



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Touriandi Limited
(AG2024/3262)

TOURIANDI LIMITED, NSWNMA AND HSU NSW ENTERPRISE AGREEMENT 2023

Aged care industry

COMMISSIONER CRAWFORD

SYDNEY, 23 SEPTEMBER 2024

Application for approval of the Touriandi Limited, NSWNMA and HSU NSW Enterprise Agreement 2023

[1] An application has been made for approval of an enterprise agreement known as the *Touriandi Limited, NSWNMA and HSU NSW Enterprise Agreement 2023* (**Agreement**). The Application was made pursuant to s.185 of the *Fair Work Act 2009* (**FW Act**). It has been made by Touriandi Limited. The Agreement is a single enterprise agreement.

[2] I am satisfied that each requirement of ss.186, 187 and 188 of the FW Act as are relevant to this application for approval have been met.

[3] Noting clause 8.2 of the Agreement, I am satisfied that the more beneficial entitlements of the NES in the FW Act will prevail where there is an inconsistency between the Agreement and the NES.

[4] The Australian Nursing and Midwifery Federation (**ANMF**) and the Health Services Union (**HSU**) lodged Form F18 statutory declarations giving notice under s.183 of the FW Act that they want the Agreement to cover them. In accordance with s.201(2) of the FW Act, I note the Agreement covers the ANMF and the HSU.

[5] The Agreement is approved and will operate from seven days after approval in accordance with s.54 of the FW Act. The nominal expiry date of the Agreement is 1 August 2025.



COMMISSIONER

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<AE526150 PR779528>

The Touriandi Limited, NSWNMA and HSU NSW Enterprise Agreement 2023

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PART 1 - PRELIMINARIES

1. INTRODUCTION

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

- (a) It is the intention of this Agreement that the Unions will be covered by this Agreement.

2. TITLE

This Agreement shall be known as the Touriandi Limited, NSWNMA and HSU NSW Enterprise Agreement 2023 and throughout is referred to as “the Agreement”.

3. PARTIES BOUND

This Agreement shall be binding according to its terms upon the following:

- (a) Touriandi Limited ABN: 66145179585; and,
- (b) all those employees of the employer performing work within the classifications contained in this agreement and employed in a residential aged care facility, retirement village or home care program in NSW.
- (c) It is acknowledged that Unions intend to apply to be covered by the Agreement.

4. COMMENCEMENT

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

5. EXPIRY

This Agreement shall have a nominal expiry date of 1 August 2025.

6. DEFINITIONS

Where a term of this Agreement has a corresponding definition in the Act, the Regulations or the NES, the definition in the Act, the Regulations or the NES shall apply. Any such terms that are also defined in this Agreement are defined for the convenience only of the parties and shall be overridden to the extent of any inconsistency with the definition found in the Act, the Regulations or the NES.

For the purposes of this Agreement:

Act means the *Fair Work Act 2009* (as amended).

Base rate of pay (refer to section 16 of the Act) is the rate of pay payable to the employee for the ordinary hours of work, but not including any of the following: Incentive-based payments and bonuses; loadings; monetary allowances; overtime or penalty rates; or any other separately identifiable amounts.

Base hourly rate of pay means the base rate of pay divided by 38.

Board means the Nursing and Midwifery Board of Australia and shall also be taken to mean a reference to the Australian Health Practitioner Regulation Authority as appropriate/applicable.

De facto partner means:

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

Employment classifications mean those set out in Schedule A to this Agreement and shall apply as if they had been reproduced in full in this clause.

Employee means an Employee of the Employer and has the meaning in the Act.

Employer means Touriandi Limited and has the meaning in the Act.

Employee representative means an Employee or other person or union nominated by the Employee/s to represent the Employee/s in relation to their employment.

FWC means Fair Work Commission

Immediate Family means:

- (a) a spouse, a former spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (b) a child, parent, grandparent, grandchild or sibling of a spouse or a former spouse or de facto partner of the employee; or
- (c) a person related to the Employee in accordance with First Nations kinship relationship.

NES means the National Employment Standards as amended from time to time.

Ordinary Pay includes: the base rate of pay; any applicable over-agreement payments for ordinary hours of work and Climatic & Isolation Allowance. It does not include shift or weekend or public holiday penalties.

Regulations means the Fair Work Regulations 2009 associated with the *Fair Work Act 2009* (as amended from time to time).

Union or Unions means the HSU NSW/ACT/QLD; the New South Wales Nurses and Midwives' Association; and the Australian Nursing and Midwifery Federation (NSW Branch).

7. COMPLETE AGREEMENT

- 7.1 Unless it is agreed to seek a variation to the terms of this agreement, the parties to this agreement acknowledge that this Agreement settles all claims in relation to the terms and conditions of employment of the Employees to whom it applies and agree that they will not pursue any extra claims during the term of this Agreement.
- 7.2 Subject to an Employer meeting its obligations to consult arising under this Agreement or a contract of employment, it is not the intent of this provision to inhibit, limit or restrict an Employer's right or ability to introduce change at the workplace.

7.3 Despite clause 7.1, the Employer recognises that Stage 3 of the 'work value' applications before the Fair Work Commission have not been completed. The Employer undertakes that any financial assistance delivered by the Commonwealth in regard to the rates of pay will be provided to employees in accordance with the Minister's instructions or guidance.

8. NATIONAL EMPLOYMENT STANDARDS

8.1 The NES and the Agreement contain the minimum conditions of employment for Employees covered by this Agreement.

8.2 The NES applies to Employees covered by the Agreement except where the Agreement provides a greater condition or entitlement whereby the Agreement will prevail to the extent that is it more favourable than the NES.

9. AVAILABILITY OF AGREEMENT

The employer must ensure that copies of this Agreement and the NES are available to all employees to whom they apply, such as on a notice board which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

PART 2 - ENGAGEMENT

10. EMPLOYEE ENGAGEMENT

10.1 Employment Categories:

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

- (i) full-time;
- (ii) part time; or
- (iii) casual.

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

10.2 **Full-time Employees:** A full-time employee is one engaged as such and whose ordinary hours of work average 38-hours per week.

10.3 **Part-time Employees:**

(a) A part-time employee is an employee who is engaged to work less than an average of 38 ordinary hours per week and whose hours of work are reasonably predictable.

(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. For all Employees except those employed in Nursing classifications, the agreement will also include the starting and finishing times each day and the days of the week.

- (c) The terms of the agreement in clause 10.3(b) may be varied by agreement between the Employer and Employee and recorded in writing.
- (d) Unless otherwise stated, the terms of this Agreement will apply on a pro rata basis to part-time Employees on the basis that the ordinary weekly hours for full-time Employees are 38.
- (e) Reasonable additional hours may be worked in accordance with Clause 17.3 – Arrangement of Hours.

10.4 Review of Part-time Hours:

- (a) At the request of an Employee, the hours worked by the Employee will be reviewed annually.
- (b) Where the Employee is regularly working more than their specified contracted hours then such contracted hours shall be adjusted by the Employer, to reflect the hours regularly worked, which may include moving to full-time employment.
- (c) 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 due, for example, to the specific needs of a resident or client.
- (d) Any adjusted contracted hours resulting from a review, should, however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace.

10.5 Review of Guaranteed Hours (Part time Home Care Classifications only)

- (a) Where a part time Home Care employee has regularly worked more than their guaranteed hours for at least 12 months, the Employee may request in writing that the Employer vary the agreement made under clause 10.3(b), or as subsequently varied under clause 10.3(c), to increase their guaranteed hours.
- (b) The Employer must respond in writing to the Employee's request within 21 days.
- (c) The Employer may refuse the request only on reasonable business grounds.
- (d) Before refusing a request made under clause 10.5(a), the Employer must discuss the request with the Employee and genuinely try to reach agreement on an increase to the Employee's guaranteed hours that will give the Employee more predictable hours of work and reasonably accommodate the Employee's circumstances.
- (e) If the Employer and Employee agree to vary the agreement made under clause 10.5(b), the Employer's written response must record the agreed variation.
- (f) If the Employer and Employee do not reach agreement, the Employer's written response must set out the grounds on which the Employer has refused the Employee's request.
- (g) Clause 10.5 is intended to operate in conjunction with clause 10.3(c) and does not prevent an Employee and Employer from agreeing to vary the agreement made under clause 10.3(b) in other circumstances.
- (h) An Employee cannot make a request for a review of their guaranteed hours when:
 - (i) The Employee has refused a previous offer to increase their guaranteed hours in the last 6 months; or

- (ii) The Employer refused a request from the Employee to increase their guaranteed hours based on reasonable business grounds in the last 6 months.
- (i) In addition to those matters covered in clause 10.5(a), changes to hours for Home Care employees may be affected by:
 - (i) continuity of funding;
 - (ii) client numbers; and
 - (iii) client preferences for services including their ability to choose particular care workers.

10.6 Casual Employees

- (a) A casual employee is one who is engaged as such on an hourly basis
- (b) A casual Employee will be paid an hourly rate equal to 1/38th of the weekly rate appropriate to the Employee's classification plus the 25% casual loading.
- (d) A casual employee's entitlement to long service leave is governed by the provisions of the *Long Service Leave Act 1955 (NSW)*.
- (e) Paid leave provisions do not apply to casual employees.

10.7 Casual Conversion

- (a) At 12 months of service, a casual Employee shall be offered the opportunity to convert their casual employment to permanent employment. Such an offer is to be made within 21 days after the Employee's 12-month anniversary.

A casual employee who has been rostered on a regular and systematic basis over a period of 26-weeks has the right to request conversion to permanent employment:

- (i) on a full-time basis where the employee has worked on a full-time basis throughout the period of casual employment; or
- (ii) on a part-time basis where the employee has worked on a part-time basis throughout the period of casual employment.
- (b) The employer may consent to or refuse the request but shall not unreasonably withhold agreement to such a request. Such contract would generally be on the basis of the same number of hours as previously worked, subject to the following:
 - (i) The hours worked in the following circumstances will not be incorporated in a consent and conversion:
 - where 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, parental leave, workers compensation; and/or
 - where the increase in hours is due to a temporary increase in hours, for example, due to the specific needs of a resident or client.
 - (ii) In addition to the circumstances outlined above in this clause, Home Care employees' consent and conversion may be affected by:

- (A) continuity of funding;
 - (B) client numbers; and,
 - (C) client preferences for services including their ability to choose particular care workers.
- (iii) The employer will not unreasonably refuse to consent to and convert the hours of a Home Care employee based on the circumstances in clause 10.7(b)(ii) unless there is an imminent change to any of those circumstances.
 - (iv) The guaranteed minimum number of hours resulting from a casual conversion should reflect roster cycles and shift configurations utilised in the workplace.
 - (v) Casual conversion will not apply where a casual has covered absences of permanent employees that are expected to return to work.

10.8 Trainees

Schedule E to the *Miscellaneous Award 2020* sets out minimum wage rates and conditions for employees undertaking traineeships. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2020* is to be read as referring to this Agreement and not the *Miscellaneous Award 2020*.

10.9 Trade Apprentices

The *Aged Care Award 2010* at Schedule E sets out minimum wage rates and conditions for employees undertaking school based apprenticeships. Provided that any reference to “this award” in *Aged Care Award 2010* is to be read as referring to this Agreement and not the *Aged Care Award 2010*.

10.10 Supported Wage

Employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this Agreement shall be employed in accordance with the provisions set out in their Assessment with the relevant capacity percentage applied to the minimum rates in this Agreement and all relevant terms of employment will conform to those in this Agreement. Provided that the minimum amount payable must be not less than \$125.00 per week and will be increased by 2.5% from the FFPPOA 1 July 2024 and a further 2.5% from the FFPPOA 1 July 2025,

11. RECOGNITION OF SERVICE AND EXPERIENCE

- (a) From the time of commencement of employment an employee has three months in which to provide documentary evidence to the employer detailing any other relevant service or experience not disclosed at the time of commencement. This evidence, in the absence of other documentary evidence, may take the form of a statutory declaration.
- (b) Until such time as the employee furnishes any such documentation contemplated in sub-clause (a), the employer shall pay the employee at the level for which proof has been provided.
- (c) If within 3 months of commencing employment an employee does provide documentary evidence of other previous relevant service or experience not disclosed at the time of commencement, the employer shall pay the employee at the

appropriate rate as and from the date of commencement that would have been paid from that date had the additional evidence been provided at that time.

- (d) For the purpose of yearly progression based on service and experience, an employee must complete 1200 hours of work, but not less than 12 months service, including any Annual Leave taken during the year. For part-time and casual Employees, work in a similar capacity for another Employer shall count as if the hours worked were with the Employer.

12. RE-GRADING OF EMPLOYEE CLASSIFICATION (AGED CARE CLASSIFICATIONS ONLY)

- (a) Where the nature of the work undertaken by an employee changes, such that the majority of the work regularly performed is work of a type normally associated with a higher classification and has been performed for a period of at least 3 months, the employee may apply to have their position reclassified to the higher classification.
- (b) An application for re-grading by an employee must be made in writing.
- (c) The employer must respond to the request in writing within 3 weeks, indicating whether the application is approved or denied. Where denied the response must provide reasons.
- (d) Changes in work by themselves may not lead to a change in an employee's substantive classification. Factors with a bearing on the decision may include whether the changes:
 - (i) involve the exercise of skills, responsibility and/or autonomy normally undertaken at a higher classification.
 - (ii) are permanent or temporary; and/or
 - (iii) involve work at a higher classification or not (e.g., simply performing more work at the same classification or different work at the same classification would not qualify for re-grading).

13. NATIONAL CRIMINAL HISTORY RECORD AND/OR NDIS CHECK

- (a) It is a condition of employment that employees, contractors and volunteers, who have, or are reasonably likely to have access to care recipients undergo a National Criminal History Record Check, commonly known as a Police Check on commencement of employment and at any other time as directed by the employer.
- (b) The employer will pay the cost of renewal of Police Checks for employees required to undergo such checks.
- (c) New employees will be required to pay for their initial Police Check before commencing employment.
- (d) Where the Employer requires an Employee to have a valid NDIS check, the procedures in regard to the Police Check above shall also apply.

14. PAY AND PAYMENT

The minimum rates of pay at Schedule B shall apply from the first full pay period on or after 1 January 2024.

14.1 Full-Time and Part-Time Employees

- (a) The base rates of pay in the appropriate employment classification for full-time employees and for part-time employees shall be the hourly rates of pay set out in the Tables in Schedule B to this Agreement.
- (b) Notwithstanding clause 14.1(a), the base rate of pay for employees in nursing classifications will be as set out in the Tables in Schedule B or 2% higher than the rates in the Nurses Award 2020 for the corresponding classifications, whichever is the greater. This rate is inclusive of a buy-out of one week's annual leave for all nursing classifications which equates to 1.92% of the base rate of pay.
- (c) Full-time employees have the benefit of all of the other entitlements set out in this Agreement.
- (d) Part-time employees have the benefit of all of the other entitlements set out in this Agreement on a pro rata basis in the same proportion as their ordinary hours of work bear to full-time hours.

14.2 Casual Employees

- (a) The base rates of pay in the appropriate employment classification for casual employees shall be the hourly rates of pay set out in the Table's in Schedule B to this Agreement. In addition, a casual loading of 25% is payable.
- (b) Penalty rates shall be applied to the Employee's base rate of pay with casual loading added to this amount. This is reflected within the relevant tables.
- (c) Casual employees have the benefit of all of the other entitlements set out in this Agreement, which are applicable to casual employees, on a pro rata basis in the same proportion as their ordinary hours of work bear to full-time hours.

14.3 Live-in Home Carer

- (a) A 24-hour care shift requires an Employee to be available for duty in a client's home for a 24-hour period. During this period, the Employee is required to provide the client with the services specified in the care plan. The Employee is required to provide a total of no more than 8 hours of care during this period.
- (b) An Employer may only require an Employee to work a 24-hour care shift by agreement.
- (c) The Employee will be afforded the opportunity to sleep for a continuous period of 8 hours during a 24-hour care shift and Employees will be provided with a separate room with a bed and clean linen, the use of appropriate facilities (including access to food preparation facilities and staff facilities where these exist) and free board and lodging for each night when the Employee sleeps over.
- (d) The Employee will be paid 8 hours' work at 155% of their appropriate rate for each 24-hour period.
- (e) If the Employee is required to perform more than 8 hours' work during a 24-hour care shift, that work shall be treated as overtime and paid at the rate of time and a half for the first 2 hours and double time thereafter, except on Sundays when overtime will be paid for at the rate of double time, and on public holidays at the rate of double time and a half. The Employer and an Employee may utilise the TOIL arrangement in accordance with Clause 24.4.

- (f) An Employee may refuse to work more than 8 hours' work during a 24-hour care shift in circumstances where the requirement to work those additional hours is unreasonable.

15. PAYMENT OF WAGES

- (a) Wages shall be paid fortnightly or where mutually agreed, monthly.
- (b) Employees shall have their wages paid by direct deposit or electronic transfer into one account with a bank or other financial institution as nominated by the employee. Wages shall be deposited by the employer in sufficient time to ensure that wages are available for withdrawal by employees by the close of business on pay day. Where the wages are not available to the employee by such time due to circumstances beyond the employer's control, the employer shall not be held accountable for such delay.
- (c) Where the services of an employee are terminated with due notice, all moneys owing shall be paid upon cessation of employment, but in the case of termination without notice, within 3 working days.
- (d) Where the employer has overpaid an employee, the employer shall notify the employee in writing of such overpayment and how such overpayment is made up, and may recover such amounts, with the written agreement of the employee as to the amount of the overpayment and method of such recovery.

15.1 Particulars of Wages

- (a) On pay day each employee shall be provided with a pay slip in electronic form or hardcopy which complies with the relevant provisions of the Act:
 - (i) the employer's name; and
 - (ii) the employee's name; and
 - (iii) the period to which the pay slip relates; and
 - (iv) the date on which the payment to which the pay slip relates was made; and
 - (v) The hours worked in that period
 - (vi) Superannuation payments made by the Employer to the Employee's nominated Fund,
 - (vi) the gross amount of the payment; and
 - (vii) the net amount of the payment; and
 - (viii) Any deductions authorised by the Employee; and,
 - (ix) any amount paid to the employee that is a bonus, loading, allowance, penalty rate, incentive-based payment or other separately identifiable entitlement; and
 - (x) Australian Business Number (if any) of the employer.
- (b) The employer shall, upon written request from an employee, provide a record of that employees' current accrued leave entitlements.

16. SALARY PACKAGING

- (a) By agreement with the Employee, an Employee's pay may be salary packaged.
- (b) The Employee shall compensate the Employer from within their base remuneration for any FBT incurred as a consequence of any salary packaging arrangement the Employee has entered into that either exceeds the cap or is a benefit outside of the Fringe Benefits Tax Assessment Act and associated taxation ruling.
- (c) Other than for in-house payroll service, the Employee shall be responsible for all costs associated with the administration of their salary packaging arrangements.
- (d) The Employer shall not be held responsible in any way for the cost or outcome of any financial advice obtained by the Employee.

17. HOURS

17.1 Reasonable Additional Hours

- (a) All hours worked over an average of 38 ordinary hours per week, will be deemed to be additional hours. All hours worked by part-time employees beyond their guaranteed minimum number of hours will be treated as additional hours for the purpose of this subclause. From time to time, full time employees may be required to work a reasonable number of additional hours.

Part time employees may be asked, but not required, to work a reasonable number of additional hours. All additional hours worked will be paid in accordance with this Agreement.

- (b) An employee may not be required to work additional hours in circumstances where the working of additional hours would result in the employee working hours which are unreasonable having regards to (refer to section 62 of the Act):
 - (i) any risk to employee health and safety from working the additional hours;
 - (ii) the employee's personal circumstances, including family responsibilities;
 - (iii) the needs of the workplace or enterprise in which the employee is employed;
 - (iv) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
 - (v) any notice given by the employer of any request or requirement to work the additional hours;
 - (vi) any notice given by the employee of his or her intention to refuse to work the additional hours;
 - (vii) the usual patterns of work in the industry, or the part of an industry, in which the employee works;
 - (viii) the nature of the employee's role, and the employee's level of responsibility;
 - (ix) whether the additional hours are in accordance with averaging terms included under section 63 in a modern award or enterprise agreement that

applies to the employee, or with an averaging arrangement agreed to by the employer and employee under section 64; and,

- (x) any other relevant matter.

17.2 Voluntary Additional Hours

- (a) The Employer will always offer additional shifts in the first instance to part-time or casual Employees where it is practicable to do so.
- (b) A part-time or casual Employee is not required to accept any additional hours.
- (c) Where a part-time or casual Employee requests or accepts any offer of hours in addition to their rostered shift or shifts, as acceptance is not required by the Employer, this will be paid at Ordinary time except where overtime or a penalty rate is otherwise payable.
- (d) To be clear, where the Employer requires an Employee to work additional time, the Employee is entitled to be paid overtime or at a higher penalty rate as per clauses 24, 26, 27 or 28, the employee shall be paid at the relevant rate as per those clauses..

17.3 Arrangement of Hours

- (a) The ordinary hours of work, exclusive of mealtimes, shall not exceed an average of 38 hours per week.
- (b) The hours of work prescribed in sub-clause (a) may be arranged as follows:
 - (i) 76 hours per fortnight to be arranged so that each employee shall not work their ordinary hours on more than ten days in the fortnight or
 - (ii) 152 hours in a 28 calendar-day cycle to be arranged so that each employee shall not work their ordinary hours on more than 20 days in the 28 calendar-day cycle; or
 - (iii) 152 hours in a 28 calendar-day cycle to be arranged so that each employee shall not work their ordinary hours on no more than 19 days with the twentieth day taken as an accrued paid day off (ADO).
 - (iv) as otherwise agreed in writing between the employer and the employee.
- (c) Employees will be free from duty for not less than 2 full days in each week or 4 full days in each fortnight or 8 full days in each 28-day cycle. Where practicable, days off will be consecutive. These days are referred to as "Rostered Days Off" (RDO's).
- (d) Other than for a day worker, each shift shall consist of no more than 10 hours of work at ordinary time (not including unpaid breaks). Day workers shall not work more than 8 hours per day.
- (e) Except for meal breaks and the periods not worked in broken shifts, all time from the commencement to the cessation of duty each shift shall count as working time.
- (f) The employer will ensure there is provision for handover between Registered Nurses at the commencement of each shift to inform of any changes to the health status of residents and in home care, sufficient notes are made.
- (g) Where practicable, days off will be consecutive. For Employees employed in Nursing classifications duty includes time an Employee is on call.

17.4 Rest Breaks Between Rostered Work

- (a) An Employee will be allowed a rest break of 10 hours between the completion of one ordinary work period or shift and the commencement of another ordinary work period or shift, except by agreement where it may be 8 hours.
- (b) If, on the instruction of the Employer, an Employee employed in a Nursing classification resumes or continues to work without having had 10 consecutive hours off duty, or 8 hours as agreed, they will be paid at the rate of double time until released from duty for such period.
- (c) If a rest break after overtime is required, that shall be taken in accordance with Clause 23.4.

17.5 Span of Hours (Excluding Home Care Classifications)

- (a) The ordinary hours of work for a day worker will be between 6.00 am and 6.00 pm Monday to Friday.
- (b) A shift worker is an Employee who is regularly rostered to work their ordinary hours of work outside the ordinary hours of work of a day worker.

17.6 Span of Hours (Home Care Classifications Only)

(a) Day Worker

The ordinary hours of work for a day worker will be worked between 6.00 am and 8.00 pm Monday to Sunday.

(b) Shift worker

A shift worker is an Employee who works the shifts as prescribed at clause 25.

Where an Employer wishes to engage an Employee in shiftwork, the Employer will advise the Employee in writing, specifying the period over which the shift is ordinarily worked.

18. MINIMUM STARTS

- (a) Full-time employees shall receive a minimum payment of 4 hours for each start in respect of ordinary hours of work.
- (b) Residential Care
Part-time employees shall receive a minimum payment of 3 hours for each start, with the exception that where a part time employee works a shift attached to a sleepover the minimum start will be 2 hours.
- (c) Home Care
Part-time home care employees shall receive a minimum payment of 2 hours for each engagement.
- (f) Casual Employees will be paid the following minimum hours for each engagement at the appropriate rate:
 - (i) Health Professionals 3 hours
 - (ii) All other Employees 2 hours

- (c) Casual Home Care Employees will be paid for a minimum of 2 hours for each period of work in a broken shift.

19. ACCRUED DAYS OFF (ADO)

- (a) This clause will only apply to full-time Employees.
- (b) Where an Employee is entitled to an ADO in accordance with the arrangement of ordinary hours of work as set in clause 17.3 (b) (iii), ADOs will be taken within 12 months of the date on which the first full ADO accrued.
- (c) With the consent of the Employer, ADOs may be accumulated up to a maximum of five in any one year.
- (d) Where an Employee's employment terminates for any reason, accumulated ADOs will be paid to the Employee at ordinary rates.
- (e) The Employer will schedule the taking of ADOs and display them on the roster. Scheduling decisions will be based on the needs of the workplace and will have regard to Employee's preferences.
- (f) Wherever possible ADOs, will be consecutive with rostered days off prescribed in Clause 17.3.
- (g) Once set, ADOs may not be changed, except in accordance with Clause 21 Rosters.
- (h) ADOs will not be rostered on public holidays.
- (i) ADOs credited to an Employee may be cashed out, subject to the following conditions:
 - (i) each cashing out of a particular amount of ADOs must be by a separate agreement in writing between the Employer and the Employee; and,
 - (ii) the Employee must be paid at least the full amount that would have been payable to the Employee had the Employee had the ADO cashed out on termination.

20. BROKEN SHIFTS

20.1 General

- (a) Broken shifts for the purpose of this clause means a shift worked by an Employee that includes one or more breaks (other than a meal break) totalling not more than four hours and where the span of hours is not more than 12 hours.
- (b) A broken shift may be worked where there is mutual agreement between the Employer and Employee to work the broken shift. For Nursing Employees, a broken shift may be worked where there is mutual agreement in writing.
- (c) Payment for a broken shift will be at ordinary pay with penalty rates and shift allowances in accordance with clause 25 Shiftwork, with shift allowances being determined by the commencing time of the broken shift.
- (d) All work performed beyond the maximum span of 12 hours for a broken shift will be paid at double time.
- (e) For permanent part-time and casual Employees each portion of the shift must be a

minimum payment of 2 hours.

- (f) An Employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.

20.2 (Home Care Classifications only)

- (a) One unpaid break

An employee required to work a broken shift with one (1) unpaid break will be paid the Allowance at Schedule B per broken shift.

- (b) Two unpaid breaks

An employee required to work a broken shift with two (2) unpaid breaks in will be paid the Allowance at Schedule B, per broken shift.

- (c) Broken shift with 1 unpaid break:

- (i) The Employer may only roster an Employee to work a broken shift of 2 periods of work with 1 unpaid break (other than a meal break).

- (ii) An Employee rostered to work a broken shift with 1 unpaid break must be paid the allowance at Allowances Item #1.

- (d) Agreement to work a broken shift with 2 unpaid breaks

- (i) Despite clause 20.2(a), an Employer and an Employee may agree that the Employee will work a broken shift of 3 periods of work with 2 unpaid breaks (other than meal breaks).

- (ii) An agreement under clause 20.2(a) must be made before each occasion that the Employee is to work a broken shift with 2 unpaid breaks unless the working of the 2 break broken shift is part of the agreed regular pattern of work in an agreement made under clause 17.3(b) or subsequently varied under clause 17.3(d).

- (iii) An Employee who works a broken shift with 2 unpaid breaks must be paid the allowance Allowances Item #2.

- (e) Where a break in work falls within a minimum payment period in accordance with Clause 18 then it is to be counted as time worked and does not constitute a break in a shift for the purposes of clause 20.2 (a) or (b).

- (f) Payment for a broken shift will be at ordinary pay with weekend, overtime and public holiday penalty rates to be paid in accordance with clauses 26 Saturday and Sunday Work, 24 Overtime and 27 Public Holidays.

- (g) An Employee must be paid the shift penalties in accordance with clause 25 Shiftwork in relation to work performed on a broken shift, provided that:

- (i) The shift penalties are only payable in respect of periods of work in a broken shift that satisfy the definitions of afternoon shift, night shift and public holiday shift (as defined by clause 25.2 (a) and in accordance with clause 25.2 (b)).

- (ii) The night shift penalty is not payable for work performed on a night shift that commences before 6.00 am.

Example: If an Employee performs work on a broken shift from 9.00 am to 11.00am (first period of work) and then from 5.30 pm to 8.30 pm (second period of work), the afternoon shift penalty will be payable on the second

period of work only.

- (h) The span of hours for a broken shift is up to 12 hours. All work performed beyond a span of 12 hours will be paid at double time.
- (i) An Employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.

Aged Care

- (j) Where a broken shift is worked by an Aged Care Employee they shall be paid receive an additional half an hour of their base rate of pay per worked shift.

21. ROSTERS

21.1 Roster

- (a) The employer shall make available for each employee, in a form accessible to the employee, a roster which includes the following information:
 - (i) the ordinary hours of work for each employee
 - (ii) each sleepover; and
 - (iii) ADO's where applicable.
- (b) The roster shall be displayed two weeks prior to the commencing date of the first working period in any roster subject to sub-clause (c).
- (c) Sub-clause (a) shall not make it obligatory for the employer to display any roster of ordinary hours of work of casual or relieving employees.
- (d) A roster may be altered at any time:
 - (i) so as to enable the service of the organisation to be carried on;
 - where another employee is un-expectedly absent from duty; or
 - in the event of an emergency; or
 - in accordance with Clause 22 Client Cancellation; or
 - (iii) where the employer and employee affected agree.

22. CLIENT CANCELLATION

- (a) Clause 22 applies where a client cancels a scheduled home care service, within 7 days of the scheduled service, which a full-time or part-time Employee was rostered to provide. For the purposes of Clause 22, a client cancellation includes where a client reschedules a scheduled home care service.
- (b) Where a service is cancelled by a client under Clause 22(a), the Employer may either:
 - (i) direct the Employee to perform other work during those hours in which they were rostered; or
 - (ii) cancel the rostered shift or the affected part of the shift.

- (c) Where clause 22 (b) (i) applies, the Employee will be paid the amount payable had the Employee performed the cancelled service or the amount payable in respect of the work actually performed, whichever is the greater.
- (d) Where clause 22.2(b) (ii) applies, the Employer must either:
 - (i) pay the Employee the amount they would have received had the shift or part of the shift not been cancelled; or
 - (ii) subject to clause 22.2 (e), provide the Employee with make-up time in accordance with clause 22(f).
- (e) The make-up time arrangement can only be used where the Employee was notified of the cancelled shift (or part thereof) at least 12 hours prior to the scheduled commencement of the cancelled service. If less than 12 hours' notice is provided, clause 22 (d) (i) applies.
- (f) Where the Employer elects to provide make-up time:
 - (i) the Employer must provide the Employee with 7 days' notice of the make-up time (or a lesser period by agreement with the Employee); and,
 - (ii) the make-up time must be worked within 6 weeks of the date of the cancelled service;
 - (iii) the Employer must consult with the Employee in accordance with clause 40 Consultation Regarding Major Workplace Change about changes to rosters or hours of work regarding when the make-up time is to be worked;
 - (iv) the make-up time can include work with other clients or in other areas of the Employer's business provided the Employee has the skill and competence to perform the work; and
 - (v) an Employee who works make-up time will be paid the amount payable had the Employee performed the cancelled service or the amount payable in respect of the work actually performed, whichever is the greater.
- (j) Clause 22 is intended to operate in conjunction with clause 40 and does not prevent the Employer from changing a roster under clause 40.

23. BREAKS

- 23.1 Two separate 10-minute tea breaks (in addition to meal breaks) shall be allowed each employee on duty during each ordinary shift of 7.6 hours or more. Where an employee works 4 hours or more but less than 7.6 hours, the employee shall be allowed one 10-minute tea break. Subject to agreement between the employer and the employee, the two 10-minute tea breaks may alternatively be taken as one 20-minute tea break, or by one 10-minute tea break with the employee allowed to proceed off duty ten minutes before the completion of the normal shift finishing time. Such tea break/s shall count as working time.
- 23.2 (a) Employees shall not be required to work more than 5 hours without a meal break. Such meal break shall be of between 30 and 60 minutes' duration and shall not count as time worked.
- (b) Employees employed in Nursing and Health Professional classifications may elect to forgo the meal break, with the consent of the Employer if the Employee works

no more than 6 hours in the shift.

- (c) Where an Employee is required to remain available for duty during a meal break, the Employee will be paid as follows depending on their classification:
 - (i) Health Professional and Home Care classifications: an 'on call during meal break allowance' will be paid as provided for Allowances Item #15. provided such that only one allowance shall be payable in any period of 24 hours.
 - (ii) Nursing classifications: will be paid at base rates for a 30-minute meal break. This period will not count as time worked when calculating ordinary hours for the purposes of overtime or penalties;
 - (iii) Aged Care classifications: will be paid at overtime rates for all time worked from the commencement of that meal break until such time that a meal break free from duty is taken by the Employee or the Employee's shift ends (whichever occurs first).
- (d) If an Employee is recalled to work during the meal break, then overtime will be paid for all time worked during such meal break.
- (e) Where a Home Care Employee is required to have a meal with a client or clients as a part of the normal work routine or client program, the meal period referred to in clause 23.2 (a) of the Agreement is to be counted as time worked.
- (f) In the event that all or some of the meals of breakfast, lunch and dinner are not provided for a live-in home carer the employer shall reimburse such reasonable amounts for same, upon proof of expenditure.

23.3 Noting the provisions of sub-clause 23.2, an employee required to work in excess of 10 hours in a shift shall be entitled to a 60-minute meal break. Such time shall be taken as either two thirty-minute meal breaks or one 60-minute meal break, subject to agreement between the employer and employee.

23.4 Rest Period After Overtime

- (a) An Employee, other than a casual Employee, who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day, that they have not had at least 10 consecutive hours off duty between those times, will be released after completion of such overtime, until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such a absence.
- (b) If, on the instruction of the Employer, an Employee resumes or continues to work without having had 10 consecutive hours off duty, they will be paid at the rate of double time until released from duty for such period. The Employee will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during the absence.

24. OVERTIME

24.1 Overtime is paid in the following circumstances:

- (a) Where a full-time employee works in excess of their ordinary hours;
- (b) Where a part time employee:
 - (i) works in excess of their ordinary hours;
 - (ii) works in excess of 10 hours per shift;

- (iii) works in excess of 76 hours per fortnight, where employed by the fortnight; and/or
 - (iv) works in excess of 152 hours per 4-weekly period, where employed on a 4-weekly basis.
- (c) Nurses may work to daily ordinary full-time hours before overtime is available. For all other employees, all time worked in excess of a part time employees rostered hours on any one day.
- (d) All time worked in excess of their guaranteed hours (unless a written agreement has been entered into between the part time Employee and their Employer in accordance with clause 17.3 (b) (iv) will be overtime and paid at the rates prescribed by clause 24.
- (e) Where a casual employee:
- (i) works in excess of 10 hours per shift; and/or
 - (ii) works in excess of 76 hours per fortnight.
- (f) Where an employee is deprived of part or their break between shifts as required by clause 17.4.
- (g) See clause 17.2 for (Voluntary Additional Hours) when additional hours are worked in relation to access to penalty rates.

24.2 Overtime Penalty Rates

- (a) Hours worked in excess of the ordinary hours on any day or shift prescribed in clause 17 Arrangement of Hours are to be paid as follows:

Classification of Employee	Monday to Friday	Saturday	Sunday	Public holidays
Aged Care	150% for the first two hours and 200% thereafter	200%	200%	250%
Health Professional, Nursing and Home Care		150% for the first two hours and 200% thereafter		

- (b) Overtime penalties as prescribed in clauses 24.2(a) and 24.3(a) do not apply to Registered Nurse Levels 4 and 5.
- (c) Overtime rates under this clause will be in substitution for and not cumulative upon the shift premiums prescribed in Clauses 26 and Clauses 25.

24.3 Part time and Casual Employees

- (a) Hours worked in excess of the ordinary hours on any day or shift prescribed in Clause 17.3 are to be paid as follows:

Classification of Employee	Monday to Friday	Saturday	Sunday	Public holidays
Part time Health Professional, Nursing and Home Care	150% for the first two hours and 200% thereafter	150% for the first two hours and 200% thereafter	200%	250%
Casual Health Professional and Nursing	187.5% for the first two hours and 250% thereafter	187.5% for the first two hours and 250% thereafter	250%	312.5%
Casual Home Care	175% for the first two hours and 225% thereafter	175% for the first two hours and 225% thereafter	225%	275%
Part time Aged Care - all time worked in excess of 38 hours per week or 76 hours per fortnight	150% for the first two hours and 200% thereafter	200%	200%	250%
Casual Aged Care - all time worked in excess of 38 hours per week or 76 hours per fortnight	187.5% for the first two hours and 250% thereafter	250%	250%	312.5%
Part time Aged Care - all time worked in excess of 10 hours per day	150% for the first two hours and 200% thereafter	150% for the first two hours and 200% thereafter	200%	250%
Casual Aged Care - all time worked in excess of 10 hours per day	187.5% for the first two hours and 250% thereafter	187.5% for the first two hours and 250% thereafter	250%	312.5%

(b) The rates for casual Employees in clause 24.3 (a) are in substitution for and not cumulative upon the casual loading prescribed in clause 10.6.

(d) Overtime rates under this clause will be in substitution for and not cumulative upon the shift premiums prescribed in Clause 25 and 26.

24.4 Time Off Instead of Payment for Overtime

By mutual agreement, an Employee may be compensated by way of time off instead of payment of overtime (time for time) on the following basis:

(a) Time off instead of payment of overtime must be equivalent to the overtime payment that would have been made to the Employee and taken within 4 months of being accrued.

- (b) Where it is not possible for an Employee to take the time off, instead of payment for overtime, within the 4-month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made. These provisions will also apply on termination of employment.
- (c) An Employee cannot be compelled to take time off instead of overtime.

24.5 Recall to Work

Where an Employee is paid for any recall, any subsequent recall within the paid period, shall not attract any additional pay.

24.6 Recall to Work when On Call

An Employee, who is required to be on call and who is recalled to work, will be paid for a minimum of four hours work at the appropriate overtime rate.

Where the Employee is not required to attend the workplace and the question can be resolved by telephone or other method, 1 hour shall be paid for each occasion.

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

24.7 Recall to Work when not On Call

- (a) An Employee who is not required to be on call and who is recalled to work after leaving the Employer's premises will be paid for a minimum of four hours work at the appropriate overtime rate.
- (b) The time spent travelling to and from the place of duty will be deemed to be time worked. Except that, where an Employee is recalled within three hours of their rostered commencement time, and the Employee remains at work, only the time spent in travelling to work will be included with the actual time worked for the purposes of the overtime payment.
- (c) An Employee who is recalled to work will not be obliged to work for four hours if the work for which the Employee was recalled is completed within a shorter period.

24.8 Recall to Work Overtime (Home Care Classifications only)

An Employee recalled to work overtime after leaving the Employer's or client's premises and requested by their Employer to attend a workplace in order to perform such overtime work will be paid for a minimum of two hours' work at the appropriate rate for each time so recalled. If the work required is completed in less than two hours the Employee will be released from duty.

25. SHIFT WORK

25.1 Shift Penalties (Aged Care and Nursing Classifications only)

- (a) Employees working afternoon or night shift shall be paid the following percentages in addition to their base rate, for such a shift. Provided that Employees who work less than 38 hours per week will only be entitled to the additional rates where their shifts commence prior to 6.00am or finish subsequent to 6.00pm.

Shift	Full-time/Part-time Employee	Casual Employee
Afternoon shift commencing at or after 10:00 a.m. and before 1:00 p.m	10%	35%
Afternoon shift commencing at or after 1:00 p.m. and before 4:00 p.m	12.5%	37.5%
Night shift commencing at or after 4:00 p.m. and before 4:00 a.m	15%	40%
Night shift commencing at or after 4:00 a.m. and before 6:00 a.m	10%	35%

- (b) The shift penalties prescribed in this clause will not apply to shiftwork performed by an Employee on Saturday, Sunday or public holiday where the extra payment prescribed by clauses 26 and 27 apply.
- (c) The rates for casual Employees in clause 25.1(a) are in substitution for and not cumulative upon the casual loading prescribed in clause 10.6.
- (d) The provisions of this clause 25.1 will not apply to Registered Nurse Levels 4 and 5.

25.2 Shiftwork (Home Care Classifications only)

- (a) Definitions:
- (i) **Afternoon shift** means any shift which finishes after 8.00 pm and at or before 12 midnight Monday to Friday.
 - (ii) **Night shift** means any shift which finishes after 12 midnight or commences before 6.00 am Monday to Friday.
 - (iii) A **public holiday shift** means any time worked between midnight on the night prior to the public holiday and midnight of the public holiday.
- (b) Following the shift work definitions at **clause 25.2(a)** above, in addition to the employees base rate, the following shift penalties apply:

Shift	Full-time/Part-time Employee	Casual Employee
Afternoon shift – loading on the base rate of pay for the whole such shift	12.5%	37.5%
Night shift - loading on the base rate of pay for the whole such shift	15%	40%
Public holiday - loading on the base rate of pay for the part of such shift which is on the public holiday	150%	175%

- (c) The rates for casual Employees in clause 25.2(b) are in substitution for and not cumulative upon the casual loading prescribed in clause 10.6.

- (d) Shifts are to be worked in one continuous block of hours that may include meal breaks and sleepovers, except where broken in accordance with clause 20.

25.3 Shiftwork (Health Professional Classifications only)

- (a) Where the ordinary rostered hours of work of a shiftworker finish between 6.00 pm and 8.00 am or commence between 6.00 pm and 6.00 am, the employee will be paid an additional loading of 15% of their base rate of pay.
- (b) A casual Employee who works shift work as defined in clause 25.2(a) will be paid an additional loading of 40% of their base rate of pay but will not be paid the casual loading of 25%.

25.4 The shift penalties prescribed in this clause 25 will not apply to shift work performed by any Employee on Saturday, Sunday or Public Holiday where the extra payment prescribed in clauses 26 and 27 apply.

26. SATURDAY AND SUNDAY WORK

26.1 Full-time and part-time Employees will be paid for ordinary hours worked on Saturdays and Sundays:

Classification of Employee	Midnight Friday to Midnight Saturday	Midnight Saturday to Midnight Sunday
Aged Care	150% of their base rate of pay	175% of their base rate of pay
HPSS	150% of their base rate of pay	175% of their base rate of pay
Home Care	150% of their base rate of pay	200% of their base rate of pay
Nursing	150% of their base rate of pay	175% of their base rate of pay

26.2 Casual Employees will be paid for ordinary hours worked on Saturdays and Sundays:

Classification of Employee	Midnight Friday to Midnight Saturday	Midnight Saturday to Midnight Sunday
Aged Care	175% of their base rate of pay	200% of their base rate of pay
HPSS	175% of their base rate of pay	200% of their base rate of pay
Home Care	175% of their base rate of pay	225% of their base rate of pay
Nursing	187.5% of their base rate of pay	218.75% of their base rate of pay

26.3 The penalty rates prescribed in clause 26.2 are in substitution for and not cumulative upon the casual loading prescribed in clause 10.6.

26.4 The penalty rates in clause 26 are in substitution for and not cumulative upon the shift penalties prescribed at clause 25.

- 26.5 Other than for Nursing Assistants or Enrolled Nurses, weekend penalty rates in clause 26 shall be in substitution for and not cumulative upon the casual loading at sub-clause 10.6(b).
- 26.6 For Nursing Assistants and Enrolled Nurses, the penalty rate will be applied to their base rate with the casual loading added to the weekend penalty rate.

27. PUBLIC HOLIDAYS

- 27.1 Public holidays are provided for in the NES. This clause contains additional provisions.
- 27.2 The employer may request an employee to work on a particular public holiday.
- 27.3 Public holidays shall be allowed to employees without loss of pay.
- 27.4 The public holiday pertains to the area in which the Facility or Home Care administrative office is located.
- 27.5 (a) For the purposes of this agreement, the following shall be deemed to be public holidays:
- (i) New Year's Day; Australia Day; Good Friday; Easter Saturday; Easter Sunday; Easter Monday; Anzac Day; the King's Birthday; Labour Day; Christmas Day and Boxing Day;
 - (ii) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday; and

Local Public Holiday

- (iii) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed within a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday
- (b) If, under (or in accordance with a procedure under) a law of a State or Territory, a day or part-day is substituted for a day or part-day that would otherwise be a public holiday because of subclause 19.5(a), then the substituted day or part-day is the public holiday.

Additional Public Holiday

- (c) In addition to the named public holidays, Employees shall be entitled to an extra public holiday on a date nominated by the Employer each year. Such public holiday shall occur on a day between Christmas and New Year within the days Monday to Friday inclusive and not coinciding with a date that is already a declared public holiday for that calendar year.
 - (d) The employer and an employee may agree to substitute another day for a public holiday observed at 27.5.
- 27.6 An employee who is required to and does work on any public holiday prescribed in this clause shall be paid in lieu of all other shift penalties (except broken shift allowances), weekend penalties, casual loading, as follows:
- (a) All work done by an Employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at 250% of their ordinary rate of pay. Alternatively, if the Employee elects, the Employee will be paid half-time extra

(50%) for all time worked in addition to the weekly rate and have one ordinary working day added to the period of annual leave. This additional annual leave shall not attract the annual leave loading prescribed at clause 30.

- (c) Payments and entitlement under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

27.7 Public Holiday Substitution

An Employer and the Employees may, by agreement, substitute another day for a public holiday.

27.8 Part-time Employees

- (a) A part-time Employee will only be entitled to payment for those public holidays that fall on days they are normally rostered to work.
- (b) A part-time Employee who is rostered off on a public holiday they would ordinarily work will be paid their ordinary pay for that day.

27.9 Casual Employees

- (a) Casual Employees will be paid only for those public holidays they work. Casual employees will be paid for hours worked at their base rate in the table below. The rates are in substitution for and not cumulative upon the casual loading prescribed in clause 10.6.

Classification of Employee	Public Holiday Rate
Aged Care, Home Care and Health Professionals	275%
Nursing	250%

- (b) Payments under this clause 27.9 are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

28. PUBLIC HOLIDAYS OCCURRING ON ROSTERED DAYS OFF

28.1 All full-time Employees will receive a day's base pay for public holidays that occur on their rostered day off except where the public holidays fall on Saturday or Sunday with respect to Monday to Friday Employees.

28.2 Payment For Work Done On Public Holidays

All work done by a Full-time or Part-time Employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at 250% of their base rate of pay.

28.3 Part-Time Employees

- (a) A part-time Employee will only be entitled to payment for those public holidays that fall on days they are normally rostered to work.

- (b) A part-time Employee who is rostered off on a public holiday they would ordinarily work will be paid their ordinary pay for that day.

28.4 Casual Employees

- (a) Casual Employees will be paid only for those public holidays they work. Casual employees will be paid for hours worked at the relevant rate in the table below. The rates are in substitution for and not cumulative upon the casual loading prescribed in clause 10.6.

Classification of Employee	Public Holiday Rate
Aged Care, Home Care and Health Professionals	275%
Nursing	250%

- (b) Payments under this **clause 28.4** are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

29. ALLOWANCES

29.1 In Charge Allowance

- (a) A registered nurse who is designated by the employer to be in charge during the day, evening or night of a residential aged care facility shall be paid in addition to his or her appropriate salary, whilst so in charge, the per shift allowance set out in Allowances Item #4. (for less than 100 beds) or Item #5 (for 100 or more beds).
- (b) A registered nurse who is designated by the employer to be in charge of a shift in a section of a residential aged care facility shall be paid in addition to his or her appropriate salary, the per shift allowance set out in Allowances Item #6.
- (c) This sub-clause shall not apply to registered nurses holding classified positions of a higher grade than a registered nurse.

29.2 Vehicle/Travelling Allowance

- (a) An employee, other than a Home Care Employee, sent for duty to a place other than his or her regular place of duty shall be paid for all excess travelling time at the appropriate rate of pay and reimbursed excess travelling expenses.
- (b) Where employees, including Home Care employees, are rostered to work at different locations, other than meal breaks, they shall be paid for the time taken to travel via the most direct available route between the locations. This excludes travel from home to the first place of work and travel from the last place of work to home.
- (c) 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. Where an Employee uses their own vehicle for the authorised travel, the per kilometre rate at Schedule B shall be paid
- (d) Where an employee is required to use public transport for work-related travel, such employee is to be reimbursed actual expenses incurred for such travel,

excluding travel from the employee's home to the first place of work and return to home at the cessation of his or her duties.

- (e) No payment shall be made under sub-clauses 29.2(c) and (d) unless the employer is satisfied that the employee has incurred expenditure for such travel.

29.3 Uniforms Allowance

- (a) Subject to the following sub-clauses, sufficient suitable and serviceable uniforms or other items of clothing or equipment shall be supplied free of cost, to each employee who is required to wear a unique uniform.
- (b) Upon termination, an employee shall return any uniform or equipment supplied by the organisation, which is still in use by the employee, immediately prior to leaving.
- (c) In lieu of supplying a unique uniform, the employer shall pay the allowance at Schedule B.
- (e) If, in any facility, the uniforms of an employee are not laundered at the expense of the facility, the allowance at Schedule B shall be paid.
- (f) An employee who works less than 38 hours per week shall be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.
- (g) Each employee whose duties require them to work out of doors shall be supplied with appropriate clothing e.g. over boots, raincoats, sunhats.
- (h) Where an employee is required to wear rubber gloves, special clothing or where safety equipment is required for the work performed by an employee, the employer must reimburse the employee for the cost of purchasing such items except where such clothing or equipment is provided by the employer.
- (l) Laundry allowance shall not be paid to any employee on absences exceeding one week.
- (m) All other allowances in this clause will not be paid to employees during absences on:
 - (i) Workers Compensation: Long Service Leave and periods of leave without pay; and,
 - (ii) Personal/Carers leave beyond 3 weeks.

29.4 Sleepover Allowance

- (a) Employees, other than nurses and health professionals, may, in addition to normal rostered shifts, be required to sleepover. Nurses may undertake sleepovers by agreement. A sleepover means when an employee sleeps overnight at premises where clients for whom the employee is responsible are located in order to be on call for emergencies.
- (b) The following conditions shall apply to each night of sleepover:
 - (i) The span for a sleepover shall be not less than 8 hours or more than 10 hours on any one night.
 - (ii) Employees shall be provided with free board and lodging for each night on which they are required to sleep over.

- (iii) Employees shall be provided with a separate room with a bed and use of facilities or client facilities where applicable.
- (iv) In addition to the provision of free board and lodging for such nights, the employee shall be entitled to a sleepover allowance equivalent to 2.2 hours of base pay of the employee's classification for each sleepover.
- (v) No work other than that of an emergency nature shall be required to be performed during any sleepover. For the purposes of this clause an emergency is any unplanned occurrence or event requiring prompt action.
- (vi) An employee directed to perform work other than that of an emergency nature during any sleepover shall be paid the appropriate hourly rate from the start of the sleepover to the end of the non-emergency work, or from the start of the non-emergency work to the end of the sleepover, whichever is the lesser, in addition to the sleepover allowance in sub-clause 20.4(b)(iv).
- (vii) All time worked during any sleepover shall count as time worked and be paid for in accordance with the following provisions:
 - All time worked by full-time employees during any sleepover shall be paid for at overtime rates.
 - All time worked by part-time employees during any sleepover shall be paid for at ordinary pay plus applicable shift and weekend penalties; provided that, if the total number of hours worked on that day exceeds the number of hours worked by full-time employees, or eleven hours where there are no such full-time employees, then the excess hours worked on that day shall be paid for at overtime rates; and provided further that if the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight as the case may be, then the excess hours worked in that week or fortnight, as the case may be, shall be paid for at overtime rates.
 - All time worked by casual employees during any sleepover shall be paid for at base pay plus applicable shift and weekend penalties; provided that if the total number of hours worked in the week exceeds 38 hours or exceeds 76 hours in the fortnight as the case may be, then the excess hours worked in that week or fortnight, as the case may be, shall be paid for at overtime rates.
 - And provided that where the employee does not have 8 consecutive hours off duty between ordinary rostered duty on successive days, then the provisions of clause 24 will apply.
- (viii) A sleepover may be rostered to commence immediately at the conclusion of the employee's shift and continuous with that shift; and/or immediately prior to the employee's shift and continuous with that shift, and not otherwise.
- (ix) No employee shall be required to sleepover during any part of their rostered days off and/or allocated days off provided for in sub-clauses 17.3(b)(iii) and 17.3(c).
- (x) An employee (whether a full-time employee, part-time employee or casual employee) who performs so much work during sleepover periods between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they

have not had at least 810 consecutive hours off duty between these times shall, subject to this sub-clause, be released after completion of such work until they have had 8 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of the employer such an employee resumes or continues to work without having such 8 consecutive hours off duty they shall be paid at double time of the appropriate rate applicable on such day until they are released from duty for such period and they then shall be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- (c) Nothing in this clause shall preclude the employer from rostering an employee to work shift work in lieu of undertaking sleepovers.

29.5 On Call Allowance

- (a) An employee who, at the request of the employer, agrees to be on call and is rostered on call shall be paid the allowance, for each period of 24 hours or part thereof, set out in Schedule B to this Agreement. An employee on call agrees to make themselves ready and available to return at short notice to work at the employers' or clients' premises, whilst off duty.
- (b) An employee who is directed to remain on call during a meal break shall be paid the meal break allowance set out in Schedule B to this Agreement, provided that no allowance shall be paid if, during a period of 24 hours, including such period of on call, the employee is entitled to receive the allowance prescribed in sub-clause 29.5(a).
- (c) Where an employee on call in accordance with sub-clause 29.5(a), leaves the residential aged care facility and is recalled to duty, she or he shall be reimbursed all reasonable fares and expenses actually incurred. Where in these circumstances the employee elects to use his or her own vehicle the employee shall be paid the per kilometre allowance set out in Allowances Item #7.
- (d) This subclause shall not apply to a Director of Nursing, Deputy Director of Nursing, Assistant Director of Nursing or CSE 5 employee.

29.6 Meal Allowance

- (a) An Employee will be supplied with an adequate meal where the Employer has adequate cooking and dining facilities or be paid a meal allowance at the rate set out in Allowances Items #16,17 and 18 in addition to any overtime payment as follows:
 - (i) when required to work overtime after the usual finishing hour of work beyond one hour or, in the case of shift workers, when the overtime work on any shift exceeds one hour.
 - (ii) provided that where such overtime work exceeds 4 hours a further meal allowance will be paid.
- (b) Clause 29.6 (a) will not apply when an Employee could reasonably return home for a meal within the meal break.

29.7 Continuing Education Allowance

- (a) A registered nurse or enrolled nurse who holds a continuing education qualification in a clinical field, in addition to the qualification leading to registration

or enrolment, shall be paid an allowance subject to the conditions set out in this clause.

- (b) The qualification must be accepted by the employer to be directly relevant to the competency and skills used by the employee in the duties of the position.
- (c) The allowance is not payable to Deputy Directors of Nursing or Directors of Nursing unless it can be demonstrated to the satisfaction of the employer that more than fifty per cent of the employee's time is spent doing clinical work.
- (d) The allowance is not payable to Clinical Nurse Specialists, Clinical Nurse Consultants or Clinical Nurse Educators.
- (e) A registered nurse or enrolled nurse holding more than one relevant qualification is only entitled to the payment of one allowance, being the allowance of the highest monetary value.
- (f) The employee claiming entitlement to a continuing education allowance must provide evidence to the employer that they hold that qualification.
- (g) A registered nurse who holds a relevant postgraduate certificate in a clinical field (not including a hospital certificate) that is accepted by the employer to be directly relevant to the competency and skills used by the registered nurse in carrying out the duties of the position shall be paid the weekly allowance set out in Allowances Item #19.
- (h) A registered nurse who holds a relevant postgraduate diploma or degree in a clinical field (other than a nursing undergraduate degree) that is accepted by the employer to be directly relevant to the competency and skills used by the registered nurse in carrying out the duties of the position shall be paid the weekly allowance set out in Allowances Item #20..
- (i) A registered nurse who holds a relevant master's degree or doctorate in a clinical field that is accepted by the employer to be directly relevant to the competency and skills used by the registered nurse in carrying out the duties of the position shall be paid the weekly allowance set out in Allowances Item #21..
- (j) An enrolled nurse who holds a relevant certificate IV qualification in a clinical field (not including a certificate IV qualification which has the effect of upgrading the qualification leading to enrolment) that is accepted by the employer to be directly relevant to the competency and skills used by the enrolled nurse in carrying out the duties of the position shall be paid the weekly allowance set out in Allowances Item #22..
- (k) The allowances set out in sub-clauses 29.7 (g), (h), (i) and (j) are not included in the employee's base pay and will not constitute part of the all-purpose rate.
- (l) A registered nurse or enrolled nurse who is employed on a part-time or casual basis shall be paid these allowances on a pro rata basis.

29.8 Higher Duties

An employee who is required to relieve or act in a position of a higher classification, shall be entitled to receive the minimum rate applicable for such higher classification for that period. For clarity, the period required must be for at least 2 hours.

29.9 Climatic & Isolation Allowance

- (a) This clause shall not apply to employees unless they were entitled to the allowance immediately prior to the date of approval of this agreement.

- (b) (i) Subject to sub-clause 29.9(c) persons employed in organisations in places situated upon or to the west of a line drawn as herein specified shall be paid the allowance set out in Allowances Item #23 in addition to the salary to which they are otherwise entitled.
- (ii) The line shall be drawn as follows: viz., commencing at Tocumwal and thence to the following towns in the order stated, namely: Lockhart; Narrandera; Leeton; Peak Hill; Gilgandra; Dunedoo; Coolah; Boggabri; Inverell and Bonshaw.
- (c) (i) Persons employed in organisations in places situated upon or to the west of a line drawn as herein specified shall be paid the allowance set out in Allowances Item #24 in addition to the salary to which they are otherwise entitled.
- (ii) The line shall be drawn as follows: viz., commencing at a point on the right bank of the Murray River opposite Swan Hill (Victoria) and thence to the following towns in the order stated, namely: Hay; Hillston; Nyngan; Walgett; Collarenebri and Mungindi.
- (d) The allowances prescribed by this clause are not cumulative.
- (e) Except for the computation of overtime, the allowances prescribed by this clause shall be regarded as part of salary for the purposes of this Agreement.

PART 3 - LEAVE

30. ANNUAL LEAVE

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

30.2 Accrual of Annual Leave

- (a) All employees, other than shift workers, are entitled to 4 weeks paid annual leave for each year of service with the employer. The base rate of pay for nurses in Table 1 is inclusive of a buy-out of one week's annual leave for all nursing classifications. This is achieved by being not less than 2.0% above the relevant Award pay point for their classification.
- (b) Shift workers are entitled to one additional week of Annual Leave.
- (c) For the purposes of this clause, a shift worker is a Nursing or Aged Care Employee who is not a day worker as defined in clause 17.5 Span of Hours (Excluding home care classification) and clause 17.6 Span of Hours for Home Care Classifications.
- (d) The entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work and accumulates from year to year.

30.3 Payment of Annual Leave

- (a) annual leave shall be paid at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (b) Annual leave loading, shall be paid in accordance with **clause 30.7**.

30.4 Taking of Annual Leave

- (a) An employee is entitled to take an amount of annual leave during a particular period if:
 - (i) at least that amount of annual leave is credited to the employee; and
 - (ii) the employer has authorised the employee to take the annual leave during that period.
- (b) In the taking of leave, the employee shall make written application to the employer, giving reasonable notice of the desired period of such leave.
- (c) It is understood that in certain periods of peak demand such as Christmas, Easter, school holidays and long weekends, the employer may require more notice and further time in which to approve leave requests.
- (d) Annual leave shall be taken in an amount and at a time which is approved by the employer subject to the operational requirements of the workplace. The employer shall not unreasonably withhold or revoke such approval.

30.5 Direction by Employer for Excessive Leave to be Taken

- (a) Where an Employee has accrued more than 2 years of paid annual leave (including additional leave for shift workers) such an Employee has an excessive leave accrual (Excess Leave).
- (b) In the circumstances of Excess Leave, the Employer may direct the Employee to take a period of annual leave (Direction) by giving not less than 8 weeks and not more than 12 months' notice to the Employee (Notice), subject to the following:
 - (i) the Employee will first be given a reasonable opportunity to submit a plan to reduce their total annual leave accrued balance to not more than 6 weeks within a period of 6 months (leave reduction plan)
 - (ii) The Employer will not unreasonably refuse to agree to an Employee's annual leave reduction plan, which includes saving leave for an extended absence within 12 months of the date of agreement to the leave reduction plan. The agreement is to be in writing and signed by both the Employer and Employee; and,
 - (iii) The Direction cannot result in the Employee being directed to reduce the accrued leave to less than 6 weeks.
 - (iv) The Direction must not require any period of less than 1 week to be taken.

30.6 Cashing out of Annual Leave

- (a) Annual leave credited to an employee may be cashed out by agreement, subject to the following conditions:
 - (i) 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; and
 - (ii) each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; and

- (ii) 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.

30.7 Annual Leave Loading

- (a) In addition to their Annual Leave payment, an employee will be paid the higher of:
 - (i) an annual leave loading of 17.5% of their Annual Leave; or
 - (ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.
- (b) The Annual Leave loadings in clause 30.7(a) are not payable for days which have been added to be taken in conjunction with annual leave in accordance with the election provisions of clause 27.
- (c) Shift allowances and weekend penalties are not payable for public holidays which occur during a period of annual leave.

31. PERSONAL/CARER'S LEAVE AND COMPASSIONATE LEAVE

- 31.1**
- (a) Employees are entitled to personal/carer's leave and compassionate leave in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 7 of the Act).
 - (b) Casual employees have no entitlement to paid personal/carer's leave or compassionate leave but do have an entitlement to unpaid leave.

31.2 Entitlement to paid Personal/Carers Leave

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

31.3 Taking of Personal/Carer's Leave

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

- (a) where the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or
- (b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
 - (i) a personal illness, or personal injury, affecting the member; or
 - (ii) an unexpected emergency affecting the member.

31.4 Payment of Paid Personal/Carer's Leave

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

31.5 Personal/Carers Leave on Public Holidays

If the period during which an employee takes paid personal/carer's 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 personal/carer's leave on that public holiday.

31.6 Unpaid Carer's Leave

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

31.7 Compassionate Leave

- (a) An employee is entitled to 2 days of compassionate leave for each 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
 - (ii) sustains a personal injury that poses a serious threat to his or her life
 - (iii) NES entitlement relating to miscarriage and stillbirth; or,
 - (iii) dies.
- (c) An employee may take compassionate leave as:
 - (i) a single continuous period of 2 days: or
 - (ii) 2 separate periods of 1 day each; or
 - (ii) any separate periods agreed with the employer.

31.8 Payment for Compassionate Leave

- (a) If an employee takes a period of paid compassionate leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (b) Casual employees are entitled to unpaid compassionate leave.

31.9 Notice and Evidence Requirements

- (a) To be entitled to leave under clause 31, an employee must give the employer notice of the period, or expected period of the leave: as soon as reasonably

practicable (which may be at a time before or after the leave has started) that the employee is (or will be) absent;

- (b) An employer may require an employee to give the employer evidence that would satisfy a reasonable person that the leave was taken for a permissible reason or occasion.
- (c) To be entitled to personal leave during the period, the employee may be required to give the employer as soon as reasonably practicable either:
 - (i) a medical certificate from a registered health service provider stating that in their opinion, the employee was, is, or will be unfit for work during the period because of a personal illness or injury; or
 - (ii) a statutory declaration made by the employee stating that the employee was, is, or will be unfit for work during the period because of a personal illness or injury.
- (d) To be entitled to carer's leave, the employee may be required to give the employer as soon as reasonably practicable either:
 - (i) a medical certificate from a registered health service provider stating that in their opinion the Employee is required to provide care and/or support to a member of their immediate family or household during the period due to personal illness or injury; or
 - (ii) a statutory declaration made by the employee stating that the employee requires or required to provide care and/or support to a member of their immediate family or household during the period because of personal illness, or injury, of the member or an unexpected emergency affecting the immediate family or household .
- (e) To be entitled to compassionate leave, the employee may be required to give the employer as soon as reasonably practicable:
 - (i) a medical certificate from a registered health service provider stating that in their opinion the member is suffering from an illness or injury that poses a serious threat to the member's life; or
 - (ii) a statutory declaration made by the employee stating that the employee requires or required leave during the period due to the death of the member.

32. COMMUNITY SERVICE LEAVE

32.1 Employees are entitled to community service Leave in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 8 of the Act).

32.2 Eligible community service activities

- (a) This clause entitles an employee, acting reasonably, to be absent from employment for periods including:
 - (i) time when the employee engages in the activity
 - (ii) reasonable travelling time associated with the activity
 - (iii) reasonable rest time immediately following the activity

and includes:

- (iv) a voluntary emergency management activity; or
- (v) an activity prescribed in regulations made for the purpose of Section 109(4) of the Act.

32.3 Jury Service

- (a) There is no limit on the amount of unpaid jury service leave an employee can take in a 12-month period of employment.
 - (b) Employees, other than casuals, are entitled to be paid:
 - (i) for the first 10 days when absent from work in one or more periods to attend jury service re a particular jury service summons.
 - (ii) the difference between what the employee received as jury service pay and the base rate of pay for the employee's ordinary hours of work in the period or periods.
 - (c) Where the duration of jury service re a particular jury service summons exceeds 10 days, the employer agrees to assist the employee as far as is reasonably practical to maintain their regular income. The assistance may include: flexibility of rosters; access to Annual Leave and/or Long Service Leave.
 - (d) The employer may require the employee to provide evidence that would satisfy a reasonable person:
 - (i) that the employee took all necessary steps to obtain any amount of jury service pay to which they were entitled; and
 - (ii) of the total amount of jury service pay, paid or payable to the employee.
- (d) No payment is required where evidence is required by the employer and not provided by the employee.

32.4 Voluntary emergency management activity (VEMA)

- (a) An employee engages in a VEMA if:
 - (i) they voluntarily participate;
 - (ii) the activity involves dealing with an emergency or natural disaster;
 - (iii) they are a member of, or have a member like association with a recognised emergency management body (REMB); and,
 - (iv) the REMB requests their participation

33. PARENTAL LEAVE

33.1 Employees are entitled to parental leave in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 5 of the Act).

33.2 Paid parental leave

- (a) Full-time and part-time employees may claim paid parental leave at ordinary pay, from the date the parental leave commences in the following circumstances:
 - (i) first claim: where eligible for unpaid parental leave; and

- (ii) second and subsequent claims: where an employee having returned to work from a period of parental leave has completed 3 months of continuous service prior to each claim.
- (b) For the purposes of the calculation of “ordinary pay” for paid parental leave purposes, an employee will be paid the higher of:
 - (i) The average of the ordinary hours actually worked by the employee in the 12-month period ending at the commencement of parental leave; or
 - (ii) The ordinary hours worked by the employee at the time of the commencement of parental leave.
- (c) Paid parental leave includes:
 - (i) 10 weeks paid maternity leave for the birth mother.
 - (ii) 10 weeks paid adoption leave for the initial primary carer of the adopted child; and
 - (iii) 2 weeks paid partner leave.
- (d) Paid partner leave will be payable to:
 - (i) the father; or
 - (ii) partner of the birth mother; or
 - (iii) partner of the initial primary carer of an adopted child.
- (e) Partner includes spouse and de facto partner but does not include former spouse or de facto partners.
- (f) Any period of “paid no safe job leave” taken by an employee pursuant to the “Transfer to a Safe Job” provisions of the Act shall be deducted from the employee’s entitlement to paid maternity leave.

34. LONG SERVICE LEAVE

- 34.1 An employee’s entitlement to long service leave shall be in accordance with the provisions of this Agreement and the *Long Service Leave Act 1955 (NSW)* provided that should there be any inconsistency between that legislation and the provisions of this Agreement these provisions shall prevail to the extent the Agreement entitles employees to long service leave in excess of the employees’ entitlement to long service leave under the *Long Service Leave Act (1955) NSW*.
- 34.2 (a) Each employee shall be entitled to 2 months long service leave on ordinary pay after ten years’ service; thereafter additional long service leave shall accrue on the basis of 5 months long service leave for each 10 years’ service. This additional leave may be taken on a pro-rata basis each 5 years after completing the initial 10-year period of service.
- (b) Where the services of an employee with at least 5 years’ service are terminated by the employer for any reason other than the employee’s serious and wilful misconduct, or by the employee on account of illness, incapacity or domestic or other pressing necessity, or by reason of the death of the employee, he/she shall be entitled to be paid a proportionate amount on the basis of 2 months for 10 years’ service.
- 34.4 (a) The employer shall give to each employee at least 1 months’ notice of the date

from which it is proposed that the employee's long service leave shall be given and taken. Long service leave shall be taken as soon as practicable having regard to the needs of the workplace, or where the employer and the employee agree, such leave may be postponed to an agreed date.

(b) Where the employer and the employee agree in writing that the taking of a period of leave be postponed at the request of an employee to an agreed future date, the period of leave at the time of the agreement being made will, when taken, be paid at the rate applicable at the time of the agreement.

34.5 (a) On the termination of employment of an employee, otherwise than by his or her death, an employer shall pay to the employee the monetary value of all long service leave accrued and not taken at the date of such termination and such monetary value shall be determined according to the salary payable to the employee at the date of such termination.

(b) Where an employee who has acquired a right to long service leave, or after having had 5 years' service and less than 10 years' service dies, the employee's personal representative shall, upon request, be entitled to receive the monetary value of the leave not taken or which would have accrued to such employee had his or her services terminated as referred to in sub-clause 25.2(b) and such monetary value shall be determined according to the salary payable to the employee at the time of his or her death.

34.6 (a) With the agreement of the employer, an employee may take long service leave on half the ordinary pay thereby increasing the period of paid leave which can be taken. For example, an employee who is eligible for 13 weeks paid long service leave can take 26 weeks paid long service leave at half their ordinary pay.

(b) During a period of long service leave on half the ordinary pay accrual of annual leave and personal/carers leave will be on the basis of half the ordinary hours of work.

(c) For the purposes of this clause:

(i) Subject to s22 of the Act, continuous service with the employer in coming into force of this agreement shall be taken into account, and:

(ii) Continuous service shall be deemed not to have been broken by:

1. Absence of an Employee from the facility while a member of the Defence Forces of the Commonwealth in time of war; or

2. Any period of absence on leave without pay not exceeding six months.

(iii) One month equals four and one-third weeks.

35. REPATRIATION LEAVE

35.1 Employees who are considered to be ex-service personnel may be granted special leave in one or more periods up to a maximum of 6½ working days in any period of 12 months without deduction from annual or personal leave credits for the following purposes in connection with an accepted war-caused disability or in connection with an application to the Repatriation Department for a disability to be so accepted:

(a) to attend a hospital or clinic or visit a medical officer in that regard;

- (b) to attend a hospital, clinic or medical officer or to report for periodical examination or attention;
 - (c) to attend limb factories for the supply, renewal and repair of artificial replacements and surgical appliances.
- 35.2 Employees may be required to provide the employer with documentary evidence as to the attendance prior to the payment of special leave being granted.

36. LEAVE WITHOUT PAY

- 36.1 By agreement between the employer and a permanent employee, an employee may be granted a period of leave without pay.
- 36.2 The period of leave without pay will not break the continuity of service of the employee but is not counted for accrual of service related entitlements

37. CEREMONIAL LEAVE

An employee who is required by Aboriginal and Torres Strait Islander tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to 10 working days' unpaid leave in any one year, with the approval of the employer.

38. NATURAL DISASTER LEAVE

- 38.1 Where a permanent employee is unable to attend work because of a natural disaster, i.e. bushfire or flood, they will be entitled to be paid ordinary pay for the shift they would otherwise have worked on that day. This entitlement will apply once per calendar year and is not cumulative from year to year.
- 38.2 The employer may require the employee to provide evidence to support their claim.

39. LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE

- 39.1 An Employee may request 10 days paid leave per annum (non-cumulative) to deal with matters relating to family and domestic violence as defined by this clause. Payment for any leave is the full rate of pay for the hours they would have worked had they not taken the leave. Part time and casual Employees may request these days on their usual rostered days only.
- 39.2 This leave may be taken as consecutive or single days or as a fraction of a day.
- 39.3 Family and domestic violence means violent, threatening or other abusive behaviour by a close relative of an Employee that seeks to coerce or control the Employee and that causes them harm or to be fearful or the conduct of a current or former intimate partner of an Employee, or a member of an Employee's household.
- 39.4 For the purposes of this clause, a family member is defined as:
- (a) A spouse, former spouse, de-facto partner, former de-facto partner, child, parent, grandparent, grandchild or sibling of the Employee
 - (b) A child, parent, grandparent, grandchild or sibling of a spouse, former spouse, de-facto partner or former de-facto partner of the Employee; or,
 - (c) are related by First Nations kinship rules.

- 39.5 The reasons for which an Employee may access leave under this clause may include (but not limited to) making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.
- 39.6 An Employee who supports a person experiencing family and domestic violence may use their existing carer's leave and if exhausted, annual leave and if exhausted, unpaid leave to accompany the person on activities related to the family and domestic violence or to provide care for the dependents.
- 39.7 The Employee may be required to provide evidence to satisfy the requirement of accessing leave under this clause. The evidence provided by the Employee must be that of what would satisfy a reasonable person that the leave being taken is for the purpose specified in this clause.
- 39.8 All personal information concerning family violence will be kept confidential, in line with the Employer's privacy policy and relevant legislation.
- 39.10 Nothing under this clause precludes the Employer to agreeing to additional discretionary leave being provided to the Employee.

PART 4 - OTHER PROVISIONS

40. CONSULTATION

40.1 Consultation regarding major workplace change

Employer to notify

- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any, which may be the union.
- (b) Significant effects include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this Agreement makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

40.2 Employer to discuss change

- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 40.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 40.1.
- (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, which may be the union, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other

matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

40.3. Consultation regarding changes to regular rosters or ordinary hours of work

- (a) Where the employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.
- (b) The employer must consult with any employees affected by the proposed change and their representatives (if any).
- (c) For the purpose of the consultation, the employer must:
 - (i) provide to the employees and representatives information about the proposed change (for example, information about the nature of the change and when it is to begin); and
 - (ii) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.
- (d) The employer must consider any views given under clause 40.3 (c).
- (e) Clause 40 is to be read in conjunction with any other provisions of this Agreement concerning the scheduling of work or the giving of notice.

41. REDUNDANCY

- 41.1 For the purposes of this clause, "continuous service" shall be interpreted in the same manner as "service of a worker" is interpreted in the *Long Service Leave Act 1955 (NSW)* as at the date this Agreement comes into operation. Periods of leave without pay, including parental leave without pay, do not break the continuity of service of an employee but are not to be taken into account in calculating length of service for the purposes of this clause.
- 41.2 Redundancy occurs where the employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.
- 41.3 Unless the FWC subsequently orders otherwise pursuant to **clause 41.6**, where the employment of an employee is to be terminated for the reason set out in sub-clause 41.2, the employer shall pay, in addition to other payments due to that employee, the following retrenchment pay in respect of the following continuous periods of service:
- (a) Where the employee is under 45 years of age, the employer shall pay the employee in accordance with the following scale:

Minimum Years of Service	Retrenchment Pay
Less than 1-year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	7 weeks' pay
3 years and less than 4 years	10 weeks' pay
4 years and less than 5 years	12 weeks' pay
5 years and less than 6 years	14 weeks' pay
6 years and over	16 weeks' pay.

- (b) Where the employee is 45 years of age or over, the employer shall pay the employee in accordance with the following scale:

Minimum Years of Service	Retrenchment Pay
Less than 1-year	Nil
1 year and less than 2 years	5 weeks' pay
2 years and less than 3 years	8.75 weeks' pay
3 years and less than 4 years	12.5 weeks' pay
4 years and less than 5 years	15 weeks' pay
5 years and less than 6 years	17.5 weeks' pay
6 years and over	20 weeks' pay

'Weeks' pay' means the rate of pay for the employee concerned at the date of termination, and shall include in addition to the ordinary pay any over-agreement payments and the following, if applicable:

- shift and weekend penalties as prescribed in Clauses 25 and Clause 26;
- broken shift allowance as prescribed in clause 20;
- sleepover allowance as prescribed in clause 29.4; and,
- climatic and isolation allowances as prescribed in clause 29.9.

41.4 Transfer to Lower Paid Duties

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

41.5 Employee Leaving During Notice Period

An Employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The Employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to any payment in lieu of any remaining notice.

41.6 Lesser Amount

Subject to an application by the employer and further order of the FWC the employer may pay a lesser amount (or no amount) of retrenchment pay than that contained in sub-clause 32.3. The FWC shall have regard to such financial and other resources of the employer concerned as the FWC thinks relevant, and the probable effect paying the amount of retrenchment pay in sub-clause 32.3 will have on the employer.

41.7 Job search entitlement

(a) Where the employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the Act for the purpose of seeking other employment.

(b) If an employee is allowed time off without loss of pay of more than one day under paragraph (a), the employee must, at the request of the employer, produce proof of attendance at an interview.

(c) A statutory declaration is sufficient for the purpose of paragraph (b).

(d) An employee who fails to produce proof when required under paragraph (b) is not entitled to be paid for the time off.

(e) This entitlement applies instead of clause 43.6.

42. DISCIPLINARY MATTERS

42.1 An Employee required to attend a disciplinary or performance meeting will be entitled to ordinary pay for the duration of the meeting.

Investigative procedure

42.2 When a question is raised about the Employee's underperformance, conduct or behaviour, the Employer will conduct a fair investigation, having proper regard to procedural fairness and the factors set out below.

42.3 Important procedural factors include:

- (a) That the reason for any interview is explained to the Employee.
- (b) A reasonable opportunity is to be provided for a representative or support person of the Employee's choice to attend any interviews or meetings conducted by the Employer with the Employee, provided that this shall not unduly delay processes. Other than the Employee, attendance may be in person, by videoconference or by telephone.
- (c) Prior to a response being sought from the Employee to the matters raised, the Employee will be provided, in writing, relevant details of the Employer's concerns and specific allegations, as well as possible outcomes if the allegations are proven or the underperformance continues.
- (d) The Employee will be given the opportunity to respond to the concerns or allegations. This may be given in writing, and any responses given shall be taken into account before a decision is reached.
- (e) The Employee may decline to answer any questions relating to the investigation. In which case, the Employer may reach a decision based on the information and evidence to hand.
- (f) If the Employee raises an issue in their response to concerns or allegations that warrants further investigation, the Employer shall take reasonable steps to investigate the other matters either concurrently or at a later time if the issue is not relevant to the outcome of the performance/ underperformance concerns.

- (g) The Employer may suspend an Employee with pay (including allowances, loadings and penalty rates) for a period as is reasonably necessary to conduct the investigation or to deliver the outcome of the investigation.
- (h) When the investigation has been completed, the Employer will advise the Employee of the Employer's decision in regard to the outcome of the investigation in writing, with reasons provided for the outcome. Where the outcome is delivered in a meeting, the Employee may invite a support person or representative to be present.

42.4 Outcome of Investigation

After considering all the information reasonably available on the matter, and if the Employer determines that misconduct/behaviour or underperformance issues have occurred, the Employer may, having regard to the degree of misconduct or underperformance:

- (a) Take no further action;
- (b) Counsel the Employee and identify and then provide appropriate training, including performance improvement plans for minor issues;
- (c) Issue a verbal warning;
- (d) Issue a formal written warning.

42.5 In regard to misconduct only, the Employer may decide to:

- (a) Issue a 'first and final' formal written warning for a substantial breach not warranting dismissal.
- (b) Terminate the Employee's employment with notice where the conduct warrants this outcome or results from a breach of a 'first and final' warning; or,
- (c) Terminate the Employee's employment without notice only where the conduct is determined to be 'serious misconduct' within the meaning of the Act.

42.6 In regard to continued underperformance only, the Employer may dismiss the Employee with notice where the underperformance has continued and a reasonable period to improve has been given, and the Employee, having had the opportunity to improve their performance, has failed to meet expectations.

43. TERMINATION OF EMPLOYMENT

43.1 Notice of Termination by the Employer: Subject to below, at the time of termination, the Employer must provide the following periods of notice to all Employees other than casuals:

Period of Continuous Service	Minimum Period of Notice
Not more than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

43.1 A Director of Nursing; Deputy Director of Nursing; Assistant Director of Nursing and a Personal Care Worker Level 5 - 4 weeks' notice.

- 43.2 An Employee over 45 years of age is entitled to an extra weeks' notice if the Employee has completed at least two years of continuous service.
- 43.3 Casuals are to be given notice to the end of their current shift or 1 hour whichever is the greater.
- 43.4 Payment in lieu of notice prescribed above shall be made if the appropriate notice period is not given, provided that employment may be terminated by part of the period of notice specified and part in lieu thereof. The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the Employee's employment had continued until the end of the required notice period, the Employer would have been liable to pay to the Employee because of the employment continuing during that period (i.e. payment for ordinary hours plus all allowances, loadings and penalties and any other amount under the Employee's contract of employment).
- 43.5 In the case of dismissal for proven serious misconduct, payment is made only to the time of dismissal.

Job Search Entitlement

- 43.6 Where the Employer has given notice of termination to an Employee, an Employee must be allowed up to 1 day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the Employee after consultation with the Employer. This clause does not apply to casual Employees.

44 NOTICE OF TERMINATION BY THE EMPLOYEE

- 44.1 At the time of termination, the Employee must provide to the Employer the same periods of notice as listed in clause 43.1 or as per clause 43.3.
- 44.2 If the Employee fails to give notice or fails to work their allocated notice period, the Employer may seek the Employee's written authorisation to withhold any monies due to the Employee on termination under this Agreement an amount not exceeding the Employee's ordinary rate of pay equivalent to one week's pay. The Employee is within their rights to not agree to this deduction in accordance with the s324 of the *Act*.
- 44.3 The employer will give the employee a statement signed by the employer stating the period of employment and when the employment was terminated if the employee requests.
- 44.4 Abandonment of Employment: Where an employee is terminated by the employer for abandonment of employment, the employer shall provide notice of termination in accordance with the National Employment Standards (NES)

45. LABOUR FLEXIBILITY AND MIXED FUNCTIONS

- 45.1 The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence, training and Workplace Health and Safety considerations.
- 45.2 The employer may direct an employee to carry out such duties and use such tools and equipment as may be required, provided the employee possesses the relevant skills and competence to perform such tasks. Where the employee does not possess such skills and competence, appropriate training shall be facilitated.

- 45.3 Any direction issued by the employer pursuant to sub-clauses 35.1 and/or 35.2 shall be consistent with the employer's responsibility to provide a safe and healthy working environment for employees, and the employer's duty of care to residents and/or clients.
- 45.4 Where an employer has decided there is no longer a requirement for a Deputy Director of Nursing or an Assistant Director of Nursing to be appointed in a workplace, the employer shall ensure that the workload previously performed by that nurse manager is adequately allocated to other management employees, and that the workloads of all other nurses on the nursing care roster within that workplace will remain consistent with their substantive role, duties and classifications.

46. WORKLOAD MANAGEMENT

- 46.1 The parties to this agreement acknowledge that employees and management have a responsibility to maintain a balanced workload and recognise the adverse effects that excessive workloads may have on employee/s and the quality of resident/client care.
- 46.2 To ensure that employee concerns involving excessive workloads are effectively dealt with by Management the following procedures should be applied:
- (a) In the first instance, employee/s should discuss the issue with their immediate supervisor and, where appropriate, explore solutions.
 - (b) If a solution cannot be identified and implemented, the matter should be referred to an appropriate senior manager for further discussion.
 - (c) If a solution still cannot be identified and implemented, the matter should, where possible be referred to the Facility Manager or Home Care Manager for further discussion.
 - (d) The outcome of the discussions at each level and any proposed solutions should be recorded in writing and fed back to the effected employees.
 - (e) At each of the steps above the parties should aim to agree on a reasonable time frame for response
- 46.3 Workload management must be an agenda item at meetings of employees on at least a quarterly basis. Items in relation to workloads must be recorded in the minutes of the meeting, as well as actions to be taken to resolve the workloads issue/s. Resolution of workload issues should be based on the following criteria including but not limited to:
- (a) Clinical assessment of residents' needs;
 - (b) The demand of the environment such as facility layout;
 - (c) Statutory obligation, (including, but not limited to, workplace health and safety legislation;
 - (d) The requirements of nurse regulatory legislation;
 - (e) Reasonable workloads;
 - (f) Accreditation standards;
 - (g) Replacement of employees on leave; and
 - (h) Budgetary considerations.

46.4 If the issue is still unresolved, the employee/s may advance the matter through clause 54. Arbitration of workload management issues may only occur by agreement of all parties.

47. SUPERANNUATION

47.1 The employer will make superannuation contributions into an approved Superannuation Fund nominated by the employee in accordance with the Superannuation Guarantee (SG) legislation as varied from time to time. An approved fund must offer a “My Super” product.

47.2 An ‘approved fund’ means:

(a) Aware Super

(b) Australian Super

(c) Health Employees' Superannuation Trust Australia (H.E.S.T.A.);

-(d) any agreed complying superannuation fund; provided that the employer shall not unreasonably withhold agreement unless it establishes good and proper reasons for the withholding of agreement.

47.3 An employee will nominate one approved fund to which all statutory superannuation contributions shall be paid.

47.4 On commencement, should an Employee fail to nominate an approved fund within 28 days, the Employer will make superannuation payments to the Employee's ‘Stapled Fund’ (meaning the Superannuation Fund used in their last period of employment). Employees with no identified Super Fund and who do not nominate a Superannuation Fund within 28 days, will have their superannuation sent to one of the nominated Funds above.

47.5 The superannuation contributions will be paid at ordinary pay, which for the purpose of this Agreement includes ordinary time worked on public holidays and public holiday loadings.

47.6 Contributions

The employer shall make superannuation contributions into an approved fund on a monthly basis. With respect to casual employees, contributions shall be remitted at least quarterly.

47.7 Salary Sacrifice to Superannuation

(a) An employee can elect to sacrifice a portion of salary to superannuation. Such election must be made prior to the commencement of the period of service to which the earnings relate and be in accordance with relevant legislation.

(b) Salary sacrifice to superannuation means the option of making additional superannuation contributions by electing to sacrifice a portion of the gross earnings (pre-tax dollars). This will give the effect of reducing the taxable income by the amount for salary sacrifice.

(c) Employers will not use any amount that is salary sacrificed by an employee to count towards the employer's obligation to pay contributions under the SG legislation.

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

48. ATTENDANCE AT MEETINGS

Wherever possible, the employer will hold meetings within the employee's ordinary hours. Any employee required by the employer to attend meetings outside the employee's ordinary hours shall be entitled to receive at least their minimum engagement plus any applicable shift penalties, weekend penalties or overtime for attendance at such meetings.

49. TRAINING

- 49.1 Employees will be given on-going training as necessary, relevant to their roles and responsibilities. Delivery of training may be via a variety of means including but not limited to face to face, on the job and e-learning. The organisation will facilitate access to the appropriate resources to undertake the training provided and the skills necessary to utilise those resources.
- 49.2 If requested by the employee' they shall be provided with details of their attendance at training.
- 49.3 Upon termination of the employee's employment the employer shall provide to the employee a written statement of the hours of training attended by the employee.
- 49.4 Where practicable, such training shall be provided to employees during their normal rostered hours of work. Where this is not practicable:
 - (a) Employees shall attend training outside their normal rostered working hours when required to do so by the employer;
 - (b) The employer shall provide employees with two (2) weeks' notice of the requirement to attend training outside of their normal rostered working hours;
 - (c) Unless the overtime provisions at clause 24 apply, attendance at such training shall be paid ordinary pay for the period of training.
 - (d) The employer requiring an employee to attend training shall also pay to the employee ordinary pay for time travelling to and from a period of training referred to in sub-clause (c) that is in excess of the time normally taken for that employee to attend work.

- (e) When receiving travelling time as set out in sub-clause (d), an employee using his or her own vehicle for attendance at such training shall be paid the per kilometre allowance set out in Allowances Item #7..
- (f) Training provided outside the normal rostered hours of work shall be arranged so as to allow full-time employees to have at least 10 hours off-duty before or after training and the end or beginning of their shift, whichever is applicable as set out in clause 17.3 - Arrangement of Hours. Where practicable, similar arrangements should also be made available to all other employees.
- (g) Any training undertaken by an employee that occurs at a workplace is not intended to replace or supplement staffing levels and the normal levels of service delivery at such a workplace.

50. CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

- 50.1 The employer commits to the professional development of employees where it is within the scope of the employee's role and is deemed to meet the needs of the employer.
- 50.2 The employer will assist to facilitate access to professional development opportunities by allowing flexibility of rostering and applications for leave. Where such professional development is reasonable, approval will be subject to the operational needs of the facility.

51. AMENITIES

- 51.1 The minimum standards as set out in all relevant Work Health and Safety legislation shall be met in the provision of amenities to employees.

52. INSPECTION OF LOCKERS

Lockers may only be opened for inspection in the presence of the employee but in cases where the employee neglects or refuses to be present or in any circumstances where notice to the employee is impracticable, such inspection may be carried out in the absence of the employee by an officer of the employer and an employee representative where practicable, otherwise by any two officers appointed by the employer for that purpose.

53 REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

- 53.1 An Employee may request a change in working arrangements. This Clause applies where an Employee has made a request for a change in working arrangements under section 65 of the Act.

NOTE 1: Section 65 of the Act provides for certain Employees to request a change in their working arrangements because of their circumstances, as set out in section 65(1A). This clause supplements or deals with matters incidental to the NES provisions.

NOTE 2: An Employer may only refuse a section 65 request for a change in working arrangements on 'reasonable business grounds' (see section 65(5) and (5A)).

NOTE 3: Clause 53 is in addition to s65.

Responding to the Request

- 53.2 Before responding to a request made under section 65, the Employer must discuss the request with the Employee and genuinely try to reach an agreement on a change in working arrangements that will reasonably accommodate the Employee's circumstances having regard to:
- (a) the needs of the Employee arising from their circumstances
 - (b) the consequences for the Employee if changes in working arrangements are not made; and,
 - (c) any reasonable business grounds for refusing the request.

NOTE 1: The Employer must give the Employee a written response to an Employee's section 65 request within 21 days, stating whether the Employer grants or refuses the request (section 65(4)).

NOTE 2: If the Employer refuses the request, then the written response must include details of the reasons for the refusal (section 65(6)).

What the Written Response Must Include if the Employer Refuses the Request

- 53.3 This clause applies if the Employer refuses the request and has not reached an agreement with the Employee under clause 53.2.
- 53.4 The written response under section 65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- 53.5 If the Employer and Employee could not agree on a change in working arrangements under clause 79.2, then the written response under section 65(4) must:
- (a) state whether or not there are any changes in working arrangements that the Employer can offer the Employee so as to better accommodate the Employee's circumstances; and,
 - (b) if the Employer can offer the Employee such changes in working arrangements, set out those changes in working arrangements.

What the Written Response Must Include if a Different Change in Working Arrangements is Agreed

- 53.6 If the Employer and the Employee reach an agreement under clause 53.2 on a change in working arrangements that differs from that initially requested by the Employee, then the Employer must provide the Employee with a written response to their request setting out the agreed change(s) in working arrangements.
- 53.7 Disputes about whether the Employer has discussed the request with the Employee and responded to the request in the way required by clause 53.2, can be dealt with under clause 54 (Dispute resolution).
- 53.8 See Schedule C for the format for an Individual Flexibility Arrangement.


54. DISPUTE RESOLUTION PROCEDURES

- 54.1 This clause sets out the procedures to be followed if a dispute arises about a matter under this Agreement or in relation to the NES.
- 54.2 The parties to the dispute must first try to resolve the dispute at the workplace through a discussion between the Employee or Employees concerned and the relevant supervisor.

- 54.3 If the dispute is not resolved through discussion as mentioned above, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the Employee or Employees concerned and more senior levels of management, as appropriate.
- 54.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under this clause, a party to the dispute may refer it to the Fair Work Commission.
- 54.5 The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and arbitration.
- 54.6 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the Act to use and that it considers appropriate for resolving the dispute.
- 54.7 The parties agree that Disputes over workloads (Clause 46), may only be subject to Arbitration with the consent of all parties.
- 54.8 While procedures are being followed under this clause in relation to a dispute:
- (a) work must continue in accordance with this Agreement and the Act; and
 - (b) an Employee must not unreasonably fail to comply with any direction given by the Employer about performing work, whether, at the same or another workplace, that is safe and appropriate for the Employee to perform.
- 54.9 An Employee who is a party to the dispute may appoint a person, organisation, or association to support and/or represent them in any discussion or process under this clause.
- 54.10 Clause 54.8 is subject to any applicable Workplace Health and Safety legislation.

EXECUTION:

DATED this 21st day of AUGUST 2024


	<u>Darraugh Cleary</u>	<u>MANAGER</u>
Signature	Print Name	Position

Signature on behalf of Touriandi Limited

I declare that I am authorised to sign this Agreement on behalf of the Employer.

4 Bora Road Bingara. NSW 2404

DATED this 21 day of AUGUST 2024

	<u>Janele French</u>	<u>C-admin AIN</u>
Witness Signature	Print Name	Position

4 Bora Road Bingara. NSW 2404

DATED this 21 day of AUGUST 2024

I declare that I am an Employee of *Touriandi Limited* and that my employment will be covered by the terms of the *Touriandi Limited, NSWNMA, and HSU NSW Enterprise Agreement 2023*.

	<u>JOANNA MUNRO</u>	<u>CARER</u>
Signature	Print Name	Position

4 Bora Road Bingara. NSW 2404

DATED this 21 day of AUGUST 2024

	<u>Gene Taddio</u>	<u>Lifestyle</u>
Witness Signature	Print Name	Position

4 Bora Road Bingara. NSW 2404



.....
Shaye Candish
Branch Secretary
Australian Nursing and Midwifery Federation
New South Wales Branch
50 O'Dea Ave
WATERLOO NSW 2017



.....
WITNESS
Michael Whaites
50 O'Dea Ave, Waterloo

Authority to sign Agreement on behalf of employees is in accordance with Rule 40 of the Rules of the Australian Nursing and Midwifery Federation and as bargaining representative in accordance with the Fair Work Act 2009.

SCHEDULE A: EMPLOYMENT CLASSIFICATIONS

Higher Levels are expected to perform work at a lower level as required from time to time.

All qualifications must be directly relevant to the role performed.

This Schedule contains the following employment classifications and definitions:

Progression through pay points

Unless otherwise specified, progression for all classifications for which there is more than one pay point will be:

- For full time employees, by an annual movement to the next higher pay point; and,
- For part time and casual employees, at 1200 hours of experience but not less than 12 months.

Movement from ACE 'New Entry' for Aged Care Employees to ACE Level 2 shall occur when the Employee has reached 500 hours of industry experience.

Progression to a higher classification is based on the Employer's requirement and the Employee's qualifications, experience, demonstrated skills and merit.

A.1 PERSONAL CARER CLASSIFICATION DEFINITIONS

All Personal Carers are encouraged to formally upskill during their employment to at least Certificate Level III in Aged care or similar.

Personal Carer means a person employed in a Residential Aged Care Facility to provide personal care to those residents and support and encourage Resident's in maintaining a healthy and active lifestyle designed to meet their individual wellbeing levels.

Movement to a higher pay point is by appointment only.

Personal Carer – New Entrant

Such an Employee would not need to possess any accredited training.

An Employee at this Level:

- works under direct supervision within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- Assisting with showers or baths, shaving, lay out clothes and assist in dressing;
- make beds and tidy rooms;
- store clothes and clean wardrobes; assist with meals.;
- Under direct supervision, provide assistance to a higher Personal Carer in attending to the personal care needs of a resident.

Personal Carer Level 1

Such an Employee would not need to possess any accredited training.

An Employee at this Level:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.
- Provide assistance to residents in carrying out simple personal care tasks which shall include but not be limited to:
 - supervise daily hygiene e.g. assisting with showers or baths, shaving, lay out clothes and assist in dressing;
 - make beds and tidy rooms;
 - store clothes and clean wardrobes; assist with meals.;
 - Under direct supervision, provide assistance to a higher Personal Carer in attending to the personal care needs of a resident.

Personal Carer Level 2

An Employee at this level:

- performs the work of a lower level Personal Carer
- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication and/or arithmetic skills;
- requires specific on-the-job training and/or relevant skills training or experience; and
- may hold a relevant Certificate II qualification (or possesses equivalent knowledge or skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

Training or experience in the following is also a requirement:

- first aid equal to a basic first aid certificate,
- manual handling,
- infection control,
- communication skills; and,
- basic personal care of residents.

Duties:

- assist and support residents with medication utilising dose administration aids;
- simple wound dressing;
- implementation of continence programs as identified in the Care Plans;
- attend to routine urinalysis, blood pressure, temperature and pulse checks;

- attend to blood sugar level checks etc. and assist and support diabetic residents in the management of their insulin and diet, recognising the signs of both hyper and hypoglycaemia;
- recognise, report and respond appropriately to changes in the condition of residents, within the skills and competence of the employee and the policies and procedures of the organisation;
- assist in the development and implementation of resident care plans;
- assist in the development and implementation of programs of activities for residents, under the supervision of a Registered Nurse, a higher level Personal Carer or a qualified Allied Health Professional.

Personal Carer Level 3

An Employee at this level:

- performs the work of a lower-level Personal Carer
- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.
- holds a relevant Certificate III qualification (or possesses equivalent knowledge or skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

Training or experience in the following is also a requirement:

- Basic computer skills,
- Dealing with dementia,
- Monitoring care of the incontinent resident,
- Skin care,
- Simple wound monitoring,
- Diabetes awareness,
- Infection control, and
- Behaviour management.

Personal Carer Level 4

Means a person employed in a Residential Aged Care Facility appointed as the personal care supervisor/coordinator, and who holds the overall responsibility of managing the residents' personal care needs on a day to day basis.

A Personal Carer at this level will generally have a Certificate IV qualification (or possesses equivalent knowledge or skills) and Cert IV (administer and monitor medications).

The Personal Carer will not supervise a Registered or Enrolled Nurse in relation to any clinical or care matters.

Personal Carer Level 5

Means a person employed in a Residential Aged Care Facility appointed as the personal care Manager, and who holds the overall responsibility of overseeing the residents' personal care needs as a member of the Clinical care team.

A Personal Carer at this level will generally have at least a Certificate IV qualification (or possesses equivalent knowledge or skills) and Cert IV (administer and monitor medications).

The Personal Carer will not supervise a Registered or Enrolled Nurse in relation to any clinical or care matters.

A.2 - AGED CARE EMPLOYEES - NON DIRECT CARE CLASSIFICATION DEFINITIONS

Aged Care Employees shall be classified for pay purposes into one of these three broad areas:

- General Services
- Catering Services; or,
- Clerical Support Services.

Aged Care Employee – Level 1 – less than 500 hours in industry

An Employee who has less than 500 hours of work experience in the industry and performs basic duties:

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

Typical Roles:

- General Services: Assistant gardener, Laundry hand or Cleaner.
- Catering Services: Food services assistant
- Clerical Support Services: General clerk

Aged Care Employee - Level 2 – more than 500 hours in industry

An Employee at this Level:

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

Typical Roles:

- General Services: Laundry hand, Cleaner, Gardener (non-trade), Maintenance/Handyperson (unqualified) or Driver (less than 3 ton)
- Catering Services: Food services assistant
- Clerical Support Services: General clerk/Typist (between 3 months' and less than 1 years' service)

Aged Care Employee - Level 3

An Employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical).

- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- in the case of an admin/clerical Employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Typical Roles:

- General Services: Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate
- Catering Services: Cook (unqualified)
- Clerical Support Services: General clerk/Typist (second and subsequent years of service), Receptionist or Pay clerk

Aged Care Employee - Level 4

An Employee at this level:

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

Typical Roles:

- General Services: Maintenance/Handyperson (qualified), Driver (3 ton and over) or Gardener (trade or TAFE Certificate III or above)
- Catering Services: Senior cook (trade)
- Clerical Support Services: Senior clerk or Senior receptionist

Aged Care Employee - Level 5

An Employee at this level:

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

Typical Roles:

- General Services: NIL.
- Catering Services: Chef
- Clerical Support Services: Secretary or interpreter (unqualified)

Aged Care Employee - Level 6

An Employee at this level:

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

Typical Roles:

- General Services: Maintenance tradesperson (advanced) or Gardener (advanced)
- Catering Services: Senior chef
- Clerical Support Services:

Aged Care Employee - Level 7

An Employee at this level:

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

Typical Roles:

- General Services: Gardener superintendent or General services supervisor.
- Catering Services: NIL.
- Clerical Support Services: Clerical supervisor or Administrative Assistant in Quality Compliance or Interpreter (qualified)

Most Senior Cook

- **Chef /Food services supervisor (ACE 7 Direct Care)**

The appointed Head Chef (Trades qualified)/Food services supervisor means a chef who has completed an apprenticeship or passed the appropriate trade test in cooking.

- **Most Senior Cook or Chef (ACE 6)**
Senior chef – Trades qualified
- **Most Senior Cook or Chef (ACE 5)**
Chef – Trades qualified
- **Most Senior Cook or Chef (ACE 4)**

Senior cook – Trades qualified or demonstrates a higher level of skills than a lower level cook.

In addition to the classification description for their appropriate level, the most senior Cook performs the following:

- day to day meal preparation and cooking
- meal planning which meets industry standards including the dietary needs of residents both as a group or to cater for individual prescribed dietary needs (for example diabetes, lactose intolerance, or sourcing culturally significant or religion-based diets such as Kosher or Halal methods or vegetarian only) and other known restrictions
- general and specialised duties, including supervision or training of kitchen and dining room employees, liaising with Allied Health professionals, planning and staffing forward rosters and resolving complaints,
- ordering and stock control including managing the allocated budget and advise managers of significant differences when comparing actual to budget; and,
- ensuring WHS standards are met in the kitchen, dining room and bedside food delivery.

A.3 – LEISURE AND LIFESTYLE / ACTIVITIES OFFICER EMPLOYEE CLASSIFICATION DEFINITIONS

The classification structure is as follows:

Leisure and Lifestyle Assistant Level 1 (Aged Care Employee - Level 3)

Means a person employed in a Residential Aged Care Facility, to provide activities/diversional therapy to those residents. Such an Employee would not possess any relevant accredited training. Such a person assists with the planning and implementation of lifestyle enhancement programmes under direct supervision and in co-operation with other members of the aged care team.

Leisure and Lifestyle Assistant Level 2 (Aged Care Employee - Level 4)

Means a person employed in a Residential Aged Care Facility appointed to provide activities for to those residents. Such an Employee must have a Certificate III qualification in Leisure and Lifestyle, or other relevant qualification.

Such a person is primarily required to assist with the planning and implementation as well as deliver lifestyle and leisure services and related client/resident enhancement programmes where required under the supervision and direction of a Lifestyle Co-ordinator, Therapist, Allied Health Professional, or other member of staff in co-operation with other members of the aged care team.

A.4 HOME CARE EMPLOYEE CLASSIFICATION DEFINITIONS

Home Care / Personal Care Assistant - Level 1

All Home Care positions require personal judgment as to the manner of completing their work and identifying problems.

The nature of the work is clearly defined with established procedures well understood or clearly documented. A person appointed to this position will have less than 12 months' experience in the industry.

General duties may include ensuring clients receive their medication on time, supporting mobility limited clients, help clients dress/bathe/eat , prepare and cook meals according to the customer's restrictions, help customers with their shopping, do necessary housekeeping to maintain a clean environment, assist with pet care and pot plant maintenance and provide emotional support.

An Employee in this level will have commenced on-the-job training which may include an induction course.

Home Care / Personal Care Assistant - Level 2

An Employee in this level performs broad tasks involving the utilisation of a range of developed skills in the provision of domestic assistance and support. Work performed falls within general guidelines but with scope to exercise discretion in the application of established practices and procedures.

May assist others in the supervision of work of the same or lower level and is responsible for assuring the quality of work performed.

Indicative but not exclusive tasks in addition to those at Level 1, monitoring medications and effects, fitting and changing of catheters.

An Employee at this level will have attained a Home Care Certificate or equivalent or relevant experience/on-the-job training.

Home Care / Personal Care Assistant - Level 3

Employees perform work under general supervision. Employees in this level are accountable for the quality, quantity and timeliness of their own work in so far as available resources permit, and for the care of assets entrusted to them.

Indicative but not exclusive tasks include: computer and other general office skills; provide input into meal planning; liaise with dieticians on special needs; co-ordinate and direct the work of support staff including maintenance (no more than four); provide personal care to clients with particular emphasis on those requiring extra help due to specific physical problems or frailty; plan, develop, and co-ordinate diversional therapy programs.

Indicative but not exclusive of the qualifications required in this level is an accredited qualification to the position at the level of Certificate 3 and/or knowledge and skills gained through on-the-job training commensurate with the requirements of the work in this level.

Home Care / Personal Care Assistant - Level 4

A position in this level has the following characteristics:

Employees are expected to exercise discretion within standard practices and processes, undertaking and implementing quality control measures. Positions in this level may provide direction, leadership, administration and rostering of direct care Employees.

The objectives of the work are well defined but the particular method, process or equipment to be used must be selected from a range of available alternatives. For Employees undertaking rostering duties, the process often requires the quantification of the amount of resources needed to meet those objectives.

Employees will be required to plan, direct and train subordinate staff. Employees are also required to have a thorough understanding of the relevant technology, procedures and processes used within their operating unit.

Indicative but not exclusive of the skills required include: the manipulation of data e.g. modify fields of information and create spreadsheets; create new forms or records using a computer based records system; access and extract information from external sources e.g. local authorities; roster staff and direct work programs; oversee the work and training of lower level Employees; provide guidance and counselling; assist in the development of budgets; order

consumables and routine stock items used in domestic support areas; develop client care plans and oversee the provision of domestic services.

Positions in this level require the ability to gain co-operation and assistance from members of the public and other Employees in the performance of well defined activities. Employees in this level may also be expected to write reports in their field of expertise.

An Employee in this level will have satisfactorily completed the requirements of level 3 or equivalent as well as have relevant experience.

Home Care / Personal Care Assistant - Level 5 (Home Care Coordinator)

Positions in this level may co-ordinate resources and/or give support to more senior Employees or be engaged in duties of a specialist nature.

In positions where the prime responsibility is for resource co-ordination, the freedom to act is governed by clear objectives and/or budgets with frequent prior consultation with more senior Employees and a regular reporting mechanism to ensure adherence to plans.

Employees in this level are accountable for the quality, effectiveness, cost and timeliness of the programs, projects or work plans under their control and for the safety and security of the assets being managed.

Employees with co-ordination responsibilities are also required to ensure that all Employees under their direction are trained in safe working practices and in the safe operation of equipment and are made aware of all occupational health and safety policies and procedures.

The objectives of the work are usually well defined but the particular method, technology, process or equipment to be used must be selected from a range of available alternatives. Ability to identify and then resolve complex problems with solutions and some creativity and originality is required.

Co-ordinators in this level require a thorough understanding of the relevant technology, procedures and processes used within their operating unit. Positions in this level may provide direction, leadership and structured training or on-the-job training to supervised Employees or groups of Employees.

This position require skills in managing time, setting priorities and planning for a team to achieve specific objectives in the most efficient way possible within the resources available and within a set timetable. The position requires an understanding of and ability to implement basic personnel policies and practices.

Employees in this level are expected to write reports in their field of expertise and to prepare external correspondence of a routine nature.

A.5 NURSING EMPLOYEE CLASSIFICATION DEFINITIONS

NURSING ASSISTANTS

Nursing Assistant means an employee, other than one registered with the Nursing and Midwifery Board of Australia or its successor or one who is in training for the purpose of such registration, who is under the direct control and supervision of a Registered Nurse and whose employment is solely to assist a Registered Nurse or Enrolled Nurse in the provision of nursing care to residents.

Nursing Assistant (Cert III) performs general Nursing Assistant duties. Their rate of pay will be a minimum of 1.75% above that of Nursing Assistant 4th year and thereafter.

Nursing Assistant Team Leader means an employee who is Cert IV qualified, who performs general Nursing Assistant duties is appointed to a specific role. The role will generally assist and report to the most Senior Registered Nurse. Their rate of pay will be a minimum of 3.25% above that of Nursing Assistant 4th year and thereafter.

Nursing care means:

- giving assistance to a person who, because of disability, is unable to maintain their bodily needs without frequent assistance;
- carrying out tasks which are directly related to the maintenance of a person's bodily needs where that person because of disability is unable to carry out those tasks for themselves; and/or
- assisting a Registered Nurse or Enrolled Nurse to carry out their work.

ENROLLED NURSES

Enrolled Nurse (EN) means a nurse who has satisfactorily completed a course of training of 12 months duration in a specified branch of nursing leading to enrolment on a register or roll maintained by the Nursing and Midwifery Board of Australia or its successor; or

An Enrolled Nurse may be required to lead and/or supervise the work of others.

An Enrolled Nurse is a nurse who holds current registration as an Enrolled Nurse with the Board and is authorised to administer medication.

Enrolled Nurse (with Notation) means an Enrolled Nurse registered by the Board as an Enrolled Nurse with the notation "*does not hold a Board Approved qualification in medicines administration*".

An Enrolled Nurse with notation performs the duties and has the skills of an Enrolled Nurse however is not authorised to administer medication.

REGISTERED NURSES

RN Level 1

An Employee at this level performs their duties:

- according to their level of competence; and,
- under the general guidance of, or with general access to a more experienced Registered Nurse who provides work related support and direction
- Performs general nursing duties registration as a Nurse with the Australian Health Practitioner Regulation Agency ("AHPRA") including an ability to:
 - deliver direct and comprehensive nursing care and individual case management to

- residents or clients;
- coordinate services, including those of other disciplines or agencies, to individual residents or clients;
- provide education, counselling and group work services orientated towards the promotion of health status improvement of residents and clients; and,
- provide support, direction and education to newer or less experienced staff, including Enrolled Nurses, Nursing Assistants and Personal Carers.

RN Level 2

An Employee at this level:

- holds any other qualification required for working in an Aged Care or Home Care practice setting or accepted relevant experience; and
- is appointed as such by a selection process.

An Employee at this level may provide additional support in an Aged Care or Home Care practice setting.

In addition to the duties of a Registered Nurse Level 1, an Employee at this level is required, to perform duties delegated by a Clinical nurse consultant or any higher level classification.

Duties of a Clinical Nurse Specialist will substantially include, but are not confined to:

- delivering direct and comprehensive nursing care and individual case management to a specific group of residents or clients in a particular area of nursing practice within the practice setting;
- providing support, direction, orientation and education to RN Level 1, Enrolled Nurses, and Personal Carers;
- being responsible for planning and coordinating services relating to a particular group of clients or residents in the facility, as delegated by the Clinical Nurse Consultant;
- acting as a role model in the provision of holistic care to residents or clients in the practice setting; and
- assisting in the management of action research projects, and participating in quality assurance programs and policy development within the practice setting.

Nurse Unit Manager (not available to new entrants)

This role is 'grand-fathered' for personal to current occupants as at 1 March 1999).

In addition to the duties of an RN Level 1, the Duties of a **Nurse Unit Manager** may include:

- providing leadership and role modelling, in collaboration with others including the Clinical nurse consultant and the Nurse educator, particularly in the areas of action research and quality assurance programs;
- assisting in staff selection and education;
- assisting in allocation and rostering of staff;
- assisting in or the responsibility for occupational health;
- initiation and evaluation of research related to staff and resource management;
- participating in policy development and implementation; and,
- acting as a consultant on request in the employee's own area of proficiency (for the purpose of facilitating the provision of quality nursing care).

RN Level 3

An Employee at this level:

- holds any other qualification required for working in an Aged Care or Home Care practice setting; and,
- is appointed as such by a selection process.

An Employee at this level may also be known as a Clinical Nurse Consultant or Nurse Educator.

In addition to the duties of an RN Level 2, an Employee at this level will perform the following duties in accordance with practice settings and resident or client groups.

Duties will substantially include, but are not confined to:

- providing leadership and role modelling, in collaboration with others particularly in the areas of action research and quality assurance programs;
- staff and patient/client education;
- staff selection, management, development and appraisal;
- participating in policy development and implementation;
- acting as a consultant on request in the Employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care;
- delivering direct and comprehensive nursing care to a specific group of residents or clients with complex nursing care needs, in a particular area of nursing practice within a practice setting;
- coordinating, and ensuring the maintenance of standards of the nursing care of a specific group or population of residents or clients within a practice setting; and
- coordinating or managing nursing or multidisciplinary service teams providing acute nursing and community services.
- The Clinical Nurse Consultant may also be the most senior Registered Nurse.

Duties of a **Nurse educator** will substantially include, but are not confined to:

- providing leadership and role modelling, in collaboration with others including the Clinical nurse consultant and the Nurse manager, particularly in the areas of action research;
- implementation and evaluation of staff education and development programs;
- staff selection;
- implementation and evaluation of patient or client education programs;
- participating in policy development and implementation;
- acting as a consultant on request in the employee's own area of proficiency (for the purpose of facilitating the provision of quality nursing care); and
- being accountable for the assessment, planning, implementation and evaluation of nursing education and staff development programs for a specified population.

RN Level 4

Clinical Care Coordinator means a registered nurse appointed to assist the Clinical Operations Manager in the management of a Facility and take a shared responsibility for the clinical care of residents.

The Clinical Care Coordinator may also be the most senior Registered Nurse.

In addition to the duties of an RN Level 3, an Employee at this level will perform the following duties:

- Being accountable for the standards of nursing care;
- Participating as a member of the executive of the Facility;

- Providing leadership, direction and management in the Facility in accordance with policies, philosophies, objectives and goals established through consultation with staff and in accordance with the directions of the Board of Directors;
- Providing leadership and role modelling, in collaboration with others, particularly in the areas of staff selection, promotion of participative decision making and decentralisation of nursing management and generally advocating for the interests within the Facility;
- Ensuring that nursing services meet the changing needs of clients or residents through proper strategic planning; and
- Complying, and ensuring the compliance of others, with the code of ethics and legal requirements of the nursing profession.

RN Level 5

An employee at this level may also be known as a Director of Nursing.

An employee at this level:

- holds any other qualification required for working in an Aged Care or Home Care practice setting; and
- is appointed as such by a selection process.

In addition to the duties of an RN4, an employee at this level may perform the following duties:

- being accountable for the standards of nursing care for the Facility and for coordination of the nursing service in the Facility;
- participating as a member of the executive, being accountable to the executive team for the development and evaluation of nursing policy, and generally contributing to the development of wider policy;
- providing leadership, direction and management in accordance with policies, philosophies, objectives and goals established through consultation with staff and in accordance with the directions of the Facility Manager (or similar) and the Board of Directors;
- providing leadership and role modelling, in collaboration with others, particularly in the areas of staff selection, promotion of participative decision making and decentralisation of nursing management and generally advocating for the interests of nursing to the executive team;
- managing the budget for nursing services;
- ensuring that nursing services meeting changing needs of residents and/or clients through proper strategic planning; and
- complying, and ensuring the compliance of others, with the code of ethics and legal requirements of the nursing profession.

A.6 - HEALTH PROFESSIONAL AND SUPPORT SERVICES EMPLOYEE CLASSIFICATION DEFINITIONS

This agreement covers Health Professionals who are engaged in the aged care industry such as Diversional Therapists.

Health Professional—level 1

- (a) Positions at level 1 are regarded as entry level health professionals and for initial years of experience.
- (b) This level is the entry level for new graduates who meet the requirement to practise as a health professional (where appropriate in accordance with their professional association's rules and be eligible for membership of their professional association) or such qualification as deemed acceptable by the employer. It is also the level for the early stages of the career of a health professional.

Health Professional—level 2

- (a) A health professional at this level works independently and is required to exercise independent judgment on routine matters. They may require professional supervision from more senior members of the profession or health team when performing novel, complex, or critical tasks. They have demonstrated a commitment to continuing professional development and may have contributed to workplace education through provision of seminars, lectures or in-services. At this level the health professional may be actively involved in quality improvement activities or research.
- (b) At this level the health professional contributes to the evaluation and analysis of guidelines, policies and procedures applicable to their clinical/professional work and may be required to contribute to the supervision of discipline specific students.

Health Professional—level 3

- (a) A health professional at this level would be experienced and be able to independently apply professional knowledge and judgment when performing novel, complex, or critical tasks specific to their discipline. At this level health professionals will have additional responsibilities.
- (b) An employee at this level:
 - (i) works in an area that requires high levels of specialist knowledge and skill as recognised by the employer;
 - (ii) is actively contributing to the development of professional knowledge and skills in their field of work as demonstrated by positive impacts on service delivery, positive referral patterns to area of expertise and quantifiable/measurable improvements in health outcomes;
 - (iii) may be a sole discipline specific health professional in a metropolitan, regional or rural setting who practices in professional isolation from health professionals from the same discipline;
 - (iv) is performing across a number of recognised specialties within a discipline;
 - (v) may be accountable for allocation and/or expenditure of resources and ensuring targets are met and is responsible for ensuring optimal budget outcomes for their customers and communities;
 - (vi) may be responsible for providing regular feedback and appraisals for senior staff to improve health outcomes for customers and for maintaining a performance management system; and
 - (vii) is responsible for providing support for the efficient, cost effective and timely delivery of services.

Health Professional—level 4

- (a) A health professional at this level applies a high level of professional judgment and knowledge when performing a wide range of novel, complex, and critical tasks, specific to their discipline.
- (b) An employee at this level:
 - (i) has a proven record of achievement at a senior level;
 - (ii) has the capacity to allocate resources, set priorities and ensure budgets are met within a large and complex organisation;

- (iii)** may be responsible to the executive for providing effective services and ensuring budget/strategic targets are met;
- (iv)** supervises staff where required; and
- (v)** is expected to develop/implement and deliver strategic business plans which increase the level of care to customers within a budget framework.

SCHEDULE B - PAY RATES AND ALLOWANCES

Nursing Classifications

Classification Title	FFPPOA 1 January 2024	FFPPOA 1 July 2024	FFPPOA 1 July 2025
Nursing Assistant			
1st year	\$30.43	\$31.19	\$31.97
2nd year	\$30.90	\$31.68	\$32.47
3rd year	\$31.40	\$32.18	\$32.99
4th year and thereafter	\$32.41	\$33.22	\$34.05
Experienced (Cert III qualification)	\$33.00	\$33.22	\$34.05
Nurse Assistant) (Cert IV qualification) Appointed Team Leader role	\$33.50	\$33.22	\$34.05
Student Enrolled Nurse			
21 Years of age and over 1 st year	\$29.22	\$29.95	\$30.70
21 years of age and over 2 nd year	\$29.36	\$30.09	\$30.85
Enrolled Nurse with Notation			
Pay point 1	\$35.35	\$36.23	\$37.14
Pay point 2	\$35.41	\$36.30	\$37.20
Pay point 3	\$35.46	\$36.35	\$37.26
Pay point 4	\$35.51	\$36.40	\$37.31
Pay point 5	\$35.56	\$36.45	\$37.36
Enrolled Nurse			
Pay point 1	\$35.35	\$36.23	\$37.14
Pay point 2	\$36.22	\$37.13	\$38.06
Pay point 3	\$37.03	\$37.96	\$38.91
Pay point 4	\$37.87	\$38.81	\$39.78
Pay point 5	\$37.91	\$38.85	\$39.83
Registered Nurse Level 1			
Pay point 1	\$40.47	\$41.48	\$42.51
Pay point 2	\$42.78	\$43.85	\$44.94
Pay point 3	\$45.22	\$46.35	\$47.51
Pay point 4	\$47.83	\$49.03	\$50.25
Pay point 5	<u>\$51.64</u>	<u>\$52.93</u>	<u>\$54.25</u>
Minimum entry rate			
Four year degree	\$47.72	\$48.91	\$50.13
Masters degree	\$50.49	\$51.75	\$53.05
Registered nurse – Level 2 CNS			
Pay point 1	\$53.02	\$54.34	\$55.70
Pay point 2	\$53.10	\$54.43	\$55.79
Pay point 3	\$53.19	\$54.52	\$55.89
Pay point 4 and thereafter	\$53.29	\$54.62	\$55.98

Registered nurse – level 3 NE			
Pay point 1	\$56.56	\$57.97	\$59.42
Pay point 2	\$58.09	\$59.55	\$61.04
Pay point 3	\$59.51	\$61.00	\$62.52
Pay point 4 and thereafter	\$62.39	\$63.95	\$65.55
Registered Nurse – Level 3 CNC			
Pay point 1	\$62.09	\$63.64	\$65.23
Pay point 2	\$62.19	\$63.75	\$65.34
Pay point 3	\$62.30	\$63.85	\$65.45
Pay point 4 and thereafter	\$62.39	\$63.95	\$65.55
Nursing Unit Manager (personal to current occupants as at 1/3/99)			
Level I	\$58.09	\$59.55	\$61.04
Level II	\$59.51	\$61.00	\$62.52
Level III	\$61.01	\$62.53	\$64.09
Registered Nurse – Level 4 SNE			
Grade 1 1st Year	\$64.26	\$65.87	\$67.51
Grade 1 2nd Year	\$65.44	\$67.08	\$68.75
Grade 1 3rd Year	\$67.43	\$69.12	\$70.84
Grade 2 1st Year	\$64.72	\$66.34	\$68.00
Grade 2 2nd Year	\$65.90	\$67.55	\$69.24
Grade 2 3rd Year	\$67.89	\$69.59	\$71.33
Grade 3 1st Year	\$65.12	\$66.75	\$68.42
Grade 3 2nd Year	\$66.31	\$67.96	\$69.66
Grade 3 3rd Year	\$68.29	\$70.00	\$71.75
Registered Nurse – Level 4 Clinical Care Coordinator			
< 150 beds	\$60.22	\$61.72	\$63.27
151 - 250 beds	\$63.75	\$65.35	\$66.98
> 251 beds	\$65.12	\$66.75	\$68.42
Registered Nurse – Level 4 ADON			
<20 beds	\$59.85	\$61.35	\$62.88
21-75 beds	\$61.71	\$63.26	\$64.84
76-100 beds	\$63.37	\$64.95	\$66.58
101-150 beds	\$64.57	\$66.19	\$67.84
151-200 beds	\$64.57	\$66.19	\$67.84
Registered Nurse – Level 5 DON			
<25 beds	\$66.58	\$68.25	\$69.95
26-50 beds	\$70.56	\$72.33	\$74.14
51-75 beds	\$71.92	\$73.71	\$75.56
76-100 beds	\$73.27	\$75.10	\$76.98
101-150 beds	\$76.41	\$78.32	\$80.28
151-200 beds	\$79.48	\$81.46	\$83.50

Table 1 – Rates of Pay (cont.)

Personal Care Workers and Recreational Activities Officer / Lifestyle Officers

Classification Title	FFPPOA 1 January 2024	FFPPOA 1 July 2024	FFPPOA 1 July 2025
Personal Care Worker – New Entrant <500 hours exp	\$28.67	\$29.39	\$30.12
Personal Care Worker Level 1	\$29.80	\$30.55	\$31.31
Recreational/Lifestyle activities officer (unqualified) / Personal Care Worker Level 2	\$30.95	\$31.72	\$32.52
Recreational/Lifestyle activities officer (Cert III) / Personal Care Worker Level 3 (Cert III)	\$31.31	\$32.10	\$32.90
Personal Care Worker Level 4 (Cert IV). Appointed role.	\$32.86	\$33.68	\$34.52
Personal Care Worker Level 5 (Cert IV). Appointed role.	\$37.83	\$38.77	\$39.74

Head Chef / Head Cook (the single most senior food services employee engaged by any employer at the facility or site.

Classification Title	FFPPOA 1 January 2024	FFPPOA 1 July 2024	FFPPOA 1 July 2025
Most Senior cook (trade)	\$31.31	\$32.10	\$32.90
Most Senior cook (Chef)	\$32.85	\$33.67	\$34.51
Most Senior cook (Senior Chef)	\$34.12	\$34.98	\$35.85
Chef /Food services supervisor	\$34.73	\$35.60	\$36.49

Table 1 – Rates of Pay (cont.)

Health Professional and Diversional Therapist

Classification Title	FFPPOA 1 January 2024	FFPPOA 1 July 2024	FFPPOA 1 July 2025
Health Professional – Level 1 (UG2) Dip / ADip			
1st Year	\$28.57	\$29.28	\$30.01
2nd Year	\$29.67	\$30.41	\$31.17
3rd Year	\$30.98	\$31.76	\$32.55
4th Year	\$32.05	\$32.85	\$33.67
5th Year	\$34.92	\$35.79	\$36.68
6th Year and thereafter	\$36.15	\$37.06	\$37.98
Health Professional – Level 1 Bachelors Degree			
First Year	\$29.67	\$30.41	\$31.17
Second Year	\$30.98	\$31.76	\$32.55
Third Year	\$32.05	\$32.85	\$33.67
Fourth Year	\$34.92	\$35.79	\$36.68
Fifth Year	\$36.15	\$37.06	\$37.98
Health Professional – Level 1 4 Year Degree			
First Year	\$30.98	\$31.76	\$32.55
Second Year	\$32.05	\$32.85	\$33.67
Third Year	\$34.92	\$35.79	\$36.68
Fourth Year and Thereafter	\$36.15	\$37.06	\$37.98
Health Professional – Level 1 Masters Degree			
First Year	\$32.05	\$32.85	\$33.67
Second Year	\$34.92	\$35.79	\$36.68
Third Year & Thereafter	\$36.15	\$37.06	\$37.98
Health Professionals and Diversional Therapists Level 2			
First Year	\$36.35	\$37.26	\$38.19
Second Year	\$37.67	\$38.61	\$39.58
Third Year	\$39.11	\$40.09	\$41.09
Fourth Year & Thereafter	\$40.67	\$41.68	\$42.73
Health Professionals and Diversional Therapists – Level 3			
First Year	\$42.43	\$43.49	\$44.58
Second Year	\$43.62	\$44.71	\$45.83
Third Year	\$44.56	\$45.67	\$46.81
Fourth Year	\$46.54	\$47.70	\$48.89
Fifth Year & Thereafter	\$48.26	\$49.46	\$50.70

Table 1 – Rates of Pay (cont.)

Home Care Classifications

Classification Title	FFPPOA 1 January 2024	FFPPOA 1 July 2024	FFPPOA 1 July 2025
Home Care Employee Level 1	\$29.01	\$29.73	\$30.48
Home Care Employee Level 2	\$30.89	\$31.67	\$32.46
Home Care Employee Level 3 (Cert III) Pay point 1	\$31.31	\$32.10	\$32.90
Home Care Employee Level 3 (Cert III) Pay point 2	\$32.28	\$33.09	\$33.92
Home Care Employee level 4 – Pay point 1	\$34.17	\$35.02	\$35.90
Home Care Employee level 4 - Pay point 2	\$34.85	\$35.72	\$36.61
Home Care Employee level 5 – Home Care Coordinator Pay point 1	\$36.75	\$37.67	\$38.61
Home Care Employee level 5 – Home Care Coordinator Pay point 2	\$38.07	\$39.03	\$40.00

Non Direct Aged Care Employee Classifications

Classification Title	FFPPOA 1 January 2024	FFPPOA 1 July 2024	FFPPOA 1 July 2025
Level 1 – Less than 500 hours experience			
General Services	\$24.93	\$25.55	\$26.19
Catering Services	\$25.26	\$25.89	\$26.54
Clerical Support Services	\$27.82	\$28.52	\$29.23
Level 2			
General Services	\$25.92	\$26.57	\$27.23
Clerical Support Pay point 1	\$26.23	\$26.88	\$27.56
Clerical Support Pay point 2	\$27.82	\$28.52	\$29.23
Catering Services	\$26.27	\$26.93	\$27.60
Level 3			
General Services	\$28.65	\$29.36	\$30.10
Clerical Support Pay point 1	\$26.91	\$27.59	\$28.28
Clerical Support Pay point 2	\$27.82	\$28.52	\$29.23
Catering Services	\$26.65	\$27.31	\$28.00
Level 4			
General Services (Trade)	\$31.13	\$31.91	\$32.71
Clerical Support	\$29.48	\$30.22	\$30.98
Catering Services (Cook – Trade)	\$27.39	\$28.08	\$28.78
Level 5			

General Services – in charge of staff	\$29.29	\$30.02	\$30.78
Catering Services – Chef	\$28.15	\$28.86	\$29.58
Clerical Support	\$30.85	\$31.62	\$32.41
Level 6			
Catering Services – Senior Chef	\$29.67	\$30.41	\$31.17
Level 7			
Clerical Support Services General Services: Gardener superintendent or General services supervisor	\$32.29	\$33.09	\$33.92

Apprentice Cook

Apprentice Cook - % of Non Direct Aged Care Employee Level 3	Apprentice Cook - % of Non Direct Aged Care Employee Level 4
1st year (55%)	1st year (55%)
2nd year (65%)	2nd year (65%)
3rd year (80%)	3rd year (80%)
4th year (95%)	4th year (95%)

Apprentice Gardener

Apprentice Cook - % of Non Direct Aged Care Employee Level 3	Apprentice Cook - % of Non Direct Aged Care Employee Level 4
1st year (55%)	1st year (52.5%)
2nd year (65%)	2nd year (65%)
3rd year (75%)	3rd year (75%)
4th year (95%)	4th year (95%)

SCHEDULE B CONTINUED - Other Rates and Allowances

Item Number	Allowance Description	Method	FFPPOA 1 January 2024	FFPPOA 1 July 2024	FFPPOA 1 July 2025
1	Broken Shift - Home Care	1 break	\$19.96	\$20.46	\$20.97
2	Broken Shift - Home Care	2 breaks	\$26.41	\$27.07	\$27.75
3	Broken Shift - Aged Care	per shift - base rate of pay	0.5 hour	0.5 hour	0.5 hour
4	In charge of residential aged care facility less than 100 beds	per shift	\$27.86	\$28.56	\$29.27
5	In charge of residential aged care facility, 100 beds or more	per shift	\$44.88	\$46.00	\$47.15
6	In charge of section	per shift	\$27.86	\$28.56	\$29.27
7	Vehicle Allowance	per km	\$0.96	\$0.98	\$1.01
8	Uniform	Max per week	\$18.27	\$18.73	\$19.20
9	Laundry	Max per week	\$6.31	\$6.47	\$6.63
10	Sleepover	hours of ordinary pay/sleepover	2.2	2.2	2.2
11	RN On call Mon-Friday	per 24 hours or part day	\$25.48	\$26.12	\$26.77
12	RN On call Saturday	per 24 hours or part day	\$38.38	\$39.34	\$40.32
13	RN On call Sunday and Public Holidays	per 24 hours or part day	\$44.77	\$45.89	\$47.04
14A	On call not RN	per 24 hours or part day	\$25.48	\$26.12	\$26.77
14B	On call Home Care weekends and Public Hols	per 24 hours or part day	\$45.17	\$46.30	\$47.46
15	On call - meal break	per period	\$13.45	\$13.78	\$14.13
16	Overtime - Breakfast	per meal	\$15.20	\$15.58	\$15.97
17	Overtime - Lunch	per meal	\$17.88	\$18.32	\$18.78
18	Overtime - Evening Meal	per meal	\$26.09	\$26.74	\$27.41
19	Continuing education allowance: RN	Max per week	\$19.96	\$20.46	\$20.97
20	Continuing education allowance: RN	Max per week	\$33.24	\$34.07	\$34.92
21	Continuing education allowance: RN	Max per week	\$39.88	\$40.88	\$41.90
22	Continuing education allowance: EN	Max per week	\$13.29	\$13.62	\$13.96
23	Climatic & Isolation	per hour +40c	\$0.62	\$0.64	\$0.66
24	Climatic & Isolation	per hour +46c	\$0.73	\$0.75	\$0.76

SCHEDULE C – INDIVIDUAL FLEXIBILITY ARRANGEMENTS

- C.1 Despite anything else in this Agreement, the employer and an individual employee may agree to vary the application of the terms of this Agreement relating to any of the following in order to meet the genuine needs of both the employee and the employer:
- (a) arrangements for when work is performed; or
 - (b) overtime rates; or
 - (c) penalty rates; or
 - (d) allowances; or
 - (e) annual leave loading.
- C.2 The Agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
- C.3 The Agreement may only be made after the individual employee has commenced employment with the employer.
- C.4 The employer who wishes to initiate the making of an agreement must:
- (a) give the employee a written proposal; and
 - (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.
- C.5 The Agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.
- C.6 The Agreement must do all of the following:
- (a) state the names of the employer and the employee; and
 - (b) identify the Agreement term, or terms, the application of which is to be varied; and
 - (c) set out how the application of the award term, or each award term, is varied; and
 - (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
 - (e) state the date the agreement is to start.
- C.7 An agreement must be:
- (a) in writing; and
 - (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- C.8 Except as provided in clause C.7(b), the Agreement must not require the approval or consent of a person other than the employer and the employee.
- C.9 The employer must keep the Agreement as a time and wages record and the employee will be provided with the signed Arrangement within 14 days and that the instrument will not contain any unlawful terms.

- C.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an Agreement.
- C.11 An agreement may be terminated:
- (a) at any time, by written agreement between the employer and the employee; or
 - (b) by the employer or employee giving 4 weeks' written notice to the other party.
- Note: If the employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in s.144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see s.145 of the Act).*
- C.12 An agreement terminated as mentioned in clause C.11 (b) ceases to have effect at the end of the period of notice required under that clause.
- C.13 The right to make an agreement under Appendix C is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

SCHEDULE D – WORKPLACE DELEGATES’ RIGHTS

- D.1 Schedule D provides for the exercise of the rights of workplace delegates set out in section 350C of the Act.
NOTE: Under section 350C(4) of the Act, the employer is taken to have afforded a workplace delegate the rights mentioned in section 350C(3) if the employer has complied with Schedule D.
- D.2:
- (a) employer means the employer of the workplace delegate;
 - (b) delegate’s organisation means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and
 - (c) eligible employees means members and persons eligible to be members of the delegate’s organisation who are employed by the employer in the enterprise.
- D.3 Before exercising entitlements under Schedule D, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.
- D.4 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.
- D.5 Right of representation
A workplace delegate may represent the industrial interests of eligible employees who wish to be represented by the workplace delegate in matters including:
- (a) consultation about major workplace change;
 - (b) consultation about changes to rosters or hours of work;
 - (c) resolution of disputes;
 - (d) disciplinary processes;
 - (e) enterprise bargaining where the workplace delegate has been appointed as a bargaining representative under section 176 of the Act or is assisting the delegate’s organisation with enterprise bargaining; and
 - (f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible employees are entitled to be represented and which concerns their industrial interests.
- D.6 Entitlement to reasonable communication
- (a) A workplace delegate may communicate with eligible employees for the purpose of representing their industrial interests under clause D.5. This includes discussing membership of the delegate’s organisation and representation with eligible employees.
 - (b) A workplace delegate may communicate with eligible employees during working hours or work breaks, or before or after work.
- D.7 Entitlement to reasonable access to the workplace and workplace facilities
- (a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:
 - (i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible employees;
 - (ii) a physical or electronic noticeboard;
 - (iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible employees and by eligible employees to communicate with each other, including access to Wi-Fi;
 - (iv) a lockable filing cabinet or other secure document storage area; and

- (v) office facilities and equipment including printers, scanners and photocopiers.
- (b) The employer is not required to provide access to or use of a workplace facility under clause D7(a) if:
 - (i) the workplace does not have the facility;
 - (ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or
 - (iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

D.8 Entitlement to reasonable access to training

The employer must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible employees, subject to the following conditions:

- (a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible employees.
- (b) The number of eligible employees will be determined on the day a delegate requests paid time to attend training, as the number of eligible employees who are:
 - (i) full-time or part-time employees; or
 - (ii) regular casual employees.
- (c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the delegate had not been absent from work to attend the training.
- (d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.
- (e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.
- (f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.
- (g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

D.9 Exercise of entitlements under Schedule D:

- (a) A workplace delegate's entitlements under Schedule D are subject to the conditions that the workplace delegate must, when exercising those entitlements:
 - (i) comply with their duties and obligations as an employee;
 - (ii) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;
 - (iii) not hinder, obstruct or prevent the normal performance of work; and
 - (iv) not hinder, obstruct or prevent eligible employees exercising their rights to freedom of association.
- (b) Schedule D does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible employees.
- (c) Schedule D does not require an eligible employee to be represented by a workplace delegate without the employee's agreement.

NOTE: Under section 350A of the Act, the employer must not:

- (a) unreasonably fail or refuse to deal with a workplace delegate; or*
- (b) knowingly or recklessly make a false or misleading representation to a workplace delegate; or*
- (c) unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate under the Act or Schedule D.*