



# DECISION

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

**Adeney Private Hospital Pty Ltd T/A Adeney Private Hospital**  
(AG2022/5518)

## **ADENEY PRIVATE HOSPITAL NURSES GREENFIELDS AGREEMENT 2022**

Health and welfare services

COMMISSIONER LEE

MELBOURNE, 18 JANUARY 2023

*Application for approval of the Adeney Private Hospital Nurses Greenfields Agreement 2022*

[1] An application has been made for approval of a greenfields agreement known as the *Adeney Private Hospital Nurses Greenfields Agreement 2022* (the Agreement). The application was made by Adeney Private Hospital Pty Ltd T/A Adeney Private Hospital pursuant to s.185 of the *Fair Work Act 2009* (Act).

[2] This is a greenfields agreement that meets the requirements of section 172(2)(b) of the Act. I am satisfied that each of the requirements of ss.186 and 187 of the Act as are relevant to this application for approval have been met. In accordance with s.187(5)(a) of the Act, I am satisfied that the Australian Nursing and Midwifery Federation (ANMF) is entitled to represent the industrial interests of a majority of employees who will be covered by the Agreement in relation to work that is to be performed under it. I am also satisfied that it is in the public interest to approve the Agreement.

[3] Pursuant to s.53(2)(b) of the Act I note the Agreement was made with the ANMF and that the Agreement covers this organisation.

[4] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 25 January 2023. The nominal expiry date of the Agreement is 1 December 2025.

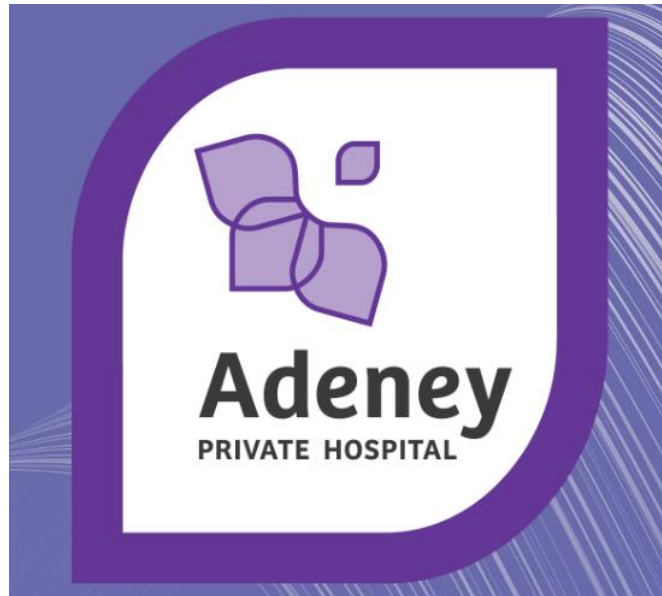


COMMISSIONER

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ADENEY PRIVATE HOSPITAL

NURSES GREENFIELDS AGREEMENT

2022

## 1. ARRANGEMENT

The Agreement is arranged as follows:

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2. NAME OF THE AGREEMENT

This Agreement shall be called the Adeney Private Hospital Nurses Greenfields Agreement 2022 (**'the Agreement'**).

3. COVERAGE

The Agreement shall cover:

- (a) Adeney Private Hospital Pty Ltd (ABN No: 35 648 472 191) (the **'employer'**); and
- (b) Nursing staff employed by the employer in the classifications in Schedule 1 of this Agreement (**'employee'** or **'employees'**).
- (c) This Agreement is made under section 172 of the *Fair Work Act 2009*. The employer will take the necessary steps to seek approval of this Agreement under section 186 of the Act.
- (d) The employer will formally advise the Australian Nursing and Midwifery Federation Victorian Branch (**'ANMF'**) when the Agreement is made in order for the ANMF to apply under section 183 of the *Fair Work Act 2009* to be covered by the Agreement.
- (e) It is the intention of this Agreement that the ANMF will be covered by this Agreement.

4. DATE AND PERIOD OF OPERATION

This Agreement shall commence operation from the 7<sup>th</sup> day after the agreement is approved by Fair Work Commission ('FWC') and will remain in place until 1 December 2025, or thereafter in accordance with the *Fair Work Act 2009*.

The parties agree that discussions shall commence for a new Agreement no later than six months prior to the expiry date of the Agreement.

5. POSTING OF THE AGREEMENT

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

6. RELATIONSHIP TO THE NATIONAL EMPLOYMENT STANDARDS

Entitlements in accordance with the National Employment Standards (**"NES"**) are provided for under the *Fair Work Act 2009*. Where this Agreement also has provisions regarding matters dealt with under the NES and the provisions in the NES set out in the Act 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 that matter in this Agreement will have no effect in respect of that Employee. The provisions in this Agreement otherwise apply.

7. DEFINITIONS

For the purposes of this Agreement:

- (a) Registered Nurse shall mean a person who has a current practising certificate issued by the Nursing and Midwifery Board of Australia (**"the Board"**) entitling them to practice as a Registered Nurse.
- (b) Enrolled Nurse shall mean a person who has a current practising certificate issued by the Nursing and Midwifery Board of Australia (**"the Board"**) entitling them to practice as

an Enrolled Nurse.

- (c) The quantum of relevant allowances is set out in Appendix 1 of this Agreement.
- (d) Experience means service and experience following registration in a grade or sub-grade at least equal to that in which the Employee is employed (or to be employed). Where an Employee has previously been employed in a higher grade or sub-grade, service and experience in that higher grade or sub-grade will count as service and experience in the lower grade or sub-grade for the purposes of determining an Employee's Experience. Provided that an employee shall, prior to commencing employment with the Employer or within 3 months of commencing employment, provide suitable documentary evidence to the Employer of their experience. Where an employee fails to provide such evidence to the Employer, until such time as the employee provides such evidence to the Employer, the employee shall be paid at the level for which documentary evidence was provided. No back payment will be made based on documentary evidence provided after the first 3 months from commencement of employment.
- (e) A Year of Experience means Experience gained from working an average of three shifts or more per week in a year. If the Employee averages less than three shifts per week or 48 hours per fortnight (whichever is the lesser), the Employee will need to complete an additional year to advance. Where in this Agreement there is a reference to a number of Years of Experience greater than one, then each such Year of Experience must be calculated by reference to the definition of one Year of Experience in order to determine whether an Employee has attained the requisite number of Years of Experience. Where an employee has not been regularly employed as a Registered Nurse, or has not actively nursed for a period of five years or more, such employee's prior service and experience shall not be taken into account.

Provided that an internationally trained nurse (ITN):

- (i) granted registration with conditions, previous experience will not be counted whilst the conditions are in place;
  - (ii) granted registration subject to successful completion of a bridging program, previous experience will not be counted until the completion of that bridging course;
  - (iii) required by the Australian professional registration body to undertake an outcome-based assessment (OBA), previous experience will not be counted until the completion of that OBA.
- (f) the Act shall mean the *Fair Work Act 2009*, as amended.
  - (g) Hospital Certificate does not include an Employee's base qualification.
  - (h) NES means the National Employment Standards as contained in sections 59 to 131 of the *Fair Work Act 2009 (Cth)*.
  - (i) Nursing and Midwifery Board of Australia (or NMBA) includes its predecessor bodies.
  - (j) Service and Continuous Service are defined by section 22 of the *Fair Work Act*.
  - (k) **immediate family** of an employee means:
    - (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or

- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.
- (iii) child includes an adult child (including an adopted child, a step child or an ex-nuptial child).
- (iv) **spouse** includes a former spouse.
- (v) **de facto partner** of an employee:
  - (1) means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
  - (2) includes a former de facto partner of the employee.
- (l) **ordinary pay** means the rate of pay payable to the employee for his or her ordinary hours of work, but does not include any loadings, penalties, allowances or overtime unless otherwise stated in this Agreement

## 8. CONSULTATION REGARDING CHANGE

- (a) This term applies if the employer:
  - (i) 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
  - (ii) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

### Major change

- (b) For a major change referred to in paragraph (a)(i):
  - (i) the employer must notify the relevant employees of the decision to introduce the major change; and
  - (ii) subclauses (c) to (i) apply.
- (c) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (d) If:
  - (i) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (ii) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.
- (e) As soon as practicable after making its decision, the employer must:
  - (i) discuss with the relevant employees:
    - (1) the introduction of the change; and
    - (2) the effect the change is likely to have on the employees; and

- (3) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
- (ii) for the purposes of the discussion – provide, in writing, to the relevant employees:
  - (1) all relevant information about the change including the nature of the change proposed; and
  - (2) information about the expected effects of the change on the employees; and
  - (3) any other matters likely to affect the employees.
- (f) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (g) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (h) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (b)(i) and subclauses (3) and (5) are taken not to apply.
- (i) In this term, a major change is *likely to have a significant effect on employees* if it results in:
  - (i) the termination of the employment of employees; or
  - (ii) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - (iii) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (iv) the alteration of hours of work; or
  - (v) the need to retrain employees; or
  - (vi) the need to relocate employees to another workplace; or
  - (vii) the restructuring of jobs.

Change to regular roster or ordinary hours of work

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



representative;  
the employer must recognise the representative.

- (m) As soon as practicable after proposing to introduce the change, the employer must:
  - (i) discuss with the relevant employees the introduction of the change; and
  - (ii) for the purposes of the discussion – provide to the relevant employees:
    - (1) all relevant information about the change, including the nature of the change; and
    - (2) information about what the employer reasonably believes will be the effects of the change on the employees; and
    - (3) information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - (iii) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (n) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (o) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (p) In this term:

*relevant employees* means the employees who may be affected by a change referred to in subclause (a).

## 9. DISPUTE RESOLUTION PROCEDURE

- (a) In the event of a dispute in relation to a matter arising under this Agreement or the NES or section 65 or 76 of the *Fair Work Act* (in respect to a rejection of a request to extend unpaid parental leave or to return to work part-time), in the first instance the parties will attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- (b) A party to the dispute may appoint another person, organisation or association to accompany or represent them in relation to the dispute.
- (c) If a dispute in relation to a matter arising under subclause (a) is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the FWC for resolution by conciliation and, where the matter in dispute remains unresolved, arbitration.
- (d) It is a term of this Agreement that while the dispute resolution procedure is being conducted work shall continue normally unless an employee has a reasonable concern about an imminent risk to his or her health or safety.
- (e) If arbitration is necessary the FWC may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective.

## 10. WAGES

- (a) The rates of pay for Employees covered by this Agreement as increased by this Agreement are set out in Appendix 1.
- (b) The wage increases specified in subclause (a) of this Clause shall constitute the all purpose rate of pay in respect of the employee covered by this Agreement.
- (c) The wage increases referred to in subclause (a) of this Clause shall be absorbed into any payment made to the Employee beyond the minimum rates contained within this Agreement.
- (d) Rates of pay as increased by this Agreement are set out in Appendix 1.
- (e) The loadings for casual employees as per Clause 16 of this Agreement shall be calculated and paid in accordance with Appendix 1 of the Agreement.

## 11. PAYMENT OF SALARIES

- (a) Wages must be paid fortnightly unless otherwise mutually agreed up to a monthly maximum period.
- (b) Employees will be paid by electronic funds transfer into the bank or financial institution account nominated by the employee.
- (c) When notice of termination of employment has been given by an employee or an employee's services have been terminated by the employer, payment of all wages and other monies owing to an employee will be made to the employee. Such payment will be processed in the next pay run after the termination of employment takes effect or within 7 days, whichever is sooner.

## 12. SUPERANNUATION

- (a) 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.
- (b) "The Fund" for the purpose of this Agreement shall mean:
  - (i) Health Employees Superannuation Trust of Australia ('HESTA') established and governed by a trust deed, as may be amended from time to time, and includes any superannuation scheme which may be made in succession thereto;
  - (ii) Aware Super established and governed by a trust deed, as may be amended from time to time, and includes any superannuation scheme which may be made in succession thereto;
  - (iii) An employee's stapled fund; or
  - (iv) any other superannuation fund nominated by the employee and approved by the Employer.
- (c) Upon commencement of employment, the organisation shall provide each worker with membership form for their preferred fund and shall forward the completed membership forms for the worker's choice of fund within 28 days. In the event that the employee had

not completed an application form within 28 days, the Organisation shall forward contributions and employee details to HESTA (which has a MySuper product) or the employee's stapled fund.

- (d) In addition to the Organisation's statutory contributions to the Fund an employee may make additional contribution from their salary, and on receiving written authorisation from the employee the Organisation must commence making contributions to the Fund in accordance with the Superannuation Guarantee Charge Act 1992.
- (e) Superannuation fund payments will be made in accordance with trust fund deeds.
- (f) Where an Employee salary packages their wages in accordance with this Agreement, superannuation shall be paid on the pre-packaged wages.
- (g) The Employer will also make a superannuation contribution on the paid parental leave at subclauses 21(b), equivalent to that required by relevant legislation if such payments were deemed ordinary time earnings.

### 13. HOURS OF WORK

- (a) Hours for an Ordinary Weeks Work
  - (i) The ordinary hours of work for a full-time employee will be:
    - (1) 38 hours per week; or
    - (2) 76 hours per fortnight; or
    - (3) 152 hours over 28 days.
  - (ii) The shift length or ordinary hours of work per day will be a maximum of 10 hours exclusive of meal breaks.
- (b) Each employee will be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each 28-day cycle. Where practicable, such days off must be consecutive.

### 14. FULL-TIME EMPLOYMENT

- (a) A full-time employee is one who is employed and who is ready, willing and available to work a full week of 38 hours at the times and during the hours as may be mutually agreed upon or in the absence of such agreement as prescribed by the employer.
- (b) Such employee shall be paid the weekly salary appropriate to the employee's classification, irrespective of the number of hours worked not exceeding 38, or an average of 38 hours per week. This shall not apply in respect of periods of unpaid leave.

### 15. PART-TIME EMPLOYMENT

- (a) A part-time employee is one who is employed and who is ready, willing and available to work on a regular basis any number of hours less than 38 hours per week. Where the employee is employed on a part-time basis he or she shall be paid the ordinary appropriate hourly rate prescribed for the classification in which they are employed.
- (b) Before commencing part-time employment, the employer and employee will agree in writing the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours.

- (c) The minimum engagement for a part time employee shall be 4 hours.
- (d) The provisions of this Agreement in respect to annual leave, personal leave and holidays shall apply on a pro rata basis to part-time employees.
- (e) At the request of an employee, the hours worked by the employee will be reviewed annually. Where the employee is regularly working more than their specified contract hours then such contract hours shall be adjusted by the Employer, to reflect the hours regularly worked. The hours worked in the following circumstances will not be incorporated in the adjustment.
  - (i) if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, maternity leave, workers compensation; and
  - (ii) if the increase in hours is due to a temporary increase in hours only.
- (f) Any adjusted contracted hours resulting from a review identified in sub-clause (e) of this clause should, however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace.

#### 16. CASUAL EMPLOYMENT

- (a) A casual employee is an employee who is engaged in relieving work or work of a casual nature and whose engagement is on an hourly basis, subject to applicable minimum engagement. A casual employee does not include an employee who could more properly be classified as a full-time or part-time employee.
- (b) A casual employee shall be paid per hour worked an amount equal to one 1/38th of the weekly salary appropriate to the class of work performed plus 25%.
- (c) In addition, a casual employee, where eligible, shall be entitled to receive the allowances prescribed in this Agreement.
- (d) Subject to sub-clause (e) below, unless an allowance or payment is otherwise prescribed in this Agreement, the casual loading set out in clause 16(b) above is in lieu of Annual Leave and paid Personal Leave. Such leave provisions and the provision regarding Termination of Employment, shall not apply in the case of a casual employee.
- (e) Casual Enrolled Nurses are entitled to long service leave in accordance with clause 27. Casual Registered Nurses are excluded from clause 27 of this Agreement and any eligibility to long service leave will be in accordance with the Long Service Leave Act 2018 (Vic).
- (f) The minimum engagement for a casual employee shall be 4 hours.
- (g) Casual Conversion is provided for under the NES.

#### 17. ROSTER OF HOURS

- (a) The ordinary hours of work for each employee will be displayed on a fortnightly roster in a place conveniently accessible to employees. The roster will be posted at least two weeks before the commencement of the roster period.
- (b) The Employer and individual employee may agree to vary the finishing time, either extending or decreasing the period of time worked dependent on the operational requirements of the Employer. Where there is mutual agreement on the day of the said

shift to vary the hours worked, the Employee shall be paid in accordance with the rostered hours worked at their ordinary hourly rate of pay.

- (i) Notwithstanding the provisions of subclause (b) regarding the variation in time worked on a particular shift, permanent employees shall be entitled to be paid in accordance with the overtime provisions of this Agreement where such time worked exceeds 8 hours on a shift, unless rostered for a 10 hour shift.
- (ii) Further, where a permanent employee agrees to reduce the number of hours worked on a shift, such employee shall be afforded additional hours within the monthly roster to ensure that the employee receives their agreed minimum hours per month.
- (c) Except as in emergency situations seven days' notice shall be given of a change of roster, other than as per the variation by mutual agreement specified in subclause (b) herein. In this instance a change of roster allowance, as set out in Appendix 1, shall be payable to an employee where seven days' notice has not been given and where the change is not by mutual agreement.
- (d) The roster or rosters shall be drawn up so as to provide ten hours off, or eight hours off by mutual agreement, between successive ordinary shifts.
- (e) 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.
- (f) Notwithstanding any other provision of this part, this clause shall not apply to casual employees.

#### 18. SATURDAY AND SUNDAY WORK

All rostered time of ordinary duty performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and a half. A casual employee will be entitled to this penalty rate on their casual hourly rate.

#### 19. MEAL AND REST BREAKS

- (a) Where practicable, employees shall not be required to work more than 5 hours without an unpaid 30 minute meal break. Provided that, by agreement of an individual employee, an employee who works shifts of 6 hours or less may forgo the meal break.
- (b) Where an employee is required to remain available during a meal break the employee will be paid at ordinary rates for the portion of the meal break not taken. Where an employee is required to perform duty during a meal break, they will be paid for the meal break at 150%.
- (c) Employees shall be entitled to one paid ten minute rest interval per four hours worked, or part thereof greater than 2 hours. Subject to an agreement between the employee and the Employer, such breaks may be taken as one 20 minute break.

#### 20. OVERTIME

- (a) Overtime rates, as set out in clause 20(c) below, will apply where a full time or part time employee is required to work in excess of:
  - (i) the rostered daily ordinary full-time hours on any shift for a part time employee or

the rostered hours for a full-time employee;

- (ii) 76 hours in a fortnight.

Noting that all work in excess of 10 hours on any day or shift will be paid at overtime rates.

- (b) A casual employee will be entitled to overtime penalty rates where they are required to work in excess of 10 hours per day / shift or in excess of 76 hours per fortnight.
- (c) The applicable penalty rates for overtime work are:

<b>Status</b>	<b>Monday - Friday</b>	<b>Saturday - Sunday</b>	<b>Public holiday</b>
Permanent	150% first two hours 200% thereafter	200%	250%
Casual	187.5% first two hours 250% thereafter	250%	312.5%

For clarity, the above percentages are applied to the ordinary pay and the casual percentages are inclusive of the casual loading.

- (d) When calculating overtime payments, each day or shift will stand alone
- (e) These extra rates will be in substitution for and not cumulative upon the shift and weekend loadings prescribed in this Agreement.
- (f) Time off instead of payment for overtime
- (i) An employee may elect, with the consent of the Employer, to take time off instead of payment for overtime at a time agreed with the Employer.
- (ii) Overtime taken as time off during ordinary hours will be calculated at the relevant overtime penalty.
- (iii) The Employer shall provide payment at the appropriate overtime rates as specified in clause 20(c) above where time off in lieu has not been taken within four weeks of accrual or on termination of employment.
- (iv) Wherever possible, time off in lieu should be taken in the pay period it has accrued, however the employee may elect, subject to the approval of the employer, to carry forward the time accrued to a maximum of 15.2 hours.
- (v) Time off in lieu in excess of 15.2 hours is to be paid out.
- (g) Rest break during overtime
- (i) An employee working overtime will take a paid rest break of 20 minutes after each four hours of overtime worked if required to continue work after the break.
- (h) Rest break between shifts when overtime is worked
- (i) When overtime, including recall work is necessary, employees will be entitled to at least ten (10) consecutive hours off duty between work and the next rostered period of duty.

- (ii) An employee, other than a casual employee, who works so much overtime or recall work that they would not have had a least 10 consecutive hours off duty between overtime or recall work and their next rostered period of duty, the employee shall be released after completion of such overtime or recall work until they have had at least 10 consecutive hours off duty, without loss of pay for rostered hours occurring during such absence.
- (iii) Where an employee is recalled to duty within four hours of the commencement of their next rostered shift (and such recall is continuous with the rostered shift) and the employee has had at least one break of not less than 10 hours immediately preceding the last rostered shift or period of overtime and this period of recall, then they will be required to complete their next rostered shift at normal time without the requirement of a ten (10) hour break. In this example, the employee is entitled to be paid at normal time for the entire rostered shift plus a minimum of three (3) hours at double time.
- (iv) If, on the instruction of the employer, an employee resumes or continues work without having had 10 consecutive hours off duty they shall be paid at the rate of double time until they have been released from duty for such a period and they shall then be entitled to 10 consecutive hours off duty without loss of pay for rostered hours occurring during such absence.

## 21. PARENTAL LEAVE

- (a) Employees are entitled to parental leave in accordance with the provisions of the *Fair Work Act 2009*, as amended from time to time.
- (b) Where a permanent Employee has twelve months of continuous service with the Employer and is 'eligible' for parental leave in accordance with subclause (a) such employee shall be entitled to one of the following types of paid parental leave:
  - (i) Paid Parental/Adoption Leave - an eligible employee, who is the primary carer of the child at birth or adoption, is entitled to 14 weeks paid maternity leave at ordinary pay from the date the parental leave commences. Parental leave may commence up to six weeks prior to the expected date of birth.
  - (ii) Paid Partner Leave – an eligible employee, who is the partner and non-primary carer of the child at birth or adoption, is entitled to 2 weeks of Paid Partner leave.
- (c) Paid leave in accordance with subclause (b) above may be paid at half the rate of pay for double the period provided above.
- (d) The amount of paid leave provided in this Agreement shall not be reduced in terms of its monetary value by the paid parental leave prescribed under the Paid Parental Leave Act 2010. For the avoidance of doubt the value of the paid parental leave provided under this Agreement will be in addition to the value of the paid parental leave paid at the Federal minimum wage.

## 22. ANNUAL LEAVE

- (a) Employee's entitlement to leave
  - (i) Employees shall be entitled to 5 weeks annual leave in respect of any 12 months service. This leave entitlement is inclusive of the base NES annual leave entitlement and the additional week under the NES for a 'shiftworker' as defined.

A 'shiftworker' for the purposes of this clause and the NES is an employee who is regularly rostered over seven days of the week and regularly works weekends.

- (ii) Such annual leave accrues progressively during a year of service according to the employee's ordinary hours of work and accumulates from year to year.
- (b) Employee taken to not be on paid annual leave at certain times
  - (i) If the period during which an employee takes paid annual 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 on that public holiday.
  - (ii) Where other periods of leave occurs (other than unpaid parental leave), or a period of absence from employment for community service leave, the employee is taken not to be on paid annual leave for the period of that other leave or absence.
- (c) Effect of termination on annual leave
  - (i) An employee who leaves or is dismissed before completing a full qualifying twelve-month period will, on termination, receive payment in lieu of any accrued and untaken annual leave and leave loading in respect of the accrued annual leave entitlement.
- (d) Taking of leave
  - (i) Two weeks' notice of the date from which an employee shall commence his or her annual leave shall be given unless otherwise mutually agreed upon between the parties concerned
  - (ii) An employee is entitled to apply to take annual leave at a time agreed between the employee and the employer and the employer shall not unreasonably refuse such a request for annual leave.
- (e) Payment for leave
  - (i) Employees shall receive their ordinary pay during all periods of annual leave. Employees may request that before going on leave, such leave be paid in advance, otherwise the leave will be paid in the normal pay fortnights for the period of such leave.
  - (ii) In addition to ordinary pay, all employees shall receive either:
    - (1) a loading of 17.5% calculated on the prescribed rate of salary:
      - (A) provided that such loading shall be on a maximum of 152 hours (4 weeks) in respect of any year of employment; or
    - (2) in respect of each week of leave granted an amount comprising the following:
      - (A) all payments for ordinary hours of work;
      - (B) shift work premiums according to roster or projected roster;
      - (C) Saturday, Sunday premiums according to roster or projected roster;
      - (D) in-charge allowances;



- (E) allowances prescribed in the uniform and laundry allowance clause of this Agreement

whichever is the higher.

(f) Pay in lieu of an amount of annual leave

- (i) Upon receipt of a written request by an Employee, the Employer may, in writing, authorise the Employee to receive pay in lieu of an amount of annual leave.
- (ii) Paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (iii) Where an Employee forgoes an entitlement to take an amount of annual leave, the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.
- (iv) Each separate agreement reached between the employee and the employer in relation to payment in lieu of annual leave must be recorded in writing.

(g) Excessive Annual Leave

Where an employee has accrued more than 10 weeks of paid annual leave (or 12 weeks in the case of a shiftworker) (**excessive leave accrual**), the employee and employer may seek to genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual. If agreement is not reached, the employer may direct the employee in writing to take one or more periods of paid annual leave. Such a direction:

- (i) is of no effect if it would result in the remaining accrued entitlement to be less than 6 weeks; and
- (ii) must not require the employee to take paid annual leave of less than one week; and
- (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given;
- (iv) must not be inconsistent with any leave arrangement agreed upon by the employee and employer.

(h) Weekend work

In addition to the entitlement set out at clause 22(a)(i), an Employee is entitled to an additional one week of annual leave where the Employee:

- (i) is regularly rostered over 7 days of the week; and
- (ii) regularly works on weekends.

23. PUBLIC HOLIDAYS

- (a) An employee shall be entitled to paid time off (or penalty payments for time worked) in respect of public holidays in accordance with this clause.
- (b) Subject to (c), the public holidays to which this clause applies are the days determined and gazetted under Victorian law as public holidays in respect of the following occasions:

- (i) New Year's Day, Australia Day, Christmas Day and Boxing Day; and
  - (ii) Good Friday, the Saturday immediately before Easter Sunday, Easter Monday, Anzac Day, King's Birthday, AFL Grand Final Friday and Labour Day; and
  - (iii) Melbourne Cup Day, or in lieu of Melbourne Cup Day, some other day as determined under Victorian law for a particular locality; and
  - (iv) any additional public holiday declared or prescribed in Victoria or a locality in respect of occasions other than those set out in (b)(i).
  - (v) If a day or days are not determined in respect of any of the occasions (b)(i), (ii) or (iii) under Victorian law in any year, the public holiday for that occasion will be the day or date upon which the public holiday was observed in the previous year.
- (c) Applicability of penalty payments for some public holidays falling on a weekend
- When Christmas Day, Australia Day, Boxing Day, or New Year's Day (Actual Day) is a Saturday or a Sunday, and a substitute or additional holiday is determined under Victorian law on another day in respect of any of those occasions (Other Day):
- (i) Weekend Workers and casual employees shall receive penalty payments pursuant to clause (e) for time worked on the Actual Day or on the Other Day if the employee does not work ordinary hours on the Actual Day; and
  - (ii) all other employees will receive penalty payments pursuant to clause (e) for time worked on the Other Day.
- (d) Substitution of one public holiday for another
- (e) The Employer and an individual employee may substitute another day for any prescribed in this clause. Penalty Payments in respect of public holidays
- (i) An employee, other than a casual, who performs work on a public holiday (or where Christmas Day, Boxing Day, New Year's Day or Australia Day fall on a weekend, the day to which penalty rates apply pursuant to clause (c)) shall be entitled to be paid;
    - (1) 200% (based on 1/38th of the weekly salary set out in Appendix 1) for the time worked on a public holiday Monday to Friday; or
    - (2) 250% (based on 1/38th of the weekly salary set out in Appendix 1) for the time worked on a public holiday on a Saturday or Sunday (which is inclusive of the rates in clause 18 – Saturday and Sunday Work).
- (f) A casual employee who performs work (including overtime work) on a public holiday (or where Christmas Day, Boxing Day, New Year's Day or Australia Day fall on a weekend, the day to which penalty rates apply pursuant to clause (c)) shall be entitled to be paid inclusive of the casual loading;
- (i) 250% (based on 1/38th of the weekly salary set out in Appendix 1) for time worked on a public holiday Monday to Friday; or
  - (ii) 312.5% (based on 1/38th of the weekly salary set out in Appendix 1) for time worked on a public holiday on a Saturday or Sunday. This rate is inclusive of the penalty rates in clause 18 for Saturday/Sunday work.
- (g) Public holidays occurring on rostered days off – Full time employees

- (i) Subject to (f)(ii) and (iii), a full-time employee shall receive a sum equal to a day's ordinary pay for public holidays that occur on their rostered day off.
- (ii) Subject to clause (f)(iii), if a public holiday falls on Saturday or Sunday then (f)(i) will only apply to Weekend Workers.
- (h) Where on each occasion that Christmas Day, Boxing Day, New Year's Day or Australia Day falls on a weekend, and under Victorian law an additional day or substitute day (Other Day) applies as a public holiday in respect of that occasion, and:
  - (i) the employee is rostered off for both the actual day and the Other Day, then only one day's payment will be made under (f)(i); or
  - (ii) the employee works only on one of either the actual day or the Other Day, and receives penalty rates for the day worked, the employee will not receive a payment under (f)(i) in respect of the day not worked.
- (i) Public holidays occurring on rostered days off – 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 unless he/she is required to work on the public holiday, notwithstanding the following:

- (i) In determining whether a part-time employee who works a variable roster is entitled to receive public holiday penalty rates for a particular public holiday not worked, the employer will determine this by reviewing the roster pattern of the individual over the preceding six months. If the rosters show that the employee has worked 50% or more of the days on which a particular public holiday falls, the employee shall be entitled to receive the 'rostered off' benefit for that public holiday.
- (ii) For the purposes of this clause the 'rostered off' benefit shall be calculated by adding together the hours worked by the employee on the particular day of the week on which the public holiday falls over the immediately preceding six months and averaging those hours in respect of those days worked by the employee.
- (j) For the purpose of this clause only, a Weekend Worker is an employee who works ordinary hours on a Saturday or Sunday.

#### 24. PERSONAL / CARER'S LEAVE

- (a) The paid leave provisions of this clause apply to full-time and part-time employees (on a pro rata basis) but do not apply to casual employees.
- (b) Access to paid personal leave
  - (i) Paid personal leave is available to an employee, when they are absent:
    - (1) due to personal illness or injury (sick leave); or
    - (2) for the purposes of caring for or supporting an immediate family or household member who is ill or injured and requires care or support or who requires care or support due to an unexpected emergency.
  - (ii) The amount of personal leave to which a full-time employee is entitled depends on how long they have worked for the employer and accrues as follows:

(c) Amount of paid personal leave

(i) An employee is entitled to the following amount of paid personal leave:

- (1) up to 7 hours and 36 minutes, for each month of service in the first year of service;
- (2) up to 106 hours and 24 minutes, in each year in the second, third and fourth years of service;
- (3) up to 159 hours and 36 minutes, in the fifth and following years of service.

(ii) Personal / Carer's leave accumulates from year to year and is accrued progressively during the year based on the employee's ordinary hours of work.

(d) Notification and evidence of Personal Leave

(i) An employee must give notice to the Employer of his/her intention to take personal/carer's leave as soon as practicable.

(ii) The notice must include how long the employee expects to be away from work.

(iii) Evidence Supporting Claim

- (1) Claims for personal leave shall be supported by a certificate from a registered health practitioner or a Statutory Declaration signed by the employee. Provided that the use of statutory declarations as evidence shall be limited to not more than three occasions per year in respect to absences not exceeding a single day/ shift.

- (2) Provided that any employee may be absent through sickness for one day without furnishing evidence of such sickness on not more than three occasions in any one year of service.

(e) Notification and evidence of Carer's Leave

(i) An employee, other than a casual employee, shall be entitled to use, in accordance with this subclause, any current or accrued personal / carer's leave entitlement for the purposes of caring for or supporting a member of his/her immediate family or household where there is a personal injury or illness affecting the member or there is an unexpected emergency.

(ii) The employee shall, if required, establish, either by production of a certificate from a registered health practitioner or statutory declaration, the relationship to the employee of the person requiring care or support (establishing that the person is a member of the employee's immediate family or household member), the reasons for taking such leave and the estimated length of absence.

(iii) An employee shall, wherever practicable, give the employer notice, prior to the absence, of the intention to take leave. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(f) Unpaid Carer's Leave

- (i) Casual employees and employees who have exhausted all paid personal / carer's leave entitlements, are entitled to take 2 days of unpaid carer's leave per occasion to provide care or support for members of their immediate family or household who are ill/ injured or who require care or support due to an unexpected emergency.

25. COMPASSIONATE LEAVE

- (a) An employee is entitled to 2 days of 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:
  - (i) contracts or develops a personal illness that poses a serious threat to his or her life; or
  - (ii) sustains a personal injury that poses a serious threat to his or her life; or
  - (iii) dies.
- (b) The entitlement to compassionate leave also applies when:
  - (i) a child is stillborn, where the child would have been a member of the employee's immediate family, or a member of the employee's household, if the child had been born alive; or
  - (ii) the employee, or the employee's spouse or de facto partner, has a miscarriage.
- (c) An employee may take compassionate leave for a particular permissible occasion if the leave is taken:
  - (i) 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, referred to in subclause (a); or
  - (ii) after the death of the member of the employee's immediate family or household referred to in subclause (a) or the stillbirth of the child referred to in sub-clause (b)(i); or
  - (iii) after the employee, or the employee's spouse or de facto partner, has the miscarriage referred to in sub-clause (b)(ii).
- (d) An employee may take compassionate leave for a particular permissible occasion as a single continuous 2 day period; or 2 separate periods of 1 day each; or any separate periods to which the employee and the employer agree.
- (e) If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.
- (f) If, in accordance with this Clause, an employee, other than a casual employee, takes a period of compassionate leave, the employer must pay the employee at the employee's ordinary rate of pay for the employee's ordinary hours of work in the period. For casual employees, compassionate leave is unpaid leave.
- (g) The employee, if required by the employer, shall supply relevant evidence of the requirement for such leave. Such evidence may include a requirement to supply a

medical certificate.

## 26. LONG SERVICE LEAVE

### (a) Entitlement

- (i) Employees shall be entitled to long service leave as hereinafter provided.
- (ii) An employee shall be entitled to long service leave with pay, in respect of continuous service with the employer in accordance with the provisions of this Clause.
- (iii) An employee shall have an entitlement to long service leave after seven years of continuous service with the Employer. The entitlement will be based on the rate of 1.733 weeks per year of continuous service.

### (b) Service entitling to leave

- (i) Subject to this subclause service shall also include all periods during which an employee was serving in Her Majesty's Forces or was made available by the employer for National Duty.
- (ii) Where a business is transmitted from one employer (the old employer) to another employer (the new employer) an employee who worked with the old employer and who continues in the service of the new employer shall be entitled to count her/his service with the old employer as service with the new employer for the purposes of this clause.
- (iii) For the purposes of this Clause service shall be deemed to be continuous notwithstanding:
  - (1) the taking of any annual leave or long service leave; or other paid leave approved in writing by the employer and not covered by sub-clause (b)(iii)(2) to (b)(iii)(4).
  - (2) any absence from work of not more than fourteen days in any one year on account of illness or injury or if applicable such longer period as provided in the Personal Leave clause of this Agreement;
  - (3) any interruption or ending of the employment by the employer if the interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;
  - (4) any absence on account of injury arising out of or in the course of the employment of the employee for a period during which payment is made under the Accident pay clause of this Agreement;
  - (5) any leave of absence of the employee where the absence is authorised in advance in writing by the employer to be counted as service;
  - (6) any interruption arising directly or indirectly from an industrial dispute;
  - (7) the dismissal of an employee, but only if the employee is re-employed within a period not exceeding two months after the dismissal;
  - (8) any absence from work of an employee from work for a period not exceeding twelve months or longer as agreed under the parental leave

clause of this Agreement in respect of any pregnancy or adoption;

- (9) in the case of a Registered Nurse, any unpaid absence of not more than 24 months for the sole purpose of undertaking a course of study related to nursing where the written approval of the employer is given;
    - (10) any other absence of an employee by leave of the employer, or on account of injury arising out of or in the course of his or her employment not covered by (b)(iii)(4) of this subclause.
  - (iv) In calculating the period of continuous service of any employee, any interruption or absence of a kind mentioned in (b)(iii)(1) to (b)(iii)(5) shall be counted as part of the period of their service, but any interruption or absence of a kind mentioned in (b)(iii)(6) to (b)(iii)(10) shall not be counted as part of the period of service unless it is so authorised in writing by the employer.
  - (v) The employer shall keep or cause to be kept a long service record for each employee, containing particulars of service, leave taken and payments made.
- (c) Payment in lieu of long service leave on the death of an employee
- Where an employee who has completed at least seven years' service dies while still in the employment of the Employer, the Employer shall pay to such employee's personal representative the long service leave entitlement that has been accrued.
- (d) Payment for period of leave
- (i) Payment to an employee in respect of long service leave shall be made at the same time as payment would have been made if the employee had remained on duty, unless otherwise requested by the employee (for example, a request that the full amount be paid at the start of the leave period).
  - (ii) Where the employment of an employee is for any reason terminated before the employee takes any long service leave to which he or she is entitled or where any long service leave accrues to an employee pursuant to clause 26(a)(iii) hereof the employee shall subject to the provisions of clause 26(d)(iii) be entitled to pay in respect of such leave as at the date of termination of employment.
  - (iii) Where a wage increase occurs in an employee's ordinary pay during any period of long service leave taken by the employee, the employee shall be entitled to receive payment of the amount of any increase.
- (e) Taking of leave
- (i) When an employee becomes entitled to long service leave such leave shall be granted by the Employer within six months from the date of the entitlement, but the taking of such leave may be postponed to such a date as is mutually agreed.
  - (ii) Any long service leave shall be inclusive of any public holiday or accrued day off occurring during the period when leave is taken.
  - (iii) Long service leave should be accessed as a single period of leave, or in two or three separate periods. An employee may request to take long service leave for shorter periods.

(f) Definitions

(i) For the purposes of this Clause the following definitions apply:

- (1) "Pay" means remuneration for an employee's normal weekly hours of work calculated at the employee's ordinary pay provided in Appendix 1 hereof at the time the leave is taken or (if the employee dies before the completion of leave so taken) as at the time of his or her death; and shall include the amount of any increase to the employee's ordinary pay which occurred during the period of leave as from the date such increase operates.
- (2) "Month" shall mean a calendar month.

(g) Requests for alterations to payment and quantum of leave

- (i) At the request in writing of the employee, and then by agreement of the Employer, Long Service Leave entitlements may be taken as double the quantum of leave at half pay.
- (ii) Where the employee is considering making such a request, the employer recommends that the employee seek independent financial advice as to the relevant taxation implications, if any, prior to making such a request.
- (iii) The Employer will provide to the employee in writing an indication of the payment and the tax payable as a result of the employee choosing double the leave at half pay prior to the request by the employee being finalised.

27. ACCIDENT PAY

Where an entitlement to accident make-up pay arises under this part any reference to the *Accident Compensation Act 1985* (or 'the Act') shall be deemed to include a reference to the *Workplace Injury Rehabilitation and Compensation Act 2013*, as amended from time to time.

(a) Definitions

The words hereunder shall bear the respective definitions set out herein.

(i) Accident pay

- (1) Total incapacity In the case of an employee who is or deemed to be totally incapacitated within the meaning of the Act and arising from an injury covered by this Clause means a weekly payment of an amount representing the difference between the total amount of compensation paid under the Act for the week in question and the total 38 hour weekly rate and weekly over Agreement payment for a day employee which would have been payable under this part for the employee's normal classification of work for the week in question if she/he had been performing her/his normal duties provided that such latter rate shall exclude additional remuneration by way of shift premiums, overtime payments, special rates or other similar payments.

(ii) Partial incapacity

In the case of an employee who is or deemed to be partially incapacitated within the meaning of the Act and arising from an injury covered by this Clause means a weekly payment of an amount representing the difference between the total amount of compensation paid under the Act for the period in question together with the average weekly amount the employee is earning or is able to earn in some suitable employment or business (as determined expressly or by implication



by the Accident Compensation Conciliation Service or as agreed between the parties) and the total 38 hour weekly rate and weekly over-agreement payment for a day employee which would have been payable under this part for the employee's normal classification of work for the week in question if he had been performing his normal duties provided that such latter rate shall exclude additional remuneration by way of shift premiums, overtime payments, special rates or other similar payments.

- (1) The total 38 hour weekly agreement rate and weekly over-agreement payment abovementioned shall be the same as that applying for a total incapacity provided that where an employee receives a weekly payment under this section and subsequently such payment is reduced pursuant to the Act such reduction will not increase the liability of the employer to increase the amount of accident pay in respect of that injury.
- (2) For the purposes of the calculation of the total 38 hour weekly agreement rate and weekly over-agreement payment in (a)(i) and (a)(ii) payments made to an employee arising from a production incentive earnings scheme (whether arising from a payment by results, task or bonus scheme or however titled) shall not be taken into account.

(iii) Payment for part of a week

Where an employee receives accident pay and such pay is payable for incapacity for part of the week the amount shall be direct pro rata.

- (iv) Injury shall be given the same meaning and application as applying under the Act, as amended from time to time and no injury shall result in the application of accident pay unless an entitlement exists under the Act.

(b) Qualification for payment

Always subject to the terms of this clause, an employee covered by this part shall upon receiving payment of compensation and continuing to receive such payment in respect of a weekly incapacity within the meaning of the Act be paid accident pay by her/his employer who is liable to pay compensation under the Act, which said liability by the employer for accident pay may be discharged by another person on his behalf, provided that:

- (i) Accident pay shall only be payable to an employee whilst such employee remains in the employment of the employer by whom she/he was employed at the time of the incapacity and then only for such period as she/he receives a weekly payment under the Act. Provided that if an employee on partial incapacity cannot obtain suitable employment from hers/his employer but such alternative employment is available with another employer than the relevant amount of accident pay shall be payable.
  - (1) Provided further that in the case of the termination of employment by an employer of an employee who is incapacitated and who except for such termination would be entitled to accident pay, accident pay shall continue to apply subject to the provisions of this clause except in those cases where the termination is due to serious and/or wilful misconduct on the part of the employee.
  - (2) In order to qualify for the continuance of accident pay on termination an

employee shall if required provide evidence to his/her employer of the continuing payment of weekly employees compensation payments.

- (c) Accident pay shall not apply to any incapacity occurring during the first two weeks of employment unless such incapacity continues beyond the first two weeks and then subject to (d) and to the maximum period of payment prescribed elsewhere herein, accident pay shall apply only to the period of incapacity after the first two weeks.
  - (i) Provided that as to industrial diseases contracted by a gradual process or injuries subject to recurrence, aggravation or acceleration as provided in section 3 of the Act such injuries or diseases shall not be subject to accident pay unless the employee has been employed with the employer at the time of the incapacity for a minimum period of one month.
- (d) Accident pay shall not apply in respect of any injury during the first five normal working days of incapacity.
  - (i) Provided however that in the case of a Registered Nurse or Mothercraft Nurse who contracts an infectious disease in the course of duty and is entitled to receive workers compensation therefore shall receive accident pay from the first day of the incapacity.
- (e) Maximum period of payment

The maximum period or aggregate of periods of accident pay to be made by an employer shall be a total of 39 weeks for any one injury as defined in (a)(iv)
- (f) Absences on other paid leave

An employee shall not be entitled to payment of accident pay in respect of any period of other paid leave of absence.
- (g) Notice of injury

An employee upon receiving an injury for which she/he claims to be entitled to receive accident pay shall give notice in writing of the said injury to her/his employer as soon as reasonably practicable after the occurrence thereof provided that such notice may be given by a representative of the employee.
- (h) Medical examination
  - (i) In order to receive entitlement to accident pay an employee shall conform to the requirements of the Act as to medical examination.
  - (ii) Where in accordance with the Act a medical referee gives a certificate as to the condition of the employee and her/his fitness for work or specifies work for which the employee is fit and such work is made available by the employer and refused by the employee or the employee fails to commence the work. Accident pay shall cease from the date of such refusal or failure to commence the work.
- (i) Cessation of weekly payments

Where there is a cessation or redemption of weekly compensation payments under the Act the employer's liability to pay accident pay shall cease as from the date of such cessation or redemption.
- (j) Civil damage claims

- (i) An employee receiving or who has received accident pay shall advise her/his employer of any action she/he may institute or any claim she/he may make for damages. Further the employee shall, if requested, provide an authority to the employer entitling the employer to a charge upon any money payable pursuant to any judgement or settlement on that injury.
  - (ii) Where an employee obtains a judgement or settlement for damages in respect of an injury for which she/he has received accident pay the employer's liability to pay accident pay shall cease from the date of such judgement or settlement provided that if the judgement or settlement for damages is not reduced either in whole or part by the amount of accident pay made by the employer the employee shall pay to her/his employer any amount of accident pay already received in respect of that injury by which the judgement or settlement has not been so reduced.
  - (iii) Where an employee obtains a judgement or settlement for damages against a person other than the employer in respect of an injury for which she/he has received accident pay the employer's liability to pay accident pay shall cease from the date of such judgement or settlement provided that if the judgement or settlement for damages is not reduced either in whole or part by the amount of accident pay made by the employer the employee shall pay to her/his employer any amount of accident pay already received in respect of that injury by which the judgement or settlement has not been so reduced.
- (k) Insurance against liability
- Nothing in this part shall require an employer to insure against her/his liability for accident pay.
- (l) Variations in compensation rates
- Any changes in compensation rates under the Act shall not increase the amount of accident pay above the amount that would have been payable had the rates of compensation remained unchanged.
- (m) Death of an employee
- All rights to accident pay shall cease on the death of an employee.

## 28. DISCIPLINARY PROCEDURE

- (a) Where disciplinary action may be necessary, the management representative shall notify the employee of the issues in writing and the employee will be given an opportunity to respond to these issues. In the event that the employee's response is unsatisfactory, a first warning in writing may be issued. This warning will be recorded on the employee's personnel file.
- (b) If there are further performance or conduct issues, the employee will again be notified in writing of the matter and a response requested from the employee. If appropriate, a second warning in writing will be given to the employee and recorded on the employee's personnel file.
- (c) In the event that there are further performance or conduct issues, the employee will again be notified in writing of the matter and a response requested. If appropriate, a final written warning will be issued to the employee and recorded on the employee's personnel file.

- (d) In the event of further performance or conduct issues, then the employee may be terminated after the matters have been investigated and reasons sought from the employee.
- (e) Notwithstanding the above process, for serious matters pertaining to conduct or performance the employer may also issue a “final warning” in the first instance. A “final warning” shall be such that the employee is notified that in the event that there are further performance or conduct issues the employee may be terminated. Further, termination or summary dismissal of an employee may still occur for acts of serious misconduct.
- (f) During all steps in the Disciplinary Procedure, the employee has the right to representation of his or her choice. The procedure may be delayed due to the unavailability of the employee’s chosen representative. However, in accordance with the principles of natural justice disciplinary matters are to be dealt with in a timely manner and the process will not be unreasonably delayed on account of the unavailability of the employee’s chosen representative.
- (g) The employer may be represented by the representative of their choice.
- (h) Records relating to disciplinary procedures will be disregarded where a continuous period of 12 months elapses without further warning/s. Records relating to disciplinary procedures will be destroyed after a period of two (2) years where no further warning/s arise.
- (i) This clause shall not apply until the employee has 6 month’s continuous service with the Employer. However, where the Employer is considering the termination of an Employee’s employment within the first 6 months of service with the Employer, the Employer will endeavour to give the Employee an opportunity to address any concerns by providing such concerns in writing to the employee and meeting with the employee to discuss the concerns. They must also be able to have a representative of their choice present at any meeting to consider the allegations and the Employee’s response

## 29. TERMINATION OF EMPLOYMENT

### Notice of termination by the Employer

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

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

- (b) In addition to this notice, where the employee is over 45 years of age at the time of the giving of the notice with not less than two years continuous service, they will be entitled to an additional week’s notice.
- (c) Payment in lieu of part or all of the notice will be made if the appropriate notice period, or part thereof, is not required to be worked.
- (d) In calculating any payment in lieu of notice, the employee will be entitled to receive their

full rate of pay (inclusive of penalty rates, allowances) that they would have received had they worked during the notice period,

- (e) The period of notice in this Clause shall not apply in the case of dismissal for serious misconduct, or in the case of casual employees or employees engaged for a specific period of time or for a specific task or tasks.
- (f) Notwithstanding the foregoing provisions, where the employee has been engaged as a trainee for a specific period of time, the employee shall, once the traineeship is completed and provided that the trainees' services are retained, have all service including the training period counted in determining entitlements. In the event that a trainee's engagement is terminated at the end of the traineeship and is re-engaged by the employer within six months of such termination the period of traineeship shall be counted as service in determining any future termination.

#### Notice of termination by the Employee

- (g) The notice of termination required to be given by the employee is the same as that required of the Employer, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.
- (h) If an employee who is at least 18 years old does not give the period of notice required under paragraph (a), then in accordance with section 324 of the Act, the Employer may deduct from wages due to the employee under this Agreement an amount that is no more than one week's wages for the employee.
- (i) If the Employer has agreed to a shorter period of notice than that required under paragraph (a), then no deduction can be made under paragraph (h).
- (j) Any deduction made under paragraph (h) must not be unreasonable in the circumstances.

### 30. EXAMINATION LEAVE

- (a) Employees shall be entitled to five days paid leave in any one year for the purposes of undertaking and/or preparing for examinations in a course of study. Leave entitlements pursuant to this Clause shall not accumulate from year to year.
- (b) Entitlement to leave pursuant to subclause (a) shall be available to full-time and part-time employees who are employed to work at least three shifts or 24 hours per week.
- (c) Entitlement to leave pursuant to subclause (a) shall be subject to an employee having been employed by the Employer for twelve months immediately prior to taking of examination leave.
- (d) Entitlement to leave pursuant to subclause (a) shall be granted for studies which are:
  - (i) related to Classification in Grades duty requirements; and / or
  - (ii) relevant to advancement through the career structure, including undergraduate bachelor of nursing education for Enrolled Nurses.
- (e) Such studies would normally be undertaken in a Tertiary Institution.
- (f) Entitlement to leave pursuant to subclause (a) shall be taken at a time that is mutually agreed between the employer and the employee. The employer shall not unreasonably

withhold approval for such leave.

**31. STUDY LEAVE FOR POST GRADUATE STUDIES**

- (a) Full time employees shall be entitled to four hours paid Study Leave (pro rata for part-time employees) per week for twenty-six weeks per annum for approved post graduate study in any one year for the purposes of attending courses and/or undertaking or preparing for examinations in a relevant post graduate course of study. Part time employees shall be entitled to Study Leave in accordance with this clause on a pro rata basis. Leave entitlements pursuant to this clause shall not accumulate from year to year.
- (b) Entitlement to Study Leave shall be granted for studies which are relevant to employment at the establishment.
- (c) Entitlement to Study Leave shall be taken at a time that is mutually agreed between the employer and the employee. The employer shall not unreasonably withhold approval for such leave.

**32. PROFESSIONAL DEVELOPMENT/ CONFERENCE LEAVE**

- (a) The Employer shall ensure that operating budgets make reasonable provision for the ongoing professional development of nursing staff. The Employer will encourage all nursing staff to attend relevant seminars and conferences on a regular basis. Subject to the employer's approval, costs will either be shared or paid for in total by the employer when appropriate.
- (b) The employer further agrees that full-time and part-time (four shifts or more per fortnight) Registered Nurses and Enrolled Nurses will be entitled to 5 days professional development/conference leave per year. This leave is in addition to other leave entitlements in the Agreement. To access the benefits of this provision it is the responsibility of the employee to make an application for this leave. This leave is to be taken within each calendar year and is not cumulative. This leave will apply pro-rata to part time employees.
- (c) An application for this leave, nominating the preferred date(s), will be made in writing providing a brief description of the nature of the professional development activity to be undertaken. The application may be for research, attendance at seminars and conferences.
- (d) This application shall be made at least six weeks' prior to the requested date(s) and shall be subject to approved by the Employer. The approval shall not be unreasonably refused.
- (e) The Nurses will be required to report on the professional development seminar/conference to the Employer.

**33. QUALIFICATION ALLOWANCE - REGISTERED NURSES**

- (a) A Registered Nurse will be entitled to a qualification allowance set out below, subject to the following:
  - (i) a Registered Nurse holding more than one qualification is only entitled to one qualification allowance, being the allowance for the highest qualification held having regard to sub-clause (a)(ii)
  - (ii) it must be demonstrated that the qualification is relevant to the employee's current

are of practice;

- (iii) a Registered Nurse claiming entitlement to a qualification allowance must provide to the employer evidence of that Registered Nurse holding the qualification for which the entitlement is claimed.
- (iv) for the avoidance of doubt, a qualification allowance cannot be claimed by a Registered Nurse in respect of the employee's base qualification leading to registration as a Registered Nurse, with the exception of:
  - (1) A double degree
  - (2) A four year degree
  - (3) An honours degree
  - (4) A Masters degree
  - (5) A Doctorate
- (v) certificates obtained from training or education facilities shall be recognised provided that the programmes are equivalent to a University/Graduation certificate and the training/education facility verifies that in writing.
- (b) A Registered Nurse who holds a Hospital Certificate or Graduate Certificate (or equivalent) shall be paid, in addition to their salary, the allowance set out in Appendix 1.
- (c) A Registered Nurse who holds a Post-Graduate Diploma or a Degree (or equivalent) (other than a nursing undergraduate degree), or a double degree, shall be paid the allowance set out at Appendix 1.
- (d) A Registered Nurse who holds a Masters (including a Masters degree completed prior to, or that leads to registration), shall be paid the allowance set out at Appendix 1.
- (e) A Registered Nurse who holds a Doctorate, shall be paid the allowance set out at Appendix 1.
- (f) The above allowances are to be paid during all periods of leave except sick leave which exceeds 21 days and long service leave.
- (g) The allowance is to be paid on a pro-rata basis for non-full-time employees.
- (h) Unless an employee provides evidence to the Employer of the qualification the employee shall not be entitled to payment of a qualification allowance. Payment of the qualification allowance shall be made on and from the date that evidence is provided, subject to the Employer being satisfied that the qualification held entitles the employee to an allowance under this clause.

#### 34. QUALIFICATION ALLOWANCE – ENROLLED NURSES

- (a) An enrolled nurse who holds the following certificate and who is required by the employer to use such a certificate in connection with his/her duties shall be paid an allowance of 4% of their weekly wage as per Appendix 1 of this Agreement:
  - (i) Operating Theatre (six months)
- (b) Unless an employee provides evidence to the Employer of the qualification, the employee shall not be entitled to payment of a qualification allowance. Payment of the

qualification allowance shall be made on and from the date that evidence is provided.

**35. VEHICLE ALLOWANCE**

- (a) An employee required and authorised to use their own motor vehicle in the course of their duties will be paid an allowance of \$0.92 per kilometre. This allowance will be indexed to ensure parity to the Nurses Award 2020.
- (b) 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 receipted account(s) or other evidence acceptable to the employer.
- (c) Provided further that the employee will not be entitled to reimbursement for expenses referred to in subclause (b) which exceed the mode of transport, meals or the standard of accommodation agreed with the Employer, for these purposes.

**36. CLOTHING / UNIFORM**

- (a) Employees required by the employer to wear uniforms will be supplied with an adequate number of items 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 the Employer free of cost to the employee.
- (b) Instead of the provision of such uniforms, the Employer may pay such employee a uniform allowance at the rate set out at Appendix 1 per shift or part thereof on duty or the rate as set out in Appendix 1 per week, whichever is the lesser amount. Where such employee's uniforms are not laundered by or at the expense of the employer, the employee will be paid a laundry allowance as set out at Appendix 1 per shift or part thereof on duty or the amount set out at Appendix 1 per week, whichever is the lesser amount.
- (c) The uniform allowance, but not the laundry allowance, will be paid during all absences on leave, except absences on long service leave and absence on personal / carer's leave beyond 21 days. Where, prior to the taking of leave, an employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave will be the average of the allowance paid during the four weeks immediately preceding the taking of leave.
- (d) Where the Employer provides uniforms, such uniforms shall be supplied free of cost to each employee required to wear a uniform. An employee to whom a new uniform or part of a uniform has been issued who, without good reason, fails to return the corresponding article last supplied shall not be entitled to have such article replaced without payment therefore at a reasonable price subject to the requirements of section 324(1)(b) of the Fair Work Act 2009.
- (e) An employee, on leaving the service of the Employer, shall return any uniform or part thereof supplied by the Employer which is still in use immediately prior to leaving.

**37. HIGHER DUTIES**

- (a) An employee, who is required to relieve another employee in a higher classification than the one in which they are ordinarily employed for 3 days or more will be paid at the higher classification rate.



### 38. SHIFT ALLOWANCES

#### Morning/Afternoon Shift

- (a) In addition to any other rates prescribed elsewhere in this part of this Agreement an employee whose rostered hours of ordinary duty finish between 6.00p.m. and 8.00a.m or commence between 6.00p.m. and 6.30a.m. shall be paid an amount specified in Appendix 1 per rostered period of duty for any such period of duty.

#### Night Shift

- (b) Provided that in the case of an employee working on any rostered hours of ordinary duty, finishing on the day after commencing duty or commencing after midnight and before 5.00a.m he or she shall be paid an amount stipulated in the night shift allowance set out in Appendix 1 per rostered period of duty for any such period of duty.

### 39. MEAL ALLOWANCE (OVERTIME)

- (a) When required to work overtime after an employee's rostered ordinary hours of work on a day / shift, and such overtime exceeds one hour, the employee will be entitled to a meal or the payment of a meal allowance in Appendix 1. Provided that where such overtime work exceeds four hours a further meal allowance, of the amount set out in Appendix 1, will be paid.
- (b) Sub-clause (a) will not apply when an employee could reasonably return home for a meal within the meal break.

### 40. JURY SERVICE

- (a) An employee, required to attend for jury service during his or her ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his or her attendance for such jury service and the amount of ordinary salary he or she would have received in respect of the ordinary time he or she would have worked had he or she not been on jury service.
- (b) An employee shall notify his or her employer as soon as possible of the date upon which he or she is required to attend for jury service. Further the employee shall give his or her employer proof of his or her attendance at the court, the duration of such attendance and the amount received in respect of such jury service.
- (c) The Juries Act 2000 (Vic) contains obligations in relation to the payment of casual employees who perform jury service. This Agreement is not intended to reduce any obligation or entitlement under those provisions.

### 41. REDUNDANCY

- (a) Where the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and the change is likely to have a significant effect on employees of the employer, the employer shall consult with affected employees and their representative/s in accordance with the consultation regarding change provision of this Agreement.

#### Transfer to lower paid duties

- (b) Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) the employee shall be entitled to the same period of notice of transfer as she/he would be entitled to if her/his employment had been terminated, and the employer may

at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks' notice still owing.

#### Redundancy pay

- (c) In addition to the period of notice prescribed for termination, an employee whose employment is terminated because the employer no longer requires the job done by the employee to be done by anyone shall be paid the following amount of severance pay in respect of a period of continuous service.

Period of continuous service	Redundancy 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 over	16 weeks' pay

#### Definitions

- (d) "Week's pay" means the ordinary pay for the employee concerned.

#### Employee Leaving During Notice Period

- (e) An employee whose employment is terminated for reasons set out in paragraph (a) may terminate her/his employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had she/he remained with the employer until the expiry of such notice. Provided in such circumstances the employee shall not be entitled to payment in lieu of notice.

#### Alternative Employment

- (f) Subject to section 122 of the Act, where the employer obtains for the employee suitable alternative employment no severance payment is payable. Acceptable alternative employment means employment in the same discipline, without loss of income, within reasonable proximity of the employee's home and without imposition of a qualifying or probationary period.

#### Time off Period of Notice

- (g) During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (h) 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 shall, at the request of the employer, produce proof of attendance at an interview or she/he shall not receive payment for the time absent.
- (i) For this purpose a statutory declaration will be sufficient.

#### Employees with Less than One Year's Continuous Service

- (j) This clause does not apply to employees with less than one year's continuous service.

#### Employees Exempted

- (k) This clause shall not apply where employment has been terminated because the conduct of an employee justifies instant dismissal or in the case of casual employees, or employees engaged for a specific period of time or for a specified task or tasks.

#### 42. SALARY SACRIFICE PROCEDURE (SUPERANNUATION ONLY)

- (a) Permanent employees may be able to make voluntary pre-tax contributions or payments through a written salary sacrifice agreement between the employer and the employee. The employer will pay the salary sacrifice amount in accordance with the salary sacrifice agreement.
- (b) An employee may apply to have their ordinary time earnings reduced by an amount nominated by them as a salary sacrifice contribution for their benefit.
- (c) The total value of the reduced salary and the agreed value of the benefits provided will not be less than the amount that would otherwise be paid if the salary sacrifice arrangement was not in place.
- (d) The Employer recognises the need for employees to consider independent financial and taxation advice and recommend that employees consider such advice prior to entering into salary sacrifice arrangements.
- (e) In the event that the law governing superannuation and/or taxation make the objective of this clause ineffective, unattainable or illegal, the employer will advise the employee concerned. The salary sacrifice contribution arrangement will be terminated or amended to comply with such laws.
- (f) Unless otherwise agreed by the employer, an employee may revoke or vary their salary sacrifice contribution/payment by giving not less than one month's written notice, provided the terms of any other agreement relating to the salary sacrifice benefit are met.

#### 43. ON CALL ALLOWANCE

- (a) Employees shall be paid an on-call allowance as specified in Appendix 1 per twelve hour period. For any period beyond twelve hours the on call allowance will be paid pro rata on an hourly basis.
- (b) In the event of an employee being recalled to duty during an off-duty period, where the recall work is not continuous with the next succeeding rostered period of duty, that employee shall be paid a minimum of three hours pay at the appropriate overtime rate. An Employee recalled to work will not be required to work the full three hours if the recall work to be performed is completed in a shorter period.
- (c) The time spent travelling to and from the place of duty will count as time worked.

#### 44. STAFFING LEVELS

- (a) The Employer is committed to ensuring that staffing levels are appropriate in order to ensure the delivery of high quality patient care.

- (b) Should any nurse in the ward or unit feel the workloads are unreasonably heavy, on a regular basis, then they have a responsibility to discuss their concerns with their nurse manager. If appropriate action is not taken to address the workload issues, the nurses are responsible for informing the Director of Nursing.
- (c) The Employer shall appoint a full time Director of Nursing (however titled) who is a Registered Nurse with appropriate skill and experience for the role.
- (d) On afternoon shifts, night shifts and weekend shifts, a suitable qualified and experienced Registered Nurse shall be appointed to be in charge of the hospital and classified at Hospital Coordinator. For the avoidance of doubt, such Registered Nurse will be in charge of the inpatient unit and the facility at the same time.

#### 45. FLEXIBILITY ARRANGEMENTS

- (a) The employer and employees covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
  - (i) the agreement deals with 1 or more of the following matters:
    - (1) arrangements about when work is performed;
    - (2) overtime rates;
    - (3) penalty rates;
    - (4) allowances;
    - (5) leave loading; and
  - (ii) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (i); and
  - (iii) The employer and the individual employee must have genuinely made the agreement without coercion or duress.
- (b) The employer must ensure that the terms of the individual flexibility arrangement:
  - (i) are about permitted matters under section 172 of the *Fair Work Act 2009*;
  - (ii) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
  - (iii) result in the employee being better off overall than the employee would be if no arrangement was made.
- (c) The employer must ensure that the individual flexibility arrangement:
  - (i) is in writing;
  - (ii) includes the name of the employer and employee;
  - (iii) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - (iv) includes details of:
    - (1) the terms of the Enterprise Agreement that will be varied by the arrangement; and
    - (2) how the arrangement will vary the effect of the terms; and

- (3) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
    - (v) states the day on which the arrangement commences.
  - (d) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
  - (e) The employer or employee may terminate the individual flexibility arrangement:
    - (i) by giving no more than 28 days written notice to the other party to the arrangement; or
    - (ii) if the employer and employee agree in writing — at any time.
46. REPRESENTATIVE LEAVE
- (a) Leave to attend trade union and union delegate courses/seminars shall be as follows:
    - (i) The ANMF shall be entitled to nominate a delegate to utilise, to a maximum of 3 days per year (1 January to 31 December) for the totality of all applications of paid trade union, union delegate training leave, for the purpose of trade union training, union delegate courses, seminars provided that:
      - (1) the scope, content and level of the courses are directed to the enhancement of the operation of the settlement of dispute/dispute settlement procedure/s;
      - (2) that two weeks period of notice is provided to the employer;
      - (3) the approval of leave must have regard to the operational requirements of the employer;
      - (4) this leave shall be paid at the ordinary time rate of pay.
  - (b) Leave of absence granted pursuant to this clause shall count as service for all purposes of this Agreement.
47. DAYLIGHT SAVING
- (a) If an employee works on a shift during the time changes because of the introduction of, or cessation to, daylight saving, that employee shall be paid for the actual hours worked at ordinary pay (including any shift penalties or allowances ordinarily payable in respect of this shift).
  - (b) No overtime is payable for the additional hour worked because of daylight saving.
48. NURSE SPECIALIST
- (a) The Clinical Nurse Specialist classification shall be in accordance with the provisions of Appendix 2 of this Agreement.
  - (b) The Enrolled Nurse Specialist classification shall be in accordance with the provisions of Appendix 3 of this Agreement.
49. PURCHASED LEAVE (48/52)
- (a) Staff may apply for an additional four weeks paid annual leave.
  - (b) Approval is subject to mutual agreement of the employee and employer and is subject

to operational needs. Approval will be in writing and can be for a total of four weeks' additional paid annual leave with a proportionate reduction in the hourly rate of pay to take into account the increase in both annual leave and annual leave loading entitlements.

- (c) Where employees elect to take additional annual leave as specified in the above sub clauses existing annual leave entitlements would be increased in proportion to the reduction in the hourly rate of pay.
  - (i) Employees may not alter such election as specified in the above sub clauses during the year except with the agreement of the employer. Where the employee ceases to receive additional annual leave, the employee will revert back to the normal rate of pay and annual leave entitlement.
  - (ii) Any additional annual leave accrued under this clause shall not be subject to annual leave loading.

#### 50. CEREMONIAL LEAVE

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

#### 51. LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE

- (a) This clause applies to all employees, including casuals.

- (b) Definitions

In this clause:

- (i) *family and domestic violence* means violent, threatening or other abusive behaviour by a close relative of an Employee, a member of an Employee's household, or a current or former intimate partner of an Employee that seeks to coerce or control the Employee and that causes them harm or to be fearful.
  - (ii) family member means:
    - (1) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
    - (2) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
  - (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
  - (iv) A reference to a spouse or de facto partner in the definition of family member in clause 51(b) includes a former spouse or de facto partner.
- (c) Entitlement to leave
    - (i) An employee is entitled to 10 days' paid leave to deal with family and domestic violence, as follows:
      - (1) the leave is available in full at the start of each 12 month period of the employee's employment; and

- (2) the leave does not accumulate from year to year; and
    - (3) is available in full to part-time and casual employees.
  - (ii) A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the Employer.
  - (iii) Where an employee has exhausted their paid leave under this clause, the employee will be able to access accrued personal / carer's leave for the purposes described below.
- (d) Taking leave to deal with family and domestic violence
- (i) An employee may take leave to deal with family and domestic violence if the employee:
    - (1) is experiencing family and domestic violence; and
    - (2) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.
  - (ii) The reasons for which an employee may take leave include arranging for the safety of the employee or a close relative (including relocation), attending court hearings, accessing police services, attending counselling and attending appointments with medical, financial or legal professionals.
- (e) Service and continuity
- The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service. Paid leave will count as service.
- (f) Notice and evidence requirements
- (i) Notice
 

An employee must give the Employer notice of the taking of leave by the employee under this clause. The notice:

    - (1) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
    - (2) must advise the employer of the period, or expected period, of the leave.
  - (ii) Evidence
    - (1) An employee who has given the Employer notice of the taking of leave under this clause must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 51(d).
    - (2) Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.
- (g) Confidentiality
- (i) Employers must take steps to ensure information concerning any notice an

employee has given, or evidence an employee has provided under clause 51(f), is treated confidentially, as far as it is reasonably practicable to do so.

- (ii) Nothing in clause 51 prevents the Employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.
- (iii) The Employer acknowledges that information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. The Employer and employee may consult about the handling of sensitive information.

(h) Compliance

An employee is not entitled to take leave under clause 51 unless the employee complies with clause 51.

52. FLEXIBLE WORK ARRANGEMENTS

- (a) Employees are entitled to request flexible employment arrangements in accordance with the provisions of the NES.
- (b) Employees who have worked for the Employer for at least 12 months can request flexible working arrangements if they:
  - (i) are the parent, or have responsibility for the care, of a child who is school aged or younger;
  - (ii) are a carer (under the *Carer Recognition Act 2010* (Cth));
  - (iii) have a disability;
  - (iv) are 55 years of age or older;
  - (v) are experiencing family or domestic violence; or
  - (vi) provide care or support to a member of their household or immediate family who requires care and support because of family or domestic violence.
- (c) The Employee is not entitled to make the request unless:
  - (i) for an Employee other than a casual employee – the Employee has completed at least 12 months of continuous service with the Employer immediately before making the request; and
  - (ii) for a casual Employee – the Employee:
    - (1) is a long term casual Employee of the Employer immediately before making the request; and
    - (2) has a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.
- (d) The request must:
  - (i) be in writing; and
  - (ii) set out details of the change sought and of the reasons for the change.
- (e) The Employer must give the Employee a written response to the request within 21 days,



stating whether the Employer grants or refuses the request.

## **SCHEDULE 1: EMPLOYMENT CLASSIFICATIONS**

### **REGISTERED NURSE**

#### **Grade 2**

Grade 2 Year 1 - A Registered Nurse in his or her first year of experience following registration as a nurse with the Board.

Grade 2 Year 2 - A Registered Nurse in the second or subsequent years of experience as a Registered Nurse and not elsewhere classified.

#### **Clinical Nurse Specialist**

A Registered Nurse appointed as a Clinical Nurse Specialist and paid as such (refer to Appendix 2 – CNS Provisions).

#### **ANUM**

A Registered Nurse appointed as an Associate Unit Manager and paid as such.

#### **Grade 4A**

A Registered Nurse appointed as a Clinical Nurse Educator and paid as such.

#### **NUM**

A Registered Nurse appointed as a Unit Manager and paid as such.

#### **Hospital Coordinator**

A Registered Nurse appointed as an in-charge nurse on PM/ Night/ Weekend shifts and paid as such.

### **Enrolled Nurses**

#### **1.1 Enrolled Nurse Level 2 (EN2)**

- (a) **Cert IV Entry** - EN Level 2.1 is the entry to practise rate for the first year of experience of an Enrolled Nurse who holds a NMBA approved Cert IV – Nursing [HLT 43407] qualification without prior experience as an Enrolled Nurse. On completion of each year of experience thereafter the employee will progress to the next increment up to and including EN Level 2.6.
- (b) EN 2.1 to 2.6 inclusive will also apply to an Enrolled Nurse who holds a NMBA approved qualification in administration of medicines with an Administration of Medication Scope of up to four routes. Experience includes experience as an Enrolled Nurse prior to holding the Administration of Medication qualification.
- (c) **Diploma Entry** - EN Level 2.2 is the entry to practise rate for the first year of experience of an Enrolled Nurse who holds a NMBA approved Diploma of Nursing [HLT 51607] qualification without prior experience as an Enrolled Nurse. On completion of each year of experience thereafter the employee will progress to the next increment up to and including EN 2.6.
- (d) EN 2.3 to 2.6 inclusive also apply to an Enrolled Nurse who holds a NMBA approved qualification in administration of medicines with an Administration of Medication Scope of all five routes. Experience includes experience as an Enrolled Nurse prior to holding the Administration of Medication qualification.
- (e) **Progression** – An EN2 will progress through the increments on completion of a year

of experience, including previous experience.

**1.2** In this clause 'year of experience' has the meaning provided by clause 7.

**Enrolled Nurse Specialist** means an Enrolled Nurse appointed to the classification with either:

- (a) specific post registration qualifications and 12 months' experience. working in the clinical area of their specified post basic qualification, and who is responsible for clinical nursing duties, or
- (b) a minimum of 4 years post registration experience including 3 years' experience in the relevant specialist field. The ENS classification shall be available Enrolled Nurses employed full time or part time, and who meet the criteria outlined in Appendix 3.

# APPENDIX 1 – WAGE RATES AND ALLOWANCES

<b><u>Classification</u></b>	<b>Weekly Wage</b>	<b>Weekly Wage</b>	<b>Weekly Wage</b>
	<b>On commencement</b>	<b>1/07/2024</b>	<b>1/07/2025</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b><u>Registered Nurse</u></b>			
Grade 2 Year 1	1,299.00	1,367.97	1,422.69
Grade 2 Year 2	1,373.00	1,444.19	1,501.96
Grade 2 Year 3	1,445.00	1,518.35	1,579.08
Grade 2 Year 4	1,525.00	1,600.75	1,664.78
Grade 2 Year 5	1,603.00	1,681.09	1,748.33
Grade 2 Year 6	1,678.00	1,758.34	1,828.67
Grade 2 Year 7	1,763.00	1,845.89	1,919.73
Grade 2 Year 8	1,835.00	1,940.05	2,017.65
CNS	1,910.00	2,013.71	2,094.26
ANUM Year 1	2,055.00	2,166.65	2,253.32
ANUM Year 2	2,125.00	2,238.75	2,328.30
Grade 4A	2,177.00	2,285.85	2,377.28
NUM Year 1	2,425.00	2,547.75	2,649.66
NUM Year 2	2,425.00	2,547.75	2,649.66
NUM Year 3	2,425.00	2,547.75	2,649.66
Hospital Coordinator	2,186.00	2,301.58	2,393.64
<b><u>Enrolled Nurse</u></b>			
Grade 2 Year 1	1,231.00	1,297.93	1,349.85
Grade 2 Year 2	1,258.00	1,325.74	1,378.77
Grade 2 Year 3	1,286.00	1,354.58	1,408.76
Grade 2 Year 4	1,313.00	1,382.39	1,437.69
Grade 2 Year 5	1,340.00	1,410.20	1,466.61
Grade 2 Year 6	1,355.00	1,425.65	1,482.68
ENS	1,436.00	1,529.08	1,590.24

## Allowances

<b><u>ALLOWANCES</u></b>	<b>On commencement</b>	<b>1/07/2024</b>	<b>1/07/2025</b>
Morning Shift	32.00	32.96	34.28
Afternoon Shift	32.00	32.96	34.28
Night Shift	87.00	89.61	93.19
Change of roster allowance	37.00	38.11	39.25
On call	68.00	70.04	72.84
Grad Cert (per week)	60.00	61.80	64.27
Grad Dip (per week)	90.00	92.70	96.41
Masters (per week)	110.00	113.30	117.83
PhD (per week)	140.00	144.20	149.97
Laundry (per week)	1.60	1.65	1.71
Laundry (per day)	0.32	0.33	0.34
Uniform (per week)	1.23	1.27	1.32
Uniform (per day)	6.24	6.43	6.68
Meal allowance (OT greater than 1 hour)	14.10	14.52	15.10
Meal allowance (OT greater than 4 hours)	12.71	13.09	13.61

## APPENDIX 2 – CRITERIA FOR CLINICAL NURSE SPECIALIST

This classification is available to nurses currently classified within Registered Nurse Grade 2 in this Agreement. It provides recognition for nurses who meet the definition and eligibility and the criteria for clinical expertise set by the unit in which they practice.

### (i) Clinical Nurse Specialist - Eligibility

1. A Registered Nurse, of at least Grade 2 who is responsible for clinical nursing duties, who has specialist knowledge and experience, and who has worked for a minimum of 6 months in a relevant area.
2. Candidates must be employed by the Employer for a minimum of 6 months before they are eligible to apply for CNS status.

### (ii) Broad Selection Criteria

#### Clinical Skill

1. The nurse must demonstrate higher levels of skill in clinical decision making, in particular problem identification, solution, analysis, and interpretation of clinical data.
2. The nurse must work toward maintenance and improvements of clinical standards.
  - \* Contribute to the establishment and updating of policies and procedures for clinical practice within the unit; and
  - \* Maintaining the established standard of clinical practice for him/ herself and other nurses;
  - \* Maintenance of CPE hours for AHPRA.

#### Unit Selection Criteria

In addition to the above Criteria, Registered Nurses applying for Clinical Nurse Specialist status are required to meet the Unit Specific Criteria which is outlined as follows:

#### Clinical

1. To demonstrate a comprehensive knowledge of all aspects of care for all patients, as evidenced by the ability to identify changing patient needs and initiation of appropriate interventions.  
This includes patient assessment, patient education, data interpretation and specific nursing care.
2. To demonstrate an advanced level of skill in the set up, operation, problem solving and maintenance of equipment commonly used in the management of patients (if applicable to their area of practice).

#### Professional Behaviour and Development

The nurse must demonstrate three or more of the following:

- \* Customer service in accordance with the Employer's customer service standards.
- \* Positive role-modeling, including the provision of constructive feedback to others as required.
- \* Involvement in relevant professional bodies and professional forums.
- \* Act as a mentor or preceptor to less experienced nurses, including graduate nurses.
- \* Support of, and contribution to, quality improvement and research projects within the area of practice and unit.
- \* Contribution to legal and ethical nursing issues.
- \* The nurse must act as a resource person for others.

- \* Participate in an organisational or unit portfolio.

Educational Objectives (to be set and agreed on appointment and subsequent annual performance reviews)

1. Initiate at least three education sessions within the unit. For example:
  - \* Present a teaching session to staff within the unit or develop a self-directed learning package.
  - \* Negotiate another of your choice
2. Where available and practicable within paid time, attend a minimum of 20 hours of ongoing education annually. This may include unit-based in-service education, organisational education programs and relevant seminars/conferences.
3. Perform role of preceptor for all clinical nurses within their unit.
  - \* Member of a relevant interest group or clinical professional body.

The Employer will ensure that appropriate time and resources are made available in order for CNS nurses to achieve the above.

### (iii) Over-riding Principles

When considering a nurse for appointment to the Clinical Nurse Specialist classification, the following must be taken into account:

1. The CNS classification's primary focus is clinical.
2. The Clinical Nurse Specialist must be demonstrating higher skills than would generally be expected of other Grade 2 registered nurses in the area. It needs to be recognised that the level of clinical practice reflects a higher level of skill than would be expected of other Grade 2 nurses but less than Grade 3 positions.
3. The fact that a nurse practices his/her profession in a narrow so-called "specialised" field does not make him or her a Clinical Nurse Specialist.
4. Care needs to be taken to ensure that the practice of new skills or the performance of any other particular task may merely reflect changes occurring generally to all levels of nursing care and treatment which is general change in the overall standard of nursing. These general changes to nursing care and standards do not qualify an employee to be paid as a Clinical Nurse Specialist. The fact that a nurse practices "new" skills or highly technical skills does not make that nurse a Clinical Nurse Specialist.
5. The fact that a nurse may be able to undertake and perform some tasks better than other nurses or that they may be considered to be "all rounders" and therefore able to undertake all tasks competently does not justify the specialist status.
6. A registered nurse who does meet the agreement definition and criteria as contained herein but has been out of the workforce for some time, could not appropriately be classified as a Clinical Nurse Specialist immediately upon entering the workforce.
7. The term "unit" in the foregoing is synonymous with the term "department".

### PROCESS FOR APPLICATION FOR CNS

- \* Written application to be made to the CEO/DON
- \* Interview will be with CEO/DON and another nominated nurse.
- \* The successful applicant will be notified in writing within 7 days. The pay office will be informed of the new classification at the same time, with implementation to occur from the next pay period.
- \* If the applicant is unsuccessful, they are to be notified of the outcome within 7 days. An explanation will be given to the applicant as to the reasons for the decision.

## APPENDIX 3 – CRITERIA FOR ENROLLED NURSE SPECIALIST

### Criteria

This classification is available to Enrolled Nurses. It provides recognition for Enrolled Nurses who are performing at a specialist level within their role and who meet the eligibility of the role.

### Eligibility

An enrolled nurse who is responsible for clinical nursing duties, who has specific post-registration qualifications and who has worked for 12 months' post qualification in the clinical area of his/her specialty;

OR

has a minimum of 4 years' full time equivalent post-registration experience with 3 of those years being in the relevant specialist field.

For clarification, a post registration qualification in Medication Administration is not included in the eligibility criteria.

The candidate for Enrolled Nurse Specialist status must be rostered to work their total hours in the specified unit and be employed either full time or part time.

The Enrolled Nurse will be required to have at least 12 months service with the Employer before being eligible to apply for an Enrolled Nurse Specialist position.

### Selection Criteria for Application

The Enrolled Nurse must demonstrate broad expertise within the specialised area of nursing practice within the EN scope of practice (see also Unit Selection Criteria). The Enrolled Nurse must consistently demonstrate higher skills in:

#### 1. Clinical Skill

- (a) Practices using specialised or advanced knowledge and skills in a clinical area within the enrolled nursing scope of practice.
- (b) Contributes to the education of new graduate Enrolled Nurses and /or Trainee Enrolled Nurses, through preceptorship, performance appraisal processes. Contributes to the maintenance and improvement of clinical standards relevant to Enrolled Nurses.
- (c) Contribution to establishing and updating protocols and procedures for clinical practice within the unit.

#### 2. Professional Behaviour

- (d) Positive role model;
- (e) Act as a mentor or preceptor to less experienced Enrolled Nurses, including graduate nurses;
- (f) Support of, and contribution to, quality improvement and research projects within the area of practice and ward/unit/department;
- (g) Acting as a resource person to other Enrolled Nurses in relation to clinical practice.

#### 3. Professional Development



- (h) Membership of relevant professional body, and ability to demonstrate and document:
  - (i) learning from a journal article, or attendance at a conference or seminar, or reflection on seminar or conference papers; or
  - (ii) participation in effective learning activities relevant to their learning needs; or
  - (iii) membership of a sub-grouping of the professional association relevant to their area of practice.
- (i) Contribution to the education of other professionals, for example, providing at least one in-service education program each year;
- (j) Undertaking own planned professional development and competence through various forms of continuing education, for example, conferences, study days, formal study, reading.

### **Clinical and Educational Objectives**

1. Will be set for each successful applicant in line with Epworth's Enrolled Nurse Specialist package to be located on the intranet.
2. Objectives are to be set and agreed upon on appointment and subsequent annual performance reviews.

### **Process for Application for Enrolled Nurse Specialist**

Twice a year for fourteen days applications will be invited from Enrolled Nurses who believe that they meet the criteria for Enrolled Nurse Specialist classification.

Written applications are to be made to the Director of Clinical Services.

Interviews, where required will be undertaken by the Director Clinical Services, Nurse Unit Manager, Educator and / or Associate Nurse Unit Manager.

The successful applicant will be notified in writing within fourteen days. The pay office will be informed of the new classification at the same time, with implementation to occur from the next pay period.

If the applicant is unsuccessful, they are to be notified of the outcome within fourteen days. An explanation will be given to the applicant as to the reasons for the decision.

### **Appeal Process - Unsuccessful Applications**

Unsuccessful applicants may:

- (a) Meet with Director Clinical Services, Nurse Unit Manager, Associate Nurse Unit Manager and/or Nurse Educator for debriefing.
- (b) Be provided with reasons, based on selection criteria, why his/her application was unsuccessful based on the same.
- (c) Discuss the application further, setting objectives and time frames for completion, allowing appropriate time for preparation for future application.
- (d) The appeal decision is to be communicated to the applicant within two weeks of notification of the initial decision.

A letter of appeal should be addressed to the Director of Clinical Services.

### **Maintenance of Enrolled Nurse Specialist Classification**

To maintain the classification of Enrolled Nurse Specialist, an Enrolled Nurse must continue to demonstrate higher skills and annually provide evidence of the following:

- (a) Consistent and active demonstration of commitment to Epworth's values and behaviours through professional practice, teamwork and collegiality; and
- (b) Portfolio management and/or active participation and demonstration of outcomes in any of the following areas: EQuIP / Quality project, Work Health and Safety, Infection Control; and
- (c) Successful completion of all mandatory competencies; and
- (d) Contributes to the education of new graduate Enrolled Nurses and/or Trainee Enrolled Nurses. For example, the Enrolled Nurse Specialist may precept or mentor new graduate Enrolled Nurses, and/or Trainee Enrolled Nurses or contribute to the performance appraisal of less experienced Enrolled Nurses; and
- (e) Satisfactory completion of each of the clinical and educational objectives set for the preceding 12 months.

The maintenance of the ENS classification can be assessed separately or in the annual PDP review process.

Where an Enrolled Nurse with ENS classification does not meet the requirements for the maintenance of Enrolled Nurse Specialist classification, she/he will be re-classified to the appropriate EN Grade and year classification.

I am authorised to sign this Agreement on behalf of ADENEY PRIVATE HOSPITAL PTY LTD



LOUISE O'CONNOR CEO

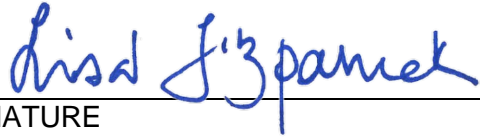
SIGNATURE

PRINT NAME AND AUTHORITY / TITLE

Address: 209 COTHAM RD  
KEW  
3101

Date: 16/12/2022

I am authorised to sign this Agreement as a nominated employee bargaining representative on behalf of the Australian Nursing and Midwifery Federation Victorian Branch



SIGNATURE

Lisa Fitzpatrick - Secretary

PRINT NAME AND AUTHORITY / TITLE

Address: 535 Elizabeth Street, Melbourne Victoria 3000

Date: 16 December 2022