

46.7 The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term.

47 CONSULTATION

47.1 This term applies if the Employer:

- (a) (in cases other than a change to the Roster that is dealt with in (b) below), 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) (in the case of a change to the Roster) proposes to introduce a major change to the regular roster or ordinary hours of work of employees.

Major change

47.2 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.

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

47.4 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.

47.5 As soon as practicable after making its decision, the Employer must:

- (a) discuss with the relevant Employer
 - (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:

the employer, the requirements set out in paragraph 47.2(a) and subclauses 47.3 and 47.5 are taken not to apply.

47.9 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.

Major Change

47.10 For a change referred to in paragraph 47.1(b):

- (a) the employer must notify the relevant employees of the proposed change; and
- (b) subclauses 47.11 to 47.15 apply.

47.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.

47.12 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.

47.13 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:

(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.

47.13 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).

47.14 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

47.15 The Employer must give prompt and genuine consideration to matters raised about the change by the relevant Employees.

47.16 In this term:

"relevant employees" means the Employees who may be affected by a change referred to in subclause 47.1.

48 CALL BACK

(a) An Employee recalled to work overtime after leaving the Employer's premises will be paid for a minimum of four (4) hours' work at the appropriate overtime rate for each time so recalled.

(b) Time reasonably spent in getting to and from work will be regarded as time

worked.

49 PAYMENT OF ANNUAL INFLUENZA VACCINATION

- (a) The Employer will provide the Employee with the opportunity to have the cost cover for the administration of the influenza vaccination.
- (c) The Employer will arrange for this to be undertaken at the Facility
- (d) The Employer will cover the cost of the actual vaccination.

50 PROTECTIVE CLOTHING

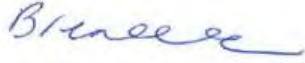
- (a) The employer will provide where necessary, suitable protective clothing for the employees. An employee, who is supplied with protective clothing, will wear the clothing for the purpose for which it is supplied.
- (b) The employer will maintain full and sufficient supplies of safety appliances, such as rubber gloves, disinfectants or other materials required to be used in the course of the employee's duties.
- (c) The employer will compensate an employee where, in the course of the work, an employee's clothing is damaged, destroyed by fire or by the use of corrosive substances.

51 SLEEP OVER PROVISION

The Employer will not introduce sleepovers during the life of this Agreement.

52 SIGNATURE CLAUSE

DATED this 26 day of March 2019



Signature on behalf of Menarock Aged Care Services (Claremont) Pty Ltd

Position:Chief Group Operations Manager.. Print Name: Brendan Coulton

I am a Director of the Employer and authorised to sign this Agreement

.....697 Whitehorse Road, Mont Albert VIC 3127.....

[Address]

DATED this 26 day of March 2019

.....
[Signature: on behalf of the Australian Nursing and Midwifery Federation as a default Employee Bargaining Representative] Print Name

Position:

I declare that I am authorised to sign this Agreement on behalf of the named Bargaining Representative.

[Address]

DATED this day of 2019

[Signature: on behalf of the Health and Community Services Union of Tasmania a default Employee Bargaining Representative]

Position: Print Name

I declare that I am authorised to sign this Agreement on behalf of the named Bargaining Representative.

[Address]

DATED this day of 2019

Schedule A - Classifications

Aged care Employee—Level 1

Entry level:

An employee who has less than three (3) 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:

General and administrative services	Food services
General clerk Laundry hand Cleaner Assistant gardener	Food services assistant

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:

General and administrative services	Food services	Personal care
General clerk/Typist (between	Food services	Personal care

3 months' and less than 1 years' service) Laundry hand Cleaner	assistant	worker grade 1
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General and administrative services	Food services	Personal care
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:

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

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:

General and administrative services	Food services	Personal care
Senior clerk Senior receptionist Driver (3 ton and over)	Senior cook (trade)	Personal care worker grade 3 Community and Home Based Care employees.

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:

General and administrative services	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:

	Food services
	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:

General and administrative Services	Food services	Personal care
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Clerical supervisor Interpreter (qualified) General services supervisor	Chef/Food services supervisor	Personal care worker grade 5
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Schedule B - Wage Rates

Agreement Classifications	Current rates (01/07/2018)	FFPP 01/07/19	FFPP 01/07/20	FFPP 01/07/21
		2.50%	2.50%	2.50%
Aged Care employee Level 1	\$764.70	\$783.82	\$803.41	\$823.50
Aged Care employee Level 2	\$796.30	\$816.21	\$836.61	\$857.53
Aged Care employee Level 3	\$827.60	\$848.29	\$869.50	\$891.23
Aged Care employee Level 4	\$837.40	\$858.34	\$879.79	\$901.79
Aged Care employee Level 5	\$865.70	\$887.34	\$909.53	\$932.26
Aged Care employee Level 6	\$912.40	\$935.21	\$958.59	\$982.56
Aged Care employee Level 7	\$928.80	\$952.02	\$975.82	\$1,000.22

Note - any current employee being paid above the rates prescribed herein will be maintained until such a time the rates in the Agreement are greater than the current rates

Schedule C – Allowances

Allowance	As at FFPP 1/07/2018	FFPP 1/7/19 2.5%	FFPP 1/7/20 2.5%	FFPP 1/7/21 2.5%
Foul and nauseous hourly rate	\$ 0.46	\$0.47	\$0.48	\$0.49
Foul and nauseous minimum weekly rate	\$2.64	\$2.70	\$2.77	\$2.84
Meal Allowance - Breakfast	\$ 9.85	\$10.10	\$10.35	\$10.61
Meal Allowance - Lunch	\$ 10.86	\$11.13	\$11.41	\$11.70
Meal Allowance - Dinner	\$ 19.17	\$19.65	\$20.14	\$20.64
Meal Allowance - employee provides own meal	\$ 3.22	\$3.30	\$3.38	\$3.47
Meal charges - single hot or cold main course	\$ 3.94	\$4.04	\$4.14	\$4.24
Meal charges - single (other) course	\$ 3.58	\$3.67	\$3.76	\$3.86
Meal charges - Breakfast	\$ 3.58	\$3.67	\$3.76	\$3.86
Meal Allowance when working overtime	\$ 12.84	\$13.16	\$13.49	\$13.83

Laundry Allowance

Allowance	Current rates (1/7/2018)	FFPP	FFPP	FFPP
		1/07/2019	1/07/2020	1/07/2021
		2.5%	2.5%	2.5%
Uniform				
Per shift	\$1.23	\$1.26	\$1.29	\$1.32
Max Per week	\$6.24	\$6.40	\$6.56	\$6.72
Laundry				
Per shift	\$0.32	\$0.33	\$0.34	\$0.34
Max per week	\$1.49	\$1.53	\$1.56	\$1.60

Shift Allowances

Allowances (per shift)	FFPP 01-07-18	FFPP 01-07-19	FFPPP 01-07-20	FFPP 01-07-21
15% of their ordinary rate of pay				

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG 2019/962


Applicant: *Menarock Aged Care Services (Claremont) Pty Ltd T/A the Gardens*

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, Brendan Coulton, Director, of Menarock Aged Care Services Group Pty Ltd, give the following undertakings with respect to the *Menarock Aged Care Services (Claremont) Pty Ltd Non-Nursing Enterprise Agreement 2019-2021* ("the Agreement"):

1. I have the authority given to me by the Menarock Aged Care Services Group to provide this undertaking in relation to the application before the Fair Work Commission.
2. Further to clause 29 of the Agreement, a 20 minute rest break will be provided during overtime in accordance with clause 25.1 (e) of the *Aged Care Award 2010* ("Award").
3. Cause 33, of the Agreement provides shift penalties. In the event that a shift is worked that is not covered in the Agreement, but is covered by the Award, payments will be made in accordance with clause 26.1 of the Award.
4. Employees do not work broken shifts at the Gardens and will not do so in the life of this Agreement.



Signature

Date 18 April 2019