



NEW SOUTH WALES  
**INDUSTRIAL GAZETTE**

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(1934)

SERIAL C9387

## NURSES' (LOCAL GOVERNMENT) RESIDENTIAL AGED CARE CONSOLIDATED (STATE) AWARD 2021

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by New South Wales Nurses and Midwives' Association, Industrial Organisation of Employees.

(Case No. 302623 of 2021)

Before Commissioner Sloan

23 November 2021

### AWARD

#### Arrangement

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## PART A

### 1. Definitions

The following definitions apply in this award, except where otherwise clearly indicated.

- (i) "Approved fund" means:
  - (a) Aware Super (formerly known as First State Super);
  - (b) Health Employees Superannuation Trust Australia (HESTA);
  - (c) any superannuation fund as agreed between the Association and employer(s), provided that the fund is a complying regulated fund and holds a Certificate of Compliance issued by the Australian Prudential Regulation Authority. Provided further that the Association will not unreasonably withhold agreement unless it establishes good and proper reasons;
  - (d) any superannuation fund operating within a place of employment prior to 1 July 2000 provided that the fund is a complying regulated fund, holds a Certificate of Compliance issued by the Australian Prudential Regulation Authority, and the Association agrees to the continued approval of that fund. Provided that the Association will not unreasonably withhold agreement unless it establishes good and proper reasons;
  - (e) any superannuation fund nominated by the employee and approved by the employer in accordance with section 124 of the *Industrial Relations Act 1996* (NSW) ("the 1996 Act").

- (ii) "Assistant in Nursing" means - a person, other than a registered nurse, trainee or enrolled nurse who is employed in nursing duties in a facility.
- (iii) "Assistant Director of Nursing" means:
  - (a) A person appointed as such in any sized facility and includes a person appointed as the nurse in charge during the evening or night in a facility where the adjusted daily average of occupied beds is not less than 150.
  - (b) A person appointed as such to a position approved by the employer including persons appointed to be in charge of a ward or group of wards.
- (iv) "Association" means the New South Wales Nurses and Midwives' Association.
- (v) "Board" means the Nursing and Midwifery Board of Australia.
- (vi) "Complying regulated fund" means a superannuation fund that is regulated under the *Superannuation Industry (Supervision) Act 1993* (Cth) and has been issued with a Certificate of Compliance by the Australian Prudential Regulation Authority.
- (vii) "Clinical Nurse Consultant" means - a registered nurse appointed as such to the position, who has had at least five years' post registration experience and who has in addition approved post registration nursing qualifications relevant to the field in which they are appointed or such other qualifications or experience deemed appropriate by the employer.
- (viii) "Clinical Nurse Educator" means - a registered nurse with relevant post registration certificate qualifications or experience deemed appropriate by the employer, who is required to implement and evaluate educational programmes at the nursing home.

The Clinical Nurse Educator will cater for the delivery of clinical nurse education at the nursing home. The Clinical Nurse Educator may also be responsible for new employee orientation at the nursing home.

A nurse will achieve Clinical Nurse Educator status on a personal basis by being required by the nursing home to provide the educational programmes detailed above.

- (a) Nothing in this clause will affect the role carried out by the Clinical Nurse Specialist as a specialist resource and the Clinical Nurse Consultant in the primary role of clinical consulting, researching etc.
- (ix) "Clinical Nurse Specialist": -
  - (a) In facilities of 250 ADA and above, the definition of a Clinical Nurse Specialist is:
 

"Clinical Nurse Specialist" means - a registered nurse with specific post registration qualifications and twelve months experience working in the clinical area of their specified post registration qualification; or a registered nurse with four years post registration experience in a specific clinical area and working in the clinical area of their specified post registration experience.
  - (b) In facilities of less than 250 ADA the definition for Clinical Nurse Specialist is:
 

"Clinical Nurse Specialist" means - a registered nurse with specific post registration qualifications and twelve months experience working in the clinical areas of their specified post registration qualification.
- (x) "Day Worker" means - a worker who works their ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6am and before 10am, otherwise than as part of the shift system.

- (xi) "Deputy Director of Nursing" means - a person appointed to that position or deemed to hold that position pursuant to clause 33, Deputy Director of Nursing and Assistant Director of Nursing, of this award.
- (xii) "Director of Nursing" means a registered nurse who is registered by their employer with the Health Administration Corporation as the person in charge of the facility. There will be only one person in each facility entitled to be classified as Director of Nursing or whatever title the senior nursing administrator is known by in the individual facility and will include "Director of Nursing" as defined by Part 7, Division 4, 104 (3) of the *Public Health Act 2010* (NSW).
- (xiii) "Enrolled Nurse" means - a person enrolled by the Board as such.
- (xiv) "Experience" in relation to an enrolled nurse or assistant in nursing means experience both before and/or after the commencement of this award whether within New South Wales or elsewhere and in the case of an enrolled nurse or assistant in nursing who was formerly a student nurse includes experience as such student nurse.
- (xv) "Facility" means - a nursing home or residential aged care facility
- (xvi) "Industry of Nursing" means - the industry of persons engaged in New South Wales in the profession of nursing in nursing homes and hostels.
- (xvii) "Nurse" includes Registered Nurses, Enrolled Nurses and Assistants in Nursing.
- (xviii) "Nurse Educator" means - a registered nurse with a post registration certificate, who has relevant experience or other qualifications deemed appropriate by the employer, and who is appointed to a position of Nurse Educator.

A Nurse Educator will be responsible for the development, implementation, and delivery of nursing education programmes within a nursing home or group of nursing homes. Nurse education programmes will mean courses conducted such as post registration certificates, continuing nurse education, orientation programmes including new graduate programmes, post enrolment courses for enrolled nurses and where applicable general staff development courses.

A person appointed to a position of Nurse Educator who holds relevant tertiary qualifications in education or tertiary postgraduate specialist clinical nursing qualifications will commence on the 3rd year rate of the salary scale.

A person appointed as the sole nurse educator for a group of nursing homes will be paid at the 3rd year rate of the salary scale.

Incremental progression for Nurse Educators will be on completion of 12 months satisfactory full-time equivalent service, provided that progression will not be beyond the 3rd year rate unless the person possesses the qualifications detailed in the two previous paragraphs. Persons appointed to the 3rd year rate by virtue of paragraphs 3 and 4 above will progress to the 4th year rate after completion of 12 months satisfactory full time service.

- (xix) "Nursing Home" means a facility at which residential care (within the meaning of the *Aged Care Act 1997* (Cth)) is provided, being:
  - (a) a facility at which care is provided in relation to an allocated place (within the meaning of that Act) that requires a high level of residential care (within the meaning of that Act), or
  - (b) a facility that belongs to a class of facilities prescribed by the regulations
- (xx) "Ordinary time earnings" for the exclusive purpose of clauses relating to superannuation means remuneration for an employee's weekly number of hours of work, excluding overtime hours, calculated at the ordinary-time rate of pay, including the following:

- (a) Monday to Friday shift premiums for ordinary hours of work;
  - (b) Weekend shift premiums for ordinary hours of work;
  - (c) Public holiday loadings;
  - (d) any percentage addition payable to casual employees for ordinary hours of work;
  - (e) ordinary time award allowances (not including expense-related allowances);
  - (f) over-award payments for ordinary hours of work.
- (xxi) "Qualified employee" means:
- (a) A full-time or part-time employee who has completed at least four weeks' service in the industry of nursing. Provided that once this period has elapsed, payments in accordance with clause 51 will be made for the entire period of service with the employer;
  - (b) A casual employee who has earned in excess of \$2000.00 ordinary-time earnings during their employment with an employer in the course of any one year (1 July to 30 June). Provided further that any casual employee who is deemed to be a qualified employee prior to the operative date of this award will continue to be qualified.
- (xxii) "Registered Nurse" means - a person registered by the Board as such.
- (xxiii) "Senior Nurse Educator" means - a registered nurse with a post registration certificate or appropriate qualifications, who has, or is working towards, recognised tertiary qualifications in education or equivalent and has demonstrated experience and skills in the field of education, and who is appointed to a position of Senior Nurse Educator.
- A Senior Nurse Educator will be responsible for one or more Nurse Educators in the planning, co-ordination, delivery and evaluation of educational programmes such as post registration certificate courses, continuing nurse education, orientation programmes including new graduate programmes, post enrolment courses for enrolled nurses and where applicable general staff development courses either in a nursing home or in a group of nursing homes.
- Incremental progression will be on completion of 12 months' satisfactory service.
- (xxiv) "Service" for the purpose of clause 6, Salaries, of this award, means - service before or after the commencement of this award in New South Wales or elsewhere as a registered nurse, plus any actual periods on and from 1 January 1971, during which a registered nurse undertook a prescribed geriatric, infants', midwifery, mothercraft or psychiatric training course, or attended a post-graduate course recognised by the Board whether in New South Wales or elsewhere; provided that in the case of service elsewhere than in New South Wales where the period of the prescribed course of training is less than the period of the prescribed course of training in New South Wales, the nurses will serve a period after graduation equal to the difference between the period of the prescribed course elsewhere than in New South Wales and the period of the prescribed course in New South Wales before becoming entitled to be paid as a registered nurse, general nurse, geriatric nurse, infants' nurse, midwifery nurse, mothercraft nurse or psychiatric nurse as the case may be.
- (xxv) "Shift Worker" means - a worker who is not a day worker as defined.
- (xxvi) "They" may be used to refer to multiple people or as a gender neutral way of referring to a singular person.
- (xxvii) "Trainee Enrolled Nurse" means - a person who is being trained to become an enrolled nurse in a nursing home recognised by the Board for that purpose.

**2. Hours of Work and Free Time of Employees Other Than Directors of Nursing**

- (i) The ordinary hours of work for day workers, other than Directors of Nursing, exclusive of meal times, will be 152 hours per 28 calendar days, to be worked Monday to Friday, inclusive, and to commence on such days at or after 6am and before 10am.
- (ii) The ordinary hours of work for shift workers, other than Directors of Nursing, exclusive of meal times, will not exceed an average of 38 hours per week in each roster cycle.
- (iii)
  - (a) The hours of work prescribed in subclauses (i) and (ii) of this clause will, where possible, be arranged in such a manner that in each roster cycle of 28 calendar days each employee will not work their ordinary hours of work on more than 19 days in the cycle.
  - (b) Notwithstanding the provision of paragraph (a) of this subclause, employees may, with the agreement of the employer, work shifts of less than eight hours each over 20 days in each cycle of 28 days.
  - (c) Provided that on the occasion of an employee's written request, and with the consent of the employer, a 9.5-day fortnight may be worked instead of the 19-day month.

NOTE: This subclause is designed to ensure that rosters achieve increased leisure time for nurses, rather than reduced daily hours. This can be achieved by the working of shifts of longer than eight hours per day, with the result that less than 19 days are worked in 28, but without the accrual of an additional day off, as well as by the working of a 19-day month with an accrued additional day off.

- (iv) Each shift will consist of no more than ten hours on a day shift or 11 hours on a night shift with not less than eight hours break between each shift; provided that an employee will not work more than seven consecutive shifts unless the employee so requests and the Director of Nursing agrees. Provided also that an employee will not work more than two quick shifts in any period of seven days, i.e., an evening shift followed by a morning shift, where the break between ordinary shifts is less than ten hours.
- (v) The employer is to decide when employees take their additional days off prescribed in subclause (iii) of this clause (as a consequence of the implementation of the 38-hour week). Where necessary, the employer must consult with the affected employees to ascertain the employees' preferences and must take any such preferences into account when arriving at a decision. Where practicable, additional days off duty will be consecutive with the rostered days off duty prescribed in subclause (xiv) of this clause.
- (vi) Once set, the additional day off duty may not be changed, except in accordance with the provisions of clause 5, Rosters.
- (vii) Where the employer's decision (in accordance with subclause (v) of this clause) is that an employee's additional days off be accumulated, no more than six days may be accumulated in any one year of employment. By mutual agreement this may be extended to no more than 12 days at any one time.
- (viii)
  - (a) Except for breaks for meals, the hours of duty each day will be continuous.
  - (b) "Broken shift" for the purposes of this subclause means a shift worked by a permanent part-time employee that includes a break (other than a meal break) of not more than four hours and where the span of hours is not more than 12 hours.
  - (c) Notwithstanding paragraph (a) above and subclause (iv) of this clause, an employer association representing an employer may apply to the Association for permission to implement broken shifts.

- (d) Broken shifts may be worked without the permission of the Association, but only where:
  - (1) it is for a period of one month or less; and
  - (2) it is by reason of an emergency in the roster, e.g., absence of another employee due to sick leave, annual leave on short notice or resignation; and
  - (3) the affected employees agree to work the broken shifts.
  
- (ix)
  - (a) Each employee will be allowed a break of not less than 30 minutes and not more than 60 minutes for each meal occurring on duty.
  - (b) Where practicable, employees will not be required to work more than five hours without a meal break.
  
- (x) Two separate ten-minute intervals (in addition to meal breaks) will be allowed each employee on duty during each ordinary shift of 7.6 hours or more; where less than 7.6 ordinary hours are worked, employees will be allowed one ten-minute interval in each four-hour period. Subject to agreement between the employer and the employee, such intervals may alternatively be taken as one 20-minute interval, or as one ten-minute interval with the employee allowed to proceed off duty ten minutes before the completion of the normal shift finishing time. Such interval(s) will count as working time.
  
- (xi) Subclauses (ix) and (x) of this clause will not apply to an employee who, before going on night duty, is provided with a meal between 9pm and 11pm and who is allowed two intervals of 20 minutes each during the period of night duty, but such intervals will count as working time and will be paid for as such.
  
- (xii)
  - (a) Except as provided for in paragraph (b) of this subclause, an employee will not be employed on night duty for a longer period than eight consecutive weeks. After having served a period of night duty, an employee will not be required to serve a further period on night duty until they have been off night duty for a period equivalent to the previous period on night duty.
  - (b) The provisions of paragraph (a) will not apply to an Assistant Director of Nursing, a Nursing Unit Manager or a registered nurse in charge, as the case may be, who is employed permanently in charge at night, nor to an employee who requests to be employed on night duty and the Director of Nursing consents.
  - (c) Moreover, except in cases of emergency, a trainee enrolled nurse will not be employed on night duty for more than ten weeks in any one year of training nor will a trainee enrolled nurse who is sitting for their final examination be required to perform night duty during a period of at least two weeks prior to the respective examination or on the two nights following such examination.
  
- (xiii) An employee changing from night duty to day duty or from day duty to night duty will be free from duty during the 20 hours immediately preceding the commencement of the changed duty.
  
- (xiv)
  - (a) Each employee will be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each 28-day cycle and no duties will be performed by the employee on any of such free days except for overtime. Where practicable, days off will be consecutive and will not be preceded by an evening shift or a night shift unless an additional eight hours are granted as sleeping time. An evening shift will be one which commences at or after 1pm and before 4pm.

- (b) An employee, at their request, may be given free-from-duty time in one or more periods but no period will be less than one full day.
  - (c) For the purpose of this subclause, "full day" means - from midnight to midnight or midday to midday.
- (xv)
- (a) Employees may be required to remain "on call". Any such time on call will not be counted as time worked (except insofar as an employee may take up actual duty in response to a call) but will be paid for in accordance with clause 9, Special Allowances. Provided, however, that no employee will be required to remain on call whilst on leave or on the day before entering upon leave.
  - (b) No employee will be required to remain on call while on a rostered day or days off nor on completion of the shift on the day preceding a rostered day off. This provision will not apply where in special circumstances it is necessary for an employer to place staff on call on rostered days off or on completion of the shift on the day preceding a rostered day off in order to ensure the provision of services.
- (xvi) All rostered time off duty occupied by a trainee enrolled nurse in attendance at lectures and demonstrations given in the course of instruction in the theory and practice of nursing or during the time necessarily occupied in attending at and sitting for prescribed examinations will be deemed to be time worked.
- (xvii) The provisions of paragraphs (a) and (b) of subclause (xii) and of subclause (xiii) and of paragraph (a) of subclause (xiv) of this clause, will not apply if the employee is required to perform duty to enable the nursing service of the employer to be carried on or where another employee is absent from duty on account of illness or in an emergency.

### **3. Hours of Work and Free Time of Directors of Nursing**

- (i) A Director of Nursing will be free from duty for not less than nine days in each 28 consecutive days and such days free from duty may be taken in one or more periods.
- (ii) If any of the days mentioned in subclause (i) of this clause cannot be taken by reason of emergency, such day or days will be given and taken within 28 days of becoming due.
- (iii) A Director of Nursing will, where practicable, inform their employer by giving not less than seven days' notice of the days they propose to be free from duty; provided that such days will be subject to the approval of the employer, and such approval will not be unreasonably withheld.

### **4. Remuneration Packaging**

- (i) Where an employer intends to offer remuneration packaging generally to employees under this award, the employer will notify the Association at least 21 days prior to making that general offer that it intends to make a general offer of remuneration packaging to employees under this award.
- (ii) Where the employer offers remuneration packaging to an individual employee, the employer will allow the employee a period of no less than 21 days to seek independent advice on the terms of the proposed remuneration packaging.
- (iii) Remuneration packaging will be introduced by agreement between an employer and the employee. Neither the employee nor the employer will be compelled to enter into a salary packaging arrangement. Employees may exercise their rights to continue to receive their applicable salary.
- (iv) The terms and conditions of a package offered to an employee will not, when viewed objectively, be less favourable than the entitlements otherwise available under the award and will be subject to the following provisions:

- (a) The employer will ensure that the structure of any package complies with taxation and other relevant laws.
- (b) All award conditions, other than the salary and those conditions as agreed in paragraph (c) below will continue to apply.
- (c) Where packaging arrangements apply with a Director of Nursing (DON) or a Deputy Director of Nursing (DDON), the employer and employee may by mutual agreement delete the application of certain award clauses, excepting clauses 22, Annual Leave; 24, Sick Leave; 25, Long Service Leave; and 28, Personal/Carer's Leave.
- (d)
  - (i) Employees will have the Superannuation Guarantee Contribution (SGC) calculated on their award salary prior to the application of any remuneration packaging arrangements.
- (v) A copy of the agreement will be made available to the employee.
- (vi) The employee will be entitled to inspect details of the payments made under the terms of this agreement.
- (vii) The configuration of the remuneration package will remain in force for the period agreed between the employee and the employer.
- (viii) Where at the end of the Fringe Benefit Tax year the full amount allocated to a specific benefit has not been utilised, it will be paid as salary, which will be subject to appropriate taxation requirements. By agreement between the employer and the employee, any unused benefit may be carried forward to the next period on the basis that any FBT obligation is accepted by the employee.
- (ix) In the event that the employer ceases to attract exemption from payment of Fringe Benefit Tax, the employer may terminate all remuneration packaging arrangements and the employee's salary will revert to the applicable award classification rate the employee would have been entitled to receive but for the remuneration packaging agreement.
- (x) One months notice by either party is required for change or termination of a remuneration packaging agreement, unless the change or termination is brought about by legislation or an increase to the award wage.
- (xi) In the event that the employee ceases to be employed by the employer this agreement will cease to apply as at the date of termination. Benefits not paid on or before the date of termination will be treated as salary and the appropriate tax deducted.
- (xii) Pay increases granted to employees in accordance with this award will also apply to employees subject to remuneration packaging arrangements.
- (xiii) Any allowance, penalty rate, overtime, payment for unused leave entitlements, other than any payments for leave taken whilst employed, will be calculated by reference to the salary which would have applied to the employee in the absence of any remuneration packaging arrangements.

## 5. Rosters

- (i) The ordinary hours of work for each employee, other than the Director of Nursing, will be displayed on a roster in a place conveniently accessible to employees.
- (ii) The roster will, where practicable, be displayed at least two weeks, and in any event not less than one week, prior to the commencing date of the first working period in the roster.
- (iii) Notwithstanding the foregoing provisions of this clause, a roster may be altered at any time to enable the nursing service of the facility to be carried on where another employee is absent from duty on account of illness or in an emergency; provided that where any such alteration involves an employee working on a

day which would otherwise have been such employee's day off, the day off in lieu thereof will be as mutually arranged.

- (iv) Prior to the date of the changed shift, such change of roster will be notified verbally or in writing to the employee concerned.
- (v) Where an employee is entitled to an additional day off duty in accordance with clause 2, Hours of Work and Free Time of Employees other than Directors of Nursing, of this award, such day is to be shown on the roster of hours for that employee.
- (vi) All rosters will be retained for at least six years.

#### **6. Salaries**

- (i) The minimum salaries per week will be as set out in Table 1 - Salaries, of Part B, Monetary Rates.

#### **7. Recognition of Service and Experience**

- (i) The employer will notify each nurse, in writing, of the requirements of this clause at the time of the nurse's commencement of employment. If the employer does not so notify the nurse, then the requirements of this clause will not commence until the employer does so notify the nurse.
- (ii) From the time of commencement of employment the nurse has three months in which to provide documentary evidence to their employer detailing any other 'service' or 'experience', as defined in clause 1, Definitions, not disclosed at the time of commencement. This evidence, in the absence of other documentary evidence may take the form of a statutory declaration.
- (iii) Until such time as the nurse furnishes any such documentation contemplated in subclause (ii) above, the employer will pay the nurse at the level for which proof has been provided.
- (iv) If within three months of commencing employment a nurse does provide documentary evidence of other previous service or experience not disclosed at the time of commencement, the employer will pay the nurse 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.
- (v) If a nurse provides documentary evidence of other previous service or experience not disclosed at the time of commencement after the said three months period, the nurse will be paid a rate appropriate for the previous service or experience then proved, but only from the date of providing that evidence to the employer.
- (vi) A nurse who is working as a nurse for more than one organisation will notify each employer under this award within one month of the end of each quarter of their hours worked with those other employers in the last quarter.
- (vii) A nurse who is entitled to progress to the next year of service or experience (by reason of hours worked with other employers) as and from a particular date must provide proof of that entitlement within three months of that entitlement arising. If that proof is so provided, the nurse will be paid at the higher rate as and from the date they were entitled to progress to the next year of service or experience. If the proof is provided outside that three-month period, the nurse will be paid at the higher rate only from the date that proof is provided.

#### **8. Average Occupied Beds**

The average will be taken for the 12 months ended 30 June in each and every year and such average will relate to the salary of the Director of Nursing and Deputy Director of Nursing for the succeeding year. On request, an employer will furnish to the Association a statement in writing showing the adjusted daily average of occupied beds for the twelve months ending on the preceding 30 June.

### 9. Special Allowances

- (i)
  - (a) A registered nurse in charge during the day, evening or night of a facility having a daily average of occupied beds of less than 150 will be paid, in addition to their appropriate salary, whilst so in charge, the relevant sum set out in Item 1 of Table 2, Other Rates and Allowances, of Part B Monetary Rates, per shift.
  - (b) A registered nurse who is designated to be in charge of a shift in a ward will be paid, in addition to their appropriate salary, the sum set out in Item 2 of the said Table 2, per shift.
  - (c) This subclause will not apply to registered nurses holding classified positions of a higher grade than a registered nurse.
  - (d) An enrolled nurse will not be required to be in charge of a facility, shift, ward or unit.
- (ii)
  - (a) An employee required by their employer to be on call otherwise than as provided for in paragraph (b) of this subclause will be paid the sum set out in Item 3 of Table 2 for each period of 24 hours or part thereof, provided that only one allowance will be payable in any period of 24 hours.
  - (b) An employee required to be on call on rostered days off in accordance with paragraph (b) of subclause (xv) of clause 2, Hours of Work and Free Time of Employees Other Than Directors of Nursing, will be paid the sum set out in Item 4 of Table 2 for each period of 24 hours or part thereof, provided that only one allowance will be payable in any period of 24 hours.
  - (c) An employee who is directed to remain on call during a meal break will be paid the sum set out in Item 5 of Table 2, provided that no allowance will 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 paragraph (a) of subclause (ii) of this clause.
  - (d) Where an employee on remote call leaves the facility and is recalled to duty, they will be reimbursed all reasonable fares and expenses actually incurred, provided that where an employee uses a motor car in those circumstances the allowance payable will be calculated utilising the rate per kilometre in Item 6 of Table 2.
  - (e) This subclause will not apply to a Director of Nursing, subsidiary nursing home Director of Nursing, Deputy Director of Nursing or Assistant Director of Nursing.
- (iii) Where an employee is called upon and agrees to use their own private vehicle for official business, payment of an allowance will be made by utilising the rate per kilometre in Item 6 of Table 2. This subclause will apply to all employees.

### 10. Continuing Education Allowance

- (i) 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, will be paid an allowance subject to the conditions set out in this clause.
- (ii) 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.
- (iii) 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.

- (iv) The allowance is not payable to Clinical Nurse Specialists, Clinical Nurse Consultants or Clinical Nurse Educators.
- (v) An RN or EN holding more than one relevant qualification is only entitled to the payment of one allowance, being the allowance of the highest monetary value.
- (vi) The employee claiming entitlement to a continuing education allowance must provide evidence to the employer that they hold that qualification.
- (vii) An RN 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 RN in carrying out the duties of the position will be paid a weekly allowance as set out in Item 1 of Table 3, Continuing Education Allowances of Part B, Monetary Rates.
- (viii) An RN 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 RN in carrying out the duties of the position will be paid a weekly allowance as set out in Item 2 of Table 3, Continuing Education Allowances of Part B, Monetary Rates.
- (ix) An RN 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 RN in carrying out the duties of the position will be paid a weekly allowance as set out in Item 3 of Table 3, Continuing Education Allowances of Part B, Monetary Rates.
- (x) An EN 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 EN in carrying out the duties of the position will be paid a weekly allowance as set out in Item 4 of Table 3, Continuing Education Allowances of Part B, Monetary Rates.
- (xi) The allowances set out in subclauses (vii), (viii), (ix) and (x) hereof are not included in the employee's ordinary rate of pay and will not constitute part of the all-purpose rate.
- (xii) A registered nurse or enrolled nurse who is employed on a part-time or casual basis will be paid these allowances on a pro rata basis.
- (xiii) The rates for these allowances will be adjusted in accordance with increases in other wage-related allowances contained in this award.
- (xiv) Where a disagreement or dispute arises concerning the eligibility of an employee for payment of a continuing education allowance, and such disagreement or dispute is not resolved by the process set out in subclauses (i), (ii) and (iii) of clause 46, Resolution of Disputes, negotiations between the employer and the Association must occur prior to referral to the Industrial Relations Commission for determination.

### **11. Climatic and Isolation Allowance**

- (i) Subject to subclause (ii) of this clause, persons employed in facilities in places situated upon or to the west of a line drawn as herein specified will be paid the sum per week as set out in Item 7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, in addition to the salary to which they are otherwise entitled. The line will be drawn as follows:

Commencing at Tocumwal and then on to the following towns in the order stated, namely, Lockhart, Narrandera, Leeton, Peak Hill, Gilgandra, Dunedoo, Coolah, Boggabri, Inverell and Bonshaw.

- (ii) Persons employed in facilities in places situated upon or to the west of a line drawn as herein specified will be paid the sum per week as set out in Item 8 of the said Table 2 in addition to the salary to which they are otherwise entitled. The line will be drawn as follows:

Commencing at a point on the right bank of the Murray River opposite Swan Hill (Victoria), and then on to the following towns in the order stated, namely, Hay, Hillston, Nyngan, Walgett, Collarenebri and Mungindi.

- (iii) Except for the computation of overtime, the allowances prescribed by this clause will be regarded as part of the salary for the purposes of this award.
- (iv) The allowances prescribed by this clause are not cumulative.
- (v) An employee who works less than 38 hours per week will be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 hours.

### 12. Penalty Rates for Shift Work and Weekend Work

- (i) Employees working afternoon or night shift will be paid the following percentages in addition to the ordinary rate for such 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 6am or finish subsequent to 6pm.

|   |               |
|---|---------------|
| Afternoon shift commencing at 10am and before 1pm | 10 per cent   |
| Afternoon shift commencing at 1pm and before 4pm  | 12.5 per cent |
| Night shift commencing at 4pm and before 4am      | 15 per cent   |
| Night shift commencing at 4am and before 6am      | 10 per cent   |

- (ii) "Ordinary rate" and "ordinary time" will not include any percentages addition by reason of the fact that an employee works less than 38 hours per week, but will include amounts payable under clause 6, Salaries, subclauses (i) and (ii) of clause 9, Special Allowances, and subclauses (i) and (ii) of clause 11, Climatic and Isolation Allowance.

- (iii) For the purposes of this clause, day, afternoon and night shifts will be defined as follows:

"Day shift" means - a shift which commences at or after 6am and before 10am

"Afternoon shift" - means a shift which commences at or after 10am and before 4pm

"Night shift" means - a shift which commences at or after 4pm and before 6am on the day following.

- (iv) Employees whose ordinary working hours include work on a Saturday and/or Sunday, will be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and one-half and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of time and three-quarters. These extra rates will be in substitution for and not cumulative upon the shift premiums prescribed in subclause (i) of this clause.

The foregoing paragraph will apply to employees who work less than 38 hours per week, but such employees will not be entitled to be paid in addition any allowance prescribed by clause 21, Part-time, Casual and Temporary Employees, in respect of their employment between midnight on Friday and midnight on Sunday.

- (v) The additional payments prescribed by this clause will not form part of the employee's ordinary pay for the purposes of this award, except as provided in clause 22, Annual Leave.

### 13. Expense Allowance for Directors of Nursing

- (i) The Director of Nursing will be paid the appropriate sum as set out in Item 9 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, according to the adjusted daily average of the facility.

Payment equal to one quarter of the annual amount is to be made at the end of each three month period subsequent to appointment as Director of Nursing or Subsidiary Nursing Home Director of Nursing in a particular nursing home.

- (ii) Provided that this clause will only apply to persons employed as at 12 December 1994 in nursing homes conducted by members of Aged and Community Services Australia.

#### **14. Telephone Allowance**

- (i) If an employee is required, for the purpose of their employment, to be on call on a regular basis or where an employee is required by their employer to have a telephone installed for the purpose of their employment, the employer will be responsible for the following payments:
  - (a) Where the employee already has a telephone installed:
    - (i) three-quarters of the cost of rental of the telephone;
    - (ii) the cost of all official trunk line calls.
  - (b) Where the employee does not have the telephone installed:
    - (i) the cost of installation of the telephone;
    - (ii) three-quarters of the cost of rental of the telephone;
    - (iii) the cost of all official trunk line calls.
  - (ii) Provided that this clause will not apply to persons employed in facilities conducted by members of Aged and Community Services Australia.

#### **15. Public Holidays**

- (i) The following days will be public holidays: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day, and any other day or part thereof proclaimed and observed as a public holiday within the area in which the facility is situated. All five-day workers will be allowed every public holiday prescribed by this subclause without loss of pay.
- (ii) In addition to those public holidays prescribed in subclause (i) of this clause, employees are entitled to an extra public holiday each year. Such public holiday will occur on a day between Christmas Day and New Year's Day as determined by the employer following consultation with the Association. This subclause will apply in substitution for any additional local public holiday or half public holiday proclaimed in a local government area.
- (iii)
  - (a) A full time employee who is covered by paragraph (b) of subclause (i) of clause 22, Annual Leave, and who is required to and does work on a public holiday prescribed by subclauses (i) and (ii) of this clause will have one day or one half day, as appropriate, added to their period of annual leave and will be paid at the rate of time and one-half for the time actually worked.

Such payment is in lieu of any additional rate for work or weekend work which would otherwise be payable had the day shift not been a public holiday. In lieu of adding to annual leave under this paragraph, an employee may elect to be paid for the time actually worked at the rate of time and one-half in addition to their ordinary weekly rate. Such election will be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer. Where payment is made in lieu of leave in respect of the time worked on a public holiday, payment will be made for a minimum of four hours' work, and any balance of the day or shift not worked will be paid at ordinary rates.
  - (b) Where a public holiday falls on a rostered day off of a full-time shift worker as defined in clause 1, Definitions, who receives four weeks annual leave in accordance with paragraph (b) of

subclause (i) of clause 22, Annual Leave, such shift worker will be paid one day's pay in addition to the weekly rate or, if the employee so elects, will have one day added to the period of annual leave prescribed by paragraph (b) of subclause (i) of clause 22.

- (c) For the purposes of this subclause, the hourly rate of pay will be calculated on the basis of one thirty-eighth of the appropriate ordinary weekly rate of pay prescribed in clause 6, Salaries.
- (iv) Employees engaged upon a seven-day shift roster and who are required to work on any public holiday prescribed by subclause (i) of this clause will be paid, in addition to their ordinary pay for that day, an allowance of 50 per cent of their ordinary day's pay for work performed within ordinary hours and double time and a half for all time worked outside ordinary hours.

#### **16. Uniform and Laundry Allowance**

- (i) Subject to subclause (iii) of this clause, sufficient suitable and serviceable uniforms, including one pair of shoes per annum which will be of a recognised acceptable standard for the performance of nursing duties, and one cardigan or jacket, will be supplied free of cost to each employee required to wear a uniform or part of a uniform. An employee to whom a new uniform or part of a uniform has been issued who, without good reason, fails to return the corresponding article last supplied will not be entitled to have such article replaced without payment therefore at a reasonable price.
- (ii) An employee, on leaving the service of an employer, will return any uniform or part thereof supplied by that employer which is still in use immediately prior to leaving.
- (iii)
  - (a) In lieu of supplying uniforms and shoes to an employee, an employer will pay the said employee the sum per week set in Item 10 of Table 2 - Other Rates and Allowances of Part B, Monetary Rates for uniforms and the sum per week set out in Item 11 of the said Table 2 for shoes.
  - (b) In lieu of supplying a cardigan or jacket to an employee, an employer will pay the said employee the sum per week set out in Item 12 of Table 2.
  - (c) In lieu of supplying stockings to a female employee, an employer will pay the said employee the sum per week set out in Item 13 of Table 2.
  - (d) In lieu of supplying socks to an employee, the employer will pay the said employee the sum per week set out in Item 14 of Table 2.
- (iv) If, in any facility, the uniforms of an employee are not laundered at the expense of the facility, the sum per week set out in Item 15 of Table 2 will be paid to the said employee. Provided that the payment of such laundry allowance will not be made to any employee on absences exceeding one week.
- (v) Where the employer requires any employee to wear headwear, the facility will provide headwear free of charge to the employee.
- (vi) The allowances referred to in subclause (iii) are also payable during any period of paid leave.

#### **17. Higher Grade Duty**

- (i) Subject to subclauses (ii), (iii) and (iv) of this clause, an employee who is called upon to relieve an employee in a higher classification or is called upon to act in a vacant position of a higher classification, will be entitled to receive for the period of relief or the period during which they so act the minimum payment for such higher classification.
- (ii) The provisions of subclause (i) of this clause will not apply where the employee of the higher classification is off duty pursuant to clause 3, Hours of Work and Free Time of Directors of Nursing, except insofar as a Director of Nursing accumulates days off for a continuous period of one week or more; nor when an employee in a higher grade is absent from duty by reason of their additional day off duty as a consequence of working a 38 hour week.

- (iii) Further, the provisions of subclause (i) of this clause will not apply where a Director of Nursing is absent from duty for a period of three working days or less for any reason other than pursuant to the said clause 3.
- (iv) Subject to subclauses (ii) and (iii) above, the provisions of subclause (i) will not apply where a day worker is being relieved and is absent from duty for a period of three consecutive working days or less

### 18. Overtime

- (i) Employees will work reasonable overtime when required by the employer.
- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (iii) For the purposes of subclause (ii) what is unreasonable or otherwise will be determined having regard to:
  - (a) any risk to employee health and safety;
  - (b) the employee's personal circumstances including any family and carer responsibilities;
  - (c) the needs of the facility;
  - (d) the notice (if any) given by the employer of the overtime and by the employee of their intention to refuse it; and
  - (e) any other relevant matter.
- (iv) This subclause is subject to subclause (x) below.
  - (a) Subject to paragraph (b) of this subclause, all time worked by employees other than Directors of Nursing in excess of the rostered daily ordinary hours of work will be overtime and will be paid for at the rate of time and one-half for the first two hours and double time thereafter in respect of each overtime shift worked or in respect of overtime worked prior to or at the conclusion of a normal shift. Provided that overtime worked on Sundays will be paid for at the rate of double time and on public holidays at the rate of double time and one-half.
  - (b) All time worked by employees pursuant to PART I - PERMANENT PART-TIME EMPLOYEES of clause 21 Part-time, Casual and Temporary Employees, in excess of the rostered daily ordinary hours of work prescribed for the majority of full-time employees employed on that shift in the ward or section concerned will be paid for at the rate of time and one-half for the first two hours and double time thereafter, except that on Sundays such overtime will be paid for at the rate of double time and on public holidays at the rate of double time and one-half.

Time worked up to the rostered daily ordinary hours of work prescribed for a majority of the full-time employees employed on that shift in the ward or section concerned will not be regarded as overtime but an extension of the contract hours for that day and will be paid at the ordinary rate of pay.
- (v) The ordinary hours of work for Directors of Nursing will be 38 per week and will not, without payment of overtime at the rate of time and one-half, exceed:
  - (a) 43 hours in any week; or
  - (b) 86 hours in any fortnight; or
  - (c) 129 hours in any 21 consecutive days; or

- (d) 172 hours in any 28 consecutive days.
- (vi) An employee required to work overtime following on the completion of their normal shift for more than two hours will be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours overtime; all such time will be counted as time worked, provided that the benefits of this subclause will not apply to an employee employed pursuant to PART I - PERMANENT PART-TIME EMPLOYEES of clause 21 Part-time, Casual and Temporary Employees, until the expiration of the normal shift for a majority of the full-time employees employed on that shift in the ward or section concerned.
- (vii) An employee recalled to work overtime after leaving the employer's premises and who is required to work for more than four hours will be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours' overtime; all such time will be counted as time worked.
- (viii) The meals referred to in subclauses (vi) and (vii) of this clause will be allowed to the employee free of charge. Where the facility is unable to provide such meals, the sum per meal set out Item 16 of Table 2 will be paid to the employee concerned.
- (ix) Where an employee is required to work an overtime shift on their rostered day off, the appropriate meal breaks for that shift, as prescribed by clause 2, Hours of Work and Free Time of Employees other than Directors of Nursing, will apply.
- (x) Employees who work so much overtime:
- (a) 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 eight consecutive hours off duty between these times; or
- (b) on a Saturday, a Sunday or a public holiday, not being ordinary working days, or on a rostered day off without having had eight consecutive hours off duty in the 24 hours preceding the ordinary commencing time on the next ordinary day or shift,
- will, subject to this subclause, be released after completion of such overtime until they have had eight 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 eight consecutive hours off duty, they will 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 will be entitled to be absent until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (xi) An employee recalled to work overtime after leaving the employer's premises will be paid for a minimum of four hours work at the appropriate rate for each time so recalled. If the work required is completed in less than four hours, the employee will be released from duty; provided that this subclause does not apply to a Director of Nursing.
- (xii) By agreement between the employee and employer, an employee may be compensated by way of time off in lieu of payment of overtime on the following basis:
- (a) Time off in lieu of overtime must be taken at ordinary rates within three months of it being accrued.
- (b) Where it is not possible for a nurse to take the time off in lieu of overtime within the three-month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
- (c) Nurses cannot be compelled to take time off in lieu of overtime.
- (d) Time off in lieu of overtime should only be considered as an option in those circumstances where the employer is able to provide adequate replacement staff to ensure that the level of the quality

of service that would otherwise have been provided had the overtime been worked, is in fact provided.

- (e) Records of all time off in lieu of overtime owing to nurses and taken by nurses must be maintained by the employer.

### **19. Payment and Particulars of Salaries**

- (i) All salaries and other payments will be paid weekly or fortnightly, provided that payment for any overtime worked may be deferred to the pay day next following the completion of the working cycle within which such overtime is worked, but for no longer; provided further that the payment of shift and weekend penalties relating to work performed in the second week of a fortnightly roster period may be deferred to the pay day next following the completion of the working cycle within which such shifts were worked, but for no longer. Provided further that, for the purpose of adjustments of wages related to variations in the basic wage, the pay period will be deemed to be weekly.
- (ii) Employees will have their salary paid into one account with a bank or other financial institution in New South Wales as nominated by the employee. Salaries will be deposited by facilities in sufficient time to ensure that wages are available for withdrawal by employees by no later than pay day, provided that this requirement will not apply where employees nominate accounts with non-bank financial institutions; but in such cases facilities will take all reasonable steps to ensure that the wages of such employees are available for withdrawal by no later than pay day.
- (iii) Notwithstanding the provisions of subclause (ii) of this clause, an employee who has given or has been given the required notice of termination of employment, in accordance with clause 37, Termination of Employment, will be paid all moneys due to them prior to ceasing duty on the last day of employment.

Where an employee is summarily dismissed or their services are terminated without due notice, any moneys due to them will be paid as soon as possible after such dismissal or termination but in any case not more than three days thereafter.

- (iv) On each pay day an employee, in respect of the payment then due, will be furnished with a written statement containing the following particulars, namely: name, the amount of ordinary salary, the total number of hours or overtime worked, if any, the amount of any overtime payment, the amount of any other moneys paid and the purpose for which they are paid, the amount of the deductions made from the total earnings and the nature thereof.

### **20. Proportion**

Except in cases of emergency, not more than four enrolled nurses and/or assistants in nursing to each registered nurse will be employed in a facility and for this purpose a Director of Nursing who is a registered nurse will count; provided that the proportions specified by this clause may be altered in respect of any particular facility by agreement between the facility concerned and the New South Wales Nurses and Midwives' Association.

### **21. Part-Time, Casual and Temporary Employees**

#### **PART I - PERMANENT PART-TIME EMPLOYEES**

- (i) A permanent part-time employee is one who is permanently appointed by a facility to work a specified number of hours which are less than those prescribed for a full-time employee. By agreement between employer and employee, the specified number of hours may be balanced over a week and/or a fortnightly period, provided that the average weekly hours will be deemed to be the specified number of hours for the purposes of accrual of annual leave, long service leave and sick leave. Provided further that there will be no interruption to the continuity of employment merely by reason of an employee working on a "week on, week off" basis in accordance with this subclause.
- (ii) Employees engaged under Part I of this clause will be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed by clause 6, Salaries, and where applicable, one thirty-eighth of the appropriate allowance or allowances prescribed by clause 9, Special Allowances, with a

minimum payment of two hours for each start, and one thirty-eighth of the appropriate allowances prescribed by clause 16, Uniform and Laundry Allowance, but will not be entitled to an additional day off or part thereof as prescribed by subclauses (iii) and (v) of clause 2, Hours of Work and Free Time of Employees Other than Directors of Nursing.

- (iii) Four weeks annual leave on ordinary pay is to be granted on completion of each 12 months' service. The provisions of subclauses (iii) to (ix) of clause 22, Annual Leave, and clause 23, Annual Leave Loading, will apply to employees engaged under this Part of this clause. The remaining provisions of the said clause 22 will not apply.

Where an employee has any period of permanent part-time employment during any 12 month qualifying period for annual leave, payment for such annual leave will be calculated on the basis of the proportion that the average number of hours worked each week bears to 38.

- (iv) A public holiday occurring on an ordinary working day will be allowed to employees without loss of pay; provided that an employee who is required to and does work on a public holiday will have one day or one half day, as appropriate, added to their period of annual leave and be paid at the rate of one half time extra for the time actually worked. Such payment is in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday. In lieu of adding to annual leave under this paragraph, an employee may elect to be paid for the time actually worked at the rate of time and one-half in addition to their ordinary weekly rate. Such election will be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer. Where payment is made in lieu of leave in respect of time worked on a public holiday, payment will be made for a minimum of four hours work, and any balance of the day or shift not worked will be paid at ordinary rates.
- (v) To the leave prescribed by subclause (iii) of this Part of this clause there will be added one working day for each public holiday or one half working day for each half public holiday which occurs on what would have been an ordinary working day during a period of annual leave.
- (vi) For the purpose of this Part of this clause, the following are to be public holidays, namely: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, local Labour Day, Christmas Day, Boxing Day and any other day duly proclaimed and observed as a public holiday within the area in which the facility is situated.
- (vii) In addition to those public holidays prescribed in subclause (iv) of this Part I of this clause, there will be an extra public holiday each year. Such public holiday will occur on the August Bank Holiday or a date which is agreed upon by the Association and Aged and Community Services Australia, and Leading Age Services Australia NSW-ACT. The foregoing does not apply in areas where, in each year:
  - (a) a day in addition to the ten named public holidays specified in subclause (vi) of this Part of this clause are proclaimed and observed as a public holiday; or
  - (b) two half days in addition to the ten named public holidays specified in the said subclause (vi) are proclaimed and observed as half public holidays.
- (viii) In areas where in each year one half day in addition to the ten named public holidays specified in the said subclause (vi) is proclaimed and observed as a half public holiday, for the purposes of this award the whole day is to be regarded and observed as a public holiday, and no additional public holiday which would otherwise apply as a result of this subclause will be observed.
- (ix) Employees engaged under this Part of this clause will be entitled to all other benefits of this award not otherwise expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.

**PART II - CASUAL EMPLOYEES**

- (i) A casual employee is one engaged on an hourly basis otherwise than as a permanent part-time or full-time employee.
- (ii) A casual employee will be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed by clause 6, Salaries, and, where applicable, one thirty-eighth of the appropriate allowance or allowances prescribed by clause 9, Special Allowances, plus ten per cent thereof, with a minimum payment of two hours for each start, and one thirty-eighth of the appropriate allowances prescribed by clause 16, Uniform and Laundry Allowance.
- (iii) With respect to a casual employee, the provisions of clause 3, Hours of Work and Free Time of Directors of Nursing; clause 5, Rosters; clause 13, Expense Allowance for Directors of Nursing; clause 18, Overtime; clause 22, Annual Leave; clause 23, Annual Leave Loading; clause 24, Sick Leave; clause 25, Long Service Leave; clause 26, Compassionate Leave; clause 33, Deputy Director of Nursing and Assistant Director of Nursing; clause 35, Fares and Expenses, will not apply. Further, casual employees will not be entitled to an additional day off or part thereof as prescribed by subclauses (iii) and (v) of clause 2, Hours of Work and Free Time of Employees Other than Directors of Nursing.
- (iv) For the entitlement to payment in respect of annual leave, see *Annual Holidays Act 1944* (NSW).
- (v) For the entitlement to payment in respect of long service leave, see *Long Service Leave Act 1955* (NSW).
- (vi) A casual employee who is required to and does work on a public holiday as defined in subclauses (i) and (ii) of clause 15, Public Holidays, will be paid for the time actually worked at the rate of double time and one-half, such payment being in lieu of weekend or shift allowances which would otherwise be payable had the day not been a public holiday; provided that a casual employee will not be entitled to be paid, in addition, the allowance of ten per cent prescribed in subclause (ii) of this Part in respect of such work.

**PART III - TEMPORARY EMPLOYEES**

- (i) A temporary employee is one engaged for a set period not exceeding 13 weeks, provided that fixed term contracts of employment, whether for periods greater or lesser than 13 weeks, must not be offered in preference to ongoing contracts unless they are necessary to meet the genuine operational requirements of the employer, which may include but not be limited to parental leave, limited term funding arrangements, long term leave relief, forthcoming service reductions, and anticipated peak demand times
- (ii) A temporary employee will be paid, in addition to all rates and allowances to which the said employee is entitled under this award, an allowance equal to ten per cent of the rates prescribed for their classification by clause 6, Salaries, provided that this subclause will cease to apply upon:
  - (a) the said period of engagement being extended after the said period of 13 weeks;
  - (b) the employer and the employee agreeing during the said period of 13 weeks that the employee will be employed on a permanent part-time or full-time basis.
- (iii) For entitlement to payment in respect of annual leave, see *Annual Holidays Act 1944* (NSW).

**22. Annual Leave**

- (i) Annual leave on full pay is to be granted on completion of each 12 months service as follows:
  - (a) Employees required to work on a seven-day basis - six weeks annual leave.
  - (b) All other employees - four weeks annual leave.

## (ii)

- (a) An employee to whom paragraph (a) of subclause (i) of this clause applies and who is required to and does work on a public holiday will be paid, in addition to the appropriate ordinary weekly rate of pay, at the rate of one half time extra for the time actually worked on such holiday. Such payment will be in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday.
- (b) To the leave prescribed by paragraph (a) of subclause (i) there will be added one working day or one half working day for each special public holiday or half public holiday, not being one of the ten specifically named public holidays prescribed by subclause (i) of clause 15, Public Holidays (or a special day proclaimed in lieu of any of them) which may occur during the qualifying period for annual leave or during the period of annual leave.
- (c) To the leave prescribed by paragraph (b) of subclause (i) of this clause there will be added one working day or one half working day for each public holiday or half public holiday which occurs on what would have been an ordinary working day during a period of annual leave; provided that in the case of a full-time shift worker the provisions of this paragraph will apply to any public holiday falling during the period of annual leave.

## (iii)

- (a) An employee will be eligible for annual leave when 12 months have elapsed since the date on which the first annual leave would have begun if taken immediately it had become due or, if the employee has not previously had annual leave, since the commencement of employment.
- (b) Credit of time towards an allocated day off duty will not accrue when an employee is absent in accordance with subclause (i) of this clause. Employees entitled to allocated days off duty in accordance with clause 2, Hours of Work and Free Time of Employees Other Than Directors of Nursing, will accrue credit towards an allocated day off duty in respect of each day those employees are absent on additional annual leave in accordance with paragraph (b) of subclause (ii) of this clause and paragraph (a) of subclause (iii) of clause 15, Public Holidays.

- (iv) Annual leave will be given and taken either in one consecutive period or two periods or, if the employer and employee so agree, in either three or four separate periods but not otherwise. Provided that no employee will be compelled to take annual leave in periods of less than one week in place of any other leave provided for by this award.

## (v)

- (a) Annual leave will be given and will be taken within a period of six months after the date when the right to annual leave accrued; provided that the giving and taking of such leave may be postponed by mutual agreement between the parties for a further period not exceeding six months.
- (b) Nothing in this subclause will prevent an employer by agreement with the employee from allowing annual leave to an employee before the right thereto has accrued, but where leave is taken in such a case a further period of annual leave will not commence to accrue until the expiration of the 12 months in respect of which annual leave was taken before it accrued.
- (c) The employer will give each employee, where practicable, three months notice of the date upon which they will enter upon leave and, in any event, such notice will not be less than 28 days.

## (vi)

- (a) Each employee before going on leave will be paid for the period of the leave at the ordinary rate of salary to which they are entitled under this award. Where an employee has any period of permanent part-time employment during any 12-month qualifying period for annual leave,

payment for such annual leave will be calculated on the basis of the proportion that the average number of hours worked each week bears to 38.

- (b) An employee to whom paragraph (a) of subclause (i) applies will be paid during the first 28 consecutive days while on annual leave their ordinary rate of salary plus shift allowances and weekend penalties relating to ordinary time the employee would have worked if they had not been on annual leave. Additional annual leave accrued under subclause (ix) attracts shift allowances and weekend penalties relating to ordinary time the employee would have worked if they had not been on annual leave. Provided that the provisions of the preceding paragraphs of this subclause will not apply to public holidays which occur during a period of annual leave or days which have been added to annual leave in accordance with paragraph (b) of subclause (ii) of this clause and subclause (ii) of clause 15, Public Holidays.
- (vii) Except as provided in subclauses (viii) and (ix) of this clause, payment for annual leave will not be made or accepted in lieu of annual leave.
- (viii) Where the employment of an employee is terminated, the employee will be entitled to receive, in addition to all other amounts due, in respect of service of less than one year an amount equal to one-twelfth (6/46 in respect of employees rostered to work on a seven-day basis) of their ordinary pay for that period of employment, together with payment for any days added to annual leave in accordance with subclause (iii) of the said clause 15.
- (ix)
- (a) In addition to the leave prescribed by subclause (i) of this clause, employees who work their ordinary hours on Sundays and/or public holidays prescribed by clause 15 are entitled to receive additional annual leave as follows:

Number of ordinary shifts worked on Sundays and/or public holidays during a qualifying period of employment for annual leave purposes -

|            |                                |
|------------|--------------------------------|
| 4 to 10    | 1 day additional annual leave  |
| 11 to 17   | 2 days additional annual leave |
| 18 to 24   | 3 days additional annual leave |
| 25 to 31   | 4 days additional annual leave |
| 32 or more | 5 days additional annual leave |

Provided that an employee may elect to be paid when proceeding on annual leave an amount equivalent to the value of their additional leave entitlement in lieu of taking the additional leave. Such election is to be made in writing by the employee at the commencement of each year of employment and is irrevocable during the currency of that year of employment.

- (b) On termination of employment, employees are to be paid for any untaken annual leave due under this subclause, together with payment for any leave in respect of an uncompleted year of employment calculated in accordance with this subclause, together with payment for any untaken annual leave due in accordance with subclause (viii) of this clause.
- (c) Permanent part-time employees will be entitled to the benefits of this subclause in the same proportion as their average weekly hours of work bear to full-time hours.

### 23. Annual Leave Loading

- (i) Before an employee is given and takes their annual holiday or where, by agreement between the employer and the employee, the annual holiday is given and taken in more than one separate period, then before each of such separate periods the employer will pay the employee a loading determined in accordance with this clause.
- (ii) The loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under paragraph (b) of subclause (i) and paragraph (c) of subclause (ii) of clause 22, Annual

Leave, or in the case of permanent part-time employees, for the period of holiday given and taken and due to the employee in accordance with the provisions of the *Annual Holidays Act 1944* (NSW).

- (iii) The loading is the amount payable for the period or the separate periods, as the case may be, at the rate per week of 17½ per cent of the appropriate ordinary weekly time rate of pay prescribed by this award for the classification in which the employee was employed immediately before commencing their annual holiday, together with any allowances prescribed by subclauses (i) and (ii) of clause 9, Special Allowances.
- (iv) No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such an employee continues until the day when the employee would have become entitled under the said clause 22, to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with subclause (iii) of this clause, applying the award rates and wages payable on that day.
- (v)
  - (a) When the employment of an employee is terminated by the employer for a cause other than misconduct, and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which the employee became entitled, they will be paid a loading calculated in accordance with subclause (iii) of this clause for the period not taken.
  - (b) Except as provided by paragraph (a) of this subclause, no loading is payable on the termination of an employee's employment.
- (vi) This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if they had not been on holidays; provided that, if the amount to which the employee would have been entitled by way of shift work allowances and weekend penalty rates for the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount will be paid to the employee in lieu of the loading.

#### 24. Sick Leave

- (i) Subject to the following limitations and conditions, an employee will be entitled to sick leave on full pay calculated by allowing 76 rostered ordinary hours of work for each year of continuous service, less any sick leave on full pay already taken.
  - (a) An employee during their first year of employment with an employer will be entitled to sick leave at the rate of 7.6 hours at the end of each of the first five months continuous service. Upon completion of six months continuous service the employee will be entitled to a further 38 hours sick leave. For the purpose of this subclause, where service is continuous, each new entitlement will accrue at the monthly anniversary date of the commencement of employment, i.e., a person starting on 6 March would be entitled to their first 7.6 hours on 6 April.
  - (b) An employee will not be entitled to sick leave on full pay for any period in respect of which such employee is entitled to workers' compensation; provided, however, that an employer will pay to an employee who has sick leave entitlement under this clause, the difference between the amount received as workers' compensation and full pay. The employee's sick leave entitlement under this clause will, for each week during which such difference is paid, be reduced by that proportion of 38 hours which the difference paid bears to full pay.
  - (c) All periods of sickness will be certified to by the Director of Nursing of the facility or by the employee's own legally qualified medical practitioner. The employer may dispense with the requirements of a medical certificate when the absence does not exceed two consecutive days or where, in the employer's opinion, the circumstances are such as not to warrant such requirement.

- (d) Each employee will notify their employer of an absence from work due to illness or injury prior to the commencement of their rostered shift or as soon as practicable thereafter and will, as far as possible, inform the employer of the estimated duration of the absence.
- (ii) The employer will not change the rostered hours of work of an employee fixed by the roster or rosters applicable to the 14 days immediately following the commencement of sick leave merely by reason of the fact that they are on sick leave.
- (iii) For the purpose of this clause, "service" means - service in the employment of an employer.
- (iv) For the purpose of this clause, continuity of service in the employment will not be broken by:
  - (a) absences from such employment on account of illness;
  - (b) absences from such employment for the purposes of pursuing a post-graduate course in nursing (i.e. a course which results in obtaining a certificate, diploma or qualifications whether in Australia or elsewhere) and where the course is pursued outside Australia an employee will be deemed to be absent for the purpose of pursuing the course throughout the time reasonably occupied travelling to the place of study and return to Australia, the actual duration of the course, a period of three months after completion of the course before returning to Australia and a period of one month after returning to Australia, provided that subclauses (iii) and (iv) will only apply to persons employed in facilities conducted by members of Aged & Community Services Australia.
- (v) Permanent Part-time Employees - A permanent part-time employee will be entitled to sick leave in the same proportion of 76 hours as the average weekly hours worked over the preceding 12 months or from the time of commencement of employment, whichever is the lesser, bears to 38 ordinary hours. Such entitlements will be subject to all the above conditions applying to full-time employees.
- (vi) With respect to an employee who is eligible for sick leave and who produces a satisfactory medical certificate to the effect that they have been incapacitated for a period of at least one week's duration while on annual leave, the employer may re-credit such employee with an equivalent period of annual leave, provided that no such re-crediting will be granted to an employee on leave prior to retirement, resignation or termination of services and provided further the employer is satisfied on the circumstances and the nature of the incapacity.
- (vii) Subject to the provision of a satisfactory medical certificate and sick leave being due, extended or long service leave will be re-credited where an illness of at least one week's duration occurs during the period of extended or long service leave; provided that the period of leave does not occur prior to retirement, resignation or termination of services.

## 25. Long Service Leave

- (i) For long service leave falling due prior to 20 February 1981, see *Long Service Leave Act 1955 (NSW)*.
- (ii) For long service leave falling due after 20 February 1981, the following provisions will apply:
  - (a)
    - (i) Every employee after ten years' continuous service with the same employer will be entitled to two months' long service leave on full pay; after 15 years' continuous service to an additional one month's long service leave on full pay; and for each five years' continuous service thereafter to an additional one and one-half months' long service leave on full pay.

Such leave will be taken at a time to be mutually arranged between the employer and the employee as soon as practicable after each period of leave falls due, having regard to the reasonable preferences of each party. Where required by the employer, the term "as soon as practicable" will mean that leave is taken by the employee within 12 months of the date

that the leave falls due. The leave is to be taken in one continuous period unless the employer and employee agree otherwise.

Notwithstanding anything contained elsewhere in this clause, an employer and an employee may mutually agree that the taking of the leave be deferred beyond the initial twelve months referred to above. In such a case the employer and employee may agree that the employee will be paid for that leave at the rate of pay applicable at the time of the agreement to further postpone the leave, and not at the rate of pay applicable at the time that the leave is taken. For any such agreement to be valid, it must be in writing and be signed by both the employer and the employee.

- (ii) Where the service of an employee with at least five years' service is terminated, the employee will be entitled to long service leave as follows:

For the first five years' service - one month.

For the next ten years' service - a proportionate amount calculated on the basis of one month for each additional five years. For the purpose of calculation, each completed whole month of continuous service gives an entitlement equal to 0.0722 weeks' pay.

For all subsequent service - a proportionate amount calculated on the basis of 1.5 months for each additional five years. For the purpose of calculation, each completed whole year of continuous service gives an entitlement equal to 1.2996 weeks' pay.

- (b) Subject to paragraph (a) of this subclause, where an employee has acquired a right to long service leave, then:

- (i) If, before such leave has been entered upon, the employment of such employee has been terminated, such employee will be entitled to receive the monetary value of the leave to which such employee has become entitled, computed at the rate of salary which such employee had been receiving immediately prior to the termination of employment.
- (ii) If such employee dies before entering upon such extended leave, or if, after having entered upon the same, dies before its termination, their widow/widower or, in the case of a widow/widower leaving children, their children or their guardians or other dependent relatives or their legal representatives, will be entitled to receive the monetary value of the leave not taken or not completed, as the case may be, and computed at the rate of salary which the employee had been receiving at the time of death.

- (c) For the purpose of this clause:

- (i) Continuous service in the same facility prior to the coming into force of this award will be taken into account.
- (ii) One month equals four and one-third weeks.
- (iii) Continuous service will 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;
  - (2) any period of absence on leave without pay not exceeding six months.

- (d) Where any employee has been granted a period of long service leave prior to the coming into force of this award, the amount of such leave will be debited against the amount of leave due under this award.

- (e) Except where the total actual service is less than five years -
  - (i) all service in facilities to which subclause (i) of clause 11, Climatic and Isolation Allowance, applies will be counted as one and one-half times the actual time served;
  - (ii) all service in a facility to which subclause (ii) of the said clause 11 applies will be counted as twice the actual time served.
- (f) Any period(s) of part-time employment with the same employer will count towards long service leave as provided for in paragraphs (a) and (e) of this subclause. Such long service leave will be paid for on the basis of the proportion that the average number of hours worked per week bears to 38.
- (g) Where an employee has accrued a right to an allocated day off duty on pay prior to entering a period of long service leave, such day will be taken on the next working day immediately following the period of long service leave.

An employee returning to duty from long service leave will be given the next allocated day off duty in sequence, irrespective of whether sufficient credits have been accumulated or not.

## 26. Compassionate Leave

- (i) In general, compassionate leave with pay should be granted only in extraordinary or emergent circumstances where a member of the staff of a facility is forced to absent himself/herself from duty because of urgent pressing necessity, and such leave as is granted should be limited to the time necessary to cover the immediate emergency.
- (ii) Any absence occasioned by personal exigencies which might fairly be regarded as an obligation on the employee rather than the employer to make good, should be covered by the grant of leave without pay or, if the employee so desires, charged against their annual leave credit.
- (iii) The following basic principles should be kept in mind when dealing with applications:
  - (a)
    - (i) An employee, other than a casual employee, will be entitled to a maximum of two days compassionate leave without deduction of pay, on each occasion of the death of a person as prescribed in subparagraph (iii) of this paragraph. Provided that, where the employee is involved in funeral arrangements, travelling, etc., leave may be allowed for up to three days.
    - (ii) The employee must notify the employer as soon as practicable of the intention to take compassionate leave and will, if required by the employer, provide, to the satisfaction of the employer, proof of death.
    - (iii) Compassionate leave will be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (ii) of paragraph (c) of subclause (i) of clause 28, Personal/Carer's Leave, provided that, for the purpose of compassionate leave, the employee need not have been responsible for the care of the person concerned.
    - (iv) An employee will not be entitled to compassionate leave under this clause during any period in respect of which the employee has been granted other leave.
    - (v) Compassionate leave may be taken in conjunction with other leave available under subclauses (ii), (iii), (iv), (v) and (vi) of the said clause 28. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

- (b) Illnesses in the family - Except in very special circumstances, leave with pay should be limited to one day which, as a general rule, would prove sufficient time to meet the immediate emergency and allow the employee to make any other arrangements necessary. It would be expected that no one but the employee would be available to care for the sick member of the family.
- (iv) The above principles are not intended to codify completely purposes for which compassionate leave with pay may be allowed. The element of unforeseen emergency could be present in other situations, e.g., floods and bushfires, which clearly prevent attendance for duty.
- (v) In view of the purpose for which compassionate leave is intended, it is not possible to prescribe a precise limitation of the amount of leave to be granted in a given period. It is suggested, however, that only under the most exceptional circumstances should leave exceeding a total of three days be granted to an employee in any year.
- (vi) Bereavement entitlements for casual employees
  - (a) Subject to the evidentiary and notice requirements set out in subparagraph (ii) of paragraph (a) of subclause (iii) of clause 26, Compassionate Leave, casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subparagraph (ii) of paragraph (c) of subclause (i) of clause 28, Personal/Carer's Leave.
  - (b) The employer and the employee will agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
- (vii) The provisions of this clause will have no application to employees of bodies established by the Catholic Church to propagate religion.

## 27. Parental Leave

- (i) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions will also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (ii) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (iii) Right to request
  - (a) An employee entitled to parental leave may request the employer to allow the employee:
    - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
    - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;

- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (b) The employer will consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under subparagraph (ii) of paragraph (a) of subclause (iii) of clause 27, Parental Leave and subparagraph (iii) of (a) of subclause (iii) of clause 27, Parental Leave must be recorded in writing

- (d) Request to return to work part-time

Where an employee wishes to make a request under subparagraph (iii) of paragraph (a) of subclause (iii) of clause 27, Parental Leave, such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (iv) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer will take reasonable steps to:
  - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
  - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee will take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (c) The employee will also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

## **28. Personal/Carer's Leave**

- (i) Use of Sick Leave

- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in set out in subparagraph (ii) of paragraph (c) of subclause (i) of clause 28, Personal/Carer's Leave who needs the employee's care and support, will be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 24, Sick Leave of this award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

- (b) The employee will, if required,
- (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
  - (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
- (i) the employee being responsible for the care and support of the person concerned; and
  - (ii) the person concerned being:
    - (1) a spouse of the employee; or
    - (2) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (3) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
    - (4) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
    - (5) a relative of the employee who is a member of the same household where, for the purposes of this subparagraph:
      - (a) "relative" means - a person related by blood, marriage or affinity;
      - (b) "affinity" means - a relationship that one spouse because of marriage has to blood relatives of the other; and
      - (c) "household" means - a family group living in the same domestic dwelling.
    - (d) An employee will, wherever practicable, give the employer notice, prior to the absence, of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee will notify the employer by telephone of such absence at the first opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee will discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 46, Resolution of Disputes, should be followed.

- (ii) Unpaid Leave for Family Purpose
  - (a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in subparagraph (ii) of paragraph (c) of subclause (i) of clause 28, Personal/Carer's Leave above who is ill or who requires care due to an unexpected emergency.
- (iii) Annual Leave
  - (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
  - (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, will be exclusive of any shutdown period provided for elsewhere under this award.
  - (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
  - (d) An employee may elect with the employer's agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
- (iv) Time Off in Lieu of Payment for Overtime
  - (a) For the purpose only of providing care and support for a person in accordance with subclause (i) of this clause, and despite the provisions of subclause (xii) of clause 18, Overtime, the following provisions will apply.
  - (b) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
  - (c) Overtime taken as time off during ordinary time hours will be taken at the ordinary time rate, that is, an hour for each hour worked.
  - (d) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason, payment for time accrued at overtime rates will be made at the expiry of the 12-month period or on termination.
  - (e) Where no election is made in accordance with the said paragraph (a), the employee will be paid overtime rates in accordance with this award.
- (v) Make-up Time
  - (a) An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in this award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.
- (vi) Additional Rostered Days Off
  - (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
  - (b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.

- (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
  - (d) This subclause is subject to the employer informing each union which is both party to this award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.
- (vii) Personal Carers Entitlement for casual employees -
- (a) Subject to the evidentiary and notice requirements in paragraph (b) of subclause (i) of clause 28, Personal/Carer's Leave and paragraph (d) of subclause (i) of clause 28, Personal/Carer's Leave casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause subparagraph (ii) of paragraph (c) of subclause (i) of of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (b) The employer and the employee will agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (viii) The provisions of this clause will have no application to employees of bodies established by the Catholic Church to propagate religion.

### **29. Staff Amenities**

- (i)
  - (a) The employer will provide for the use of employees:
    - (i) toilet facilities; provided that this provision will not apply to a facility the registered number of beds of which is less than nine;
    - (ii) a full-length locker fitted with lock and key or other suitable place for the safe keeping of clothing and personal effects of such employee.
  - (b) An employer will provide for employees morning and afternoon tea, supper and early morning tea (which will include tea or coffee, together with milk and sugar).
  - (c) Where an employee requests, the employer will provide an employee with meals of a reasonable standard. The employer may make a charge, provided that the charge for breakfast will be the sum set out in Item 17 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, and the sum set out in Item 18 of the said Table 2 for other meals.
- (ii) The charges referred to in subclause (i) of this clause are to be adjusted in accordance with the movement in wage rates following State Wage Case decisions. The employers are entitled to set prices for meals at a level to cover labour and ingredient costs (not indirect costs).

### **30. Labour Flexibility**

- (i) Nurses will not be required to perform as a matter of routine duties: washing, sweeping, polishing and/or dusting of floors, walls, windows, corridors, annexes, bathrooms or verandas, except in an emergency.

- (ii) Nothing in subclause (i) of this clause will preclude the employment of nurses in the washing of beds, bedspreads, mattresses, bedside tables or the like, following the discharge of a patient suffering a notifiable infectious disease.
- (iii) Nothing in subclause (i) of this clause will preclude any nurse from being required to perform all or any of the specified duties, at any time when domestic staff is not available to perform them; provided that the employer has made all reasonable efforts to obtain domestic staff.
- (iv) Subject to subclause (i) of this clause, an employer may direct a nurse to carry out such duties as are within the limits of the nurse's skill, competence and training. Such duties may include work which is incidental or peripheral to the nurse's main tasks, provided that such duties are not designed to promote deskilling.

Any employer may direct a nurse to carry out duties and use such equipment as may be required, provided that the nurse has been properly trained or has otherwise acquired the necessary skills in the use of such equipment. Any such direction issued by the employer will be consistent with the employer's responsibility to provide a safe and healthy working environment for nurses and the employer's duty of care to residents.

- (v) Assistants in Nursing may be employed under this award to perform mixed functions, provided that:
  - (a) The primary duties performed by the Assistant in Nursing, being the delivery of direct care to residents, occupy no less than the majority of the hours for which they are employed in any 28 day cycle.
  - (b) The Assistant in Nursing will be paid at the appropriate rate for an Assistant in Nursing for all work performed for their employer in that classification.
  - (c) An Assistant in Nursing will not be required to perform mixed functions where the employer does not provide adequate staff to ensure that the level of the quality of the service that would have otherwise been provided if the Assistant in Nursing did not perform mixed functions, is in fact provided.
  - (d) Subject to paragraph (a) of this subclause, an Assistant in Nursing may perform duties associated with a resident's well being and comfort, including functions of a laundry, kitchen or other personal support nature.

### 31. Medical Examination of Nurses

On commencement of employment the employee will be notified of the availability of the following provisions, which the employer will provide at the request of the employee:

- (i) For protection against tuberculosis:
  - (a) Before a nurse commences duty, a PA chest x-ray examination of the nurse, unless a radiologist's report of a normal chest x-ray taken within the previous six months is available.
  - (b) As soon as practicable after the nurse commences duty, a Mantoux test on the nurse, then -
    - (i) where the Mantoux test is negative, immunisation with BCG vaccine;
    - (ii) where the Mantoux test is positive (otherwise than as a result of BCG vaccination), referral to a chest clinic for assessment.
  - (c) A Mantoux test annually to -
    - (a) previously Mantoux-negative nursing staff;
    - (b) nursing staff whose Mantoux reaction has been converted by BCG vaccination.

- (d) A chest x-ray annually to nursing staff whose Mantoux reaction is positive (otherwise than as a result of BCG vaccination).
- (e) Where a nurse has been caring for open tuberculosis cases, a PA chest x-ray examination of the nurse one year after completion of employment.
- (ii) For protection against other communicable diseases:
  - (a) where a nurse has not had a complete course of immunisation against diphtheria, tetanus, poliomyelitis, measles, mumps and hepatitis, immunisation against those diseases;
  - (b) booster immunisation against tetanus at ten-year intervals;
  - (c) a rubella antibody test and, where a nurse has a negative result, rubella immunisation.
- (iii) For protection against radiation exposure, nurses required to work in close proximity to a source of ionising radiation should be provided with a film badge or personal radiation dosimeter, and a record should be maintained of the radiation exposure measured by such film badge or dosimeter.
- (iv) The costs involved in the various screening and protection procedures should be borne by the employer.

### **32. Escort Duty**

- (i) Periods during which an employee, other than a Director of Nursing, is engaged in nursing duties, in other words, in attendance on a patient, will be paid as working time under this award. Where applicable, overtime will be payable.
- (ii) All reasonable out-of-pocket expenses will be reimbursed.
- (iii) Rostered time will be paid as such, even though an employee may be travelling, in hotel/motel accommodation or waiting for transport.
- (iv) In respect of non-rostered time not spent in nursing duties -
  - (a) Periods in hotel/motel accommodation or waiting for transport will not be counted as working time.
  - (b) Periods travelling will count as working time.

### **33. Deputy Director of Nursing and Assistant Director of Nursing**

- (i) Subject to subclause (ii) of this clause, the following appointments will be made in nursing homes with daily averages of occupied beds as specified hereunder:
  - Less than 150 beds - a Deputy Director of Nursing.
  - 150 beds and over - a Deputy Director of Nursing and Assistant Director of Nursing.
- (ii) There is no requirement to appoint a Deputy Director of Nursing in nursing homes of 40 beds and under in the following circumstances:
  - (a) the registered nurses at the nursing home are all given the same duties and no registered nurse is delegated Deputy Director of Nursing duties; and
  - (b) the Director of Nursing perceives no requirement for a Deputy Director of Nursing to be employed.

Provided that no Deputy Director of Nursing employed as at 16 December 1994 will be dismissed or demoted from that position as a result of the implementation of this subclause.

- (iii) Where a decision is made, pursuant to subclause (ii) of this clause, not to appoint a Deputy Director of Nursing, the employer will notify the Association in writing of that decision within 14 days and must certify that the requirements of paragraphs (a) and (b) of subclause (ii) have been met.
- (iv) In the event of a dispute arising as to the operation of this clause, the procedures set out in clause 46, Resolution of Disputes, will be followed.
- (v) Appointments under subclause (i) of this clause will be made within two calendar months of the date this award becomes operative and thereafter within two calendar months of the occurrence of a vacancy. In default of appointment within the said period of two calendar months, the registered nurse employed as such or in a higher classification who has customarily relieved in the vacant position, or if no one has so customarily relieved, the general nurse employed in the same or the next senior classification below the vacant position with the longest service in such classification at the nursing home will be deemed to be appointed until such time as another appointment is made by the nursing home.
- (vi) This clause will not apply to a nursing home using members, novices or aspirants of religious orders where a member of an order carries out the duties under this clause of an Assistant Director of Nursing or Deputy Director of Nursing.
- (vii) This clause will not apply to a nursing home which is owned by two or more registered nurses who are actively engaged as Directors of Nursing in the running of the nursing home.

### **34. Nursing Unit Managers**

No person appointed to any level of the former classification of Nursing Unit Manager as at 1 March 1999 will be dismissed or demoted as a result of the deletion of that classification from this award. Provided that the salary rates appearing under that classification in Table 1 - Salaries, of Part B, Monetary Rates, are to be payable, on a strictly personal basis, only to those persons appointed to such positions as at 1 March 1999.

### **35. Fares and Expenses**

- (i) An employee required to travel in the performance of duty will be reimbursed first class fares (including sleeper accommodation) and all reasonable out-of-pocket expenses.
- (ii)
  - (a) An employee who is engaged for an indefinite period and who remains in the employment for at least six months will be reimbursed forward fares from the place of engagement, provided that the distance of normal travel there from to the employment exceeds 40 kilometres.
  - (b) An employee who is engaged for an indefinite period, and who is dismissed within six months for any reason other than misconduct or inefficiency, will be reimbursed forward fares from the place of engagement, provided that the distance of normal travel there from to the employment exceeds 40 kilometres, and will also be reimbursed return fares to such place of engagement or the employee's immediate destination, whichever is the cheaper.
- (iii) An employee who is engaged for a definite period and who completes the period of engagement or who is dismissed before completing such period for any reason other than misconduct or inefficiency, will be reimbursed forward fares from the place of engagement, provided that the distance of normal travel there from to the employment exceeds 40 kilometres, and will also be reimbursed return fares to such place of engagement or to the employee's immediate destination, whichever is the cheaper.
- (iv) Fares within the meaning of this clause will include only fares incurred in respect of travel within New South Wales.
- (v) An employee who claims reimbursement of fares pursuant to this clause will furnish to the employer, if so required, satisfactory proof that they have not received from another employer reimbursement in respect of those fares.

**36. Registration or Enrolment Pending**

- (i) A registered nurse or enrolled nurse who has trained outside New South Wales will be paid as a registered nurse or enrolled nurse as from the date they are notified that they are eligible for registration or enrolment as a registered nurse or enrolled nurse; provided that they make application for registration within seven days after being so notified.
- (ii) They notify the employer as soon as possible after they have applied.

**37. Termination of Employment**

- (i) Except for misconduct justifying summary dismissal, the services of an employee, for reasons arising from production, programme, organisation or structure in accordance with paragraph (a) of subclause (i) of clause 52, Introduction of Change, will be terminated only by notice or by the payment of salary in lieu thereof other than a Director of Nursing, as follows;

| Period | Employee's period of continuous service with the employer at the end of the day the notice is given | Period  |
|--------|---|---------|
| 1      | Not more than 1 year  | 1 week  |
| 2      | More than 1 year but not more than 3 years  | 2 weeks |
| 3      | More than 3 years but not more than 5 years   | 3 weeks |
| 4      | More than 5 years   | 4 weeks |

- (a) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years' continuous service, will be entitled to an additional week's notice.
  - (b) Payment in lieu of the notice above will 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 payment in lieu thereof.
  - (c) In the case of a Director of Nursing payment of salary in lieu thereof notice period can be made, except that where the employment of a Director of Nursing is terminated within 13 weeks of their engagement, there will be given 14 days notice or the payment of 14 days salary in lieu thereof.
- (ii) Notice for Technological Change

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance with paragraph (a) of subclause (i) of clause 52, Introduction of Change.

- (a) In order to terminate the employment of an employee, the employer will give to the employee three months notice of termination.
  - (b) Payment in lieu of the notice above will 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 payment in lieu thereof.
  - (c) The period of notice required by this subclause to be given will be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955 (NSW)*, the *Annual Holidays Act 1944 (NSW)*, or any Act amending or replacing either of these Acts.
- (iii) Time Off during the Notice Period
    - (a) During the period of notice of termination given by the employer, an employee will be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purpose of seeking other employment.

- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee will, at the request of the employer, be required to produce proof of attendance at an interview or the employee will not receive payment for the time absent.
- (iv) No employee will, without the consent of the employer, resign without having given seven days' notice (or, in the case of a Director of Nursing, 28 days' notice) of the intention so to do or forfeiting salary earned during the pay period current at the time of resignation; provided that in no circumstances will the employee other than the Director of Nursing forfeit more than seven days' pay and the Director of Nursing more than 28 days' pay at the rates prescribed for their classification by clause 6, Salaries.

(a) Employee Leaving during the Notice Period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee will be entitled to the same benefits and payments under this clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstance the employee will not be entitled to payment in lieu of notice.

(v) Statement of Employees

Upon the termination of the services of an employee, the employer will furnish the employee with a written statement, duly signed by or on behalf of the employer, setting out the period of the employment and the capacity in which the employee was employed. In addition, an employer will provide to Assistants in Nursing a statement of in-service training and/or education which the employee has undertaken.

- (vi) Employees who have accrued additional days off duty pursuant to subclause (vii) of clause 2, Hours of Work and Free Time of Employees Other Than Directors of Nursing, will be paid for such accrued time as ordinary rate of pay upon termination.

(vii) Notice to Centrelink

Where a decision has been made to terminate the employment of employees, the employer will notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(viii) Centrelink Employment Separation Certificate

The employer will, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by Centrelink.

(ix) Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties for reasons set out in subclause (i) of clause 52, Introduction of Change, the employee will be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, and the employer may at the employer's option make payment in lieu thereof of an amount equal to the difference between the former ordinary-time rate of pay and the new ordinary-time rate for the number of weeks notice still owing.

### 38. Award Benefits to be Continuous

- (i) In the event of any change of ownership, licensee or management of any facility covered by this award, all employee rights and benefits provided by this award will continue as if no such change in ownership, licensee or management had taken place, and no employee will be dismissed for the reason of such change.

- (ii) Where such changes do occur, no employee will be paid out for accrued annual leave, long service leave or any other benefits, but such benefits will be continuous.
- (iii) No employee, full-time or part-time, will have their employment terminated or be required to take leave without pay where such termination or leave is used to avoid the requirements of any Act or to avoid payment of any rights or benefits provided by this award.

### **39. Special Provisions Relating to Trainee Enrolled Nurses**

- (i) Where a trainee enrolled nurse has transferred from one training school to another, the time allowed by the Board in the first training school will be counted in computing salary.
- (ii) A trainee enrolled nurse, who is absent from training for not more than two weeks, exclusive of annual leave, in any period of 12 months training will, for the purpose of annual increase in salary under clause 6, Salaries, be deemed to have completed the particular year of training 12 calendar months after the commencement thereof notwithstanding such absence, but if absent for more than the aforesaid time in any such period, the particular year of training will not be deemed to have been completed until the employee has served the actual period of excess of such time.

### **40. Trainee Enrolled Nurse**

- (i) Objective:

The objective of this clause is to assist with the establishment of a system of traineeships for Trainee Enrolled Nurses, which provides approved training in conjunction with employment and which is to be at the same AQF level as the existing Certificate IV course.

- (ii) Application:

(a) This clause applies only to the employment of Trainee Enrolled Nurses undertaking Certificate IV in Nursing whilst performing the duties of a Trainee Enrolled Nurse.

(b) The system is neither designed nor intended for those who are already trained and job ready.

- (iii) Definitions:

"Structured Training" means - training which is specified in the Training Plan, which is part of the Training Contract registered with the relevant NSW Training Authority. It includes training undertaken both on and off-the-job in a Traineeship and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a Traineeship approved by the relevant NSW Training Authority.

"Trainee" is an individual who is signatory to a Training Contract registered with the relevant NSW Training Authority and is involved in paid work and structured training both on and off the job. A trainee can be full time, part time or school-based.

"Traineeship" means - a system of training, which has been approved by the relevant NSW Training Authority and includes full time traineeships and part time traineeships including school-based traineeships.

"Training Contract" means - a contract entered into for the purposes of establishing a Traineeship under the *Apprenticeship and Traineeship Act 2001* (NSW).

"Training Plan" means - a programme of training which forms part of a Training Contract registered with the relevant NSW Training Authority.

"Relevant NSW Training Authority" means - the Department of Education, or successor organisation.

"School Based Trainee Enrolled Nurse" is a student enrolled in the Higher School Certificate, or equivalent qualification, who is undertaking a Traineeship which forms part of a recognised component of their HSC curriculum, and is endorsed by the relevant NSW Training Authority, NSW Board of Studies and NSW Nurses Registration Board as such.

(iv) Training Conditions

- (a) The employer will provide a level of registered nurse supervision during the traineeship period in accordance with the training contract.
- (b) Trainee Enrolled Nurses will not be required to perform the duties of registered or enrolled nurses in the event of absenteeism. In the event that a registered or enrolled nurse needs to be replaced, existing staff including casuals will be offered the shift, or agency staff will be used.
- (c) The employer agrees that the overall training programme will be monitored by officers of the relevant NSW Training Authority. Training records or work books may be utilised as part of this monitoring process.
- (d) A Traineeship will not commence until the relevant Training Contract has been signed by the employer and the trainee and lodged for registration with the relevant NSW Training Authority.

(v) Full Time, Part Time Traineeships

A full time Trainee Enrolled Nurse will be engaged as a full-time employee for a maximum of one year's duration.

A part time Trainee Enrolled Nurse will be engaged as a part time employee for a maximum of two years' duration.

A Trainee Enrolled Nurse who undertakes a Traineeship on a part-time basis works less than full-time ordinary hours and will undertake the approved training at the same or lesser training time than a full-time trainee.

(vi) Employment Conditions

- (a) A Trainee Enrolled Nurse will be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer.
- (b) By agreement in writing, and with the consent of the relevant NSW Training Authority, the relevant employer and the Trainee may vary the duration of the Traineeship and the extent of approved training. Any agreement to vary will be in accordance with the relevant Traineeship.
- (c) Where the trainee completes the qualification in the Training Contract earlier than the time specified in the Training Contract then the Traineeship may be concluded by mutual agreement.
- (d) A traineeship will not be terminated before its conclusion except in accordance with the *Apprenticeship and Traineeship Act 2001* (NSW) or by mutual agreement.
- (e) An employer who chooses not to continue the employment of a Trainee upon the completion of the Traineeship will notify, in writing, the relevant NSW Training Authority of their decision.
- (f) The Trainee will be permitted to be absent from work without loss of continuity of employment and/or wages to attend training in accordance with the Traineeship Agreement.
- (g) Where the employment of a Trainee by an employer is continued after the completion of the traineeship period, such employment period will be counted as service for the purposes of this award or any other legislative entitlement.

- (h) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure the training programme is successfully completed.
- (i) No Trainee Enrolled Nurses will work overtime or shiftwork unless under the direct supervision of a registered nurse.
- (ii) No Trainee Enrolled Nurse will work shiftwork unless the parties to a Traineeship agree that such shiftwork makes satisfactory provision for structured training.
- (iii) Such training may be applied over a cycle in excess of a week but must average over the relevant period no less than the amount of training required for non-shiftwork Trainee Enrolled Nurses.
- (iv) No Trainee Enrolled Nurse will be rostered to work a shift any less than 8 hours prior to attending off the job training requirements, or any less than 8 hours after having completed off the job training requirements.
- (i) The Trainee Enrolled Nurse wages will be in accordance with Table 1 - Salaries, of Part B, Monetary Rates and will be the basis for the calculation of overtime and/or shift penalty rates prescribed by this award.
- (j) A Trainee who fails to either complete the Traineeship or who cannot for any reason be placed in employment with the employer on successful completion of the Traineeship will not be entitled to any severance payments
- (k) All the terms and conditions of this award or former industrial agreements that are applicable to the Trainee Enrolled Nurse will apply unless specifically varied by this clause.

#### **41. Trainee Assistant in Nursing**

- (i) Application
  - (a) This clause will apply subject to the paragraph (b) to persons who are undertaking training as an assistant in nursing under a Traineeship (as defined).
  - (b) Notwithstanding the foregoing, clause 41, Trainee Assistant in Nursing, will not apply to employees who were employed under this award or awards that previously covered these employees, prior to the date of approval of a traineeship scheme relevant to the employer, except where agreed between the employer and the relevant union(s).
  - (c) This clause does not apply to the apprenticeship system or any training programme which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 27 April 1998 or in an award that binds the employer.
  - (d) For the removal of any doubt, this clause only applies to the employment of Trainees as trainee assistants in nursing.
  - (e) At the conclusion of the traineeship, this clause will cease to apply to the employment of the trainee and general provisions under this award will apply to the former trainee.

- (ii) Objective

The objective of clause 41, Trainee Assistant in Nursing is to assist with the establishment of a system of traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of trainees, particularly young people and the long term unemployed. The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees will be displaced from employment by trainees. It is intended to apply only to the employment of Trainees as assistants in nursing. Except as provided for in

subclause (iv) of clause 41, Trainee Assistant in Nursing nothing in this clause will be taken to replace the prescription of training requirements in this award.

(iii) Definitions

"Appropriate State Legislation" means the *Apprenticeship and Traineeship Act 2001* (NSW), or any successor legislation.

"Relevant NSW Training Authority" means the Department of Education, or successor organisation.

"School Based Trainee" means a student enrolled in the Higher School Certificate, or equivalent qualification, who is undertaking a traineeship which forms part of a recognised component of their HSC curriculum, and is endorsed by the relevant NSW Training Authority and the NSW Board of Studies as such.

"Structured Training" means that training which is specified in the Training Plan, which is part of the Training Contract registered with the relevant NSW Training Authority. It includes training undertaken both on and off the job in a Traineeship and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a traineeship approved by the relevant NSW Training Authority and leads to a qualification as set out in paragraph (f) of subclause (iv) of clause 41, Trainee Assistant in Nursing.

"Trainee" means an employee, employed for training as an assistant in nursing, who is bound by a Training Contract made in accordance with this award.

"Traineeship" means a contract entered into for the purposes of establishing a Traineeship under the *Apprenticeship and Traineeship Act 2001* (NSW).

"Training Plan" means a programme of training which forms part of a Training Contract registered with the relevant NSW Training Authority.

"Year 10" means for the purposes of this award any person leaving school before completing Year 10 will be deemed to have completed Year 10.

(iv) Training Conditions

- (a) The Trainee will attend an approved training course or training programme prescribed in the Training Contract or as notified to the Trainee by the relevant NSW Training Authority in accredited and relevant Traineeship.
- (b) A Traineeship will not commence until the relevant Training Contract, has been signed by the employer and the Trainee and lodged for registration with the relevant NSW Training Authority, provided that if the Training Contract is not in a standard format a Traineeship will not commence until the Training Contract has been registered with the relevant NSW Training Authority.
- (c) The employer will ensure that the Trainee is permitted to attend the training course or programme provided for in the Training Contract and will ensure that the Trainee receives the appropriate on-the-job training.
- (d) The employer will provide a level of supervision in accordance with the Training Contract during the traineeship period.
- (e) The employer agrees that the overall training programme will be monitored by officers of the relevant NSW Training Authority and training records or work books may be utilised as part of this monitoring process.

- (f) Training will be directed at:
- (i) the achievement of key competencies required for successful participation in the workplace (where these have not been achieved) (e.g. literacy, numeracy, problem solving, team work, using technology), and as are proposed to be included in the Australian Qualification Framework Level 1 qualification.  
  
This could be achieved through foundation competencies which are part of endorsed competencies for an industry or enterprise; and/or
  - (ii) the achievement of competencies required for successful participation in an industry or enterprise (where there are endorsed national standards these will define these)
- (v) Employment Conditions
- (a) A Trainee will be engaged as a full-time employee for a maximum of one year's duration or a part time trainee for a maximum period of 2 years, unless the relevant NSW Training Authority directs, the maximum duration for a traineeship will be thirty six months.
  - (b) A Trainee will be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer.
  - (c) By agreement in writing, and with the consent of the relevant NSW Training Authority, the relevant employer and the Trainee may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship .
  - (d) Where the trainee completes the qualification, in the Training Contract, earlier than the time specified in the Traineeship Agreement then the traineeship may be concluded by mutual agreement.
  - (e) An employer will not terminate the employment of a Trainee without firstly having provided written notice of termination to the Trainee concerned and the relevant NSW Training Authority in accordance with the Training Contract or the *Apprenticeship and Traineeship Act 2001* (NSW).  
  
An employer who chooses not to continue to the employment of a Trainee upon the completion of the traineeship will notify, in writing, the relevant NSW Training Authority of their decision.
- (f)
- (i) The Training Contract may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure the training programme is successfully completed.
  - (ii) No Trainee will work overtime or shiftwork on their own unless consistent with the provisions of this award.
  - (iii) No Trainee will work shiftwork unless the parties to this award agree that such shiftwork makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week but must average over the relevant period no less than the amount of training required for non-shiftwork Trainees.
  - (iv) The Trainee wages will be the basis for the calculation of overtime and/or shift penalty rates prescribed by this award, unless otherwise agreed by the parties to a Traineeship.
- (g) All other terms and conditions of this award or other industrial instruments that are applicable to the Trainee or would be applicable to the Trainee but for clause 41, Trainee Assistant in Nursing, will apply unless specifically varied by this clause.

- (h) A Trainee who fails to either complete the Traineeship or who cannot for any reason be placed in full time employment with the employer on successful completion of the Traineeship will not be entitled to any severance payments.
  - (i) The trainee will be permitted to be absent from work without loss of continuity of employment and/or wages to attend Structured Training in accordance with the Training Contract.
  - (j) Where the employment of a Trainee by an employer is continued after the completion of the traineeship period, such traineeship period will be counted as service for the purposes of this award or any other legislative entitlement.
- (vi) Wages
- (a)
    - (i) The weekly wages payable to trainees are as provided in Table 4 - Wages - Trainees, of Part B, Monetary Rates, and in accordance with subclause (v), Employment Conditions.
    - (ii) These wage rates will only apply to trainees while they are undertaking an approved traineeship which includes approved training as defined in clause 41, Trainee Assistant in Nursing.
    - (iii) The wage rates prescribed by this clause do not apply to the complete trade level training which is covered by the apprenticeship system.
  - (b) The wage rates have been determined, having regard to the following criteria:
    - (i) the agreement of the parties;
    - (ii) the nature of the industry;
    - (iii) the total training plan;
    - (iv) recognition that training can be undertaken in stages;
    - (v) the exit skill level in this award contemplated by the traineeship.
  - (c) For the purposes of the said Table 4, "out of school" will refer only to periods out of school beyond Year 10, and will be deemed to:
    - (i) include any period of schooling beyond Year 10 which was not part of, nor contributed to, a completed year of schooling;
    - (ii) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10;
    - (iii) not include any period during a calendar year in which a year of schooling is completed; and
    - (iv) have effect on an anniversary date, being 1 January in each year.
  - (d) At the conclusion of the traineeship, clause 41, Trainee Assistant in Nursing, ceases to apply to the employment of the trainee and general provisions within this award will apply to the former trainee.

## (vii) Part-Time Employees

This subclause will apply to trainees who undertake a traineeship on a part-time basis by working less than full-time ordinary hours and by undertaking the approved training at the same or lesser training time than a full-time trainee.

- (a) The wage rate will be pro rata the full-time rates based on variation in the amount of training and/or the amount of work over the period of the traineeship, which may also be varied on the basis of the following formula:

$$\frac{\text{trainee hours - average weekly training time}}{\text{Full-time wage rate}} \times 30.4^*$$

\*NOTE:30.4 in the above formula represents 38 ordinary full-time hours less the average training time for full-time trainees (i.e., 20%). A pro rata adjustment would need to be made in the case where ordinary full-time hours were not 38.

- (b) "Full-time wage rate" means the appropriate rates as set out in Table 4 - Wages -Trainees, of Part B and School Based Traineeships in Table 5 of Part B
- (c) "Trainee hours" will be the hours worked per week including the time spent in approved vocational training. For the purpose of this definition, the time spent in approved vocational training may be taken as an average for that particular year of the Traineeship.
- (d) "Average weekly training time" is based upon the length of the traineeships specified in the traineeship contract or training contract as follows:

$$\frac{7.6 \times 12}{\text{length of the traineeship in months}}$$

## NOTE 1:

7.6 in the above formula represents the average weekly training time for a full-time trainee whose ordinary hours are 38 per week. A pro rata adjustment would need to be made in the case where ordinary full-time hours were not 38.

## NOTE 2:

The parties note that the training contract will require a trainee to be employed for sufficient hours to complete all requirements of the traineeship, including the on-the-job work experience and demonstration of competencies. The parties also note that this would normally result in the equivalent of a full day's on-the-job work per week.

- (e) A part-time trainee will receive, on a pro rata basis, all employment conditions applicable to a full-time trainee. All the provisions of clause 41, Trainee Assistant in Nursing will apply to part-time trainees except as specified in this -subclause.
- (f) A part-time trainee may, by agreement, transfer from a part-time to a full-time traineeship position should one become available.
- (g) The minimum engagement periods specified in this award will also be applicable to part-time trainees.

**EXAMPLE**

Example of the calculation for the wage rate for a part-time traineeship:

A school student (year 10) commences a traineeship in Year 11 (plus one year out of school).

The ordinary hours of work in this award is 38. The Training Contract specifies two years (24 months) as the length of the traineeship.

"Average weekly training time" is, therefore,  $7.6 \times 12/24 = 3.8$  hours

"Trainee hours" totals 15 hours. These are made up of 11 hours' work, which is worked over two days of the week, plus 1 1/2 hours on-the-job training, plus 2 1/2 hours off-the-job approved training at school and at a Registered Training Organisation.

So the wage rate for a school leaver, plus one year out of school is:

\$187 x (15 = \$68.90 plus any applicable penalty rates under the award.  
3.8)  
30.4

The wage rate varies when the student completes Year 11 and passes the anniversary date of 1 January the following year to begin Year 12 and/or if "trainee hours" changes.

(viii) School Based Traineeships

- (a) School-Based Trainees will not be required to attend work during the interval starting four weeks prior to the commencement of the final Higher School Certificate examination period and ending upon the completion of the individual's last examination period.
- (b) For the purposes of clause 41, Trainee Assistant in Nursing, a School-Based Trainee will become an ordinary Trainee as at January 1 of the year following in which they cease to be a school student.
- (c) An Employer will not terminate the employment of a Trainee without firstly having provided written notice of termination to the Trainee, and to the relevant NSW Training Authority in accordance with the Training Contract or the *Apprenticeship and Traineeship Act 2001* (NSW).  
  
An Employer who chooses not to continue the employment of a Trainee upon the completion of the traineeship will notify, in writing, the relevant NSW Training Authority of their decision.
- (d) The Trainee will be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Training Contract
- (e) Where the employment of a Trainee by an Employer is continued after the completion of the Traineeship period, such Traineeship period will be counted as service for the purposes of this award or any other legislative entitlements.
- (f) The Training Contract may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure that the training program is successfully completed.
- (g) No Trainee will work overtime or shiftwork on their own unless consistent with the provisions of this award.
- (h) No Trainee will work shiftwork unless the parties to this award agree that such shiftwork makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week but must average over the relevant period no less than the amount of training required for non-shiftwork Trainees.
- (i) The Trainee wage will be the basis for the calculation of overtime and/or shift penalty rates prescribed by this award, unless otherwise agreed by the parties to a Traineeship.
- (j) All other terms and conditions of this award that are applicable to the Trainee or would be applicable to the Trainee but for this clause will apply unless specifically varied by this clause.

- (k) A Trainee who fails to complete the Traineeship or who is not offered employment with the employer on successful completion of the Traineeship will not be entitled to any severance payments.

#### 42. Right of Entry

See Part 7 of Chapter 5 of the *Industrial Relations Act 1996* (NSW).

#### 43. Redundancy

##### (i) Application

- (a) In respect to employers who employ 15 or more employees immediately prior to the termination of employment of the employees, in the terms of clause 37, Termination of Employment.
- (b) Notwithstanding anything contained elsewhere in this clause, this clause will not apply to employees with less than one year's continuous service and the general obligation on employers will be no more than to give such employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.
- (c) Notwithstanding anything contained elsewhere in this clause, this clause will not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.
- (d) Clause 43, Redundancy, will apply to all full-time and part-time employees in classifications listed in Part B, Monetary Rates, Table 1 - Salaries.

##### (ii) Redundancy

###### Discussions before Termination

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone pursuant to paragraph (a) of subclause (i) of clause 52, Introduction of Change, and that decision may lead to the termination of employment, the employer will hold discussions with the employees directly affected and with the union to which they belong.
- (b) The discussions will take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of paragraph (a) of this subclause and will cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.
- (c) For the purposes of the discussion the employer will, as soon as practicable, provide to the employees concerned and the union to which they belong all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer will not be required to disclose confidential information the disclosure of which would adversely affect the employer.

##### (iii) Severance Pay

- (a) Where the employment of an employee is to be terminated pursuant to clause 37, Termination of Employment, subject to further order of the Industrial Relations Commission of New South Wales, the employer will pay the following severance pay in respect of a continuous period of service.

- (i) If an employee is under 45 years of age, the employer will pay in accordance with the following scale:

| Years of Service              | Entitlement |
|-------------------------------|-------------|
| Less than 1 year              | Nil         |
| 1 year and less than 2 years  | 4 weeks     |
| 2 years and less than 3 years | 7 weeks     |
| 3 years and less than 4 years | 10 weeks    |
| 4 years and less than 5 years | 12 weeks    |
| 5 years and less than 6 years | 14 weeks    |
| 6 years and over              | 16 weeks    |

- (ii) Where an employee is 45 years of age or over, the entitlement will be in accordance with the following scale:

| Years of Service              | Entitlement |
|-------------------------------|-------------|
| Less than 1 year              | Nil         |
| 1 year and less than 2 years  | 5 weeks     |
| 2 years and less than 3 years | 8.75 weeks  |
| 3 years and less than 4 years | 12.5 weeks  |
| 4 years and less than 5 years | 15 weeks    |
| 5 years and less than 6 years | 17.5 weeks  |
| 6 years and over              | 20 weeks    |

- (iii) "Week's pay" means the all-purpose rate of pay for the employee concerned at the date of termination, and will include, in addition to the ordinary rate of pay, over-award payments, shift penalties and allowances specified in paragraph (iv) of this subclause paid in accordance with the award covering the wages and conditions of the employee.
- (iv) For the purposes of this clause, the following allowances in paragraphs (a) and (b) of subclause (i) of clause 9, Special Allowances, and subclauses (i) and (ii) of clause 11, Climatic and Isolation Allowance.
- (v) A "week's pay" for a particular employee will be determined according to the average week's pay received by the employee in the period immediately prior to their last date of employment equal to the number of weeks of severance pay to which the employee is entitled under paragraphs (i) and (ii) of this subclause.

(b) Incapacity to Pay

Subject to an application by the employer and further order of the Industrial Relations Commission of New South Wales, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (a) of subclause (iii) of clause 43, Redundancy.

The Commission will have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in the said paragraph (a) will have on the employer.

(c) Alternative Employment

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (a) of subclause (iii) of clause 43 Redundancy, if the employer obtains acceptable alternative employment for an employee.

(iv) Savings Clause

Nothing in this clause will be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the union and any employer bound by this award.

#### **44. Attendance at Meetings and Fire Drills**

- (i) Any employee required to work outside the ordinary hours of work in satisfaction of the requirements for compulsory fire safety practices (e.g., fire drill and evacuation procedures), contained within the NSW Health Policy Directive PD2010\_024 - Fire Safety in Health Care Facilities, will be entitled to be paid the "ordinary rate" for the actual time spent in attendance at such practices. Such time spent in attendance will not be viewed as overtime for the purposes of this award.
- (ii) Any employee required to attend Occupational Health and Safety Committee and/or Board of Management meetings in the capacity of employee representative will, if such meetings are held outside the ordinary hours of work, be entitled to receive payment at the "ordinary rate" for the actual time spent in attendance at such meetings. Such time spent in attendance will not be viewed as overtime for the purposes of this award.
- (iii) For the purposes of this clause, "ordinary rate" will include amounts payable under clause 6, Salaries, subclauses (i) and (ii) of clause 9, Special Allowances, and clause 11, Climatic and Isolation Allowance, plus, where appropriate, the ten per cent loading prescribed in clause 21, Part-time, Casual and Temporary Employees, for employees engaged otherwise than as a full-time or permanent part-time employee.

#### **45. Training for Nurses**

- (i) Each employer will provide a minimum of 12 hours of in-service training per annum to Assistants in Nursing.
- (ii) Each employer may make training available to nurses other than Assistants in Nursing.
- (iii) Each employee will provide to their employer details of their attendance at in-service training and the employer will keep a record of this attendance.
- (iv) Upon termination of the employee's employment the employer will provide to the employee a written statement of the hours of in-service training attended by the employee.
- (v) Where practicable, such training will be provided to employees during the normal rostered hours of work. Where it is not practicable to provide such training during the normal rostered hours of work then:
  - (a) Employees will attend in-service training outside their normal rostered working hours when required to do so by the employer.
  - (b) An employer will provide employees with two weeks notice of the requirement to attend training outside of their normal rostered working hours.
  - (c) Notwithstanding clause 18, Overtime, attendance at such training will be paid at ordinary rates.
  - (d) Notwithstanding subclause (iv) of clause 2, Hours of Work and Free Time of Employees Other Than Directors of Nursing, attendance at such in-service training outside the normal rostered working time of an employee will not affect the ordinary rate paid to the employee during normal rostered working time.

#### 46. Resolution of Disputes

Grievances and disputes will be dealt with in the following manner:

- (i) The employee is to notify (in writing or otherwise) the employer as to the substance of the grievance, requesting a meeting with the employer for discussions and state the remedy sought. This meeting will take place within two working days of the issue arising (weekends and public holidays excepted).
- (ii) If agreement is not reached, the matter will then be referred by either party to a higher authority (where this exists) no later than three working days after subclause (i) above (weekends and public holidays excepted). At the conclusion of the discussion, the employer must provide a response to the employee's grievance if the matter has not been resolved, including reasons (in writing or otherwise) for not implementing the proposed remedy.
- (iii) Failing settlement of the issue at this level, the matter will be submitted to a committee consisting of not more than four members, two of whom will be appointed by the facility concerned (and for the purpose of this subclause the facility may ask their employer organisation to assist) and two by the Association.
- (iv) Whilst these procedures are continuing, no stoppage of work or any form of ban or limitation of work will be applied.
- (v) The Association reserves the right to vary this procedure where it is considered a safety factor is involved.
- (vi) This clause will not interfere with the right of either party to institute proceedings for the determination of any matter in accordance with the *Industrial Relations Act 1996* (NSW).

#### 47. Anti-Discrimination

- (i) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* (NSW) to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977* (NSW), it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977* (NSW);
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

## NOTES -

- (i) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (ii) Section 56(d) of the *Anti-Discrimination Act 1977* (NSW) provides:

"Nothing in this Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion".

**48. Enterprise Arrangements****PART 1 - PARTIES**

- (i) As part of the Structural Efficiency exercise and as an ongoing process for improvements in productivity and efficiency, discussion should take place at an enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction, and positive assistance in the restructuring process and to encourage consultation mechanisms across the workplace to all employees in an enterprise and consideration of a single bargaining unit in all multi-union/union award workplaces. Union delegates at the place of work may be involved in such discussions.
- (ii) The terms of any proposed genuine arrangement reached between an employer and employee(s) in any enterprise will, after due processing, substitute for the provisions of this award to the extent that they are contrary, provided that:
  - (a) A majority of employees affected genuinely agree.
  - (b) Such arrangement is consistent with the current State Wage Case principles.
- (iii)
  - (a) Before any arrangement requiring variation to the award is signed and processed in accordance with Part 2 of this clause, details of such arrangements will be forwarded in writing to the union or unions with members in that enterprise affected by the changes and the employer association, if any, of which the employer is a member. A union or an employer association may, within 14 days thereof, notify the employer in writing of any objection to the proposed arrangements, including the reasons for such objection.
  - (b) When an objection is raised, the parties are to confer in an effort to resolve the issue.

**PART 2 - PROCEDURES TO BE FOLLOWED - SUCH ENTERPRISE ARRANGEMENTS WILL BE PROCESSED AS FOLLOWS**

- (i) All employees will be provided with the current prescriptions (e.g., award, industrial agreement, enterprise agreement or enterprise arrangement) that apply at the place of work.
- (ii)
  - (a) Where an arrangement is agreed between the employer and the employees or their authorised representative at an enterprise, such arrangement will be committed to writing.

Where the arrangement is agreed between the employer and an absolute majority of permanent employees under this award at an enterprise, such arrangement will be committed to writing.
  - (b) The authorised representative of employees at an enterprise may include a delegate, organiser or official of the relevant union if requested to be involved by the majority of employees at the establishment.

- (iii) The arrangement will be signed by the employer, or the employer's duly authorised representative, and the employees, or their authorised representative with whom agreement was reached.
- (iv) Where an arrangement is objected to in accordance with paragraph (a) of subclause (iii) of Part 1 of this clause and the objection is not resolved, an employer may make application to the Industrial Relations Commission of New South Wales to vary the award to give effect to the arrangement.
- (v) The union and/or the employer association will not unreasonably withhold consent to the arrangements agreed upon by the parties.
- (vi) If no party objects to the arrangement, then a consent application will be made to the Industrial Relations Commission to have the arrangement approved and the award varied in the manner specified in subclause (vii). Such applications are to be processed in accordance with the appropriate State Wage Case principles.
- (vii) Where an arrangement is approved by the Industrial Relations Commission and the arrangement is contrary to any provisions of the award, then the name of the enterprise to which the arrangement applies, the date of operation of the arrangement, the award provisions from which the said enterprise is exempt, and the alternative provisions which are to apply in lieu of such award provisions (or reference to such alternative provisions), will be set out in a schedule to the award.
- (viii) Such arrangement when approved will be displayed on a notice board at each enterprise affected.
- (ix) No existing employee will suffer a reduction in entitlement to earnings, award or over award, for working ordinary hours of work as the result of any award changes made as part of the implementation of the arrangement.

#### **49. Exemptions**

- (i) This award will not apply to members, novices or aspirants of religious orders in any facility.
- (ii) Clause 51, Superannuation, will apply to all persons employed as nurses or in accordance with the profession of nursing in the State of New South Wales excluding the County of Yancawinna.

#### **50. Secure Employment**

- (i) Objective of this clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (ii) Casual Conversion
  - (a) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this award during a calendar period of six months will thereafter have the right to elect to have their ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
  - (b) Every employer of such a casual employee will give the employee notice in writing of the provisions of this subclause within four weeks of the employee having attained such period of six months. However, the employee retains their right of election under this subclause if the employer fails to comply with this notice requirement.
  - (c) Any casual employee who has a right to elect under paragraph (ii)(a) upon receiving notice under paragraph (ii)(b) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that they seek to elect to convert their ongoing contract of

employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer will consent to or refuse the election, but will not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so will be fully stated and discussed with the employee concerned, and a genuine attempt will be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment will be dealt with as far as practicable and with expedition through the disputes settlement procedure.

- (d) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert their ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (e) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (f) If a casual employee has elected to have their contract of employment converted to full-time or part-time employment in accordance with paragraph (ii)(c), the employer and employee will, in accordance with this paragraph, and subject to paragraph (ii)(c), discuss and agree upon:
  - (i) whether the employee will convert to full-time or part-time employment; and
  - (ii) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert their contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert their contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (g) Following an agreement being reached pursuant to paragraph (f), the employee will convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it will be dealt with as far as practicable and with expedition through the disputes settlement procedure.
  - (h) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (iii) Work Health and Safety
- (a) For the purposes of this subclause, the following definitions will apply:
    - (i) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
    - (ii) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.

- (b) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises will do the following (either directly, or through the agency of the labour hire or contract business):
  - (i) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (ii) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (iii) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (iv) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (c) Nothing in clause 50(iii) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Work Health and Safety Act 2011* (NSW) or the *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

(iv) Disputes Regarding the Application of this clause

Where a dispute arises as to the application or implementation of this clause, the matter will be dealt with pursuant to the disputes settlement procedure of this award.

- (v) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (NSW) (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by relevant federal bodies.

## 51. Superannuation

(i) Superannuation Legislation

- (a) The subject of superannuation is dealt with extensively by federal legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth), the *Superannuation (Resolution of Complaints) Act 1993* (Cth), and section 124 of the *Industrial Relations Act 1996* (NSW). This legislation, as varied from time to time, will govern the superannuation rights and obligations of the parties.

(ii) Contribution

- (a) The employer will make, in respect of qualified employees, legislated superannuation contributions currently set at 10% of ordinary-time earnings into an approved fund. Such contributions will be remitted to the approved fund on a monthly basis. With respect to casual employees, contributions will be remitted at the time that employees receive their annual group certificate.
- (b) It is provided further that an employee may nominate one complying fund to which all award and statutory superannuation contributions in respect of them will be paid, subject to employer approval of the fund nominated by the employee. Provided that the employer will not unreasonably withhold agreement unless it establishes good and proper reasons for the withholding of agreement.

- (c) Where no such nomination is made before any such contributions become payable, the contribution referred to in subclause (a) of this clause will be paid to the approved fund for that place of employment.
- (iii) Salary Sacrifice to Superannuation
- (a) 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) under this award. This will give the effect of reducing the taxable income by the amount for salary sacrifice.
- (b) Salary sacrifice to superannuation will be offered to employees by mutual agreement between the employee and employer.
- (c) Such election must be made prior to the commencement of the period of service to which the earnings relate.
- (d) One change of a sacrificed amount will be permitted in an employee's anniversary year, which is 12 months from the date of commencement of employment, without incurring an administration charge (\$50.00). Changing from full-time to part-time or part-time to full-time employment will not be classified as a change for administration charge purposes.
- (e) The amount sacrificed must not exceed any relevant superannuation guarantee contribution limit.
- (f) The sacrificed portion of salary reduces the salary subject to PAYG taxation deductions.
- (g) Any allowance, penalty rate, overtime, payment for unused leave entitlements, other than any payments for leave taken whilst employed, will 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.
- (h) Salary sacrifice arrangements can be cancelled by either the employer or employee at any time provided either party gives one month's notice. The employer has the right to withdraw from offering salary sacrifice to employees without notice if there is any alteration to relevant Australian Taxation legislation.
- (i) Contributions payable by the employer in relation to the Superannuation Guarantee Legislation will be calculated by reference to the salary which would have applied to the employee this award in the absence of any salary sacrifice.
- (j) Employers will not use any amount that is salary sacrificed by an employee to negate contributions payable under the Superannuation Guarantee Legislation.
- (k) The employee will have the portion of payable salary that is sacrificed paid as additional employer superannuation contributions into the same superannuation fund that receives the employer's SGC contributions.
- (l) Nothing in this clause will affect the right of an employer to maintain alternate arrangements with respect to salary sacrifice for employees.

## 52. Introduction of Change

- (i) Employer's Duty to Notify
- (a) Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on employees, the employer will notify the employees who may be affected by the proposed changes and the union to which they belong.

- (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.
- (ii) Employer's Duty to Discuss Change
- (a) The employer will discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in subclause (i) of this clause, 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 will give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
  - (b) The discussion will commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in the said subclause (i).
  - (c) For the purpose of such discussion, the employer will provide to the employees concerned and the union to which they belong 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 any employer will not be required to disclose confidential information the disclosure of which would adversely affect the employer.

### 53. Area, Incidence and Duration

- (i) This award is made pursuant to section 10 and 11 of the *Industrial Relations Act* 1996 (NSW) and rescinds and replaces the reviewed Nursing Homes, &c., Nurses' (State) Award published 24 January 2020, the Nurses' (Private Sector) Training Wage (State) Award published 27 January 2012, the reviewed Nurses (Private Sector) Superannuation (State) Award published 24 January 2020, and the reviewed Nurses (Private Sector) Redundancy (State) Award published 21 February 2020.

This award combines the above awards by mirroring as closely as possible the contents of those awards into a new, consolidated, award.

The changes made to the award are pursuant to section 19(6) of the *Industrial Relations Act* 1996 (NSW) take effect on 8 October 2021 for a nominal period of 1 year. This award remains in force until varied or rescinded

- (ii) It will apply to persons engaged in the industry of nursing as defined herein within the State of New South Wales, within the jurisdiction of the Private Hospital, Day Procedure Centre, Nursing Home, &c., Nurses' (State) Industrial Committee, which includes as part of its coverage the following:

Trained nurses, Trainees and Assistants in Nursing and all persons employed as nurses in the industry and calling of nursing and employed in or in connection with a residential aged care facility.

- (iii) The rates of pay in this award include the adjustments payable under the State Wage Case 2019, State Wage Case 2020, and State Wage Case 2021. These adjustments may be offset against:
- (a) any equivalent overaward payments, and/or
  - (b) award wage increases since 29 May 1991 other than the safety net, State Wage Case, and minimum rates adjustments.

The rates of pay and allowances in Part B, Monetary Rates take effect from the first full pay period on or after 28 September 2021.

**PART B**  
**MONETARY RATES**

**Table 1 - Salaries**

| Classification  | SWC 2019<br>FFPP<br>28/09/2019 | SWC 2020<br>1.75%<br>FFPP<br>28/10/2020 | SWC 2021<br>2.5%<br>FFPP<br>8/10/2021 |
|---|--------------------------------|---|---------------------------------------|
| Assistant in nursing/trainee enrolled nurse                                 |                                |   |                                       |
| Under 18 years  |                                |   |                                       |
| First year of experience  | \$711.10                       | \$723.50                                | \$741.60                              |
| Second year of experience   | \$742.70                       | \$755.70                                | \$774.60                              |
| Thereafter  | \$772.20                       | \$785.70                                | \$805.30                              |
| 18 years and over   |                                |   |                                       |
| First year of experience  | \$835.70                       | \$850.30                                | \$871.60                              |
| Second year of experience   | \$861.50                       | \$876.60                                | \$898.50                              |
| Third year of experience  | \$887.70                       | \$903.20                                | \$925.80                              |
| Thereafter  | \$914.50                       | \$930.50                                | \$953.80                              |
| Enrolled nurse  |                                |   |                                       |
| First year of experience  | \$1,019.90                     | \$1,037.70                              | \$1,063.60                            |
| Second year of experience   | \$1,040.70                     | \$1,058.90                              | \$1,085.40                            |
| Third year of experience  | \$1,063.00                     | \$1,081.60                              | \$1,108.60                            |
| Fourth year of experience   | \$1,084.80                     | \$1,103.80                              | \$1,131.40                            |
| Thereafter  | \$1,106.70                     | \$1,126.10                              | \$1,154.30                            |
| Registered nurse general, MR Psych., Infants, geriatric,<br>midwifery       |                                |   |                                       |
| First year of service   | \$1,151.80                     | \$1,172.00                              | \$1,201.30                            |
| Second year of service  | \$1,213.10                     | \$1,234.30                              | \$1,265.20                            |
| Third year of service   | \$1,274.10                     | \$1,296.40                              | \$1,328.80                            |
| Fourth year of service  | \$1,339.40                     | \$1,362.80                              | \$1,396.90                            |
| Fifth year of service   | \$1,404.40                     | \$1,429.00                              | \$1,464.70                            |
| Sixth year of service   | \$1,469.30                     | \$1,495.00                              | \$1,532.40                            |
| Seventh year of service   | \$1,543.70                     | \$1,570.70                              | \$1,610.00                            |
| Eighth year of service  | \$1,605.70                     | \$1,633.80                              | \$1,674.60                            |
| Nursing unit manager (personal to current occupants as at<br>1 March 1999). |                                |   |                                       |
| Level 1   |                                |   |                                       |
| First year  | \$1,777.90                     | \$1,809.00                              | \$1,854.20                            |
| Second year   | \$1,827.20                     | \$1,859.20                              | \$1,905.70                            |
| Level 2   | \$1,874.90                     | \$1,907.70                              | \$1,955.40                            |
| Level 3   | \$1,920.00                     | \$1,953.60                              | \$2,002.40                            |
| Nurse undergoing pre-registration Assessment                                | \$997.00                       | \$1,014.40                              | \$1,039.80                            |
| Clinical nurse specialist   | \$1,670.50                     | \$1,699.70                              | \$1,742.20                            |
| Clinical nurse consultant   | \$1,967.80                     | \$2,002.20                              | \$2,052.30                            |
| Clinical nurse educator   | \$1,670.50                     | \$1,699.70                              | \$1,742.20                            |
| Nurse educator  |                                |   |                                       |
| First year  | \$1,777.80                     | \$1,808.90                              | \$1,854.10                            |
| Second year   | \$1,827.20                     | \$1,859.20                              | \$1,905.70                            |
| Third year  | \$1,871.20                     | \$1,903.90                              | \$1,951.50                            |
| Fourth year   | \$1,967.80                     | \$2,002.20                              | \$2,052.30                            |

|                               |            |            |            |
|-------------------------------|------------|------------|------------|
| Senior nurse educator         |            |            |            |
| First year                    | \$2,014.70 | \$2,050.00 | \$2,101.30 |
| Second year                   | \$2,055.40 | \$2,091.40 | \$2,143.70 |
| Third year                    | \$2,122.90 | \$2,160.10 | \$2,214.10 |
| Assistant director of nursing |            |            |            |
| Less than 150 beds            | \$1,827.20 | \$1,859.20 | \$1,905.70 |
| 150-250 beds                  | \$1,967.80 | \$2,002.20 | \$2,052.30 |
| 250 beds and over             | \$2,014.70 | \$2,050.00 | \$2,101.30 |
| Deputy director of nursing    |            |            |            |
| Less than 20 beds             | \$1,863.70 | \$1,896.30 | \$1,943.70 |
| 20 beds, less than 75 beds    | \$1,911.00 | \$1,944.40 | \$1,993.00 |
| 75 beds, less than 100 beds   | \$1,954.60 | \$1,988.80 | \$2,038.50 |
| 100 beds, less than 150 beds  | \$1,995.50 | \$2,030.40 | \$2,081.20 |
| 150 beds, less than 200 beds  | \$2,055.30 | \$2,091.30 | \$2,143.60 |
| 200 beds, less than 250 beds  | \$2,122.90 | \$2,160.10 | \$2,214.10 |
| 250 beds, less than 350 beds  | \$2,201.40 | \$2,239.90 | \$2,295.90 |
| 350 beds, less than 450 beds  | \$2,278.80 | \$2,318.70 | \$2,376.70 |
| 450 beds, less than 750 beds  | \$2,362.50 | \$2,403.80 | \$2,463.90 |
| 750 beds and over             | \$2,452.70 | \$2,495.60 | \$2,558.00 |
| Director of nursing           |            |            |            |
| Less than 25 beds             | \$2,080.50 | \$2,116.90 | \$2,169.80 |
| 25 beds, less than 50 beds    | \$2,201.40 | \$2,239.90 | \$2,295.90 |
| 50 beds, less than 75 beds    | \$2,247.90 | \$2,287.20 | \$2,344.40 |
| 75 beds, less than 100 beds   | \$2,294.00 | \$2,334.10 | \$2,392.50 |
| 100 beds, less than 150 beds  | \$2,359.30 | \$2,400.60 | \$2,460.60 |
| 150 beds, less than 200 beds  | \$2,437.30 | \$2,480.00 | \$2,542.00 |
| 200 beds, less than 250 beds  | \$2,514.80 | \$2,558.80 | \$2,622.80 |
| 250 beds, less than 350 beds  | \$2,608.30 | \$2,653.90 | \$2,720.20 |
| 350 beds, less than 450 beds  | \$2,764.00 | \$2,812.40 | \$2,882.70 |
| 450 beds, less than 750 beds  | \$2,922.80 | \$2,973.90 | \$3,048.20 |
| 750 beds and over             | \$3,104.40 | \$3,158.70 | \$3,237.70 |

Table 2 - Other Rates and Allowances

| Item No. | Brief Description                   | Clause No. | 28/09/2019 | 28/10/2020 | 8/10/2021  | Period                       |
|----------|-------------------------------------|------------|------------|------------|------------|------------------------------|
| 1        | In Charge of Nursing Home           | 9(i)(a)    |            |            |            |                              |
|          | (a) less than 100 beds              |            | \$28.56    | \$29.06    | \$29.79    | per shift                    |
|          | (b) 100 beds and less than 150 beds |            | \$45.97    | \$46.77    | \$47.94    | per shift                    |
| 2        | In Charge of ward/unit              | 9(i)(b)    | \$28.56    | \$29.06    | \$29.79    | per shift                    |
| 3        | On Call                             | 9(ii)(a)   | \$25.44    | \$25.89    | \$26.53    | per 24 hours or part thereof |
| 4        | On Call on rostered days off        | 9(ii)(b)   | \$50.88    | \$51.77    | \$53.06    | per 24 hours or part thereof |
| 5        | On Call During Meal Break           | 9(ii)(c)   | \$13.77    | \$14.01    | \$14.36    | per shift                    |
| 6        | Travelling Allowance                | 9(ii)(d)   | \$0.79     | \$0.79     | \$0.82     | per km                       |
| 7        | Climatic Allowance                  | 11(i)      | \$5.27     | \$5.36     | \$5.50     | per week                     |
| 8        | Isolation Allowance                 | 11(ii)     | \$10.20    | \$10.38    | \$10.64    | per week                     |
| 9        | Expense Allowance for DON's         | 13         |            |            |            |                              |
|          | less 100 beds                       |            | \$287.81   | \$287.81   | \$298.75   | per annum                    |
|          | 100 - 299 beds                      |            | \$574.41   | \$574.41   | \$596.24   | per annum                    |
|          | 300 - 499 beds                      |            | \$862.24   | \$862.24   | \$895.01   | per annum                    |
|          | over 500 beds                       |            | \$1,150.44 | \$1,150.44 | \$1,194.16 | per annum                    |

|    |                    |            |         |         |         |          |
|----|--------------------|------------|---------|---------|---------|----------|
| 10 | Uniforms           | 16(iii)(a) | \$7.72  | \$7.72  | \$8.01  | per week |
| 11 | Shoes              | 16(iii)(a) | \$2.39  | \$2.39  | \$2.48  | per week |
| 12 | Cardigan or Jacket | 16(iii)(b) | \$2.32  | \$2.32  | \$2.41  | per week |
| 13 | Stockings          | 16(iii)(c) | \$4.02  | \$4.02  | \$4.17  | per week |
| 14 | Socks              | 16(iii)(d) | \$0.80  | \$0.80  | \$0.83  | per week |
| 15 | Laundry            | 16(iv)     | \$6.45  | \$6.45  | \$6.70  | per week |
| 16 | Meal on Overtime   | 18(vi)     | \$11.37 | \$11.37 | \$11.80 | per week |
| 17 | Breakfast          | 29(i)(c)   | \$4.26  | \$4.26  | \$4.42  | per week |
| 18 | Other Meals        | 29(i)(c)   | \$7.71  | \$7.71  | \$8.00  | per week |

**Table 3, Continuing Education Allowances**

| Item No. | Brief Description              | Clause No. | 28/09/2019 | 28/09/2020 | 8/10/2021 | Period   |
|----------|--------------------------------|------------|------------|------------|-----------|----------|
| 1        | RN - Post Graduate Certificate | 10(vii)    | \$23.96    | \$24.38    | \$24.99   | per week |
| 2        | RN - Post Grad Diploma/Degree  | 10(viii)   | \$39.92    | \$40.62    | \$41.63   | per week |
| 3        | RN - Masters/Doctorate         | 10(ix)     | \$47.91    | \$48.75    | \$49.97   | per week |
| 4        | EN - Cert IV                   | 10(x)      | \$15.97    | \$16.25    | \$16.66   | per week |

**Table 4 - Monetary Rate for Assistant in Nursing Trainees**

| Highest Year of Schooling Completed | FFPPOA<br>28/09/2019 | FFPPOA<br>28/10/2020<br>1.75% | FFPPOA<br>8/10/2021<br>2.50% |
|-------------------------------------|----------------------|-------------------------------|------------------------------|
| Skill Level A - Year 10             |                      |                               |                              |
| School Leaver                       | \$342.90             | \$348.90                      | \$355.00                     |
| 1 year out of school                | \$377.90             | \$384.50                      | \$391.20                     |
| 2 years out of school               | \$453.80             | \$461.70                      | \$469.80                     |
| 3 years out of school               | \$528.30             | \$537.50                      | \$546.90                     |
| 4 years out of school               | \$614.00             | \$624.70                      | \$635.60                     |
| 5 years out of school               | \$701.60             | \$713.90                      | \$726.40                     |
| Highest Year of Schooling Completed |                      |                               |                              |
| Skill Level A - Year 11             |                      |                               |                              |
| School Leaver                       | \$378.00             | \$384.60                      | \$391.30                     |
| 1 year out of school                | \$453.80             | \$461.70                      | \$469.80                     |
| 2 years out of school               | \$528.30             | \$537.50                      | \$546.90                     |
| 3 years out of school               | \$614.00             | \$624.70                      | \$635.60                     |
| 4 years out of school               | \$701.70             | \$714.00                      | \$726.50                     |
| 5 years out of school               | \$701.70             | \$714.00                      | \$726.50                     |
| Highest Year of Schooling Completed |                      |                               |                              |
| Skill Level A - Year 12             |                      |                               |                              |
| School Leaver                       | \$453.80             | \$461.70                      | \$469.80                     |
| 1 year out of school                | \$528.30             | \$537.50                      | \$546.90                     |
| 2 years out of school               | \$614.10             | \$624.80                      | \$635.70                     |
| 3 years out of school               | \$701.40             | \$713.70                      | \$726.20                     |
| 4 years out of school               | \$701.40             | \$713.70                      | \$726.20                     |
| 5 years out of school               | \$701.40             | \$713.70                      | \$726.20                     |

**Table 5 - Monetary Rates for School Based Traineeships**

| Year of Schooling - Year 11 | FFPPOA<br>28/09/2019 | FFPPOA<br>28/10/2020 | FFPPOA<br>8/10/2021 |
|-----------------------------|----------------------|----------------------|---------------------|
| Skill Level 1               | \$329.50             | \$335.30             | \$341.20            |
| Year of Schooling - Year 12 |                      |                      |                     |
| Skill Level 1               | \$378.00             | \$384.60             | \$391.30            |

**Table 6 - Wages - School Based Traineeships**

| Year of Schooling - Year 11 | FFPPOA<br>28/09/2019 | FFPPOA<br>28/10/2020 | FFPPOA<br>8/10/2021 |
|-----------------------------|----------------------|----------------------|---------------------|
| Skill Levels A, B, C        | \$229.00             | \$233.00             | \$237.10            |
| Year of Schooling - Year 12 |                      |                      |                     |
| Skill Levels A, B, C        | \$250.70             | \$255.10             | \$259.60            |

D. SLOAN, *Commissioner*

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## PUBLIC HOSPITAL CAREER MEDICAL OFFICERS (STATE) AWARD 2021

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 187784 of 2021)

Before Chief Commissioner Constant

22 July 2021

### AWARD

#### 1. Arrangement

##### PART A

| Clause No. | Subject Matter  |
|------------|---|
| 1.         | Arrangement   |
| 2.         | Definitions   |
| 3.         | Salaries  |
| 4.         | Senior Career Medical Officer                                     |
| 5.         | Salary increases and work value                                   |
| 6.         | In-Charge Allowance   |
| 7.         | Hours of Work   |
| 7A.        | Multiple Assignments  |
| 8.         | Penalty Rates   |
| 9.         | Time Worked   |
| 10.        | Overtime  |
| 11.        | On-Call and Call-Back   |
| 12.        | Annual Leave  |
| 13.        | Public Holidays   |
| 14.        | Sick Leave  |
| 15.        | Family and Community Services Leave and<br>Personal/Carer's Leave |
| 15A.       | Family Violence Leave   |
| 16.        | Uniform and Laundry Allowance                                     |
| 17.        | Continuing Medical Education                                      |
| 18.        | Settlement of Disputes  |
| 19.        | Travelling Allowances   |
| 20.        | Long Service Leave  |
| 21.        | Maternity, Adoption and Parental Leave                            |
| 21A.       | Lactation Breaks  |
| 22.        | Trade Union Leave   |
| 23.        | Labour Flexibility  |
| 24.        | Anti-Discrimination   |
| 25.        | Salary Sacrifice to Superannuation                                |
| 26.        | Salary Packaging  |
| 27.        | Reasonable Hours  |
| 28.        | Higher Duties Allowance   |
| 29.        | Underpayment and Overpayment of Salaries                          |
| 30.        | No Extra Claims   |
| 31.        | Area, Incidence and Duration                                      |

**PART B**

Table 1 - Allowances

**PART A****2. Definitions**

"Association" means the Australian Salaried Medical Officers' Federation (New South Wales) or the Health Services Union NSW.

"Award" means the Public Hospital Career Medical Officers (State) Award 2021.

"Career Medical Officer" means a medical practitioner who is registered with the Medical Board of Australia and is not employed under the classifications set out in the Public Hospital Medical Officers (State) Award.

"Day Worker" means a worker who works ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6.00am and before 10.00am otherwise than as part of a shift system.

"Employer" means the Secretary of the Ministry of Health exercising employer functions on behalf of the Government of NSW.

"Hospital" means a public hospital as defined under section 15 of the *Health Services Act 1997*.

"Ministry" means the NSW Ministry of Health.

"Public Health Organisation" means an organisation defined in section 7 of the *Health Services Act 1997* as follows:

- (a) a Local Health District; or
- (b) a statutory health organisation; or
- (c) an affiliated health organisation in respect of its recognised establishments and recognised services.

"Secretary" means the Secretary of the Ministry of Health.

"Shift Worker" means a worker who is not a day worker as defined.

**3. Salaries**

Part A -

Full time Career Medical Officers shall be paid the salaries as set out in the Health Professional and Medical Salaries (State) Award.

Career Medical Officers with less than five years postgraduate experience shall be appointed to Grade 1.

Career Medical Officers with five years postgraduate experience or more shall be appointed to Grade 2.

Progression within Grades 1 and 2 shall occur on the anniversary of appointment. Provided that nothing in this clause precludes the employer, at the employer's sole discretion, from:

- (i) initially appointing a Career Medical Officer to a higher step within the relevant grade; or

- (ii) accelerating a Career Medical Officer through the steps within the relevant grade irrespective of length of service.

Provided that an employee employed on the Transitional Grade as at the commencement date of this Award shall remain on that scale. Progression within the Transitional Grade shall be in accordance with the provisions of this Award.

Individual Career Medical Officers employed as at 26 May 2005 in receipt of a salary higher than that of Senior Registrar as set out in the Health Professional and Medical Salaries (State) Award may reach written agreement with the employer that overtime payment will be calculated on the salary ascribed to Senior Registrar, as varied from time to time. Any such agreement will require further written agreement on an annual basis.

#### Part B -

- (a) For the purpose of calculation of payments to employees pursuant to the provisions of this Award, one hour's pay shall be calculated in accordance with the following formula:

$$\frac{\text{Annual Salary}}{52.17857} \times \frac{1}{38}$$

and one day's pay shall be calculated by multiplying "one hour's pay" (as calculated in accordance with the above formula) by 7.6.

- (b) Employees shall be eligible to progress to the next higher step in the scale on the anniversary of the date on which they were appointed.

#### Part C - Permanent Part-Time Career Medical Officers

- (i) A permanent part-time employee is one who is permanently appointed to work a specified number of hours which are less than those prescribed for a full-time employee.
- (ii) Employees engaged under Part C of this clause shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed by Part A, with a minimum payment of two hours for each start and one thirty-eighth of the appropriate allowances prescribed by clause 16, Uniform and Laundry Allowances, if applicable but shall not be entitled to an additional day off or part thereof as prescribed by clause 7, Hours of Work.
- (iii) Employees engaged under Part C of this clause shall be entitled to all other benefits of this Award not otherwise expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.
- (iv) Employees engaged under Part C of this clause are entitled to contribute to the appropriate superannuation scheme subject to the requirements of relevant legislation.
- (v) A permanent part-time employee will progress to the next incremental step every 12 months from the date of commencement of employment, provided the work performed by the employee outside the scope of the part-time agreement is commensurate with the experience of a full-time employee and is acceptable to the employer. This subclause does not preclude accelerated progression.

#### 4. Senior Career Medical Officer

- (i) A grading committee consisting of two nominees of the Ministry and two representatives of the Association(s) shall be constituted to consider and make recommendations to the employer in relation to appointment to the Senior Career Medical Officer grade. The committee shall meet to consider an application for progression to this grade by a Career Medical Officer within 28 days of an application being submitted to the employer.

- (ii) The grading committee shall not recommend appointment to the Senior Career Medical Officer grade unless the individual:
  - (a) has at least seven years postgraduate clinical experience; and
  - (b) has a demonstrated capacity to perform clinical duties and responsibilities at a senior level with minimal clinical supervision in one or more areas of medical speciality; and
  - (c) is required by the employer to perform clinical duties and responsibilities at a senior level with minimal clinical supervision in one or more areas of medical speciality as required by the employer.
- (iii) If a grading committee does not recommend progression by a Career Medical Officer to Senior Career Medical Officer then the committee must provide written reasons to why progression was not recommended, which should provide guidance in respect of any future applications. Such written reasons must be provided to the Career Medical Officer within 21 days of the date of the meeting held to consider the application for regrading.
- (iv) A Career Medical Officer shall not make more than one application for progression to Senior Career Medical Officer in any 12 month period.
- (v) Subject to subclause (vi) of this clause, a Senior Career Medical Officer will progress to the second step of the Senior Career Medical Officer grade on the anniversary of his or her commencement on that grade.
- (vi) A Career Medical Officer appointed to the Transitional Grade shall be entitled to apply to be appointed to the Senior Career Medical Officer grade in accordance with the provisions of this clause. Provided that a Career Medical Officer who has been employed on the top step of the Transitional Grade for at least 12 months and who is appointed as a Senior Career Medical Officer shall be entitled to progress to the second step of the Senior Career Medical Officer grade after six months.

### **5. Salary Increases and Work Value**

The employer and the Associations agree that the salary rates provided under this Award recognise and cover all work value change and productivity gains for the period up to 1 July 2007 and extinguish all work value, special case or other claims prior to that date for Career Medical Officers.

### **6. In-Charge Allowance**

An allowance as set out in Item 1 of Table 1 - Allowances shall be paid to employees for each twelve hours of duty or part thereof of continuous in-charge duty for responsibility for after hours medical services. This allowance shall be varied in accordance with increases in salary rates under this Award.

### **7. Hours of Work**

- (i) The ordinary hours of work shall not exceed an average of 38 hours per week. This shall be achieved by rostering employees for duty over either forty hours in any period of seven consecutive days or eighty hours in any period of fourteen consecutive days and, in addition, then granting employees roster leave additional to that prescribed in subclause (ii) of this clause to the extent of one additional day per calendar month. Such additional roster leave may accumulate to a maximum of three days and shall be granted in multiples of one day. Upon termination of employment an employee shall be paid the monetary value of any untaken additional roster leave, calculated at the employee's ordinary time rate of pay as prescribed by clause 3, Salaries.
- (ii) Employees shall be free from ordinary hours of duty for not less than two days in each week or where this is not practicable, four days in each fortnight. Where practicable, days off shall be consecutive and where possible additional rostered days off shall be combined with other rostered time off.

- (iii) No shift shall be less than eight hours in length on a weekday or less than four hours in length on a Saturday, Sunday or public holiday.
- (iv) No broken or split shifts shall be worked.
- (v) All time worked in excess of ten hours in any one shift shall be paid as overtime.
- (vi) Where in any pay period, an employee is not employed for the whole of the pay period, the ordinary hours of work for the purpose of calculating salary for that pay period (i.e., 38 or 76 hours) will be adjusted by the following factor, rounded to the nearest whole number -
  - Number of calendar days employed
  - Number of calendar days in pay period
- (vii) Employees shall be given at least two weeks' notice of rosters to be worked in relation to ordinary hours of work and also where practicable, in relation to additional (overtime) rostered hours of work, provided that the employer may change the rosters without notice to meet any emergent situation. This subclause shall not apply in respect of the granting by the employer of additional roster leave pursuant to this clause.
- (viii) In the interests of patient care and the health and welfare of medical staff, employees shall have a break from duty for the purpose of taking a meal. There shall be a uniform meal break of 30 minutes except where locally agreed arrangements for a longer period are made (which shall not exceed one hour).
- (ix) If employees are required to work during their meal breaks they shall be paid for the time worked. Unless the employee is permitted to finish duty early on the same shift then overtime becomes payable once the total ordinary work time of the shift has elapsed.
- (x) Medical administrators are to establish simple and effective procedures in consultation with employees to record when staff are required to work through their meal breaks and to ensure that payment is made.

#### **7A. Multiple Assignments**

- (i) Multiple assignments under this Award exist when an employee has more than one position under this Award within the NSW Health Service. Each of these positions are referred to in this clause as "assignments".
- (ii) An employee can only enter into a multiple assignment arrangement within this Award.
- (iii) Where an employee has multiple assignments, the employee will progress in accordance with clause 3 and clause 4.
- (iv) With the exception of subclause (iii) above, this clause does not apply to employees who have multiple casual assignments only. The Award provisions are to apply separately to each casual assignment.

##### Multiple Assignments within a single Public Health Organisation

- (v) The following provisions apply to employees with two or more assignments within a single Public Health Organisation.
  - (a) The work performed in each of an employee's assignments shall be aggregated for the purposes of determining all of the employee's entitlements under this Award.

##### Hours, Additional Days Off and Overtime

- (b) The combined total number of ordinary hours worked under an employee's multiple assignments shall not exceed the hours of work as set out in subclause 7 (i), Hours of Work.

- (c) Where the combined total number of ordinary hours worked under an employee's multiple assignments is equivalent to those set out in subclause 7 (i), Hours of Work, they will be considered as a full time employee for the purposes of the Award and:
1. that employee is entitled to additional days off in accordance with subclause (ii) of clause 7, Hours of Work
  2. Subclause 7(v) shall apply for the purposes of overtime.
- (d) Where the combined total number of ordinary hours worked under an employee's multiple assignments is less than those set out in paragraph (b) of this subclause, the Provisions of Part C - Permanent Part Time Career Medical Officers, of clause 3, Salaries shall apply.
- (e) Employees who are in full time or part time assignments cannot be engaged on a second or further assignment as a casual employee under the Award. Any additional hours worked by such employees are to be remunerated in accordance with paragraphs (c) or (d) of this subclause.

#### Leave

- (f) All ordinary hours worked by an employee in multiple assignments shall count towards determining the employee's leave entitlements.
- (g) Employees with multiple assignments shall be entitled to take all forms of leave in any of their assignments. That is, leave accrued by an employee through work performed in one assignment, can be taken by that employee in their other assignment/s. Service in all assignments will be recognised for the purposes of paragraph (b) in subclause (i) of clause 14, Sick Leave.
- (h) Where an employee's combined total number of ordinary hours worked in their multiple assignments is equivalent to those set out in subclause (c) of this subclause, the additional leave shall accrue from both assignments in accordance with subclause (ii) of clause 12, Annual Leave.
- (i) Service in all assignments will be recognised for the purposes of entitlements under clause 21, Maternity, Adoption and Parental Leave.
- (j) Where an employee's assignment is terminated but the employee remains employed under another full time or part time assignment, all leave credits will be transferred to the remaining assignments. The employee shall not be paid out the monetary value of the annual leave or long service leave accrued in the terminated assignment.

#### Disclosures, Notifications and Approvals

- (k) Employees must, at the time they apply for any second or further assignment, disclose in writing that they are already employed by NSW Health and provide details of that assignment including:
1. the position/s currently held
  2. the facility in which the existing position/s are worked
  3. the classification/s under which they are engaged in each position
  4. the number of ordinary hours worked in each position
  5. any regular additional hours or overtime that is worked in each position
  6. whether the position/s is worked according to a set roster and if so, the details of that roster arrangement; and

- (l) Prior to accepting an offer for a second or further assignment, employees must provide to their current manager details of that proposed assignment including:
  - 1. the position they have applied for
  - 2. the facility in which the proposed new assignment is to be worked
  - 3. the classification under which they would be engaged in the new assignment
  - 4. the number of ordinary hours to be worked in the proposed assignment
  - 5. whether the position is to be worked according to a set roster and if so, the details of that roster arrangement.
- (m) A Public Health Organisation may elect on reasonable grounds to withhold the approval of a second or further assignment to employees who are already employed in another assignment.
- (n) Before accepting any change in roster or undertaking additional hours or overtime that will impact on another assignment, employees who hold multiple assignments must notify their current manager of the details of their next shift in either assignment. Managers must not change rosters or require employees to work additional hours or overtime where these will impact on the employee's roster in the other assignment (for example by generating overtime) without first consulting the manager of the other assignment/s. (By way of example, if an employee is requested by Manager 1 in Assignment 1 to undertake additional hours in Assignment 1 that may impact on the roster in Assignment 2, the employee must notify Manager 1 of the impact. Manager 1 must not change rosters/hours that impact on Assignment 2 without first consulting Manager 2.)

#### Multiple Assignments Across Different Public Health Organisations

- (vi) Assignments in different Public Health Organisations will be regarded as entirely separate for all purposes under the Award, including the accrual and taking of leave. The only exceptions are the provisions of subclause (iii) of this clause (regarding incremental progression) and:
  - (a) At the time an employee commences an assignment in another Public Health Organisation the employee's accrued leave will be apportioned across their assignments (for example, a 0.6 full time equivalent Career Medical Officer who commences another 0.4 full time equivalent assignment in another Public Health Organisation will have 60% of their leave accruals allocated to the former assignment and 40% to the latter assignment) unless prior to commencing the new assignment the employee elects that this apportioning does not occur. After this apportioning, leave accrues separately in each assignment, based on the hours worked in each assignment. The employer will notify the employee of their right to make this election prior to the apportioning taking place.
  - (b) Employees who have multiple assignments across different Public Health Organisations at the time this clause was inserted into this Award may elect to apportion their accrued leave across their assignments.
  - (c) Service in all assignments will be aggregated for the purposes of calculating long service leave entitlements under the Award.
  - (d) Service in all assignments will be recognised for the purposes of entitlements under clause 21, Maternity, Adoption and Parental Leave.
  - (e) Service in all assignments will be recognised for the purposes of entitlements of Family and Community Services Leave and Personal/Carer's Leave as provided in clause 15.
  - (f) Service in all assignments will be recognised for the purposes of entitlements of Continuing Medical Education as provided in clause 17.

- (g) Where an employee terminates an assignment, any leave credits that are held against that assignment will be transferred to the remaining assignment/s.
- (h) If prior to the introduction of this clause and/or the StaffLink payroll system an employee received additional days off and/or overtime in accordance with clause 7, Hours of Work that employee shall continue to receive those benefits until one of the assignments is terminated.
- (i) Where an employee has three or more assignments, one or more of which are in different Public Health Organisations, subclause (m) of this clause shall apply to those assignments which are within a single Public Health Organisation.

#### Changes to the composition of Public Health Organisations

- (vii) The employer and the Association agree to review this clause in the event that the boundaries of any Public Health Organisation change.
- (viii) Where any change to the boundaries of any Public Health Organisation causes an employee's multiple assignments to which subclause (iv) of this clause previously applied to then be subject to subclause (v) of this clause, subclause (iv) of this clause shall continue to apply (to the exclusion of subclause (v) of this clause) to those assignments until one of them is terminated.

### 8. Penalty Rates

Any ordinary hours worked between the following hours shall be paid at ordinary time plus the appropriate penalty rate:

- (i) Hours worked between 6.00 pm and midnight, Monday to Friday - 12.5%.
- (ii) Midnight and 8.00 am, midnight Sunday to midnight Friday - 25%.
- (iii) Midnight Friday and midnight Saturday - 50%.
- (iv) Midnight Saturday and midnight Sunday - 75%.

### 9. Time Worked

Time worked means the time during which an employee is required by the employer to be in attendance at a hospital for the purpose of carrying out such functions as the employer may call on him/her to perform, and it shall include times when the employee, in waiting to carry out some active functions, is studying or resting or sleeping or engaged in any other activity.

Provided that time worked does not include uninterrupted breaks allowed and actually taken for meals.

Provided further that where an employee attends of his/her own volition outside of hours rostered on duty, or where an employee remains in attendance when formally released from the obligation to perform professional duties, the employer shall not be liable to make any payment for such attendance.

### 10. Overtime

- (i) All time worked by employees in excess of the ordinary hours specified in clause 7, Hours of Work, shall be paid at the rate of time and one half for the first two hours, and double time for the remaining hours worked, provided that all overtime performed on a Sunday shall be at double time.
- (ii) All time worked by employees employed pursuant to Part C, Permanent Part-Time Career Medical Officers, of clause 3, Salaries, in excess of the rostered daily ordinary hours of work prescribed for the majority of full-time employees employed on that shift shall be paid at the appropriate overtime rate prescribed herein. Time worked up to the rostered daily ordinary hours of work prescribed for a majority of the full-time employees employed on the shift concerned shall not be regarded as overtime but an extension of the contract hours for that day and shall be paid at the ordinary rate of pay.

- (iii) An employee who works authorised overtime and was not notified on or prior to his/her previous shift of the requirement to work such overtime shall be paid in addition to payment for such overtime the meal allowance as determined by the Industrial Relations Secretary from time to time:
  - (a) for breakfast when commencing such overtime work at or before 6.00 am;
  - (b) for an evening meal when such overtime is worked for at least one hour immediately following his/her normal ceasing time, exclusive of any meal break and extends beyond or is worked wholly after 7.00 pm;
  - (c) for luncheon when such overtime extends beyond 2.00 pm on Saturdays, Sundays or holidays;or shall be provided with adequate meals in lieu of such payments.
- (iv) Provided however that an employee employed in a community health facility shall be granted time in lieu of overtime payments. Such time in lieu shall be taken within three months of accrual and at ordinary time. If such accrued time in lieu is unable to be taken within the three month period, it is to be paid out at the end of the three month period in accordance with subclause (i) above at the current rates of pay then applying.

### **11. On-Call and Call-Back**

- (i) An "on-call period" is a period during which an employee is required by the employer to be on-call. No employee shall be required to remain on call while on leave.
- (ii) For the purposes of calculation of payment of on-call allowances and for call-back duty, an on-call period shall not exceed 24 hours.
- (iii) An employee shall be paid for each on-call period which coincides with a day rostered on duty an allowance as set out in Item 2 of Table 1 - Allowances and for each on-call period coinciding with a rostered day off an allowance as set in the said Item 2 with a maximum payment as set out in the said Item 2 per week. These allowances shall be varied in accordance with increases in salary rates under this Award.
- (iv) Subject to subclause (v) below, an employee who is called back for duty shall be paid for all time worked at the appropriate overtime rate, with a minimum of four hours at such rates. If an employee is called back on more than one occasion during the call back period for which he or she is paid, the employee will not be entitled to further payment until the expiration of the four hour payment period.
- (v) Employees required to work overtime after leaving the employer's premises to provide a technology support resolution or clinical appraisal remotely without onsite presence, shall be paid for such work at the appropriate overtime rate, with a minimum of one hour at such rates.
- (vi) The amounts specified in subclause (iii) shall be taken to include expenses incurred in taking telephone calls at one's own residence and other expenses incurred being available for emergency duty.

### **12. Annual Leave**

- (i) All employees shall be allowed four calendar weeks leave of absence on full pay in respect of each twelve months service as defined in this Award plus one day on full pay in respect of each public holiday occurring within the period of such leave.
- (ii) Employees who are required to work on Sundays and/or public holidays during a qualifying period of employment for annual leave purposes shall be entitled to receive additional annual leave in respect of each complete period of eight hours so worked as follows:
  - (a) if 35 or more such periods on such days have been worked - one week;

- (b) if less than 35 such periods on such days have been worked - leave proportionately calculated on the basis of 38 hours leave for 35 such periods worked;
  - (c) work performed by reason of call-backs pursuant to clause 10, Overtime, shall be disregarded when assessing an employee's entitlement under this subclause.
  - (d) The calculations referred to in paragraphs (a) and (b) of this subclause shall be made to the nearest one-fifth of the ordinary hours worked, half or more than half of one-fifth being regarded as one-fifth and less than half being disregarded.
  - (e) An employee, with accrued additional annual leave pursuant to this subclause (ii), can elect at any time to be paid an amount equivalent to the value of accrued additional leave in lieu of taking additional leave, provided that the amount is a minimum of one weeks' accrued additional leave and that the salary for the period of additional leave paid out will be calculated as if the period of leave was actually taken.
- (iii) Annual leave shall be given and shall be taken within a period of six months after the date when the right to annual leave accrued; provided that the giving and taking of the whole or any separate period of such annual leave may, by mutual agreement between the employer and the employee, be postponed for a further period not exceeding six months.
  - (iv) If the employee and the employer so agree, the annual leave or any such separate periods may be taken wholly or partly in advance before the employee has become entitled to that leave, but where leave is taken in such circumstances a further period of annual leave shall not commence to accrue until the expiration of the twelve months in respect of which the annual leave or part thereof has been so taken.
  - (v) Except as provided by this clause, payment shall not be made to an employee in lieu of any annual leave or part thereof nor shall any such payment be accepted by the employee.
  - (vi) The employee shall be given at least two months notice of the date from which his/her annual leave is to be taken.
  - (vii) Each employee shall be paid before entering upon annual leave his/her ordinary rate of salary for the period of leave.
  - (viii) Where the employment of an employee is terminated, the employee shall be entitled to receive proportionate payment for each completed month of service, together with such additional annual leave entitlements due under subclause (ii). All payments are to be made at the rate of salary to which such employee is entitled under this Award.
  - (ix) Where the annual leave under this clause or any part thereof has been taken in advance by an employee pursuant to subclause (iv), of this clause; and
    - (a) the employment of the employee is terminated before he/she has completed the year of employment in respect of which such annual leave or part thereof was taken; and
    - (b) the sum paid to the employee as ordinary pay for the annual leave or part so taken in advance exceeds the sum which the employer is required to pay to the employee under sub clause (viii) of this clause,the employer shall not be liable to make any payment to the employee under the said sub clause (viii); and shall be entitled to deduct the amount of such excess from any remuneration payable to the employee upon the termination of the employment.
  - (x) Any annual leave which had accrued to an employee employed immediately prior to the operative date of this Award under the provisions then in force and who continues in employment under this Award shall remain to his/her credit and such leave may be allowed as provided in this clause in addition to any other leave which has accrued to an employee under the provisions of this clause.

(NOTATION: The conditions under which the annual leave loading shall be paid to employees are the same as generally applied through policy directives issued by the Ministry).

### 13. Public Holidays

- (i) Public Holidays shall be allowed to employees on full pay.
- (ii) Where an employee is required to and does work on any of the public holidays, as set out in this clause, the employee shall have one day added to the period of his/her annual leave for each public holiday so worked unless time off in respect of time worked on any such public holiday has already been granted to the employee. The provisions of this subclause shall also apply to employees where a public holiday falls on a rostered day off.
- (iii) Provided that an employee who has accrued additional annual leave referred to in paragraph (ii) of this subclause can elect at any time to be paid an amount equivalent to the value of accrued additional leave in lieu of taking additional leave, provided that the amount is a minimum of one weeks' accrued additional leave and that the salary for the period of additional leave paid out will be calculated as if the period of leave was actually taken.
- (iv) For the purpose of this clause, the following shall be deemed to be public holidays: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day, or in lieu of any such day any holiday proclaimed in lieu thereof, together with any other day duly proclaimed as a special day and observed as a public holiday within the area in which the hospital in which the employee is employed is situated.
- (v) All hours worked on public holidays shall be paid at the rate of time and one half.

### 14. Sick Leave

- (i) An employee shall be allowed sick leave on full pay calculated by allowing 76 rostered ordinary hours of work for each year of continuous service less any sick leave on full pay already taken subject to the following conditions:
  - (a) The employer may require the sickness to be certified to by the medical superintendent or by a legally qualified medical practitioner, approved by the employer, or may require other satisfactory evidence thereof. This requirement shall be dispensed with where the absence does not exceed two consecutive days.
  - (b) An employee shall not be entitled to sick leave until the expiration of three months' continuous service.
  - (c) Each employee shall take all reasonably practicable steps to inform the employer of his or her inability to attend for duty and as far as possible state the estimated duration of the absence. Where practicable such notice shall be given within twenty-four hours of the commencement of such absence.
  - (d) An employee shall not be entitled to sick leave on full pay for any period in respect of which such employee is entitled to workers' compensation; provided, however, an employer shall pay to an employee who has sick leave entitlements under this clause, the difference between the amount received as workers' compensation and full pay, if the employee elects such payment. The employee's sick leave entitlements under this clause shall, for each week during which such difference is paid, be reduced by that proportion of hours which the difference paid bears to full pay. On the expiration of available sick leave, weekly compensation payments only shall be payable.
  - (e) An employee not eligible for sick leave during periods when he/she would have normally been rostered on overtime shifts.

- (ii) Continuous service for the purpose of this clause shall be calculated in the same manner as provided for in paragraph (a) of subclause (ii) of clause 20, Long Service Leave.
- (iii) Full pay for the purpose of this clause shall include the uniform allowance where payable under clause 16, Uniform and Laundry Allowance.
- (iv) Sick leave as defined shall accrue and be transferable between hospitals, at the rate of 76 rostered ordinary hours of work per year of continuous service, minus leave taken.
- (v) Any sick leave which had accrued to an employee employed immediately prior to the operative date of this Award, under the provisions then in force and who continues in employment under this Award shall remain to his/her credit and such leave may be allowed as provided in this clause in addition to any other leave which has accrued to an employee under the provisions of this clause.
- (vi) Subject to the provision of a satisfactory medical certificate and sick leave being due, annual or long service leave shall be re-credited where an illness of at least a week's duration occurs during the period of annual or long service leave, provided that the period of leave does not occur prior to retirement, resignation or termination of service.

#### **15. Family and Community Services Leave and Personal/Carer's Leave**

- (i) Family and Community Services (FACS) Leave and Personal/Carer's Leave are separate, stand alone entitlements.
- (ii) The provisions outlined in Parts A and B of this clause are available to all employees covered by this Award, other than casual employees as defined in subclause (iii) below.
- (iii) Casual employees as defined in the Health Industry Status of Employment (State) Award are entitled to the provisions outlined in Part C of this clause.

##### **A. FACS Leave**

###### **(i) FACS Leave - General**

- (a) For the purpose of this clause relating to FACS leave:

"relative" means a person related by blood, marriage or affinity;

"affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

"household" means a family group living in the same domestic dwelling.

- (b) The employer may grant FACS leave to an employee:

- (1) to provide care and/or support for sick members of the employee's relatives or household; or
- (2) for reasons related to the family responsibilities of the employee (e.g. to arrange and or attend a funeral of a relative; to accompany a relative to a medical appointment where there is an element of emergency; parent/teacher meetings; education week activities; to meet elder-care requirements of a relative); or
- (3) for reasons related to the performance of community service by the employee (e.g. in matters relating to citizenship; to office holders in local government, other than as a mayor, for attendance at meetings, conferences or other associated duties; representing Australia or the State in major amateur sport other than in Olympic/Commonwealth Games); or

- (4) in a case of pressing necessity (e.g. where an employee is unable to attend work because of adverse weather conditions which either prevent attendance or threaten life or property; the illness of a relative; where a child carer is unable to look after their charge).
- (ii) FACS leave replaces compassionate leave.
- (iii) An employee is not to be granted FACS leave for attendance at court to answer a criminal charge, unless the employer approves the grant of leave in the particular case. Applications for FACS leave to attend court, for reasons other than criminal charges, will be assessed on an individual basis.
- (iv) FACS Leave - entitlement
- (a) The maximum amount of FACS leave on full pay that may be granted to an employee is:
- (1) 3 working days during the first year of service, commencing on and from 1 January 1995, and thereafter 6 working days in any period of 2 years; or
- (2) 1 working day, on a cumulative basis effective from 1 January 1995, for each year of service after 2 years' continuous service, minus any period of FACS leave already taken by the employee since 1 January 1995,
- whichever method provides the greater entitlement.
- (b) For the purposes of calculating entitlements under (vi)(a)(1) and (2) above, a working day for employees working 38 hours per week shall be deemed to consist of 8 hours, and a working day for employees working 35 hours per week shall be deemed to consist of 7 hours. The rate at which FACS leave is paid out and utilised shall be on actual hours absent from a rostered shift.
- Example A: An employee working 38 hours per week will have an entitlement, in their first year of employment, to 24 hours of FACS leave. If the employee take FACS leave for a full 10 hour shift, the employee would be debited 10 hours of FACS leave.
- Example B: An employee working 35 hours per week will have an entitlement, in their first year of employment, to 21 hours of FACS leave. If the employee takes FACS leave for a full 7 hour shift, the employee would be debited 7 hours of FACS leave.
- Example C: An employee, employed prior to 1 January 1995, applies for FACS leave on 20 February 1997. The employee is entitled to 6 days in any period of two years. Therefore, to calculate the employee's available FACS leave as at 20 February 1997, add all FACS leave taken from 21 February 1995 to 20 February 1997 and deduct that amount from the 6 days entitlement.
- (c) FACS leave is available to part-time employees on a pro rata basis, based on the average number of hours worked per week. A working day shall consist of one-fifth of the employee's average weekly hours during the preceding 12 months or during the employee's period of employment, whichever is the lesser period.
- Example: An employee working an average of 30 hours per week will have an entitlement, in his/her first year of employment, of 18 hours of FACS leave. If the employee takes FACS leave for a full rostered shift e.g. of 4 hours, the employee would be debited 4 hours of FACS leave. Likewise, if the employee was rostered for 8 hours and was absent for the full 8 hours on FACS leave, he/she would be debited 8 hours of FACS leave.

- (v) Additional FACS leave for bereavement purposes

Where FACS leave has been exhausted, additional FACS leave of up to 2 days for bereavement may be granted on a discrete, "per occasion" basis to an employee on the death of a relative or member of a household as defined in subclause (i) (a) of Part A of this clause.

- (vi) Use of other leave entitlements

The employer may grant an employee other leave entitlements for reasons related to family responsibilities or community service, by the employee.

An employee may elect, with the consent of the employer, to take annual leave; long service leave; or leave without pay.

## B. Personal/Carer's Leave

- (i) Use of sick leave to care for the person concerned - definitions

A person who needs the employee's care and support is referred to as the "person concerned" and is:

- (a) a spouse of the employee; or
- (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
- (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
- (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (e) a relative of the employee who is a member of the same household, where for the purpose of this clause relating to Personal/Carer's Leave:

"relative" means a person related by blood, marriage or affinity;

"affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

"household" means a family group living in the same domestic dwelling.

- (ii) Use of sick leave to care for the person concerned - entitlement

- (a) The entitlement to use sick leave in accordance with this subclause is subject to:
  - (1) the employee being responsible for the care and support of the person concerned; and
  - (2) the person concerned being as defined in paragraph (i) of Part B, Personal/Carer's Leave, of this clause.
- (b) Other than a casual or any other employee who receives a loading in lieu of sick leave, an employee with responsibilities in relation to a person who needs their care and support shall be entitled to use the untaken sick leave, from that year's annual sick leave entitlement, to provide care and support for such persons when they are ill.

- (c) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (b) above, sick leave untaken from the previous 3 years may also be accessed by an employee with responsibilities in relation to a person who needs their care and support.
- (d) The employer may, in special circumstances, make a grant of additional sick leave. This grant can only be taken from sick leave untaken prior to the period referred to in subparagraph (c) above.
- (e) The employee shall, if required, establish either by production of a medical certificate or statutory declaration, that the illness of the person concerned is such as to require care by another person.
- (f) The employee has the right to choose the method by which the ground for leave is established, that is, by production of either a medical certificate or statutory declaration.
- (g) The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.
- (h) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
- (i) In normal circumstances, the employee must not take leave under this part where another person has taken leave to care for the same person.

(iii) Use of other leave entitlements

An employee may elect, with the consent of the employer, to take:

- (a) annual leave, including annual leave not exceeding 10 days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties. An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least 5 consecutive annual leave days are taken. An employee may elect with the employer's agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
  - (b) long service leave; or
  - (c) leave without pay for the purpose of providing care and support to the person concerned as defined in paragraph (i) of Part B of this clause.
- (iv) Time off in lieu of payment of overtime
- (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment of overtime at a time or times agreed with the employer within 12 months of the said election
  - (b) Overtime taken as time off during ordinary time shall be taken at the ordinary time rate, that is, one hour off for each hour of overtime worked.
  - (c) If, having elected to take time as leave in accordance with (iv)(a) above and the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the twelve 12 month period from the date the overtime was worked, or earlier by agreement, or on termination.

- (d) Where no election is made in accordance with subparagraph (iv)(a) above, the employee shall be paid overtime rates in accordance with the provisions of clause 9, Overtime.
  - (v) Use of make-up time
    - (a) An employee may elect, with the consent of the employer, to work "make-up time". "Make-up time" is worked when the employee takes time off during ordinary hours for family or community service responsibilities, and works those hours at another time, during the spread of ordinary hours provided for in clause 6 of this Award, at the ordinary rate of pay.
    - (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off during ordinary hours and works those hours at another time) at the applicable shift work rate which would have been applicable to the hours taken off.
- C. Entitlements for Casual Employees
- (i) Bereavement entitlements for casual employees
    - (a) Casual employees are entitled to not be available to attend work or to leave work upon the death in Australia of a relative or member of a household as prescribed in subparagraph (i)(a) of Part A of this clause.
    - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
    - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this part. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
  - (ii) Personal carers entitlement for casual employees
    - (a) Subject to the evidentiary and notice requirements in subparagraphs (ii)(e) - (h) of Part B of this clause casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause (i) of Part B of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
    - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
    - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this part. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

#### **15A. Family Violence Leave**

- (i) For the purpose of this clause, family violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007* as varied from time to time. The violence may have been reported to the police and/or may be the subject of an Apprehended Violence Order.
- (ii) An employee experiencing family and domestic violence can utilise Award leave entitlements provided for in Sick Leave and Family and Community Services Leave provisions of the Award.

- (iii) Where leave entitlements to Sick Leave and Family and Community Services Leave are exhausted, the employer will grant up to five days per year of paid special leave to attend legal proceedings, counselling, appointments with a medical or legal practitioner and relocation and safety activities directly associated with alleviating the effects of family and domestic violence. This leave entitlement does not accumulate from year to year.
- (iv) Upon exhaustion of the paid leave entitlement, an employee may request further periods of unpaid leave, for the same activities for which paid leave would be available.
- (v) To access paid and unpaid leave, the employee must provide the employer with evidence, to the employer's satisfaction, substantiating the purpose of the leave and that the leave is related to alleviating the effects of family violence. The employer may accept a variety of agreed documentation in support of an application for leave. Supporting documentation may be presented in the form of an agreed document issued by the Police Force, a Court, a doctor, a Family Violence Support Service or a lawyer.
- (vi) Matters related to family violence can be sensitive. Information collected by the employer will be kept confidential. No information relating to the details of the family violence will be kept on an employee's personnel file without their express permission. However, records about the use of family violence leave will need to be kept.
- (vii) The employer, where appropriate, may facilitate flexible working arrangements subject to operational requirements. This may include changes to working times and locations, telephone numbers and email addresses.
- (viii) The employer will co-operate with all legal orders protecting an employee experiencing domestic violence.

#### **16. Uniform and Laundry Allowances**

- (i) Sufficient suitable and serviceable uniforms shall be provided for each employee required to wear a uniform and such uniforms shall be laundered at the expense of the employer.
- (ii) Where an employer requires a uniform to be worn but does not provide such uniform, the following allowances shall be paid:
  - (a) where a full uniform, including special shoes, is required, an amount per week as set in Item 3 of Table 1 - Allowances;
  - (b) in other cases, an amount as also set in Item 3 of Table 1.

#### **17. Continuing Medical Education**

- (i) After 12 months employment, an employee shall be entitled to 7 days of paid leave per annum for the purposes of Continuing Medical Education and professional development. This entitlement can accrue to a maximum of 21 days. The value of such leave is not payable on termination.
- (ii) The approval of the employer is required for such leave, which must not interfere with the maintenance of essential services and patient care. Approval shall not be unreasonably withheld.
- (iii) The Continuing Medical Education or professional development activities undertaken during such paid leave must be relevant to the position occupied by the employee.
- (iv) Expenses associated with such leave are to be reimbursed by the employer, provided that no expenses or allowances shall be payable in respect of travel or accommodation outside Australia, except in respect of courses run under the auspices of a recognised Australasian Specialist College in New Zealand. The provisions of the Ministry of Health Policy Directive PD2016\_010, Official Travel, as amended from time to time, shall apply to any travel under this clause.

- (v) Expenses shall be reimbursed where the approved Continuing Medical Education or professional development activity falls on days that would not otherwise be working days.

### 18. Settlement of Disputes

- (i) Where a dispute arises in a particular section which cannot be resolved between the employees or their representative and the supervising staff, it shall be referred to the Chief Executive Officer of the Public Health Organisation or his/her nominee, who will arrange for the matter to be discussed with the employees concerned and a local representative or representatives of the Association.
- (ii) Failing settlement of the issue at this level, the matter shall be referred to the Secretary and the Head Office of the Association(s). The dispute will then be dealt with pursuant to subclause (v) of this clause.
- (iii) While these procedures are continuing, no stoppage of work or any form of ban or limitation of work shall be applied. Unless agreed otherwise by the parties the status quo before the emergence of the issue must continue while these procedures are being followed. For this purpose "status quo" means the work procedures and practice in place:
  - (a) immediately before the issue arose; or,
  - (b) immediately before any change to those procedures or practices, which caused the issue to arise, was made.
- (iv) The Association(s) reserve(s) the right to vary this procedure where it is considered a safety factor is involved.
- (v) With a view to an amicable and speedy settlement, all disputes that firstly cannot be settled in accordance with subclauses (i) and (ii) of this clause may be submitted to a committee consisting of not more than six members with equal representatives of the Secretary and the Association(s). Such committee shall have the power to investigate all matters in dispute and to report to the Chief Executive Officer and the Association(s) respectively with such recommendation as it may think right and in the event of no mutual decision being arrived at by such committee, the matter in dispute may be referred to the industrial committee.
- (vi) This clause shall not interfere with the rights of either party to institute proceedings for the determination of any matter in accordance with the *Industrial Relations Act 1996*.

### 19. Travelling Allowances

- (i) An employee seconded to another hospital may be granted a daily travel allowance at the rate of the difference between the cost of travel by public transport to his/her normal place of employment and travel by public transport to the seconding hospital. Provided that where an employee drives his/her own vehicle, he/she shall, in lieu, be eligible for an allowance equivalent to the transport allowance rate payable to members of the New South Wales Health Service as determined under the *Health Services Act 1997* from time to time, for the difference between the distance to his/her normal place of employment and the distance to the seconding hospital.
- (ii) An employee who, with the approval of the chief executive officer, uses on official business, a motor vehicle maintained primarily for other than official business, shall be paid the abovementioned allowance from time to time effective. However, where it is estimated that an employee will, with the approval of the chief executive officer, be required to use his/her private vehicle on official business on at least 50 days during any period of 12 months and during that period aggregate at least 805 kilometres of official running, he/she shall be paid at the official business rate payable to members of the New South Wales Public Service as determined by clause 36 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 from time to time.

- (iii) For the purpose of subclause (ii) travel on official business:
- (a) occurs when an employee is required by the employer as part of his/her duty to use his/her motor vehicle to attend away from his/her normal place of employment or seconding hospital to another clinic, annexe or hospital. Where an employee travels on official business direct from his/her place of residence to a clinic, annexe or hospital, other than his/her normal place of employment he/she shall be paid for the difference between the distance to his/her normal place of employment or seconding hospital and that other annexe, clinic or hospital;
  - (b) does not include "call backs".
- (iv) Nothing in this clause shall make the employer liable for the cost of the employee's daily travel to his/her usual and normal place of employment.
- NOTATION: -
- (i) For conditions relating to secondments see relevant Ministry of Health policy directives.
  - (ii) Travelling compensation applies to staff required to work at centres other than their headquarters.

## 20. Long Service Leave

- (i)
- (a) Each employee shall be entitled to two months long service leave on full pay after ten years of service; thereafter additional long service shall accrue on the basis of five months long service leave on full pay for each ten years service.
- Employees with at least seven years service and less than 10 years service are entitled, proportionate to his or her length of service, to proceed on a proportionate period of long service leave on the basis of two months' long service leave for ten years' service on full pay.
- (b) Where the services of an employee with at least five years service and less than seven 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, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months' long service leave for ten years' service.
- Where the services of an employee with at least seven years are terminated by the employer or by the employee, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months' long service leave for ten years' service. Where the services of an employee with at least 10 years service are terminated by the employer or by the employee, he/she shall be entitled to be paid on the basis of two months' long service leave for ten years' service and thereafter on the basis of five months long service leave for each ten years service.
- (ii) For the purposes of subclause (i) of this clause:
- (a) service shall mean continuous service with the employer. For the purpose of this paragraph, continuous service will be determined in accordance with the provisions of Section 7 of the Ministry of Health Policy Directive PD2019\_010 Leave Matters for the NSW Health Service, as amended from time to time.
  - (b) Broken periods of service with the employer in one or more hospitals shall count as service subject to the condition that where an employee, after ceasing employment with the employer is re-employed subsequent to the 1st July 1974, any service of that employee before he/she was so re-employed shall not be counted for the purpose of determining any long service leave due to that employee in respect of his/her service after he/she was so re-employed unless he/she has completed at least five years' continuous service from the date of his/her being so re-employed.

- (c) Service shall not include -
- (1) any period of leave without pay except in the case of employees who have completed at least ten years service (any period of absence without pay being excluded there from) in which case service shall include any period of leave without pay not exceeding six months taken after 1 July 1974;
  - (2) any period of part-time service, except permanent part-time service.
- (iii) An employee with an entitlement to long service leave may elect to access such entitlement:
- (a) on full pay;
  - (b) on half pay; or
  - (c) on double pay.
- (iv) When an employee takes long service leave, the leave entitlement will be deducted on the following basis:
- (a) a period of leave on full pay - the number of days so taken;
  - (b) a period of leave on half pay - half the number of days so taken; or
  - (c) a period of leave on double pay - twice the number of days so taken.
- (v) When taking long service leave and an employee would otherwise have had a rostered shift fall on a public holiday during that period, the amount of long service leave to be deducted is to be reduced by one day for the public holiday.
- (vi) Long service leave shall be taken at a time mutually arranged between the employer and the employee.
- (vii)
- (a) On the termination of employment of an employee, otherwise than by his/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 unless the employee transfers his or her leave entitlement in accordance with Section 7 of the NSW Health Policy Directive PD2019\_010 Leave Matters for the NSW Health Service, as amended from time to time.
  - (b) Where an employee who has acquired a right to long service leave, or after having had five years service and less than ten years service dies, the widow or the widower of such employee, or if there is no such widow or widower, the children of such employee, or if there is no such widow, widower, or children, such person who, in the opinion of the employer, was at the time of the death of such employee, a dependent relative of such employee, shall be entitled to receive the monetary value of the leave not taken or which would have accrued to such employee, had his/her services terminated as referred to in paragraph (b) of subclause (i) of this clause and such monetary value shall be determined according to the salary payable to the employee at the time of his/her death.
- Where there is a guardian of any children entitled under this paragraph the payment, to which such children are entitled, may be made to such guardian for their maintenance, education and advancement.
- Where there is no person entitled under this paragraph to receive the monetary value of any leave payable under the foregoing provisions payment in respect thereof shall be made to the legal personal representative of such employee.

- (viii) Rights to long service leave under this clause shall be in replacement of rights to long service leave, if any, which at the 1st July 1974, may have accrued or may be accruing to an employee and shall apply only to persons in the employ of the employer on or after the 1st July 1974. Where an employee has been granted long service leave or has been paid its monetary value prior to the 1st July 1974, the employer shall be entitled to debit such leave against any leave to which the employee may be entitled pursuant to this clause.

## 21. Maternity, Adoption and Parental Leave

### A. Maternity Leave

#### (i) Eligibility for Paid Maternity Leave

To be eligible for paid maternity leave a full-time or permanent part-time employee must have completed at least 40 weeks continuous service prior to the expected date of birth.

An employee who has once met the conditions for paid maternity leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid maternity leave, unless-

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after her services have been otherwise dispensed with: or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act 1987* as varied from time to time.

#### (ii) Portability of Service for Paid Maternity Leave

Portability of service for paid maternity leave involves the recognition of service in government sector agencies for the purpose of determining an employee's eligibility to receive paid maternity leave. For example, where an employee moves between a public service department and a public hospital, previous continuous service will be counted towards the service prerequisite for paid maternity leave.

When determining an employee's eligibility for paid maternity leave, continuous service with an organisation that is part of the government sector as defined in the *Government Sector Employment Act 2013* as varied from time to time will be recognised, provided that:

- (a) service was on a full-time or permanent part-time basis;
- (b) cessation of service with the former employer was not by reason of dismissal on any ground, except retrenchment or reduction of work;
- (c) the employee immediately commences duty with the new employer. There may be a break in service of up to two months before commencing duty with the new employer. However, such a break in service will not be counted as service for the purpose of calculating any prior service prerequisite for paid maternity leave.

#### (iii) Entitlement to Paid Maternity Leave

An eligible employee is entitled to fourteen weeks at the ordinary rate of pay from the date maternity leave commences. This leave may commence up to fourteen weeks prior to the expected date of birth.

It is not compulsory for an employee to take this period off work. However, if an employee decides to work during the nine weeks prior to the date of birth it is subject to the employee being able to satisfactorily perform the full range of normal duties.

Paid maternity leave may be paid:

on a normal fortnightly basis; or

in advance in a lump sum; or

at the rate of half pay over a period of twenty-eight weeks on a regular fortnightly basis.

Annual and/or long service leave credits can be combined with periods of maternity leave on half pay to enable an employee to remain on full pay for that period.

(iv) Unpaid Maternity Leave

(a) Full-time and permanent part-time employees who are entitled to paid maternity leave are entitled to a further period of unpaid maternity leave of not more than 12 months after the actual date of birth.

(b) Full-time and permanent part-time employees who are not eligible for paid maternity leave are entitled to unpaid maternity leave of not more than 12 months.

(v) Applications

An employee who intends to proceed on maternity leave should formally notify her employer of such intention as early as possible, so that arrangements associated with her absence can be made.

Written notice of not less than eight weeks prior to the commencement of the leave should accordingly be given. This notice must include a medical certificate stating the expected date of birth and should also indicate the period of leave desired.

(vi) Variation after Commencement of Leave

After commencing maternity leave, an employee may vary the period of her maternity leave once only without the consent of her employer by giving the employer notice in writing of the extended period at least fourteen days' before the start of the extended period. An employer may accept less notice if convenient.

An employee may extend the period of maternity leave at any time with the agreement of the employer.

The conditions relating to variation of maternity leave are derived from Section 64 of the *Industrial Relations Act 1996*.

(vii) Staffing Provisions

In accordance with obligations established by the *Industrial Relations Act 1996* (Section 69) any person who occupies the position of an employee on maternity leave must be informed that the employee has the right to return to her former position. Additionally, since an employee has the right to vary the period of her maternity leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should be also set down clearly; to a fixed date or until the employee elects to return to duty, whichever occurs first.

(viii) Effect of Maternity Leave on Accrual of Leave, Increments etc.

When the employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual leave, sick leave and long service leave and any period of maternity leave on half pay is taken into account to the extent of one half thereof when determining the accrual of annual leave, sick leave and long service leave.

Except in the case of employees who have completed ten years' service the period of maternity leave without pay does not count as service for long service leave purposes. Where the employee has completed ten years' service the period of maternity leave without pay shall count as service provided such leave does not exceed six months.

Maternity leave without pay does not count as service for incremental purposes. Periods of maternity leave at full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.

Where public holidays occur during the period of paid maternity leave, payment is at the rate of maternity leave received i.e., public holidays occurring in a period of full pay maternity leave are paid at full rate and those occurring during a period of half pay leave are paid at half rate.

(ix) Illness Associated with Pregnancy

If, because of an illness associated with her pregnancy an employee is unable to continue to work then she can elect to use any available paid leave (sick, annual and/or long service leave) or to take sick leave without pay.

Where an employee is entitled to paid maternity leave, but because of illness, is on sick, annual, long service leave, or sick leave without pay prior to the birth, such leave ceases nine weeks prior to the expected date of birth. The employee then commences maternity leave with the normal provisions applying.

(x) Transfer to a More Suitable Position

Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obliged, as far as practicable, to provide employment in some other position that she is able to satisfactorily perform. This obligation arises from Section 70 of the *Industrial Relations Act 1996*. A position to which an employee is transferred under these circumstances must be as close as possible in status and salary to her substantive position.

(xi) Miscarriages

In the event of a miscarriage any absence from work is to be covered by the current sick leave provisions

(xii) Stillbirth

In the case of a stillbirth, (as classified by the Registry of Births, Deaths and Marriages) an employee may elect to take sick leave, subject to production of a medical certificate, or maternity leave. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.

(xiii) Effect of Premature Birth on Payment of Maternity Leave

An employee who gives birth prematurely and prior to proceeding on maternity leave shall be treated as being on maternity leave from the date leave is commenced to have the child. Should an employee return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.

(xiv) Right to Return to Previous Position

In accordance with the obligations set out in Section 66 of the *Industrial Relations Act 1996*, an employee returning from maternity leave has the right to resume her former position.

Where this position no longer exists the employee is entitled to be placed in a position nearest in status and salary to that of her former position and to which the employee is capable or qualified.

(xv) Further Pregnancy While on Maternity Leave

Where an employee becomes pregnant whilst on maternity leave a further period of maternity leave shall be granted. If an employee enters on the second period of maternity leave during the currency of the initial period of maternity leave, then any residual maternity leave from the initial entitlement ceases.

An employee who commences a subsequent period of maternity leave while on unpaid maternity leave under subclause (iv)(a) of Part A of this clause or subclause (i)(b) of Part D of this clause is entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on maternity leave).

An employee who commences a subsequent period of maternity leave during the first 12 months of a return to duty on a part-time basis as provided under subparagraph (i)(c) of Part D of this clause is entitled to be paid at their substantive full-time rate for the subsequent period of maternity leave.

An employee who commences a subsequent period of maternity leave more than 12 months after returning to duty on a part-time basis under subclause (i)(c) of Part D, Right to Request, of this clause, will be entitled to paid maternity leave for the subsequent period of maternity leave at their part-time rate.

B. Adoption Leave

(i) Eligibility

All full-time and permanent part-time employees who are adopting a child and are to be the primary care giver of the child are eligible for unpaid adoption leave.

To be eligible for paid adoption leave a full-time or permanent part-time employee must also have completed at least 40 weeks continuous service prior to the date of taking custody of the child.

An employee who has once met the conditions of paid adoption leave, will not be required to again work the 40 weeks continuous service in order to qualify for further periods of paid adoption leave, unless

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with; or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Worker's Compensation Act* (NSW) 1987 as varied from time to time.

(ii) Portability of Service for Paid Adoption Leave

As per maternity leave conditions.

(iii) Entitlement

(a) Paid Adoption Leave

Eligible employees are entitled to paid adoption leave of fourteen weeks at the ordinary rate of pay from and including the date of taking custody of the child.

Paid adoption leave may be paid: -

on a normal fortnightly basis; or

in advance in a lump sum; or

at the rate of half pay over a period of twenty-eight weeks on a regular fortnightly basis.

Annual and/or long service leave credits can be combined with periods of adoption leave at half pay to enable an employee to remain on full pay for that period.

(b) Unpaid Adoption Leave

Eligible employees are entitled to unpaid adoption leave as follows:

where the child is under the age of 12 months - a period of not more than 12 months from the date of taking custody;

where the child is over the age of 12 months and under 18 years old - a period of up to 12 months, such period to be agreed upon by both the employee and the employer.

(iv) Applications

Due to the fact that an employee may be given little notice of the date of taking custody of a child, employees who believe that, in the reasonably near future, they will take custody of a child, should formally notify the employer as early as practicable of the intention to take adoption leave. This will allow arrangements associated with the adoption leave to be made.

(v) Variation after Commencement of Leave

After commencing adoption leave, an employee may vary the period of leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although an employer may accept less notice if convenient.

(vi) Staffing Provisions

As per maternity leave conditions.

(vii) Effect of Adoption Leave on Accrual of Leave, Increments, etc.

As per maternity leave conditions.

(viii) Right to return to Previous Position

As per maternity leave conditions.

C. Parental Leave

(i) Eligibility

To be eligible for parental leave a full-time or permanent part-time employee must have completed at least 40 weeks continuous service prior to the expected date of birth or to the date of taking custody of the child.

An employee who has once met the conditions for paid parental leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid parental leave, unless:

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with: or
  - (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act 1987* as varied from time to time.
- (ii) Portability of Service for Paid Parental Leave
- As per maternity leave conditions.
- (iii) Entitlements

Eligible employees whose spouse or partner (including a same sex partner) is pregnant or is taking custody of a child, are entitled to a period of leave not exceeding 52 weeks, which includes one week of paid leave, and may be taken as follows:

- (a) an unbroken period of up to one week at the time of the birth of the child, taking custody of the child or other termination of the pregnancy (short parental leave), and
  - (b) a further unbroken period in order to be the primary caregiver of the child (extended parental leave).
  - (c) The entitlement of one week's paid leave may be taken at anytime within the 52 week period and shall be paid:  
  
at the employees ordinary rate of pay for a period not exceeding one week on full pay, or two weeks at half pay or the period of parental leave taken, whichever is the lesser period.
  - (d) Extended parental leave cannot be taken at the same time as the employee's spouse or partner is on maternity or adoption leave except as provided for in subparagraph (i)(a) of Part D, Right to Request of this clause.
- Annual and/or long service leave credits can be combined with periods of parental leave on half pay to enable an employee to remain on full pay for that period.
- (iv) Applications
- An employee who intends to proceed on parental leave should formally notify their employer of such intention as early as possible, so that arrangements associated with their absence can be made.

- (a) In the case of extended parental leave, the employee should give written notice of the intention to take the leave.
- (b) The employee must, at least four weeks before proceeding on leave, give written notice of the dates on which they propose to start and end the period of leave, although it is recognised in situations of taking custody of a child, little or no notice may be provided to the employee. In such an instance, the employee should notify the employer as early as practicable.
- (c) The employee must, before the start of leave, provide a certificate from a medical practitioner confirming that their spouse or partner is pregnant and the expected date of birth, or in the case of an adoption, an official form or notification on taking custody of the child.

- (d) In the case of extended parental leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:
  - (1) if applicable, the period of any maternity leave sought or taken by his spouse, and
  - (2) that they are seeking the period of extended parental leave to become the primary care giver of the child.
- (v) Variation after Commencement of Leave -

After commencing parental leave, an employee may vary the period of her/his parental leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although an employer may accept less notice if convenient.
- (vi) Effect of Parental Leave on Accrual of Leave, Increments etc.

As per maternity leave conditions.
- (vii) Right to Return to Previous Position

As per maternity leave conditions.

#### D. Right to Request

- (i) An employee entitled to maternity, adoption or parental leave may request the employer to allow the employee:
  - (a) to extend the period of simultaneous maternity, adoption or parental leave use up to a maximum of eight weeks;
  - (b) to extend the period of unpaid maternity, adoption or extended parental leave for a further continuous period of leave not exceeding 12 months;
  - (c) to return from a period of maternity, adoption or parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.
- (ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (iii) The employee's request and the employer's decision made under subparagraphs (i)(b) and (c) must be recorded in writing.
- (iv) Where an employee wishes to make a request under subparagraph (i)(c):
  - (a) the employee is to make an application for leave without pay to reduce their full-time weekly hours of work
  - (b) such application must be made as early as possible to enable the employer to make suitable staffing arrangements. At least four weeks notice must be given;
  - (c) salary and other conditions of employment are to be adjusted on a basis proportionate to the employee's full-time hours of work i.e. for long service leave the period of service is to be converted to the full-time equivalent and credited accordingly.

- (d) employees who return from leave under this arrangement remain full-time employees. Therefore, the payment of any part-time allowance to such employees does not arise.

E. Communication During Leave

- (i) Where an employee is on maternity, adoption or parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
  - (a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing the leave; and
  - (b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing the leave.
- (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of the leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (i).

NOTE:

- (a) The entitlement to Maternity, Adoption and Parental leave for part-time employees who receive an adjusted hourly rate along with casual employees, are in accordance with the provisions of Part 4, Parental Leave of the *Industrial Relations Act 1996* and/or Determination made under the *Health Services Act 1997*.
- (b) Where a casual employee is entitled to parental leave under the *Industrial Relations Act 1996*, the following provisions shall also apply in addition to those set out in the Act.

An employer must not fail to re-engage a casual employee because:

the employee or employee's spouse is pregnant; or

the employee is or has been immediately absent on parental leave.

The rights of the employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (c) Part-time employees who receive an adjusted hourly rate are also entitled to the provisions of Part D, Right to Request and Part E, Communication During Leave, of this clause.
- (d) Liability for Superannuation Contributions

During a period of unpaid maternity, adoption or parental leave, the employee will not be required to meet the employer's superannuation liability.

**21A. Lactation Breaks**

- (i) This clause applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this Award.

- (ii) A full-time employee or a part-time employee working more than four hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day or per shift.
- (iii) A part-time employee working four hours or less on any day or shift is entitled to only one paid lactation break of up to 30 minutes each per day or per shift worked.
- (iv) A flexible approach to lactation breaks can be taken by mutual agreement between an employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the employee.
- (v) The employer shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk. Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and the employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.
- (vi) Employees experiencing difficulties in effecting the transition from home based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- (vii) Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave or other leave in accordance with the Award.

## **22. Trade Union Leave**

### **(i) Eligibility**

Applies to members of the Association(s) accredited by the Association(s) as delegates.

### **(ii) Paid Special Leave**

Paid special leave is available for attendance at:

- (a) annual or bi-annual conferences of the delegate's union; and
- (b) meetings of the union's executive/committee of management;
- (c) authorised union delegate meetings;
- (d) annual conference of Unions NSW;
- (e) bi-annual conference of the Australian Council of Trade Unions.

### **(iii) Limits**

There is no limit on the special leave that could be applied for or granted.

### **(iii) Responsibilities of the Union Delegate**

Responsibilities of the union delegate are:

- (a) to establish accreditation as a delegate with the union;
- (b) to provide sufficient notice of absence to the employer; and,
- (c) to lodge a formal application for special leave.

## (v) Responsibilities of the relevant Association

Responsibilities of the relevant Association are:

- (a) to provide documentary evidence to the employer about an accredited delegate in sufficient time to enable the employer to make arrangements for performance of duties;
- (b) to meet all travelling, accommodation and any other costs incurred by the accredited delegate; and,
- (c) to provide the employer with confirmation of attendance of the accredited delegate.

## (vi) Responsibilities of the employer

Responsibilities of the employer are:

- (a) to release the accredited delegate for the duration of the conference or meeting;
- (b) to grant special leave (with pay); and,
- (c) to ensure that the duties of the absent delegate are performed in his/her absence, if appropriate.

## (vii) Period of Notice

Generally, dates of conferences or meetings are known well in advance and it is expected that employers would be notified as soon as accreditation has been given to a delegate or at least two weeks before the date of attendance.

Where extraordinary meetings are called at short notice, a shorter period of notice would be acceptable, provided such notice is given to the employer as soon as advice of the meeting is received by the accredited delegate.

## (viii) Travel Time

Where a delegate has to travel to Sydney, inter or intra state, to attend a conference or meeting, special leave will also apply to reasonable travelling time to and from the venue of the conference or meeting.

No compensation, such as time off in lieu, is to be provided if travel can be and is taken on an accredited delegate's non-working day or before or after their normal hours of work.

## (ix) Payment of Allowances

No allowances will be claimable in cases of special leave granted for attendance at union conferences or executive meetings covered by this clause - see also subclause (v) above.

### 23. Labour Flexibility

- (i) An employer may direct an employee to carry out such duties as are reasonable, and within the limits of the employee's skill, competence and training consistent with employee's classification, grouping and/or career stream provided that such duties are not designed to promote deskilling.
- (ii) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained or has otherwise acquired the necessary skills in the use of such tools and equipment.
- (iii) Any direction issued by an employer pursuant to subclause (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy work environment.

- (iv) Existing provisions with respect to the payment of mixed functions/higher duties allowances shall apply in such circumstances. In no circumstances shall an employee's salary be reduced by the application of this clause.

#### 24. Anti-Discrimination

- (i) It is the intention of the parties bound by this Award to seek to achieve the object in section 3 (f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this Award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### NOTES -

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:  
  
"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion:"

#### 25. Salary Sacrifice to Superannuation

- (i) Notwithstanding the salaries prescribed in clause 3, Salaries as varied from time to time, an employee may elect, subject to the agreement of the employee's employer, to sacrifice a part or all of the salary payable under the salaries clause to additional employer superannuation contributions. Such election must be made prior to the commencement of the period of service to which the earnings relate. The amount sacrificed together with any salary packaging arrangements under clause 26. Salary Packaging, of this Award may be made up to one hundred (100) per cent of the salary payable under the salaries clause, or up to one hundred (100) per cent of the currently applicable superannuable salary, whichever is the lesser.

In this clause, 'superannuable salary' means the employee's salary as notified from time to time to the New South Wales public sector superannuation trustee corporations.

- (ii) Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be packaged. Such payroll deductions may include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees and private health fund membership fees.
- (iii) Where the employee has elected to sacrifice a part or all of the available payable salary to additional employer superannuation contributions:
  - (a) The employee shall be provided with a copy of the signed agreement. The salary sacrifice agreement shall be terminated at any time at the employee's election and shall cease upon termination of the employee's services with the employer.
  - (b) Subject to Australian taxation law, the amount of salary sacrificed will reduce the salary subject to appropriate PAYE taxation deductions by the amount sacrificed; and
  - (c) Any allowance, penalty rate, overtime, payment for unused leave entitlements, weekly workers' compensation, or other payment, other than any payment for leave taken in service, to which an employee is entitled under the relevant award or any applicable award, Act, or statute which is expressed to be determined by reference to an employee's salary, shall be calculated by reference to the salary which would have applied to the employee under the salaries clause in the absence of any salary sacrifice to superannuation made under this Award.
- (iv) The employee may elect to have the specified amount of payable salary which is sacrificed to additional employer superannuation contributions:
  - (a) paid into the superannuation scheme established under the *First State Superannuation Act 1992* as optional employer contributions; or
  - (b) subject to the employer's agreement, paid into a private sector complying superannuation scheme as employer superannuation contributions.
- (v) Where an employee elects to salary sacrifice in terms of subclause (iv) above, the employer will pay the sacrificed amount into the relevant superannuation fund.
- (vi) Where the employee is a member of a superannuation scheme established under:
  - (a) the *Police Regulation (Superannuation) Act 1906*;
  - (b) the *Superannuation Act 1916*;
  - (c) the *State Authorities Superannuation Act 1987*;
  - (d) the *State Authorities Non-Contributory Superannuation Act 1987*; or
  - (e) the *First State Superannuation Act 1992*.

The employee's employer must ensure that the amount of any additional employer superannuation contributions specified in subclause (i) above is included in the employee's superannuable salary which is notified to the New South Wales public sector superannuation trustee corporations.

- (vii) Where, prior to electing to sacrifice a part or all of their salary to superannuation, an employee had entered into an agreement with their employer to have superannuation contributions made to a superannuation fund other than a fund established under legislation listed in subclause (v) above, the employer will continue to base contributions to that fund on the salary payable under clause 3. Salaries, of the Award to the same extent as applied before the employee sacrificed that amount of salary to superannuation. This clause applies even though the superannuation contributions made by the employer may be in excess of the superannuation guarantee requirements after the salary sacrifice is implemented.

## 26. Salary Packaging

- (i) By agreement with their employer, employees may elect to package part or all of their salary in accordance with this clause, to obtain a range of benefits as set out in the NSW Health Services Salary Packaging Policy and Procedure Manual, as amended from time to time. Such election must be made prior to the commencement of the period of service to which the earnings relate. Where an employee also elects to salary sacrifice to superannuation under this Award, the combined amount of salary packaging/sacrificing may be up to 100 per cent of salary.

Any salary packaging above the fringe benefit exemption cap will attract fringe benefits tax as described in paragraph (iv) below.

- (ii) Where an employee elects to package an amount of salary:
- (a) Subject to Australian taxation law, the packaged amount of salary will reduce the salary subject to PAYE taxation deductions by that packaged amount.
  - (b) Any allowance, penalty rate, overtime payment, payment for unused leave entitlements, weekly workers' compensation, or other payment other than any payment for leave taken in service, to which an employee is entitled under this Award or statute which is expressed to be determined by reference to an employee's salary, shall be calculated by reference to the salary which would have applied to the employee under this Award in the absence of any salary packaging or salary sacrificing made under this Award.
  - (c) 'Salary' for the purpose of this clause, for superannuation purposes, and for the calculation of Award entitlements, shall mean the Award salary as specified in Clause 3, Salaries, and which shall include 'approved employment benefits' which refer to fringe benefit savings, administration costs, and the value of packaged benefits.
- (iii) Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be packaged. Such payroll deductions may include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees, and private health fund membership fees.
- (iv) The salary packaging scheme utilises a fringe benefit taxation exemption status conferred on public hospitals and local health districts, which provides for a fringe benefit tax exemption cap of \$17,000 per annum. The maximum amount of fringe benefits-free tax savings that can be achieved under the scheme is where the value of benefits when grossed-up, equal the fringe benefits exemption cap of \$17,000. Where the grossed-up value exceeds the cap, the employer is liable to pay fringe benefits tax on the amount in excess of \$17,000 but will pass this cost on to the employee. The employer's share of savings, the combined administration cost and the value of the package benefits, are deducted from pre-tax dollars.
- (v) The parties agree that the application of the fringe benefits tax exemption status conferred on public hospitals and local health districts is subject to prevailing Australian taxation laws.
- (vi) If an employee wishes to withdraw from the salary packaging scheme, the employee may only do so in accordance with the required period of notice as set out in the Salary Packaging Policy and Procedure Manual.
- (vii) Where an employee ceases to salary package, arrangements will be made to convert the agreed package amount to salary. Any costs associated with the conversion will be borne by the employee, and the employer shall not be liable to make up any salary lost as a consequence of the employee's decision to convert to salary.
- (viii) Employees accepting the offer to salary package do so voluntarily. Employees are advised to seek independent financial advice and counselling to apprise them of the implications of salary packaging on their individual personal financial situations.

- (ix) The employer and the employee shall comply with the procedures set out in the NSW Health Services Salary Packaging Policy and Procedure Manual as amended from time to time.

### **27. Reasonable Hours**

- (i) Subject to sub-clause (ii) an employer may require an employee to work reasonable overtime at overtime rates unless or as otherwise provided for under the Award.
- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (iii) For the purposes of sub-clause (ii) what is unreasonable or otherwise will be determined having regard to:
- (a) any risk to employee health and safety;
  - (b) the employee's personal circumstances including any family and carer responsibilities;
  - (c) the needs of the workplace or enterprise;
  - (d) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (e) any other relevant matter.

### **28. Higher Duties Allowance**

An employee who is called upon to relieve an employee in a higher classification continuously for five working days or more and who satisfactorily performs the whole of the duties and assumes the whole of the responsibilities of the higher classification, shall be entitled to receive, for the period of relief, the minimum pay of such higher classification.

### **29. Underpayment and Overpayment of Salaries**

The following process will apply once the issue of underpayment or overpayment is substantiated.

- (i) Underpayment
- (a) If the amount underpaid is equal to or greater than one day's gross base pay the underpayment will be rectified within three working days.
  - (b) If the amount underpaid is less than one day's gross base pay it will be rectified by no later than the next normal pay. However, if the employee can demonstrate that rectification in this manner would result in undue hardship, every effort will be made by the employer to rectify the underpayment within three working days.
- (ii) Overpayment
- (a) In all cases where overpayments have occurred, the employer shall as soon as possible advise the employee concerned of both the circumstances surrounding the overpayment and the amount involved. The employer will also advise the employee of the pay period from which the recovery of the overpayment is to commence.
  - (b) One off overpayments will be recovered in the next normal pay, except that where the employee can demonstrate that undue hardship would result, the recovery rate shall be at 10% of an employee's gross fortnightly base pay.

- (c) Unless the employee agrees otherwise, the maximum rate at which cumulative overpayments can be recovered is an amount, calculated on a per fortnight basis, equivalent to 10% of the employee's gross fortnightly base pay.
- (d) The recovery rate of 10% of an employee's gross fortnightly base pay referred to in subclause (ii)(c) above may be reduced by agreement, where the employee can demonstrate that undue hardship would result.
- (e) Where an employee's remaining period of service does not permit the full recovery of any overpayment to be achieved on the fortnightly basis prescribed in subclause (ii)(c) above, the Employer shall have the right to deduct any balance of such overpayment from monies owing to the employee on the employee's date of termination, resignation or retirement, as the case may be.

### 30. No Extra Claims

Other than as provided for in the *Industrial Relations Act* 1996 and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or proceedings instituted before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2022 by a party to this Award.

### 31. Area, Incidence and Duration

- (i) This Award takes effect from 1 July 2021 and shall remain in force for a period of one year. The allowances in the second column in the table in Part B, Table 1 - Allowances will apply from the first full pay period on or after 1 July 2021.
- (ii) This Award rescinds and replaces the Public Hospital Career Medical Officers (State) Award 2019 published 1 November 2019 (385 I.G. 681) and all variations thereof.
- (iii) This Award shall apply to persons employed in classifications contained herein employed in the NSW Health Service under section 115(1) of the *Health Services Act* 1997, or their successors, assignees or transmittes.

## PART B

**Table 1 - Allowances**

| Item No. | Clause No. | Allowance Description   | Frequency                            | Rate from 1 July 2021<br>\$ | Rate from first pay period on or after 1 July 2021<br>\$ |
|----------|------------|---|--------------------------------------|-----------------------------|--|
|          |            | <b>In-Charge</b>  |                                      |                             |  |
| 1        | 6          | In-charge allowance   | Per 12 hours of duty or part thereof | 36.10                       | 36.80  |
|          |            | <b>On Call</b>  |                                      |                             |  |
| 2        | 11(iii)    | On-call Allowance per on-call period which coincides with a day rostered on duty  | Per Day                              | 39.50                       | 40.30  |
| 2        | 11(iii)    | On-call allowance per on-call period which coincides with a day rostered off duty | Per Day                              | 79.00                       | 80.60  |
| 2        | 11(iii)    | On Call Per Week (Career Med. Officers) Uniform                                   | Per Week                             | 276.60                      | 282.20   |
| 3        | 16(ii)(a)  | Full uniform including special shoes if required                                  | Per Week                             | 2.54                        | 2.57   |
| 3        | 16(ii)(b)  | Other cases   | Per Week                             | 1.87                        | 1.89   |

N. CONSTANT, *Chief Commissioner*

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Printed by the authority of the Industrial Registrar.

**PUBLIC HOSPITAL MEDICAL OFFICERS (STATE) AWARD 2021**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 187774 of 2021)

Before Chief Commissioner Constant

22 July 2021

**AWARD****PART A****Arrangement**

| Clause No. | Subject Matter  |
|------------|---|
| 1          | Definition  |
| 2          | Salaries  |
| 3          | Payment of Salaries   |
| 4          | Qualification Allowance   |
| 5          | In-charge Allowance   |
| 6          | Hours of Work   |
| 7          | Part-Time Employees   |
| 8          | Penalty Rates   |
| 9          | Time Worked   |
| 10         | Meal Breaks   |
| 11         | Overtime  |
| 12         | On Call and Call Back   |
| 13         | Higher Duties Allowance   |
| 14         | Annual Leave  |
| 15         | Public Holidays   |
| 16         | Sick Leave  |
| 17         | Maternity, Adoption and Parental Leave                            |
| 17A        | Lactation Breaks  |
| 18         | Family and Community Services Leave and<br>Personal/Carer's Leave |
| 18A        | Family Violence Leave   |
| 19         | Long Service Leave  |
| 20         | Board and Accommodation   |
| 21         | Uniform and Laundry Allowances                                    |
| 22         | Termination of Employment   |
| 23         | Settlement of Disputes  |
| 24         | Anti-Discrimination   |
| 25         | Study Leave   |
| 26         | Travelling Allowances   |
| 27         | Mobility, Excess Fares and Travelling                             |
| 28         | Secondment  |
| 29         | Relocation Expenses   |
| 30         | Labour Flexibility  |
| 31         | Salary Packaging  |
| 32         | Reasonable Hours  |
| 33         | Salary Sacrifice to Superannuation                                |
| 34         | No Extra Claims   |
| 35         | Area, Incidence and Duration                                      |

## PART B

Table 1 - Allowances and Other Rates

## PART C

**PART A****1. Definitions**

"Award" means the Public Hospital Medical Officers (State) Award 2021.

"Employer" means the Secretary of the Ministry of Health exercising employer functions on behalf of the Government of New South Wales (and includes a delegate of the Secretary).

"Health Service" means a Local Health District constituted under section 8 of the *Health Services Act 1997*, a Statutory Health Corporation constituted under section 11 of that Act, and an Affiliated Health Organisation constituted under section 13 of that Act.

"Higher Medical Qualifications" means such qualifications obtained by a medical practitioner subsequent to graduation and includes:

- (i) post-graduate university degrees and diplomas recognised by the Medical Board of Australia as qualifications, or
- (ii) membership or fellowship of the Royal College or Royal Australasian College of Physicians or fellowship of the Royal College or Royal Australasian College of Surgeons or membership or fellowship of the Royal College of Obstetricians and Gynaecologists, or
- (iii) such other post-graduate qualifications obtained by examination and recognised by the Medical Board of Australia and acceptable to the employer, including fellowship of the Royal Australian College of General Practitioners.

"Hospital" means a public hospital as defined under section 15 of the *Health Services Act 1997*.

"Intern" means a medical officer serving in a hospital prior to obtaining full registration with the Medical Board of Australia pursuant to the *Health Practitioner Regulation National Law Act*.

"Registrar" means a medical officer who:

- (i) has had at least three years' experience in public hospital service as defined under this Award or any lesser period acceptable to the Ministry of Health, and
- (ii) is appointed as a registrar by a hospital, and
- (iii) is occupying a position of registrar in an established position as approved by the employer.

"Resident" means a medical officer who has obtained full registration.

"Secretary" means the Secretary of the Ministry of Health.

"Senior Registrar" means a registrar holding higher medical qualifications and occupying a position of senior registrar in an established position as approved by the employer.

"Service" for the purpose of clause 2, Salaries, means service before and/or after the commencement of this Award in one or more hospitals or in other institutions approved from time to time by agreement between the parties of this Award. It shall include service as a medical officer in the Australian Armed Forces and service, whether continuous or not, in other hospitals within the Commonwealth of Australia.

"Union" means the Health Services Union NSW and the Australian Salaried Medical Officers' Federation (New South Wales).

"Weekly Rates" will be ascertained by dividing an annual amount by 52.17857 or a weekly rate can be multiplied by 52.17857 to obtain the annual amount.

## 2. Salaries

Full-time Medical Officer employees shall be paid the salaries as set out in the *Health Professional and Medical Salaries (State) Award*.

## 3. Payment of Salaries

- (i) All salaries and other payments shall be paid fortnightly.
- (ii) Employees shall have their salary paid into one account with a bank or other financial institution in New South Wales as nominated by the employee, except where agreement as to another method of payment has been reached between the Union and the employer due to the isolation of the work location.
- (iii) Salaries shall be deposited by the employer in sufficient time to ensure that wages are available for withdrawal by employees no later than pay day, provided that this requirement shall not apply where employees nominate accounts with non-bank financial institutions which lack the technological or other facilities to process salary deposits within 24 hours of the employer making deposits with such financial institutions, but in such cases the employer shall take all reasonable steps to ensure that the wages of such employees are available for withdrawal by no later than pay day.
- (iv) Penalty rates and overtime worked during the second week of the pay fortnight may be paid to employees in the next pay period by the employer.
- (vi) Subject to adequate notice in writing on each occasion, employees who are rostered off on pay day shall be entitled to have their salary deposited before proceeding on their day or days off.
- (vii) Underpayment and overpayment of salaries - the following process will apply once the issue of underpayment or overpayment is substantiated.
  - (a) Underpayment
    - (1) If the amount underpaid is equal to or greater than one day's gross base pay the underpayment will be rectified within three working days.
    - (2) If the amount underpaid is less than one day's gross base pay it will be rectified by no later than the next normal pay. However, if the employee can demonstrate that rectification in this manner would result in undue hardship, every effort will be made by the employer to rectify the underpayment within three working days.
  - (b) Overpayment
    - (1) In all cases where overpayments have occurred, the employer shall as soon as possible advise the employee concerned of both the circumstances surrounding the overpayment and the amount involved. The employer will also advise the employee of the pay period from which the recovery of the overpayment is to commence.
    - (2) One off overpayments will be recovered in the next normal pay, except that where the employee can demonstrate that undue hardship would result, the recover rate shall be at 10% of an employee's gross fortnightly base pay.
    - (3) Unless the employee agrees otherwise, the maximum rate at which cumulative overpayments can be recovered is an amount, calculated on a per fortnight basis, equivalent to 10% of the employee's gross fortnightly base pay.

- (4) The recovery rate of 10% of an employee's gross fortnightly base pay referred to in subclause (b)(3) above may be reduced by agreement, where the employee can demonstrate that undue hardship would result.
- (5) Where an employee's remaining period of service does not permit the full recovery of any overpayment to be achieved on the fortnightly basis prescribed in subclause (b)(3) above, the employer shall have the right to deduct any balance of such overpayment from monies owing to the employee on the employee's date of termination, resignation or retirement, as the case may be.

#### **4. Qualification Allowance**

An allowance detailed in the Medical Officers section of the Health Professional and Medical Salaries Award shall be paid to officers who obtain an appropriate higher medical qualification subject to graduation.

Provided that this clause shall not apply to an officer who is appointed as a Senior Registrar, the salary rate prescribed in clause 2, Salaries, of this Award for such position having taken into account that a higher medical qualification is a prerequisite for appointment.

Provided further that, where an officer in his/her fifth and subsequent years of training is expected to meet the formal requirements of a higher medical qualification in that year, he/she shall be paid half the qualification allowance.

#### **5. In-Charge Allowance**

An allowance as set out in Item 1 of Table 1, Allowances, shall be paid to medical officers for each twelve hours, or part thereof, of continuous in-charge duty for responsibility for after-hours medical services.

#### **6. Hours of Work**

- (i) The ordinary hours of work shall not exceed an average of 38 hours per week. This shall be achieved by rostering officers for duty over either forty hours in any period of seven consecutive days or eighty hours in any period of fourteen consecutive days and, in addition, then granting officers roster leave additional to that prescribed in subclause (ii) of this clause to the extent of one additional day per calendar month. Such additional roster leave may accumulate to a maximum of three days and shall be granted in multiples of one day. Upon termination of employment an officer shall be paid the monetary value of any untaken additional roster leave, calculated at the officer's ordinary time rate of pay as prescribed by clause 2, Salaries, of this Award.
- (ii) Officers shall be free from ordinary hours of duty for not less than two days in each week or, where this is not practicable, four days in each fortnight. Where practicable, days off shall be consecutive and where possible additional rostered days off shall be combined with other rostered time off.
- (iii) No shift shall be less than four hours in length.
- (iv) No broken or split shifts shall be worked.
- (v) All time worked in excess of ten hours in any one shift shall be paid as overtime.
- (vi) Where in any pay period, an officer is not employed by a hospital for the whole of the pay period, the ordinary hours of work for the purpose of calculating salary for that pay period (i.e., 38 or 76 hours) will be adjusted by the following factor, rounded to the nearest whole number:

$$\frac{\text{Number of calendar days employed}}{\text{Number of calendar days in pay period}}$$

- (vii) Officers shall be given at least two weeks' notice of rosters to be worked in relation to ordinary hours of work and also, where practicable, in relation to additional (overtime) rostered hours of work, provided that the employer may change the rosters without notice to meet any emergent situation. This clause

shall not apply in respect of the granting by the employer of additional roster leave pursuant to this clause.

### 7. Part-Time Employees

- (i) Medical officers engaged on a part-time basis as at 1 June 1993 under the provisions of Agreement No 1 of 1975 made in accordance with section 40BA of the *Public Hospitals Act* 1929, were able to elect to be employed as part-time employees under the provisions of this clause. Part-time employees who did not make such an election continue to be subject to the provisions of Agreement No. 1 of 1975 (see Ministry of Health Policy Directive PD2005\_474) in lieu of the provisions of this clause.
- (ii) A part-time medical officer is one who is appointed by the employer to work a specified number of hours which are less than those prescribed for the same classification employed on a full-time basis under this Award.
- (iii) A part-time medical officer shall be entitled to all other benefits of this Award not expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.
- (iv) A part-time medical officer shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed for the same classification employed on a full-time basis under clause 2, Salaries of this Award with a minimum payment for two hours for each start.
- (v) A part-time medical officer shall not be entitled to an additional day off or part thereof as prescribed in subclause (ii) of clause 6, Hours of Work of this Award.
- (vi) Annual Leave

A part-time medical officer shall be granted on completion of each 12 months service four weeks annual leave on ordinary pay.

- (vii) Overtime
  - (a) Overtime shall be paid for at the rate of time and one half for the first two hours and double time for the remaining hours worked provided that all overtime performed on Sundays shall be paid for at the rate of double time.
  - (b) Overtime will be paid to part-time medical officers as follows:
    - (1) All time worked in excess of the ordinary hours as prescribed in clause 6 Hours of Work of this Award; or
    - (2) All time worked in excess of ten hours in any one shift.
- (viii) Public Holidays
  - (a) For the purposes of this clause, public holidays are as set out in subclause (iv) of clause 15, Public Holidays of this Award.
  - (b) A public holiday occurring on a part-time medical officer's ordinary working day shall be allowed to employees without loss of pay.
  - (c) Where a part-time medical officer is required to and does work on a public holiday, the medical officer shall have their ordinary rostered hours on that day added to the period of their annual leave for each public holiday so worked unless time off in respect of time worked on any such public holiday has already been granted to the medical officer.
  - (d) Hours worked on public holidays shall be paid at the rate of time and one half.

### **8. Penalty Rates**

Any ordinary hours worked between the following hours shall be paid at ordinary time plus the appropriate penalty rate.

- (i) Hours worked between 6.00 p.m. and midnight, Monday to Friday - 12.5 per cent.
- (ii) Midnight and 7.00 a.m., midnight Sunday to midnight Friday - 25 per cent.
- (iii) Midnight Friday and midnight Saturday - 50 per cent.
- (iv) Midnight Saturday and midnight Sunday - 75 per cent.

### **9. Time Worked**

Time worked means the time during which an officer is required by the employer to be in attendance at a hospital for the purpose of carrying out such functions as the employer may call on him/her to perform, and it shall include times when the officer, in waiting to carry out some active function, is studying or resting or sleeping or engaged in any other activity.

Provided that time worked does not include breaks allowed and actually taken for meals.

Provided further that where an officer attends of his/her own volition outside of hours rostered on duty, or where an officer remains in attendance when formally released from the obligation to perform professional duties, the employer shall not be liable to make any payment for such attendance.

### **10. Meal Breaks**

The principles to be applied by the employer in relation to meal breaks for Resident Medical Officers are outlined in Ministry of Health Circular No. 88/251.

Day Shifts - Monday to Friday

- (i) In the interests of patient care and the health and welfare of medical staff, officers must have a break from duty for the purpose of taking a meal.
- (ii) There shall be a uniform meal break of 30 minutes except where locally agreed arrangements for a longer period are made (which shall not exceed one hour).
- (iii) If officers are required to work during their meal break they shall be paid for the time worked.
- (iv) Medical Administrators are to establish simple and effective procedures in consultation with officers to record when staff are required to work through their meal break and to ensure that payment is made.

Shifts Other than Day Shifts - Monday to Friday.

The arrangements outlined in Circular No. 83/250 of 19 August 1983 in relation to meal breaks during shifts other than Day Shifts, Monday to Friday, will continue to apply.

### **11. Overtime**

- (i) All time worked by officers in excess of the ordinary hours specified in clause 6, Hours of Work, of this Award, shall be paid at the rate of time and one-half for the first two hours, and double time thereafter provided that all overtime performed on a Sunday, shall be at double time.
- (ii) An officer who works authorised overtime and was not notified on or prior to his/her previous shift of the requirement to work such overtime shall be paid in addition to payment for such overtime:

- (a) as set out in Item 2 of Table 1, Allowances, for breakfast when commencing such overtime work at or before 6.00 a.m.;
- (b) as set out in Item 2 of Table 1, Allowances, for an evening meal when such overtime is worked for at least one hour immediately following his/her normal ceasing time, exclusive of any meal break and extends beyond or is worked wholly after 7.00 p.m.;
- (c) as set out in Item 2 of Table 1, Allowances, for luncheon when such overtime extends beyond 2.00 p.m. on Saturdays, Sundays or holidays;

or shall be provided with adequate meals in lieu of such payments.

The rates prescribed in this subclause shall be varied in accordance with any variations in the rates payable under Crown Employees (Public Service Conditions of Employment) Award.

## 12. On Call and Call Back

- (i) An "on call period" is a period during which an officer is required by the employer to be on call.
- (ii) For the purposes of calculation of payment of on-call allowances and for call-back duty, an on-call period shall not exceed 24 hours.
- (iii) An officer shall be paid for each on-call period which coincides with a day rostered on duty an allowance as set out in Item 3 of Table 1, Allowances, and for each on-call period coinciding with a rostered day off an allowance as set in the said Item 3 with a maximum payment as set out in the said Item 3 per week.
- (iv) Subject to subclauses (v) - (ix) below, officers who are recalled for duty, whether notified before or after leaving the employer's premises, shall be paid for all time worked at the appropriate overtime rate, with a minimum of four hours at such rates.
- (v) Officers may be required to perform other work that arises during the recall period. Officers shall not be required to work the full four hour minimum payment period if they complete the work they were recalled to perform and any additional work they are required to undertake, within a shorter period.
- (vi) The employer must have processes in place for the formal release of officers from recall duty.
- (vii) Officers who are not formally released and who are recalled again during the four hour minimum payment period are not entitled to any additional payment until the expiration of the four hour period.
- (viii) Officers who are advised they will not be required to perform any additional work and are formally released and who are subsequently recalled again during the four hour minimum payment period, shall be entitled to another four hour minimum payment.
- (ix) Officers required to work overtime after leaving the employer's premises to provide a technology support resolution or clinical appraisal remotely without onsite presence, shall be paid for such work at the appropriate overtime rate, with a minimum payment of one hour at such rates.
- (x) The amounts specified in subclause (iii) shall be taken to include expenses incurred in taking telephone calls at one's own residence and other expenses incurred in being available for emergency duty.
- (xi) For the purposes of subclause (ix) "clinical appraisal remotely" means as provided in either (a) or (b) below:
  - (a) assessing (by an on-call resident medical officer or registrar) a patient's physical condition to make a diagnosis or a differential diagnosis away from a hospital that incorporates all of the following:

1. The taking of a telephone call or calls, or receiving an email or emails, from a medical practitioner on duty in a hospital about a patient.
  2. Receiving the history of the patient so that the patient's current medical condition and any relevant past medical history including previous surgery and use of medications, if known, is provided.
  3. Discussing with the medical practitioner on duty the patient's current medical condition and asking questions in respect of the condition as necessary such that the information provided enables an evaluation of the patient's physical condition.
  4. Directing further examination to be conducted as clinically required and obtaining other clinical information or opinion from other medical practitioners as necessary.
  5. Identifying the likely cause of the patient's condition and providing a diagnosis and a prognosis based on the information provided from undertaking 1 to 4 above.
  6. Ensuring that there is a sufficient clinical justification for the proposed treatment including, if relevant, admission to hospital.
  7. Instructing the medical practitioner on duty in a hospital what course of treatment should be followed including ensuring the proposed treatment is not contraindicated, being satisfied that such treatment is able to be determined, and can be properly implemented, without requiring the return of the on-call resident medical officer or registrar. This would include developing or confirming a management plan, or varying an existing management plan with the endorsement of the staff specialist or VMO responsible for the care of the patient.
  8. Directing follow-up requirements and subsequently reviewing the patient, if appropriate, based on those requirements.
  9. Complying with relevant NSW Health and local policies, procedures and directions.
- (b) the provision of a report by an on call registrar on images forwarded electronically in circumstances where:
1. had the communications technology involved not been utilised the registrar would have had to have returned to the workplace to provide that report; and
  2. there has been prior approval at the facility level to the use, and the conditions of use, of such technology by the registrar.
- (xii) A clinical appraisal provided remotely pursuant to subclause (xi)(a) above shall attract a minimum payment of one hour at the appropriate overtime rate only in circumstances where, if it had not been provided remotely, the on-call resident medical officer or registrar would have otherwise needed to have returned to the workplace. Any additional requirement to provide further clinical appraisal falling within the hour from which the initial clinical appraisal commenced shall not attract an additional payment. Any time worked beyond the expiration of one hour shall be paid at overtime rates. Time where work is not being performed will not be counted as time for the purposes of overtime payment.

### **13. Higher Duties Allowance**

An employee who is called upon to relieve an employee in a higher classification continuously for five working days or more and who satisfactorily performs the whole of the duties and assumes the whole of the responsibilities of the higher classification, shall be entitled to receive, for the period of relief, the minimum pay of such higher classification.

**14. Annual Leave**

- (i) All officers shall be allowed four calendar weeks' leave of absence on full pay in respect of each twelve months' service plus one day on full pay in respect of each public holiday occurring within the period of such leave.
- (ii) Officers who are required to work on Sundays and/or public holidays during a qualifying period of employment for annual leave purposes shall be entitled to receive additional annual leave in respect of each complete period of eight hours so worked as follows:
  - (a) if 35 or more such periods on such days have been worked - one week;
  - (b) if less than 35 such periods on such days have been worked - leave proportionately calculated on the basis of 38 hours leave for 35 such periods worked;
  - (c) work performed by reason of call backs pursuant to clause 12, On Call and Call Back, of this Award shall be disregarded when assessing an officer's entitlement under the subclause.
  - (d) The calculations referred to in paragraphs (a) and (b) of this subclause shall be made to the nearest one-fifth of the ordinary hours worked, half or more than half of one-fifth being regarded as one-fifth and less than half being disregarded.
  - (e) An officer with accrued additional annual leave pursuant to this subclause can elect at any time to be paid an amount equivalent to the value of accrued additional annual leave in lieu of taking additional leave, provided that the amount is a minimum of one weeks' accrued additional leave and that the salary for the period of additional leave paid out will be calculated as if the period of leave was actually taken.
- (iii) Annual leave shall be given and shall be taken in one consecutive period, or, if the officer and the employer so agree, in either two or three separate periods, but not otherwise.
- (iv) Annual leave shall be given and shall be taken within a period of six months after the date when the right to annual leave accrued; provided that the giving and taking of the whole or any separate period of such annual leave may, by mutual agreement between the employer and the officer, be postponed for a further period not exceeding six months.
- (v) If the officer and the employer so agree, the annual leave or any such separate periods, may be taken wholly or partly in advance before the officer has become entitled to that leave, but where leave is taken in such circumstances a further period of annual leave shall not commence to accrue until the expiration of the twelve months in respect of which the annual leave or part thereof has been so taken.
- (vi) Except as provided by this clause, payment shall not be made by the employer to an officer in lieu of any annual leave or part thereof nor shall any such payment be accepted by the officer.
- (vii) The employer shall give the officer at least two months' notice of the date from which his or her annual leave is to be taken.
- (viii) The employer shall pay each officer before entering upon annual leave his or her ordinary rate of salary for the period of leave. For the purposes of this subclause "ordinary rate of salary" means the Award rate of salary and qualification allowance if applicable.
- (ix) Where the employment of an officer is terminated, the officer shall be entitled to receive proportionate payment for each completed month of service together with such additional annual leave entitlements due under subclause (ii). All payments are to be made at the rate of salary to which such officer is entitled under this Award.
- (x) Where the annual leave under this clause or any part thereof has been taken in advance by an officer pursuant to subclause (v), of this clause; and

- (a) the employment of the officer is terminated before he/she has completed the year of employment in respect of which such annual leave or part was taken; and
- (b) the sum paid by the employer to the officer as ordinary pay for the annual leave or part so taken in advance exceeds the sum which the employer is required to pay to the officer under subclause (ix) of this clause;
- (c) the employer shall not be liable to make any payment to the officer under the said subclause (ix) and shall be entitled to deduct the amount of such excess from any remuneration payable to the officer upon the termination of the employment.

NOTATION: The conditions under when the annual leave loading shall be paid to officers are the same as generally applied through circulars issued by the Ministry of Health.

### **15. Public Holidays**

- (i) Public holidays shall be allowed to officers on full pay.
- (ii) Where an officer is required to, and does work on any of the public holidays set out in this clause, the officer shall be paid for the hours worked at the rate of time and one-half. In addition, the officer shall have one day added to annual leave for each public holiday so worked unless time off in respect of time worked on such public holiday has been granted.
- (iii) Where a public holiday falls on a rostered day off, the officer shall have one day added to annual leave.
- (iv) Provided that an employee who has accrued additional annual leave referred to in subclauses (ii) and (iii) of this clause can elect at any time to be paid an amount equivalent to the value of the accrued additional annual leave in lieu of taking additional leave, provided that the amount is a minimum of one weeks' accrued additional leave and that the salary for the period of additional leave paid out will be calculated as if the period of leave as actually taken.
- (v) For the purpose of this clause the following shall be deemed to be public holidays: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Eight Hour Day, Christmas Day, Boxing Day, or in lieu of any such day any holiday proclaimed in lieu thereof, together with any other day duly proclaimed as a special day and observed as a public holiday within the area in which the hospital is situated.

### **16. Sick Leave**

- (i) An officer shall be allowed sick leave on full pay calculated by allowing 76 "ordinary" hours per year for each year of continuous service less any sick leave on full pay already taken, subject to the following conditions:
  - (a) the employer may require the sickness to be certified to by the medical superintendent or by a legally qualified medical practitioner approved by the employer, or may require other satisfactory evidence thereof;
  - (b) an officer shall not be entitled to sick leave until the expiration of three months' continuous service;
  - (c) each officer shall take all reasonably practicable steps to inform the employer of his or her inability to attend for duty and as far as possible state the estimated duration of the absence. Where practicable such notice shall be given within twenty-four hours of the commencement of such absence;
  - (d) an officer shall not be entitled to sick leave on full pay for any period in respect of which such officer is entitled to accident pay or workers' compensation; provided, however, that where an officer is not in receipt of accident pay an employer shall pay to an officer who has sick leave entitlements under this clause, the difference between the amount received as workers'

compensation and full pay. The officer's sick leave entitlements under this clause shall, for each week during which such difference is paid, be reduced by that proportion of hours which the difference paid bears to full pay. On the expiration of available sick leave, weekly compensation payments only shall be payable;

- (e) an officer is not eligible for sick leave during periods when he/she would have normally been rostered on overtime shifts;
- (f) an officer is not entitled to more than 8 hours' sick leave in respect of any one day.
- (ii) Continuous service for the purpose of this clause shall be calculated in the same manner as provided for in paragraph (a) of subclause (ii) of clause 19, Long Service Leave, of this Award.
- (iii) Full pay for the purpose of this clause shall include the uniform allowance where payable, under clause 21, Uniform and Laundry Allowance, of this Award.
- (iv) The employer shall not terminate the services of an officer except on the grounds of misconduct during the currency of any periods of paid sick leave.
- (v) Sick leave as defined, shall accrue and be transferable between hospitals, at the rate of 76 hours per year of continuous service, minus hours taken.

## **17. Maternity, Adoption and Parental Leave**

### **A. Maternity Leave**

#### (i) Eligibility for Paid Maternity Leave

To be eligible for paid maternity leave a full-time or permanent part-time employee must have completed at least 40 weeks' continuous service prior to the expected date of birth.

An employee who has once met the conditions for paid maternity leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid maternity leave, unless -

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after her services have been otherwise dispensed with or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act 1987* as varied from time to time.

#### (ii) Portability of Service for Paid Maternity Leave

Portability of service for paid maternity leave involves the recognition of service in government sector agencies for the purpose of determining an employee's eligibility to receive paid maternity leave. For example, where an employee moves between a public service department and a public hospital, previous continuous service will be counted towards the service prerequisite for paid maternity leave.

When determining an employee's eligibility for paid maternity leave, continuous service with an organisation that is part of the government sector as defined in the *Government Sector Employment Act 2013* will be recognised, provided that:

- (a) service was on a full-time or permanent part-time basis;
- (b) cessation of service with the former employer was not by reason of dismissal on any ground, except retrenchment or reduction of work;

- (c) the employee immediately commences duty with the new employer. There may be a break in service of up to two months before commencing duty with the new employer. However, such a break in service will not be counted as service for the purpose of calculating any prior service prerequisite for paid maternity leave.

(iii) Entitlement to Paid Maternity Leave

An eligible employee is entitled to fourteen weeks at the ordinary rate of pay from the date maternity leave commences. This leave may commence up to fourteen weeks prior to the expected date of birth.

It is not compulsory for an employee to take this period off work. However, if an employee decides to work during the nine weeks prior to the date of birth it is subject to the employee being able to satisfactorily perform the full range of normal duties.

Paid maternity leave may be paid:

on a normal fortnightly basis; or

in advance in a lump sum; or

at the rate of half pay over a period of twenty-eight weeks on a regular fortnightly basis.

Annual and/or long service leave credits can be combined with periods of maternity leave on half pay to enable an employee to remain on full pay for that period.

(iv) Unpaid Maternity Leave

- (a) Full-time and permanent part-time employees who are entitled to paid maternity leave are entitled to a further period of unpaid maternity leave of not more than 12 months after the actual date of birth.

- (b) Full-time and permanent part-time employees who are not eligible for paid maternity leave are entitled to unpaid maternity leave of not more than 12 months.

(v) Applications

An employee who intends to proceed on maternity leave should formally notify her employer of such intention as early as possible, so that arrangements associated with her absence can be made.

Written notice of not less than eight weeks prior to the commencement of the leave should accordingly be given. This notice must include a medical certificate stating the expected date of birth and should also indicate the period of leave desired.

(vi) Variation after Commencement of Leave

After commencing maternity leave, an employee may vary the period of her maternity leave once only without the consent of her employer by giving the employer notice in writing of the extended period at least fourteen days before the start of the extended period. An employer may accept less notice if convenient.

An employee may extend the period of maternity leave at any time with the agreement of the employer.

The conditions relating to variation of maternity leave are derived from section 64 of the *Industrial Relations Act 1996*.

(vii) Staffing Provisions

In accordance with obligations established by the *Industrial Relations Act 1996* (section 69) any person who occupies the position of an employee on maternity leave must be informed that the employee has

the right to return to her former position. Additionally, since an employee has the right to vary the period of her maternity leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should be also set down clearly; to a fixed date or until the employee elects to return to duty, whichever occurs first.

(viii) Effect of Maternity Leave on Accrual of Leave, Increments etc.

When the employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual leave, sick leave and long service leave and any period of maternity leave on half pay is taken into account to the extent of one half thereof when determining the accrual of annual leave, sick leave and long service leave.

Except in the case of employees who have completed ten years' service the period of maternity leave without pay does not count as service for long service leave purposes. Where the employee has completed ten years' service the period of maternity leave without pay shall count as service provided such leave does not exceed six months.

Maternity leave without pay does not count as service for incremental purposes. Periods of maternity leave at full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.

Where public holidays occur during the period of paid maternity leave, payment is at the rate of maternity leave received i.e., public holidays occurring in a period of full pay maternity leave are paid at full rate and those occurring during a period of half pay leave are paid at half rate.

(ix) Illness Associated with Pregnancy

If, because of an illness associated with her pregnancy an employee is unable to continue to work then she can elect to use any available paid leave (sick, annual and/or long service leave) or to take sick leave without pay.

Where an employee is entitled to paid maternity leave, but because of illness, is on sick, annual, long service leave, or sick leave without pay prior to the birth, such leave ceases nine weeks prior to the expected date of birth. The employee then commences maternity leave with the normal provisions applying.

(x) Transfer to a More Suitable Position

Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obliged, as far as practicable, to provide employment in some other position that she is able to satisfactorily perform. This obligation arises from section 70 of the *Industrial Relations Act 1996*. A position to which an employee is transferred under these circumstances must be as close as possible in status and salary to her substantive position.

(xi) Miscarriages

In the event of a miscarriage any absence from work is to be covered by the current sick leave provisions.

(xii) Stillbirth

In the case of a stillbirth, (as classified by the Registry of Births, Deaths and Marriages) an employee may elect to take sick leave, subject to production of a medical certificate, or maternity leave. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.

(xiii) Effect of Premature Birth on Payment of Maternity Leave

An employee who gives birth prematurely and prior to proceeding on maternity leave shall be treated as being on maternity leave from the date leave is commenced to have the child. Should an employee

return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.

(xiv) Right to Return to Previous Position

In accordance with the obligations set out in section 66 of the *Industrial Relations Act 1996*, an employee returning from maternity leave has the right to resume her former position.

Where this position no longer exists the employee is entitled to be placed in a position nearest in status and salary to that of her former position and to which the employee is capable or qualified.

(xv) Further Pregnancy While on Maternity Leave

Where an employee becomes pregnant whilst on maternity leave a further period of maternity leave shall be granted. If an employee enters on the second period of maternity leave during the currency of the initial period of maternity leave, then any residual maternity leave from the initial entitlement ceases.

An employee who commences a subsequent period of maternity leave while on unpaid maternity leave under subclause (iv)(a) of Part A of this clause or subclause (i)(b) of Part D of this clause is entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on maternity leave).

An employee who commences a subsequent period of maternity leave during the first 12 months of a return to duty on a part-time basis as provided under subclause (i)(c) of Part D of this clause is entitled to be paid at their substantive full-time rate for the subsequent period of maternity leave.

An employee who commences a subsequent period of maternity leave more than 12 months after returning to duty on a part-time basis under subclause (i)(c) of Part D of this clause, will be entitled to paid maternity leave for the subsequent period of maternity leave at their part-time rate.

**B. Adoption Leave**

(i) Eligibility

All full-time and permanent part-time employees who are adopting a child and are to be the primary care giver of the child are eligible for unpaid adoption leave.

To be eligible for paid adoption leave a full-time or permanent part-time employee must also have completed at least 40 weeks continuous service prior to the date of taking custody of the child.

An employee who has once met the conditions of paid adoption leave, will not be required to again work the 40 weeks continuous service in order to qualify for further periods of paid adoption leave, unless

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with; or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the Worker's Compensation Act.

(ii) Portability of Service for Paid Adoption Leave

As per maternity leave conditions.

(iii) Entitlement

(a) Paid Adoption Leave

Eligible employees are entitled to paid adoption leave of fourteen weeks at the ordinary rate of pay from and including the date of taking custody of the child.

Paid adoption leave may be paid:

on a normal fortnightly basis; or

in advance in a lump sum; or

at the rate of half pay over a period of twenty-eight weeks on a regular fortnightly basis.

Annual and/or long service leave credits can be combined with periods of adoption leave at half pay to enable an employee to remain on full pay for that period.

(b) Unpaid Adoption Leave

Eligible employees are entitled to unpaid adoption leave as follows:

where the child is under the age of 12 months - a period of not more than 12 months from the date of taking custody;

where the child is over the age of 12 months and under 18 years old - a period of up to 12 months, such period to be agreed upon by both the employee and the employer.

(iv) Applications

Due to the fact that an employee may be given little notice of the date of taking custody of a child, employees who believe that, in the reasonably near future, they will take custody of a child, should formally notify the employer as early as practicable of the intention to take adoption leave. This will allow arrangements associated with the adoption leave to be made.

(v) Variation after Commencement of Leave

After commencing adoption leave, an employee may vary the period of leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although an employer may accept less notice if convenient.

(vi) Staffing Provisions

As per maternity leave conditions.

(vii) Effect of Adoption Leave on Accrual of Leave, Increments, etc.

As per maternity leave conditions.

(viii) Right to return to Previous Position

As per maternity leave conditions.

**C. Parental Leave****(i) Eligibility**

To be eligible for parental leave a full-time or permanent part-time employee must have completed at least 40 weeks continuous service prior to the expected date of birth or to the date of taking custody of the child.

An employee who has once met the conditions for paid parental leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid parental leave, unless-

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with; or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act 1987* as varied from time to time.

**(ii) Portability of Service for Paid Parental Leave**

As per maternity leave conditions.

**(iii) Entitlements**

Eligible employees whose spouse or partner (including a same sex partner) is pregnant or is taking custody of a child, are entitled to a period of leave not exceeding 52 weeks, which includes one week of paid leave, and may be taken as follows:

- (a) an unbroken period of up to one week at the time of the birth of the child, taking custody of the child or other termination of the pregnancy (short parental leave), and
- (b) a further unbroken period in order to be the primary caregiver of the child (extended parental leave).
- (c) The entitlement of one week's paid leave may be taken at anytime within the 52 week period and shall be paid:
  - at the employees ordinary rate of pay for a period not exceeding one week on full pay, or
  - two weeks at half pay or the period of parental leave taken, whichever is the lesser period.
- (d) Extended parental leave cannot be taken at the same time as the employee's spouse or partner is on maternity or adoption leave except as provided for in subclause (i)(a) of Part D Right to Request of this clause.

Annual and/or long service leave credits can be combined with periods of parental leave on half pay to enable an employee to remain on full pay for that period.

**(iv) Applications**

An employee who intends to proceed on parental leave should formally notify their employer of such intention as early as possible, so that arrangements associated with their absence can be made.

- (a) In the case of extended parental leave, the employee should give written notice of the intention to take the leave.

- (b) The employee must, at least four weeks before proceeding on leave, give written notice of the dates on which they propose to start and end the period of leave, although it is recognised in situations of taking custody of a child, little or no notice may be provided to the employee. In such an instance, the employee should notify the employer as early as practicable.
- (c) The employee must, before the start of leave, provide a certificate from a medical practitioner confirming that their spouse or partner is pregnant and the expected date of birth, or in the case of an adoption, an official form or notification on taking custody of the child.
- (d) In the case of extended parental leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:
  - (1) if applicable, the period of any maternity leave sought or taken by his spouse, and
  - (2) that they are seeking the period of extended parental leave to become the primary care giver of the child.
- (v) Variation after Commencement of Leave -

After commencing parental leave, an employee may vary the period of her/his parental leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although an employer may accept less notice if convenient.
- (vi) Effect of Parental Leave on Accrual of Leave, Increments etc.

As per maternity leave conditions.
- (vii) Right to Return to Previous Position

As per maternity leave conditions.

#### **D. Right to Request**

- (i) An employee entitled to maternity, adoption or parental leave may request the employer to allow the employee:
  - (a) to extend the period of simultaneous maternity, adoption or parental leave use up to a maximum of eight weeks;
  - (b) to extend the period of unpaid maternity, adoption or extended parental leave for a further continuous period of leave not exceeding 12 months;
  - (c) to return from a period of maternity, adoption or parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.
- (ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (iii) The employee's request and the employer's decision made under subclauses (i)(b) and (c) must be recorded in writing.

- (iv) Where an employee wishes to make a request under subclause (i)(c):
- (a) the employee is to make an application for leave without pay to reduce their full-time weekly hours of work
  - (b) such application must be made as early as possible to enable the employer to make suitable staffing arrangements. At least four weeks' notice must be given;
  - (c) salary and other conditions of employment are to be adjusted on a basis proportionate to the employee's full-time hours of work i.e. for long service leave the period of service is to be converted to the full-time equivalent and credited accordingly.
  - (d) employees who return from leave under this arrangement remain full-time employees. Therefore, the payment of any part-time allowance to such employees does not arise.

#### **E. Communication During Leave**

- (i) Where an employee is on maternity, adoption or parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
- (a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing the leave; and
  - (b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing the leave.
- (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of the leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with subclause (i).

#### **NOTE:**

- (a) The entitlement to maternity, adoption and parental leave for part-time employees who receive an adjusted hourly rate, along with casual employees, are in accordance with the provisions of Part 4, Parental Leave of the *Industrial Relations Act 1996* and/or Ministry Determination.
- (b) Where a casual employee is entitled to parental leave under the *Industrial Relations Act 1996*, the following provisions shall also apply in addition to those set out in the Act.

An employer must not fail to re-engage a casual employee because:

- the employee or employee's spouse is pregnant; or
- the employee is or has been immediately absent on parental leave.

The rights of the employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (c) Part-time employees who receive an adjusted hourly rate are also entitled to the provisions of Part D Right to Request and Part E Communication During Leave of this clause.
- (d) Liability for Superannuation Contributions

During a period of unpaid maternity, adoption or parental leave, the employee will not be required to meet the employer's superannuation liability.

**17A. Lactation Breaks**

- (i) This clause applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this Award.
- (ii) A full-time employee or a part-time employee working more than four hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day or per shift.
- (iii) A part-time employee working four hours or less on any day or shift is entitled to only one paid lactation break of up to 30 minutes each per day or per shift worked.
- (iv) A flexible approach to lactation breaks can be taken by mutual agreement between an employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the employee.
- (v) The employer shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk. Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and the employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.
- (vi) Employees experiencing difficulties in effecting the transition from home based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- (vii) Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave or other leave in accordance with the Award.

**18. Family and Community Services Leave and Personal/Carers' Leave**

- (i) Family and Community Services (FACS) Leave and Personal/Carer's Leave are separate, and alone entitlements.
- (ii) The provisions outlined in Parts A and B of this clause are available to all employees covered by this Award, other than casual employees as defined in subclause (iii) below.
- (iii) Casual employees as defined in the Health Industry Status of Employment (State) Award are entitled to the provisions outlined in Part C of this clause.

**A. FACS Leave**

- (i) FACS Leave - General

- (a) For the purpose of this clause relating to FACS leave:

"relative" means a person related by blood, marriage or affinity;

"affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

"household" means a family group living in the same domestic dwelling.

- (b) The employer may grant FACS leave to an employee:
- (1) to provide care and/or support for sick members of the employee's relatives or household; or
  - (2) for reasons related to the family responsibilities of the employee (e.g. to arrange and or attend a funeral of a relative; to accompany a relative to a medical appointment where there is an element of emergency; parent/teacher meetings; education week activities; to meet elder-care requirements of a relative); or
  - (3) for reasons related to the performance of community service by the employee (e.g. in matters relating to citizenship; to office holders in local government, other than as a mayor, for attendance at meetings, conferences or other associated duties; representing Australia or the State in major amateur sport other than in Olympic/Commonwealth Games); or
  - (4) in a case of pressing necessity (e.g. where an employee is unable to attend work because of adverse weather conditions which either prevent attendance or threaten life or property; the illness of a relative; where a child carer is unable to look after their charge).

(ii) FACS leave replaces compassionate leave.

(iii) An employee is not to be granted FACS leave for attendance at court to answer a criminal charge, unless the employer approves the grant of leave in the particular case.

Applications for FACS leave to attend court, for reasons other than criminal charges, will be assessed on an individual basis.

(iv) FACS Leave - entitlement

(a) The maximum amount of FACS leave on full pay that may be granted to an employee is:

- (1) 3 working days during the first year of service, commencing on and from 1 January 1995, and thereafter 6 working days in any period of 2 years; or
- (2) 1 working day, on a cumulative basis effective from 1 January 1995, for each year of service after 2 years' continuous service, minus any period of FACS leave already taken by the employee since 1 January 1995,

whichever method provides the greater entitlement.

(b) For the purposes of calculating entitlements under (vi)(a)(1) and (2) above, a working day for employees working 38 hours per week shall be deemed to consist of 8 hours, and a working day for employees working 35 hours per week shall be deemed to consist of 7 hours. The rate at which FACS leave is paid out and utilised shall be on actual hours absent from a rostered shift.

Example A: An employee working 38 hours per week will have an entitlement, in their first year of employment, to 24 hours of FACS leave. If the employee takes FACS leave for a full 10 hour shift, the employee would be debited 10 hours of FACS leave.

Example B: An employee working 35 hours per week will have an entitlement, in their first year of employment, to 21 hours of FACS leave. If the employee takes FACS leave for a full 7 hour shift, the employee would be debited 7 hours of FACS leave.

Example C: An employee, employed prior to 1 January 1995, applies for FACS leave on 20 February 1997. The employee is entitled to 6 days in any period of two years. Therefore, to calculate the employee's available FACS leave as at 20 February 1997, add all FACS leave taken from 21 February 1995 to 20 February 1997 and deduct that amount from the 6 days entitlement.

- (c) FACS leave is available to part-time employees on a pro rata basis, based on the average number of hours worked per week. A working day shall consist of one-fifth of the employee's average weekly hours during the preceding 12 months or during the employee's period of employment, whichever is the lesser period.

Example: An employee working an average of 30 hours per week will have an entitlement, in his/her first year of employment, of 18 hours of FACS leave. If the employee takes FACS leave for a full rostered shift e.g. of 4 hours, the employee would be debited 4 hours of FACS leave. Likewise, if the employee was rostered for 8 hours and was absent for the full 8 hours on FACS leave, he/she would be debited 8 hours of FACS leave.

- (v) Additional FACS leave for bereavement purposes

Where FACS leave has been exhausted, additional FACS leave of up to 2 days for bereavement may be granted on a discrete, "per occasion" basis to an employee on the death of a relative or member of a household as defined in subclause (i) (a) of Part A of this clause.

- (vi) Use of other leave entitlements

The employer may grant an employee other leave entitlements for reasons related to family responsibilities or community service, by the employee.

An employee may elect, with the consent of the employer, to take annual leave; long service leave; or leave without pay.

## **B. Personal/Carer's Leave**

- (i) Use of sick leave to care for the person concerned - definitions

A person who needs the employee's care and support is referred to as the "person concerned" and is:

- (a) a spouse of the employee; or
- (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
- (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
- (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (e) a relative of the employee who is a member of the same household, where for the purpose of this clause relating to Personal/Carer's Leave:

"relative" means a person related by blood, marriage or affinity;

"affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

"household" means a family group living in the same domestic dwelling.

- (ii) Use of sick leave to care for the person concerned - entitlement

- (a) The entitlement to use sick leave in accordance with this subclause is subject to:

- (1) the employee being responsible for the care and support of the person concerned; and

- (2) the person concerned being as defined in subclause (i) of Part B of this clause.
- (b) Other than a casual or any other employee who receives a loading in lieu of sick leave, an employee with responsibilities in relation to a person who needs their care and support shall be entitled to use the untaken sick leave, from that year's annual sick leave entitlement, to provide care and support for such persons when they are ill.
  - (c) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (b) above, sick leave untaken from the previous 3 years may also be accessed by an employee with responsibilities in relation to a person who needs their care and support.
  - (d) The employer may, in special circumstances, make a grant of additional sick leave. This grant can only be taken from sick leave untaken prior to the period referred to in subclause (c) above.
  - (e) The employee shall, if required, establish either by production of a medical certificate or statutory declaration that the illness of the person concerned is such as to require care by another person.
  - (f) The employee has the right to choose the method by which the ground for leave is established, that is, by production of either a medical certificate or statutory declaration.
  - (g) The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.
  - (h) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
  - (i) In normal circumstances, the employee must not take leave under this part where another person has taken leave to care for the same person.

(iii) Use of other leave entitlements

An employee may elect, with the consent of the employer, to take:

- (a) annual leave, including annual leave not exceeding 10 days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties. An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least 5 consecutive annual leave days are taken. An employee may elect with the employer's agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
- (b) long service leave; or
- (c) leave without pay for the purpose of providing care and support to the person concerned as defined in subclause (i) of Part B of this clause.

(iv) Time off in lieu of payment of overtime

- (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment of overtime at a time or times agreed with the employer within 12 months of the said election.
- (b) Overtime taken as time off during ordinary time shall be taken at the ordinary time rate, that is, one hour off for each hour of overtime worked.
- (c) If, having elected to take time as leave in accordance with (iv)(a) above and the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of

the twelve 12 month period from the date the overtime was worked, or earlier by agreement, or on termination.

- (d) Where no election is made in accordance with paragraph (iv)(a) above, the employee shall be paid overtime rates in accordance with the provisions of clause 11, Overtime.
- (v) Use of make-up time
  - (a) An employee may elect, with the consent of the employer, to work "make-up time". "Make-up time" is worked when the employee takes time off during ordinary hours for family or community service responsibilities, and works those hours at another time, during the spread of ordinary hours provided for in clause 6 of this Award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off during ordinary hours and works those hours at another time) at the applicable shift work rate which would have been applicable to the hours taken off.

### **C. Entitlements for Casual Employees**

- (i) Bereavement entitlements for casual employees
  - (a) Casual employees are entitled to not be available to attend work or to leave work upon the death in Australia of a relative or member of a household as prescribed in subclause (i)(a) of Part A of this clause.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this part. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
- (ii) Personal carers entitlement for casual employees
  - (a) Subject to the evidentiary and notice requirements in subclauses (ii)(e) - (h) of Part B of this clause casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause (i) of Part B of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this part. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

#### **18A. Family Violence Leave**

- (i) For the purpose of this clause, family violence means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007* as varied from time to time. The violence may have been reported to the police and/or may be the subject of an Apprehended Violence Order.
- (ii) An employee experiencing family and domestic violence can utilise Award leave entitlements provided for in Sick Leave and Family and Community Services Leave provisions of the Award.

- (iii) Where leave entitlements to Sick Leave and Family and Community Services Leave are exhausted, the employer will grant up to five days per year of paid special leave to attend legal proceedings, counselling, appointments with a medical or legal practitioner and relocation and safety activities directly associated with alleviating the effects of family and domestic violence. This leave entitlement does not accumulate from year to year.
- (iv) Upon exhaustion of the paid leave entitlement, an employee may request further periods of unpaid leave, for the same activities for which paid leave would be available.
- (v) To access paid and unpaid leave, the employee must provide the employer with evidence, to the employer's satisfaction, substantiating the purpose of the leave and that the leave is related to alleviating the effects of family violence. The employer may accept a variety of agreed documentation in support of an application for leave. Supporting documentation may be presented in the form of an agreed document issued by the Police Force, a Court, a doctor, a Family Violence Support Service or a lawyer.
- (vi) Matters related to family violence can be sensitive. Information collected by the employer will be kept confidential. No information relating to the details of the family violence will be kept on an employee's personnel file without their express permission. However, records about the use of family violence leave will need to be kept.
- (vii) The employer, where appropriate, may facilitate flexible working arrangements subject to operational requirements. This may include changes to working times and locations, telephone numbers and email addresses.
- (viii) The employer will co-operate with all legal orders protecting an employee experiencing domestic violence.

### 19. Long Service Leave

- (i)
  - (a) Each employee shall be entitled to two months long service leave on full pay after ten years of service; thereafter additional long service shall accrue on the basis of five months long service leave on full pay for each ten years' service.  
  
Employees with at least seven years' service and less than 10 years' service are entitled, proportionate to his or her length of service, to proceed on a proportionate period of long service leave on the basis of two months' long service leave for ten years' service on full pay.
  - (b) Where the services of an employee with at least five years' service and less than seven 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, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months' long service leave for ten years' service.  
  
Where the services of an employee with at least seven years are terminated by the employer or by the employee, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months' long service leave for ten years' service.  
  
Where the services of an employee with at least 10 years' service are terminated by the employer or by the employee, he/she shall be entitled to be paid on the basis of two months' long service leave for ten years' service and thereafter on the basis of five months long service leave for each ten years' service.
- (ii) For the purposes of subclause (i) of this clause:
  - (a) Service shall mean continuous service with the employer. For the purpose of this paragraph, continuous service shall be determined in accordance with the provisions of section 7 of the

NSW Health Policy Directive PD2019\_010 Leave Matters for the NSW Health Service, as amended from time to time.

- (b) Broken periods of service with the employer in one or more hospitals shall count as service subject to the following:
- (1) where an officer, after ceasing employment with the employer is re-employed by the employer a subsequent to the 1st July 1974, any service of that officer before he/she was so re-employed shall not be counted for the purpose of determining any long service leave due to that officer in respect of his/her service after he/she was so re-employed unless he/she has completed at least five years' continuous service from the date of his/her being so re-employed;
  - (2) an officer employed at the 1st July 1974, and who was entitled to count broken service under the provisions of the Award in force prior thereto shall be entitled to count such broken service prior to the 1st July 1974.
- (c) Service shall not include -
- (1) any period of leave without pay except in the case of employees who have completed at least ten years' service (any period of absence without pay being excluded there from) in which case service shall include any period of leave without pay not exceeding six months taken after 1 July, 1974;
  - (2) any period of part-time service (excluding part-time service under clause 7 of this Award), except as provided in subclause (d) of this clause.
- (d) An employee shall be entitled to have previous part-time service under Agreement No.1 of 1975 which is the equivalent of at least two full day's duty per week taken into account for long service leave purposes in conjunction with full-time service or part-time service under clause 7 of this Award, on the basis of the proportion that the actual number of hours worked each week bears to 40 hours up until 30 June 1987 and bears to 38 on and from 1 July 1987, provided the part-time service merges without break with the subsequent full-time or part-time service.
- (iii) An employee with an entitlement to long service leave may elect to access such entitlement:
- on full pay;
  - on half pay; or
  - on double pay.
- (iv) When an employee takes long service leave, the leave entitlement will be deducted on the following basis:
- a period of leave on full pay - the number of days so taken;
  - a period of leave on half pay - half the number of days so taken; or
  - a period of leave on double pay - twice the number of days so taken.
- (v) When taking long service leave and an employee would otherwise have had a rostered shift fall on a public holiday during that period, the amount of long service leave to be deducted is to be reduced by one day for the public holiday.
- (vi) Long Service Leave shall be taken at a time mutually arranged between the employer and the employee.

(vii)

- (a) On the termination of employment of an employee, otherwise than by his/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 unless the employee transfers his/her leave entitlement in accordance with section 7 of the NSW Health Policy Directive PD2019\_010 Leave Matters for the NSW Health Service, as amended from time to time.
- (b) Where an employee who has acquired a right to long service leave, or after having had five years' service and less than ten years' service dies, the widow or the widower of such employee, or if there is no such widow or widower, the children of such employee, or if there is no such widow, widower, or children, such person who, in the opinion of the employer, was at the time of the death of such employee, a dependent relative of such employee, shall be entitled to receive the monetary value of the leave not taken or which would have accrued to such employee, had his/her services terminated as referred to in paragraph (b) of subclause (i) of this clause and such monetary value shall be determined according to the salary payable to the employee at the time of his/her death.

Where there is a guardian of any children entitled under this paragraph the payment, to which such children are entitled, may be made to such guardian for their maintenance, education and advancement.

Where there is no person entitled under this paragraph to receive the monetary value of any leave payable under the foregoing provisions payment in respect thereof shall be made to the legal personal representative of such employee.

- (viii) Rights to long service leave under this clause shall be in replacement of rights to long service leave, if any, which at the 1st July 1974, may have accrued or may be accruing to an officer and shall apply only to persons in the employ of the employer on or after the 1st July 1974. Where an officer has been granted long service leave or has been paid its monetary value prior to the 1st July 1974, the employer shall be entitled to debit such leave against any leave to which the officer may be entitled pursuant to this clause.

## 20. Board and Accommodation

- (i) Where an officer lives at a hospital, deductions from his/her salary for accommodation and/or board may be made by the employer at the rates prescribed from time to time by the Public Health System Nurses' and Midwives' (State) Award.
- (ii) Where individual meals only are provided, the officer may be charged the charges applicable under the Public Health System Nurses' and Midwives' (State) Award.
- (iii) No deduction shall be made from the salary of an officer for board and accommodation when the officer is absent on annual, sick or long service leave, provided that the employer shall be entitled to make the deduction for accommodation where the officer:
- (a) having been requested to leave his/her room completely vacant fails to do so; or
- (b) is absent on sick leave and such absence does not exceed six consecutive days.

## 21. Uniform and Laundry Allowance

- (i) Sufficient suitable and serviceable uniforms shall be provided for each officer required to wear a uniform and such uniforms shall be laundered at the expense of the employer.
- (ii) Where the employer requires a uniform to be worn but does not provide such uniform, the following allowances shall be paid:

- (a) where a full uniform, including special shoes, is required, an amount per week as set in Item 4 of Table 1, Allowances;
- (b) in other cases, an amount as also set in Item 4 of Table 1.

## 22. Termination of Employment

Employment may be terminated only by four weeks' notice given in writing either by the employer or the officer at any time during the week or by payment or forfeiture of four weeks' salary as the case may be, provided that the officer and the employer may agree to a lesser period of notice. Nothing in this clause shall prevent the summary dismissal of an officer for misconduct or neglect of duty.

## 23. Settlement of Disputes

- (i) Where a dispute arises in a particular section which cannot be resolved between the employees or their representative and the supervising staff, it shall be referred to the Chief Executive Officer of the Health Service or establishment or his/her nominee, who will arrange for the matter to be discussed with the employees concerned and a local representative or representatives of the Union.
- (ii) Failing settlement of the issue at this level, the matter shall be referred to the Secretary, and the Head Office of the Union. The dispute will then be dealt with pursuant to subclause (v) of this clause.
- (iii) Whilst these procedures are continuing, no stoppage of work or any form of ban or limitation of work shall be applied.
- (iv) The Union reserves the right to vary this procedure where it is considered a safety factor is involved.
- (v) With a view to an amicable and speedy settlement, all disputes that firstly cannot be settled in accordance with subclauses (i) and (ii) of this clause may be submitted to a committee consisting of not more than six members, with equal representatives of the Secretary and the Union. Such committee shall have the power to investigate all matters in dispute and to report to the Chief Executive Officer of the Health Service and the Union respectively with such recommendations as it may think right and, in the event of no mutual decision being arrived at by such committee, the matter in dispute may be referred to the Public Health Employees (State) Industrial Committee.
- (vi) This clause shall not interfere with the rights of either party to institute proceedings for the determination of any matter in accordance with the *Industrial Relations Act 1996*.

## 24. Anti-Discrimination

- (i) It is intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;

- (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

NOTES -

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion".

### 25. Study Leave

- (i) Subject to the terms of this clause the employer may grant to officers other than interns, study leave without loss of pay as follows:

Face-to-face courses: Half hour study time for every hour of compulsory lecture and/or tutorial attendance, up to a maximum of four hours study time per week. Where no face-to-face course is provided: A maximum of four hours study time per week for a maximum of 27 weeks per year.

- (ii) Study leave shall only be granted in respect of a course:
  - (a) leading to higher medical qualifications as defined in clause 1, Definitions, of this Award; and
  - (b) in respect of a qualification which when obtained would be relevant to the needs of the hospital.
- (iii) The officer shall submit to the employer a timetable of the proposed course of study and evidence of the officer's enrolment in the course.
- (iv) The grant of study leave is subject to the convenience of the employer and should not interfere with the maintenance of essential services or with patient care.
- (v) Periods of study leave granted shall not be taken into account for the purposes of calculating overtime payments;
- (vi) Study leave granted subject to the terms of this clause, may be accrued to a maximum of seven working days for the purpose of enabling the officer to study prior to a written, oral or clinical examination. An option to accumulate study leave in terms of this subclause shall be exercised at the commencement of each academic year and the officer shall notify the employer accordingly;
- (vii) Officers who have given continuous service of more than one year shall be allowed to accrue study leave not taken up to a maximum of fourteen calendar days.

### 26. Travelling Allowances

- (i) An officer seconded to another hospital may be granted a daily travel allowance at the rate of the difference between the cost of travel by public transport to his/her normal place of employment and travel by public transport to the seconding hospital. Provided that where an officer drives his/her own vehicle, he/she shall, in lieu, be eligible for a mileage allowance equivalent to the "Transport Allowance" as determined under the *Health Services Act 1997* from time to time, for the difference between the distance to his/her normal place of employment and the distance to the seconding hospital.

- (ii) An officer who, with the approval of the employer, uses on official business, a motor vehicle maintained primarily for other than official business, shall be paid the above-mentioned mileage allowance from time to time effective. However, where it is estimated that an officer will, with the approval of the employer, be required to use his/her private vehicle on official business on at least 50 days during any period of 12 months and during that period aggregate at least 850 kilometres of official running, he/she shall be paid at the "Official Business Rate" prescribed by clause 36 of the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* at the rate in force from time to time throughout the year.
- (iii) For the purpose of subclause (ii) travel on official business:
  - (a) occurs when an officer is required by the employer as part of his/her duty to use his/her motor vehicle to attend away from his/her normal place of employment or seconding hospital to another clinic, annexe or hospital. Where an officer travels on official business direct from his/her place of residence to a clinic, annexe or hospital, other than his/her normal place of employment he/she shall be paid for the difference between the distance to his/her normal place of employment or seconding hospital and that other annexe, clinic or hospital;
  - (b) does not include "call backs".
  - (c) shall include other arrangements as agreed to between the employer and the Union from time to time.
- (iv) Nothing in this clause shall make the employer liable for the cost of the officer's daily travel to his/her usual and normal place of employment.

### **27. Mobility, Excess Fares and Travelling**

For the purpose of this clause accustomed place of work shall mean the location where an employee is regularly required to commence duty by the employer.

- (i) An employee shall be required to proceed to the accustomed place of work and return home once on each ordinary working day or shift in the employee's own time and at the employee's own expense.
- (ii)
  - (a) Where an employee is directed to report for duty to a place of work other than the employee's accustomed place of work the employee shall travel to and from the alternative place of work in the employer's time for those periods in excess of time normally taken to travel to and from the accustomed place of work.
  - (b) If the excess of travelling time on a particular day or shift is greater than the prescribed ordinary hours of duty for the particular category of staff for that day or shift, then the excess of hours shall be paid at the ordinary rate of pay to the extent of travelling time.
  - (c) Fares incurred by such employee in excess of the fares normally incurred in travelling to the employee's accustomed place of work and returning home from the accustomed place of work shall be reimbursed.
  - (d) Where the employee is required to report to an alternative place of work and has the prior approval of the employer to travel by his/her own mode of conveyance, the employee shall be paid a kilometre allowance for kilometres travelled in excess of the kilometres the employee normally travels between the accustomed place of work and home. The kilometre allowance will be prescribed from time to time by the Industrial Relations Secretary.
- (iii)
  - (a) Where an employer has determined that an employee or employees should report to a new accustomed place of work on a permanent basis, the decision must be discussed with the affected

employee(s) and the local branch of the Union prior to notice of changed accustomed place of work being given.

- (b) The employer shall give the employee reasonable notice of the requirement to report to a new accustomed place of work. For the purpose of this subclause "reasonable notice" shall be one calendar month prior to the date the employee is first required to report to the new accustomed place of work.
- (c) Where the accustomed place of work is changed on a permanent basis by the employer, the employee shall report to the new accustomed place of work on the date specified by the employer.
- (d) If there is disagreement about such a decision after such discussion or if a significant number of employees are involved, the matter should be referred to the Secretary who will discuss the matter with the Union and will determine the date upon which notice will be given to employee(s).

(iv)

- (a) The provision of this clause shall not apply to an employee appointed to regularly perform relief duties or to employees specifically employed to perform duties at more than one place of work except as provided in (b) hereunder.
- (b) If a reliever incurs fares in excess of \$5 per day in travelling to and from the relief site, the excess shall be reimbursed.

Where a reliever, with the prior approval of the employer, travels by his/her own mode of conveyance and incurs travelling costs in excess of \$5 per day to and from the relief site, such excess shall be reimbursed. The rate applicable shall be the kilometre allowance prescribed from time to time by the Industrial Relations Secretary less \$5.

This \$5 shall be reviewed annually by the employer.

- (v) No payment shall be made under this clause unless the employer is satisfied that the employee has incurred additional expenditure in having to report to an alternative place of work, at the direction of the employer.
- (vi) Travel to an alternative place of work, either by public transport or own mode of conveyance, shall in all instances be by the most direct route.

## **28. Secondment**

- (i) Allowance - An officer, other than an intern, seconded to work in a hospital listed at Part C of this Award shall have his/her salary increased by one incremental step, by way of allowance, for the period the officer works in such hospital.

For the duration of the officer's secondment, other than periods of leave, the allowance shall be treated as salary for the purpose of calculating overtime and shift penalties.

- (ii) Travel - An officer referred to in subclause (i) of this clause shall be allowed a paid journey to Sydney and return by economy class airfare or equivalent thereof for each period of 7 weeks in the employment of a hospital listed at Part C of this Award.

At the discretion of the employer the paid journey may be taken in advance. Such travel may be used for the purpose of furthering the officer's medical education.

### 29. Relocation Expenses

Where an officer is employed by the employer within the metropolitan area and applies for and obtains a permanent position at a country location (being either a position covered by this Award or a Career Medical Officer position), the costs incurred by the officer in respect to removal of furniture and effects and conveyancing in the purchase of a residence are to be refunded by the employer on the following basis:-

At the time the appointment is taken up: 50% of costs incurred.

After one year's service at the country location: a further 25% of the costs incurred.

After two years' service at the country location: the remaining 25% of the costs incurred.

These arrangements become effective in relation to country appointments made after 1 January 1989.

### 30. Labour Flexibility

- (i) The employer may direct an employee to carry out such duties as are reasonable, and within the limits of the employee's skill, competence and training consistent with the employee's classification, grouping and/or career stream provided that such duties are not designed to promote de-skilling.
- (ii) The employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained or has otherwise acquired the necessary skills in the use of such tools and equipment.
- (iii) Any direction issued by the employer pursuant to subclauses (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy work environment.
- (iv) Existing provisions with respect to the payment of higher duties allowances shall apply in such circumstances.

### 31. Salary Packaging

- (i) By agreement with their employer, employees may elect to package part or all of their salary in accordance with this clause, to obtain a range of benefits as set out in the NSW Health Policy Directive PD2018\_044 *Salary Packaging*, as amended from time to time. Such election must be made prior to the commencement of the period of service to which the earnings relate. Where an employee also elects to salary sacrifice to superannuation under this Award, the combined amount of salary packaging/sacrificing may be up to 100 per cent of salary.

Any salary packaging above the fringe benefit exemption cap will attract fringe benefits tax as described in paragraph (iv) below.

- (ii) Where an employee elects to package an amount of salary:
  - (a) Subject to Australian taxation law, the packaged amount of salary will reduce the salary subject to PAYE taxation deductions by that packaged amount.
  - (b) Any allowance, penalty rate, overtime payment, payment for unused leave entitlements, weekly workers' compensation, or other payment other than any payment for leave taken in service, to which an employee is entitled under this Award or statute which is expressed to be determined by reference to an employee's salary, shall be calculated by reference to the salary which would have applied to the employee under this Award in the absence of any salary packaging or salary sacrificing made under this Award.
  - (c) 'Salary' for the purpose of this clause, for superannuation purposes, and for the calculation of Award entitlements, shall mean the Award salary as specified in clause 2. Salaries, and which shall include 'approved employment benefits' which refer to fringe benefit savings, administration costs, and the value of packaged benefits.

- (iii) Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be packaged. Such payroll deductions may include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees, and private health fund membership fees.
- (iv) The salary packaging scheme utilises a fringe benefit taxation exemption status conferred on public hospitals and local health districts, which provides for a fringe benefit tax exemption cap of \$17,000 per annum. The maximum amount of fringe benefits-free tax savings that can be achieved under the scheme is where the value of benefits when grossed-up, equal the fringe benefits exemption cap of \$17,000. Where the grossed-up value exceeds the cap, the employer is liable to pay fringe benefits tax on the amount in excess of \$17,000 but, will pass this cost on to the employee. The employer's share of savings, the combined administration cost and the value of the package benefits, are deducted from pre-tax dollars.
- (v) The parties agree that the application of the fringe benefits tax exemption status conferred on public hospitals and local health districts is subject to prevailing Australian taxation laws.
- (vi) If an employee wishes to withdraw from the salary packaging scheme, the employee may only do so in accordance with the required period of notice as set out in the NSW Health Policy Directive PD2018\_044 *Salary Packaging*, as varied from time to time.
- (vii) Where an employee ceases to salary package, arrangements will be made to convert the agreed package amount to salary. Any costs associated with the conversion will be borne by the employee, and the employer shall not be liable to make up any salary lost as a consequence of the employee's decision to convert to salary.
- (viii) Employees accepting the offer to salary package do so voluntarily. Employees are advised to seek independent financial advice and counselling to apprise them of the implications of salary packaging on their individual personal financial situations.
- (ix) The employer and the employee shall comply with the procedures set out in the NSW Health Policy Directive PD2018\_044 *Salary Packaging* as amended from time to time.

### **32. Reasonable Hours**

- (i) Subject to subclause (ii) the employer may require an employee to work reasonable overtime at overtime rates unless or as otherwise provided for under the Award.
- (ii) The employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (iii) For the purposes of subclause (ii) what is unreasonable or otherwise will be determined having regard to:
  - (a) any risk to employee health and safety;
  - (b) the employee's personal circumstances including any family and carer responsibilities;
  - (c) the needs of the workplace or enterprise;
  - (d) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (e) any other relevant matter.

### **33. Salary Sacrifice to Superannuation**

- (i) Notwithstanding the salaries prescribed in clause 2, Salaries, as varied from time to time, an employee may elect, subject to the agreement of the employee's employer, to sacrifice a part or all of the salary

payable under the salaries clause to additional employer superannuation contributions. Such election must be made prior to the commencement of the period of service to which the earnings relate. The amount sacrificed together with any salary packaging arrangements under clause 31, Salary Packaging, of this Award may be made up to one hundred (100) per cent of the salary payable under the relevant salaries clause, or up to one hundred (100) per cent of the currently applicable superannuable salary, whichever is the lesser.

In this clause, ‘superannuable salary’ means the employee’s salary as notified from time to time to the New South Wales public sector superannuation trustee corporations.

- (ii) Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be packaged. Such payroll deductions may include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees and private health fund membership fees.
- (iii) Where the employee has elected to sacrifice a part or all of the available payable salary to additional employer superannuation contributions:
  - (a) The employee shall be provided with a copy of the signed agreement. The salary sacrifice agreement shall be terminated at any time at the employee’s election and shall cease upon termination of the employee’s services with the employer.
  - (b) Subject to Australian taxation law, the amount of salary sacrificed will reduce the salary subject to appropriate PAYE taxation deductions by the amount sacrificed; and
  - (c) Any allowance, penalty rate, overtime, payment for unused leave entitlements, weekly workers’ compensation, or other payment, other than any payment for leave taken in service, to which an employee is entitled under the relevant Award or any applicable Award, act, or statute which is expressed to be determined by reference to an employee’s salary, shall be calculated by reference to the salary which would have applied to the employee under the salaries clause of the relevant Award in the absence of any salary sacrifice to superannuation made under this Award.
- (iv) The employee may elect to have the specified amount of payable salary which is sacrificed to additional employer superannuation contributions:
  - (a) paid into the superannuation scheme established under the *First State Superannuation Act 1992* as optional employer contributions; or
  - (b) subject to the employer’s agreement, paid into a private sector complying superannuation scheme as employer superannuation contributions.
- (v) Where an employee elects to salary sacrifice in terms of subclause (iv) above, the employer will pay the sacrificed amount into the relevant superannuation fund.
- (vi) Where the employee is a member of a superannuation scheme established under:
  - (a) the *Police Regulation (Superannuation) Act 1906*;
  - (b) the *Superannuation Act 1916*;
  - (c) the *State Authorities Superannuation Act 1987*;
  - (d) the *State Authorities Non-contributory Superannuation Act 1987*; or
  - (e) the *First State Superannuation Act 1992*.

The employee’s employer must ensure that the amount of any additional employer superannuation contributions specified in subclause (i) above is included in the employee’s

superannuable salary which is notified to the New South Wales public sector superannuation trustee corporations.

- (vii) Where, prior to electing to sacrifice a part or all of their salary to superannuation, an employee had entered into an agreement with their employer to have superannuation contributions made to a superannuation fund other than a fund established under legislation listed in subclause (v) above, the employer will continue to base contributions to that fund on the salary payable under clause 2, Salaries of the Award to the same extent as applied before the employee sacrificed that amount of salary to superannuation. This clause applies even though the superannuation contributions made by the employer may be in excess of the superannuation guarantee requirements after the salary sacrifice is implemented.

### 34. No Extra Claims

Other than as provided for in the *Industrial Relations Act 1996* and the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014*, there shall be no further claims/demands or proceedings instituted before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2022 by a party to this Award.

### 35. Area, Incidence and Duration

- (i) This Award takes effect from 1 July 2021 and shall remain in force for a period of one year. The allowances in the second column of Table 1 - Part B - Allowances and Other Rates will apply from the first full pay period on or after the dates 1 July 2021.
- (ii) This Award rescinds and replaces the Public Hospital Medical Officers (State) Award 2019 published 6 March 2020 (386 I.G. 1165) .and all variations thereof.
- (iii) This Award shall apply to persons employed in classifications contained herein employed in the New South Wales Health Service under section 115(1) of the *Health Services Act 1997*, or their successors, assignees or transmittees.

## PART B

**Table 1 - Allowances and Other Rates**

| Item No. | Clause  | Allowance Description   | Frequency                            | Rate from 01-Jul-2021<br>\$ | Rate from first full pay period on or after 01-Jul-2021<br>\$ |
|----------|---------|---|--------------------------------------|-----------------------------|---|
|          |         | In Charge   |                                      |                             |   |
| 1        | 5       | In charge Allowance   | Per 12 hours of duty or part thereof | 21.00                       | 21.40   |
|          |         | Meal Allowance for Overtime   |                                      |                             |   |
| 2        | 11(ii)  | (a) Breakfast at or before 6.00 a.m.  | Each                                 | 31.25*                      | 31.95   |
| 2        | 11(ii)  | (b) Evening at least 1 hour after normal ceasing time and extends beyond or is worked wholly after 7.00 pm. | Each                                 | 31.25*                      | 31.95   |
| 2        | 11(ii)  | (c) Lunch beyond 2.00pm Saturdays, Sundays or Holidays  | Each                                 | 31.25*                      | 31.95   |
|          |         | On-call   |                                      |                             |   |
| 3        | 12(iii) | On-call allowance per on-call period which coincides with a day rostered on duty                            | Per Day                              | 16.30                       | 16.60   |
| 3        | 12(iii) | On-call allowance per on-call period which coincides with a day rostered off duty                           | Per Day                              | 32.60                       | 33.30   |

|   |         |  |          |        |        |
|---|---------|--|----------|--------|--------|
| 3 | 12(iii) | On Call Per Week (Medical Officers) Uniform      | Per Week | 114.10 | 116.40 |
| 4 | 21(iii) | Full uniform including special shoes if required | Per Week | 2.54   | 2.57   |
| 4 | 21(iii) | Other Cases                                      | Per Week | 1.87   | 1.89   |

\* NB: These rates are varied in accordance with any variations in the rates payable under Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009.

## PART C

Albury Base Hospital

Armidale Hospital

Bathurst Base Hospital

Byron Central Hospital

South East Regional Hospital

Broken Hill Base Hospital

Coffs Harbour Health Campus

Dubbo Base Hospital

Goulburn Base Hospital

Grafton Base Hospital

Griffith Base Hospital

Lismore Base Hospital

Orange Health Service

Port Macquarie Base Hospital

Shoalhaven District Memorial Hospital

Tamworth Rural Referral hospital

Manning Base Hospital (Taree)

Tweed Hospital

Wagga Wagga Health Service

N. CONSTANT, *Chief Commissioner*

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Printed by the authority of the Industrial Registrar.

**CROWN EMPLOYEES (CORRECTIONAL OFFICERS,  
DEPARTMENT OF COMMUNITIES AND JUSTICE - CORRECTIVE  
SERVICES NSW) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(Case No. 163499 of 2021)

Before Commissioner Sloan

4 February 2022

**REVIEWED AWARD**

**1. Arrangement**

| Clause No. | Subject Matter   |
|------------|--|
| 1.         | Arrangement  |
| 2.         | Title  |
| 3.         | Definitions  |
| 4.         | Conditions Fixed by Other Instruments of Employment                          |
| 5.         | Ranking Structure  |
| 6.         | Salaries   |
| 7.         | Allowances   |
| 8.         | Progression and Promotion  |
| 9.         | Increments   |
| 10.        | Hours of Work  |
| 11.        | Shiftwork  |
| 12.        | Rostered Days Off  |
| 13.        | Shift Handover   |
| 14.        | Payment of Salary  |
| 15.        | Overtime   |
| 16.        | Recreation Leave and Compensation for Saturdays, Sundays and Public Holidays |
| 17.        | Annual Leave Loading   |
| 18.        | Allowance for Temporary Assignment   |
| 19.        | Permanent part-time  |
| 20.        | Technological change   |
| 21.        | Performance Management   |
| 22.        | Work Health and Safety   |
| 23.        | Dispute resolution procedures  |
| 24.        | Professional Conduct   |
| 25.        | Equity of Employment   |
| 26.        | Harassment Free Workplace  |
| 27.        | Anti-Discrimination  |
| 28.        | Deduction of Association Membership and Legal Fund Fees                      |
| 29.        | Savings of rights  |
| 30.        | No further claims  |
| 31.        | General  |
| 32.        | Area, Incidence and Duration   |

Schedule A - Agreed Procedures for the Settlement of  
Grievances and Disputes

Schedule B - Memorandum of Understanding for  
Correctional Officers, Corrective Services NSW  
Schedule C – Safe Staffing Levels

## 2. Title

This Award will be known as the Crown Employees (Correctional Officers, Department of Communities and Justice- Corrective Services NSW) Award.

## 3. Definitions

In this Award, unless the content or subject matter otherwise indicates, the following definitions apply:

"Act" means the *Government Sector Employment Act 2013*, or its replacement.

"Association" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.

"Award" means this Award.

"Conditions Award" means the Crown Employees (Public Service Conditions of Employment) Award 2009 or its replacement.

"Corrective Services NSW (CSNSW)" means a division within the Department of Communities and Justice.

"Division Head" means the Secretary of the Department of Communities and Justice

"Day Worker" means an Officer, other than a shift worker, who works the ordinary hours from Monday to Friday inclusive between the hours of 6.00 a.m. and 6.00 p.m.

"General Manager" means the person occupying or acting in the role of General Manager of a Correctional Centre or Superintendent of a work location.

"Correctional Officer" or "Officer" means and includes all adult persons (as defined by the Act), employed on an ongoing, temporary or casual basis, who is assigned to one of the roles covered by this Award

"Regulation" means the *Government Sector Employment Regulations 2014*, or its replacement.

"Service" means continuous service in a position covered by this Award.

"Shift worker - Continuous Shifts" means an officer engaged in work carried out in continuous shifts throughout the 24 hours of each of at least six consecutive days without interruption except during meal breaks or due to unavoidable causes beyond the control of the Division Head or delegate.

"Shift worker - non-continuous Shifts" means an officer who is not a "day worker" or a "shift worker - continuous shifts", as defined above.

## 4. Conditions Fixed by Other Instruments of Employment

- (i) The following Awards, or their replacements, insofar as they fix conditions of employment applying to officers covered by this Award, which are not fixed by this Award, will continue to apply:

Crown Employees (Public Service Conditions of Employment) Award 2009

Crown Employees (Transferred Employees Compensation) Award 2009

- (ii) Except as expressly provided by this Award, and except where conditions are covered by the Awards referred to in subclause (i) of this clause, the conditions of officers are determined by the provisions of the Act, the Regulation and the Public Service Industrial Relations Guide or its replacement.

### 5. Ranking Structure

- (i) Custodial Officers:
- Senior Correctional Officer
- First Class Correctional Officer 2nd year and thereafter
- First Class Correctional Officer 1st year
- Correctional Officer 2nd year and thereafter
- Correctional Officer 1st year
- Probationary Correctional Officer
- (ii) Industrial Officers:
- Senior Overseer
- Overseer 2nd year and thereafter
- Overseer 1st year

### 6. Salaries

- (i) Salaries payable to officers covered by this Award are in accordance with the Crown Employees (Public Sector – Salaries 2021) Award or an Award replacing it.
- (ii) Salaries prescribed in this clause include a component for the previously paid:
- environmental allowance
- special duties allowance
- clothing and laundry allowances (except for hosiery)

### 7. Allowances

The following allowances are payable subject to the conditions attached:

- (i) Incidental - this is to compensate for full participation in Area and Case Management, including maintenance of Case Management files, training junior staff and roster preparation (where appropriate), and for the progressive introduction of electronic security and inmate monitoring systems.
- (a) This allowance will be paid for all purposes. In the case of an officer acting in a higher duties capacity, the higher allowance is only payable if the officer has acted continuously in the role for more than four weeks, except for Senior Correctional Officers rostered as Officer in Charge on "B" (night) or "C" (afternoon) watches for consecutive periods of 4 (four) days or more.
- (b) Correctional Officer

|   | Per annum effective first pay period commencing on or after 1 July 2021<br>\$ |
|---|---|
| Probationary Correctional Officer (in training) | n/a   |
| Probationary (on graduation)                    | 1082  |
| 1st year  | 1,585   |
| 2nd year and thereafter                         | 2,169   |

|                                     |       |
|-------------------------------------|-------|
| 1st Class - 1st year                | 3,244 |
| 1st Class - 2nd year and thereafter | 3,244 |
| Senior Correctional Officer         | 5,407 |

## (c) Industries and Maintenance

|                 |       |
|-----------------|-------|
| Overseer        | 3,244 |
| Senior Overseer | 5,407 |

(d) This allowance is not payable to Probationary Correctional Officers whilst in primary training. It is payable from the date these officers enter on duty in a correctional centre after graduation.

- (ii) Meals – in general Correctional Officers are not entitled to meal monies except as provided for in clause 5 of Schedule B
- (iii) Mobile Work Camps - an amount of \$127 per day in addition to a normal shift payment at single time is payable to an officer rostered on a mobile work camp. This is an all incidence allowance to compensate for all out of hours activities for the remaining 16 hours each day for, among other things, acquisition of additional skills for training purposes, imparting skills to inmates, responsibilities for the security of equipment on a 24 hour basis, absence from their families and disabilities for being exposed to the elements.
- (iv) Hosiery allowance - an amount of \$120 per annum is paid to female Correctional Officers to compensate for the purchase of hosiery (which is not provided as part of the standard issue of clothing).
- (v) Should there be a variation to the Crown Employees (Public Sector – Salaries 2021) Award, or an award replacing it, during the term of this Award, by way of salary increase or other benefit to the public service, this Award will be varied to give effect to any such salary increase, or other benefit, from the operative date of the variation of the former Award or replacement award.

### 8. Progression and Promotion

- (i) Officers, whose conduct and services are satisfactory, will progress to the rank of Correctional Officer, subject to completion of twelve (12) months service as a Probationary Correctional Officer and having satisfactorily completed the appropriate training course/s as determined by CSNSW.
- (ii) Officers, who, having completed 12 months service on the Probationary rate, and who are refused progression to the rank of Correctional Officer, may request that the decision be reviewed by the Division Head or delegate.
- (iii) Officers, who have completed twelve (12) months service on the 2nd year and thereafter rate for Correctional Officer, will progress to the rank of Correctional Officer, 1st Class, subject to the following criteria:
- Satisfactory conduct and services;
  - Completion of appropriate training course/s as determined by CSNSW;
  - Value, quality and scope of the work performed warrants such progression.

N.B. Satisfactory conduct and services includes but is not limited to, the following:

- satisfactory sick leave record;
- punctual attendance;
- proper standard of dress and grooming;

- (g) no proven misconduct charges in the previous twelve (12) months.

Value, quality and scope of work performed will include:

- (h) capacity to undertake the more difficult posts with efficiency and economy;
  - (i) capacity to supervise and direct junior officers;
  - (j) high standard and accuracy of written reports;
  - (k) capacity to interact in a positive manner with other officers;
  - (l) being pro-active rather than reactive.
- (iv) Provided that officers who have not completed the training courses as determined under paragraph (iii)(b) by reason only of CSNSW exigencies are not prejudiced in their eligibility to progress.
  - (v) Correctional Officers, who, having completed 12 months service on the 2nd year and thereafter rate and who are refused progression to the rank of Correctional Officer, 1st Class, may request that the decision be reviewed by the Division Head or delegate.

### 9. Increments

- (i) The payment of increments under the scales of salaries prescribed by this Award are subject to approval by the Division Head or delegate and pursuant to the increment provisions of the Regulation except where varied by this Award.
- (ii) Four weeks prior to the date on which an officer will become eligible for an annual increment of salary, the General Manager will report to the Division Head or delegate as to the conduct and manner in which the duties of the officer have been performed.
- (iii) In cases where the recommendation of the General Manager is adverse to the granting of an increment, and such recommendation has been approved by the Division Head or delegate, the officer has a right of appeal as provided under Part 7 Public Sector disciplinary appeals of the *Industrial Relations Act 1996*.

### 10. Hours of Work

- (i) The ordinary hours of work for day workers are 38 hours per week averaged over a 28-day roster cycle, to be worked Monday to Friday inclusive, provided that by agreement between the parties ordinary hours up to a maximum of twelve (12) hours per day may be worked without the payment of overtime. Meal allowances are not applicable.
- (ii) The ordinary hours of work for shift workers are 38 hours per week averaged over a 28-day roster cycle, provided that shifts of up to twelve (12) hours may be worked without the payment of overtime. Meal allowances are not applicable.
- (iii) Time taken in partaking of meals will not count towards working time, unless such meal is taken as a crib break.
- (iv) A crib break is an entitlement to a paid break of 20 minutes to be taken between the 3rd and 5th hour after the commencement of a shift. The break is to be taken away from the direct work location wherever possible (but still within the correctional centre or work location but away from inmates) with officers being available to respond to any situation should they be required during the 20 minute break.
- (v) If a crib break referred to in subclause (iv) is not able to be taken, a Crib Break Penalty may be applicable as set out in Clause 5 of Schedule B of this Award.
- (vi) During the Daylight Saving changeover, an officer working a rostered shift will receive payment for a standard shift i.e. 8 hours plus shift allowance irrespective of whether the hours actually on duty are 7 or

9. However, if an officer is working an overtime shift, the officer is paid the actual hours worked i.e. either 7 or 9 hours.

### 11. Shiftwork

(i) For the purpose of this clause -

"Early Morning Shift" means any shift commencing before 6.00 am.

"Afternoon Shift" means any shift finishing after 6.00 pm and at or before midnight.

"Night Shift" means any shift finishing subsequent to midnight and at or before 8.00 am.

(ii) Officers who work shiftwork are to be paid the following allowances other than at weekends or on public holidays:

|                                |      |
|--------------------------------|------|
| Early morning shift            | 10%  |
| Afternoon shift (C or D watch) | 15%  |
| Night Shift (B watch)          | 17½% |

### 12. Rostered Days Off

(i) The hours of work prescribed in clause 10, Hours of Work of this award will be worked on the basis of a rostered day off in each 20 working days of a 28-day roster cycle. Officers will accrue 0.4 of an hour each 8-hour day towards having the 20th day off with pay, subject to subclauses (iii) and (iv) of this clause.

(ii) An officer's rostered day off is determined by CSNSW having regard to the needs of the establishment or sections. Where practicable, rostered days off will be consecutive with other days off.

(iii) Once set, the rostered day off may not be changed in a current 28-day roster cycle without agreement between the officer and his or her supervisor. Where the rostered day off is changed by agreement, another day will be substituted in the current roster cycle. Should this not be practicable the rostered day must be given and taken in the next roster cycle.

(iv) The maximum number of rostered days off prescribed in subclause (i) of this clause is 12 days per annum. There will be no accrual to a rostered day off during the first four (4) weeks of recreation leave.

(v) All other paid leave will contribute towards the accrual of rostered days off except where paid workers compensation and extended leave is current throughout the roster cycle. Where an officer's rostered day off falls during a period of sick leave, the officer's available sick leave will not be debited for that day.

### 13. Shift Handover

(i) The salaries paid to Correctional Officers and the application of a 38-hour week recognises that additional time may be involved for an officer at the time of shift handover in:

- (a) briefing incoming officers.
- (b) incoming officers parading prior to relieving security posts, towers, etc.
- (c) undertaking weapons safety check in the presence of the incoming and outgoing officer.

(ii) There will be no overtime hours paid for this work.

### 14. Payment of Salary

(i) Officers are paid according to an average of 38 ordinary hours per week. although more or less than 38 ordinary hours may be worked in any particular week.

- (ii) Officers will have their salaries paid into an account with a bank or other financial institution in New South Wales, as nominated by the officer. Salaries will be deposited in sufficient time to ensure that monies are available for withdrawal by officers no later than the appropriate payday.

### 15. Overtime

- (i) The conditions of the Conditions Award or its replacement will apply, provided that in establishments where extended ordinary hours and/or extended shift hours apply, officers working an overtime shift of 8 hours or more is only eligible for one (1) meal allowance.

### 16. Recreation Leave and Compensation for Saturdays, Sundays and Public Holidays

- (i) Officers engaged as day workers are entitled to recreation leave in accordance with the provisions of the Recreation Leave clause of the Conditions Award, or its replacement.
- (ii) Officers engaged as shift workers - continuous shifts under this Award and who are regularly required to perform rostered duty on Sundays and Public Holidays will receive the following compensation and be subject to the following conditions:
- (a) For ordinary rostered time worked on a Saturday - additional payment at the rate of half time extra.
- (b) For ordinary rostered time worked on a Sunday - additional payment at the rate of three quarter time extra.
- (c) When rostered off on a public holiday - no additional compensation or payment.
- (d) When rostered on a public holiday and work performed - additional payment at the rate of half time extra.
- (e) Recreation leave at the rate of six weeks per annum inclusive of any public holiday/s.
- (f) Additional payment on the following basis:

| Number of ordinary shifts worked on Sundays and/or Public Holidays during a qualifying period of twelve months from 1 December one year to 30 November the next year | Additional Payment                   |
|--|--------------------------------------|
| 4 to 10  | 1/5th of one week's ordinary salary  |
| 11 to 17   | 2/5ths of one week's ordinary salary |
| 18 to 24   | 3/5ths of one week's ordinary salary |
| 25 to 31   | 4/5ths of one week's ordinary salary |
| 32 or more   | One week's ordinary salary           |

- (iii) The additional payment will be made after the 1st December in each year for the preceding twelve months, provided that:
- (a) Where the employment of an officer is terminated, or the officer resigns or retires, the officer is entitled to be paid the additional payment that may have accrued under this paragraph from the preceding 1st December until the date of termination, resignation or retirement.
- (b) Payment will be at the rate applying as at 1st December each year, or at the date of termination, resignation or retirement.

### 17. Annual Leave Loading

- (i) The Annual Leave loading payable to all Correctional Officers engaged as shift workers will be 20% in lieu of all other entitlements under this heading.

- (ii) Annual Leave loading payable to Correctional Officers who are day workers will be paid in accordance with the provisions of the Conditions Award.

### **18. Allowance for Temporary Assignment**

- (i) Subject to this clause, an officer who is required to perform duties in a higher role covered by this Award will, provided the officer performs the whole of the duties and assumes the whole of the responsibilities of the higher role be paid an allowance at the difference between the officer's present salary and the salary prescribed for the higher role covered by this Award.
- (ii) Officers employed in the classification of Probationary Correctional Officer or Correctional Officer are not entitled to be paid the allowance prescribed in subclause (i) of this clause when performing duties of Correctional Officer or Correctional Officer 1st Class.
- (iii) An officer who is required to perform duties in a higher role covered by the Crown Employees (Senior Assistant Superintendents and Assistant Superintendents, Department of Communities and Justice-Corrective Services NSW) Award (or any award succeeding or replacing that award) will be paid an allowance equal to the difference between the officer's present salary and 95% of the '5 day' salary prescribed for the higher role. Any weekend or overtime penalty rates payable under this award will be applicable to this higher duties allowance.
- (iv) The allowance for temporary assignment payable under subclause (iii) of this clause will be included in salary for the purposes of calculating overtime only if the duties carried out during the period of overtime are those of the higher role and provided the salary and allowance does not exceed the maximum rate for Clerk Grade 8, as varied from time to time, when the rate payable for directed overtime will be at the maximum rate for Clerk, Grade 8 plus \$1.00.
- (v) The allowance for temporary assignment payable under subclauses (i) and (iii) of this clause will be paid for each day the officer acts in the higher role.
- (vi) The provisions of paragraph (i)(a) of clause 7 Allowances of this award will not apply to the payment of higher duties.

### **19. Permanent Part-Time**

- (i) CSNSW is committed to providing part-time work opportunities where practicable. Such arrangements should provide flexibility for effective use of resources and be of benefit to staff.
- (ii) Part-time arrangements must be acceptable to both CSNSW and the officer and must be in accordance with the provisions of the *Industrial Relations Act 1996* and the Flexible Work Practices Policy and Guidelines issued by the then Public Employment Office in October 1995.

### **20. Technological Change**

- (i) The introduction of technological changes will be undertaken in accordance with the provisions of the Conditions Award or its replacement.

### **21. Performance Management**

- (i) CSNSW's Performance Management System will be used as a process of identifying, evaluating and developing work performance. This will ensure CSNSW meets its corporate objectives and, at the same time, will benefit officers by way of providing information, establishing agreed targets, providing performance feedback and enhancing rapport with supervisors.
- (ii) Any officer who fails to gain a satisfactory performance appraisal will be counselled and a detailed developmental program will be negotiated to enable officers to reach satisfactory performance as outlined in CSNSW's Performance Management System.

## 22. Work Health and Safety

- (i) The parties to this Award are committed to achieving and maintaining accident-free and healthy workplaces by:
  - (a) assisting the Secretary Department of Premier and Cabinet and the Association in the development of policies and guidelines for CSNSW on Occupational Health, Safety and Rehabilitation;
  - (b) the implementation of such policies and guidelines within CSNSW;
  - (c) establishing consultative mechanisms and structures within CSNSW, to identify and introduce safe systems of work, safe work practices and working environments; to develop strategies to assist the rehabilitation of injured staff members; and to determine the level of responsibility to achieve these objectives. This will assist to achieve the objects of the *Work Health and Safety Act 2011*, the Regulation and Codes of Practice made under this Act, and the *Workplace Injury Management and Workers Compensation Act 1998* and the *Workers Compensation Act 1987*.
  - (d) identifying training strategies for officers, as appropriate, to assist in the recognition, elimination or control of workplace hazards and the prevention of work related injury and illness.
  - (e) directly involving the Division Head or delegate in the provisions of paragraphs (a) to (d) of this subclause.
- (ii) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

## 23. Dispute Resolution Procedures

- (i) The Grievances/Disputes Procedures contained in Schedule A applies to all parties covered by this Award.

## 24. Professional Conduct

- (i) Officers must be committed to personal conduct and service delivery in accordance with the principles, mission and corporate objectives as expressed in the CSNSW Corporate Plan.
- (ii) Officers must perform their duties diligently, impartially and conscientiously to the best of their ability by complying with the Department of Justice Code of Ethics and Conduct Policy in the performance of their duties.
- (iii) All officers will be professional in their conduct with the public, other staff and inmates.
- (iv) Officers must comply with the requirements of the CSNSW Dress Manual and ensure their dress and grooming are of the highest standard.

## 25. Equity of Employment

- (i) The parties are committed to providing a work environment which promotes the achievement of equity and the elimination of discrimination in employment.
- (ii) Officers with supervising responsibilities must ensure that all staff under their supervision are treated equitably and without bias or prejudice.

## 26. Harassment Free Workplace

- (i) The parties are committed to ensuring that officers work in an environment free of harassment. Harassment on the grounds of sex, marital status, pregnancy, race, culture or ethno-cultural background, disability or perceived disability (including HIV/AIDS), age, homosexuality or perceived

homosexuality, transgender or perceived transgender is unlawful in terms of the *Anti-Discrimination Act 1977*.

- (ii) Harassment is any repeated, uninvited or unwelcome behaviour directed at another person. The effect of harassment is to offend, annoy or intimidate another person and to make the workplace uncomfortable or unpleasant.
- (iii) Harassing behaviour is unacceptable and disruptive to the well-being of individuals and workplace productivity.
- (iv) Harassment on any grounds including, but not limited to, sex, marital status, pregnancy, race, culture or ethno-cultural background, disability or perceived disability (including HIV/AIDS), age, homosexuality or perceived homosexuality, transgender or perceived transgender will not be condoned by CSNSW or the Association.
- (v) Correctional Officers must prevent all forms of harassment by setting personal examples, by ensuring proper standards of conduct are maintained in the workplace and by taking immediate and appropriate measures to stop any form of harassment of which they may be aware.
- (vi) All Correctional Officers are required to refrain from perpetuating, or being party to, any form of harassment.
- (vii) Where a claim of harassment is made, and with consultation with the Association, and CSNSW considers there is reasonable grounds for considering harassment has occurred, the alleged offending officer is to be transferred to another work location until the matter is fully investigated.

#### **27. Anti-Discrimination**

- (i) It is the intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an officer because the officer has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is to be taken to affect:
  - (i) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (ii) offering or providing junior rates of pay to persons under 21 years of age;
  - (iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (iv) a party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

Notes:

- (a) CSNSW and its officers may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

### **28. Deduction of Association Membership and Legal Fund Fees**

- (i) The Association will provide CSNSW with a schedule setting out the Association's fortnightly membership and legal fund fees payable by members of the Association in accordance with the Association rules.
- (ii) The Association will advise CSNSW of any change to the amount of fortnightly membership and legal fund fees made under its rules. Any variation to the schedule of the Association's fortnightly membership and legal fund fees are to be provided to CSNSW at least 28 days in advance of the variation taking effect.
- (iii) Subject to subclauses (i) and (ii) of this clause, CSNSW will deduct the Association's fortnightly membership and legal fund fees from the pay of any officer who is an Association member in accordance with the Association's rules, provided the officer has authorised CSNSW to make such deductions.
- (iv) Monies so deducted from the officer's pay will be forwarded regularly to the Association together with all necessary information to enable the Association to reconcile and credit subscriptions to the officer's membership accounts.
- (v) Unless other arrangements are agreed to by CSNSW and the Association, all Association membership and legal fund fees will be deducted by CSNSW on a fortnightly basis.

### **29. Savings of Rights**

- (i) At the time of the making of this Award, no officer covered by this Award will suffer a reduction in his or her rate of pay or any loss or diminution in his or her conditions of employment as a consequence of the making of this Award.

### **30. No Further Claims**

- (i) It is a condition of this Award that the Association undertakes for the duration of the life of this Award not to pursue any extra claims, award or over award, with respect to Correctional Officers.

### **31. General**

- (i) Nothing in this Award will be construed as restricting the Division Head or delegate to alter the duties of any role or to abolish any role covered by this Award in consultation with the Association.

### **32. Area, Incidence and Duration**

- (i) This Award applies to all officers defined in clause 5, Ranking Structure, of this Award.
- (ii) This award is made following a review under Section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Crown Employees (Correctional Officers Department of Attorney General and Justice – Corrective Services NSW) Award published 8 May 2020 (387 I.G. 1154).
- (iii) The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the

Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from..

- (iv) The award remains in force until varied or rescinded, the period for which it was made having already expired.
- (v) Changes made to this award subsequent to it first being published on 11 July 2008 (366 I.G.130) have been incorporated into this award as part of the review.
- (vi) The Prison Officers (Settlement of Grievances and Disputes) Agreement, Agreement No. 2471 of 1984 is rescinded and replaced by Schedule A of this award.

## **SCHEDULE A - AGREED PROCEDURES FOR SETTLEMENT OF GRIEVANCES AND DISPUTES**

### **1. Objectives**

- 1.1 The object of these procedures is the improvement of industrial relations and the development of a spirit of co-operation within CSNSW.
- 1.2 The parties acknowledge the desirability, in the interests of all concerned of industrial claims being dealt with expeditiously and without resort to industrial action.
- 1.3 It is the intention that as CSNSW is an essential service industry, problems and disputes should be resolved by discussion and the adoption of common-sense solutions rather than by the resort to industrial action.
- 1.4 It is recognised that proper consultation and communication within CSNSW are of the utmost importance for its effective operation and for the administration of its functions.
- 1.5 There will be co-operation at all levels to ensure the final resolution of disputes expeditiously.
- 1.6 Compliance with the spirit and intent of this agreement as well its terms, is accepted as essential to the achievement of a better working atmosphere for Correctional Officers and to ensuring a stable environment for inmates.
- 1.7 The officials of the POVB and of the sub-branches are recognised as having, within their respective spheres, an essential role and responsibility in the handling of industrial disputes and representing Correctional Officers, but with due regard to their responsibilities as Correctional Officers.
- 1.8 These procedures are not intended to limit the powers of tribunals under the *Industrial Relations Act* 1996 but are designed to facilitate the process of conciliation and the settlement of industrial disputes by amicable arrangements as envisaged by the *Industrial Relations Act* 1996. All matters filed pursuant to the *Industrial Relations Act* 1996 will be dealt with in accordance with it.
- 1.9 It is the intention that the agreed procedure will be followed in processing industrial disputes but it may be necessary by agreement to by-pass some of the steps of the procedure in attempting to achieve a speedy resolution in specific instances.

### **2. Definitions**

In this Schedule, the definitions as listed in Clause 3 Definitions of the Crown Employees (Correctional Officers, Department of Attorney General and Justice - Corrective Services NSW) Award are to apply. In addition to those definitions, the following definitions apply:

- 2.1 "POVB" means the Prison Officers' Vocational Branch of the Association.
- 2.2 "Sub-branch" means the sub-branch of the POVB covering the workplace concerned.

- 2.3 "Industrial dispute" means a dispute or claim with regard to or affecting the conditions of employment of Correctional Officers.
- 2.4 "Industrial action" includes a refusal to work or the imposition of work bans or limitations.
- 2.5 "Workplace" includes correctional centre, courts, head or regional office.
- 2.6 "Working days" means days on which the office of CSNSW is open for business.
- 2.7 "Management Committee" means the Management Committee of the POVB.
- 2.8 "State Executive" means such of the Chairman, Vice Chairman and Hon. Secretary of the POVB (whose election has been notified by the Association to CSNSW) and Country Vice Chairman as are at the time available.
- 2.9 "Sub-branch Executive" means such of the duly elected Executive of the sub-branch (whose election has been notified to the General Manager of the workplace concerned) as are at the time available.
- 2.10 "Officials" means in the case of the POVB the State Executive and in the case of a sub-branch the sub-branch executive or such of the members of the respective bodies as are at the time available.
- 2.11 "Local issue" means an industrial claim which relates solely to a particular workplace.
- 2.12 "State-wide issues" means any industrial dispute which is not a local issue or is one which directly affects Correctional Officers at more than one workplace.

### 3. Procedure in Local Issues

- 3.1 The sub-branch Executive will immediately notify the General Manager of the existence of any industrial dispute or of any resolution passed at a meeting of members of a sub-branch and which may give rise to an industrial dispute.
- 3.2 The General Manager, as the person responsible for the day-to-day running of the workplace, will endeavour to resolve the matter in discussion with the sub-branch Executive or in the case of the Long Bay Correctional Complex with an official of the sub-branch and a local workplace delegate.
- 3.3 If any industrial dispute cannot be resolved at this level, the matter will be referred to the next appropriate higher level of management who will attempt to resolve the matter.
- 3.4 That manager will advise the appropriate higher level of management immediately of any matter which is likely to lead to an industrial dispute or which affects the conditions of employment of Correctional Officers and which has not been resolved in the procedures in subclause 3.2 and 3.3, who will immediately seek to resolve the matter.
- 3.5 Where the procedures of sub clauses 3.2, 3.3 and 3.4 do not lead to resolution of the industrial dispute, the State Executive will be advised accordingly by the sub-branch Executive. The State Executive will consider the matter promptly and, after discussion if necessary, with the sub-branch Executive, will refer the same to the Association.
- 3.6 The Association and CSNSW must each immediately notify the other of any industrial dispute which is referred to either of them and the other party will take prompt steps seeking to resolve the dispute through consultation.
- 3.7 If the Association and CSNSW are unable to resolve the dispute it must be immediately notified by one of the parties, pursuant to the *Industrial Relations Act 1996*, to be dealt with in accordance with the *Industrial Relations Act 1996*.

#### 4. Procedure in State-Wide Issues

- 4.1 Any resolution of a sub-branch which is endorsed by the State Executive or any resolution of the management committee which may lead to an industrial dispute, is to be referred by the officials concerned to the Association which must notify it to CSNSW. The Association and CSNSW will take prompt steps seeking to settle the matter by consultation.
- 4.2 If the Association and CSNSW are unable to resolve the dispute it will be immediately notified by one of the parties pursuant to the *Industrial Relations Act 1996* to be dealt with in accordance with the *Industrial Relations Act 1996*.

#### 5. General Procedures

- 5.1 The agreed procedures are not to be taken as an acknowledgement that industrial action by Correctional Officers will be necessary or proper.
- 5.2 All sub-branch meetings will be fully advertised with as much notice as possible. The General Manager will be given proper and adequate notice of any sub-branch meeting which it is proposed to hold.
- 5.3 If a resolution be carried at any sub-branch meeting calling for or suggesting industrial action, the sub-branch Executive must immediately notify the State Executive and the Association of the terms of the resolution and it will not be implemented until all the agreed procedures have been completed.
- 5.4 At least three clear working days' notice must be given by the State Executive to the Association and CSNSW of any intention or proposal for all or any members of the POVB to take industrial action.
- 5.5 No industrial action will be taken until the agreed procedures have been completed or until a dispute notified pursuant to the *Industrial Relations Act 1996* has been heard and determined.
- 5.6 CSNSW maintains that as it has the responsibility for the direction, control and management of workplaces, it has the right itself or through its appropriate Executive Staff to make the necessary management decisions.
- 5.6.1 Nevertheless CSNSW acknowledges the desirability of employees being consulted before the introduction of changes or innovations which will have a significant impact upon established work practices and procedures affecting Correctional Officers. It is accepted that the term significant impact is difficult to define and may convey different meanings to different people but, it is intended to indicate changes which have a real and important as distinct from a minor or incidental effect on Correctional Officers.
- 5.6.2 As a gesture of its good intentions and in recognition of the willingness of the Correctional Officers to agree not to resort to industrial action and of the declared intention of the Association and the Correctional Officers to adhere to these procedures, CSNSW undertakes that:
- (a) the Association will be advised of any such changes or innovations which are to be introduced where they affect more than one workplace.
  - (b) the Sub-branch Executive will be advised by the General Manager of any such changes or innovations proposed within a workplace other than on a day-to-day basis.
- 5.6.3 In the event of the Association or the POVB, or the sub-branch as the case may be, requesting consultation such consultation will take place before the changes or innovations are made.
- 5.6.4 If there is continuing disagreement between the Association and CSNSW regarding a proposed change or innovation, a notification of a dispute must be given to the other party pursuant to the *Industrial Relations Act 1996*. The proposed change or innovation will not be implemented by CSNSW until the matter has been referred to and dealt with by the Industrial Relations Commission.

- 5.6.5 There is no expectation that matters which are clearly within the prerogative of management will be decided by that Commission nor that it would substitute its view for that of management but, it is anticipated that the Industrial Relations Commission could consider taking action where the issue clearly called for its involvement.
- 5.6.6 CSNSW reserves the right to implement a change before completion of the agreed procedures if there be special circumstances which make the postponement of the change unreasonable.
- 5.6.7 No party will be prejudiced as to the final settlement by action in conformity with the agreed procedures.
- 5.7 While the agreed procedures are being pursued, work will proceed without interruption and in accordance with the instructions of the General Manager/Governor.
- 5.8 Nothing in the agreed procedures is intended to limit the right of any party from at any stage referring the matter pursuant to the *Industrial Relations Act 1996*.

## 6. Safety and Security

- 6.1 The policy of the Association is that no officer will be required to work in a role which is unsafe but, it does not support any reliance upon a pretext of safety to justify a refusal of duty where no real personal risk is involved. Accordingly, notwithstanding the agreed procedures, the Association upholds the right of Correctional Officers to vary the procedures where the safety of officers genuinely arises.
- 6.2 The nature of the occupation of Correctional Officers is such that there is a constant risk of an attack upon a Correctional Officer by an inmate and CSNSW accepts its obligation to take proper precautions to ensure the safety at work of its officers. However, it claims the right ultimately to decide the arrangements which are appropriate for ensuring the safety of the officers and it regards the running of each workplace in the most efficient manner and the staffing of posts on a day-by-day basis is to be the responsibility of the General Manager but consistent with CSNSW's policy that a "sight or sound" principle be observed in maximum security (A category) correctional centres. It is recognised that there will be genuine differences of opinion on questions of the safety of officers and the staffing of posts. A resolution of any of these differences is to be sought by a proper consideration of all aspects of the issue.
- 6.3 No officer is to leave an armed post or agreed security post unstaffed until relieved by another officer or by another person authorised by the General Manager who will arrange such relief within the period which has previously been agreed with the sub-branch Executive.

## **SCHEDULE B - MEMORANDUM OF UNDERSTANDING FOR CORRECTIONAL OFFICERS, DEPARTMENT OF COMMUNITIES AND JUSTICE- CORRECTIVE SERVICES NSW**

This Memorandum of Understanding:

- (i) Regulates the conditions of service of Correctional Officers, as defined in the Crown Employees (Correctional Officers, Department of Communities and Justice- Corrective Services NSW) Award, other than those conditions of service reflected in the aforementioned Award.
- (ii) Is complementary to the Award and covers issues excluded, in whole or part, from the Award, but that still pertain to certain aspects of conditions of employment.
- (iii) Reflects the agreed position between the Division Head or delegate and the General Secretary of the Public Service Association of NSW.
- (iv) Provides a framework for consultation between CSNSW and the Association to monitor progress on issues and changes.

Intent - The parties acknowledge that the Award and Memorandum of Understanding have been entered into on the basis of a shared commitment to the achievement of a progressive and professional correctional management within CSNSW. In this pursuit, the Award and Memorandum of Understanding consolidate existing conditions of service and introduce changes to some of the terms and conditions of service of Correctional Officers in order to increase productivity and flexibility and to enhance the professional development of these officers.

#### Key Initiatives of the Award and Memorandum of Understanding

The Award and the Memorandum of Understanding are based on the following key initiatives:

- a continued commitment to Area and Case Management and the development of a professional correctional service;
- to introduce an incidental allowance for Correctional Officers to compensate for additional responsibilities;
- to provide appropriate training and career development opportunities for Correctional Officers;
- introduction of cyclic rostering subject to a successful trial and subsequent agreement between the parties;
- cessation of entitlement to rations;
- contracting out of the purchasing function of the inmate buy ups;
- to introduce a performance management system;
- reduction in the number of roles as agreed by the parties;
- restructuring of roles within Corrective Services Industries covered by this Award;
- joint participation in the Custodial Workplace Committee (CWC) to undertake a review to promote work safety, staff welfare, mental and physical health promotion and support;
- to encourage the orderly and amicable settling of differences;
- to promote a workplace that is free from prejudice, discrimination and harassment.

The parties agree to the following provisions applying during the term of the Award or until varied by agreement between the parties:

#### **1. Family Day**

CSNSW agrees to continue to allow officers to attend, on one occasion per year, the family day arranged by CSNSW. Due to the requirement to maintain service to the correctional centres a family day is arranged twice a year. An officer's attendance at family day is at CSNSW's convenience.

#### **2. Skills and Career Development**

- (i) It is the aim of the parties that Correctional Officers must be provided with the maximum opportunities for training and development such that they will form a highly skilled and committed workforce, enjoying maximum job satisfaction. An integral part of this process will be consultation with the Association and individual officers. Correctional Officers recognise that their individual career development is a joint responsibility, shared between the officer and CSNSW.
- (ii) CSNSW agrees to set up a joint working party to review the training requirements of all Correctional Officers.

- (iii) Correctional Officers will move between tasks and functions within a correctional centre or work location and within their appointed rank in order to develop their skills and/or to apply such skills to meet the aims and objectives of CSNSW.
- (iv) Correctional Officers, by mutual agreement, will move between tasks and functions within their appointed rank in order to develop their skills and/or to apply such skills to meet the aims and objectives of CSNSW, provided that in moving these officers between tasks and functions CSNSW, the Association and POVB will have regard to the career development needs of individuals; the efficient organisation of work; and personal, family and geographic considerations.
- (v) Processes will be adopted to facilitate the skills enhancement and career development opportunities of Correctional Officers, whilst improving the effectiveness of CSNSW. Without limiting the development of further initiatives, the following processes must be utilised:
  - temporary filling of vacant roles;
  - job rotation;
  - transfers;
  - secondment;
  - provision of training relevant to the needs of the individual and the requirements of CSNSW.
- (vi) Subclauses (i) - (v) do not replace the authority of the Division Head or their delegate to exercise discretion to invoke transfers in accordance with the movement of staff within and between public sector agencies provisions of the *Government Sector Employment Act 2013* to meet CSNSW staffing requirements.

### 3. Transfers

- (i) Requests for transfers on compassionate grounds are at the expense of the officer.
- (ii) Other requests for transfers will be in accordance with CSNSW Assignment to Ongoing Custodial Officer Policy.
- (iii) Transfers at the rank of Senior Correctional Officer will be by consultation between the parties.
- (iv) Subclauses (i)-(iii) do not replace the authority of the Division Head's or their delegate to exercise discretion to invoke transfers in accordance with the movement of staff within and between public sector agencies provisions of the *Government Sector Employment Act 2013* to meet CSNSW staffing requirements.

### 4. Consultative Mechanisms

The parties are prepared to discuss all matters raised which are designed to increase flexibility and enhance the smooth running of CSNSW's operations. A consultative committee will be established consisting of management, Association and POVB representatives. This committee will meet on a regular basis to discuss any matter relevant to the operation of this Award or Memorandum of Understanding or any other matter considered relevant to the maintenance and improvement of employee relations between the parties during the terms of this Award and Memorandum of Understanding, and thereafter.

### 5. Meal Allowances

Meal monies - generally

- (i) Correctional Officers are not generally entitled to payment of meal monies other than for the exceptions listed in subclause (iii) – (vii)

- (ii) Correctional Officers employed in the following units within Security and Intelligence- Court Escort and Security Unit (CESU), Security Operations Group (SOG), K9 Unit – have areas of responsibility and when operating within those areas they are considered to be performing normal duties. Officers are required as part of their normal duties to travel to other locations and are supplied with a CSNSW vehicle to undertake the travel. In the case of the K9 unit, officers are supplied with a CSNSW vehicle to ensure that they are able to respond directly from their residences. Meal allowances are generally not payable other than for the exceptions listed in subclauses (iii) to (vii)
- (iii) An allowance at the rate equivalent to the Dinner rate for overtime under the Conditions Award is payable to officers working double shifts.
- (iv) An allowance at the rate equivalent to the Breakfast rate for overtime under the Conditions Award is payable to officers who:
  - (a) are called for duty and commence on overtime at least one hour before their rostered start time; and,
  - (b) who are required to commence this overtime at or before 6:00am.
- (v) An allowance at the rate equivalent to the Dinner rate for overtime under the Conditions Award is payable to officers:
  - (a) who are required to work at least 1.5 hours of overtime;
  - (b) whose overtime commences at the end of their rostered shift;
  - (c) whose overtime commences at or before 6:00pm; and
  - (d) whose overtime concludes at or after 6:00pm. Inability to take a meal break between the 3rd and 5th hour -
- (vi) A Member of Staff performing Authorised External Escorts who is unable to take a twenty (20) minute paid crib break away from the supervision of inmates between the third and fifth hour from the commencement of a shift will be paid an allowance – called a Crib Break Penalty:
  - (a) For “A” watch an amount equivalent to the rate for lunch money for overtime under the “Crown Employees (Public Service Conditions of Employment) Award 2009 or its replacement.
  - (b) For “C” watch an amount equivalent to the rate for dinner money for overtime under the Crown Employees (Public Service Conditions of Employment)” Award 2009 or its replacement
  - (c) For “B” watch an amount equivalent to the rate for breakfast money for overtime under the Crown Employees (Public Services Conditions of Employment) Award 2009 or its replacement

For the purposes of this clause:

“Authorised External Escort” includes but is not limited to medical/hospital escorts, funeral escorts, officer’s escorts and Court Escort and Security Unit (CESU) officers. It does not include escorting and/or supervising inmates or offenders on Mobile Outreach Programs, Community Partnership Programs or in a community setting.

“Member of Staff” means a person employed in ongoing, temporary or casual employment as defined in the *Government Sector Employment Act 2013*.

- (vii) The Crib Break Penalty set out in subclause (vi) above is in lieu of overtime.

## 6. Operational Agreements

That the parties will develop an Operational Agreement or equivalent, at each correctional centre or each relevant workplace.

NOTE: The Memorandum of Understanding was made on 19 February 1998 and published with the Crown Employees (Prison Officers, Department of Corrective Services) Award on 5 March 1999 (308 IG 557).

### SCHEDULE C – SAFE STAFFING LEVEL

#### 1 Safe Staffing Levels

- (a) Each correctional centre operated by CSNSW will have a management plan identifying safe procedures for the operation of the centre.
- (b) Each such management plan will include:
  - (i) the staff establishment, maximum inmate number and classification;
  - (ii) the inmate number and classification by wing/unit/pod (and any other operational area) and the post structure for that wing/unit/pod (and any other operational area).
- (c) Variations to paragraph 3(b)(ii) above are subject to local consultation if temporary.
- (d) Permanent variations to management plans will be the subject of consultation as required by Schedule A of the Crown Employees (Correctional Officers, Department of Communities and Justice- Corrective Services NSW) Award ("the Agreed Procedures").
- (e) Any dispute arising out of consultation concerning temporary or permanent variations to management plans will be resolved under the Agreed Procedures.
- (f) The parties acknowledge that there is no intention to staff wings/units/pods that are empty.

NOTE: This schedule was implemented on 4 February 2022 and rescinds the Crown Employees (Safe Staffing Levels Department of Justice – Correctives Services NSW) Award (C9133)

D. SLOAN, *Commissioner*

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**CROWN EMPLOYEES (RURAL FIRE SERVICE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(Case No. 179156 of 2021)

Before Chief Commissioner Constant

23 December 2021

**REVIEWED AWARD****PART A****1. Arrangement**

## PART A

| Clause No. | Subject Matter                                    |
|------------|---|
| 1.         | Arrangement                                       |
| 2.         | Title   |
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| 4.         | Definitions                                       |
| 5.         | Classification and Salary Rates                   |
| 6.         | Conditions of Employment                          |
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| 17.        | Staff Members who are Volunteer Members           |
| 18.        | Anti-Discrimination                               |
| 19.        | Area, Incidence and Duration                      |

## PART B

## MONETARY RATES

20. Schedule A – Allowances

**2. Title**

2.1 This Award will be known as the Crown Employees (Rural Fire Service) Award.

**3. Parties to the Award**

3.1 NSW Rural Fire Service and Industrial Relations Secretary; and

3.2 Public Service Association and Professional Officer's Association Amalgamated Union of New South Wales.

#### 4. Definitions

- 4.1 "Act" means the *Government Sector Employment Act 2013*.
- 4.2 "Association" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.
- 4.3 "At the convenience of" means the operational requirements permit the staff member's release from duty or that satisfactory arrangements can be made for the performance of the staff member's duties during the absence.
- 4.4 "Award" means an award as defined in the *Industrial Relations Act 1996*.
- 4.5 "Business Unit" means a section or part of the organisation that has a dedicated budget and/or corporate goals or objectives that need to be achieved as part of the overall strategic plan for the NSW Rural Fire Service.
- 4.6 "Casual Employee" means any employee engaged in terms of the *Government Sector Employment Act 2013* and any guidelines issued thereof or as amended from time to time.
- 4.7 "Conditions Award" means the Crown Employees (Conditions of Employment) Reviewed Award 2009 or award replacing it.
- 4.8 "Commissioner" means the Commissioner of the NSW Rural Fire Service or a person authorised by the Commissioner through delegated authority.
- 4.9 "Duty Officer" means a staff member rostered for duty or operating after hours, as directed by the Commissioner (under the *Rural Fires Act 1997*), to serve as coordinator of the Commissioner's emergency response organisation by receiving and passing on reports and other information, alerting reserve resources when necessary, liaising with other organisations involved in emergency response and performing normal duties as required.
- 4.10 "Incident" means an unscheduled activity such as wildfire suppression, flood or storm relief, search and rescue, cetacean rescue, accident and substance spill attendance, or as otherwise approved by the Commissioner, but does not include hazard reductions.
- 4.11 "Incident Controller" means a staff member who has been appointed by the Commissioner and is responsible for incident activities including the development and implementation of strategic decisions and approving the ordering and releasing of resources.
- 4.12 "Incident Duties" means all work involved in incidents for which there is NSW Rural Fire Service participation from when an event is declared an incident, until it is declared over by the incident controller.
- Duties may include the initial reporting, reconnaissance, organisation of resources, control, mop up, control to completion of incident duties, and may involve office duties in the organisation and direction of the emergency response as well as work at the scene (refer to the Major Incident Conditions clause in this Award).
- 4.13 "JCC" - means the NSW Rural Fire Service Joint Consultative Committee that meets on a regular basis to formally address matters of mutual interest and concern, and encourage and facilitate workplace reform and equitable, innovative and productive workplace relations.
- 4.14 "Major Incident Conditions" means the conditions that apply in circumstances where an incident is declared by the Commissioner.
- 4.15 "Normal work", for the purposes of the Grievance and Dispute Settling Procedures in this Award, means the work carried out in accordance with the staff member's role at the location where the staff member was employed, at the time the grievance or dispute was notified by the staff member.

- 4.16 "On-call (General)" means, unless already eligible for an on-call allowance under an annualised arrangement or other industrial instrument, a staff member will be entitled to be paid an on call allowance when directed by the NSW Rural Fire Service to be on call outside the staff member's normal working hours.
- 4.17 "On-call (Major Incident)" means the requirement for staff, as defined by this Award, to respond to the NSW Rural Fire Service's matters while on or off duty without necessarily returning to their normal place of employment or residence, the response being necessary to assist in bringing an incident to a satisfactory conclusion.
- This requirement does not include times when such staff members are on approved annual or long service leave.
- 4.18 "SERM Act" means the *State Emergency and Rescue Management Act 1989*.
- 4.19 "Service" means the NSW Rural Fire Service as established in the *Rural Fires Act 1997*.
- 4.20 "Staff" or "Staff Member" means an ongoing, casual or a temporary employee as defined in the Act and, unless otherwise specified in this Award, includes both full-time and part-time staff.

### **5. Classification and Salary Rates**

- 5.1 The classification under this award is titled "RFS Officer".
- 5.2 The salary rates are set out in the Crown Employees (Public Sector – Salaries 2021) Award and are varied in accordance with any variation or replacement award.
- 5.3 Annual incremental progression within a level or broad banded levels will be:
- 5.3.1 On the anniversary of appointment to a role; and
- 5.3.2 Subject to a satisfactory performance report by the Supervisor.

### **6. Conditions of Employment**

- 6.1 The staff members regulated by this award will be entitled to the conditions of employment as set out in this award and, except where specifically varied by this award, existing conditions are provided for under the *Government Sector Employment Act 2013*, the *Government Sector Employment Regulation 2014*, *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* and the *Crown Employees (Public Sector - Salaries 2021) Award* or any awards replacing these awards.
- 6.2 Where there may be inconsistencies between this Award and the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*, or any other public service award, agreement or industrial instrument that would otherwise cover staff of the NSW Rural Fire Service, the arrangements in this Award will prevail.

### **7. Hours of Work**

- 7.1 Notionally staff will work a 35-hour week worked any time from Monday to Sunday.
- 7.2 The normal working week will be Monday to Friday with standard office hours from 9.00am to 5.00pm.
- 7.3 The bandwidth for working the 35 hours will normally be between 7.00am and 7.00pm unless otherwise agreed.
- 7.4 The NSW Rural Fire Service will take appropriate measures to comply with the provisions of the *Industrial Relations Act 1996* which require that the ordinary hours of employment of staff will not exceed a maximum of 35 hours per week, averaged over a 12-week period.

- 7.5 Staff members will attend their place of employment for sufficient hours to perform their duties and to service Business Unit clients. The duties are those as defined in the approved Role Description for the job and the agreed performance management criteria for the role staff are appointed to or in which they are acting.
- 7.6 A settlement period will be each calendar month for the purposes of the taking or accumulation of an agreed absence.
- 7.7 Local arrangements between staff and supervisors will be aimed at achieving the key result areas for each role in compliance with the Corporate Plan and the corresponding Business Plan for each Business Unit.
- 7.8 Standard hours are set and regular hours of operation as determined by the Commissioner from time to time to meet organisational requirements.
- 7.9 Overtime is all time approved or directed to be worked before 7.30am or after 6.00pm on a normal workday between Monday to Friday, or on weekends and public holidays at the direction of the Commissioner.

### **8. Attendance and Working Arrangements**

- 8.1 There are no fixed rules regarding attendance times or days and subsequently, there is no requirement upon individuals to maintain any formal record of hours worked.
- 8.2 Staff members may however choose to keep their own personal record or diary of hours worked to ensure the provisions of the *Industrial Relations Act 1996* as defined in subclause 7.4 of clause 7, Hours of Work are complied with.
- 8.3 Within the parameters of this clause, staff covered by this arrangement may reach mutual agreement with their supervisor regarding hours of work.
- 8.4 Such working hours need to be sufficient to satisfy the working requirements of the Business Unit in accordance with agreed performance criteria.
- 8.5 Each staff member will record their daily attendance.
- 8.6 This record will also serve as the Monthly Attendance Return required for auditing purposes to confirm attendance of staff at work.

### **9. Background to Work Hours Arrangements**

- 9.1 The arrangements set out in this clause are those that apply to all categories of staff covered by this Award unless otherwise specified by the Commissioner in accordance with subclause 7.8 of clause 7, Hours of Work.
- 9.2 The work hours scheme is based on a high level of trust and mutual respect between management and staff and is designed to build on and maximise the level of positive communication and understanding between management and staff.
- 9.3 Management and staff agree that achievement of Corporate Goals, meeting deadlines, provision of client services and completion of tasks in accordance with commitments is the business of the NSW Rural Fire Service.
- 9.4 The work hours scheme is designed to provide a professional approach to the conduct of the NSW Rural Fire Service as a business with a substantial volunteer base, with a balance between working life and private life for each staff member and typified by "a fair day's pay for a fair day's work".

### **10. Requirement to Work Additional Hours**

- 10.1 The Commissioner may require a staff member to perform duty beyond the hours determined under this award but only if it is reasonable for the staff member to be required to do so.
- 10.2 A staff member may refuse to work additional hours in circumstances where the working of such hours would result in the staff member working unreasonable hours.
- 10.3 In determining what is unreasonable, the following factors will be taken into account:
- 10.3.1 the staff member's prior commitments outside the workplace, particularly the staff member's family and carer responsibilities, community obligations or study arrangements,
  - 10.3.2 any risk to staff member health and safety,
  - 10.3.3 the urgency of the work required to be performed during additional hours, the impact on the operational commitments of the organisation and the effect on client services,
  - 10.3.4 the notice (if any) given by the Commissioner regarding the working of the additional hours, and by the staff member of their intention to refuse the working of additional hours, or
  - 10.3.5 any other relevant matter.

### **11. Agreed Absences**

- 11.1 Staff members covered by this arrangement will be entitled to one day off per calendar month every financial year (except staff on standard hours) in recognition of the hours worked and professional commitment to the organisation.
- 11.2 The day to be absent from work will be referred to as an "agreed absence" and will be taken at a time that is mutually agreed between the staff member and supervisor.
- 11.3 By agreement, and at the convenience of the NSW Rural Fire Service, more flexible arrangements in relation to agreed absences may be made between staff members and supervisors on a local basis to meet personal and business requirements.
- 11.4 To meet either unforeseen circumstances or regular deadlines such as end of financial year accounts processing, staff members and supervisors may agree that staff members may postpone an agreed absence for one or more months.
- 11.5 The taking of postponed agreed absences is a matter for local arrangement between the staff member and his or her supervisor.
- 11.6 Subject to agreement, up to five agreed absences may be conserved by a staff member during any one financial year, during which time:
- 11.6.1 conserved days may be taken, subject to arrangement with the supervisor; or
  - 11.6.2 up to five (5) agreed absences may be "cashed in" at the staff member's ordinary salary rate of pay.
  - 11.6.3 conserved days in excess of five (5) at the end of each financial year will be forfeited unless the Commissioner approves otherwise.

### **12. Annualised Conditions Allowance (ACA)**

- 12.1 The ACA is an allowance paid in lieu of all foreseeable on-call, after hours, excess travelling time, programmed overtime, uniform/laundry and garage/carport.

- 12.2 This is an all-inclusive allowance capped at the maximum payable rate of 15% of the salary of RFS Officers, in accordance with the Matrix below:

|             | Program Overtime | After Hours | Excess Travel Time | On-call | Garage/ Carport | Uniform/ Laundry |         |
|-------------|------------------|-------------|--------------------|---------|-----------------|------------------|---------|
| Scenario 1  | ✓                | ✓           | ✓                  | ✓       | ✓               | ✓                | 15.00 % |
| Scenario 2  | ✓                | ✓           | ✓                  |         | ✓               | ✓                | 14.00 % |
| Scenario 3  | ✓                | ✓           |                    | ✓       | ✓               | ✓                | 13.00 % |
| Scenario 4  | ✓                |             | ✓                  | ✓       | ✓               | ✓                | 12.00 % |
| Scenario 5  | ✓                |             | ✓                  | ✓       |                 |                  | 11.50 % |
| Scenario 6  | ✓                | ✓           |                    |         | ✓               | ✓                | 11.00 % |
| Scenario 7  | ✓                |             | ✓                  |         | ✓               | ✓                | 10.50 % |
| Scenario 8  | ✓                |             | ✓                  |         |                 | ✓                | 10.00 % |
| Scenario 9  | ✓                |             |                    | ✓       | ✓               | ✓                | 9.00%   |
| Scenario 10 | ✓                |             |                    | ✓       |                 |                  | 8.50%   |
| Scenario 11 |                  | ✓           | ✓                  |         | ✓               | ✓                | 8.00%   |
| Scenario 12 | ✓                |             |                    |         | ✓               | ✓                | 7.00%   |
| Scenario 13 | ✓                |             |                    |         |                 |                  | 6.50%   |
| Scenario 14 |                  | ✓           |                    |         | ✓               | ✓                | 6.00%   |
| Scenario 15 |                  |             | ✓                  |         | ✓               | ✓                | 5.00%   |

- 12.3 Where no scenario exists in the Matrix to meet the particular requirements of an eligible staff member, the next nearest percentage will be requested with an accompanying submission with full justification, and if supported by the manager, referred to the Commissioner for due consideration.
- 12.4 The Executive Director, People and Strategy is to be informed of any such approvals.
- 12.5 The exception to subclause 12.1 of this clause is where major incident conditions are declared or where extenuating circumstances exist and are approved by the Commissioner.
- 12.6 The ACA must be applied for by a staff member and duly approved by an officer with the appropriate NSW Rural Fire Service delegation.
- 12.7 The ACA applies to a role and not to a staff member.
- 12.8 Where a staff member in receipt of the ACA is seconded or temporarily transferred to a role (or on a special project) for a period greater than three months and that role does not attract the ACA, they will not receive the allowance for the period they occupy the temporary role.
- 12.9 A staff member in receipt of the ACA may, on an annual basis as at 30 June, elect to opt out of the ACA and revert to the normal award provisions as they may apply.
- 12.10 The applicability of the ACA is reviewed annually as at 30 June against the functionality of the role through the ACA Review Panel.
- 12.11 The ACA Review Panel comprises representatives from the NSW Rural Fire Service and the Association and it makes recommendations to the Commissioner.
- 12.12 A staff member who does not agree with the outcome of a particular review or decision in relation to this clause may access the Service's Grievance Handling Procedures for resolution.
- 12.13 The ACA is not considered salary for superannuation and termination purposes.

### **13. After Hours Allowance**

- 13.1 The After Hours Allowance is payable to staff for work undertaken outside of normal hours of duty where the staff member will be required to be available for contact and immediate response to a call and any minor follow up work that may result from a call.
- 13.2 This allowance is not payable where a staff member is eligible for an annualised allowance under clause 12, Annualised Conditions Allowance, of this Award.
- 13.3 A weekly allowance as per Item 1 of Schedule A, Allowances of Part B, Monetary Rates, will be paid to cover all time outside the normal working hours that a staff member is required to be available for contact and immediate response to a call.
- 13.4 In support of payment of such an allowance, and where determined by the Commissioner, this arrangement will include the provision of an appropriate work area to perform the functions required by the NSW Rural Fire Service.
- 13.5 The allowance will compensate the staff member for routine incidents and minor follow-up work that may result from a call.
- 13.6 Where a staff member is rostered on duty under this clause on a public holiday, a day in lieu will be given and is to be taken at a mutually agreeable time.
- 13.7 This allowance can be rotated to accommodate other staff members rostered on to undertake these duties as required.
- 13.8 In special circumstances, application may be made to the Commissioner for the payment of overtime over and above this allowance where extenuating circumstances can be demonstrated that would not normally be covered by the intent of this clause.

### **14. District Support Staff/Fleet Roles and Allowances**

- 14.1 The Commissioner will, on application, approve the payment of the appropriate allowances as set out in Item 2 of Schedule A, Allowances of Part B, Monetary Rates.
- 14.2 Training and Multi-skilling
- 14.2.1 Following the provision of adequate in-house training, district support staff/fleet will be required to undertake a range of basic cross-classification activities within statutory limitations.
- 14.2.2 District support staff/fleet will be required to undertake such cross-classification activities when there is insufficient work in a staff member's normal classification or where the reallocation of staff is required to meet the NSW Rural Fire Service's exigencies.
- 14.2.3 Any district support staff/fleet undertaking cross-classification activities in terms of this subclause is required to carry out those activities in a responsible and competent manner.
- 14.3 The NSW Rural Fire Service may enter into arrangements to engage Apprentices.
- 14.4 The District Staff (Fleet) Allowances in Item 2 of Schedule A, Allowances of Part B, Monetary Rates of this award are increased in accordance with the relevant tool allowances in the Crown Employees (Skilled Trades) Award as varied from time to time, and the Crown Employees Wages Staff (Rates of Pay) Award 2021 or any replacement award for the electrical trades.

### **15. Major Incident Conditions**

- 15.1 The following conditions apply in circumstances where an incident is declared and/or approved by the Commissioner or State of Emergency as declared under the SERM Act until such time as the declaration of the incident is lifted.

## 15.2 Conditions

- 15.2.1 For the purpose of calculating payment for incident duty, the salary rate will be the staff member's substantive salary rate in the Crown Employees (Public Sector – Salaries 2021) Award.
- 15.2.2 Call out to attend an incident will be paid in accordance with the provisions of this Award.
- 15.2.3 All travel to and from an incident will be paid as if part of the incident.
- 15.2.4 Start and finish times:
- 15.2.4.1 On a normal rostered day on, start will be from normal workplace and finish will be on return to normal workplace, plus 30 minutes.
- 15.2.4.2 On a rostered day off, start will be on leaving place of abode and finish will be on return to place of abode, plus 30 minutes.
- 15.2.4.3 Where it is not possible to return to place of abode or normal workplace, start will be on leaving accommodation and finish will be at the time of the call and finishing time will be on return to accommodation, plus 30 minutes.
- 15.2.5 A normal shift is 7 hours, but staff members may be required to work up to a maximum of 12 hours. However, the initial shift following the declaration of an incident may extend to a maximum of 16 hours within the 24-hour period.
- 15.2.6 The intention of this Award is to allow flexibility in exceptional circumstances, e.g., new crews arriving late, unforeseeable worsening of the incident.
- 15.2.7 A minimum 10-hour break, not including travelling time, must be taken between shifts.
- 15.2.8 Staff members who undertake Fire Fighting Incident Duties on any shift, or Incident Management Duties on night shift, will be provided with a 24-hour break at payment of single time rates after the completion of three consecutive shifts.
- 15.2.9 Staff members who undertake Incident Management Duties on day shift will be provided with a 24-hour break at payment of single time rates at the completion of three consecutive shifts, or if requested by the NSW Rural Fire Service and if agreed to by the staff member, after the completion of up to five consecutive shifts.
- 15.2.10 Staff members who undertake catering or administrative assistance will be provided with a 24-hour break with payment at single time rates after the completion of up to five consecutive shifts.
- 15.2.11 For the purpose of this clause:
- Fire Fighting Incident Duties are defined as the arduous duties undertaken by:
- (a) Air Attack Supervisors, Airborne Systems Operators and Air Observers; and
- (b) Rapid Aerial Response Teams (RART) and Remote Area Fire Fighting Teams (RAFT).
- Incident Management Duties are defined as duties performed by Incident Management Team roles involved in the management of a major incident that do not include Fire Fighting Incident Duties, catering or administrative assistance.
- 15.2.12 It is the responsibility of the Incident Controller or nominee to ensure that reasonable shift and rest periods are adhered to.

- 15.2.13 If a staff member is away from their own place of work for the purposes of attending an incident and are not required to work and it is not possible to return to their home, seven hours normal pay will be paid per day until they return home or to their usual place of work, whichever is the sooner.
- 15.2.14 Staff members required to work on their allocated agreed absence will be allowed to bank the day off to be cashed in or taken at a later date in accordance with the work hours arrangements in this Award.
- 15.2.15 Staff members directed to return from annual leave to attend an incident will be compensated for pre-paid accommodation and return travel from their leave destination to home at either first class rail travel or economy air travel rate for themselves and any dependents or at official business rate if a private vehicle is used.
- 15.2.16 Staff members will be further compensated by single hourly rate for all hours travelled. Such staff members will have the same option as staff members called from an agreed absence day off.
- 15.2.17 No staff member will have time deducted from pay for meal breaks unless they are actually relieved of incident duties for the period of the break and clean-up time, e.g., 30-45 minutes. Where meals are provided to a staff member on the ground and eaten in conjunction with incident duties, no deduction will be made from pay.

### 15.3 Payment Associated With Incidents

#### 15.3.1 Shift Loadings:

A shift worker employed on a shift will be paid, for work performed during the ordinary hours of any such shift, ordinary rates plus the following additional shift loadings depending on the commencing times of shifts:

|           |                                 |      |
|-----------|---------------------------------|------|
| Day       | at or after 6am and before 10am | Nil  |
| Afternoon | at or after 10am and before 1pm | 10%  |
| Afternoon | at or after 1pm and before 4pm  | 12½% |
| Night     | at or after 4pm and before 4am  | 15%  |
| Night     | at or after 4am and before 6am  | 10%  |

15.3.2 The loadings specified in this subclause will only apply to shifts worked from Monday to Friday.

#### 15.3.3 Weekends and Public Holidays:

For the purpose of this clause any shift, the major portion of which is worked on a Saturday, Sunday or Public Holiday, will be deemed to have been worked on a Saturday, Sunday or Public Holiday and will be paid as such.

#### 15.3.4 Saturday Shifts:

Shift workers working on an ordinary rostered shift between midnight on Friday and midnight on Saturday, which is not a public holiday, will be paid for such shifts at ordinary time and one half.

#### 15.3.5 Sunday Shifts:

Shift workers working on an ordinary rostered shift between midnight on Saturday and midnight on Sunday, which is not a public holiday, will be paid for such shifts at ordinary time and three quarters.

#### 15.3.6 Public Holidays:

For shift workers working on a Public Holiday, the following will apply:

- 15.3.6.1 Where a shift worker is required to and does work on a Public Holiday, the shift worker will be paid at two and a half times the rate for time worked.
  - 15.3.6.2 Such payment will be in lieu of weekend or shift allowances which would have been payable if the day had not been a Public Holiday;
  - 15.3.6.3 a shift worker rostered off duty on a Public Holiday will be paid one day's pay for that Public Holiday or have one day added to his/her annual holidays for each such day;
  - 15.3.7 These allowances will not apply to any overtime worked.
  - 15.3.8 Staff in receipt of an ACA will have access to overtime in accordance with the provisions of this clause at the rate of salary applicable to RFS Officers under the Crown Employees (Public Sector – Salaries 2021) Award.
- 15.4 Family
- 15.4.1 The NSW Rural Fire Service will compensate staff members for additional dependent care expenses (receipts must be provided) relating to time worked during the incident.
  - 15.4.2 This must be arranged with the Incident Controller as soon as practical and each case will be assessed by the Incident Controller and approved by the Commissioner.
- 15.5 Provision of Meals and Accommodation whilst Working on Incident
- 15.5.1 The NSW Rural Fire Service will generally provide meals, including breakfast, lunch and dinner, and provide supper for staff members working night shift.
  - 15.5.2 If no meal is supplied, a payment of an amount per meal as set out in the Conditions Award will be made.
  - 15.5.3 Wherever possible, staff members will be allowed to return home or the NSW Rural Fire Service will provide suitable accommodation.
  - 15.5.4 Where returning home or to other accommodation is not possible or practical and the staff members are required to camp, they will be paid the appropriate allowance as set out in the Conditions Award.
- 15.6 "On call"
- 15.6.1 "On call" means the requirement for staff, as defined by this Award, to respond to the NSW Rural Fire Service's matters while on or off duty without necessarily returning to their normal place of employment or residence, the response being necessary to assist in bringing an incident to a satisfactory conclusion.
  - 15.6.2 This requirement does not include times when such staff are on approved annual or long service leave.

## **16. Operational Communications Centre (OCC)**

- 16.1 The shift work provisions of the Conditions Award will apply unless otherwise specified in this clause.
- 16.2 Roster Details
  - 16.2.1 The OCC will operate on a 24 hour per day, 7 days per week basis across the whole year.
  - 16.2.2 Roster arrangements will be outlined in advance for staff.

16.2.3 The rotating roster covers a 12-week period and staff will be rostered an equitable allocation of shifts across the period and therefore across a full year.

16.3 Time Span of Each Shift

16.3.1 The two shift rosters operating each day for staff will be:

- (i) Day Shift 6am (06:00) to 6pm (18:00)
- (ii) Night Shift 6pm (18:00) to 6am (06:00)
- Swing Shift Rostered as required

16.3.2 Staff members will be rostered to undertake 35 x 12-hour shifts per 12 weeks for a total of 420 ordinary hours.

16.4 Swing Shift

16.4.1 A "swing shift" (SS) will be allocated where the need arises to cover busy periods.

16.4.2 The Swing Shift may be staffed by a NSW Rural Fire Service staff member or by agency staff member through an employment agency with suitable staff.

16.5 Staffing

16.5.1 At a minimum, each shift will consist of a Senior Operational Communications Officer and Operational Communications Officer(s).

16.6 Averaging-Out Shift Penalties (ASP)

16.6.1 The shift penalties applicable have been "Averaged-Out" for all OCC staff - abbreviated to the "ASP".

16.6.2 The ASP allows OCC staff members to receive a consistent fortnightly salary payment, which removes the need for frequent salary adjustment due to rotating shift arrangements.

16.6.3 The calculation of the ASP based on the 12-week roster is as follows:

| Shifts | Type of Shift      | Hours | Total  | Loading |       | Total  |
|--------|--------------------|-------|--------|---------|-------|--------|
| 12     | Mon to Fri - Day   | 12:00 | 144:00 | 0%      | 0     | 144:00 |
| 11     | Mon to Fri - Night | 12:00 | 132:00 | 15%     | 19.80 | 151.80 |
|        | Mon to Fri Total   |       |        |         |       | 295:80 |
| 6      | Saturday Total     | 12:00 | 72:00  | 50%     | 36:00 | 108:00 |
| 6      | Sunday Total       | 12:00 | 72:00  | 75%     | 54.00 | 126.00 |
|        | Sat and Sun Total  |       |        |         |       | 234:00 |
|        | Total Hours Paid   |       |        |         |       | 529:80 |

529:80 paid hours divided by 420 ordinary hours = 1.2614

To express 1.26 as a percentage: (1.2614 x 100%) = 126.14%

Therefore ASP = 26.14%

16.6.4 The ASP is paid for all normal rostered work undertaken plus during periods of annual leave, sick leave, family and community leave, special leave and study leave.

16.6.5 The ASP will not compensate for Public Holidays, overtime worked and during periods of extended leave, parental leave and military leave.

16.6.6 Public Holidays and overtime will be paid at the appropriate Award rate.

#### 16.7 Shiftwork Rostering and Administration

- 16.7.1 In compliance with the staffing requirement of this clause, a minimum of two (2) people is required on every shift.
- 16.7.2 Shift rosters will be developed to ensure the equitable allocation of shifts to all OCC staff wherever possible across the whole twelve (12) week period.
- 16.7.3 Formal handovers will occur towards the end of the twelve (12) hour shift by the Senior Operational Communications Officer through the completion in writing of the appropriate pro forma documentation currently used in the OCC.
- 16.7.4 Extra shifts will be filled using the swing shift facility. NSW Rural Fire Service may use existing staff on overtime or temporary agency staff on contract to staff the swing shifts as required.
- 16.7.5 Staff meetings and announcements will be through email which has proved to be the most efficient and equitable way to communicate with staff to date.
- 16.7.6 If a staff member is to be absent from duty because of illness or other emergency, the staff member will notify or arrange for another person to notify the supervisor as soon as possible of the staff member's absence and the reason for the absence. Wherever possible, staff will preferably provide a minimum of 24 hours' notice.
- 16.7.7 Where a staff member stays back to cover the late arrival of another staff member, the extra hours past the twelve (12) hour shift will be calculated at applicable overtime rates. Staff members will not be expected to work more than four (4) extra hours.
- 16.7.8 Payment for overtime will be made only where the staff member works approved or directed overtime.
- 16.7.9 Staff who wish to change an allocated shift on the roster can do so through mutual agreement with another staff member but must formally notify their manager of such a change as soon as this is agreed in writing.
- 16.7.10 The NSW Rural Fire Service will maintain its ongoing support to flexible work practices to assist staff meet their family and community service commitments on a case-by-case basis.

#### 16.8 Other Leave Entitlements

16.8.1 With the operation of a twelve (12) hour shift all leave taken will be calculated on an hourly basis as demonstrated below with the sick leave comparison:

| Sick leave for non-shift workers  |          |          | Sick leave for 12 hr OCC shift workers |          |            |           |
|-----------------------------------|----------|----------|--|----------|------------|-----------|
|                                   | Accrual  | Debit    |  | Accrual  |            | Debit     |
| Full Day                          | 7:00 hrs | 7:00 hrs | Full Day                               | 7:00 hrs | Full Shift | 12:00 hrs |
| ½ Day                             | 3:30 hrs | 3:30 hrs | ½ Day                                  | 3:30 hrs | ½ Shift    | 6:00 hrs  |
| ¼ Day                             | 1:75 hrs | 1:75 hrs | ¼ Day                                  | 1:75 hrs | ¼ Shift    | 3:00 hrs  |
| Sick Leave Entitlement is 15 days |          |          | Sick Leave Entitlement is 105 hours    |          |            |           |

15 days at 7 hours = Total converted entitlement of 105 hours.

16.8.2 The same conversions apply to other leave such as annual leave:

20 days at 7 hours = Total converted entitlement of 140 hours.

## 16.9 Meal Breaks

16.9.1 The shift roster provides for a one-hour paid crib break during a twelve (12) hour shift taken in two 30-minute allocations.

16.9.2 Where a staff member works an additional shift as approved or directed overtime, the paid crib breaks as per 16.9.1 will also apply.

16.9.3 No staff member will be required to work more than five (5) consecutive hours without a meal break.

16.9.4 OCC Staff members may take a 10-minute tea break provided that the discharge of public business is not affected and, where practicable they do so out of the view of the public contact areas.

## 16.10 Opportunities for Training and Personal Development

16.10.1 The twelve-week shift roster provides for operational training to be undertaken during normal shift hours Monday to Friday in keeping with current practice.

## 16.11 Annual Leave and Annual Leave Loading

16.11.1 OCC staff will be entitled to four weeks annual leave (converted to 140 hours), which includes four weekends or rest days.

16.11.2 Payment for leave loading is replaced by the ASP which attracts a higher remuneration level.

## 16.12 Salary Rates and Classification

16.12.1 The salary rates of RFS Officers (OCC) in the Crown Employees (Public Sector – Salaries 2021) Award apply to OCC staff members.

## **17. Staff Members Who Are Volunteer Members**

### 17.1 General

17.1.1 Staff members who are volunteer members of, but not limited to:

NSW Rural Fire Service;

Bushwalkers' Federation;

Cave Rescue Association;

State Emergency Service;

Royal Volunteer Coastal Patrol;

Volunteer Rescue Association of NSW (or affiliated groups);

Wireless Institute Civil Emergency Network; or

Australian Volunteer Coast Guard Association.

May be granted special leave of up to five days in any period of 12 months for the purpose of assisting as volunteers in one of the above-mentioned organisations.

17.1.2 However, this situation does not cover declared emergencies as described in subclause 17.2, Declared Emergencies of this clause.

17.1.3 A staff member who is a volunteer as described in this clause requires the permission of their supervisor, or have pre-approval, prior to attending any such volunteer activities.

17.1.4 A supervisor may only approve of a volunteer attending a callout if it will have minimal effect on the normal routine of the office.

## 17.2 Declared Emergencies

17.2.1 If a situation arises requiring an incident response, or an incident is declared under section 44 of the *Rural Fires Act 1997* or a State of Emergency is declared under the SERM Act, staff who volunteer to assist are granted special leave with no limit.

17.2.2 Leave granted under paragraph 17.2.1 is in addition to any leave granted in paragraph 17.1.1 of this clause.

17.2.3 Volunteers may attend subject to the provisions of this clause.

## 17.3 Proof of Attendance at Emergencies

17.3.1 An application for leave must be accompanied by a statement from the Incident Controller, the Local or Divisional Controller, or the Police, certifying the times of attendance.

17.3.2 The leave application should indicate the period and area of attendance together with the name of the organisation to which the volunteer member belongs.

## 17.4 Rest Periods

17.4.1 If a volunteer staff member remains on emergency duty for several days, the Commissioner may grant special leave to allow reasonable time for recovery before returning to duty.

17.4.2 If a volunteer staff member assists in a rescue or major incident at a time such that it would be unreasonable to expect them to report for duty at the normal time, the Commissioner may grant up to one day special leave for rest.

17.4.3 In the emergency referred to in the preceding two paragraphs is not a declared emergency, the leave granted is included in the general five-day annual limit prescribed in subclause 17.1, General of this clause.

## 17.5 Bush Fire Fighting Training Courses

17.5.1 NSW Rural Fire Service volunteers nominated to attend courses approved by the NSW Rural Fire Service or by organisations recognised by the NSW Rural Fire Service are to be granted the necessary special leave to attend, up to a maximum of 10 working days in any period of 12 months.

17.5.2 Approval of leave is subject to the NSW Rural Fire Service's convenience and written confirmation of attendance.

## 17.6 State Emergency Service Courses

17.6.1 If the Director-General of State Emergency Service considers it essential that an SES volunteer staff member attend a course of training or lectures, the Commissioner should make every effort to release the staff member from duty. If the staff member is so released, the necessary absence from work is regarded as being on duty.

17.6.2 The Director-General of the State Emergency Service may nominate SES volunteer staff members for attendance at courses of training or lectures when their attendance is not regarded as essential. In these circumstances special leave may be granted for the time staff members are absent from duty.

17.6.3 A certificate of attendance is not necessary. The State Emergency Service will advise the NSW Rural Fire Service whether attendance is required and any non-attendance will be reported to the NSW Rural Fire Service.

17.7 Other Courses with Volunteer Groups as Listed Above

17.7.1 The Commissioner may grant special leave to attend training courses for any other approved voluntary group as listed above.

### 18. Anti-Discrimination

18.1 It is the intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.

18.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award, which, by its terms or operation, has a direct or indirect discriminatory effect.

18.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise a staff member because the staff member has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

18.4 Nothing in this clause is to be taken to affect:

18.4.1 any conduct or act which is specifically exempted from anti-discrimination legislation;

18.4.2 offering or providing junior rates of pay to persons under 21 years of age;

18.4.3 any act or practice of a body established to propagate religion, which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;

18.4.4 a party to this Award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

18.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

18.5.1 Employers and employees may also be subject to Commonwealth Anti-Discrimination Legislation.

18.5.2 Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

**19. Area, Incidence and Duration**

- 19.1 This award will apply to officers, Departmental temporary employees and casual employees as defined in the *Government Sector Employment Act 2013* employed in the NSW Rural Fire Service listed in Schedule 1, Part 1, to the *Government Sector Employment Act 2013*.
- 19.2 This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Crown Employees (Rural Fire Service) Award published 8 May 2020 (387 I.G. 1184, as varied).
- 19.3 The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 23 December 2021.
- 19.4 This award remains in force until varied or rescinded, the period for which it was made having already expired.

**PART B****MONETARY RATES****20. Schedule A – Allowances**

| Item No. | Clause No. | Allowances                        | Per Week     |
|----------|------------|-----------------------------------|--------------|
|          |            |                                   | 1.7.21<br>\$ |
| 1        | 13         | After Hours Allowance             | 250.00       |
| 2        | 14         | District Staff (Fleet) Allowances |              |
|          |            | Body Maker                        | 33.90        |
|          |            | Motor Mechanic                    | 33.90        |
|          |            | Electrical Mechanic               | 21.60        |

N. CONSTANT, *Chief Commissioner*

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## PUBLIC HEALTH SYSTEM NURSES' AND MIDWIVES' (STATE) AWARD 2021

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 223156 of 2021)

Before Chief Commissioner Constant

10 August 2021

### VARIATION

1. Delete Items 11 in Table 2, Other Rates and Allowances of Part B, Monetary Rates of the award published 8 October 2021 (390 I.G. 649) and substitute the following:

|    |       |   |         |
|----|-------|---|---------|
| 11 | 17(i) | Special rate for RN - Tibooburra and Ivanhoe Hospitals<br>- per week      | \$35.55 |
| 11 | 17(i) | Special rate for EN, AIN - Tibooburra and Ivanhoe<br>Hospitals - per week | \$15.49 |

2. This variation will take effect from the first full pay period to commence on or after 1 July 2021.

N. CONSTANT, *Chief Commissioner*

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**CLERICAL AND ADMINISTRATIVE EMPLOYEES (STATE) AWARD**

## INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Industrial Relations Secretary.

(Case No. 208154 of 2021)

Before Chief Commissioner Constant  
 Commissioner Murphy  
 Commissioner Sloan

15 December 2021

**VARIATION**

1. Delete Part B, Monetary Rates, of the award published 15 January 2016 (378 I.G. 824) and insert in lieu thereof the following:

**PART B****MONETARY RATES****Table 1 - Adult Wages**

The following Minimum rates of wages will take effect from the first pay period to commence on or after 16 December 2021.

| Grade | SWC 2020<br>% | Weekly Rate<br>Including 2020<br>Increase<br>\$ | SWC 2021<br>% | Weekly Rate<br>Including 2021<br>Increase<br>\$ |
|-------|---------------|---|---------------|---|
| 1     | 0.3           | 784.20  | 2.04          | 800.20  |
| 2     | 0.3           | 813.30  | 2.04          | 829.90  |
| 3     | 0.3           | 860.00  | 2.04          | 877.50  |
| 4     | 0.3           | 917.90  | 2.04          | 936.60  |
| 5     | 0.3           | 1002.50   | 2.04          | 1023.00   |

**Table 2 - Junior Wages**

The minimum rates of wages per week for junior employees shall be as follows:

- (a) Equivalent to grade 3 or above

| Age                | SWC 2020<br>% | Weekly Rate<br>Including 2020<br>Increase<br>\$ | SWC 2021<br>% | Weekly Rate<br>Including 2021<br>Increase<br>\$ |
|--------------------|---------------|---|---------------|---|
| At 17 years of age | 0.3           | 413.90  | 2.04          | 422.30  |
| At 18 years of age | 0.3           | 511.60  | 2.04          | 522.00  |
| At 19 years of age | 0.3           | 584.60  | 2.04          | 596.50  |
| At 20 years of age | 0.3           | 690.30  | 2.04          | 704.40  |

(b) All other junior employees

| Age                   | SWC 2020<br>% | Weekly Rate<br>Including 2020<br>Increase<br>\$ | SWC 2021<br>% | Weekly Rate<br>Including 2021<br>Increase<br>\$ |
|-----------------------|---------------|---|---------------|---|
| Under 17 years of age | 0.3           | 310.60  | 2.04          | 316.90  |
| At 17 years of age    | 0.3           | 389.10  | 2.04          | 397.00  |
| At 18 years of age    | 0.3           | 476.80  | 2.04          | 486.50  |
| At 19 years of age    | 0.3           | 540.60  | 2.04          | 551.60  |
| At 20 years of age    | 0.3           | 637.10  | 2.04          | 650.10  |

**Table 3 - Telephone Canvassers (Other than for the Sale of Goods)**

| Classification      | SWC<br>2020<br>% | Weekly Rate<br>Full-time<br>\$ | SWC<br>2021<br>% | Weekly Rate<br>Full-time<br>\$ | Weekly Rate<br>Part- time<br>(Weekly rate<br>divided by 38)<br>\$ | Hourly Rate<br>Casual<br>(Weekly rate<br>divided by 38<br>plus 20% loading<br>Includes 1/12<br>holiday pay)<br>\$ |
|---------------------|------------------|--------------------------------|------------------|--------------------------------|---|---|
| Telephone Canvasser | 0.3              | 753.00                         | 2.04             | 772.60                         | 20.30   | 24.40   |

**Table 4 - Other Rates and Allowances**

| Item No. | Clause | Brief Description  | 2020 Amount<br>\$ | 2021 Amount<br>\$ |
|----------|--------|--|-------------------|-------------------|
| 1        | 9.9.1  | Saturday Loadings:   |                   |                   |
|          |        | Adult  | 22.40             | 22.90             |
|          |        | Employees under 21 years of age                              | 15.20             | 15.50             |
| 2        | 10.3.2 | Meal Money (shift Work)                                      | 16.30             | 16.60             |
| 3        | 13.1   | Meal Allowance (Overtime)                                    | 16.30             | 16.60             |
| 4        | 13.5   | Own Car Allowance: per week                                  |                   |                   |
|          |        | For vehicle 1,500cc and under                                | 119.40            | 121.80            |
|          |        | For a vehicle over 1,500cc                                   | 147.50            | 150.50            |
| 5        | 13.5   | Own Car allowance<br>For use on a casual or incidental basis | 0.81 per km       | 0.83 per km       |
| 6        | 13.7   | First-Aid Allowance  | 13.30             | 13.60             |

2. This variation shall take effect from the first full pay period to commence on or after 16 December 2021.

N. CONSTANT, *Chief Commissioner*  
 J. V. MURPHY, *Commissioner*  
 D. SLOAN, *Commissioner*

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(1361)

**SERIAL C9375**

## ENTERTAINMENT AND BROADCASTING INDUSTRY - LIVE THEATRE AND CONCERT (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Unions NSW, Industrial Organisation of Employees and State Peak Council.

(Case No. 208154 of 2021)

Before Chief Commissioner Constant  
Commissioner Murphy  
Commissioner Sloan

21 October 2021

### VARIATION

- Delete Part 9 - Monetary Rates, of the award published 26 December 2008 (366 I.G. 1546) and reprinted 27 January 2012 (372 I.G. 315) and insert in lieu thereof the following:

### PART 9 - MONETARY RATES

**Table 1 - Rates of Pay**

|                                | Previous Rate<br>(SWC Case 2020) | Current Rate<br>(SWC Case 2021)<br>2.50% |
|--------------------------------|----------------------------------|--|
|                                | \$                               | \$                                       |
| Theatrical<br>Employee Level 1 | 751.85                           | 770.65                                   |
| Theatrical<br>Employee Level 2 | 823.67                           | 844.26                                   |
| Theatrical<br>Employee Level 3 | 853.56                           | 874.90                                   |
| Theatrical<br>Employee Level 4 | 916.21                           | 939.12                                   |
| Theatrical<br>Employee Level 5 | 946.12                           | 969.77                                   |
| Theatrical<br>Employee Level 6 | 1003.1                           | 1028.18                                  |
| Theatrical<br>Employee Level 7 | 1062.88                          | 1089.45                                  |

**Table 2 - Other Rates and Allowances**

| Item No. | Clause No. |  | CPI classification | Total min per wk from first full pay period after 28/10/202<br>\$ | Percentage increase based on CPI classification (SWC Case 2021) | Total min per wk from first full pay period on or after 8/10/2021<br>\$ |
|----------|------------|--|--------------------|---|---|---|
| 1        | 20.1.1     | Heads of Department<br>Supplying Own tools | Work Related       | 11.17   | 2.50%   | 11.45   |
| 2        | 20.1.1     | Other Employees<br>providing basic tools   | Work Related       | 1.16  | 2.50%   | 1.19  |
| 3        | 20.2       | Laundry Allowance<br>- Blouses and Shirts  | All groups         | 3.30  | 3.80%   | 3.43  |

|    |           |   |   |        |       |        |
|----|-----------|---|---|--------|-------|--------|
| 4  | 20.2      | Laundry Allowance - Other Garments  | All groups  | 8.57   | 3.80% | 8.90   |
| 5  | 20.2      | Laundry Allowance - Other than weekly employees                                 | All groups  | 2.63   | 3.80% | 2.73   |
| 6  | 20.2      | Laundry Allowance - Other Employees Maximum per week                            | All groups  | 11.95  | 3.80% | 12.40  |
| 7  | 20.3      | Front of House - Shoes other than black   | Clothing and footwear                               | 2.45   | 0.30% | 2.46   |
| 8  | 20.3      | Front of House - Shoes other than black maximum per week                        | Clothing and footwear                               | 6.22   | 0.30% | 6.24   |
| 9  | 20.4.1(a) | Costume more unusual than reasonably necessary engaged by the week              | Clothing and footwear                               | 9.32   | 0.30% | 9.35   |
| 10 | 20.4.1(b) | Costume more unusual than reasonably necessary - other than engaged by the week | Clothing and footwear                               | 1.85   | 0.30% | 1.86   |
| 11 | 20.5.1    | Allowance per recording   | Work Related  | 133.91 | 2.50% | 137.26 |
| 12 | 23.5      | Meal Allowance  | Take away and fast foods sub-group                  | 10.69  | 0.10% | 10.70  |
| 13 | 23.6      | Meal Allowance  | Take away and fast foods sub-group                  | 16.25  | 0.10% | 16.27  |
| 14 | 34.8.2    | Travel period less than one week  | Domestic holiday travel and accommodation sub-group | 173.20 | 4.50% | 180.99 |
| 15 | 34.8.3    | Travel period greater than one week - per week                                  | Domestic holiday travel and accommodation sub-group | 605.05 | 4.50% | 632.28 |
| 16 | 34.8.3    | Travel period greater than one week - per night                                 | Domestic holiday travel and accommodation sub-group | 121.04 | 4.50% | 126.49 |
| 17 | 38.8.6(a) | Cash Allowance per week   | Domestic holiday travel and accommodation sub-group | 605.05 | 4.50% | 632.28 |
| 18 | 38.8.6(b) | Cash Allowance per night  | Domestic holiday travel and accommodation sub-group | 121.04 | 4.50% | 126.49 |
| 19 | 34.9      | Meals - per day   | Take away and fast foods sub-group                  | 59.61  | 0.10% | 59.67  |
| 20 | 34.9      | Meals - maximum per week  | Take away and fast foods sub-group                  | 298.08 | 0.10% | 298.38 |

|    |      |                                |   |       |       |       |
|----|------|--------------------------------|---|-------|-------|-------|
| 21 | 34.1 | Incidentals - per day          | Domestic holiday travel and accommodation sub-group | 17.12 | 4.50% | 17.89 |
| 22 | 34.1 | Incidentals - maximum per week | Domestic holiday travel and accommodation sub-group | 85.62 | 4.50% | 89.47 |

**Table 3 - Reimbursement of Expenses**

| Destination                          | Previous rate<br>Amount first full pay period<br>on or after 28/10/2020<br>\$ | Current rate<br>Amount first full pay period<br>on or after 08/10/2021<br>\$ |
|--------------------------------------|---|--|
| Sydney and Melbourne                 | 1155.47   | 1207.47  |
| Adelaide, Hobart, Perth and Brisbane | 873.93  | 913.26   |
| Canberra                             | 1019.03   | 1064.89  |
| Other Places                         | 796.58  | 832.43   |

3. This variation shall take effect from the beginning of the first full pay period to commence on or after 8 October 2021.

N. CONSTANT, *Chief Commissioner*  
 J. V. MURPHY, *Commissioner*  
 D. SLOAN, *Commissioner*

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(1925)

SERIAL C9376

## LOCAL GOVERNMENT, AGED, DISABILITY AND HOME CARE (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Unions NSW, Industrial Organisation of Employees and State Peak Council.

(Case No. 208154 of 2021)

Before Chief Commissioner Constant  
Commissioner Murphy  
Commissioner Sloan

21 October 2021

### VARIATION

- Delete Part B, of the award published 19 February 2016 (379 I.G. 254) and insert in lieu thereof the following:

### PART B

**Table 1 - Monetary Rates**

|                            | Current Rate<br>p/week from<br>8 October 2021<br>\$ |
|----------------------------|---|
| Care Service Employees     |   |
| New Entrant Grade 1 Junior | \$768.85  |
| Grade 1                    | \$897.55  |
| Grade 2                    | \$953.76  |
| Grade 3                    | \$1,010.81  |
| Grade 4                    |   |
| - Level 1                  | \$1,063.59  |
| - Level 2                  | \$1,154.22  |
| Grade 5 from               | \$1,231.09  |
| to                         | \$1,819.09  |

- Note: Employees classified and paid as Recreational Activities Officers as at 10 November, 1998 be reclassified in accordance with the new definitions of Care Service Employee. Employees reclassified at Grade 2 by virtue of the above exercise, shall be paid at Grade 3 from the effective date of this award, and continue to be so paid whilst employed in the provision of recreational activities by their current employer. These employees may be required to perform the duties of a Level 3 Care Services Employee where they have the skill and competence to do so.
- Note: Salary Band-Grade 5 - Employers and employees may negotiate a rate within the salary band as shown. For the purposes of this award, the rate so negotiated shall be deemed to be the employee's award rate of pay. Salaries in excess of the salary band may also be negotiated between the parties.

|                                    | Current Rate<br>p/week from<br>8 October 2021<br>\$ |
|------------------------------------|---|
| Maintenance Supervisors            |   |
| Maintenance Supervisor (Otherwise) | \$1,056.08  |
| Maintenance Supervisor (Otherwise) |   |

|  |   |
|--|---|
| - in charge of staff   | \$1,078.92  |
| Maintenance Supervisor (Tradesperson)                            | \$1,145.04  |
|  |   |
| Catering Officer   |   |
| Trainee Catering Officer   |   |
| 1st year   | \$934.27  |
| 2nd year   | \$951.06  |
| 3rd year   | \$970.35  |
| Assistant Catering Officer                                       |   |
| 80-120 beds  | \$979.94  |
| 120-300 beds   | \$1,043.67  |
| 300-500 beds   | \$1,120.01  |
| 500-1000 beds  | \$1,149.73  |
|  |   |
|  | Current Rate<br>p/week from<br>8 October 2021<br>\$ |
| Catering Officer   |   |
| 80-120 beds  | \$1,089.66  |
| 120-200 beds   | \$1,120.01  |
| 200-300 beds   | \$1,149.73  |
| 300-500 beds   | \$1,207.09  |
| 500-1000 beds  | \$1,302.94  |
|  |   |
| Diversional Therapist  |   |
| 1st year of experience   | \$974.73  |
| 2nd year of experience   | \$1,023.23  |
| 3rd year of experience   | \$1,071.20  |
| 4th year of experience   | \$1,119.07  |
| 5th year of experience and thereafter                            | \$1,164.96  |
|  |   |
| Dieticians   |   |
| 1st year of service  | \$1,061.19  |
| 2nd year of service  | \$1,107.81  |
| 3rd year of service  | \$1,163.19  |
| 4th year of service  | \$1,223.15  |
| 5th year of service  | \$1,278.65  |
| 6th year of service  | \$1,322.87  |
| 7th year of service  | \$1,356.34  |
|  |   |
| Therapists and Social Workers (excluding Diversional Therapists) |   |
| 1st year of service  | \$1,033.65  |
| 2nd year of service  | \$1,061.19  |
| 3rd year of service  | \$1,107.81  |
| 4th year of service  | \$1,163.19  |
| 5th year of service  | \$1,223.15  |
| 6th year of service  | \$1,278.65  |
| 7th year of service  | \$1,322.87  |
| 8th year of service & thereafter                                 | \$1,356.34  |
|  |   |
| Apprentices  |   |
| Apprentice Cook  |   |
| 1st year   | \$606.47  |
| 2nd year   | \$833.93  |
| 3rd year   | \$934.99  |

|                                     |            |   |
|-------------------------------------|------------|---|
| Apprentice Gardener                 |            |   |
| 1st year                            |            | \$505.41  |
| 2nd year                            |            | \$606.47  |
| 3rd year                            |            | \$808.69  |
| 4th year                            |            | \$909.76  |
| Homecare Employees                  |            |   |
| Homecare Employee                   |            |   |
| Grade 1                             |            | \$902.67  |
| Grade 2                             |            | \$946.99  |
| Grade 3                             |            | \$1,012.69  |
|                                     |            | Current Rate<br>p/week from<br>8 October 2021<br>\$ |
| Live-in Homecarers                  |            |   |
| Grade 1                             | Daily Rate | \$234.77  |
| Grade 2                             | Daily Rate | \$265.12  |
| Grade 3                             | Daily Rate | \$307.36  |
| Clerical & Administrative Employees |            |   |
| Juniors                             |            |   |
| At 16 years of age and under        |            | \$491.02  |
| At 17 years of age                  |            | \$556.41  |
| At 18 years of age                  |            | \$637.96  |
| At 19 years of age                  |            | \$719.00  |
| At 20 years of age                  |            | \$792.74  |
| Adults                              |            |   |
| Grade 1                             |            | \$968.68  |
| Grade 2                             |            | \$1,026.25  |
| Grade 3                             |            | \$1,075.89  |
| Grade 4                             |            | \$1,134.61  |
| Grade 5                             |            | \$1,185.82  |

Note 1: Any employee paid on a classification/grade carrying a higher wage rate as at 10 November, 1998 shall have the difference between the higher rate and the new agreed grade/rate preserved whilst remaining to undertake the duties associated with the classification held prior to the date referred to above.

Note 2: Clerks who are paid at a grade above that of Grade 5 as at 10 November, 1998 shall have the difference between that grade, inclusive of the 1998 State Wage Case Increase, and the new agreed grade preserved whilst employed in a clerical position with their current employer.

**Table 2 - Allowances**

| Item No. | Clause No.         | Brief Description                     |                     | Current Rate from 8 October 2021 \$ |
|----------|--------------------|---------------------------------------|---------------------|-------------------------------------|
| 1        | 6(xi)(c)           | Broken Shift                          | per shift           | \$11.45                             |
| 2        | 8(iii)(a)          | Overtime - Breakfast*                 | per meal            | \$14.08                             |
| 3        | 8(iii)(b)          | Overtime - Luncheon*                  | per meal            | \$18.19                             |
| 4        | 8(iii)(c)          | Overtime - Evening Meal*              | per meal            | \$26.57                             |
| 5        | 9(iii)(b)          | Overtime - recall use of own vehicle* | per km              | \$0.40                              |
| 6        | 9(iii)(c)<br>13(i) | On Call Allowance                     | per day<br>(24 hrs) | \$18.66                             |
| 7        | 13(ii)             | Climatic & Isolation Allowance        | per/week            | \$7.42                              |

|    |           |  |           |         |
|----|-----------|--|-----------|---------|
| 8  | 15(i)(a)  | Climatic & Isolation Allowance                     | per week  | \$14.03 |
| 9  | 15(i)(b)  | Cleaning/Scraping Work - Confined Space            | per hour  | \$0.70  |
| 10 | 9(iii)(c) | Cleaning Scraping Work - Boiler/Flue               | per hour  | \$1.12  |
| 11 | 15(iii)   | Linen Handling - Nauseous Nature                   | per hour  | \$0.36  |
| 12 | 15(v)     | Use of own vehicle                                 | per week  | \$0.80  |
| 13 | 15(ix)    | Laundry & Dry Cleaning certificate Allowance       | per week  | \$12.34 |
| 14 | 26(ii)    | Leading Hand Allowance - in charge 2-5 employees   | per week  | \$30.37 |
| 15 | 26(ii)    | Leading Hand Allowance - in charge 6-10 employees  | per week  | \$43.44 |
| 26 | 26(ii)    | Leading Hand Allowance - in charge 11-15 employees | per week  | \$54.86 |
| 17 | 26(ii)    | Leading Hand Allowance - in charge 16-19 employees | per week  | \$66.98 |
| 18 | 28(i)(c)  | Uniform Allowance*                                 | per week  | \$7.23  |
| 19 | 28(i)(d)  | Special Type Shoes Allowance*                      | per week  | \$2.22  |
| 20 | 28(i)(e)  | Cardigan or Jumper Allowance*                      | per week  | \$2.15  |
| 21 | 28(i)(f)  | Laundry Allowance - Uniform*                       | per week  | \$5.97  |
| 22 | 29(ii)(d) | Sleepover Allowance                                | per shift | \$54.23 |
| 23 | 39(vi)    | Apprentice - TAFE Examination Allowance            | per week  | \$11.45 |

Note: Allowances marked\* did not increase by CPI (June 2019 until June 2020 -0.3%)

2. Delete subclause A.4 of Schedule A, Training Wages and insert in lieu thereof the following:

#### A.4 Minimum Wages

##### A.4.1 Minimum wages for full-time traineeships

###### (a) Wage Level A

Subject to clause A5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I-III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Schedule B are:

|                                    | Highest year of schooling completed              |  |  |
|------------------------------------|--|--|--|
|                                    | Year 10<br>per week from<br>8 October 2021<br>\$ | Year 11<br>per week from<br>8 October 2021<br>\$ | Year 12<br>per week from<br>8 October 2021<br>\$ |
| School leaver                      | \$357.62   | \$394.24   | \$473.28   |
| Plus 1 year out of school          | \$394.24   | \$473.28   | \$550.99   |
| Plus 2 years out of school         | \$473.28   | \$550.99   | \$640.37   |
| Plus 3 years out of school         | \$550.99   | \$640.37   | \$731.73   |
| Plus 4 years out of school         | \$640.37   | \$731.73   | \$731.73   |
| Plus 5 or more years out of school | \$731.73   | \$731.73   | \$731.73   |

##### A.4.2 Minimum wages for part-time traineeships

###### (a) Wage Level A

The minimum wages for a trainee undertaking a part-time AQF Certificate Level I-III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix B are:

|                           | Highest Year of Schooling completed              |  |  |
|---------------------------|--|--|--|
|                           | Year 10<br>Per hour from<br>8 October 2021<br>\$ | Year 11<br>Per hour from<br>8 October 2021<br>\$ | Year 12<br>Per hour from<br>8 October 2021<br>\$ |
| School Leaver             | \$11.78  | \$12.97  | \$15.56  |
| Plus 1 year out of school | \$12.96  | \$15.56  | \$18.07  |

|                      |         |         |         |
|----------------------|---------|---------|---------|
| Plus 2 years         | \$15.56 | \$18.07 | \$18.07 |
| Plus 3 years         | \$18.07 | \$21.08 | \$24.06 |
| Plus 4 years         | \$21.08 | \$24.06 | \$24.06 |
| Plus 5 years or more | \$24.06 | \$24.06 | \$24.06 |

## (b) School-based traineeships

The minimum wages for a trainee undertaking a school-based AQF Certificate Level I-III traineeship whose training package and AQF certificate levels are allocated to Wage A by Schedule B are as follows when the trainee works ordinary hours:

|  | Year of Schooling                            |  |
|--|--|--|
|  | Year 11<br>Rate from<br>8 October 2021<br>\$ | Year 12<br>Rate from<br>8 October 2021<br>\$ |
| School based Traineeships Wage Level A | \$11.78                                      | \$12.97                                      |

**SCHEDULE B: ALLOCATION OF TRAINEESHIPS TO WAGE LEVELS**

The wage levels applying to training packages and their AQF certificate levels are:

**Wage Level A**

| <b>Training package</b> | <b>AQF certificate level</b> |
|-------------------------|------------------------------|
| Business Services       | I                            |
|                         | II                           |
|                         | III                          |
|                         | IV                           |
| Community Services      | II                           |
|                         | III                          |
|                         | IV                           |

3. This variation shall take effect from the first full pay period commencing on and from 8 October 2021.

N. CONSTANT, *Chief Commissioner*  
 J. V. MURPHY, *Commissioner*  
 D. SLOAN, *Commissioner*

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**LOCAL GOVERNMENT (ELECTRICIANS) (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Unions NSW, Industrial Organisation of Employees and State Peak Council.

(Case No. 208154 of 2021)

Before Chief Commissioner Constant  
 Commissioner Murphy  
 Commissioner Sloan

21 October 2021

**VARIATION**

1. Delete Part B, Monetary Rates, of the award published 24 January 2020 (386 I.G. 184) and insert in lieu thereof the following:

**PART B****MONETARY RATES**

The rates of pay and allowances in Part B, Monetary Rates take effect from the first pay period on or after 8 October 2021.

Note: The rates of pay and allowances in this award include the adjustments payable under the State Wage Case 2021. These adjustments may offset any or both of:

- i. Any equivalent over award payments, and/or
- ii. Award wage increases other than State Wage Case adjustments.

**Table 1 - Wage Rates - Clause 5**

|                               | Rate of Pay Per Week<br>\$ |
|-------------------------------|----------------------------|
| Technical/Trades Band Level 1 | 977.24                     |
| Technical/Trades Band Level 2 | 1074.82                    |
| Technical/Trades Band Level 3 | 1229.59                    |
| Professional Band Level 1     | 1074.82                    |
| Professional Band Level 2     | 1229.59                    |
| Professional Band Level 3     | 1378.52                    |
| Professional Band Level 4     | 1610.99                    |
| Apprentice 1st Year           | 540.89                     |
| Apprentice 2nd Year           | 638.68                     |
| Apprentice 3rd Year           | 733.90                     |
| Apprentice 4th Year           | 826.46                     |

**Table 2 - Other Rates and Allowances**

| Clause 7 - Special Allowances |                 |
|-------------------------------|-----------------|
| (i) Wages                     |                 |
| (a) Dirty work, etc.          | \$0.41 per hour |
| (b) Wet places                | \$0.46 per hour |
| (c) Confined spaces           | \$0.46 per hour |
| (d) Working underground       | \$0.41 per hour |
| (e) Working with raw sewerage | \$9.11 per day  |

| Clause 8 - Tool Allowances  |                |
|---|----------------|
|   | Per Week<br>\$ |
| (i) Electrical Tradesperson   | 36.70          |
| (iv)(b) Amount payable by employee for each claim for compensation of loss of tools | 93.30          |

| Clause 8 - Tool Allowances  |                |
|---|----------------|
|   | Per Week<br>\$ |
| (i) Electrical Tradesperson   | 37.62          |
| (iv)(b) Amount payable by employee for each claim for compensation of loss of tools | 95.63          |

| Clause 14 - On Call     |        |
|-------------------------|--------|
|                         | \$     |
| (iii) On call allowance | 124.44 |

| Clause 15 - Meal Breaks and Allowances for Overtime Work |       |
|--|-------|
|  | \$    |
| (i) Meal allowance                                       | 17.02 |
| (ii)(a) Meal allowance                                   | 17.02 |
| (ii)(b) Meal allowance working 4 hours overtime          | 13.02 |

| Clause 24 - Travelling Allowance                                    |               |
|---|---------------|
| Where the employee works at a distance from the depot greater than: | Amount<br>\$  |
| (ii) 3-10 km  | 5.84 per day  |
| 10-20 km  | 10.56 per day |
| 20-30 km  | 15.07 per day |
| 30-40 km  | 19.37 per day |
| 40-50 km  | 24.09 per day |
| For each additional kilometre                                       | 0.45          |

| Clause 27 - Driving of Motor Vehicles                 |              |
|---|--------------|
|   | Amount<br>\$ |
| (ii) (a) Use of private vehicle (cents) per kilometre |              |
| Under 2.5 litres                                      | 0.70         |
| 2.5 litres and over                                   | 0.80         |
| (b) Minimum yearly allowance                          | 7745.52      |

| Clause 28 - Industry Allowance |                  |
|--------------------------------|------------------|
| Industry Allowance             | \$62.12 per week |

| Clause 31 - Miscellaneous           |                |
|-------------------------------------|----------------|
| (ii) (a) West of the line allowance | \$1.06 per day |
| (iii) First-aid allowance           | \$3.61 per day |

2. This variation shall take effect from the first full pay period commencing on and from 8 October 2021.

N. CONSTANT, *Chief Commissioner*

J.V. MURPHY, *Commissioner*

D. SLOAN, *Commissioner*

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(007)

**SERIAL C9368****MARINE CHARTER VESSELS (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Unions NSW, Industrial Organisation of Employees and State Peak Council.

(Case No. 208154 of 2021)

Before Chief Commissioner Constant  
 Commissioner Murphy  
 Commissioner Sloan

3 November 2021

**VARIATION**

1. Delete subclause (v) of clause 6, Wages, of the award published 12 April 2002 (332 I.G. 875) and reprinted 27 January 2012 (372 I.G. 420) and insert in lieu thereof the following:
  - (v) The rates of pay in this award include the adjustments payable under the State Wage Case 2021. These adjustments may be offset against:
    - (a) Any equivalent over award payments, and/or
    - (b) Award wage increases other than State Wage Case adjustments
2. Delete Part B, Monetary Rates, and insert in lieu thereof the following:

**PART B****MONETARY RATES****Table 1 - Wages**

| Classification                                     | Former Rate<br>(State Wage Case<br>2020)<br><br>Per Week<br>\$ | State Wage Case<br>2021<br>(applying a 2.5%<br>increase)<br><br>Per Week<br>\$ | Current Rate<br>(State Wage Case<br>2021)<br><br>Per Week<br>\$ |
|--|--|--|---|
| Master (vessels 35m and over)                      | 948.60   | 23.72  | 972.32  |
| Engineer (vessels 35m and over)                    | 948.60   | 23.72  | 972.32  |
| Master (vessels 20m and over)                      | 851.50   | 21.29  | 872.79  |
| Engineer (vessels 20m and over)                    | 851.50   | 21.29  | 872.79  |
| Master (vessels under 20m but 18.25<br>and over)   | 834.51   | 20.86  | 855.37  |
| Engineer (vessels under 20m but 18.25<br>and Over) | 834.51   | 20.86  | 855.37  |
| Master (vessels under 18.25m)                      | 829.89   | 20.75  | 850.64  |
| General - purpose Hand                             | 752.00   | 18.80  | 770.80  |

**Table 2 - Other Rates and Allowances**

| Item No. | Clause No. | Brief Description                                      | Former Amount<br>(State Wage Case 2020)<br><br>\$ | State Wage Case 2021<br>(applying a 2.5% increase)<br><br>\$ | Current Amount<br>(State Wage Case 2021)<br><br>\$ |
|----------|------------|--|---|--|--|
| 1        | 5(b)       | Meal Allowance   | 12.00   | 0.30   | 12.30  |
| 2        | 6(iii)(a)  | Certificate of Competency<br>(per day or part thereof) | 4.23  | 0.11   | 4.34   |
| 3        | 14(i)      | Uniforms   | 14.55   | 0.36   | 14.91  |
| 4        | 17         | Compensation for Personal Effects                      | 1,157.37  | 28.93  | 1,186.30   |

3. This variation shall take effect from the beginning of the first pay period to commence on or after 8 October 2021 in accordance with the State Wage Case 2021.

N. CONSTANT, *Chief Commissioner*  
 J.V. MURPHY, *Commissioner*  
 D. SLOAN, *Commissioner*

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## MISCELLANEOUS WORKERS HOME CARE INDUSTRY (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Unions NSW, Industrial Organisation of Employees and State Peak Council.

(Case No. 208154 of 2021)

Before Chief Commissioner Constant  
Commissioner Murphy  
Commissioner Sloan

15 December 2021

### VARIATION

1. Delete Part B, Monetary Rates, of award published 21 February 2020 (386 I.G. 552) and insert in lieu thereof the following:

### PART B

#### MONETARY RATES

**Table 1 - Wage Rates**

| Classification              | New Rate Per Week following<br>SWC 2020<br>(effective from the first full<br>pay period on or after<br>16 December 2020)<br>\$ | New Rate Per Week following<br>SWC 2021<br>(effective from the first full<br>pay period on or after<br>16 December 2021)<br>\$ |
|-----------------------------|--|--|
| Field Staff Grade 1         | 831.40   | 852.20   |
| Field Staff Grade 2         | 863.80   | 885.40   |
| Field Staff Grade 3         | 914.60   | 937.50   |
| Live-in Houseworker Grade 1 | 1,081.00   | 1,108.00   |
| Live-in Houseworker Grade 2 | 1,209.30   | 1,239.50   |
| Live-in Houseworker Grade 3 | 1,419.80   | 1,455.30   |

**Table 2 - Other Wage Rates**

| Rate<br>following SWC 2021<br>(effective from the first full pay period on<br>or after 16 December 2021) | Field Staff Grade 1<br>\$ | Field Staff Grade 2<br>\$ | Field Staff Grade 3<br>\$ |
|--|---------------------------|---------------------------|---------------------------|
| Part-time minimum daily payment -<br>hourly rate   | 22.40                     | 23.30                     | 24.70                     |
| Casual per hour includes 20% loading   | 27.00                     | 27.90                     | 29.60                     |
| Composite per hour includes 20%  | 27.00                     | 27.90                     | 29.60                     |
| Composite casual per hour includes 20%<br>plus 20%   | 31.50                     | 32.60                     | 34.50                     |

**Table 3 - Other Rates and Allowances**

| Item No. | Clause No. | Brief Description     | Amount<br>\$ | Amount<br>\$ |  |
|----------|------------|-----------------------|--------------|--------------|--|
| 1        | 9(ii)      | Shift Allowance       | 9.90         | 10.10        | for each break in the shift<br>per night |
| 2        | 13(iii)    | Sleep Over Allowance  | 50.60        | 51.90        |  |
| 3        | 16         | Meal Money (overtime) | 12.30        | 12.60        |  |
| 4        | 29(i)(a)   | Vehicle Allowance     | 0.90         | 0.92         | per kilometre                            |

2. This variation shall take effect from the first full pay period to commence on or after 16 December 2021.

N. CONSTANT, *Chief Commissioner*  
 J. V. MURPHY, *Commissioner*  
 D. SLOAN, *Commissioner*

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## MISCELLANEOUS WORKERS' - KINDERGARTENS AND CHILD CARE CENTRES, &c. (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Industrial Relations Secretary.

(Case No. 208154 of 2021)

Before Commissioner Constant  
Commissioner Murphy  
Commissioner Sloan

20 December 2021

### VARIATION

1. Delete Part B, Monetary Rates, of the award published 6 September 2019 (385 I.G. 187) and insert in lieu thereof the following:

### PART B

#### MONETARY RATES

**TABLE 1B**

#### WAGES - SUPPORT WORKER CLASSIFICATIONS

| Classification                  | Rate at 16/12/2020<br>\$<br>2.50% | Rate at 16/12/2021<br>\$<br>2.04% |
|---------------------------------|-----------------------------------|-----------------------------------|
| Support Worker                  | 791.10                            | 807.20                            |
| Support Worker (Qualified Cook) | 808.80                            | 825.30                            |

**TABLE 1C**

#### NEW WAGES - CHILD CARE CLASSIFICATIONS IN LONG DAY CARE

| Level | Step | Rate at 16/12/2020<br>\$<br>2.50% | Rate at 16/12/2021<br>\$<br>2.04% |
|-------|------|-----------------------------------|-----------------------------------|
| CCW   | 1    | 903.50                            | 921.90                            |
|       | 2    | 910.90                            | 929.50                            |
|       | 3    | 918.10                            | 936.80                            |
|       | 4    | 925.40                            | 944.30                            |
|       | 5    | 934.20                            | 953.30                            |
| ACCW  | 1    | 943.10                            | 962.30                            |
|       | 2    | 961.50                            | 981.10                            |
|       | 3    | 993.10                            | 1013.40                           |
| ACCWQ | 1    | 1009.60                           | 1030.20                           |
|       | 2    | 1112.70                           | 1135.40                           |
|       | 3    | 1166.70                           | 1190.50                           |
|       | 4    | 1224.70                           | 1249.70                           |

|                  |    |         |         |
|------------------|----|---------|---------|
| Asst Co-ord      |    | 1029.20 | 1050.20 |
| Asst Co-ord Qual |    | 1251.80 | 1277.30 |
| Co-Ord OOSH      | L1 | 1102.80 | 1125.30 |
| Co-Ord LDC       | L2 | 1130.00 | 1143.10 |
|                  | L3 | 1167.10 | 1190.90 |
|                  | L4 | 1213.60 | 1238.40 |
| Co-Ord Qual OOSH |    | 1347.40 | 1374.90 |
| Co-Ord Qual LDC  | L2 | 1374.30 | 1402.30 |
|                  | L3 | 1411.50 | 1440.30 |
|                  | L4 | 1458.20 | 1487.90 |

TABLE 1D

## NEW WAGES - CHILD CARE CLASSIFICATIONS IN PRE-SCHOOLS

| Level               | Step | Rate at 16/12/2020<br>\$<br>2.50% | Rate at 16/12/2021<br>\$<br>2.04% |
|---------------------|------|-----------------------------------|-----------------------------------|
| CCW                 | 1    | 870.80                            | 888.60                            |
|                     | 2    | 878.00                            | 895.90                            |
|                     | 3    | 884.90                            | 903.00                            |
|                     | 4    | 891.90                            | 910.10                            |
|                     | 5    | 900.50                            | 918.90                            |
| ACCW                | 1    | 908.90                            | 927.40                            |
|                     | 2    | 927.60                            | 946.50                            |
|                     | 3    | 956.00                            | 975.50                            |
| ACCWQ               | 1    | 974.10                            | 994.00                            |
|                     | 2    | 1071.80                           | 1093.70                           |
|                     | 3    | 1123.70                           | 1146.60                           |
|                     | 4    | 1179.70                           | 1203.80                           |
| Asst Co-ord         |      | 991.90                            | 1012.10                           |
| Asst Co-ord Qual    |      | 1205.80                           | 1230.40                           |
| Co-ord OOSH         | L1   | 1067.00                           | 1088.80                           |
| Co-Ord Pre-School   | L2   | 1094.30                           | 1116.60                           |
|                     | L3   | 1131.40                           | 1154.50                           |
|                     | L4   | 1178.10                           | 1202.10                           |
| Co-Ord Qual OOSH    |      | 1302.50                           | 1329.10                           |
| Co-Ord Qual Pre-Sch | L2   | 1329.50                           | 1356.60                           |
|                     | L3   | 1366.60                           | 1394.50                           |
|                     | L4   | 1413.20                           | 1442.00                           |

**TABLE 2****Additional Rates and Allowances**

| Item No. | Clause No. | Brief Description   | Amount<br>16/12/2020<br>\$      | Amount<br>16/12/2021<br>\$      |
|----------|------------|---|---------------------------------|---------------------------------|
| 1        | 10(ii)(a)  | Broken Shift  | 79.80 Per week<br>16.00 Per day | 81.40 Per week<br>16.30 Per day |
| 2        | 10(ii)(b)  | Excess Fares  | 10.90                           | 11.10                           |
| 3        | 10(iii)    | Uniform:<br>Laundry Allowance                                   | 5.70                            | 5.80                            |
| 4        | 10(iv)     | Cooks Uniforms:<br>Laundry Allowance                            | 9.20                            | 9.40                            |
| 5        | 10(vi)(a)  | Qualification Allowance Commercial<br>Cookery Basic Certificate |                                 |                                 |
| 6        | 10(vi)(b)  | Hotel & Restaurant Cookery Certificate                          | 16.70                           | 17.00                           |
| 7        | 12(iv)     | Meal Money  | 8.90                            | 9.10                            |
| 8        | 10(ix)     | Authorised Supervisor   | 43.20 Weekly<br>8.70 daily      | 44.10 Weekly<br>8.90 daily      |

2. This variation shall take effect from the first full pay period to commence on or after 16 December 2021.

N. CONSTANT, *Chief Commissioner*  
 J. V. MURPHY, *Commissioner*  
 D. SLOAN, *Commissioner*

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(4229)

**SERIAL C9377****NURSES' (PRIVATE SECTOR) TRAINING WAGE (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Unions NSW, Industrial Organisation of Employees and State Peak Council.

(Case No. 208154 of 2021)

Before Chief Commissioner Constant  
Commissioner Murphy  
Commissioner Sloan

21 October 2021

**VARIATION**

1. Delete paragraph (iv) of subclause (a) from clause 7, Wages, of the award published 2 August 1996 (294 I.G. 77) and reprinted 27 January 2012, (372 I.G. 588) and insert in lieu thereof the following:

(iv) The rates of pay in this award include the adjustments payable under the State Wage Case 2021.

These adjustments may be offset against:

- (a) any equivalent over award payments, and/or
- (b) award wage increases since 29 May 1991 other than the safety net, State Wage Case, and minimum rates adjustments.

The rates of pay and allowances in Part B, Monetary Rates, take effect from the first pay period on or after 8 October 2021.

2. Delete Part B, Monetary Rates and insert in lieu thereof the following:

**PART B****MONETARY RATES****Table 1 - Monetary Rate for Trainees****WAGES**

Effective from the first full pay period on or after 8 October 2021

| Highest Year of Schooling Completed |          |          |          |
|-------------------------------------|----------|----------|----------|
| Skill Level A - Year 10             | SWC 2020 | Increase | SWC 2021 |
| School Leaver                       | \$348.90 | 2.50%    | \$357.60 |
| 1 year out of school                | \$384.50 | 2.50%    | \$394.10 |
| 2 years out of school               | \$461.70 | 2.50%    | \$473.20 |
| 3 years out of school               | \$537.50 | 2.50%    | \$550.90 |
| 4 years out of school               | \$624.70 | 2.50%    | \$640.30 |
| 5 years out of school               | \$713.90 | 2.50%    | \$731.70 |
| Highest Year of Schooling Completed |          |          |          |
| Skill Level A - Year 11             | SWC 2020 | Increase | SWC 2021 |
| School Leaver                       | \$384.60 | 2.50%    | \$394.20 |
| 1 year out of school                | \$461.70 | 2.50%    | \$473.20 |
| 2 years out of school               | \$537.50 | 2.50%    | \$550.90 |
| 3 years out of school               | \$624.70 | 2.50%    | \$640.30 |
| 4 years out of school               | \$714.00 | 2.50%    | \$731.90 |

|                                     |          |          |          |
|-------------------------------------|----------|----------|----------|
| 5 years out of school               | \$714.00 | 2.50%    | \$731.90 |
| Highest Year of Schooling Completed |          |          |          |
| Skill Level A - Year 12             | SWC 2020 | Increase | SWC 2021 |
| School Leaver                       | \$461.70 | 2.50%    | \$473.20 |
| 1 year out of school                | \$537.50 | 2.50%    | \$550.90 |
| 2 years out of school               | \$624.70 | 2.50%    | \$640.30 |
| 3 years out of school               | \$714.00 | 2.50%    | \$731.90 |
| 4 years out of school               | \$714.00 | 2.50%    | \$731.90 |
| 5 years out of school               | \$714.00 | 2.50%    | \$731.90 |

**Table 2 - Monetary Rates for School Based Traineeships**

|                             |          |          |          |
|-----------------------------|----------|----------|----------|
| Year of Schooling - Year 11 | SWC 2020 | Increase | SWC 2021 |
| Skill Level 1               | \$335.30 | 2.50%    | \$343.70 |

|                             |          |          |          |
|-----------------------------|----------|----------|----------|
| Year of Schooling - Year 12 | SWC 2020 | Increase | SWC 2021 |
| Skill Level 1               | \$384.60 | 2.50%    | \$394.20 |

**Table 3 – Wages – School Based Traineeships**

|                             |          |          |          |
|-----------------------------|----------|----------|----------|
| Year of Schooling - Year 11 | SWC 2020 | Increase | SWC 2021 |
| Skill Levels A, B, C.       | \$233.00 | 2.50%    | \$238.80 |

|                             |          |          |          |
|-----------------------------|----------|----------|----------|
| Year of Schooling - Year 12 | SWC 2020 | Increase | SWC 2021 |
| Skill Levels A, B, C.       | \$255.10 | 2.50%    | \$261.50 |

3. This variation shall take effect from the beginning of the first full pay period to commence on or after 8 October 2021.

N. CONSTANT, *Chief Commissioner*

J. V. MURPHY, *Commissioner*

D. SLOAN, *Commissioner*

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(759)

**SERIAL C9371****NURSING HOMES, &c., NURSES' (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Unions NSW, Industrial Organisation of Employees and State Peak Council.

(Case No. 208154 of 2021)

Before Chief Commissioner Constant  
Commissioner Murphy  
Commissioner Sloan

21 October 2021

**VARIATION**

1. Delete subclause (iii) of clause 49, Area Incidence and Duration, of the award published 24 January 2020 (386 I.G. 273) and insert in lieu thereof the following:
  - (iii) The rates of pay in this award include the adjustments payable under the State Wage Case 2021. These adjustments may be offset any or both:
    - (a) any equivalent over award payments; and
    - (b) award wage increases other than State Wage Case adjustments.

The rates of pay and allowances in Part B, Monetary Rates, take effect from the first pay period on or after 8 October 2021.

2. Delete Part B Monetary Rates, and insert in lieu thereof the following:

**PART B****MONETARY RATES****Table 1 – Salaries**

| Classification                              | SWC 2020<br>FFPP<br>28/10/2020 | Increase<br>2.50% | SWC2021<br>FFPP<br>8/10/2021 |
|---|--------------------------------|-------------------|------------------------------|
| Assistant in nursing/trainee enrolled nurse |                                |                   |                              |
| Under 18 years                              |                                |                   |                              |
| First year of experience                    | \$723.50                       | 2.50%             | \$741.60                     |
| Second year of experience                   | \$755.70                       | 2.50%             | \$774.60                     |
| Thereafter                                  | \$785.70                       | 2.50%             | \$805.30                     |
|   |                                |                   |                              |
| 18 years and over                           |                                |                   |                              |
| First year of experience                    | \$850.30                       | 2.50%             | \$871.60                     |
| Second year of experience                   | \$876.60                       | 2.50%             | \$898.50                     |
| Third year of experience                    | \$903.20                       |                   | \$925.80                     |
| Thereafter                                  | \$930.50                       | 2.50%             | \$953.80                     |
| Enrolled nurse                              |                                |                   |                              |
| First year of experience                    | \$1,037.70                     | 2.50%             | \$1,063.60                   |
| Second year of experience                   | \$1,058.90                     | 2.50%             | \$1,085.40                   |
| Third year of experience                    | \$1,081.60                     | 2.50%             | \$1,108.60                   |
| Fourth year of experience                   | \$1,103.80                     | 2.50%             | \$1,131.40                   |
| Thereafter                                  | \$1,126.10                     | 2.50%             | \$1,154.30                   |
|   |                                |                   |                              |

|  |            |       |            |
|--|------------|-------|------------|
| Registered nurse general, MR Psych., Infants, geriatric, midwifery       |            |       |            |
| First year of service  | \$1,172.00 | 2.50% | \$1,201.30 |
| Second year of service   | \$1,234.30 | 2.50% | \$1,265.20 |
| Third year of service  | \$1,296.40 | 2.50% | \$1,328.80 |
| Fourth year of service   | \$1,362.80 | 2.50% | \$1,396.90 |
| Fifth year of service  | \$1,429.00 | 2.50% | \$1,464.70 |
| Sixth year of service  | \$1,495.00 | 2.50% | \$1,532.40 |
| Seventh year of service  | \$1,570.70 | 2.50% | \$1,610.00 |
| Eighth year of service   | \$1,633.80 | 2.50% | \$1,674.60 |
|  |            |       |            |
| Nursing unit manager (personal to current occupants as at 1 March 1999). |            |       |            |
| Level 1  |            |       |            |
| First year   | \$1,809.00 | 2.50% | \$1,854.20 |
| Second year  | \$1,859.20 | 2.50% | \$1,905.70 |
| Level 2  | \$1,907.70 | 2.50% | \$1,955.40 |
| Level 3  | \$1,953.60 | 2.50% | \$2,002.40 |
|  |            |       |            |
| Nurse undergoing pre-registration Assessment                             | \$1,014.40 | 2.50% | \$1,039.80 |
| Clinical nurse specialist  | \$1,699.70 | 2.50% | \$1,742.20 |
| Clinical nurse consultant  | \$2,002.20 | 2.50% | \$2,052.30 |
| Clinical nurse educator  | \$1,699.70 | 2.50% | \$1,742.20 |
|  |            |       | \$0.00     |
| Nurse educator   |            |       | \$0.00     |
| First year   | \$1,808.90 | 2.50% | \$1,854.10 |
| Second year  | \$1,859.20 | 2.50% | \$1,905.70 |
| Third year   | \$1,903.90 | 2.50% | \$1,951.50 |
| Fourth year  | \$2,002.20 | 2.50% | \$2,052.30 |
|  |            |       |            |
| Senior nurse educator  |            |       |            |
| First year   | \$2,050.00 | 2.50% | \$2,101.30 |
| Second year  | \$2,091.40 | 2.50% | \$2,143.70 |
| Third year   | \$2,160.10 | 2.50% | \$2,214.10 |
|  |            |       |            |
| Assistant director of nursing  |            |       |            |
| Less than 150 beds   | \$1,859.20 | 2.50% | \$1,905.70 |
| 150-250 beds   | \$2,002.20 | 2.50% | \$2,052.30 |
| 250 beds and over  | \$2,050.00 | 2.50% | \$2,101.30 |
|  |            |       |            |
| Deputy director of nursing   |            |       |            |
| Less than 20 beds  | \$1,896.30 | 2.50% | \$1,943.70 |
| 20 beds, less than 75 beds   | \$1,944.40 | 2.50% | \$1,993.00 |
| 75 beds, less than 100 beds  | \$1,988.80 | 2.50% | \$2,038.50 |
| 100 beds, less than 150 beds   | \$2,030.40 | 2.50% | \$2,081.20 |
| 150 beds, less than 200 beds   | \$2,091.30 | 2.50% | \$2,143.60 |
| 200 beds, less than 250 beds   | \$2,160.10 | 2.50% | \$2,214.10 |
| 250 beds, less than 350 beds   | \$2,239.90 | 2.50% | \$2,295.90 |
| 350 beds, less than 450 beds   | \$2,318.70 | 2.50% | \$2,376.70 |
| 450 beds, less than 750 beds   | \$2,403.80 | 2.50% | \$2,463.90 |
| 750 beds and over  | \$2,495.60 | 2.50% | \$2,558.00 |
|  |            |       |            |
| Director of nursing  |            |       |            |
| Less than 25 beds  | \$2,116.90 | 2.50% | \$2,169.80 |
| 25 beds, less than 50 beds   | \$2,239.90 | 2.50% | \$2,295.90 |
| 50 beds, less than 75 beds   | \$2,287.20 | 2.50% | \$2,344.40 |

|                              |            |       |            |
|------------------------------|------------|-------|------------|
| 75 beds, less than 100 beds  | \$2,334.10 | 2.50% | \$2,392.50 |
| 100 beds, less than 150 beds | \$2,400.60 | 2.50% | \$2,460.60 |
| 150 beds, less than 200 beds | \$2,480.00 | 2.50% | \$2,542.00 |
| 200 beds, less than 250 beds | \$2,558.80 | 2.50% | \$2,622.80 |
| 250 beds, less than 350 beds | \$2,653.90 | 2.50% | \$2,720.20 |
| 350 beds, less than 450 beds | \$2,812.40 | 2.50% | \$2,882.70 |
| 450 beds, less than 750 beds | \$2,973.90 | 2.50% | \$3,048.20 |
| 750 beds and over            | \$3,158.70 | 2.50% | \$3,237.70 |

**Table 2 - Other Rates and Allowances**

| Item No. | Brief Description                   | Clause No. | Rate 2020 \$ | Increase % | Rate 2021 \$ | Period                       |
|----------|-------------------------------------|------------|--------------|------------|--------------|------------------------------|
| 1        | In Charge of Nursing Home           |            |              |            |              |                              |
|          | (a) less than 100 beds              | 10(i)(a)   | 29.06        | 2.5        | 29.79        | per shift                    |
|          | (b) 100 beds and less than 150 beds |            | 46.77        | 2.5        | 47.94        | per shift                    |
| 2        | In Charge of ward/unit              | 10(i)(b)   | 29.06        | 2.5        | 29.79        | per shift                    |
| 3        | On Call                             | 10(ii)(a)  | 25.89        | 2.5        | 26.54        | per 24 hours or part thereof |
| 4        | On Call on rostered days off        | 10(ii)(b)  | 51.77        | 2.5        | 53.06        | per 24 hours or part thereof |
| 5        | On Call During Meal Break           | 10(ii)(c)  | 14.01        | 2.5        | 14.36        | per shift                    |
| 6        | Travelling Allowance                | 10(ii)(d)  | 0.79         | 3.8        | 0.82         | per km                       |
| 7        | Climatic Allowance                  | 11(i)      | 5.36         | 2.5        | 5.49         | per week                     |
| 8        | Isolation Allowance                 | 11(ii)     | 10.38        | 2.5        | 10.64        | per week                     |
| 9        | Expense Allowance for DON's         | 13         |              |            |              |                              |
|          | less 100 beds                       |            | 287.81       | 3.8        | 298.75       | per annum                    |
|          | 100 - 299 beds                      |            | 574.41       | 3.8        | 596.24       | per annum                    |
|          | 300 - 499 beds                      |            | 862.24       | 3.8        | 895.01       | per annum                    |
|          | over 500 beds                       |            | 1,150.44     | 3.8        | 1194.16      | per annum                    |
| 10       | Uniforms                            | 16(iii)(a) | 7.72         | 3.8        | 7.01         | per week                     |
| 11       | Shoes                               | 16(iii)(a) | 2.39         | 3.8        | 2.48         | per week                     |
| 12       | Cardigan or Jacket                  | 16(iii)(b) | 2.32         | 3.8        | 2.41         | per week                     |
| 13       | Stockings                           | 16(iii)(c) | 4.02         | 3.8        | 4.17         | per week                     |
| 14       | Socks                               | 16(iii)(d) | 0.8          | 3.8        | 0.83         | per week                     |
| 15       | Laundry                             | 16(iv)     | 6.45         | 3.8        | 6.70         | per week                     |
| 16       | Meal on Overtime                    | 18(vi)     | 11.37        | 3.8        | 11.80        | per week                     |
| 17       | Breakfast                           | 28(i)(c)   | 4.26         | 3.8        | 4.42         | per week                     |
| 18       | Other Meals                         | 28(i)(c)   | 7.71         | 3.8        | 8.00         | per week                     |

**Table 3 - Continuing Education Allowances**

| Item No. | Brief Description                  | Clause No. | Rate 2020 \$ | Increase % | Rate 2021 & | Period   |
|----------|------------------------------------|------------|--------------|------------|-------------|----------|
| 1        | Continuing education allowance: RN | 10A(vii)   | 24.38        | 2.5        | 24.99       | per week |
| 2        | Continuing education allowance: RN | 10A(viii)  | 40.62        | 2.5        | 41.64       | per week |
| 3        | Continuing education allowance: RN | 10A(ix)    | 48.75        | 2.5        | 49.97       | per week |
| 4        | Continuing education allowance: EN | 10A(x)     | 16.25        | 2.5        | 16.66       | per week |

3. This variation shall take effect from the beginning of the first full pay period to commence on or after 8 October 2021.

N. CONSTANT, *Chief Commissioner*

J. V. MURPHY, *Commissioner*

D. SLOAN, *Commissioner*

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**SECURITY INDUSTRY (STATE) AWARD**

## INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Industrial Relations Secretary.

(Case No. 208154 of 2021)

Before Chief Commissioner Constant  
 Commissioner Murphy  
 Commissioner Sloan

20 December 2021

**VARIATION**

1. Delete Part B, Monetary Rates, of the award published 24 September 2021 (390 I.G. 515) and insert in lieu thereof the following:

**PART B****MONETARY RATES****Table 1 - Rates of Pay Per 38-Hour Week**

| Classification | Former rate per week<br>SWC 2020<br>\$ | New rate per week<br>SWC 2021<br>\$ |
|----------------|--|-------------------------------------|
| Grade 1        | 851.70                                 | 869.10                              |
| Grade 2        | 877.60                                 | 895.50                              |
| Grade 3        | 893.50                                 | 911.70                              |
| Grade 4        | 918.20                                 | 936.90                              |
| Grade 5        | 949.30                                 | 968.70                              |

**Table 2 - Other Rates and Allowances**

| Item No. | Clause No. | Brief Description                     | Rate Per Week from the first pay period to commence on or after 16-Apr-21<br>\$ | Rate Per Shift from the first pay period to Commence on or after 16-Apr-21<br>\$ | Rate Per Week from the first pay period to commence on or after 16-Apr-22<br>\$ | Rate Per Shift from the first pay period to Commence on or after 16-Apr-22<br>\$ |
|----------|------------|---------------------------------------|---|--|---|--|
|          | 12.1       | Leading Hand Allowance                |   | Casuals only   |   | Casuals only   |
| 1        |            | up to 5 Employees                     | 37.60   | 7.70   | 38.40   | 7.70   |
| 2        |            | 6 to 10 Employees                     | 42.60   | 9.60   | 43.50   | 8.70   |
| 3        |            | 11 to 15 Employees                    | 55.80   | 11.20  | 56.90   | 11.40  |
| 4        |            | 16 to 20 Employees                    | 64.30   | 12.90  | 65.60   | 13.10  |
| 5        |            | Over 20 Employees                     | 64.30   | 12.90  | 65.60   | 13.10  |
| 6        |            | for each Employee exceeding 20, extra | 0.94  | 0.25   | 1.0   | 0.20   |
| 7        | 12.2       | Relieving Officer                     | 37.40   |  | 38.20   |  |
|          | 12.3       | First Aid Allowance                   |   | Casuals only   |   | Casuals only   |
| 8        |            | Industrial                            | 21.20   | 4.30   | 21.60   | 4.30   |
| 9        | 12.4       | Gun Allowance                         | 14.40   | 3.10   | 14.70   | 3.20   |
| 10       | 12.5       | Locomotion Allowance                  |   |  |   |  |
| 11       |            | Motor Vehicle/cycle                   |   | 34.80  |   | 35.50  |
| 12       |            | Bicycle                               |   | 3.80   |   | 3.90   |

|    |      |                          |                                      |                                   |                                      |                                   |
|----|------|--------------------------|--------------------------------------|-----------------------------------|--------------------------------------|-----------------------------------|
| 13 | 12.6 | Meal Allowance           |                                      | 11.10                             |                                      | 11.30                             |
| 14 | 12.7 | Fares Allowance          |                                      | 9.50                              |                                      | 9.70                              |
| 15 | 12.8 | Overnight Meal Allowance |                                      | 90.60                             |                                      | 92.40                             |
|    |      |                          | Permanent Employees<br>Rate Per Hour | Casual Employees<br>Rate Per Hour | Permanent Employees<br>Rate Per Hour | Casual Employees<br>Rate Per Hour |
| 16 | 12.9 | Aviation Allowance       | 1.52                                 | 1.52                              | 1.60                                 | 1.60                              |

2. This variation shall take effect from the first full pay period to commence on or after 16 April 2022.

N. CONSTANT, *Chief Commissioner*  
 J. V. MURPHY, *Commissioner*  
 D. SLOAN, *Commissioner*

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(1344)

**SERIAL C9388**

**CROWN EMPLOYEES (BOTANIC GARDENS AND CENTENNIAL  
PARKLANDS BUILDING AND MECHANICAL SERVICES  
EMPLOYEES) AWARD 2016**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(Case No. 141256 of 2021)

Before Commissioner Sloan

27 October 2021

**ORDER OF RESCISSION**

The Industrial Relations Commission of New South Wales orders that the Crown Employees (Botanic Gardens and Centennial Parklands Building and Mechanical Services Employees) Award 2016 published 17 April 2020 (387 I.G. 717) as varied, be rescinded on and from 27 October 2021.

D. SLOAN, *Commissioner*

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**CROWN EMPLOYEES (DEPARTMENT OF INDUSTRY) LAND  
INFORMATION OFFICERS AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(Case No. 134696 of 2021)

Before Commissioner Sloan

14 December 2021

**ORDER OF RESCISSION**

The Industrial Relations Commission of New South Wales orders that the Crown Employees (Department of Industry) Land Information Officers Award published 25 October 2019 (385 I.G. 491) as varied, be rescinded on and from 14 December 2021.

D. SLOAN, *Commissioner*

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**CROWN EMPLOYEES (SAFE STAFFING LEVELS DEPARTMENT  
OF JUSTICE - CORRECTIVE SERVICES NSW) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(Case No. 179238 of 2021)

Before Commissioner Sloan

4 February 2022

**ORDER OF RESCISSION**

The Industrial Relations Commission of New South Wales orders that the Crown Employees (Safe Staffing Levels Department of Justice - Corrective Services NSW) Award/ published 19 June 2020 (388 I.G. 863) as varied, be rescinded on and from 4 February 2022.

D. SLOAN, *Commissioner*

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**NURSES (PRIVATE SECTOR) REDUNDANCY (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(Case No. 125202 of 2021)

Before Commissioner Sloan

23 November 2021

**ORDER OF RESCISSION**

The Industrial Relations Commission of New South Wales orders that the Nurses (Private Sector) Redundancy (State) Award published 21 February 2020 (386 I.G. 660) as varied, be rescinded on and from 8 October 2021.

D. SLOAN, *Commissioner*

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(2150)

**SERIAL C9384**

## **NURSES (PRIVATE SECTOR) SUPERANNUATION (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(Case No. 125312 of 2021)

Before Commissioner Sloan

23 November 2021

### **ORDER OF RESCISSION**

The Industrial Relations Commission of New South Wales orders that the Nurses (Private Sector) Superannuation (State) Award published 24 January 2020 (386 I.G. 269) as varied, be rescinded on and from 8 October 2021.

D. SLOAN, *Commissioner*

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## **NURSES' (PRIVATE SECTOR) TRAINING WAGE (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(Case No. 125412 of 2021)

Before Commissioner Sloan

23 November 2021

### **ORDER OF RESCISSION**

The Industrial Relations Commission of New South Wales orders that the Nurses' (Private Sector) Training Wage (State) Award published 27 January 2012 (372 I.G. 588) as varied, be rescinded on and from 8 October 2021.

D. SLOAN, *Commissioner*

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## **NURSING HOMES, &c., NURSES' (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(Case No. 126407 of 2021)

Before Commissioner Sloan

23 November 2021

### **ORDER OF RESCISSION**

The Industrial Relations Commission of New South Wales orders that the Nursing Homes, &c., Nurses' (State) Award published 24 January 2020 (386 I.G. 273) as varied, be rescinded on and from 8 October 2021.

D. SLOAN, *Commissioner*

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## **RESTAURANTS, &c., EMPLOYEES (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(Case No. 201362 of 2021)

Before Commissioner Sloan

14 October 2021

### **ORDER OF RESCISSION**

The Industrial Relations Commission of New South Wales orders that the Restaurants, &c., Employees (State) Award published 6 March 2020 (386 I.G. 1227) as varied, be rescinded on and from 14 October 2021.

D. SLOAN, *Commissioner*

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**SYDNEY CRICKET AND SPORTS GROUND TRUST  
(MAINTENANCE STAFF) ENTERPRISE AWARD 2018**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(Case No. 101355 of 2021)

Before Commissioner Sloan

23 September 2021

**ORDER OF RESCISSION**

The Industrial Relations Commission of New South Wales orders that the Sydney Cricket and Sports Ground Trust (Maintenance Staff) Enterprise Award 2018 published 2 November 2018 (383 I.G. 571) as varied, be rescinded on and from 23 September 2021.

D. SLOAN, *Commissioner*

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**CROWN EMPLOYEES (OFFICE OF ENVIRONMENT AND  
HERITAGE AND THE ENVIRONMENT PROTECTION AUTHORITY)  
GENERAL AWARD 2021**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Correction to Serial C9348 published 3 December 2021

(391 I.G. 172)

(Case No. 120630 of 2021)

**CORRECTION**

1. Delete the title of the award published and insert in lieu thereof the following:

**CROWN EMPLOYEES (DEPARTMENT OF PLANNING, INDUSTRY  
AND ENVIRONMENT AND THE ENVIRONMENT PROTECTION  
AUTHORITY) ENVIRONMENT AWARD 2021**

I. HOSKINSON *Acting Industrial Registrar.*

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(558)

**SERIAL C9365**

**PUBLIC HEALTH SYSTEM NURSES' AND MIDWIVES' (STATE)  
AWARD 2021**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Correction to Serial C9322 published 8 October 2021

(390 I.G. 649)

(Case No. 188601 of 2021)

**CORRECTION**

1. Substitute the schedule of the award published on 8 October 2021 with the following:

(558)

**SERIAL C9322**

**PUBLIC HEALTH SYSTEM NURSES' AND MIDWIVES' (STATE)  
AWARD 2021**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Ministry of Health.

(Case No. 188601 of 2021)

Before Chief Commissioner Constant

22 July 2021

2. Delete Table 2 - Other Rates and Allowances of Schedule A, Part B, Monetary Rates and insert in lieu thereof the following:

**Table 2 - Other Rates and Allowances**

| <b>Item No.</b> | <b>Clause No.</b> | <b>Allowance</b>   | <b>FFPPCOOA<br/>1/07/2021<br/>\$</b> |
|-----------------|-------------------|--|--------------------------------------|
|                 |                   | <b>In charge of hospital</b>   |                                      |
| 1               | 12(i)(a)          | RN in charge of hospital - per shift                                     | \$36.00                              |
|                 |                   | <b>On Call</b>   |                                      |
| 2               | 12(ii)(a)         | On Call Allowance - per hour   | \$3.94                               |
| 2               | 12(ii)(a)         | On Call Allowance minimum payment  | \$31.52                              |
| 3               | 12(ii)(b)         | On Call Allowance on RDO - per hour                                      | \$7.86                               |
| 3               | 12(ii)(b)         | On Call Allowance on RDO minimum payment                                 | \$62.88                              |
| 4               | 12(ii)(c)         | On call during meal break - per break                                    | \$15.49                              |
|                 |                   | <b>Radiographic</b>  |                                      |
| 5               | 12(iii)(a)        | Director of Nursing performing radiographic duties - per week            | \$43.91                              |
| 6               | 12(iii)(c)        | Employee in absence of DON - per day                                     | \$8.79                               |
| 6               | 12(iii)(c)        | Maximum payment - per week   | \$43.91                              |
| 7               | 12(iv)            | Employee wearing lead apron - per hour                                   | \$2.18                               |
|                 |                   | <b>In Charge of Ward/Hospital</b>  |                                      |
| 8               | 12(v)(a) & (b)    | RN in charge of ward - per shift   | \$36.00                              |
| 9               | 12(vi)            | RN in charge of ward also in charge of hospital<br><100 beds - per shift | \$53.99                              |
| 9(b)            | 12(ix)            | RN in charge of ward also in charge of hospital<br>>100 beds - per shift | \$69.01                              |

|      |            |   |          |
|------|------------|---|----------|
|      |            | <b>Climatic/Isolation</b>   |          |
| 10   | 14(i)      | Climatic Allowance - per week   | \$4.03   |
| 10   | 14(ii)     | Isolation Allowance - per week  | \$7.92   |
| 11   | 17(i)      | Special rate for RN - Tibooburra and Ivanhoe Hospitals - per week                         | \$15.49  |
| 11   | 17(i)      | Special rate for EN, AIN - Tibooburra and Ivanhoe Hospitals - per week                    | \$35.55  |
|      |            | <b>Justice Health</b>   |          |
| 11a. | 17(iii)    | Justice Health Service Environmental Allowance per annum                                  | \$3157   |
| 11b. | 17(iv)     | Justice Health Service Productivity Allowance - per week                                  | \$77.83  |
|      |            | <b>Excess Fares</b>   |          |
| 12   | 20(iv)(b)  | Excess Fares - per day  | \$5.58   |
|      |            | <b>Uniform and Laundry Allowance</b>  |          |
| 13   | 23(iii)(a) | Uniform Allowance - per week  | \$7.99   |
| 13   | 23(iii)(a) | Shoes Allowance - per week  | \$2.47   |
| 13   | 23(iii)(a) | Uniform (including shoes allowance) - per week  | \$10.45  |
| 13   | 23(iii)(a) | Cardigan or Jacket Allowance - per week   | \$2.40   |
| 14   | 23(iv)     | Laundry Allowance - per week  | \$6.66   |
|      |            | <b>Accommodation and Board Deductions</b>   |          |
| 15   | 38(iii)(a) | Separate bedroom - per week   | \$75.37  |
| 15   | 38(iii)(b) | Self contained flat - per week  | \$91.84  |
| 16   | 38(iv)     | Deduction for meals (per week)  | \$162.69 |
| 17   | 38(v)(b)   | Breakfast - per meal  | \$5.50   |
| 17   | 38(v)(b)   | Other meals - per meal  | \$10.02  |
|      |            | <b>CSSD</b>   |          |
| 18   | 12(viii)   | EN employed in CSSD unit with CSSD Cert - per week  | \$17.07  |
|      |            | <b>Flight Nurses</b>  |          |
| 19   | 17(v)      | Industry Allowance, Flight Nurses, Ambulance Service - per week                           | \$17.43  |
|      |            | <b>Continuing Education Allowance (CEA)</b>   |          |
| 20   | 13(ii)     | CEA - Post Registration Hospital Certificate - per week                                   | \$41.90  |
| 21   | 13(iii)    | CEA - Post Graduate Certificate - pw  | \$41.90  |
| 22   | 13(iv)&(x) | CEA - Post Graduate Diploma or Degree - per week  | \$63.00  |
| 23   | 13(v)&(x)  | CEA - Masters Degree or Doctorate - per week  | \$75.70  |
| 24   | 13(vii)    | CEA - Enrolled Nurse Certificate 4 - per week   | \$30.20  |
| 25   | 13(viii)   | CEA - Enrolled Nurse Advanced Diploma of Nursing (Enrolled/Division 2 Nursing) - per week | \$37.90  |

I. HOSKINSON, *Acting Industrial Registrar.*

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