



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

St John of God Health Care Inc. T/A St John of God Health Care
(AG2022/5437)

ST JOHN OF GOD HEALTH CARE – HSU – HEALTH PROFESSIONALS, ADMINISTRATIVE, CLERICAL AND TECHNICAL ENTERPRISE AGREEMENT 2022

Health and welfare services

DEPUTY PRESIDENT BEAUMONT

PERTH, 1 FEBRUARY 2023

Application for approval of the St John of God Health Care – HSU – Health Professionals, Administrative, Clerical and Technical Enterprise Agreement 2022 – ‘employed at the time’ – McDermott - Swinburne

[1] St John of God Health Care Inc. T/A St John of God Health Care (the **Applicant**) has made an application for the approval of an enterprise agreement known as the *St John of God Health Care – HSU – Health Professionals, Administrative, Clerical and Technical Enterprise Agreement 2022* (the **Agreement**). The application was made under s 185 of the *Fair Work Act 2009* (Cth) (the **Act**). The Agreement is a single enterprise agreement.

[2] The Agreement covered 1806 employees at the time of the vote. Of that cohort, 580 employees are said to have cast a valid vote and 509 employees voted to approve the Agreement.¹ Within the cohort were 336 casual employees. All employees fell within classifications which, in general terms, were those you would be likely to find in hospital settings (excluding nurses). Those covered included, but were not limited to, psychologists, pharmacist technicians, sleep technologists, food service advisors, administrative employees, clinical coders, marketing officers, bookings officers and pastoral practitioners. Schedule B of the Agreement provides comprehensive detail of the position titles and accompanying classification levels.

[3] Because 336 casual employees were included in the cohort, the Applicant was directed to file submissions and any evidence it wished to rely upon in support of its assertion that the cohort of casual employees consisted of employees ‘employed at the time’.

¹ Form F17 – Employer’s declaration in support of an application for approval of an enterprise agreement (other than a greenfields agreement).

[4] For reasons which follow, I am satisfied that each of the requirements of ss 186, 187 and 188 of the Act as are relevant to this application for approval have been met. My reasons follow.

The casual employees and ‘employed at the time’

[5] The Applicant submits that the casual employees who were requested to approve the Agreement were *employed at the time* and entitled to vote.

[6] The Applicant explained that it conducts a quarterly audit of its casual workforce to identify casual employees who have not worked in the prior three months.² These casuals are then removed from its payroll system in accordance with an explicit term included in the casual contract of employment, which reads:³

If you do not work as a casual for more than three months your name may be removed from the register and consequently your employment will cease. If you will be unavailable for a period of time, less than three months, you must advise your Manager to ensure your name is retained on the register.⁴

[7] As noted, the proforma casual employment contracts state that if a casual employee does not work for a period of three months, they will be removed from the employee system.⁵ The Applicant submitted that it extended the vote to those casual employees who were active in its employee system, would have expected to have been so and would foreseeably be covered by the Agreement.⁶

[8] Before providing the ballot list to the external ballot provider, the Applicant stated that on 4 December 2022, it conducted a further review and assessed whether casual employees had worked in the prior three months and if they had not worked, they were removed from the ballot list.⁷

[9] It is uncontroversial that enterprise agreements were intended by the legislature to be capable of covering casual employees. However, a difficulty that has arisen is ascertaining when a casual employee ought to be regarded as an employee ‘employed at the time’ within the meaning of s 181(1). In relation to permanent employees, it is of course a relatively straightforward exercise.

[10] An enterprise agreement requires approval by the Commission in order to have legal effect under the Act. Section 186(1) of the Act establishes that where an application for approval of an enterprise agreement has been made, the Commission must approve the agreement if the requirements set out in ss 186 and 187 are met. One of those approval requirements, set out in s 186(2)(a) and applicable only to non-greenfields agreements, is that the Commission must be satisfied that the agreement has been ‘genuinely agreed to’ by the employees covered by the agreement.

² Applicant’s Outline of Submissions dated 10 January 2023, [2] (**Applicant’s Submissions**).

³ Ibid [3].

⁴ Applicant’s Outline of Submissions dated 19 January 2023, [5] (**Applicant’s Further Submissions**).

⁵ Applicant’s Submissions (n 2) [3].

⁶ Ibid [5].

⁷ Ibid [4].

[11] What constitutes genuine agreement by the employees covered by an agreement, as required by s 186(2)(a), is the subject of s 188 which reads, in part:

(1) An enterprise agreement has been ***genuinely agreed*** to by the employees covered by the agreement if the FWC is satisfied that:

(a) the employer, or each of the employers, covered by the agreement complied with the following provisions in relation to the agreement:

(i) subsections 180(2), (3) and (5) (which deal with pre-approval steps);

(ii) subsection 181(2) (which requires that employees not be requested to approve an enterprise agreement until 21 days after the last notice of employee representational rights is given); and

(b) the agreement was made in accordance with whichever of subsection 182(1) or (2) applies (those subsections deal with the making of different kinds of enterprise agreements by employee vote); and

(c) there are no other reasonable grounds for believing that the agreement has not been genuinely agreed to by the employees.

[12] Section 188(1)(a)(i) establishes as an element of the genuine agreement requirement, the necessity of compliance (subject to s 188(2)) with the ‘pre-approval steps specified in s 180(2), (3) and (5)’.

[13] Section 181, which is referred to in s 180(1) and (4), provides:

181 Employers may request employees to approve a proposed enterprise agreement

(1) An employer that will be covered by a proposed enterprise agreement may request the **employees employed at the time** who will be covered by the agreement to approve the agreement by voting for it.

(2) The request must not be made until at least 21 days after the day on which the last notice under subsection 173(1) (which deals with giving notice of employee representational rights) in relation to the agreement is given.

(3) Without limiting subsection (1), the employer may request that the employees vote by ballot or by an electronic method.

(bold my emphasis)

[14] Sections 182(1) and (2), which are referenced in s 188(1)(b), provide:

182 When an enterprise agreement is made

Single-enterprise agreement that is not a greenfields agreement

(1) If the employees of the employer, or each employer, that will be covered by a proposed single-enterprise agreement that is not a greenfields agreement have been asked to approve the

agreement under subsection 181(1), the agreement is *made* when a majority of those employees who cast a valid vote approve the agreement....

[15] It is accepted the ‘time’ of the request referred to in s 181(1) encompasses the whole of the access period and is to be equated to the ‘time’ referred to in s 180(2)(a).⁸ The Full Bench in *Re Shop, Distributive and Allied Employees Association (Kmart)* explained why it had preferred this interpretation:

... s 180(1) obliges the employer to comply with the requirements set out in the section, and the evident policy purpose of that obligation and the specific requirements in s 180(2), (3) and (5) is to ensure that before a vote upon a proposed agreement commences, the employer has taken all reasonable steps to ensure that employees have access to a copy of the agreement, have had it explained to them, and have been informed of the time, place and method of the vote. These steps may broadly be characterised as directed at endeavouring to ensure that there is an “informed electorate” which is capable of genuinely agreeing to a proposed enterprise agreement. That statutory purpose would obviously be best achieved if those employees to whom a request may be directed under s 181(1) constitute the same group of employees in relation to whom the requirements of s 180(2), (3) and (5) apply. Conversely, the achievement of that purpose would be undermined if employees to whom these requirements did not apply because they were not employed at the time referred to in s 180(2)(a) could nonetheless be requested to vote to approve a proposed agreement pursuant to s 181(1).⁹

[16] While the Full Bench in *Kmart* examined at length what was meant by the ‘time’ of the request, as referred to in s 181(1), it did not necessarily address what was meant by the phrase ‘employees *employed* at the time’. That is, what constitutes being ‘employed’.

[17] The phrase ‘employed at the time’ has received some consideration by the Federal Court of Australia in *National Tertiary Education Industry Union v Swinburne University of Technology (Swinburne)*¹⁰ and a limited number of subsequent cases before this Commission.¹¹ In *Swinburne*, those words, as used in s 180(2)(a) and s 181(1), were examined in detail.

[18] *Swinburne* concerned an appeal to the Full Court of the Federal Court regarding the decision of the Full Bench of the Commission to approve an enterprise agreement which covered academic, general, and executive staff of the Swinburne University of Technology.

[19] In *Swinburne*, a large number of sessional or casual employees were included in the voting ballot. This raised the question as to whether those employees were ‘employed at the time’. The National Tertiary Education Industry Union contended that their inclusion would necessarily have included a number of persons who were not ‘employed at the time’. The University’s cohort included all sessional academic staff who had been employed at any time, over a period of 12 months before the s 181 request was made. The Full Bench held the view that s 181(1) both permitted and required the University to address its request to all individuals who were then ‘usually employed’ by it.

⁸ (2019) 291 IR 233, 246 [33].

⁹ Ibid.

¹⁰ (2015) 232 FCR 246 (*Swinburne*).

¹¹ See, eg, *MTCT Services Pty Ltd* [2019] FWCA 4634 (*MTCT*).

[20] However, Jessup J, with whom White J concurred, observed that the foundational provision is s 172(2), which authorises an employer to make a single enterprise agreement ‘with the employees who are employed at the time the agreement is made ...’.¹² Justice Jessup acknowledged that an ‘employee’ is ‘an individual so far as she or he is employed, or usually employed’ by a national system employer (s 13).¹³ Justice Jessup stated that reading this definition into s 172(2), the employer may make the agreement with the individuals who are employed, or usually employed, by the employer, but only to the extent that they are **actually employed at the time** the agreement is made. It was explained that this construction recognises the legislative intention of confining, from within a broad class which include individuals who are usually, but not immediately, so employed, the relevant group to those who are employed at the time the agreement is made.¹⁴

[21] Having traced through provisions such as ss 180, 182(1), 181(1), (2) and (3), 172(2), 173(2) and (3), Jessup J stated:

The provisions to which I have referred bespeak the giving of such detailed attention to the rights and obligations of the parties concerned, and to the means by which an agreement is approved and thus made, that it would be, in my view, a distraction to decide issues such as that arising in the present case by reference to the high-level truism that an employee includes an individual who is usually employed by the employer concerned. If a purely grammatical justification is needed for that view, it may be found by treating the words “employed at the time” in s 181(1) as limiting apropos “employees”. Not only is that a satisfying grammatical reading of the whole phrase, it accords strongly with the purpose of this provision, and those associated with it.¹⁵

[22] Having confirmed that those to whom a request under s 181(1) should be addressed is confined to those who are employed *at the time*, his Honour observed that the University included in those to whom requests were addressed ostensibly under s 181(1), everyone who had been employed, to any extent, in 2013. His Honour expressed that at the general level, the Commission endorsed that approach because it read the provision as including those who were ‘usually employed’ as being within the expression ‘employees employed at the time’, which, his Honour explained, was a misreading of s 181(1).

[23] Since the judgment in *Swinburne*, the Full Bench of this Commission has handed down the decision in *McDermott Australia Pty Ltd v Australian Manufacturing Workers’ Union (McDermott)*¹⁶.

[24] *McDermott* concerned an appeal of a decision where the application for the approval of an enterprise agreement that covered employees engaged to work offshore on a gas project was dismissed. The agreement in question was said to cover daily hire and casual employees. At first instance, it was found that the request to employees to approve the agreement by voting for it was made to employees who were not ‘employed at the time’.¹⁷ The Commissioner explained:

¹² *Swinburne* (n 10) 252 [17].

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid* 254 [26].

¹⁶ (2016) 255 IR 146 (**McDermott**).

¹⁷ *Ibid* 153 [21].

They were casual employees in the ordinary sense of being daily hire employees. They were not actually engaged in work or being paid at that time. Accordingly, it is apparent on the evidence that the employees who voted for the Agreement were not employed at the time.¹⁸

[25] On appeal, the Full Bench provided a description of the work on the gas project, noting that the offshore construction work for the project commenced in the second quarter of 2014 and was on-going at the time of the agreement approval application. The Full Bench observed that the first offshore campaign undertaken by the company commenced in September 2014 and spanned over a period of approximately one month.¹⁹ It was followed by a number of additional campaigns of various durations before the vote for the agreement was undertaken.²⁰ However, no work was being conducted at the time of the vote.²¹

[26] In respect of the voting cohort, 39 casual employees had been engaged by the company for the gas project.²² Most employees were said to have worked on earlier campaigns for the gas project and all 39 employees had been paid wages to undertake the HSCS training essential for the gas project.²³ The Full Bench noted that prior to the voting process, the number of casual employees available to work on the gas project had been reduced to 36 active employees due to two resignations and one termination.²⁴ It was the 36 ‘active’ employees who were asked to vote on the agreement.²⁵

[27] In reaching its decision to uphold the appeal, the Full Bench observed that all 36 employees who voted for the agreement were on the company’s payroll for the gas project before the vote occurred.²⁶ The Full Bench observed at paragraph [35]:

The Commissioner was of the view that there was something wrong with the vote occurring while employees were not actually performing or being paid for performing work at the time of the vote. This in our view was incorrect; the status of the 36 casual employees at the time of the vote is a natural and expected phenomenon of being employed on a casual contract as per the Full Bench decision in *Smiths Snackfood*. In our view it would be inappropriate and counter intuitive to disenfranchise casual employees of a right to vote on an agreement that determines their wages and conditions on the basis that they were not rostered on to work on the day/s of the vote, or during the 7 day access period. There are obvious implications for voting manipulation adopting this approach. *Swinburne* is not authority for the proposition that a casual employee is only “employed at the time” they are rostered to work and are being paid. *Swinburne* eschewed the proposition that employed at the time included “usually employed”. (citations omitted).

[28] In determining whether it was legitimate and necessary for the casual employees to be included in the group of employees asked to approve the agreement, the Full Bench considered

¹⁸ *McDermott Australia Pty Ltd* [2016] FWC 1113, [26].

¹⁹ *McDermott* (n 16) [23].

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid* [25].

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid* [28].

payroll records and the evidence of the company's witness which showed the casuals had accepted *on-going employment* with the company.²⁷

[29] The Full Bench considered other factors including the work cycle of the casual employees, which was 21 days on duty and 21 days off duty,²⁸ the completion of paid training for the gas project,²⁹ and the absence of dismissals, resignations or indication that a casual was not available for future work.³⁰ The Full Bench further considered that the gas project had commenced, and the casual employees had been engaged specifically for the gas project.

[30] Having considered this factual matrix, the Full Bench in *McDermott* remarked that the facts were unlike those in *Swinburne*, as the casual employees were employed at the time, and were not in a cohort of 'likely to be engaged' or 'usually employed'.³¹

[31] In *Construction, Forestry, Maritime, Mining and Energy Union v Noorton Pty Ltd (Noorton)*, the Full Bench considered *McDermott* and made the following observations:

[32] During the appeal, Noorton referred to the decision in *McDermott Pty Ltd v the Australian Workers' Union and Anor* in aid of the Deputy President's conclusion that the cohort of casual employees who were asked to vote were employed at the time. Whilst we may have some misgivings about the correctness of *McDermott*, it is unnecessary for us to express a concluded view. The decision is plainly distinguishable on the facts. The critical conclusion in *McDermott* was that the casual employees "accepted on-going employment" with *McDermott* as evidenced by the employer's payroll records and the evidence of Mr McMahon, and as such they were employed by *McDermott* at the time the Agreement was made. Their employment comprehended work within *McDermott*'s scope of work for the Project. Unlike the facts in *Swinburne*, the casual employees were employed at the time, they were not in a cohort of "likely to be engaged" or "usually employed." The reasoning adopted by the Full Bench in *McDermott* might be said to be more akin to a conclusion that the relevant employees were not "casual employees" at all but rather were "ongoing employees" who had accepted "ongoing employment".

[33] There was no evidence before the Deputy President that the casual employees who were asked to vote to approve the Agreement accepted ongoing employment with Noorton. As we have already observed, there was no evidence about the nature of the casual employment of the employees or the terms under which these employees were engaged. The decision in *McDermott* therefore provides no assistance.³²

[32] In *National Union of Workers v Lovisa Pty Ltd (Lovisa)*, in dealing with a majority support determination, Deputy President Colman made the following comments with respect to *McDermott* and the observations above in *Noorton*:

As I said in the first decision, in *CFMMEU v Noorten* (sic), another Full Bench expressed misgivings about the correctness of *McDermott*, but found it unnecessary to form a concluded view on the matter, noting that 'the critical conclusion in *McDermott* was that the casual employees "accepted on-going employment" with *McDermott*...and as such they were

²⁷ Ibid [37].

²⁸ Ibid [35].

²⁹ Ibid [38].

³⁰ Ibid.

³¹ Ibid.

³² [2018] FWCFB 7224, [32] – [33].

employed by McDermott at the time the Agreement was made.’ The Full Bench in *Noorten* (sic) observed that the reasoning adopted by the Full Bench in *McDermott* could be said to be more of a conclusion that the relevant employees were not casual employees at all, but rather ongoing (permanent) employees. I agree with this observation. But in any event, the present case is distinguishable from *McDermott*. The circumstances of this case contrast starkly with those in *McDermott*, as in that case employees would, pursuant to clause 8 of the enterprise agreement, work a cycle of 21 days on duty and 21 days off duty. In this matter there is no evidence of any guarantee of work.³³

[33] In *MTCT Services Pty Ltd (MTCT)*, consideration was given to whether the voting cohort of casual employees was ‘employed at the time’.³⁴ The Commissioner outlined the evidence presented in the following terms:

- a) there are a cohort of onshore employees who work on a regular 9 day shift structure at the onshore sites (Onshore Employees) and a cohort of employees who work a “2 weeks on/2 weeks off” roster at the offshore locations (Offshore Employees);
- b) for both the Onshore Employees and Offshore Employees, payments were made during the period in respect of their employment of all of the 265 employees (including for example the payment of income protection, redundancy fund and long service leave contributions for the off-duty Offshore Employees, even though those employees were not physically “at work”); and
- c) to the extent that a number of offshore employees were on their “off-duty swing” or other employees were absent during the voting period or on secondment to ESSO, they nevertheless remained employed at the time, even though they were not necessarily performing work, by way of the totality of the employment relationship having regard to considerations like the nature of the expectation of employment, continuing existence of employees on the Applicant’s books, roster pattern and work cycles as detailed in the Elliott Statement: see the factually analogous circumstances of those employees considered by the Full Bench in *McDermott*.³⁵

[34] The Commissioner in *MTCT* determined that the facts were not sufficiently analogous to those in *McDermott* such that the company’s employees should be characterised as ‘ongoing’.³⁶ Further, the Commissioner considered a series of sample employee contracts. Those employee contracts included a clause which the Commissioner concluded was incongruous with a finding that the casual employees were engaged as ‘ongoing’ because the clause did not guarantee an offer of any pattern or number of casual shifts:

Your first casual engagement under this Contract will commence on the date set out in item 8 of the Schedule (Effective Date). However, as a casual employee, each casual shift that you work is a separate period of employment. There is no guarantee under this Contract that you will be offered any pattern or number of casual shifts, or that you will be offered any casual shifts at all.³⁷

[35] The Commissioner found that the employees were not ‘employed at the time’ unless they were engaged on a work shift ‘at the time’.³⁸

³³ [2019] FWC 2885, [19].

³⁴ *MTCT* (n 11).

³⁵ *Ibid* [35].

³⁶ *Ibid* [37].

³⁷ *Ibid*.

³⁸ *Ibid* [39].

[36] Turning to the application before me. The voting period for the Agreement commenced on 7 December 2022 and concluded on 14 December 2022, with the access period commencing on 30 November 2022 and concluding on 6 December 2022.

[37] The Applicant provided a spreadsheet identifying those casual employees who were included in the ballot list provided to the voting agent. The Applicant advised that the list had been extracted from its HR Management System (Ascender) on 4 December 2022 and provided to the ballot agent on that same day. According to the Applicant, the ballot list was reviewed prior to providing it to the ballot agent to remove any employee who was a casual and had not worked with the Applicant in the prior three months. As noted, the Applicant explained that casual employees were removed from the casual list in line with its standard casual employment contracts.

[38] The Applicant explained that given the size of its operation, it had two pay cycles. Pay Group One included employees who worked within Geraldton, Subiaco and Midland Hospitals and Pay Group Two included employees working at Bunbury, Mount Lawley and Murdoch Hospitals.³⁹

[39] During the period of 29 November to 6 December 2022, the following pay periods were in place:

Pay Group 1 (which covers employees employed at Geraldton, Midland and Subiaco Hospital)

Start Date of Pay Period	End Date of Pay Period	Pay Day	Last Paid Date/Pay period ending
Monday 28/11/22	Sunday 11/12/22	Thursday 15/12/22	11/12/22

Pay Group 2 (which covers employees employed at Bunbury, Group Services, Mount Lawley and Murdoch)

Start Date of Pay Period	End Date of Pay Period	Pay Day	Last Paid Date/Pay period ending
Monday 21/11/22	Sunday 4/12/22	Thursday 8/12/22	4/12/22
Monday 5/12/22	Sunday 18/12/22	Thursday 22/12/22	18/12/22

[40] In *McDermott*, the Full Bench directly addressed the Commissioner's misperception that the legitimate inclusion of a casual employee in a vote required them to be rostered on, or performing or being paid for performing work, at the time of the vote. Instead, the Full Bench considered the totality of the factual matrix against what it referred to as the natural and expected phenomenon of being employed on a casual contract. Clearly, there are misgivings

³⁹ Applicant's Further Submissions (n 4) [6].

about the correctness of *McDermott* in light of the decisions of *Noorton*, *Lovisa*, *MTCT* and *Charles Darwin University*.⁴⁰

[41] The Applicant has established within its operations a structure that maintains a ‘current’ employee list or register of casual employees. The word ‘current’ in this context means that the same employee list is refreshed every three months to ensure that ‘active’ casual employees remain on the register and those that have not worked within the period are removed. The structure is supported by the inclusion in casual employment contracts of a term that informs the employee that their inactivity will see them removed from the register and their employment ceased.

[42] Before embarking on the vote, the Applicant scrutinised the register of casual employees to remove those that had been inactive in the prior three months. It might be suggested that a casual employee was not ‘employed at the time’ because, for example, their last shift or day worked was 10 weeks prior to the access period and vote, notwithstanding having been on the employee register. The question one might ask is whether having one’s name on an employee register within the three months prior to the access period or up to 4 December 2022, notwithstanding having not worked, is sufficient to arrive at a finding that the casual employee was ‘employed at the time’ for the purpose of s 181(1). In the circumstances of this case, I am not persuaded that it is, for the following reasons.

[43] It is true that by the terms of the proforma casual employment contract, all casual employees were provided with access to the ‘St John of God Health Care account’ which provided access to all the Applicant’s major systems and applications. Further, the proforma casual employment contract required the casual employee to set up ‘NetIQ multi-factor authentication’ to access the Applicant’s ‘applications’. Casual employees were required to completed mandatory education via the Applicant’s online ‘Learning Management System’ and undertake an onsite orientation and induction. The employment contract also provided for the provision of uniforms.

[44] Of course, and as emphasised by the Applicant, the proforma casual employment contracts also provided that if the employee did not work as a casual for more than three months, their name could be removed from the register and their employment ceased, unless the unavailability was already foreshadowed to their manager.

[45] However, included in the pro-forma casual contracts were the following clauses:

Rate of Pay:	\$27.22 per hour plus 20% casual loading in lieu of paid leave entitlements such as annual leave, personal leave, paid parental leave, with the exception of long service leave where deemed eligible.
Hours:	You will be employed on an hourly basis based on operational requirements with no guarantee of continual or additional employment.

[46] It is unsurprising and altogether characteristic of the legal relationship of employment on a casual basis that the casual employee was employed on an hourly basis with no guarantee of continual or additional employment under the proforma contracts. The employment status

⁴⁰ [2023] FWC 233.

of a casual employee was succinctly explained in the Full Bench decision of *Wayne Shortland v The Smiths Snackfood Co Ltd* at paragraph [10]:

As a matter of the common law of employment, and in the absence of an agreement to the contrary, each occasion that a casual employee works is viewed as a separate engagement pursuant to a separate contract of employment. Casual employees may be engaged from week to week, day to day, shift to shift, hour to hour or for any other agreed short period. In this sense no casual employee has a continuous period of employment beyond any single engagement. Moreover, it is common for a casual employee to transition between a period in which their engagements with a particular employer are intermittent and a period in which their engagements are regular and systematic and vice versa...⁴¹

[47] The proforma casual employment contracts clearly provide that the employee is 'employed' on an hourly basis with no guarantee of continual or additional employment.

[48] In *WorkPac Pty Ltd v Rossato* (**Rossato**), the High Court stated:

62. To insist upon binding contractual promises as reliable indicators of the true character of the employment relationship is to recognise that it is the function of the courts to enforce legal obligations, not to act as an industrial arbiter whose function is to synthesise a new concord out of industrial differences. That it is no part of the judicial function to reshape or recast a contractual relationship in order to reflect a quasi-legislative judgment as to the just settlement of an industrial dispute has been emphatically the case in Australia at the federal level since the *Boilermakers Case*.

63. To insist that nothing less than binding contractual terms are apt to characterise the legal relationship between employer and employee is also necessary in order to avoid the descent into the obscurantism that would accompany acceptance of an invitation to enforce "something more than an expectation" but less than a contractual obligation. It is no part of the judicial function in relation to the construction of contracts to strain language and legal concepts in order to moderate a perceived unfairness resulting from a disparity in bargaining power between the parties so as to adjust their bargain. It has rightly been said that it is not a legitimate role for a court to force upon the words of the parties' bargain "a meaning which they cannot fairly bear [to] substitute for the bargain actually made one which the court believes could better have been made". Even the recognised doctrines of unconscionability or undue influence do not support such a course; and in any event, neither Mr Rossato, nor any of the interveners, sought to suggest that the doctrines of unconscionability or undue influence had any part to play in the resolution of the present dispute.⁴²

[49] The evidence shows that the contractual promise was employment on an hourly basis premised upon operational requirements with no guarantee of continual or additional employment. However, the proforma casual employee contract also reads that if the employee does not work as a casual for more than three months, their name is removed from the register and 'consequently [their] employment will cease'. Implicit in this latter clause is that whilst on the employee register, the employment remains on foot.

[50] The High Court in *Rossato* stated that to insist upon binding contractual promises as reliable indicators of the true character of the employment relationship is to recognise that it is the function of the courts to enforce legal obligations. As observed, encountered is a scenario

⁴¹ (2010) 198 IR 237, 240 [10].

⁴² (2021) 271 CLR 456, 478–9 [62] – [63].

where on the one hand, the proforma casual employee contract speaks to the cessation of employment if the employee has not worked as a casual for more than three months (such that maintenance of an employee's name on the register indicates employment), on the other it provides for employment on an hourly basis with no guarantee of continual employment. In my view, it is this latter clause that is the binding contractual promise that indicates the true character of the employment relationship. The latter clause sits squarely with the proposition that each occasion that a casual employee works under the contract is viewed as a separate engagement pursuant to a separate contract of employment and as such no casual employee has a continuous period of employment beyond any single engagement.

[51] It was said in *Swinburne* that those to whom a request under s 181(1) should be addressed are confined to those who are *employed* at that time. I have found that the casual employees were not 'employed at the time' unless they were working a shift 'at the time',⁴³ the 'time' being the access period. This approach inevitably disenfranchises those casual employees who did not work a shift in the access period, notwithstanding that those same employees might otherwise have their terms and conditions of employment set by the Agreement. However, in light of the preceding decisions of this Commission and the judgment in *Swinburne*, such approach appears mandatory.

[52] Of the 336 casuels listed, 282 casual employees, as evinced by the spreadsheets provided by the Applicant, worked in the pay periods ending 4 December 2022, 11 December 2022 or 18 December 2022, which encompassed the access period. This in turn means that 54 casual employees may have worked in the pay periods ending 20 November 2022 or 27 November 2022 or subsequent to the access period but did not work shifts between and including 29 November 2022 and 6 December 2022.

[53] However, given 580 employees voted of which 509 voted yes and 71 voted no, the inclusion of the above 54 casuels could not have affected the overall result. In all of the circumstances, I have found the Agreement was made in accordance with s 182(1).

Conclusion

[54] Having already expressed that I am satisfied that each of the requirements of ss 186, 187 and 188 of the Act as are relevant to this application for approval have been met, it is further noted that the model consultation term prescribed by the *Fair Work Regulations 2009* (Cth) is attached to the Agreement and taken to be a term of it.

[55] The Health Services Union (the **organisation**), being a bargaining representative for the Agreement, has given notice under s 183 of the Act that it wants the Agreement to cover it. In accordance with s 201(2), and based on the declaration provided by the organisation, I note that the organisation is covered by the Agreement.

[56] The Agreement was approved on 1 February 2023 and, in accordance with s 54, will operate from 8 February 2023. The nominal expiry date of the Agreement is 30 March 2024.

⁴³ *MTCT* (n 11) [39].



DEPUTY PRESIDENT

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



**St John of God Health Care – HSU – Health Professionals,
Administrative, Clerical and Technical Enterprise
Agreement 2022**

Introduction

St John of God Health Care is committed to the dignity and worth of each person. We believe that work is a major forum in which we express and develop our dignity and grow towards fullness in human living.

We believe that conditions of work must be such that each person has the freedom and resources needed for growth and development towards wholeness.

St John of God Health Care is committed to the development and maintenance of an organisational culture that is person focused, committed to the Christian ministry of healing, and to the processes of Quality Caring.

St John of God Health Care has an organisational culture that promotes, encourages and facilitates individual and organisational growth and development towards quality service provision. It allows for flexibility and mutuality in the arrangements of working conditions.

It is a culture that leads to greater job satisfaction and ever improving quality of patient care and services.

Involvement in this Agreement results in mutual commitment to the following:

St John of God Health Care Inc.:

- (1) The provision of fair employment conditions.
- (2) Maintenance of safe working environments.
- (3) Opportunities for growth and development for each Caregiver.
- (4) Resources to facilitate optimum work processes and quality of services.
- (5) Participation in continual improvement of all work processes.
- (6) Provision of information and training to enable each Caregiver to understand and fulfil his or her obligations under this Agreement and to apply safe work practices.
- (7) Non requirement of Caregivers to perform duties outside their competence.
- (8) Provision of a regular cycle of appraisal and review of performance and developmental needs.
- (9) Involvement of Caregivers as participants in the general functioning of the workplace.

Each Caregiver:

- (1) Provision of an honest day's work in accordance with the relevant Position Description.
- (2) Positive participation in the desired organisational culture of the hospital.
- (3) Involvement in learning that will facilitate personal and professional growth and development.
- (4) Observance of appropriate safety and security regulations.
- (5) Observance of the Employer's policies and procedures.
- (6) Participation in a regular cycle of appraisal and review of performance and developmental needs.

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1. TITLE

This Agreement shall be called the *St John of God Health Care – HSU – Health Professionals, Administrative, Clerical and Technical Enterprise Agreement 2022*.

2. PARTIES

The parties to this Agreement shall be St John of God Health Care Inc. ('the Employer') and subject to compliance with the requirements of sections 185 and 201(2) of the *Fair Work Act 2009*, the Health Services Union ("the Union").

3. AREA AND SCOPE

This Agreement shall apply to Caregivers in the State of Western Australia and eligible for membership of the Union, employed by the Employer:

- (1) in its hospital facilities;
- (2) in Shared Service functions of Billing and Receivables, Group Accounting Shared Services, Accounts Payable, Recruitment and HR; Group Admissions; Group Clinical Coding; and the Centralised Room Service; and
- (3) in the service known as Moort Boodjari Mia.

4. TERM

Subject to approval by the Fair Work Commission (FWC) this Agreement shall commence operation from seven (7) days after receiving approval from the FWC and shall remain in force until 30 March 2024 and thereafter in accordance with the Act.

5. REPLACEMENT

- (1) This agreement cancels and replaces:
 - (a) the *St John of God Health Care – HSU – Health Professionals, Administrative, Clerical and Technical Enterprise Agreement 2019*;
- (2) Notwithstanding the provisions of Clause 4 – Term, this Agreement shall continue to operate until it is cancelled, varied or replaced in accordance with the provisions of the *Fair Work Act 2009*.
- (3) Negotiations for the replacement of this agreement shall begin at least three (3) months prior to the expiration date.

6. COMPREHENSIVE AGREEMENT

- (1) It is the intention of the parties that this Agreement be a comprehensive document applying to Caregivers covered by this Agreement to the exclusion of all applicable awards and industrial agreements. It is further intended that each provision of this Agreement is to be interpreted as not containing unlawful content and that each provision only operates in a manner that would not constitute unlawful content.

Relationship to the National Employment Standards

- (2) This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this Agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

7. INTERPRETATION

- (1) In this Agreement:
- (a) 'Accrued Time Off' means paid time off that accrues where a full-time Caregiver works 40 instead of 38 hours per week, at a commensurate hourly rate.
 - (b) 'Caregiver' means an employee of St. John of God Health Care Inc.
 - (c) 'Casual' means a Caregiver engaged on an hourly basis with no guarantee of continual or additional employment.
 - (d) 'Child' includes an adopted child, stepchild, ex-nuptial child or adult child.
 - (e) 'Continuous Service' is defined by section 22 of the *Fair Work Act 2009*.
 - (f) 'Continuous Shift Worker' means a Caregiver who may be required, and is available, to regularly work rostered shifts on Weekends, public holidays or night shift.
 - (g) 'Eligible casual' means a casual caregiver who has been working with their employer on a regular and systematic basis for at least 12 months and has a reasonable expectation of ongoing employment.
 - (h) 'Employer' means St John of God Health Care Inc., or a person authorised by St John of God Health Care Inc. to exercise authority.
 - (i) 'Fixed term contract' refers to a contract of employment in which a Caregiver is engaged for a specific purpose or for a specific period of time.
 - (j) 'Immediate Family' means the Caregiver's spouse, de facto partner, child, parent, grandparent, grandchild or sibling; or a child, parent, grandparent, grandchild or sibling of the Caregiver's spouse or de facto partner.
 - (k) 'Ordinary rate' means the rate of pay prescribed in Clause 25 – Salaries of this Agreement.
 - (l) 'Ordinary time earnings' means the ordinary rate, shift and weekend penalties.
 - (m) 'Part-time' means a Caregiver with a guaranteed minimum number of hours (inclusive of holidays and leave) who is regularly employed to work less hours than those prescribed for full-time Caregivers in any fortnightly period.
 - (n) 'Pharmacist' means a Caregiver who is registered as such under the *Pharmacy Act 2010*, and employed as such by the Employer.
 - (o) 'Pharmacy Intern' means a Caregiver who is undertaking a pre-registration pharmacist training program under the auspices of the Pharmaceutical Council of WA, and employed as such by the Employer.

- (p) 'Public holiday' means New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Western Australia Day, Queen's Birthday, Christmas Day, Boxing Day, or the days observed in lieu thereof, or any other day that is prescribed under the applicable state legislation.
- (q) 'Union' means the Health Services Union (HSU).

8. FLEXIBILITY TERM

- (1) The Employer and a Caregiver covered by this Enterprise Agreement may agree to make an individual flexibility arrangement (IFA) to vary the effect of terms of the Agreement if:
 - (a) the arrangement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading and annual leave (Clause 34)
 - (vi) Parental Leave (Clause 38)
 - (vii) Flexible Work/Purchase Leave Options (Clause 47)
 - (b) the arrangement meets the genuine needs of the Employer and Caregiver in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the Employer and Caregiver.
- (2) The Employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under s172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under s194 of the *Fair Work Act 2009*; and
 - (c) result in the Caregiver being better off overall than the Caregiver would be if no arrangement was made; and
 - (d) must be documented in such a manner as to allow inspection under s482 of the *Fair Work Act 2009*.
- (3) Where the Employer seeks such agreement with a Caregiver, that Caregiver shall be made aware of his/her right, and given reasonable opportunity, to contact and seek representation from the Union or other representative.
- (4) Any disagreement arising from the operation of this subclause must be resolved in accordance with Clause 53 - Dispute Settlement Procedures of this Agreement.

- (5) For the avoidance of doubt, providing information concerning the IFA to the Union, under this subclause, does not mean that the Union must approve or consent to the individual flexibility arrangement.
- (6) The Employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the Employer and Caregiver; and
 - (c) is signed by the Employer and Caregiver and if the Caregiver is under 18 years of age, signed by a parent or guardian of the Caregiver; and
 - (d) includes details of:
 - (i) the terms of the Enterprise Agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the Caregiver will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (iv) states the day on which the arrangement commences.
- (7) The Employer must give the Caregiver a copy of the individual flexibility arrangement at the time it is signed by the Caregiver and Employer.
- (8) The Employer or Caregiver may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the Employer and Caregiver agree in writing – at any time.

9. COMMITMENT TO IMPROVED PRODUCTIVITY

- (1) The Employer and Caregivers covered by this Agreement commit to actively cooperating in implementing changes in work and staffing practices designed to improve productivity (including matching staffing levels to patient needs), especially at the department, ward or unit level. Measures to be implemented at ward level may include but not be limited to:
 - (a) self-rostering or request-based rostering;
 - (b) time off in lieu;
 - (c) variable shift lengths;
 - (d) deployment of Caregivers to busier areas;
 - (e) work practice changes;
 - (f) accrued time off; and
 - (g) rostered annual leave at low activity times.

Requesting a Caregiver to Take Leave

- (2) Caregivers may be requested by the Employer to take accrued leave from time to time (including at short notice) where:
 - (a) a downturn in activity requires a managed reduction in the number of Caregivers rostered to work, and other initiatives have been explored but have not achieved the desired results; or
 - (b) the Caregiver is carrying an excess accrued leave balance.
- (3) Where they are requested to take accrued leave, the Caregiver and Employer may make arrangements for the leave to be taken at a mutually convenient time. This may include taking leave at short notice, provided that the Caregiver cannot be directed to take leave except in accordance with subclause (6) below.

Employer Obligations

- (4) The Employer must ensure that:
 - (a) The provisions of this clause are applied equitably and without favouritism or prejudice;
 - (b) Caregivers have reasonable opportunity to use their accrued leave before accruals are deemed to be excess;
 - (c) Caregivers who wish to bank leave for use within a reasonable period of it having become excess (e.g. for an extended leave period, overseas holiday etc) have their preferences recorded in a leave management plan;
 - (d) Caregivers may elect to cash out any form of leave detailed in this clause subject to restrictions under legislation.

Definitions

- (5) For the purposes of this clause:
 - (a) an excess accrued leave balance is:
 - (i) annual leave: any leave balance greater than 1.5x the Caregiver's annual entitlement;
 - (ii) shift/on-call leave: any leave greater than the Caregiver's annual entitlement;
 - (iii) long service leave: any leave balance that remains three years after a Caregiver reaches 10 years continuous service, and each subsequent period of five years continuous service.
 - (b) a downturn in activity may be:
 - (i) unforeseen and unplanned (e.g. due to cancelled theatre lists); or
 - (ii) foreseen and planned (e.g. due to school holiday periods).

Managing Different Leave Types

- (6) A Caregiver may be directed to take:

- (a) excess accrued annual leave provided that no less than 2 weeks' notice must be provided; and the residual balance must be no less than the Caregiver's annual entitlement. For example, a Caregiver who is entitled to 4 weeks annual leave, with a balance of 6 weeks, may be directed to take up to 2 weeks.
- (b) excess accrued shift / on-call leave provided that no less than 2 weeks' notice must be provided; and the residual balance must be no less than their annual entitlement. For example, a Caregiver entitled to 38 hours shift/on-call leave, with a balance of 50 hours, may be directed to take up to 12 hours.
- (c) accrued time off and time off in lieu at any time without notice.
- (d) excess LSL provided that:
 - (i) up to 4 weeks of a Caregiver's balance in any 12 months period, inclusive of up to five, non-consecutive single day absences;
 - (ii) for single day absences, no less than 12 hours' notice must be provided; and
 - (iii) for any other period, no less than 4 weeks' notice must be provided.

Work at Another Hospital

- (7) Where there is insufficient work available to fulfil contracted hours, and all other reasonable options have been explored (including the measures as per above) and necessary efficiencies have not been achieved, Caregivers may be asked to work in any other hospital operated by the Employer.
- (8) The Caregiver may elect to take a form of paid leave, or leave without pay, rather than agree to work at another hospital, provided that:
 - (a) where the Employer makes an offer under this clause for the Caregiver to work at a different site, the Employer will be seen to have met the obligation to provide contracted hours.
 - (b) where the Caregiver refuses the offer of work at a different site as provided for in this clause, the Employer is under no obligation to pay the Caregiver for contracted hours not worked.
- (9) The Caregiver shall be provided with transport, free of charge, from her/his home to work and return, or be paid the motor vehicle allowance provided in Clause 32 – Fares and Motor Vehicle Allowance.
- (10) When proposing such measures, the Employer shall consult with each Caregiver and shall take into consideration the Caregiver's personal, family, and carer needs and responsibilities.

10. DUTIES

The Caregiver will be required to work in accordance with his/her duty statement and the Employer's policies and procedures. The Employer may direct the Caregiver to carry out such duties as are within the limits of the Caregiver's skill, competence or training provided that such duties are not designed to promote deskilling.

11. SEPARATION

Employer Giving Notice

- (1) (a) The contract of service may be terminated by the Employer on any day by giving to the Caregiver the required period of notice in writing and the contract shall expire at the end of that period of notice.

- (b) The required period of notice shall be:

Caregiver's period of continuous service with the Employer	Period of notice
Not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- (c) The required period of notice is increased by one week if the Caregiver is over 45 years old and has completed at least 2 years continuous service with the Employer.
- (d) Provided that the contract of service of a Caregiver engaged as a casual may be terminated by the Employer giving the Caregiver one hour's notice. Such notice need not be in writing.
- (e) Payment in lieu of the required period of notice may be made by the Employer if the required notice is not given.
- (f) The Employer may terminate the contract of service by providing part of the required notice and payment in lieu of the balance.

Caregiver Giving Notice

- (2) (a) The contract of service may be terminated on any day by the Caregiver giving to the Employer, in writing, the same period of notice as that required of an Employer in sub clause (1) above, save and except that there shall be no additional notice based on the age of the Caregiver concerned and the contract shall expire at the end of that period of notice.
- (b) Provided that the contract of service of a Caregiver engaged as a casual may be terminated by the Caregiver giving the Employer one hour's notice. Such notice need not be in writing.
- (c) If a Caregiver fails to give the required notice or leaves during the notice period, the Employer may, at its discretion, deduct from any monies due to the Caregiver, an amount equal to the ordinary rate for the period of notice not given.
- (3) The required notice period may be extended or dispensed with by agreement in writing between the Employer and Caregiver.
- (4) Nothing in this clause affects the Employer's right to dismiss a Caregiver without notice for serious misconduct which justifies instant dismissal.

Certificate of Service

- (5) Where a Caregiver whose service terminates requests a certificate of service, a certificate signed by the Employer stating the name of the Caregiver, the period of service, whether the service was full-time or part-time and the classifications in this Agreement in which work has been carried out, shall be provided.

Portability of Entitlements

- (6) The Employer supports the internal transfer of its Caregivers by ensuring leave entitlements and recognition of years of service are transferable between SJGHC sites.

12. PROBATION

- (1) The first three months of employment will be on a probationary basis during which time and notwithstanding the provision of Clause 11 – Separation either party may terminate the contract by giving one weeks' notice in writing or payment or forfeiture in lieu thereof.
- (2) The Employer shall provide the Caregiver with an appraisal of his or her performance during the probationary period.
- (3) The period of probation may be extended up to three (3) months if the Caregiver fails to demonstrate the required standard of performance or conduct, or where a fair assessment of the Caregiver's performance cannot be made during this time due to:
 - (a) the nature of the work; or
 - (b) the circumstances in which it is performed; or
 - (c) the absence during the period of either the Caregiver or the Caregiver's supervisor.

13. TIME NOT WORKED

The Caregiver shall not be entitled to payment for any period of unauthorised absence.

14. RIGHT OF TRANSFER

- (1) The Caregiver shall be required to comply with any reasonable request to transfer to another position (within the limits of the Caregivers skill, competence or training) or place of work within the same facility provided the Caregiver is not financially disadvantaged.

Relief

- (2) A Caregiver required to relieve away from her/his usual place of work shall be provided with transport, free of charge, from her/his home to work and return, or be paid the motor vehicle allowance provided in Clause 32 – Fares and Motor Vehicle Allowance.

15. CONFIDENTIALITY

Information relating to the Employer or its facilities, its customers or activities may not be released or divulged by the Caregiver to a third party other than in the proper performance of the Caregiver's obligations under this Agreement or relevant Act and the Caregiver's right to seek advice or representation from the Union or other representatives.

16. HOURS

- (1) The ordinary hours of a full-time Caregiver, inclusive of holidays and leave, shall not exceed:
 - (a) 76 hours per fortnight where the Caregiver is not in receipt of accrued time off; or
 - (b) 80 hours per fortnight where the Caregiver is in receipt of accrued time off.

St John of God Health Care – HSU – Health Professionals, Administrative, Clerical and Technical Enterprise Agreement 2022
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- (2) (a) Ordinary hours shall not be worked over more than 10 days in a two week shift cycle or 20 days in a four week shift cycle unless there is agreement between the Caregiver and the Employer.
- (b) Ordinary hours shall not exceed 10 in any shift, except where a shift of 12 ordinary hours is rostered by agreement between the Caregiver and the Employer.
- (3) A minimum of two days off duty in each fortnight shall be taken consecutively unless otherwise agreed between the Caregiver and the Employer.
- (4) Ordinary hours may be worked over any day of the week, Monday to Sunday inclusive, and shall be arranged by the Employer to meet its needs.
- (5) Ordinary hours may not be rostered over more than 6 consecutive days other than by agreement between the Caregiver and the Employer.
- (6) The roster shall in each case provide for a 10 hour break between shifts. Provided that this shall not apply where a Caregiver agrees to work additional hours at short notice.
- (7) A Caregiver shall not be rostered to work a shift of less than 3 hours duration.
- (8) Broken shifts shall not be rostered but may be worked where a Caregiver is called in to work at short notice either by agreement or as a result of being placed on call.
- (9) Notwithstanding the above provisions of this clause, upon the written request of a Caregiver and subject to the approval of the Employer, a Caregiver may work ordinary hours outside the normal requirements for their position. Where such agreement exists the Employer shall not be liable to pay any shift or penalty allowance that would otherwise be payable. The Employer and the Caregiver may withdraw from such arrangement by advising the other party in writing.
- (10) The Employer notes that permanent employment is the preferred form of engagement for Caregivers and that casual employment and agency engagements are not the preferred methods of care support or associated service. To this end, the Employer will continue to minimise the use of casual and agency workers within its facilities and ensure that, wherever practicable, additional hours are offered to permanent Caregivers prior to the engagement of casual or agency staff.

17. PART-TIME

- (1) A part-time Caregiver shall be guaranteed a minimum number of hours per fortnight.
- (2) A part-time Caregiver shall be entitled to remuneration and all entitlements in the same manner as a full-time Caregiver, adjusted on a pro-rata basis at the rate of their ordinary hours per week in relation to full-time hours (i.e. 38 hours). Provided that where a part-time Caregiver is in receipt of accrued time off the divisor shall be 40.
- (3) Before commencing employment, the Employer and Caregiver will agree, in writing, which will ordinarily be by way of the contract of employment, on a regular pattern of work including the:
 - (a) Number of hours to be worked each week or fortnight;
 - (b) Days of the week the Caregiver will work; and
 - (c) Starting and finishing times each day.

Noting that as the Employer is a healthcare provider it will not be unreasonable that caregivers will be required to work over 7 days of the week and over 24 hours of the day.

- (4) A part-time Caregiver may, by agreement, work additional hours:
- (a) at ordinary rates (plus relevant shift or weekend penalties) subject to the normal rostering parameters of a full-time Caregiver and the provisions of this clause, in which case the additional hours shall count towards the accrual of leave entitlements; or
 - (b) ordinary rates (plus relevant shift or weekend penalties) plus a 20% loading, in which case the additional hours shall not count towards the accrual of leave entitlements.

Noting that a part-time Caregiver shall not be disadvantaged by withholding agreement to work additional hours. Provided that where a Caregiver withholds agreement to perform additional work at ordinary rates, the Employer shall be entitled to offer that work to another Caregiver.

- (5) All part-time Caregivers will be required to elect in writing on engagement which arrangement shall apply. Caregivers may change their elected preference on the anniversary of their engagement by providing a minimum of two weeks' notice in writing.
- (6) A part-time Caregiver may, where they have regularly worked more than their contracted hours for a period of 12 months or more, request, in writing, consideration be given to increasing their contracted hours. The written request will be assessed on its merits. In assessing the request, the Employer will consider ongoing operational requirements, and whether the increased hours performed by the part time Caregiver related to another Caregiver's absence (including but not limited to parental leave, long service leave, workers compensation leave, personal leave).

18. CASUAL

- (1) A casual shall be paid 1/38th of the base weekly rate prescribed in Clause 25 – Salaries, for each hour worked, plus 20% additional loading. Effective from the first full pay period on or after 14 December 2022, the casual loading will be increased to 25%. Provided that where a casual is engaged to work hours that incur an overtime payment the prescribed overtime payment shall be paid, but not also the additional casual loading.
- (2) The minimum period of engagement for a casual Caregiver is three hours.
- (3) A casual shall not, unless explicitly provided for in this agreement, receive any of the leave entitlements prescribed in this agreement or the National Employment Standards other than those casual Caregivers eligible for Carer's Leave, Compassionate Leave, unpaid Parental Leave, Family and Domestic Violence Leave (as per the *Fair Work Act 2009*) and Long Service Leave as per the *Long Service Leave Act 1958*.

Casual Conversion

- (4) A casual caregiver is one who is offered employment on the basis that the Employer has made no firm advance commitment to continuing and indefinite work according to an agreed pattern of work and that the casual caregiver has accepted the offer of employment on that basis.
- (5) The Employer will ensure it complies with the provisions contained within the *Fair Work Act 2009* (as amended) relating to offering casual conversion once the caregiver has been employed for a minimum period of 12 months.
- (6) A casual Caregiver may request that their employment be converted to full-time or part-time employment in accordance with the provisions contained within the *Fair Work Act 2009* (as amended)

- (7) A casual Caregiver may seek conversion if they have worked a regular pattern of hours on an ongoing basis, which, without significant adjustment, the Caregiver could continue to perform as a full-time or part-time Caregiver under the provisions of this Agreement.
- (8) Any request for casual conversion must be in writing and provided to the Employer. Where a casual Caregiver seeks to convert to permanent employment, the Employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the Caregiver.
- (9) Casual conversion may not apply where a casual Caregiver covered absences of permanent staff that are expected to return to work.
- (10) The Caregiver will not be considered to have worked a regular pattern of hours where the shifts are replacing another Caregiver's absence (including but not limited to parental leave, long service leave, workers compensation leave, personal leave) or flexible work arrangement.
- (11) Where the Employer declines a casual Caregiver's request to convert, the Employer must provide the casual Caregiver with the Employer's reasons for refusal in writing within 21 days of the request being made.
- (12) The Employer will provide a casual Caregiver with a copy of the Casual Employment Information Statement at the time of their employment.

19. TEMPORARY AND FIXED TERM APPOINTMENTS

- (1) Subject to this Agreement a Caregiver appointed as a temporary or pursuant to a fixed term contract shall accrue and be paid the same benefits as a permanent Caregiver.
- (2) Nothing in this Agreement shall restrict the right of the Employer or Caregiver to terminate the engagement within the specified term in accordance with the provisions of Clause 11 – Separation.

20. OVERTIME

- (1) Time worked in excess of ordinary hours of a full-time Caregiver i.e.:
 - (a) 76 hours per fortnight where the Caregiver is not in receipt of accrued time off, or 80 hours per fortnight where the Caregiver is in receipt of accrued time off; or
 - (b) 10 days in a two week shift cycle (or 20 days in a four week shift cycle where there is agreement between the Caregiver and the Employer); or
 - (c) 10 hours in any shift (except where a shift of 12 ordinary hours is rostered by agreement between the Caregiver and the Employer)

shall be deemed overtime and paid at time and a half for the first two hours and double time thereafter.

- (2) All overtime worked on a Sunday or a public holiday will be paid at double time.
- (3) A Caregiver may be required to work reasonable overtime however unreasonable overtime requests may be declined.

Part-time/Casual Caregivers and Additional Shifts

- (4) A part-time or casual Caregiver may agree to work 11 shifts in a fortnight, in which case subclause (1) (b) above shall not apply. Provided that:

- (a) A Caregiver cannot be directed to work more than 10 shifts in a fortnight without overtime penalties.
- (b) Other overtime, shift and/or weekend penalties continue to apply and will be paid as appropriate.
- (c) The additional hours will not be performed regularly and will not form part of the Caregiver's minimum contracted hours.
- (d) The Employee's entitlements accrue on the additional hours worked, including Employer superannuation contributions.

Time off in lieu

- (5)
 - (a) In lieu of payment for overtime, a Caregiver may elect, with the agreement of the Employer, to be allowed time off in lieu of payment of overtime in proportion to the payment to which they would otherwise be entitled. Accrued time off in lieu shall be taken at a mutually convenient time.
 - (b) Time off in lieu shall accrue at the appropriate overtime rate.
 - (c) Time off in lieu can be taken at any time by mutual agreement between the Employer and the Caregiver.
 - (d) Subject to Clause 9 – Commitment to Improved Productivity, sub clause (6)(c) time off in lieu must be taken if directed by the Employer.
 - (e) Any untaken time off in lieu may be paid out after 12 months of it having accrued or on termination whichever occurs first.

Relationship to on call

- (6) Where a Caregiver is rostered to be on call and their normal rostered hours of work are extended the Caregiver shall be paid at overtime rates for these additional hours.

21. ON CALL

- (1) For the purposes of this Agreement a Caregiver is on call when he or she is required by the Employer to remain at such a place as will enable the Employer to readily contact him or her during the hours for which he or she has been placed on call. A Caregiver is also on call when required to carry a mobile telephone or beeper and to remain within a specified radius of the hospital.
- (2)
 - (a) A Caregiver shall be paid an hourly allowance of:
 - (i) from the first full pay period on or after 1 July 2022 - \$7.83
 - (ii) from the first full pay period on or after 1 April 2023 - \$8.06
 - (b) Provided that payment in accordance with this paragraph shall not be made with respect to any period for which payment is otherwise made in accordance with the provisions of this Agreement when the Caregiver is recalled to work.
- (3) The Caregiver shall not be required to remain on call whilst on leave or the day before commencing leave unless by mutual agreement between the Caregiver and the Employer.

Call In

(4) A Caregiver who is called in to work:

- (a) when on call shall be paid at time and a half for the first two hours and double time thereafter from the time the Caregiver commences work.
- (b) when not on call shall be paid at double time and include time spent travelling to and from the place of employment.

Provided that a Caregiver who is called in to work on:

- (c) a Sunday shall be paid at double time.
 - (d) a public holiday shall be paid at double time and a half.
- (5) Time worked as a result of a call in shall be deemed overtime, provided that it shall not accrue for TOIL purposes.
- (6) A Caregiver who is called in to work shall be paid a minimum of three hours provided that:
- (a) if the Caregiver is called in within three hours of starting work on a previous call he/she shall not be entitled to any further payment for the time worked within that period of three hours; and
 - (b) the call-in shall cease when the call out period ends, or on commencement of ordinary duty – whichever occurs first.
- (7) If a Caregiver is recalled to work he/she shall be paid the motor vehicle allowance as prescribed in Clause 32 – Fares and Motor Vehicle Allowance in this Agreement or provided with transport, free of charge, from his/her home to the place of employment and return.

Breaks Between Recall Periods and Ordinary Duty

- (8) Where a Caregiver is due to commence their next ordinary duty within 9.5 hours of the cessation of hours actually worked having been recalled to duty, they shall either:
- (a) delay the start to their next ordinary duty until such time as a 9.5 hours have elapsed since the cessation of overtime without loss of pay for that period; or
 - (b) if directed by the Employer, commence their next ordinary duty and be paid at double rates until released from duty for such period and shall then be entitled to be absent until he/she has had 9.5 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

Provided that (a) and (b) above shall not apply where the recall commenced within three hours of the commencement of ordinary duty and the Caregiver has had a break of 9.5 hours immediately prior to the commencement of the recall period.

Additional Annual Leave for On Call

- (9) A Caregiver regularly required to work on call will receive up to an extra 38 hours annual leave per accrual year in accordance with the schedule in sub-clause (10) below, subject to clause 34(15) provided that they are available to be rostered on call Monday to Sunday, including public holidays and are rostered on call to suit operational requirements, in accordance with the following:

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- (a) following a normal rostered shift; or
 - (b) during weekend days or public holidays; or
 - (c) on days that they are not rostered for duty.
- (10) The rate at which a Caregiver regularly placed on call shall accrue additional leave, is as follows:

Number of hours rostered on call per accrual year	Additional Hours
120 hours to 179 hours	7.6 hours
180 hours to 239 hours	15.2 hours
240 hours to 299 hours	30.4 hours
300 hours or more	38 hours

- (11) For the purpose of calculating additional leave, the period of on call is not reduced by recalled hours.

22. ROSTERS

- (1) A roster of working hours shall be posted in a convenient place where it can be readily seen by each Caregiver concerned.
- (2) The roster shall, where practicable, be posted at least 14 days before it comes into operation but will be posted at least 7 days before it comes into operation.
- (3) The roster may be altered at the Employer's discretion if the Employer's requirements render such alteration necessary provided that:
 - (a) a Caregiver is entitled to 48 hours' notice of a requirement to come in to work;
 - (b) a Caregiver is entitled to 12 hours' notice where a shift is cancelled or varied subject to the application of Clause 28(1)(d) Shift Work.
- (4) The notice referred to in this paragraph may be dispensed with by agreement between the Caregiver and the Employer.
- (5) A Caregiver who has commenced a shift is entitled to complete that shift unless otherwise agreed between the Caregiver and the Employer.

Request to work additional hours

- (6) A Caregiver may be asked to work additional hours provided that the Caregiver cannot be required to work additional hours at ordinary rates without 12 hours' notice and may choose to decline the request.

12 Hour Rosters

- (7) The Employer may introduce 12 hour shift rosters provided that all affected Caregivers are consulted and the majority of those Caregivers agree that such arrangements may be implemented. Provided that such arrangements shall only be maintained in the event that an agreed number or percentage of positions will be required to support the arrangements.

- (8) Caregivers will not be required to work the 12 hour shift roster. Caregivers may choose to participate at any stage in the 12 hour shift roster provided they give four weeks' notice in writing to the relevant Manager.
- (9) All 12 Hour shift rosters will be developed consistent with Schedule D to this Agreement.
- (10) The provisions stated in this clause shall prevail over the remainder of this Agreement to the extent of any inconsistency.

23. MEAL AND MEAL HOURS

- (1)
 - (a) Meal breaks shall be a minimum of 30 minutes and a maximum of one hour other than by agreement and subject to subclause (2) of this clause shall not be counted as time worked.
 - (b) The Caregiver shall not be required to work for more than 6 hours consecutively without a meal break.
- (2) Where a Caregiver on afternoon or night shift is required to be on duty or available but not working during her/his meal break, the Caregiver shall be paid at ordinary rates. Provided that the time shall not be counted as time worked for the purposes of Clause 20 – Overtime.
- (3) Where a Caregiver is required by the Employer to work through her/his meal break she/he shall be paid time and one half for that time worked. Provided that the time shall not be counted as time worked for the purposes of Clause 20 – Overtime.
- (4) One fifteen or two seven minute tea breaks shall be allowed during each shift and shall be taken when convenient to the Employer without deduction of pay for such time.
- (5) A Caregiver who has not been notified the previous day or earlier that he or she is required to attend work at a time when a meal is usually taken shall be provided with a meal.

24. ACCRUED TIME OFF

Entitlement

- (1) An eligible Caregiver shall accrue an entitlement to time off to a maximum of 12 days (96 hours or pro-rata for part-time) in each 12 month period. Provided that a Caregiver shall not be eligible to accrue time off in accordance with this clause in the following circumstances:
 - (a) a casual Caregiver;
 - (b) where the Caregiver is employed on the basis of accrued days off not being provided;
 - (c) where the Caregiver is guaranteed no more than 16 hours or two shifts per week.

Provided that at SJGH Murdoch accrued days off shall be provided if requested by the Caregiver (other than a casual Caregiver). The eligible Caregiver may withdraw his/her agreement by providing two weeks' notice in writing.

- (2) A Caregiver shall not accrue an entitlement to time off during:
 - (a) long service leave;

(b) any period of unpaid leave;

(c) or any absence on workers compensation leave in excess of one calendar month.

Accrual shall continue during any other period of leave (including any additional annual leave) prescribed by this Agreement.

Taking Accrued Time Off

(3) Subject to Clause 9 – Commitment to Improved Productivity, sub clause (6) (c) accrued time off may be taken at a time which is mutually convenient to the Employer and Caregiver.

(4) In addition to the foregoing and notwithstanding any other provision of this Agreement, a Caregiver who has accrued a sufficient entitlement may elect to utilise his/her accrued time off to avoid going into debit through working less than guaranteed hours.

Rate of Pay

(5) Accrued Time Off shall be paid at the ordinary rate.

Termination

(6) A Caregiver who at the time of termination has accrued time off to his/her credit shall be paid for those hours at ordinary rates.

Pay Out of Entitlements

(7) When a Caregiver:

(a) proceeds on a period of extended leave (i.e.: more than 8 weeks with or without pay); or

(b) seeks to make an adjustment to their contracted hours;

the Employer will pay the Caregiver for any accrued time off standing to his/her credit.

(8) A Caregiver may at any time, by agreement in writing with the Employer, be paid for some or all of the accrued time off standing to his/her credit in lieu of taking the time off.

(9) A Caregiver shall not otherwise be paid for accrued time off without actually taking the time off.

25. SALARIES

(1) The base rate payable to Caregivers under this Agreement and the conditions pertaining to appointment and progression are prescribed in Schedule A – Salaries.

(2) The weekly rate is calculated by dividing the annual salary by a divisor of 52.167. The hourly rate for a Caregiver shall be calculated by dividing the weekly rate by 38 in the case of a Caregiver not receiving Accrued Time Off and 40 in the case of a Caregiver receiving Accrued Time off.

(3) Where a Caregiver is engaged under the auspices of a Supported Wage System, the provisions of Schedule C – Supported Wage System will apply.

26. PAYMENT OF WAGES

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- (1) Wages shall be paid fortnightly by electronic funds transfer into one or more accounts (maximum three) nominated by the Caregiver held at any major bank, building society or credit union. Any costs associated with the establishment by the Caregiver of such an account and of the operation of it shall be borne by the Caregiver.
- (2) Each Caregiver shall be provided with a pay advice slip on each occasion that wages are paid, which will contain details in accordance with the *Fair Work Regulations 2009*.
- (3) Where payment is not made within the nominated time the Employer shall rectify the matter without delay.

Overpayment of Wages

- (4) Where a Caregiver is paid for work not subsequently performed or is overpaid in any other manner, the Employer is entitled to make adjustment to the subsequent wages or salaries of the Caregiver.

One-off Overpayments

- (5) Subject to sub-clauses (7) and (8), one-off overpayments may be recovered by the Employer in the pay period immediately following the pay period in which the overpayment was made, or in the period immediately following the pay period in which it was discovered that overpayment has occurred.

Cumulative Overpayments

- (6) Subject to sub-clauses (7) and (8), cumulative overpayments may be recovered by the Employer at a rate agreed between the Employer and the Caregiver, provided that the rate at which the overpayment is recovered is not at a lesser rate than the rate at which it was overpaid or \$50 per week, depending on which is the lesser amount per pay period.
- (7) In exceptional circumstances, other arrangements for the recovery of overpayments may be agreed between the Employer and the Caregiver.
- (8) The Employer is required to notify the Caregiver of their intention to recoup an overpayment, provide the Caregiver with details to sufficiently establish that an overpayment has occurred and to consult with the Caregiver as to the appropriate recovery rate.

Recovery of Overpayments

- (9) In exceptional circumstances, other arrangements for the recovery of overpayments may be agreed between the Employer and the Caregiver.
- (10) The Employer is required to:
 - (a) notify the Caregiver, in writing, of their intention to recoup an overpayment at least 72 hours prior to the next pay period in which the Employer seeks to recover an overpayment,
 - (b) provide the Caregiver with details to sufficiently establish that an overpayment has occurred; and
 - (c) to consult with the Caregiver as to the appropriate recovery rate
- (11) The recovery agreement will be confirmed in writing

Underpayment of Wages

- (12) Where a Caregiver is underpaid in any manner, the Employer will rectify the error as soon as practicable with consideration to subclauses (13) and (14).
- (13) Notwithstanding sub-clause (12), an error shall be rectified no later than in the pay immediately following the date on which the Employer discovers, or is advised, that the error occurred.
- (14) Notwithstanding the provisions of sub-clause (13) a Caregiver shall be paid any underpayment immediately by way of a special payment where the underpayment of wages has created serious financial hardship.

Termination Payments

- (15) Upon termination of employment, the Employer shall pay to the Caregiver all monies earned by or payable to the Caregiver within 7 days of termination of employment through the normal payroll system or via an electronic funds transfer into the Caregiver's account(s). Provided that any outstanding debts or overpayments accrued by the Caregiver may only be recovered from the final payment if agreed to and authorised by the Caregiver.

27. TIME AND WAGES RECORD

Records concerning a Caregivers employment with the Employer will be kept and maintained in accordance with the *Fair Work Act 2009* and associated regulations.

28. SHIFT WORK

- (1)
 - (a) The loading on the ordinary rates of pay for a Caregiver who works an afternoon shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on weekdays shall be 15%.
 - (b) The provisions of paragraph (a) of this subclause do not apply to a Caregiver who on any weekday commences his/her ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 pm on that day.
 - (c) The loading on ordinary rates of pay for a Caregiver who works a complete rostered night shift that commences and finishes between the hours of 6.00 pm and 7.30 am on a weekday shall be 35%.
 - (d) Provided that where a shift is extended or shortened at less than 12 hours' notice the shift penalty rate paid in respect of any ordinary hours worked on that shift shall be the penalty rate which would have applied had the start and/or finish time not been varied.
- (2)
 - (a) A Caregiver rostered to work ordinary hours between midnight Friday and midnight on the following Saturday shall be paid a loading of 50% on actual hours worked during this period.
 - (b) A Caregiver rostered to work ordinary hours between midnight Saturday and 7.30am on the following Monday, shall be paid a loading of 75% on actual hours worked during this period, provided the shift commenced prior to 2400 hours on a Sunday.
- (3) Where a Caregiver works a broken shift each portion of that shift shall be considered a separate shift for the purpose of this clause.
- (4) Where the ordinary hours of work span midnight Friday the applicable penalties shall be:

- (a) up to midnight – the rate specified at cl.28(1)(c); and
- (b) past midnight –the rate specified at cl.28(2)(a).

29. CALCULATION OF PENALTIES

Where the Caregiver works hours which would entitle him/her to payment of more than one of the penalties payable in accordance with the hours, on call, overtime, shift and weekend penalties or public holiday provisions of this Agreement, only the highest of any such penalty shall be payable. In the case of casuals any such penalty shall be in addition to the casual loading except where inconsistent with Clause 18 - Casual.

30. HIGHER DUTIES

- (1) A Caregiver who is capable of performing and does perform all duties of a position, which attracts a higher rate of pay than that which he or she usually performs shall be entitled to the higher rate whilst so engaged.
- (2) When a Caregiver performs some, but not all, of the duties of the position a rate of pay less than the rate the position normally attracts can be paid on agreement between the Employer and Caregiver.
- (3) When a Caregiver assumes higher duties or responsibilities due to a special project or similar short-term process and such higher duties or responsibilities are not imported from an existing post an appropriate rate of remuneration shall be determined by agreement between the Employer and the Caregiver. Where practicable the rate of remuneration shall be set prior to the commencement of the special project or process.
- (4) Provided that, payment for higher duties shall not apply to a Caregiver required to act in another position while the incumbent is taking accrued time off for a single day or less in accordance with Clause 24 – Accrued Time Off.

31. LAUNDRY AND UNIFORMS

- (1) (a) Where the Employer requires a uniform to be worn, an adequate supply of such uniforms shall be provided free of cost to the Caregiver on engagement.
- (b) Thereafter uniforms will be replaced on an 'as required' basis provided that:
 - (i) no uniform shall be replaced within 18 months of the date of issue;
 - (ii) the Caregiver when a new uniform is issued shall be required to return the replaced uniform.
- (c) Uniforms provided by the Employer shall at all times remain the property of the Employer and must be returned to the Employer on termination.

A failure to return Employer uniforms may lead to a delay in the processing of any termination payment and to the Employer deducting the cost of the uniforms from any monies owing to the Caregiver, with the Caregiver's written approval.

- (d) Uniforms shall not be worn other than in the course of, and in travelling to and from, employment.

- (2) The cost of laundering uniforms shall be met by the Caregiver. The payment prescribed in Schedule A of this Agreement includes an amount to compensate for this requirement.
- (3) Caregivers shall be responsible for the provision of appropriate clean and tidy footwear.
- (4) Nothing in this clause shall prevent the Employer and the Caregiver making other arrangements as to laundry and uniforms not less favourable to the Caregiver.
- (5) The provisions of this clause shall not detract from the Employer's obligation pursuant to section 19 of the *Occupational Health Safety and Health Act 1984* (WA) to provide Caregivers with adequate personal protective clothing and equipment where it is not practicable to avoid the presence of hazards at the workplace.

32. FARES AND MOTOR VEHICLE ALLOWANCE

- (1) A Caregiver required to work outside the hospital during his or her normal working hours shall be paid any reasonable travelling and accommodation expenses incurred provided that travelling expenses shall not be paid where an allowance is paid in accordance with subclause (2) hereof.
- (2) A Caregiver required and authorised to use his or her own motor vehicle in the course of his duties shall be paid an allowance of not less than 76 cents per kilometre.
- (3) The rate prescribed in subclause (2) shall be reviewed whenever this Agreement is renewed or replaced.
- (4) Nothing in this clause shall prevent the Employer and the Caregiver making other arrangements as to motor vehicle allowance not less favourable to the Caregiver.

33. SUPERANNUATION

- (1) The Employer shall contribute superannuation on behalf of the Caregiver in accordance with the requirements of the *Superannuation Guarantee (Administration) Act 1992*.
- (2) Contributions shall at the option of the Caregiver be paid into either:
 - (a) the Health Employees' Superannuation Trust Australia (HESTA) fund; or
 - (b) such other complying superannuation fund or scheme as nominated by the Caregiver.
- (3) Where an election is not made by a Caregiver, contributions will be paid into:
 - (a) The Caregiver's stapled super fund; or
 - (b) HESTA. HESTA provides a "MySuper product" and is the Employer's nominated fund.
- (4) Contributions into the nominated fund shall be paid monthly.
- (5) Contributions shall continue to be paid on behalf of a Caregiver in receipt of payments under the *Workers Compensation and Injury Management Act 1981*.
- (6) (a) A Caregiver may elect in writing to receive a superannuation benefit in lieu of part of the salary to which he/ she is otherwise entitled under this Agreement in accordance with the Employer's Salary Packaging Policy.

- (b) This arrangement shall remain in force until terminated by mutual agreement or by either the Employer or the Caregiver providing 28 days' notice.
- (7) Paid parental leave in accordance with Clause 38 – Parental Leave, sub clause (13) will also attract payment of superannuation contributions.

34. ANNUAL LEAVE

Entitlement

- (1) (a) Each Caregiver will be entitled to 4 weeks annual leave in respect of each year of continuous service. Annual leave will accrue on a progressive basis in respect of each ordinary hour worked and accumulates from year to year.
- (b) In paragraph (a), "service" shall not include any period of unpaid leave other than the first 3 months of unpaid personal leave.

Rate of Pay

- (2) (a) The Caregiver shall be paid for any period of annual leave prescribed in this clause at the ordinary rate of wage the Caregiver would have received as his or her payment at the time of taking the leave and, in addition, the average of shift and weekend penalty rates paid each week over the four weeks prior to taking leave.

Provided that a Caregiver on higher duties for a period of four consecutive weeks or less at the time of taking the leave shall be paid at the ordinary rate of wage the Caregiver would have received had he/she not been on higher duties.

- (b) Provided that the Caregiver when proceeding on any period of annual leave prescribed in subclause (1)(a) of this clause shall not be paid less than the sum of:
 - (i) the Caregiver's ordinary rate of wage for the period (i.e. excluding shift and weekend penalties); and
 - (ii) a loading of 17.5%.

Timing of Payment

- (3) The Caregiver is to be paid for a period of annual leave at the time payment is made in the normal course of employment, unless the Caregiver requests in writing that he or she be paid before the period of leave commences in which case the Caregiver is to be so paid.

Provided that, where annual leave is paid in advance, payment for time worked may be adjusted in the fortnightly pay period following the period of annual leave.

Termination

- (4) If a Caregiver's employment terminates, the Caregiver shall be paid their accrued leave including any additional leave accrued under sub clause (13) and (14) hereof. Provided that leave loading shall only apply to leave accrued in accordance with subclause (1)(a).

Taking Annual Leave

- (5) Annual leave shall be taken at a time which is mutually convenient to the Employer and Caregiver. By agreement with the Employer, annual leave may be taken for double the period at half pay. The expectation is that leave will be taken in the year that it has accrued.

Closedown

- (6) Where the Employer temporarily closes a ward, unit or department over the Christmas/New Year period, a Caregiver may be directed to take paid annual leave during part or all of this period provided such direction is reasonable.
- (7) The period of the closedown may be up to two weeks and will encompass both Christmas and New Year.
- (8) Caregivers will be provided with a minimum 3 months' notice of the intention to close the area and the dates on which it will be closed.
- (9) A Caregiver will access their accrued leave to cover the period of closedown, provided that a Caregiver may request as an alternative:
- (a) to continue working during the period, in which case the Employer will use its best endeavours to identify and offer alternative work in another area of the Hospital or at another SJGHC Hospital or facility within the same geographic area subject to operational considerations;
 - (b) to take another form of paid leave, or leave without pay;
 - (c) to take annual leave in advance where they have no other form of paid leave available to them.

Cash Out

- (10) By agreement between the Employer and Caregiver, a Caregiver may request to cash out annual leave, provided that:
- (a) cashing out shall not result in the Caregiver's remaining accrued entitlements being less than 4 weeks;
 - (b) any agreement will be in writing and signed by the Employer and Caregiver;
 - (c) the Caregiver receives the full amount that would have been payable to the Caregiver had the Caregiver actually taken the leave; and
 - (d) the Employer cannot require a Caregiver to compact or cash out any annual leave entitlements.
- (11) Annual leave loading may apply to the cash out amount subject to subclause (2) hereof.

Public Holiday Occurring During Annual Leave

- (12) A Caregiver shall be entitled to a day's leave in lieu of a public holiday, without deduction of pay, in respect of a public holiday which occurs during the Caregivers' annual leave.

Additional Annual Leave

- (13) A Continuous Shift Worker as defined by clause 7(f) will be entitled to one additional week's annual leave pro rata per annum.

- (14) Caregivers who participate in the on call roster will receive up to an additional 38 hours annual leave per annum in accordance with clause 21(9).
- (15) Provided that where a Caregiver qualifies for additional annual leave under clauses 34(13) and 34(14), no more than 38 hours additional annual leave shall accrue in any accrual year.

35. PUBLIC HOLIDAYS

- (1) A Caregiver not required to work on a day solely because that day is a public holiday or day observed in lieu thereof, shall be entitled to leave for the number of hours which he or she would otherwise be rostered to work on that day without deduction of pay.
- (2) Where the Caregiver is rostered to work on a public holiday or day observed in lieu thereof, he or she shall be entitled to ordinary rates of pay and a loading of 150% for the actual time worked. Provided that the Caregiver may elect in writing to receive, in lieu of the above, ordinary rates of pay and a loading of 50% together with an equivalent period of time off for the actual time worked on the holiday to be taken at a time convenient to the Employer.
- (3) When a public holiday falls on a day on which a Caregiver is rostered off duty and the Caregiver has not been required to work on that day, the Caregiver shall be entitled to an additional day's pay at ordinary rates or, where there is agreement between the Employer and the Caregiver, to observe that public holiday, paid at the ordinary rate, at a mutually acceptable time. This subclause shall not apply where the holiday falls on a day of the week on which the Caregiver would not normally be rostered to work.

Day Observed in Lieu of Public Holiday

- (4) Where a public holiday falls on a Saturday or a Sunday, such holiday shall be observed on the next succeeding Monday and where Boxing Day falls on a Sunday or Monday, such holiday shall be observed on the next succeeding Tuesday. Provided that:
 - (a) a day observed in lieu of the holiday may be appointed by proclamation published in the *Gazette* under the *Public and Bank Holidays Act 1972*;
 - (b) another day may be observed in lieu of the holiday by agreement between the Caregiver and the Employer.

36. PERSONAL LEAVE

- (1) A full-time Caregiver shall accrue 10 days (76 hours) paid personal leave per annum to attend to:
 - (a) **sick leave** – a personal illness, or injury, of the Caregiver; or
 - (b) **carer's leave** – the care or support of a member of the Caregiver's immediate family, or a member of their household, who requires care or support because of:
 - (i) a personal illness, or injury, of the member; or
 - (ii) an unexpected emergency affecting the member.
- (2) The entitlement shall accrue on a progressive basis in respect of each ordinary hour worked.

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- (3) Unused portions of personal leave entitlement shall accumulate from year to year and may be taken in any subsequent year.
- (4) Personal leave may be accessed in hours.
- (5) Where an application for payment exceeds the Caregiver's accrued entitlement, the excess may be offset against any future accrual or against monies otherwise payable to the Caregiver at the point of separation.
- (6) A Caregiver shall advise the Employer as soon as reasonably practicable and if possible prior to the commencement of the shift of the inability to attend work, the nature of illness or injury and the estimated duration of absence.
- (7) Unless otherwise directed, a Caregiver is allowed a maximum of five days absence without a certificate from a registered health practitioner in any one accruing year provided that:
 - (a) a certificate must be provided for any absence of more than two consecutive days;
 - (b) if it is not reasonably practicable to provide a certificate a Caregiver may provide a statutory declaration, subject to the Employer being satisfied that the circumstances preventing a medical certificate being obtained were 'not reasonably practicable'.
- (8) A Caregiver who suffers personal ill health or injury whilst on annual leave shall be paid personal leave in lieu of annual leave subject to:
 - (a) providing a certificate from a registered health practitioner confirming illness, injury or unexpected emergency during the period the Caregiver would have been taken to be on annual leave;
 - (b) the portion of annual leave coinciding with the paid personal leave is to be taken at a time agreed by Employer and Caregiver or shall be added to the next period of annual leave;
 - (c) payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in clause 34(2) - Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.
- (9) Where a Caregiver receives payment under this clause and subsequently has payments approved in respect of the same period under the *Workers Compensation and Injury Management Act 1981* (WA), the Employer shall receive the payments and reinstate the Caregiver's personal leave or other entitlements accordingly.
- (10) (a) Caregivers (including casual Caregivers) are also entitled to up to two (2) days unpaid Carer's Leave for each occasion a member of the Caregiver's immediate family or household requires care or support because of the illness, injury or unexpected emergency of the member.
 - (b) Caregivers entitled to a period of unpaid Carer's Leave are entitled, for any particular occasion, to take the leave as:
 - (i) a single, unbroken period of up to two (2) days; or
 - (ii) any separate periods to which the Caregiver and the Employer agree.

37. LONG SERVICE LEAVE

- (1) Subject to this clause, Caregivers, including eligible casual caregivers, shall be entitled to long service leave in accordance with the provisions of the *Long Service Leave Act 1958* (WA) as amended from time to time.
- (2) Long service leave shall accrue at a rate of 0.8667 weeks for each year of continuous service. A Caregiver shall be able to access accrued long service leave any time after the completion of 7 years continuous service. Provided that long service leave shall not accrue on workers' compensation leave in excess of one month.
- (3) On termination of the Caregiver's employment:
 - (a) by his or her death;
 - (b) in any circumstances otherwise than by the Employer for serious misconduct;the Caregiver shall be entitled to their accrued long service leave provided that they have completed no less than 7 years of continuous service with the Employer.
- (4) Long service leave may be accessed in single day periods.
- (5) Leave shall be granted and taken as soon as reasonably practicable after the right thereto accrues due or at such time or times as may be agreed between the Employer and the Caregiver.
- (6) By agreement between the Employer and Caregiver, a part-time Caregiver or a Caregiver whose hours have changed from part time to full time may take his or her long service leave entitlement as a reduced period of full time equivalent time off. Such agreement shall not be unreasonably withheld by the Employer.
- (7) Long service leave may be taken at half pay for double the period accrued or double pay for half the period accrued with the agreement of the Employer.
- (8) A Caregiver may elect to cash out up to 4 weeks of their accrued long service leave within any 12 month period, to be paid at ordinary rates provided that such election is to be made in writing by the Caregiver and approved by the Employer.

38. PARENTAL LEAVE

- (1) Except as hereinafter provided, Caregivers (including eligible casual caregivers) shall be entitled to parental leave in accordance with the provisions of the *Fair Work Act 2009*. A summary of the entitlement is provided below.

Interpretation

- (2) In this Clause:

'adoption', in relation to a child, is a reference to a child who:

- (a) is not the child (otherwise than because of the adoption) of the Caregiver or the Caregiver's spouse;
- (b) is less than 16 years of age; and

(c) has not lived continuously with the Caregiver for 6 months or longer;

'continuous service' means service under an unbroken contract of employment and includes:

- (a) any period of parental leave; and
- (b) any period of authorised leave of absence.

'expected date of birth' means the day certified by a medical practitioner to be the day on which the medical practitioner expects the Caregiver or the Caregiver's spouse, as the case may be, to give birth to a child;

'parental leave' means leave provided for by subclause (3) of this clause;

'spouse' includes a de facto partner.

Entitlement to parental leave

- (3) (a) Subject to this subclause and to subclauses (4) and (5) hereof, a Caregiver is entitled to take up to 52 consecutive weeks of unpaid leave in respect of -
 - (i) the birth of a child to the Caregiver or the Caregiver's spouse; or
 - (ii) the placement of a child with the Caregiver with a view to the adoption of the child by the Caregiver; and
 - (iii) the Caregiver has or will have responsibility for the care of the child.
- (b) A Caregiver is not entitled to take parental leave unless he/ she:
 - (i) has, before the expected date of birth or placement, completed at least 12 months' continuous service with the Employer;
 - (ii) has given the Employer at least 10 weeks' written notice of his or her intention to take the leave or 4 weeks in the event of concurrent leave that is to be taken in separate periods and is not the first of those periods. Provided that if it is not practicable to do so, then as soon as practicable which may be a time after the leave has started; and
 - (iii) has notified the Employer of the dates on which he or she wishes to start and finish the leave.
- (c) A Caregiver shall not be in breach of this Clause as a consequence of failure to give the required notice if such failure is occasioned by the confinement or adoption placement occurring earlier than the expected date.

Concurrent Leave

- (d) A Caregiver is not entitled to take parental leave at the same time as the Caregiver's spouse, except to the extent of concurrent leave of up to eight weeks authorised under the *Fair Work Act 2009*.
- (e) Concurrent leave may be taken in separate periods and must not be taken in a period of less than 2 weeks unless otherwise agreed by the Employer.

- (f) Concurrent leave must not start before the date of birth of the child if the leave is birth-related leave, or the day of placement of the child if the leave is adopted-related leave unless otherwise agreed by the Employer.
- (g) The entitlement to parental leave is reduced by any period of parental leave taken by the Caregiver's spouse in relation to the same child.

Certification

- (4) (a) A Caregiver who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the Employer a certificate from a medical practitioner stating that the Caregiver or the Caregiver's spouse, as the case may be, is pregnant and the expected date of birth.
- (b) A Caregiver who has given notice of his or her intention to take parental leave for adoption, is to provide to the Employer:
 - (i) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the Caregiver for adoption purposes; or
 - (ii) a statement from the appropriate government authority confirming that the Caregiver is to have custody of the child pending an application for an adoption order.

Notice of spouse's parental leave

- (5) (a) A Caregiver who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the Employer of particulars of any period of parental leave taken or to be taken by the Caregiver's spouse in relation to the same child.
- (b) Any notice given is to be supported by a statutory declaration by the Caregiver as to the particulars notified.

Transfer to a safe job

- (6) (a) Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the Caregiver make it inadvisable for the Caregiver to continue in her present position during a stated period (the risk period), the Caregiver shall, if the Employer deems it practicable, be transferred to a safe job with no other change to the Caregiver's terms and conditions of employment, and the Caregiver shall be paid for the safe job at the Caregiver's full rate of pay (for the position she was in before the transfer) for the hours that she works in the risk period.
- (b) If the transfer to a safe job is not practicable, the Caregiver shall be entitled to 'no safe job leave' where the Employer shall pay the Caregiver at the Caregiver's base rate of pay for the Caregiver's ordinary hours of work during the risk period, but the Employer may require further medical certificates to be provided in accordance with the provisions of the *Fair Work Act 2009*. Provided that 'no safe job leave' will cease when parental leave commences.

When leave must commence

- (7) (a) A female Caregiver who has given notice of her intention to take parental leave, other than for an adoption, is to start the leave 6 weeks before the expected date of birth unless in respect of any period closer to the expected date of birth a medical practitioner has certified that the Caregiver is fit to work.

- (b) If the leave is birth-related leave but subclause (7)(a) does not apply, the period of leave must start on the date of birth of the child.
- (c) If the leave is adoption-related leave, the period of leave must start on the day of placement of the child.

Provided that leave may start at any time within 12 months after the date of birth or day of placement of the child if the Caregiver has a spouse who is not a Caregiver and the spouse has a responsibility for the care of the child for the period between the date of birth or day of placement of the child and the start date of the leave.

Right to request variation of Period of Parental Leave

- (8) (a) Provided the aggregate of any leave does not exceed the period to which the Caregiver is entitled under subclause (3) hereof:
 - (i) the period of parental leave may be lengthened once only by the Caregiver giving the Employer written notice of the proposed extension at least 4 weeks before the end date of the original leave period;
 - (ii) the period may be further lengthened only by agreement between the Caregiver and the Employer.
- (b) The period of parental leave may, with the consent of the Employer, be shortened by the Caregiver giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

Notwithstanding provisions in subclause (3), a Caregiver may seek an extension of parental leave from 12 months up to 24 months, provided that the total leave of an employee couple shall not exceed 24 months. Such a request shall be in writing and may not be unreasonably refused.

Special Maternity Leave and Personal Leave

- (9) (a) A female Caregiver is entitled to a period of unpaid special maternity leave if she is not fit for work during that period because:
 - (i) she has a pregnancy-related illness; or
 - (ii) She has been pregnant, and the pregnancy ends within 28 weeks of the expected date of birth of the child other than by the birth of a living child.
- (b) If a Caregiver has an entitlement to paid personal leave she may take that leave instead of taking unpaid special maternity leave under this subclause.
- (c) The above period of leave shall be supported by a certificate from a duly qualified medical practitioner.
- (d) Special Maternity Leave (including paid personal leave accessed in accordance with this subclause) does not reduce the amount of unpaid parental leave available to a Caregiver.
- (e) A Caregiver returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of a Caregiver who was transferred to a safe job pursuant to subclause (6) to the position she held immediately before such transfer.

- (f) Where such position no longer exists but there are other positions available, for which the Caregiver is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

Special Parental Leave for Adoption Purposes

- (10) A Caregiver seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The Caregiver and the Employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the Caregiver is entitled to take up to two days unpaid leave. Where paid leave is available to the Caregiver, the Employer may require the Caregiver to take such leave instead.

Parental Leave and Other Leave Entitlements

- (11) (a) A Caregiver may take any annual leave, long service leave, accrued time off or time off in lieu to which he or she is then entitled, in lieu of or in conjunction with parental leave, provided that it does not extend the period to which the Caregiver is entitled under subclause (3) hereof.
- (b) Paid authorised absences other than those referred to in subclause (11)(a) above shall not be available to a Caregiver during his or her absence on parental leave.

Paid Parental Leave

- (12) A Caregiver (other than a casual) shall be entitled to paid parental leave in accordance with this clause subject to:
 - (a) Meeting the requirements for parental leave as specified in subclause (3) of this clause.
 - (b) Other than the leave referred to in subclause (12)(c)(ii), the period of paid parental leave shall coincide with a period of parental leave.
 - (c) The entitlement to paid parental leave shall be:
 - (i) 14 week's paid parental leave for the primary carer, which may be taken at half pay over 28 weeks, or
 - (ii) 1 week's paid leave in the case of leave taken by the spouse as concurrent leave.
 - (d) The rate of pay for parental leave shall be based on the Caregiver's ordinary rate of pay prior to proceeding on leave.
 - (e) The period of paid parental leave is reduced by any period of paid parental leave taken by the Caregiver's spouse in relation to the same child, except the period of one week's leave referred to in subclause (12)(c)(ii) hereof.
 - (f) Paid parental leave must be taken in accordance with subclause (7), or consecutive with any period of paid parental leave taken by the Caregiver's spouse.
 - (g) A Caregiver must have worked continuously for at least 6 months prior to the expected date of birth or adoption placement to be eligible for subsequent periods of paid parental leave. For 6 months service 50% of the full entitlement will be payable and for each additional month of service completed, 1/12 of the full entitlement will be payable up to 12 months – being 100% entitlement.

Return to work after parental leave

- (13) (a) A Caregiver shall confirm his or her intention of returning to work by notice in writing to the Employer given not less than four weeks prior to the expiration of the period of parental leave.
- (b) On finishing parental leave, a Caregiver is entitled to the position he or she held immediately before starting parental leave.
- (c) If the position referred to in subclause (13)(b) is not available, the Caregiver is entitled to an available position:
- (i) for which the Caregiver is qualified; and
 - (ii) that the Caregiver is capable of performing, most comparable in status and pay to that of his or her former position.
- (d) Where, immediately before starting parental leave, a Caregiver was acting in, or performing on a temporary basis the duties of, the position referred to in subclause (13)(b), that subsection applies only in respect of the position held by the Caregiver immediately before taking the acting or temporary position.
- (e) Notwithstanding the provisions of this clause, a Caregiver may request to return to work on a part time basis (or reduced part time basis in the case of an existing part time Caregiver) where the Caregiver is the parent, or has responsibility for the care of the child who is of school age or younger to enable the Caregiver to care for the child. Such a request may not be unreasonably refused.

Effect of parental leave on employment

- (14) Absence on parental leave:
- (a) does not break the continuity of service of a Caregiver; and
 - (b) is not to be taken into account when calculating the period of service for a purpose of this Agreement or a relevant contract of employment.

Termination of Employment

- (15) (a) A Caregiver on parental leave may terminate his or her employment at any time during the period of leave by notice given in accordance with this Agreement.
- (b) The Employer shall not terminate the employment of a Caregiver on the grounds of pregnancy or absence on parental leave, but otherwise the rights of the Employer in relation to termination of employment are not hereby affected.

Replacements

- (16) (a) A replacement is a person specifically engaged as a result of a Caregiver proceeding on parental leave.
- (b) The Employer shall, before engaging a replacement under this subclause, inform that person of the temporary nature of the employment and of the rights of the Caregiver who is being replaced.
- (c) The Employer shall, before engaging a person to replace a Caregiver temporarily promoted or transferred in order to replace a Caregiver exercising his or her rights under this clause, inform

that person of the temporary nature of the promotion or transfer and of the rights of the Caregiver who is being replaced.

- (d) Provided that nothing in this subclause shall be construed as requiring the Employer to engage a replacement.

Casual Employment

- (17) A Caregiver may elect to cease parental and adoption leave, subject to any mandatory period of absence, in order to return to employment with the Employer as a casual Caregiver for the duration of the period of absence that would otherwise have applied.
- (18) Provided that it is the Caregiver's responsibility to determine if working as a casual Caregiver during this period may affect other parental leave statutory entitlements.

Keeping in Touch Days

- (19) A Caregiver may access, subject to agreement by the Employer, up to 10 keeping in touch days during the period of parental leave in accordance with the provisions of section 79A of the *Fair Work Act 2009* (as amended).

39. COMPASSIONATE LEAVE

- (1) A Caregiver (other than a casual) is entitled to up to two (2) days of paid Compassionate Leave:
 - (a) for the purpose of spending time with a person who:
 - (i) is a family member; and
 - (ii) has a personal illness, or injury, that poses a serious threat to their life; and / or
 - (b) on the death of a family member or any other person who immediately before that person's death lived with the Caregiver as a family member.
- (2) For the purposes of this clause, 'family member' means a member of the Caregiver's immediate family or a member of the Caregiver's household as defined in the *Fair Work Act 2009* as amended.
- (3) Caregivers entitled to a period of Compassionate Leave are entitled, for any particular occasion, to take the leave as:
 - (a) a single, unbroken period of up to two (2) days; or
 - (b) two (2) separate periods of one (1) day each; or
 - (c) any separate periods to which the Caregiver and the Employer agree.
- (4) Caregivers are entitled to Compassionate Leave without loss of ordinary time earnings.
- (5) Payment for such leave shall be subject to the Caregiver providing evidence of the illness, injury or death.
- (6) The Employer shall make every endeavour to grant a Caregiver's request for paid accrued leave and unpaid leave of absence resulting from the Caregiver's need to take additional time off in conjunction with Compassionate Leave. Such a request must not be unreasonably refused.

40. FAMILY AND DOMESTIC VIOLENCE

- (1) The Employer will exercise compassion, flexibility and confidentiality in considering requests from Caregivers who are seeking support during a situation of family and/or domestic violence.

Definitions

- (2) For the purposes of this clause, family and domestic violence leave means violent, threatening or other abusive behaviour by a close relative of a Caregiver, a member of a Caregiver's household, or a current or former intimate partner of a Caregiver that seeks to coerce or control the Caregiver and that causes them harm or to be fearful.
- (3) For the purposes of this clause, a family member/close relative is a person who is a member of the Caregiver's immediate family; or is related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

Access to Leave

- (4) Caregivers in this situation will be able to apply to access their accrued leave, including personal leave, and other forms of paid leave, or leave without pay as necessary.
- (5) Caregivers will be able to access free independent counselling assistance, and may apply for additional financial assistance through the St John of God Health Care Caregivers Facing Hardship Policy.
- (6) All Caregivers, including casuals, will be able to access up to 10 days paid family and domestic violence leave per annum. This paid leave entitlement is available in full at the start of each twelve (12) month period of the Caregiver's employment, is non-cumulative and paid at the Caregiver's full rate of pay for the hours they would have worked had they not taken the leave. The full rate of pay, for the purposes of this clause, is the caregiver's base rate plus any relevant loadings, monetary allowances, overtime or penalty rates.
- (7) All Caregivers, including casuals, will also be able access up to 5 days of unpaid family and domestic violence leave per annum. This unpaid leave entitlement is available in full at the start of each twelve (12) month period of the Caregiver's employment and does not accumulate from year to year.
- (8) Family and domestic violence leave can be taken in periods of single or multiple days, or any separate periods to which the Employer and Caregiver agree, including periods of less than one day.
- (9) Unpaid family and domestic violence leave does not break a Caregiver's period of continuous service but does not count as service when calculating accumulated entitlements such as paid leave.
- (10) A Caregiver may take family and domestic violence leave if the Caregiver is experiencing family and domestic violence; and the Caregiver needs to do something to deal with the impact of the family and domestic violence; and it is impractical for the caregiver to do that thing outside the caregiver's ordinary hours of work, which could include:
- (a) Making arrangements for their safety, or safety of a close relative (including relocation);
 - (b) Attending to legal proceedings or court hearings;
 - (c) Accessing police services; or
 - (d) Attend counselling or appointments with medical practitioners or a social worker.

Confidentiality

- (11) The Employer must take steps to ensure information concerning any notice a Caregiver has given under this clause is treated confidentially, as far as it is reasonably practicable to do so. Noting that nothing in this clause prevents the Employer from disclosing information provided by a Caregiver if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the Caregiver or another person.

Notice and Evidence Requirements

- (12) A Caregiver must give the Employer notice of the taking of leave, under this clause, as soon as practicable (which may be a time after the leave has started) and advise the period, or expected period of the leave.
- (13) Where a Caregiver wishes to access an entitlement under this clause, evidence may be required by the Employer and can be provided in the form of an agreed document issued by the Police Service, A Court, a registered health practitioner, a Family Violence Support Service, a district nurse, maternal and health care nurse or Lawyer. A signed Western Australian or Commonwealth statutory declaration can also be offered as evidence.

Flexible Work Practices

- (14) Caregivers can also make a request to the Employer for flexible work practices. Flexible work practices may include but are not limited to:
- (a) changes to the Caregiver's span of hours or pattern or hours and/or shift patterns;
 - (b) job redesign or changes to duties;
 - (c) relocation to suitable employment within the organisation;
 - (d) a change to their telephone number or email address to avoid harassing contact;
 - (e) any other appropriate measure including those available under existing provisions for family friendly and flexible work.

41. TIME OFF WITHOUT PAY

Time off without pay for whatever purpose may be granted by agreement between the Employer and the Caregiver.

42. STUDY LEAVE

- (1) Where a Caregiver is engaged in an accredited course of study which in the Employer's view:
- (a) is relevant to the duties being or likely to be performed by the Caregiver;
 - (b) is relevant to the current and emerging business needs of the Employer;
 - (c) enhances the career development of the Caregiver; and
 - (d) does not unduly affect or inconvenience the operations of the Employer.

The Employer may grant leave with pay to undertake study for an approved course, provided that the classes, lectures or tutorials fall within the parameters of the Caregiver's normal working hours. The amount of leave granted may be up to three hours per week.

- (2) Paid study leave is provided for formal study periods only (ie at the college/university) and the Caregiver shall undertake at least 50% of formal study in her/his own time.
- (3) The Caregiver is required to provide evidence to the Employer of attendance and satisfactory progress with studies.

43. PROFESSIONAL DEVELOPMENT

- (1) A minimum of two days professional development leave for full-time Caregivers (pro rata for part-time) shall be granted on an annual basis to Professional Callings positions as per Schedule A – Salaries. The purpose of this entitlement is to enable Caregivers to undertake learning and development activities that fulfil professional and organisational needs.
- (2) Professional development leave is cumulative, up to four days.
- (3) The Employer may grant on a case by case basis:
 - (a) additional professional development leave to Caregivers whose positions are within the Professional Callings table at Schedule A;
 - (b) up to two days professional development leave to positions outside of the Professional Callings table at Schedule A.

44. JURY AND WITNESS SERVICE

- (1) Caregivers summoned for jury service and giving prior advice to their manager will be granted paid leave subject to the procedures set out herein.
- (2) Caregivers summoned as a witness in relation to their official capacity and giving prior advice to their manager will be granted paid leave subject to the procedures set out herein.
- (3) Caregivers requesting time off for jury service must notify their manager on receipt of notice to attend.
- (4) Application for leave of absence for jury or witness service must be made on the standard Application for Leave form with a copy of the notice to attend attached.
- (5) On presentation of proof of appearance payment of salary will be made at the ordinary time through the pay roll system.
- (6) The Employer will claim reimbursement from the Court.

45. CULTURAL / CEREMONIAL OBLIGATIONS

- (1) A Caregiver is entitled to access accrued paid leave for tribal/ceremonial/cultural obligations providing he/she has sufficient leave available.
- (2) Leave under this provision may be approved to meet the Caregiver's customs, traditional law and / or to participate in ceremonial and cultural activities.

- (3) Time off without pay may be granted by Agreement between the Employer and Caregiver.
- (4) The Employer may request reasonable evidence of the legitimate need for time off.

46. DEFERRED SALARY SCHEME

- (1) Permanent Caregivers will have access to the 4/5 pay option, whereby they work for four years at 80% pay and then take one year off at 80% pay in accordance with the following:
 - (a) By written agreement between the Employer and Caregiver, a Caregiver may be paid 80% of her/his normal salary under this Agreement, and any other relevant agreement upon the expiry of this Agreement, over a five-year period. The fifth year will then be taken as leave with pay with the accrued salary annualised over the year. The fifth year will be treated as continuous service.
 - (b) The leave may not be accrued unless the Employer agrees to accrual. In deciding whether to support a particular request for this arrangement, the Employer will take into account factors such as operational requirements. To satisfy operational requirements, the number of Caregivers allowed to work under this arrangement may be restricted at any one time and/or the timing of the arrangements may need to be staggered. The Employer has the absolute discretion to determine the operational needs in this regard.
 - (c) Where a Caregiver is approved to participate in this arrangement, the 80% of salary shall then become the applicable salary for all purposes including overtime, shift penalties, superannuation, salary packaging etc.
 - (d) A Caregiver may withdraw from this arrangement by giving notice in writing at any time. She/he would then receive a lump sum equal to the accrued credit, paid at a time agreed between the Employer and Caregiver but not more than 3 months from the time of the Caregiver's withdrawal from the arrangement.
 - (e) A Caregiver who terminates his or her employment prior to the completion of the 4th year will be paid the accrued credit in their final payment.
 - (f) Any paid leave taken during the first four years of the arrangements will be paid at 80% of the Caregiver's normal salary, plus the applicable leave loading.
 - (g) It is the responsibility of the Caregiver to investigate the impact of entering into this arrangement on her/his superannuation, taxation, salary packaging and other benefits.

47. FLEXIBLE WORK/PURCHASED LEAVE OPTIONS

- (1) Caregivers may elect in writing to participate in flexible working arrangements where these are offered by the Employer. These arrangements may include the facility for the Caregiver to 'purchase' additional leave, by electing to forego part of their salary in order to accrue an additional commensurate amount of leave. Such arrangements will be subject to the Employer's policy, and as stated clearly in written agreement between the Employer and Caregiver.
- (2) It will remain the responsibility of the Caregiver wishing to avail themselves of the flexibility to seek advice concerning potential implications for taxation, superannuation, salary packaging and other benefits.

48. ADDITIONAL MEASURES DURING STATE OF EMERGENCY

During a declared state of emergency under the Public Health Act 2016 (as amended) certain measures will be implemented to mitigate the impact of that emergency. The Employer will ensure that its response to a declaration is appropriate to the circumstances being faced which may include provision of additional leave, enabling caregivers to readily access accrued leave, providing leave in advance of its usual accrual date, directions to remain away from the workplace, provision of and requirement to wear personal protective equipment. The Employer will ensure that policies, procedures and guidelines are developed and maintained to address the additional measures required during such an emergency.

49. BULLYING AND HARASSMENT

The Employer maintains a zero tolerance policy in relation to discrimination, harassment and bullying. The Employer will ensure that policies and procedures that relate to the management of these issues are at all times consistent with legislative requirements.

50. INTRODUCTION OF CHANGE AND REDUNDANCY

Interpretation

(1) In this clause:

‘Caregiver’ does not include a Caregiver engaged on a casual or temporary basis or on a fixed term contract for the purposes of subclause (5) onwards;

‘redundant’ means the position is no longer required by the Employer to be undertaken because the Employer has decided that the job will not be done by any Caregiver.

For the purposes of this clause, an action of the Employer has a ‘significant effect’ on a Caregiver if:

- (a) there is to be a major change in the composition, operation or size of, or skills required in, the Employer's workforce that will affect the Caregiver; or
- (b) there is to be elimination or reduction of a job opportunity, promotion opportunity or job tenure for the Caregiver; or
- (c) the guaranteed hours of the Caregiver's work are to significantly increase or decrease; or
- (d) the Caregiver is required to be retrained; or
- (e) the Caregiver is to be required to transfer to another job or work location; or
- (f) the Caregiver's job is to be restructured.

Caregiver to be Informed

- (2) (a) Where the Employer has decided to:
 - (i) take action that is likely to have a significant effect on a Caregiver; or
 - (ii) make a Caregiver's position redundant,

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the Caregiver is entitled to be informed by the Employer, as soon as reasonably practicable after the decision has been made, of the action or the redundancy, as the case may be.

Discussions to occur

- (3) (a) The Employer shall thereafter hold discussions with the Caregiver affected as to:
- (i) the likely effects of the action or the redundancy in respect of the Caregiver; and
 - (ii) measures that may be taken by the Caregiver or Employer to avoid or minimise a significant effect.

Provided that the Employer shall not be required to disclose confidential information the disclosure of which may seriously harm the Employer's interests.

Other Parties to be informed

- (4) (a) Where the Employer has made a definite decision to introduce major changes that are likely to have significant effects on Caregivers, the Employer shall notify and hold discussions with other interested parties, including the Union, in regard to the general nature of the changes.
- (b) If a Caregiver appoints a representative and notifies the Employer of the identity of the representative, the Employer will recognise the representative for the purposes of consultation.

Severance Pay

- (5) (a) In addition to the period of notice prescribed in Clause 11 - Separation of this Agreement, for ordinary termination, a Caregiver whose employment is terminated on the grounds of redundancy shall be entitled to the following amount of severance pay in respect of a continuous period of service.

Period of Continuous Service	Severance Payment
Less than 1 year	Nil
1 year but less than 2 years	4 weeks
2 years but less than 3 years	6 weeks
3 years but less than 4 years	7 weeks
4 years but less than 5 years	8 weeks
5 years but less than 6 years	10 weeks
6 years but less than 7 years	12 weeks
7 years but less than 8 years	14 weeks
8 years but less than 9 years	16 weeks
9 years but less than 10 years	18 weeks
10 years but less than 11 years	20 weeks
11 years but less than 12 years	22 weeks
12 years but less than 13 years	24 weeks
13 years but less than 14 years	26 weeks

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14 years but less than 15 years	28 weeks
15 years and over	30 weeks

'Weeks' Pay' means the ordinary weekly rate of wage for the Caregiver concerned.

- (b) For the purpose of this clause continuity of service shall not be broken on account of:
- (i) any absence from work on account of personal sickness or accident for which a Caregiver is entitled to claim personal leave as prescribed by this Agreement or on account of leave lawfully granted by the Employer; or
 - (ii) any absence with reasonable cause, proof whereof shall be upon the Caregiver; or
 - (iii) any absence on approved leave without pay.

Provided that in the calculation of continuous service under this subclause any time in respect of which a Caregiver is absent from work except time for which a Caregiver is entitled to claim annual leave, personal leave, long service leave and public holidays as prescribed by this Agreement shall not count as time worked.

Service by the Caregiver with a business which has been transmitted from one Employer to another and the Caregiver's service has been deemed continuous in accordance with relevant State long service leave legislation, as amended from time to time, shall also constitute continuous service for the purpose of this clause.

Redundancy shall not be payable in the event of a transmission of business where comparable alternative employment is offered and accepted.

Caregiver Leaving During Notice

- (6) A Caregiver whose employment is to be terminated on the grounds of redundancy may terminate employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had the Caregiver remained with the Employer until the expiry of such notice. Provided that in such circumstances the Caregiver shall not be entitled to payment in lieu of notice.

Alternative Employment

- (7) (a) The Employer, in a particular redundancy case, may make application to the Fair Work Commission to have the general severance pay prescription varied if the Employer obtains acceptable alternative employment for a Caregiver.
- (b) Provided that where a Caregiver is offered and accepts alternative employment within St John of God Health Inc., continuity of service shall not be broken and any accrued entitlements shall be carried over to the new Employer. The Caregiver shall not be entitled to the benefits prescribed in subclause (5) of this Clause.

Leave for Job Interviews

- (8) (a) A Caregiver who has been given notice that he or she has been, or will be, made redundant shall during the period of notice of termination be entitled to be absent from work up to a maximum of 8 ordinary hours during each week of notice without deduction of pay for the purpose of being interviewed for further employment.

- (b) A Caregiver who claims to be entitled to paid leave under paragraph (a) shall, at the request of the Employer, be required to produce reasonable proof of attendance at an interview or the Caregiver shall not receive payment for the time absent.

Notice to Centrelink

- (9) Where a decision has been made to terminate Caregivers in circumstances of redundancy, the Employer shall, subject to the agreement of the Caregivers concerned, notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the Caregivers likely to be affected and the period over which the terminations are intended to be carried out.

51. CONSULTATION ABOUT CHANGES TO ROSTERS OR HOURS OF WORK

- (1) Where the Employer proposes to change a Caregiver's regular roster or ordinary hours of work, the Employer must consult with the Caregiver or Caregivers affected and their representatives, if any.
- (2) The Employer will:
 - (a) provide to the Caregiver or Caregivers affected and their representatives, if any, information about the proposed change i.e. information about the nature of the change to the Caregiver's regular roster or ordinary hours of work and when that change is proposed to commence;
 - (b) invite the Caregiver or Caregivers affected and their representatives, if any, to give their views about the impact of the proposed change, including any impact in relation to their family or caring responsibilities; and
 - (c) give prompt and genuine consideration to any matters raised about the impact of the proposed change that are given by the Caregiver or Caregivers concerned and/or their representatives, if any.
- (3) The requirement to consult under this clause does not apply where a Caregiver has irregular, sporadic or unpredictable working hours.
- (4) These provisions are to be read in conjunction with other Agreement provisions concerning the scheduling of work and notice requirements.
- (5) At any stage during this process a Caregiver may appoint a representative of their choice in writing. The Employer's obligation to consult or provide information to the representative only occurs after written notice is provided to the Employer.
- (6) Any changes to contracted hours of work will only be made where the employer and a Caregiver agree to the change.

52. WORKPLACE REPRESENTATIVES

- (1) The Employer recognises that trade unions have a legitimate interest in representing their members.
- (2) The Employer also recognises and acknowledges that accredited workplace union representatives have an important role to play in the workplace and may be appointed as endorsed representatives of the union.
- (3) Accredited representatives will be treated fairly and be able to perform their role as union delegates without any fear of discrimination or victimisation in their employment.

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- (4) Accredited representatives will have reasonable access to telephone, facsimile and photocopying facilities for the purpose of carrying out work as a representative subject to the prior approval of their manager.
- (5) Accredited representatives may request approval from their manager for paid time off during normal working hours to perform their role as per (1) above. Any such request shall be considered by the manager taking into account the operational requirements of the representative's department.
- (6) Accredited representatives will be able to place union information on noticeboards provided for such purposes in the workplace.
- (7) Subject to a minimum of four weeks' notice and the operational needs of the hospital, the Employer will provide up to two (2) day's paid leave each calendar year to enable accredited representatives to attend appropriate union education and training. Any additional training requests above these levels will be considered, on a case by case basis, upon request by the Union.
- (8) Subject to a minimum of four weeks' notice and the operational needs of the hospital, the Employer will provide one Union covered Caregiver, per hospital with one paid union meeting each year for the purposes of discussion, education, interpretation and application of clauses contained in this Enterprise Agreement, company policy and other statutory laws pertaining to matters in the workplace. The meetings can also include education and training in addressing and resolving concerns in the workplace.
- (9) Accredited representatives may request, in writing, up to 6 months of leave without pay to engage in Union campaigns in line with Clause 41 – Time Off Without Pay. The request will be considered on its merits having consideration to operational requirements including but not limited to the capacity to replace the representative's substantive position for the period request. Should the request be approved, the commencement of the period of leave will be subject to ongoing discussions and agreement between the parties, particularly if there is a need to replacement the representative's substantive position for the period of time requested. If an accredited representative has access to accrued leave particularly an excess leave balance the representative may be required to use this leave as part of their time away from the workplace.

53. DISPUTE SETTLEMENT PROCEDURES

- (1) Where a dispute concerning the operation of this Agreement or the National Employment Standards arises the following steps shall be taken:
 - (a) As soon as practicable after the dispute has arisen, it shall be considered jointly by the appropriate supervisor, the Caregiver or Caregivers concerned and where the Caregiver or Caregivers so request, the Caregiver/s' Union or other representative.
 - (b) If the dispute is not resolved it shall be considered jointly by the appropriate senior representative of the Employer, the Caregiver or Caregivers concerned and where a Caregiver so requests, the Caregiver/s' Union or other representative who shall attempt to settle the dispute.
 - (c) If the dispute is still not resolved it shall be considered jointly by the Employer, the Caregiver or Caregivers concerned and where any Caregiver so requests the Caregiver/s' Union or other representative who shall attempt to settle the dispute.

- (d) Should the matter remain in dispute after the above processes and all reasonable attempts have been made to resolve the question, dispute or difficulty the matter may then be referred to the Fair Work Commission for assistance in its resolution by conciliation and / or arbitration. If arbitration is necessary the Fair Work Commission may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective.
- (2) On each occasion sensible time limits shall be agreed upon for the completion of each step of the procedure.
- (3) The parties involved in the matter will abide by the decision of the arbitrator.
- (4) Provided that the Agreement may only be varied by arbitration for the purpose of removing ambiguity or uncertainty.

54. WORKLOAD MANAGEMENT

- (1) The Employer is committed to ensuring staffing levels are appropriate for the delivery of high quality patient care.
- (2) The parties agree that existing flexibility in respect of patient ratios will be maintained. The current practice of staffing based on collaboration between Administration and ward/unit management will continue on a shift by shift basis, taking into account both occupancy and patient acuity.
- (3) Staffing levels at each department shall be determined on the basis of:
 - (a) clinical assessment of patient needs;
 - (b) the demands of the environment such as ward layout;
 - (c) statutory obligations including workplace safety and health legislation;
 - (d) the requirements of regulatory legislation and professional standards; and
 - (e) reasonable workloads.
- (4) Should any Caregiver in any department, ward or unit believe that an unreasonable and excessive workload is being imposed other than occasionally or infrequently then:
- (5) The Caregiver should attempt to resolve the matter with the appropriate department, ward/unit Manager. If appropriate action is not taken to address the workload issues within seven working days the Caregiver should lodge a statement setting out the details of the situation with the relevant Executive (i.e.: Department Head).
- (6) The Caregiver may raise the matter by submitting a Workload Grievance form to the appropriate Manager.
- (7) The Executive shall respond to the Caregiver within seven working days.
- (8) If the matter remains unresolved the Caregiver may seek to resolve the matter using the Dispute Settlement Procedures at Clause 53 in this Agreement.

- (9) Nothing shall prevent a Caregiver from seeking to resolve the matter using the Dispute Settlement Clause in this Agreement.

55. CLASSIFICATION OF POSITIONS

- (1) The concept of “work value” will be utilised for the purposes of classifying and reclassifying positions.
- (2) In assessing the “value” of a position consideration will be given to a range of factors including but not limited to the minimum essential education level required; the experience required to perform the position; the scope and variety of activities required of the position; the level of interpersonal skills and analytical and problem solving required; the influence the position has on the results within a Department/Organisation; the level of independence/autonomy within the position; the size/budget of the Unit/department; the number of Caregivers supervised and/or controlled and where the positions is placed in the organisational hierarchy.
- (3) Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to the work requirements as to warrant the upgrading to a higher classification.
- (4) Consideration will also need to be given to wage relativities that might result not only within the relevant classification structure but also against external classifications to which the structure at SJGHC might relate. The Employer does not support the concept of wage “leapfrogging” arising out of changes in relative positions.

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56. SIGNATORIES

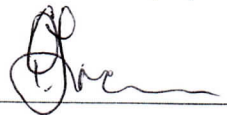
Signed for and on behalf of St John of God Health Care
Inc.:



Clare Francis
Group Manager Employee and Industrial Relations
Level 1, 556 Wellington Street
PERTH WA 6000

In the presence of:

Peter Francis



Date: 20 DECEMBER 2022


Signed for and on behalf of Caregivers:



Naomi McCrae
Secretary (WA)
Health Services Union
8 Coolgardie Terrace
PERTH WA 6000

In the presence of:

Jayda Kemp



Date:

19 December 2022

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SCHEDULE A – SALARIES

- (1) The increases payable to Caregivers covered by this Agreement are detailed in the tables below and include:
 - (a) Subject to a positive ballot 3% from the first full pay period commencing on or after 1 July 2022.
 - (b) 3% from the first full pay period commencing on or after 1 April 2023.
- (2) Unless otherwise specified progression for all levels for which there is more than one wage point, shall be by automatic annual increments, subject to a satisfactory performance appraisal.
- (3) Progression between levels shall be by appointment, subject to the Employer's requirements.
- (4) No Caregiver, who at the date of this Agreement was in receipt of a rate of wage higher than that prescribed herein for his/her classification of work, shall have that rate reduced by the operation of this Agreement.
- (5) In lieu of the salary provided in this Schedule, the Employer and Caregiver may agree to implement salary packaging arrangements. Such arrangements must be in accordance with the Employer's salary packaging policy. The administrative arrangements for salary packaging will be entirely at the discretion of the Employer. Salary packaging arrangements entered into will be cost neutral in relation to the total employment cost of the Caregiver for the Employer.
- (6) Where an annual salary is specified, the weekly rate shall be calculated using a divisor of 52.167.

Table A – General Classifications

Classification and Increment level	Current salary	from FFPOA 1 July 2022 3%	from FFPOA 1 April 2023 3%
1.1	49,648	51,137	52,671
1.2	50,418	51,931	53,489
1.3	51,442	52,985	54,575
1.4	52,312	53,882	55,498
1.5	53,777	55,390	57,052
2.1	53,952	55,570	57,237
2.2	55,618	57,286	59,005
2.3	57,285	59,004	60,774
2.4	58,960	60,728	62,550
2.5	60,489	62,304	64,173
3.1	60,661	62,481	64,355
3.2	62,554	64,430	66,363
3.3	63,884	65,800	67,774
3.4	65,481	67,446	69,469
4.1	64,214	67,636	69,665
4.2	65,851	67,826	69,861
4.3	66,748	68,750	70,813
4.4	68,644	70,703	72,824

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Classification and Increment level	Current salary	from FFPOA 1 July 2022 3%	from FFPOA 1 April 2023 3%
5.1	69,567	71,654	73,804
5.2	71,622	73,770	75,983
5.3	74,907	77,154	79,469
6.1	75,241	77,498	79,823
6.2	76,733	79,035	81,406
7.1	78,297	80,646	83,066
7.2	80,443	82,856	85,342
8.1	82,655	85,134	87,688
8.2	84,925	87,473	90,097
9.1	89,305	91,984	94,744
9.2	92,556	95,333	98,193
10.1	94,181	97,007	99,917
10.2	97,172	100,087	103,090
11.1	99,647	102,636	105,715
11.2	103,092	106,185	109,371
12.1	108,436	111,689	115,040
13.1	111,299	114,638	118,077
13.2	114,921	118,369	121,920
14.1	118,676	122,236	125,904
15.1	124,161	127,886	131,722
15.2	128,660	132,520	136,496

- (7) A Caregiver may be appointed to the position of Senior Anaesthetic Technician where the position involves overall coordination of anaesthetic services and/or works within specialised areas, with involvement in complex/advanced procedures with additional responsibilities.
- (8) Advancement of Clinical Coders to Level 9 is subject to:
- (a) meeting the requirements and satisfactory performance as a Clinical Coder at Level 6-8; and
 - (b) completion of the internal competencies for a Level 9 Clinical Coder; and
 - (c) an audit as per Australian Coding Benchmark (ACBA/NCCH).
- (9) Subject to satisfactory performance, a Clinical Coder at Levels 6-9 will be paid a \$2,000 allowance per year or part thereof.
- (10) Advancement of Clinical Coder trainees between Levels 4 and 5 is subject to:
- (a) meeting the requirements and satisfactory performance as a Clinical Coder at Level 4; and
 - (b) completion of the internal competencies for a Level 5 Clinical Coder trainee; and
 - (c) an audit as per Australian Coding Benchmark (ACBA/NCCH).

Table B – Professional Callings

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- (11) Caregivers who possess a relevant entry level tertiary qualification, or equivalent as agreed between the Union and the Employer, and who are employed in the callings of:

Art Therapist, Audiologist, Cardiac Scientific Officer, Clinical Perfusionist, Psychologist, Dietitian, Exercise Physiologist, Librarian, Medical Imaging Technologist, Medical Scientist, Music Therapist, Neurophysiology Technologist, Nuclear Medicine Technologist, Occupational Therapist, Physiotherapist, Podiatrist, Respiratory Scientist, Respiratory Sleep Scientist, Sleep Technologist, Social Worker, Sonographer, Speech Pathologist

shall be entitled to annual salaries as reflected in the below Table B2.

- (12) Caregivers who occupy positions currently classified within Column A in Table B1 below will translate to the applicable classification and incremental point as reflected in Column B within Table B1 and will, subject to subclause (13) below of this Schedule progress to the next incremental step within the defined classification level in line with sub clause (2) of this Schedule. The Caregiver's anniversary date is preserved.
- (13) Where a Caregiver is in receipt of a personal classification within the current classification and incremental step reflected in Column A of Table B1 they will be maintained at the corresponding classification and incremental step in the new structure reflected in Column B.

Table B1:

Column A	Column B
Current classification and incremental step	New classification and incremental step
	Grade 1 (One)
6/12.1	G1.1
6/12.2	G1.2
6/12.3	G1.3
6/12.4	G1.4
6/12.5	G1.5
6/12.6	G1.6
	Grade 2 (Two)
13.1	G2.1
13.2	G2.2
14.1	G2.3
	Grade 3 (Three)
15.1	G3.1
15.2	G3.2
	Grade 4 (Four)
16.1	G4.1
16.2	G4.2
17.1	G4.3

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Table B2

Classification and Increment level	Current salary	from FFPOA 1 July 2022 3%	from FFPOA 1 April 2023 3%
Grade 1 (One)			
G1.1	75,241	77,498	79,823
G1.2	80,443	82,856	85,342
G1.3	84,925	87,473	90,097
G1.4	89,305	91,984	94,744
G1.5	97,172	100,087	103,090
G1.6	105,815	108,990	112,259
Grade 2 (Two)			
G2.1	111,299	114,638	118,077
G2.2	114,921	118,369	121,920
G2.3	118,676	122,236	125,904
Grade 3 (Three)			
G3.1	124,161	127,886	131,722
G3.2	128,660	132,520	136,496
Grade 4 (Four)			
G4.1	130,225	134,131	138,155
G4.2	132,829	136,814	140,919
G4.3	137,396	141,518	145,763

- (14) Subject to paragraph (16) of this subclause, on appointment or promotion to the Grade 1 under this clause:
- (a) Caregivers who have completed an approved three academic year tertiary qualification, relevant to their calling, shall commence at the first year increment.
 - (b) Caregivers, who have completed an approved four academic year tertiary qualification, relevant to their calling, shall commence at the second year increment.
 - (c) Caregivers, who have completed an approved Masters or PhD Degree, relevant to their calling, shall commence on the third year increment.
- Provided that Caregivers who attain a higher tertiary level qualification after appointment, shall not be entitled to any advanced progression through the range.
- (15) The Employer shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this clause.
- (16) The Employer, in allocating levels pursuant to subclause (11) of this clause may determine a commencing salary above Grade 1 for a particular calling or callings.
- (17) (a) Unless otherwise specified, progression between incremental levels shall be by annual increments (i.e. 12 months continuous service), subject to a satisfactory performance appraisal.

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- (b) Any disagreement in relation to the payment of an annual increment will be addressed using the dispute settlement provisions of this Agreement.

Endorsed (Clinical/Counselling/Neuro) Psychologists

- (18) A Caregiver appointed as a (Clinical/Neuro/Counselling) Psychologist Registrar (Grade 1) will commence at Grade 1.5 and progress to Grade 1.6 in the second year.
- (19) A Caregiver appointed as an Endorsed ('Clinical/Counselling/Neuro) Psychologist' (Grade 2) will commence at Grade 2.1 and progress by annual increments to Grade 3.2.
- (20) A Caregiver may be appointed or progress to (Clinical/Counselling/Neuro) Psychologist (Grade 2) when:
- (a) they are registered as an endorsed 'Psychologist' with the Psychology Board of Australia; and
 - (b) they have thorough knowledge of the methods, principles and practices of the profession; and
 - (c) they work under general to limited direction; and
 - (d) they practice psychology with a high degree of initiative and experience.

Table C – Subiaco Pharmacy

Classification and Increment level	Current salary	from FFPOA 1 July 2022 3%	from FFPOA 1 April 2023 3%
3.1	62,774	64,657	66,597
3.2	63,908	65,825	67,800
7/12.1	75,661	77,931	80,269
7/12.2	80,162	82,567	85,044
7/12.3	85,235	87,792	90,426
7/12.4	90,077	92,779	95,563
7/12.5	97,471	100,395	103,407
7/12.6	106,218	109,404	112,687
13/14.1	108,965	112,234	115,601
13/14.2	112,444	115,817	119,292
13/14.3	116,049	119,531	123,117
15/16.1	121,319	124,958	128,707
15/16.2	125,637	129,406	133,289
17.1	132,498	136,473	140,567
17.2	137,053	141,164	145,399
Pharmacists who are on-call (extra 0.25%)			
13/14.1	109,238	112,515	115,890
13/14.2	112,725	116,107	119,590
13/14.3	116,339	119,829	123,424
15/16.1	121,622	125,270	129,029
15/16.2	125,951	129,729	133,621
17.1	132,829	136,814	140,919

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Classification and Increment level	Current salary	from FFPOA 1 July 2022 3%	from FFPOA 1 April 2023 3%
17.2	137,396	141,518	145,763

- (21) Subiaco Pharmacist Caregivers at classification 13/14, 15/16 or 17, who are required to be on call, receive an additional 0.25% salary. These rates are specified in the above table. This is in recognition of the requirement to provide advice and assistance whilst on call, which is in addition and separate to the requirement to be called in, whilst on call. Should a Caregiver no longer be on call they will not be entitled to receive an additional 0.25% salary.
- (22) Subject to paragraph (23) of this subclause, on appointment or promotion to the Level 7/12 under this clause:
- (a) Caregivers, who have completed an approved three academic year tertiary qualification, relevant to their calling, shall commence at the first year increment.
 - (b) Caregivers, who have completed an approved four academic year tertiary qualification, relevant to their calling, shall commence at the second year increment.
 - (c) Caregivers who have completed an approved Masters or PhD Degree, relevant to their calling, shall commence on the third year increment.
 - (d) Provided that Caregivers who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.
- (23) The Employer and union shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this Clause and shall maintain a manual setting out such qualifications.
- (24) The Employer, in allocating levels pursuant to subclause (21) of this clause may determine a commencing salary above level 7/12 for a particular calling/s.
- (25) Annual increments shall be subject to the Caregiver's satisfactory performance over the preceding twelve months.

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SCHEDULE B – CLASSIFICATION AND GRADINGS

The listed positions and levels are current at the time of negotiation of this Agreement, and are therefore not exhaustive. The positions and levels are a guide only as the classification may be amended over time in line with the assessment of the work value of a given position as reflected in Clause 55 – Classification of Positions. Where a Caregiver is appointed to a position that is not listed, the classification of the position will be established having regard to the work value of the position, including such relativities as levels of responsibilities, duties, skills, education and consideration will also be given to the classification of similar position.

General Classifications Table

Level	Position Title
1	Hospitality Receptionist, Hospital Concierge
2	Food Services Advisor, Receptionist and/or Switchboard Operator
2/3	Swim Teacher/Coordinator
3	Accounts Payable Officer, Accounts Receivable Officer, Administrative Assistant, Admissions Officer, Allied Health/Therapy Assistant, Child Care Worker, Coding Clerk, Discharge Officer, Human Resources Assistant, Library Assistant, Medical Receptionist, Menu Monitor, Orthopaedic/Anaesthetic Technician Trainee, Outpatients Officer, Patient Administrative Assistant, Patient Health Information Officer, Medical Records Officer, Medical Typist, Research Assistant, Patient Booking Officer, Supply / Purchasing Officer, Ward Clerk.
3/6	Sleep Technologist Bunbury
4	Administrative Officer, Bookings Officer, Clerical Team Leader, Medical Secretary, Menu Coordinator, Pastoral Associate, Programs Coordinator (Murdoch)
4/5	Clinical Coder Trainee, Finance Assistant, Pharmacy Technician
5	Executive Secretary, Food Services Coordinator, Coordinator Housekeeping & Mail Services, Hydrotherapy Coordinator, Insurance Liaison Officer, Library Technician, Maintenance Planner, Medical Credentialing Officer, Patient Equipment Coordinator, Senior Bookings Officer, Senior Medical Secretary, Training Officer, Volunteer Coordinator
5/6	Human Resources Officer, Orthopaedic Technician
5 – 8	Anaesthetic Technician
6	Assist Cath Lab Tech, Coordinator JMOs, Credentialing Officer PNH, Departmental Secretary (Midland), Emergency Department Coordinator, Executive Secretary, Graduate Research Assistant, Hydrotherapy and Allied Health Assistant Coordinator, Implant and Stock Coordinator, Medical Clinic Coordinator, Medical Education Coordinator, Post Graduate Medical Services Coordinator, Procedural Services Secretary, Programs Support Officer (LOD), Sessional Suite Coordinator, Team Leader
6/7	Environmental Services Coordinator Bunbury, Food Services Coordinator Bunbury, Personal Assistant, Security Response Officer (Midland),
6-9	Clinical Coder
7	Marketing Officer, Pastoral Practitioner, Senior Orthopaedic Technician, CSSD Coordinator, Data Analysis and Reporting Coordinator
7/8.1	Senior Pharmacy Technician
7-9	Clinical Trial and Data Management Officer
7-10	Facilities/Maintenance Supervisor
8	Consumer Liaison and Release of Information Officer, Coordinator Outpatients, Junior Cardiac Technician, Senior Pastoral Practitioner
9	Coordinator Medical Centres (Murdoch), Doctor Liaison Coordinator, Executive Assistant, Freedom of Information Officer, Mission Associate, Marketing Coordinator, Senior Health Information Officer, Travel Smart Officer, Pastoral Services Coordinator
9.1	Head Pharmacy Technician

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Level	Position Title
9-10	Senior Human Resource Advisor
10	Academic Support Officer, Clinical Coder Educator, Community Relations Coordinator, Coordinator Clinical Trials, Coordinator Day Hospice Services, Coordinator Events, Coordinator Orthopaedics, Coordinator Quality, Injury Management Advisor, Coordinator Volunteers, Occupational Health and Safety Consultant, Patient Care Simulation Technician, Senior Anaesthetic Technician, Senior Clinical Trials Coordinator
10/11	Coordinator Clinical Coding, Management Accountant
11	Coordinator Executive Administrative Team, Occupational Health and Safety Coordinator
12	Counsellor, Perioperative Resource Manager, Senior Human Resource Partner
13	Emergency Preparedness Officer, Post-Doctoral Research Fellow, Senior Cardiac Technician
13/14	Manager Drug Service Team Bunbury

Professional Callings Table

Classification/Level	Position Title/Descriptor
Grade 1 (One)	Entry level Allied Health Professional (AHP) as defined within Schedule A, clause (11)
Grade 2 (Two)	Senior Allied Health Professional
Grade 3 (Three)	Specialist Allied Health Professional/Team Leader/Manager (small team)
Grade 4 (Four)	Manager (large team); Advanced Scope AH Professional

Pharmacy Classifications Table (Relates to Schedule A, Table C)

Level	Position Title
3	Intern – unqualified
7/12	Pharmacist – qualified
13/14	Clinical Pharmacist
13/14	Senior Pharmacist
15/16	Pharmacy Section Head
15/16	Clinical Pharmacist Specialist
17	Acting Deputy Chief Pharmacist
17	Clinical Pharmacy Coordinator

SCHEDULE C – SUPPORTED WAGE SYSTEM

(1) Workers eligible for a supported wage

- (a) This Schedule defines the conditions which will apply to Caregivers who, because of the effects of a disability, are eligible for a supported wage under the terms of this Agreement. In the context of this clause, the following definitions will apply:
- (i) “Supported Wage System” means the Commonwealth Government System to promote employment for people who cannot work at full Agreement wages because of a disability, as documented in “Supported Wage System: Guidelines and Assessment Process”.
 - (ii) “Approved Assessor” means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual’s productive capacity within the Supported Wage System.
 - (iii) “Disability Support Pension” means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.
 - (iv) “Assessment instrument” means the tool provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.
 - (v) “**SWS Wage Assessment Agreement**” means the document in the form required by the Department of Social Services that records the Caregiver’s productive capacity and agreed wage rate.

(2) Eligibility criteria

- (a) Workers covered by this Schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the is engaged under this Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.
- (b) (The Schedule does not apply to any existing Caregiver who has a claim against the Employer which is subject to the provisions of workers’ compensation legislation or any provision of this Agreement relating to the rehabilitation of Caregivers who are injured in the course of their current employment).
- (c) The Agreement does not apply to the Employer in respect of their facility, program, undertaking service or the like which receives funding under the *Disability Services Act 1986* (DS Act) and fulfils the dual role of service provider and sheltered Employer to people with disabilities who are receiving or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section10 or under Section12A of the DS Act, or if a part only has received recognition, that part.

(3) Supported wage rates

- (a) Caregivers to whom this Schedule applies shall be paid a percentage of the minimum rate of pay prescribed by this Agreement for the class of work which the person is performing commensurate with their assessed capacity. That is, where their capacity is assessed at 70%, they shall be paid at 70% of the applicable rate.
- (b) Where a person’s assessed capacity is 10 per cent, they shall receive a high degree of assistance and support.

(4) Assessment of capacity

- (a) For the purpose of establishing the percentage of the Agreement rate to be paid to a Caregiver under this Agreement, the productive capacity of the Caregiver will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:
 - (i) the Employer and a union party to the Agreement, in consultation with the Caregiver or, if desired by any of these;
 - (ii) the Employer and an accredited Assessor from a panel agreed by the parties to the Agreement and the Caregiver.

(5) Lodgement of assessment instrument

- (a) All SWS Wage Assessment Agreements under the conditions of this Schedule, including the appropriate percentage of the relevant wage to be paid to the Caregiver, shall be lodged by the Employer to the Fair Work Commission.
- (b) All SWS Wage Assessment Agreements shall be agreed and signed by the parties to the assessment. Where a union, which is a party to the Agreement but is not a party to the assessment, the assessment will be referred by the FWC to the union by certified mail and the SWS Wage Assessment Agreement will take effect unless an objection is notified to the FWC within ten (10) days.

(6) Review of assessment

The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

(7) Other terms and conditions of employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Caregivers covered by the provisions of the Schedule will be entitled to the same terms and conditions of employment as all other Caregivers covered by this Agreement paid on a pro-rata basis.

(8) Workplace adjustment

An Employer wishing to employ a person under the provisions of this Schedule shall take reasonable steps to make changes in the workplace to enhance the Caregiver's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other Caregivers in the area.

(9) Trial period

- (a) In order for an adequate assessment of the Caregiver's capacity to be made, an Employer may employ a person under the provisions of this Schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (b) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

- (10) The minimum amount payable to the worker during the trial period shall be no less than \$95 per week and will be reviewed on an annual basis.

- (11) Work trials should include induction or training as appropriate to the job being trialled.

- (12) Where the Employer and Caregiver wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (9) (b) hereof.

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SCHEDULE D – 12 Hour Shift Roster Guidelines

- (1) 12 Hour Shift Rosters will be worked in accordance with the following roster pattern

PROP HRS VARIATION (per 4wk cycle)	No 12 HR SHIFTS	AVERAGE No SHIFTS PER WEEK	ADDITIONAL HRS TO MAKE UP CONTRACT
152 hrs - full time	12	3, 4 in one week	1 x 8
144 hrs - part time	12	3	0
140 hrs - as above	11	3, 2 in one week	1
128 hrs - as above	10	3 and 2	1
120hrs - as above	10	2, 3 in one week	0
108 hrs - as above	9	2,1	0
96 hrs - as above	8	2	0

- (2) Unless otherwise agreed between the Caregiver and the Employer, the roster must provide for the following:
- (a) no more than three consecutive night shifts
 - (b) no more than four consecutive day shifts
 - (c) no more than four shifts in a row
 - (d) a reasonable distribution of days off between blocks of shifts
 - (e) shifts should not be compacted to produce an excessively long break
 - (f) the roster pattern will be planned over a period of four weeks
 - (g) full time Caregivers will work 13 shifts per four week cycle, three shifts for three weeks and four shifts in one week
 - (h) part time Caregivers will have the opportunity to increase or decrease their hours to best fit their 12-hours roster inclusive of education time.

An example of a full time four week cycle roster is as follows:

WK	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7
1			D	D	N		
2			D	D	N		
3			D	D	N		
4			D	D	N	N	

Shift Penalties

- (3) Monday to Friday shift penalties shall apply as follows:

hours worked between 0700-1300 – 0%
hours worked between 1300-2100 – 15%
hours worked between 2100 - 0730 – 35%

Weekend shift penalties shall be paid according to the shift work provisions of this Agreement.

Maintenance of Contracted Hours

- (4) All Caregivers shall have their hours of work protected and must be given the opportunity to make up their contracted hours. Any Caregiver wishing to reduce/increase their hours may do so by agreement with their Manager. Caregivers who have voluntarily reduced/increased their hours to undertake 12

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hour shifts and wish to return to their original roster arrangement/hours may do so by forwarding a written request to their Manager.

- (5) Any adjustment required in hours will be adjusted up rather than down unless otherwise requested by the Caregiver within FTE establishment.

Minimum Break Between Shifts

- (6) The minimum rostered break between shifts shall be at least 11.5 hours. Shorter breaks shall not be rostered.

Meal and Tea Breaks

- (7) The shift periods shall incorporate one paid 30 minute meal break (which shall be counted as time worked) and one unpaid 30 minute meal break. The first break shall be taken within 6 hours of commencing duty unless this is delayed by agreement to meet patient needs.
- (8) Within each shift period there shall also be allowed two tea breaks of 10 minutes each that shall be taken when convenient to the hospital without deduction of pay for such time. Tea breaks may be taken in conjunction with meal breaks.

Overtime

- (9) Overtime will not be worked in conjunction with 12 hour shifts, provided that by agreement between the Caregiver and the Employer ad hoc overtime to a maximum of 2 hours may be worked.

Education

- (10) Education is to be provided within the roster as part of the shift hours.

Allocation

- (11) The Employer may require a Caregiver to change their work allocation, or roles during the course of a shift. Caregivers (with the exception of the night shift) working a 12 hour shift may request to change their work allocation after 6 hours of duty. All reasonable efforts will be made to accommodate such a request.

Rotation

- (12) Rotation to other areas based on operational requirements shall be for the duration of the relief shift. The balance of the 12 hour shift may be:
 - (a) worked by agreement to meet operational needs or
 - (b) taken as TOIL or annual leave.
- (13) Caregivers will be given the opportunity to utilise TOIL days or single annual leave days when there is excess staff rostered.

Withdrawal Provisions

- (14) Any Caregiver who finds the 12 hour roster to be unworkable may revert to their previous roster after having given notice of one four week roster cycle.
- (15) Arrangements shall only be maintained in the event that an agreed number or percentage of positions continues to support the arrangements. If the number or percentage of positions required to support the arrangements falls below the agreed levels then continuation of the 12 hour roster will be reviewed.

Schedule 2.3—Model consultation term

(regulation 2.09)

Model consultation term

- (1) This term applies if the employer:
 - (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

- (2) For a major change referred to in paragraph (1)(a):
 - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
 - (a) discuss with the relevant employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and

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

Change to regular roster or ordinary hours of work

- (10) For a change referred to in paragraph (1)(b):
 - (a) the employer must notify the relevant employees of the proposed change; and
 - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.

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- (12) If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
- (a) discuss with the relevant employees the introduction of the change; and
 - (b) for the purposes of the discussion—provide to the relevant employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:
- relevant employees*** means the employees who may be affected by a change referred to in subclause (1).