



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

St John Of God Health Care Inc T/A St John of God Health Care
(AG2019/2509)

ST JOHN OF GOD HEALTH CARE - ANMF - REGISTERED NURSES' AND MIDWIVES' AGREEMENT 2018

Health and welfare services

COMMISSIONER WILLIAMS

PERTH, 5 SEPTEMBER 2019

Application for approval of the St John of God Health Care - ANMF - Registered Nurses' and Midwives' Agreement 2018.

[1] An application has been made for approval of an enterprise agreement known as the *St John of God Health Care - ANMF - Registered Nurses' and Midwives' Agreement 2018* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by St John Of God Health Care Inc T/A St John of God Health Care. The Agreement is a single enterprise agreement.

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

[3] Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement, as clause 13(8)(a) does not comply with section 203(6)(a) of the Act.

[4] The Australian Nursing and Midwifery Federation 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) I note that the Agreement covers the organisation.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 12 September 2019. The nominal expiry date of the Agreement is 12 December 2020.



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***St John of God Health Care – ANMF – Registered Nurses’ and
Midwives’ Agreement 2018***

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

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 – ANMF – Registered Nurses’ and Midwives’ Agreement 2018*.

2. PARTIES

- (1) The parties to this Agreement shall be St John of God Health Care Inc. (‘the Employer’) and its Caregivers employed in the classifications set out in clause 24 - Salaries and Salary Packaging, in the Employer’s hospitals located within West Australia.
- (2) Subject to compliance with the requirements of sections 185 and 201(2) of the *Fair Work Act 2009*, the Australian Nursing and Midwifery Federation (WA Branch) will be covered by this Agreement.

3. TERM

- (1) The term of this Agreement shall be from the first full pay period on or after 1 April 2019 until 12 December 2020, subject to a successful ballot and subject to approval by the Fair Work Commission.
- (2) Notwithstanding the provisions of subclause (1) hereof, this Agreement shall continue to operate until it is cancelled, varied or replaced in accordance with the provisions of the *Fair Work Act 2009*.

4. REPLACEMENT

This agreement cancels and replaces the *St John of God Health Care – ANMF – Registered Nurses’ and Midwives’ Agreement 2016*

5. COMPREHENSIVE AGREEMENT

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 industrial agreements including as provided for in the *Fair Work Act 2009*. 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.

6. INTERPRETATION

- (1) In this Agreement:
 - (a) ‘Caregiver’ means an employee of St. John of God Health Care Inc.
 - (b) ‘Casual’ means a Caregiver engaged on an hourly basis with no guarantee of continued or additional employment.
 - (c) ‘Child’ includes an adopted child, stepchild, exnuptial child or adult child.
 - (d) ‘Continuous Shift Worker’ means for the purposes of the National Employment Standards (NES) a Caregiver who may be required, and is available, to work afternoons and nights rotating with day duty, or permanent night duty, across the entire 14 days of a roster including weekends and public holidays where 24 hour 7 day per week coverage is required in the department.
 - (e) ‘Employer’ means St John of God Health Care Inc, or a person authorised by St John of God Health Care Inc. to exercise authority.
 - (f) ‘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.
 - (g) ‘Immediate Family’ means the Caregiver’s spouse or defacto spouse or the child, parent, grandparent, grandchild, or sibling of the Caregiver, their spouse or defacto spouse.
 - (h) ‘Midwife’ means a Caregiver registered under the Health Practitioner Regulation National Law

(Western Australia) in the nursing and midwifery profession whose name is entered on the register of midwives kept under that Law as a midwife.

- (i) ‘Nurse’ means a Caregiver registered under the Health Practitioner Regulation National Law (Western Australia) in the nursing and midwifery profession whose name is entered on division 1 of the register of nurses kept under that Law as a registered nurse.
- (j) ‘Nurse Practitioner’ means a Caregiver who is registered as a nurse practitioner by the Health Practitioner Regulation National Law (Western Australia) whose name is entered on the register of nurses kept under that Law as being qualified to practice as a nurse practitioner.
- (k) ‘Ordinary rate’ means the rate of pay prescribed in Clause 24 - Salaries and Salary Packaging of this Agreement.
- (l) ‘Ordinary time earnings’ means the ordinary rate, shift and weekend penalties.
- (m) ‘Part-time’ means a Caregiver regularly employed to work less hours than those prescribed for full-time Caregivers.
- (n) ‘Union’ shall mean the Australian Nursing and Midwifery Federation (WA Branch) (ANMF).

7. COMMITMENT TO IMPROVED PRODUCTIVITY

- (1) The parties to this Agreement recognise that the wage increases and other benefits contained in this Agreement can only be sustained through improvements in productivity.
- (2) Accordingly the Caregivers covered by this Agreement commit to actively cooperate 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.

8. DUTIES

- (1) 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 Caregivers to carry out such duties as are within the limits of the Caregiver's skill, competence or training.

9. 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

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.

- (c) Provided that the contract of service of a Caregiver engaged as a casual on a regular and systematic basis for a period or periods of less than 12 months may be terminated by the Employer giving the Caregiver one hour's notice. Such notice need not be in writing.
- (d) Payment in lieu of the required period of notice may be made by the Employer if the required notice is not given.
- (e) The Employer may terminate the contract of service by providing part of the required notice

and payment in lieu of the balance.

- (2) Nothing in this clause affects the Employer's right to dismiss a Caregiver without notice for serious misconduct which justifies instant dismissal.

Caregiver Giving Notice

- (3) (a) (i) The contract of service of a Level 1 Nurse may be terminated on any day by the Caregiver giving to the Employer two weeks notice in writing and the contract shall expire at the end of that period of notice.
- (ii) The contract of service of a Level 2, 3 or Senior Registered Nurse may be terminated on any day by the Caregiver giving to the Employer four weeks notice in writing and the contract shall expire at the end of that period of notice.
- (b) Notwithstanding subclause 9(3)(a)(i) the Employer and the Caregiver may agree in writing to a longer period of notice up to and including four weeks.
- (c) 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.
- (d) 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.
- (e) The required notice may be dispensed with by agreement in writing between the Employer and Caregiver.

Certificate of Service

- (4) 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.

10. PROBATION

- (1) The first three months of employment or any period of extension implemented in accordance with sub clause (3) below, will be on a probationary basis during which time and notwithstanding the provision of Clause 9 - 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 to allow additional time for a Caregiver to address identified performance issues, or if 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.

11. TIME NOT WORKED

The Caregiver shall not be entitled to payment for any period of unauthorised absence or any period of authorised leave without pay.

12. TRANSFER

The Caregiver shall be required to comply with any reasonable request to transfer to another position or place of work with the Employer within the same location (within the limits of the Caregiver's skill,

competence or training).

13. FLEXIBILITY TERM

- (1) The Employer and a Caregiver covered by this Enterprise Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
 - (a) the 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;
 - (vi) Parental Leave;
 - (vii) Flexible work options.
 - (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 51 - Dispute Settlement Procedures of this Agreement.
- (5) For the avoidance of doubt, providing information concerning the Union under this subclause does not mean that that 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 within 14 days after it is agreed to.
- (8) The Employer or caregiver may terminate the individual flexibility arrangement:
- (a) by giving no more than 14 days written notice to the other party to the arrangement; or
 - (b) if the Employer and caregiver agree in writing – at any time.

14. 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.

15. HOURS

- (1) The ordinary hours of a full-time Caregiver shall be as follows:
- (a) 76 hours in a fortnight (as averaged over a period agreed between the Employer and the Caregiver(s))
 - (b) 10 shifts in a fortnight (except as otherwise agreed between the Employer and the Caregiver(s))
 - (c) up to 10 hours a shift (except as otherwise agreed between the Employer and the Caregiver(s)).

Provided that Caregivers who were employed at SJG Bunbury Hospital using a 40 hour divisor at the commencement of the Agreement shall continue to do so subject to Schedule A of this Agreement.

- (2) 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, provided that there will be no split shifts.
- (3) A minimum of two days off duty in each fortnight shall be taken consecutively.
- (4) A Caregiver, other than a casual, shall not be rostered to work a shift of less than 3 hours duration.

Breaks Between Shifts

- (5) The roster shall in each case provide for a 9½ hour break between shifts.
- (6) A Caregiver changing from night to day shift or from day to night shift shall not be rostered on duty during the twenty hours immediately preceding the changed shift.
- (7) The provisions of this clause may be departed from by agreement between the Employer and the Caregiver(s) concerned. Provided that such agreement shall not be sought prior to, or as a condition of, the Caregiver's engagement.

Flexibility - Unit Based Work and Staffing Practices

- (8) It is envisaged that the productivity improvements necessary to support this Agreement will primarily be met at the department, ward or unit level as a result of the implementation of innovative and efficient work and staffing practices. Measures to be implemented at ward level might 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) rostered annual leave at low activity times;
 - (g) completion of mandatory competencies or other Employer required e-learning
- (9) Where 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 take annual leave at short notice, provided that:
- (a) wherever practicable, Caregivers whose accrued annual leave exceeds the threshold limit as per clause 34(11) will be asked to take annual leave before those caregivers whose annual leave accrual is within threshold limits.
 - (b) Caregivers may request to take leave without pay in lieu of annual leave.

Recognition of Caregivers’ Outside Interests

- (10) While the Employer expects Caregivers to be flexible where possible, it also recognises that Caregivers have outside interests and commitments. Accordingly:
- (a) a Caregiver cannot be required to work additional hours. Such hours may only be worked by agreement;
 - (b) a Caregiver, having commenced a shift, cannot be sent home before the end of the shift. This can only happen by agreement.
- (11) The objective is to achieve a balance between the Employer meeting the needs of its patients and Caregivers retaining control over their working hours. The Employer will make every endeavour to approve Caregiver roster requests noting that operational requirements will need to be met.
- (12) Changes may only be implemented in accordance with the provisions of this Agreement. Changes involving a departure from the provisions of this clause may only be implemented by agreement between the Employer and Caregiver(s) concerned.

Employment Security

- (13) The Employer notes that permanent employment is the preferred form of engagement for employees 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 employees prior to the engagement of casual or agency staff.

16. PART-TIME EMPLOYMENT

- (1) 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.
- (a) A part-time Caregiver may agree to work additional hours (i.e. unrostered hours worked in conjunction with an existing shift) and/or additional shifts.
 - (b) Any additional hours or shifts are to be paid at ordinary rates, unless the hours worked exceed

the limits prescribed in clause 15(1) - Hours, in which case the rates at clause 19(3) - Overtime shall apply.

- (2) A part-time Caregiver who opts to work additional hours or additional shifts within the limits prescribed in clause 15(1) - Hours shall have those additional hours paid as follows:
 - (a) ordinary rates (plus shift or weekend penalties) in which case the additional hours shall count towards the accrual of leave entitlements; or
 - (b) ordinary rates (plus shift or weekend penalties) plus a 20% loading, in which case the additional hours shall not count towards the accrual of leave entitlements.
- (3) 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.
- (4) Where the Employer is unable to fill a need from other staff resources, part time Caregivers working additional hours may elect to put the additional hours to Time Off In Lieu (TOIL) at overtime rates in lieu of the provisions outlined in subclause (2)(a) and (b) above, provided that a maximum of 38 hours TOIL may be accrued under this subclause in any 12 month period.

17. CASUAL EMPLOYMENT

- (1) A casual shall be paid 1/38th of the total rate prescribed in clause 24 - Salaries and Salary Packaging, for each hour worked, plus 20% additional loading. Provided that where a casual is engaged to work hours that incur an overtime payment under clauses 19 - Overtime or 20 - On Call Allowance and Recall to Duty, the prescribed overtime payment shall be paid, but not also the 20% additional loading.
- (2) A casual shall not receive any of the paid leave entitlements prescribed in this Agreement other than those eligible for Carer’s Leave (as per the *Fair Work Act 2009*) and Long Service Leave (as per the *Long Service Leave Act 1958*).
- (3) The minimum period of engagement for casuals will be two hours.

18. 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 9 – Separation.

19. OVERTIME

- (1) Overtime is payable where a Caregiver works more than the ordinary hours prescribed in clause 15 – Hours.
- (2) Provided that overtime shall also be paid for hours worked in excess of the maximum number of hours of a normal full time shift length in the applicable ward, unit or clinic.

Payment for Overtime

- (3) Overtime is paid at:
 - (a) time and a half for the first three hours, and double time thereafter, from Monday to Saturday
 - (b) double time on a Sunday or public holiday.

Time Off in Lieu of Payment

- (4) A Caregiver may elect to receive time off in lieu of payment for overtime worked. Time off in lieu accrues at the applicable overtime rate.

- (5) Time off in lieu may be taken at any time by mutual agreement between the Employer and Caregiver. Alternatively, a Caregiver may be directed to use time off in lieu by the Employer with 9.5 hours notice.
- (6) All unused time off in lieu will be paid out on termination.

Breaks Between Overtime and Ordinary Duty

- (7) Wherever possible, allocation of work shall be managed to ensure that Caregivers shall have a minimum break of 9½ hours between the cessation of overtime and the commencement of their next ordinary duty.
- (8) Where a Caregiver is due to commence their next ordinary duty within 9½ hours of the cessation of overtime, they shall either:
 - (a) delay the start to their next ordinary duty until such time as 9½ 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 9½ consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

Meals

- (9) A Caregiver not notified the previous day or earlier of the requirement to work overtime shall, if working overtime for an hour or more, be provided with any of the usual meals occurring during such overtime.

Relationship to On Call

- (10) A Caregiver may be rostered to be on call at the end of a rostered shift. However, in the event that the rostered hours of work are extended, the Caregiver shall be paid at overtime rates for these additional hours.

20. ON CALL ALLOWANCE AND RECALL TO DUTY

- (1) On call allowance is payable where a Caregiver is required by the Employer to:
 - (a) 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;
 - (b) carry a mobile telephone or pager and to remain within a specified radius of the hospital;
 - (c) return to duty at the request of the Employer during a period of rostered time off, in which case the allowance shall be paid from the time of the initial call to either the time of attendance or time where informed attendance is no longer required, or for a period of three hours, whichever is the greater.
- (2) A caregiver who is rostered on call and is asked to continue working at the end of their normal rostered shift will be paid in accordance with clause 19 – Overtime. The period on call will commence at the completion of the additional time worked.

Payment of On Call Allowance

- (3) On call allowance shall increase at the same rate, and at the same time, as increases to rates of pay as per clause 24 – Salaries and Salary Packaging.
- (4) The base rate for on-call allowance will be:

Current rate	\$7.35 per hour
First full pay period on or after 1 April 2019	\$7.46 per hour

First full pay period on or after 13 December 2019 \$7.57 per hour

- (5) Provided that the rate of on-call between midnight Friday and 7:30am Monday morning, and for public holidays, will be:

Current rate \$7.68 per hour

First full pay period on or after 1 April 2019 \$7.80 per hour

First full pay period on or after 13 December 2019 \$7.91 per hour

- (6) Provided that the on call allowance shall not be paid for any period where the Caregiver is paid in the event of recall to duty.

Restrictions

- (7) A Caregiver shall not be required to remain on call whilst on annual leave or the day before commencing leave unless by agreement between the Caregiver and the Employer.
- (8) A Caregiver shall not be required to remain on call for more than 4 consecutive nights unless by agreement between the Caregiver and the Employer.

Additional Annual Leave for On Call

- (9) A nurse 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 (11) below, 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:
- (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 accrual year shall be the anniversary of the commencement of this agreement or, for Caregivers not employed at the commencement of this agreement, the anniversary of their commencement with the Employer.
- (11) 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

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

Payment in the Event of Recall to duty

- (13) A Caregiver who is recalled to duty where they are rostered on call shall be paid:
- (a) at the rates applicable for overtime as specified in subclause 19(3) – Overtime, subject to a minimum payment of three hours for each period of recall
 - (b) Provided that subsequent recalls to duty:
 - (i) that commence within and finish after the completion of the initial three hour period shall be paid only for actual time worked that extends beyond the initial three hour period

- (ii) that commence after the completion of the initial three hour period will be paid at double time.
- (14) A Caregiver who is recalled to duty where they are not rostered on call shall be paid:
 - (a) at double time, subject to a minimum payment of three hours
 - (b) provided that subsequent recalls to duty that commence within and finish after the completion of the initial three hour period shall be paid only for actual time worked that extends beyond the initial three hour period.
- (15) A Caregiver who is recalled to duty shall be paid a motor vehicle allowance as per Clause 32 – Fares and Motor Vehicle Allowance of this Agreement.
- (16) A Caregiver who is recalled to duty may elect to receive time in lieu or payment as required in subclauses (13) and (14) above for the time worked. Time off in lieu will be managed in accordance with clause 19 – Overtime.
- (17) A minimum payment of three hours shall be made in the event that the recall is cancelled, provided that subsequent recalls to duty that commence within and finish after the completion of the initial three hour period shall be paid only for actual time worked that extends beyond the initial three hour period.

Breaks Between Recall Periods and Ordinary Duty

- (18) Where a Caregiver is due to commence their next ordinary duty within 9½ 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 9½ 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 9½ consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

Hospital Oncology Advice

- (19) A Caregiver rostered on call in a role where they are required to provide specialist clinical oncology advice via the telephone direct to a patient or other relevant carers will receive a minimum of 15 minutes overtime on each occasion when telephone advice is provided. A nurse who is on call to provide telephone advice shall not be required to remain within a specified distance of the hospital during the period of such recall.

21. 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 be posted at least 14 days before it comes into operation.
- (3) Forty eight (48) hours’ notice of a change of roster will be given by the Employer to a Caregiver. Except that, a roster may be altered at any time, by mutual agreement, to enable the functions of the hospital or facility to be carried out where another employee is absent from work pursuant to Personal/Carer’s Leave, Compassionate Leave and Leave to deal with Family and Domestic Violence, or in the event of unplanned or unforeseen change that impacts on operational needs. Noting that the Employer may use a range of strategies to address roster shortfalls whilst ensuring that patient care is not compromised. The range of strategies include the following:
 - (a) Use of casual staff;
 - (b) Use of permanent pool staff;

- (c) Offering additional shifts to part time caregivers;
 - (d) Asking other caregivers if anyone is available and interested in a shift change
 - (e) Using Agency staff
- (4) The Caregiver can continue to request a change of roster, at any time.

22. 12 HOUR ROSTERS

- (1) Consistent with clause 52 – Unit Flexibility, 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 Registered Nurse positions will be required to support the arrangements.
- (2) 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 Nurse Manager.
- (3) All 12 Hour Shift Rosters will be developed consistent with Attachment A to this Agreement.
- (4) 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 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 but may do so by agreement to meet patient needs.
- (2) Where the Caregiver is required to:
- (a) work during his/her meal break and the break is not able to be subsequently taken due to workload requirements, the period of the meal break shall be paid at overtime rates in accordance with subclause 19(3) - Overtime.
 - (b) remain in the immediate work area on standby during a meal break they will be paid at normal time
 - (c) remain available and to carry a pager during a meal break shall receive no additional payment. Clause 20 - On Call and Recall to Duty shall not apply.
- (3) One fifteen minute tea break shall be allowed during each shift and shall be taken when convenient to the Employer without deduction of pay for such time.

24. SALARIES AND SALARY PACKAGING

Rates of Pay

- (1) The base rates payable to Caregivers are detailed in the tables below, and include the increases that will apply during the term of this Agreement. The increases will be as follows:
- (a) the first increase will be 1.5%, payable from the first full pay period on or after 1 April 2019, subject to a successful ballot;
 - (b) the second increase will be 1.5%, payable from the first full pay period on or after 13 December 2019.

Salary Packaging

- (2) In lieu of the weekly rates of pay provided in this clause, the Employer and the Caregiver may agree

to implement salary packaging arrangements. Such arrangements must be in accordance with the Employer salary packaging policy as amended and varied from time to time provided there is no reduction in benefits, unless required as a result of a change or variation to an existing law, the enactment of a new law, or a decision of a court, the Australian Tax Office, or tribunal, which requires compliance by the Employer. 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.

Registered Nurses

Classification	current rate of pay	FFPPOA 1/4/19	FFPPOA 13/12/19
Level 1			
1	\$1,272.53	\$1,291.62	\$1,310.99
2	\$1,314.47	\$1,334.19	\$1,354.20
3	\$1,372.49	\$1,393.08	\$1,413.97
4	\$1,430.50	\$1,451.96	\$1,473.74
5	\$1,488.52	\$1,510.85	\$1,533.51
6	\$1,546.33	\$1,569.52	\$1,593.07
7	\$1,604.34	\$1,628.41	\$1,652.83
8	\$1,674.55	\$1,699.67	\$1,725.16
9	\$1,674.55	\$1,699.67	\$1,725.16
Level 2			
1	\$1,717.02	\$1,742.78	\$1,768.92
2	\$1,756.00	\$1,782.34	\$1,809.08
3	\$1,795.30	\$1,822.23	\$1,849.56
4	\$1,833.89	\$1,861.40	\$1,889.32

Senior Registered Nurses

Caregivers are required to be appointed to a specific level within the below table and are not subject to progression or incremental increases between levels.

Classification	current rate of pay	FFPPOA 1/4/19	FFPPOA 13/12/19
SRN 1	\$108,035	\$109,656	\$111,300
SRN 2	\$110,642	\$112,302	\$113,986
SRN 3	\$114,093	\$115,804	\$117,541
SRN 4	\$117,743	\$119,509	\$121,302
SRN 5	\$121,523	\$123,346	\$125,196
SRN 6	\$129,239	\$131,178	\$133,145

Level 3 Registered Nurses

Classification	current rate of pay	FFPPOA 1/4/19	FFPPOA 13/12/19
Level 3 Mon-Fri			
1	\$2,018.53	\$2,048.81	\$2,079.54
2	\$2,062.05	\$2,092.98	\$2,124.38
3	\$2,105.53	\$2,137.11	\$2,169.17

Classification	current rate of pay	FFPPOA 1/4/19	FFPPOA 13/12/19
Level 3 Duty Manager			
1	\$1,949.94	\$1,979.19	\$2,008.88
2	\$1,993.40	\$2,023.30	\$2,053.65
3	\$2,036.92	\$2,067.47	\$2,098.49

Nurse Practitioners

Caregivers are required to be appointed to a specific level within the below table and are not subject to progression or incremental increases between levels.

Classification	current rate of pay	FFPPOA 1/4/19	FFPPOA 13/12/19
Nurse Practitioner			
1	\$114,093	\$115,804	\$117,541
2	\$117,743	\$119,509	\$121,302
3	\$121,523	\$123,346	\$125,196
4	\$129,239	\$131,178	\$133,145
5	\$137,433	\$139,494	\$141,587

‘Level 3 Monday to Friday’ means a nurse who is temporarily appointed to work day shift Monday to Friday with no fixed hours of duty and who may on occasion be required to work additional hours in the evening and on weekends to meet the requirements of the Employer.

Level 3 Monday to Friday Nurses and Senior Registered Nurses whose regular hours are Monday to Friday shall, in addition to having no fixed hours of duty, not be entitled to the provisions of clauses 19 - Overtime, 20 - On Call and Recall to Duty, 28 - Shift Work of this Agreement.

‘Level 3 Duty Nurse Manager’ means a nurse who is temporarily appointed to work as rostered across all shifts to manage the bed allocation and Caregivers allocation function for the Employer.

Level 3 Duty Nurse Manager and Senior Registered Nurses whose regular hours are Monday to Friday are not entitled to the provisions of clause 19 – Overtime, except when required to work an additional shift, outside normal full time duties, when they shall be paid overtime at overtime rates.

Calculating Rates of Pay

- (3) The hourly rate shall be calculated by dividing the weekly rate by 38. For annual salaries, the weekly rate is calculated using a divisor of 52.167.
- (4) Casual Caregivers shall be paid for each hour worked at 1/38th of the rate prescribed, plus 20% additional loading, and shall not be entitled to any of the paid leave entitlements prescribed in this Agreement.

Classification levels

- (5) The classification levels used in the tables above are as follows:
 - (a) Level 1- A registered nurse in the first or subsequent years of experience as a registered nurse and not elsewhere classified.
 - (b) Level 2 - A registered nurse appointed as a clinical nurse, an area manager, a research nurse, a staff development nurse, or clinical instructor; or functioning in a combined role and classified at Level 2.
 - (c) Level 3 - A registered nurse who is temporarily appointed to work in a combined role classified at Level 3.

- (d) Senior Registered Nurse - A registered nurse appointed as a clinical specialist nurse, a nurse manager, a nursing researcher or a nurse educator.
- (6) Progression for all classifications shall be by annual increments (where applicable), provided that:
 - (a) for part-time or casual Caregivers who work less than an average of 21 hours per week, incremental progression shall be at the completion of 24 months of paid continuous service to the Employer.
 - (b) those part-time or casual Caregivers who reach the full time equivalent hours (1976 hours) before two years have elapsed will progress to the next experience increment upon reaching the full time equivalent hours.

Review of Performance and Development needs

- (7) The National Safety and Quality Health Service Standards requires health service organisations to have a valid and reliable Performance Review and Development Process in place to ensure all nurses and midwives regularly take part in a review of their performance.

Performance review and development supports safety and quality by developing skills, knowledge and identifying needs for training and development.

The Performance Review and Development (PRnD) Process should be undertaken in a positive, collaborative, confidential and non-threatening manner, which is free of bullying. The performance review (PRnD) process is not to be used for the management of substandard performance

- (8) Core requirements of the Performance Review (PRnD) Process should include:
 - (a) A Continuing Professional Development /Mandatory Training Record including Clinical Competencies; and
 - (b) A review of an individual's performance
- (9) Reviews aligned to the core requirements should occur every two years and will generally involve a meeting to discuss the outcomes of the review documentation. A meeting will not occur if both parties (i.e. Manager and Caregiver) agree that a meeting is not required.

Recognition of Prior Experience

- (10) Where a Caregiver is appointed to a position at level 1, 2, 3 or Senior Registered Nurse, previous relevant nursing experience at that level, or in a similar level under a differing career structure, shall be taken into account for determining the appropriate increment level. Experience shall include the time spent in hospital based post basic courses, and includes midwifery and psychiatric training. The onus of proof of previous experience shall rest with the Caregiver.
- (11) Provided that a Caregiver returning to the profession after an absence greater than five years shall commence at the first increment of Level 1 for a period of three months. During this time the Caregiver shall be subject to performance appraisal and review by the Director of Nursing or by peer assessment if there is dispute.
- (12) Upon satisfactory review she/he shall move to a level and increment as determined by the assessment. A Caregiver who fails to satisfy the panel of her/his competency to progress through the Level 1 increments or into another level as the case may be, may apply for reassessment by a peer assessment panel after a period of twelve months from the date of employment.
- (13) An Advanced Skills Enrolled Nurse or an Enrolled Nurse with at least five years experience who has converted to a Registered Nurse will commence as a Registered Nurse Level 1.1 and after three months satisfactory service progress to a level 1.3 or above, based on performance. Progression for a casual or part-time registered nurse shall be in accordance with subclause (6) of this clause.

25. QUALIFICATIONS ALLOWANCE

- (1) A Caregiver may be eligible to receive a qualifications allowance (pro-rata for part time), subject to

satisfaction of the criteria set out in this clause. The allowance is not available to casual Caregivers.

- (2) The allowance is payable fortnightly, based on the annual amount, as follows:

Qualification	current rate of pay	FFPPOA 1/4/19	FFPPOA 13/12/19
Level 1	\$3,057	\$3,103	\$3,149
Level 2	\$3,931	\$3,990	\$4,050
Level 3	\$4,805	\$4,877	\$4,950

- (3) The allowance is payable, subject to sub clause (4) from the first full pay period on or after the date at which the Caregiver makes application for the allowance, that is relevant to the Caregiver’s current practice or position or role. The allowance is only payable to the Caregiver while they undertake duties in their current position or area of nursing practice that are relevant to the prescribed qualification. For a period of six (6) months , from 30 June 2019, the Employer will allow any existing Caregiver who has not yet applied for a Qualification Allowance to lodge their application and the allowance will be payable from the first full pay period on or after the date at which the caregiver acquires the relevant qualification that is relevant to the Caregiver’s current practice or position or role. This provision will lapse six (6) months after 30 June 2019.
- (4) To support an application for an allowance a Caregiver will provide evidence of the attainment of the qualification as confirmed and authorised by the academic institution e.g. an authorised copy of the academic transcript, which confirms successful completion of the course
- (5) Where a Caregiver holds two or more relevant qualifications, the allowance is only payable in respect of the highest qualification.
- (6) The qualifications that will attract this allowance are as follows:
- (a) Level 1
- Hospital based postgraduate qualification of one years' (or two academic semesters) duration, or the renal dialysis certificate.
- Hospital based postgraduate qualification of six (6) months duration, which have subsequently been replaced by qualifications involving one years' (or two academic semesters) duration, will be included if at the time a Caregiver undertook the course, a six (6) month postgraduate qualification was all that was available and that the Director of Nursing deems equivalent to a one year duration qualification.
- (b) Level 2
- Postgraduate qualifications awarded by a recognised university, which must have been taken over a period of at least two semesters.
- (c) Level 3
- Recognised Masters or PhD qualifications, which are relevant to the Caregiver’s area of nursing practice or position or role.
- (7) Unless specifically provided for in this clause, conversion degrees and non-tertiary postgraduate qualifications do not attract the allowance.
- (8) The allowance will continue to be paid during all periods of paid leave.
- (9) Caregivers who believe they may be eligible for payment of a qualification allowance shall make application to the Director of Nursing. Applicants shall be required to provide appropriate supporting documentation attesting to their qualifications. Eligibility will be determined by the Director of Nursing. In determining eligibility for the qualifications allowance, qualifications that do not meet the criteria of subclause (6) of this clause may also be considered.

- (10) Any disputes arising from this process shall be dealt with in accordance with Clause 51 - Dispute Settlement Procedures.

26. PAYMENT OF WAGES

- (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.

Recovery of Overpayments

- (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. The recovery agreement will be confirmed in writing.

Underpayment of Wages

- (9) Where a Caregiver is underpaid in any manner, the Employer will rectify the error as soon as practicable with consideration to subclauses (10) and (11).
- (10) Notwithstanding sub-clause (9), 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.
- (11) Notwithstanding the provisions of sub-clause (10) 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

- (12) 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) Where on any weekday a Caregiver works a complete rostered afternoon shift commencing at 12 noon or after, and finishing after 6 pm, the Caregiver shall be paid a loading of 15% on the ordinary rates of pay.
- (b) The provisions of subclause 28(1)(a) do not apply where the Caregiver commences her/his ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 p.m. on that day.

Provided that where a caregiver works additional hours at the employer’s request, either by permanently amending the roster hours or temporarily to meet operational needs, in conjunction with an afternoon shift, and commences that shift prior to 12 noon, a loading of 15% shall be paid on the hours worked after 12 noon.

- (2) Where on any weekday a Caregiver works a complete rostered night shift between the hours of 6 pm and 7.30 am, the Caregiver shall be paid a loading of 35% on the ordinary rates of pay.
- (3) Ordinary hours worked between midnight Friday and midnight on the following Saturday shall attract a loading of 50%.
- (4) Ordinary hours worked between midnight Saturday and 7.30am on the following Monday shall attract a loading of 75%.

29. CALCULATION OF PENALTIES

- (1) Where the Caregiver works hours which would entitle him or 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.
- (2) In the case of casuals any such penalty shall be in addition to the casual leave loading, except where inconsistent with clause 17 - Casual Employment of this Agreement.

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 for a complete rostered shift shall be entitled to the higher rate whilst so engaged.
- (2) Where a Caregiver performs some, but not all, of the duties of a position which attracts a higher rate of pay than that which she/he usually performs, for a period of not less than one working week, a rate of pay less than the rate the position normally attracts can be paid by agreement between the Employer and Caregiver. Applications for payment under this provision shall be made to the Nurse Manager in the first instance.
- (3) A Caregiver classified at Level 1 may be required to undertake the shift coordination function for part of a shift or an entire shift. Subject to the available nursing skill mix and patient load, a Caregiver employed as a Level 1 Registered Nurse who is required to undertake the shift coordination function for an entire shift, will be paid an amount equivalent to a Level 2.1, regardless of whether there is a Level 2 or Nurse Manager on duty

SJG Bunbury Hospital

- (4) Provided also that a Caregiver who is required to act as Hospital/Shift Coordinator at SJG Bunbury Hospital shall be paid the higher rate commensurate with that position on a shift by shift basis where there is a shift of four caregivers (inclusive) or more.

31. 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, provided that where a uniform is damaged in the course of employment, the uniform shall be replaced or repaired by the Employer;
 - (ii) the Caregiver shall be required to return the replaced uniform when a new uniform is issued.
 - (c) (i) Uniforms provided by the Employer shall at all times remain the property of the Employer and must be returned to the Employer on termination.
 - (c) (ii) A failure to return hospital 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.
 - (e) All casual Caregivers shall be required to dress in accordance with the Employer designated standards.
- (2) The cost of laundering uniforms shall be met by the Caregiver, as a laundry allowance has been absorbed into the rates of pay.
 - (3) Caregivers shall be responsible for the provision of appropriate clean and safe footwear.
 - (4) The provisions of this clause shall not detract from the Employer's obligation pursuant to section 19 of the *Occupational 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 expenses incurred except 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 their duties (including travel to and from work when on call) shall be paid an allowance of not less than 74 cents per kilometre.
- (3) The rate prescribed in subclause (2) shall be reviewed on expiry of this Agreement.
- (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 on behalf of the Caregiver in accordance with the requirements of the *Superannuation Guarantee (Administration) Act 1992 (Cth)*.
- (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) Contributions shall be paid into the Caregiver’s nominated fund on a monthly basis.
- (4) Where an election is not made by a Caregiver, contributions will be paid into HESTA.

- (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 (WA)* for a period of three months.
- (6) (a) A Caregiver may elect in writing to receive a superannuation benefit in lieu of part of the salary to which he or she is otherwise entitled under this Agreement in accordance with the St John of God Health Care salary packaging policy.
- (b) This arrangement shall remain in force until terminated by mutual agreement or by either the Employer or the Caregiver providing one calendar month's notice.

34. ANNUAL LEAVE

Quantum

- (1) Caregivers 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.
- (2) A Continuous Shift Worker as defined by clause 6(1)(d) will be entitled to one additional week's annual leave pro rata per annum.
- (3) Caregivers who participate in the on call roster will receive up to an additional 38 hours annual leave per annum in accordance with clause 20(9) – 20(12)
- (4) Provided that where a Caregiver qualifies for additional annual leave under subclauses (2) and (3), no more than 38 hours additional annual leave shall accrue. The entitlement to annual leave as per subclause (1) above shall continue to accrue whilst a Caregiver is on annual leave and other forms of paid leave. Annual leave shall not accrue during any period of unpaid leave except the first 3 months of unpaid sick leave and the first month of workers' compensation leave.

Rate of pay

- (5) A Caregiver shall be paid for any period of annual leave prescribed in this clause at the ordinary rate of pay the Caregiver would have received as his or her payment at the time of taking the leave, and, in addition, a loading of 17.5% on the first 4 weeks due to the Caregiver i.e. leave accrued in accordance with sub clause (1) above.
- (6) A Caregiver who performs higher duties for a period of more than one calendar month at the time of taking leave shall be paid at the higher duties rate in addition to a loading of 17.5% on the first 4 weeks due to the Caregiver.

Timing of Payment

- (7) 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.

Termination

- (8) If a Caregiver's employment terminates, the Caregiver shall be paid for any annual leave which has accrued under this clause but which has not yet been taken.

Taking Annual Leave

- (9) The annual leave prescribed in this clause may be split into portions by mutual agreement between the Employer and the Caregiver.
- (10) When the Caregiver requests that the annual leave be split into portions the Employer shall make every reasonable endeavour to accommodate the wishes of the Caregiver.
- (11) Annual leave shall be taken at a time which is mutually convenient to the Employer and Caregiver provided that the leave must be taken within 18 months following the date of accrual. Where annual leave has not been taken within 18 months of accrual, the Employer may give the Caregiver at least 2 week's notice of the period of time when it will be convenient to the Employer for the Caregiver to take the leave.

- (12) Annual leave may be taken at half pay by agreement with the Employer.

Periods of Low Activity

- (13) During defined periods of low activity i.e. Christmas/New Year, Easter and School Holidays, Caregivers may be directed to take paid annual leave during part or all of these periods provided such direction is reasonable.
- (14) Caregivers will be provided with a minimum 3 months notice of the intention to take annual leave and the dates of the low activity period.
- (15) A Caregiver will access their accrued annual leave to cover the period of low activity, provided that a Caregiver shall also be entitled to the following as an alternative to using their paid annual leave:
- (a) to continue working during the period, only if there is alternative work available in another area of the Hospital or at another SJGHC Hospital or facility within the same geographic area subject to operational considerations. The Employer will use its best endeavours to identify and offer alternatives;
 - (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.

Cashing out of annual leave

- (16) By agreement between the Employer and Caregiver, a Caregiver may request to cash out annual leave, provided that such cashing out shall not result in the Caregiver’s remaining accrued entitlements being less than 4 weeks.
- (17) Any agreement to cash out annual leave entitlements will be in writing and signed by the Employer and Caregiver. Cashing out of annual leave entitlements can only be done by agreement between the Employer and Caregiver. The Employer cannot require a Caregiver to cash out any annual leave entitlements.
- (18) Annual leave loading may apply to the cash out amount subject to clause 34(5).

35. PUBLIC HOLIDAY LEAVE

- (1) All Caregivers (excluding casual Caregivers) shall be entitled to 2 weeks public holiday leave in respect of each year of continuous service.
- (2) Public holiday leave shall accrue on an hourly basis in respect of each ordinary hour worked.
- (3) Public holiday leave shall be paid at ordinary rates only, and shall be taken at a time or times agreed between the Employer and the Caregiver or at the direction of the Employer in accordance with sub-clause (4) below or sub clause 36(5) of this Agreement.
- (4) Any public holiday leave greater than 1.5 times the caregiver’s annual entitlement may be directed as follows:
- (a) The Employer is to provide no less than 2 weeks’ notice; and
 - (b) The residual balance must be no less than 1.5 times the Caregiver’s annual entitlement.

36. PUBLIC HOLIDAY PENALTY RATES

- (1) For the purposes of public holidays penalty payments payable pursuant to this clause, the following days, or the days observed in lieu of those days pursuant to subclause (2) or other day declared or prescribed under a law of the State of WA will be public holidays:
- (a) 1 January - New Year’s Day;
 - (b) 26 January - Australia Day;

- (c) Good Friday;
 - (d) Easter Monday;
 - (e) 25 April - Anzac Day;
 - (f) Labour Day;
 - (g) WA Day;
 - (h) Sovereign’s Birthday;
 - (i) 25 December - Christmas Day; and
 - (j) 26 December - Boxing Day.
- (2) Where any public holiday prescribed by sub-clause (1) of this Agreement falls on a Saturday or Sunday, such holiday will for penalty payment purposes 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.
- (3) Any work performed on the Saturday or Sunday, as the case may be, will be paid at ordinary rates plus the applicable weekend loading.
- (4) Where a Caregiver is rostered to work ordinary hours on a day prescribed in sub-clause (1), or day observed in lieu thereof, the Caregiver will be entitled to payment at the ordinary rate and a loading of 50% for the actual time worked.
- (5) Where a Caregiver is not required to work on a day prescribed in sub-clause (1) or day observed in lieu thereof and as a result works fewer than his/her contracted hours in that fortnight the deficit will be deducted from the Caregiver’s public holiday leave entitlements and paid to the Caregiver. Provided that where a Caregiver has insufficient accrued public holiday leave entitlements to cover the deficit then either:
- (a) a deduction will be made from another form of paid leave (other than annual leave); or
 - (b) If the Caregiver has insufficient paid leave (other than annual leave) the Caregiver will be deemed to be on leave without pay
- (6) At any time public holiday leave may be:
- (a) cashed out; or
 - (b) taken as leave, whether or not in conjunction with other leave types.

Accrued public holiday leave will be paid out on termination.

37. PERSONAL LEAVE

- (1) A full time Caregiver shall be entitled to 10 days to a maximum of 76 hours paid personal leave per annum (pro rata for part time caregivers) 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 hours worked and

accumulates from year to year.

- (3) Unused portions of personal leave entitlement shall accumulate from year to year and may be taken in any subsequent year.
- (4) 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.
- (5) 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.
- (6) 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) 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'.
- (7) A Caregiver who would ordinarily be eligible for personal leave had they not have been on annual leave shall be paid personal leave in lieu of annual leave subject to:
 - (a) providing a certificate from a registered health practitioner stating the illness or injury necessitated confinement to home or hospital.
 - (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(5)- Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.
- (8) 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.
- (9)
 - (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.

38. LONG SERVICE LEAVE

- (1) Save as hereinafter provided, 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 equivalent to 13 weeks over 15 years, provided that a Caregiver shall be able to access accrued long service leave any time after the completion of 7 years continuous service.
- (3) Long service leave shall not accrue on workers' compensation leave in excess of one month.

- (4) On the termination of the Caregiver’s employment –
 - (a) by his/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.
- (5) Long service leave may be taken in single day periods.
- (6) 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.
- (7) 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.
- (8) Long service leave may be taken at half pay for double the period accrued with the agreement of the Employer.
- (9) A Caregiver may elect to cash out any portion of their accrued long service leave, to be paid at ordinary rates, provided that such election is to be made in writing by the Caregiver and approved by the Employer.

39. PARENTAL LEAVE

- (1) Except as hereinafter provided, 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:
 - (a) ‘adoption’, in relation to a child, is a reference to a child who:
 - (i) is not the natural child or the step-child of the Caregiver or the Caregiver’s spouse;
 - (ii) is less than 16 years of age; and
 - (iii) has not lived continuously with the Caregiver for 6 months or longer;
 - (b) ‘continuous service’ means service under an unbroken contract of employment and includes:
 - (i) any period of parental leave; and
 - (ii) any period of authorised leave or absence.
 - (c) ‘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;
 - (d) ‘parental leave’ means leave provided for by subclause (13) of this clause;
 - (e) ‘spouse’ includes a de facto spouse.

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 12 consecutive months 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:
- (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 or she:
 - (i) has, before the expected date of birth or placement, completed at least 12 months' continuous service with the Employer; and

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;
 - (ii) 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 8 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 adoption-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*.
- (c) If a pregnant Caregiver is not entitled to parental leave as prescribed in subclause (3), the Caregiver is then entitled to unpaid no safe job leave for the risk period.
- (d) ‘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 employee has a spouse who is not an employee 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.
- (f) Notwithstanding provisions in subclause (3), a Caregiver may seek an extension of parental leave from 12 months 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.

Cancellation of Parental Leave

- (9) (a) Parental leave, other than adoption leave, applied for but not commenced, shall be cancelled when the pregnancy of the Caregiver or the Caregiver’s spouse terminates other than by the birth of a living child.

- (b) Where the pregnancy of a Caregiver on maternity leave terminates other than by the birth of a living child, or the placement of child for adoption with a Caregiver does not proceed or continue, the employer must give at least 4 week’s notice to the Caregiver to resume work or where a female Caregiver who has given birth, not earlier than 6 weeks after the date of birth of the child.

Special Maternity Leave and Sick Leave

- (10) (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 otherwise than by the birth of a living child..
- (b) If a caregiver has an entitlement to paid sick leave she may take that leave instead of taking unpaid special maternity leave under this sub clause.
- (c) The above period of leave shall be supported by a certificate from a duly qualified medical practitioner.
- (d) Special maternity leave (including paid sick leave accessed in accordance with this sub clause) 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

- (11) 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

- (12) Provided the aggregate of any leave does not exceed the period to which the Caregiver is entitled under subclause (3) hereof:
 - (a) a Caregiver may, in lieu of or in conjunction with parental leave, take any annual leave, long service leave or any part thereof, accrued time off or time off in lieu to which he or she is then entitled.
 - (b) Paid sick leave or other paid authorised absences other than those referred to in sub clause (12) (a) above, shall not be available to a Caregiver during his or her absence on parental leave.

Paid Parental Leave

- (13) A Caregiver 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 (13)(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 weeks 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 (13)(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

- (14) (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 (14)(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 (14)(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 a 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

- (15) 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

- (16) (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

- (17) (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

- (18) 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 hospital as a casual Caregiver for the duration of the period of absence that would otherwise have applied.
- (19) 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

- (20) 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).

40. COMPASSIONATE LEAVE

- (1) A Caregiver is entitled to up to two (2) days of paid Compassionate Leave in accordance with the provisions of the *Fair Work Act 2009*:
 - (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; 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 from time to time.
- (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.
- (7) Compassionate leave is not to be taken where the Caregiver is absent on another form of leave (except annual leave) or would not otherwise have been on duty unless the absence has been taken to enable the Caregiver to be with a seriously ill or dying relative.
- (8) A Caregiver at SJG Bunbury Hospital who is employed on the basis that they will accrue time off shall, whilst on Compassionate Leave prescribed by this clause shall continue to accrue an entitlement to an Accrued Day(s) Off.

41. FAMILY AND DOMESTIC VIOLENCE

- (1) Where Caregivers find themselves in a situation of family and/or domestic violence, they may access up to 5 days of leave without pay per annum (non-cumulative) or access personal and other forms of leave as necessary to help cope during this situation. Caregivers in this situation will be able to access personal and other paid leave, leave without pay and the SJGHC Caregivers Facing Hardship Policy. Caregivers will also be provided with free independent counselling assistance to support them during such a time.
- (2) Managers will exercise compassion, flexibility and confidentiality in considering applications for leave to support those involved in family and domestic violence.

42. TIME OFF WITHOUT PAY

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

43. PROFESSIONAL DEVELOPMENT

- (1) A minimum of two days professional development leave for full time Caregivers (pro rata for part time) shall be granted each financial year. All reasonable endeavours will be made to accommodate leave requests. The purpose of this entitlement is to enable Caregivers to undertake learning and development activities that fulfil professional and organisational needs. Personal development leave is cumulative, up to four days.
- (2) The entitlement provided under this clause will not be used to cover attendance at mandatory competency programs. The entitlement does not apply to those participating in a Graduate Nurse Program.
- (3) Payment for professional development leave will be at the employee’s ordinary rate of pay and will exclude any penalties or allowances.

Mandatory competency programs

- (4) The Employer is responsible for ensuring caregivers have time within their rostered hours allocated to complete mandatory education requirements .
- (5) Caregivers who have not been allocated work time to complete mandatory competencies should raise the matter with their immediate supervisor in accordance with the Dispute Settlement Procedures outlined in Clause 51 of this Agreement.

44. 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 may be provided for formal study periods (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.

45. JURY AND WITNESS SERVICE

- (1) Caregivers summoned for jury service will be granted paid leave subject to the procedures set out herein.
- (2) Caregivers summoned as a witness in relation to their official capacity will be granted paid leave subject to the procedures set out herein.
- (3) Caregivers requesting time off for jury or witness 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.

46. 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.

47. 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 included 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.

48. FLEXIBLE WORK 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.

49. 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 (4) onwards;

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

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;

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

- (b) The Employer shall thereafter hold discussions with the Caregiver affected and his/her representative 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

- (3) 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.

Severance Pay

- (4) (a) In addition to the period of notice prescribed in Clause 9 - 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
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 sick pay 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, sick pay, long service leave and public holidays as prescribed by this Agreement shall not count as time worked.

- (c) Service by the Caregiver with a business which has been transmitted from one hospital to another and the Caregiver’s service has been deemed continuous in accordance with the *Long Service Leave Act 1958 (WA)*, as amended from time to time, shall also constitute continuous service for the purpose of this clause.
- (d) 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

- (5) 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

- (6) (a) The Employer, in a particular redundancy case, may make application to Fair Work Australia 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 at another St John of God Health Inc. hospital, continuity of service shall not be broken and any accrued entitlements shall be carried over to the new hospital. The Caregiver shall not be entitled to the benefits prescribed in subclause (4) of this Clause.

Leave for Job Interviews

- (7) (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 subclause (7)(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

- (8) 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.

50. CONSULTATION ABOUT CHANGES TO ROSTERS OR HOURS OF WORK

- (1) Where the employer proposes a change to the regular roster or ordinary hours of work:
 - (a) the employer must notify the relevant caregivers of the proposed change; and
 - (b) subclauses (2) to (8) apply.

- (2) The relevant caregivers may appoint a representative for the purposes of the procedures in this term.
- (3) If:
 - (a) a relevant caregiver appoints, or relevant caregivers appoint, a representative for the purposes of consultation; and
 - (b) the caregiver or caregivers advise the employer of the identity of the representative;
the employer must recognise the representative.
- (4) As soon as practicable after proposing to introduce the change, the employer must:
 - (a) discuss with the relevant caregivers the introduction of the change; and
 - (b) for the purposes of the discussion--provide to the relevant caregivers:
 - (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 caregivers; and
 - (iii) information about any other matters that the employer reasonably believes are likely to affect the caregivers; and
 - (c) invite the relevant caregivers to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (5) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant caregivers.
- (6) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (7) The requirement to consult under this clause does not apply where a Caregiver has irregular, sporadic or unpredictable working hours.
- (8) These provisions are to be read in conjunction with other Agreement provisions concerning the scheduling of work and notice requirements
- (9) Any changes to contracted hours of work will only be made where the employer and a Caregiver agree to the change.
- (10) In this clause "relevant caregivers" means the caregivers who may be affected by a change referred to in sub clause (1).

51. DISPUTE SETTLEMENT PROCEDURES

- (1) Where a dispute concerning the operation of this agreement and/or the National Employment Standards arises (including a dispute about whether St John of God Health Care had reasonable business grounds under sub-section 65(5) or 76(4) of the *Fair Work Act 2009*) 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 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) If the dispute is not resolved it may then be referred to an agreed arbitrator for assistance in its resolution by conciliation and / or arbitration. Where the parties involved in the matter cannot agree on an arbitrator they shall request Fair Work Australia to nominate an arbitrator.
- (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.

52. UNIT FLEXIBILITY

- (1) The Employer and caregivers will consult over any proposal to vary the methods by which hours and rosters may be worked to meet the requirements of a particular department or unit and the aspirations of the Caregivers concerned.
- (2) A representative forum may be established in the area affected to progress discussions on proposals for change through consultation. The forum can present written comments to caregivers/management on the proposals for change.
- (3) Caregivers affected by the proposed change can seek representation by the Union at any stage in the process
- (4) The details of the proposed change and the process for consultation must be discussed with caregivers, and provided in writing to all caregivers affected. The process for consultation must be open and transparent.
- (5) All affected caregivers will be advised of the final outcome in writing.

53. NURSING 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 nurse patient ratios will be maintained. The current practice of staffing based on collaboration between Nursing Administration and ward/unit management will continue on a shift by shift basis, taking into account both occupancy and patient acuity.
- (3) Nursing staffing levels at each ward/unit 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 nurse regulatory legislation and professional standards; and reasonable workloads.
- (4) Within the first 3 months following the registration of this Agreement, the Employer and the Union shall hold a joint education session at each hospital to ensure that Caregivers understand SJGHC staffing practices, how nursing staffing levels at each ward/unit are determined and the process to be followed should any Caregiver be concerned about unreasonable and excessive workloads, including the use of a Workload Grievance Form.

- (5) Within the first 3 months following the registration of this Agreement, the Employer and the Union will develop a joint circular for Caregivers at each hospital. The circular will provide relevant information to ensure that Caregivers understand SJGHC staffing practices, how nursing staffing levels at each ward/unit are determined; and the process to be followed should any Caregiver be concerned about unreasonable and excessive workloads, including the use of a Workload Grievance Form,
- (6) The Employer and the Union will continue to hold a joint education session at each Hospital on an annual basis. The Employer will also continue to provide the joint circular at orientation, through team meetings and in other communication as required from time to time over the life of this Agreement.
- (7) Should any Caregiver in any one ward or unit believe that an unreasonable and excessive workload is being imposed other than occasionally or infrequently then:
 - (a) The Caregiver should attempt to resolve the matter with the appropriate ward/unit Nurse 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 Director of Nursing.
 - (b) The Caregiver may raise the matter by submitting a Workload Grievance form to the appropriate ward/unit Nurse Manager.
 - (c) The Director of Nursing shall respond to the Caregiver within seven working days.
 - (d) If the matter remains unresolved the Caregiver may seek to resolve the matter using the Dispute Settlement Procedures at clause 51 in this Agreement.
- (8) Nothing shall prevent a Caregiver from seeking to resolve the matter using the Dispute Settlement Clause in this Agreement.

54. WORKPLACE REPRESENTATIVES

- (1) SJGHC recognises that trade unions have a legitimate interest in representing their members.
- (2) SJGHC 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.
- (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 subclause (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, SJGHC will provide a minimum of one day’s paid leave each calendar year to enable accredited representatives to attend appropriate union education and training. An additional one day’s leave will be made available to newly appointed representatives in their first year of appointment to that role. Any additional training requests above these levels will be considered.

55. DISCIPLINARY PROCESS

- (1) Where the Employer seeks to discipline a Caregiver, the following options will be observed:

- (a) In the event that a Caregiver commits a misdemeanour, the Employer may:
 - (i) Counsel the caregiver so that the Caregiver understands the nature and implications of his/her conduct.
 - (ii) Issue the caregiver with a formal warning(s) in writing
 - (iii) Depending upon the seriousness of the matter issue the caregiver with a first and final warning
- (2) In the event a Caregiver commits a further misdemeanour, the Employer may exercise its right to either issue a counselling letter, a further written formal warning(s) or depending on the nature of the conduct may consider termination of employment taking into account the nature of the previous warning(s).
- (3) The above procedure is meant to preserve the rights of the individual Caregiver, however it will not in any way limit the right of the Employer to summarily dismiss a Caregiver for serious misconduct.

56. SIGNATORIES TO THE AGREEMENT

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

.....Eve Dawson.....

Eve Dawson
Group Manager Human Resources and Employee Relations
10/454 Scarborough Beach Road
OSBORNE PARK WA 6017

In the presence of:

[Signature]
(Signature)

Clare Francis
(Name)

Date: 5/7/19

Signed for and on behalf of Caregivers

[Signature]

.....Mark Olson.....
Mark Olson
Secretary
Australian Nursing and Midwifery Federation (WA Branch)
260 Pier Street
PERTH WA 6000

In the presence of:

[Signature]
(Signature)

Vickie Haeridge
(Name)

Date: 2/7/19

SCHEDULE A – Accrued Time Off

Application

- (1) This Schedule applies to Caregivers employed at SJG Bunbury Hospital who are engaged on the condition that:
- (a) they are able to accrue time off; and
 - (b) for the purposes of clause 24(3) their hourly rate of pay shall be calculated using a 40 hour divisor;
- on the day immediately prior to the commencement of this Agreement.

Entitlement

- (2) (a) A Caregiver (other than a casual) shall accrue an entitlement to time off to a maximum of 12 days (96 hours) off in each 12 month period.
- (b) A Caregiver shall not accrue an entitlement to time off during:
- (i) long service leave;
 - (ii) any period of unpaid leave; or
 - (iii) any absence on workers compensation leave over one calendar month.
- (c) Accrual shall continue during any other period of leave (including any additional annual leave) prescribed by this Agreement.

Taking Accrued Time Off

- (3) (a) Caregivers shall be given an opportunity to take ADOs within 28 days of completing each accrual cycle (monthly).
- (b) ADOs may be cleared at a time or times mutually agreed between the Employer and Caregiver. A Caregiver may be granted ADOs before they become due.
- (c) The Employer may roster the Caregiver off duty for up to twelve (12) single ADOs for each twelve monthly period with as much notice as is reasonably practicable being given to the Caregiver.
- (d) Notwithstanding any other provision of this agreement accrued time off may only be taken in periods of less than a day by agreement between the Employer and Caregiver.

Rate of Pay

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

Termination

- (5) 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

- (6) (a) When a Caregiver proceeds on parental leave, the Employer may on request pay the Caregiver for any accrued time off then standing to his/her credit.
- (b) 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.

Caregivers who do not accrue time off

- (7) Notwithstanding any other provision in this Agreement:
- (a) a Caregiver may by agreement with the Employer elect not to accrue time off
 - (b) the Employer may elect to engage new Caregivers on the condition that they not accrue time off.
- (8) Where a Caregiver (other than a casual) does not accrue time off:
- (a) the maximum number of ordinary hours that may be worked shall be 76 in each fortnight
 - (b) the hourly rate shall be calculated by dividing the weekly rate prescribed in clause 24 - Salaries and Salary Packaging by 38
 - (c) the loading for any additional hours or shifts worked in accordance with clause 16(2) - Part Time Employment shall be 15%.

ATTACHMENT A - 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 division’s Registered Nurses’ and Midwives’ 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 by agreement with the Nurse Manager. Caregivers who have voluntarily reduced/increased their hours to undertake 12 hour shifts and wish to return to their original roster arrangement/hours may do so by forwarding a written request to the Nurse 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 patient 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 patient allocation after 6 hours of duty. All reasonable efforts will be made to accommodate such a request.

Ward Rotation

- (12) Rotation to other ward 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 nursing 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 Registered Nurse positions continues to support the arrangements. If the number or percentage of Registered Nurse positions required to support the arrangements falls below the agreed levels then continuation of the 12 hour roster will be reviewed.

Schedule 2.2—Model flexibility term

(regulation 2.08)

Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (a) the agreement deals with 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
 - (b) the arrangement meets the genuine needs of the employer and employee 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 employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) includes details of:

- (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the employer and employee agree in writing—at any time.