

# CITY OF HOLDFAST BAY (ALWYNDOR AGED CARE) AND ANF NURSING EMPLOYEES ENTERPRISE AGREEMENT 2010

File No. 04082 of 2010

**This Agreement shall come into force on and from 17 September 2010 and have a life extending for a period of thirty-six months therefrom.**

THE COMMISSION HEREBY APPROVES THIS ENTERPRISE AGREEMENT PURSUANT TO SECTION 79 OF THE FAIR WORK ACT 1994.



DATED THIS 17<sup>TH</sup> DAY OF  
SEPTEMBER 2010.

A handwritten signature in black ink, appearing to be 'S. Long'. The signature is written in a cursive style.

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COMMISSION MEMBER



**City of Holdfast Bay  
(Alwyndor Aged Care)  
and  
Australian Nursing & Midwifery  
Federation**

**NURSING EMPLOYEES**

**ENTERPRISE AGREEMENT**

**2010**

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## 2 APPLICATION AND OPERATION OF ENTERPRISE AGREEMENT

### 2.1 TITLE

This Enterprise Agreement shall be known as the City of Holdfast Bay (Alwyndor Aged Care) and ANF Nursing Employees Enterprise Agreement 2010.

### 2.2 PARTIES BOUND

This Enterprise Agreement shall be binding on:

- The employer, the **City of Holdfast Bay (Alwyndor Aged Care)** and
- The **Australian Nursing & Midwifery Federation (ANF)**.
- All persons whose employment is, at any time when the Enterprise Agreement is in operation, subject to the Enterprise Agreement
- All nursing staff employed by the City of Holdfast Bay (Alwyndor Aged Care)

### 2.3 DATE AND PERIOD OF OPERATION

**2.3.1** This Enterprise Agreement shall operate from date of approval from the State Industrial Relations Commission and shall remain in force for a period of three (3) years from that date.

**2.3.2** The parties to this Agreement agree that negotiations for a new Agreement should commence no later than three (3) months prior to the expiration of this Agreement. If Agreement is not reached on a renegotiated Agreement at the expiration of this Agreement, the Agreement will continue in force until superseded or rescinded.

### 2.4 RELATIONSHIP TO AWARDS

This Agreement shall be read and interpreted wholly in conjunction with the Nurses (SA) Award, provided that where there is any inconsistency this Agreement shall take precedence to the extent of the inconsistency.

### 2.5 DEFINITIONS

**“Act”** means the Fair Work Act (SA) 1994

**“Commission”** means the Industrial Relations Commission of South Australia

**“Consultation”** means conferring and deliberating between two or more people who share all of the relevant information, which they need to form a view or make a decision.

**“Division”** means the Board or Management Committee of the Network which is party to this agreement.

**“Designated Manager”** means the Chief Executive Officer, the Executive Office or the manager with executive authority for the Division, as delegated by the Management Committee or Board of Directors.

“**Employer**” means the City of Holdfast Bay, Alwyndor Aged Care

“**Employee**” means all nurses whose employment is subject to this Agreement,

“**Mutual Agreement**” means agreement that is reached after individuals have been fully informed of the issues under consideration, including alternatives that are available or feasible. Mutual agreement is achieved when managers and employees have entered into arrangements after full and open discussions, free of any coercion.

“**Award**” means underpinning Award for this Agreement is Nurses (ANF – South Australian Private Sector) Award 2003

## **2.6 OBJECTIVES**

- 2.6.1** Commitment to the provision of Quality Service Care to Residents in accord with provisions of the *Aged Care Act 1997* (Cth) as amended from time to time and the Charter of Residents Rights.
- 2.6.2** The Enterprise Agreement commits the employer and its employees to achieve best practice standards in all aspects of the operations of the business, in meeting the Requirements of the *Aged Care Act 1997* (Cth), as amended in particular the Accreditation process and Care Standards.
- 2.6.3** The Enterprise Agreement aims at continually improving communication, consultation in relation to major change and cooperation at the workplace level between management and staff. The Enterprise Agreement recognises the important contribution of staff members to ensuring the employer’s future.
- 2.6.4** The Enterprise Agreement will enable the parties to develop and implement strategies that are designed to recognise and achieve productivity improvements at the workplace, without impairing quality of service, to further improve productivity and enhance job satisfaction, security and remuneration in a stable employee relations environment.

## **2.7 ANTI-DISCRIMINATION**

- 2.7.1** It is the intention of the employer to this Enterprise Agreement to achieve the principal object of s.3(m) of the Act through respecting and valuing the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 2.7.2** Accordingly, in fulfilling their obligations under the clause 3.3 – Dispute Settlement Resolution Procedure, the employer must make every endeavour to ensure that neither the Enterprise Agreement nor their operation are directly or indirectly discriminatory in their effects.
- 2.7.3** Nothing in this clause is to be taken to affect:
  - 2.7.3(a)** any different treatment (or treatment having different effects) which is specifically exempted under Commonwealth or State anti-discrimination legislation;

**2.7.3(b)** an employee, employer or registered organisation, pursuing matters of discrimination in any State or Federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;

**2.7.3(c)** Nothing in this clause is taken to prevent:

- (i) a matter referred to in 2.7.1 from being a reason for terminating employment if the reason is based on the inherent requirements of the particular position;
- (ii) a matter referred to in 2.7.1 from being a reason for terminating a person's employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the employer terminates the employment in good faith in order to avoid injury to the religious susceptibilities of adherents of the religion or creed.

## **2.8 CONTINUOUS SERVICE**

### **2.8.1 Maintenance of continuous service**

Except as otherwise indicated, service is deemed to be continuous despite:

- 2.8.1(a)** Absence of the employee from work in accordance with the employee's contract of employment or any provision of this Enterprise Agreement;
- 2.8.1(b)** Absence of the employee from work for any cause by leave of the employer;
- 2.8.1(c)** Absence from work on account of illness, disease or injury;
- 2.8.1(d)** Absence with reasonable cause. Proof of such reasonable cause lies with the employee;
- 2.8.1(e)** Interruption or termination of the employee's service by an act or omission of the employer with the intention of avoiding any obligation imposed by this Enterprise Agreement the Act or the *Long Service Leave Act 1987* (SA);
- 2.8.1(f)** Interruption or termination of the employee's service arising directly or indirectly from an industrial dispute if the employee returns to the service of the employer in consequence of the settlement of the dispute or was re-employed by the employer upon such settlement;
- 2.8.1(g)** Transfer of the employment of an employee from one employer to a second employer where the second employer is the successor or assignee or transmittee of the first employer's business. In this case, service with the first employer is deemed to be service with the second employer;
- 2.8.1(h)** Interruption or termination of the employee's service by the employer for any reason other than those referred to in this clause if the worker returns to the service of the employer within two months of the date on which the service was interrupted or terminated;
- 2.8.1(i)** Any other absence from work for any reason other than those referred to in this clause unless written notice is given by the employer that the absence from work is to be taken as breaking the employee's continuity of service. Such notice must be given during the period of absence or not later than fourteen days after the end of the period of absence.

## **2.8.2 Calculation of period of service**

Where an employee's continuity of service is preserved under this clause, the period of absence from work is not to be taken into account in calculating the period of the employee's service with the employer except to the extent that the employee receives or is entitled to receive pay for the period.

### **3. CONSULTATION AND DISPUTE PROCEDURES**

#### **3.1 CONSULTATION AND COMMUNICATION**

- 3.1.1** The parties commit to continuing dialogue over the operation of the provisions of the Enterprise Agreement.
- 3.1.2** Where it becomes apparent that a provision or provisions contained in this Enterprise Agreement are no longer permissible content as a consequence of the operation of the Act or Regulations (thereby becoming a provision of concern), the parties commit to holding discussions as soon as practicable to discuss the effect of the Act or Regulations and commit to take all reasonable measures to uphold the intended effect of the provision or provisions of concern.
- 3.1.3** The parties are committed to consultation and communication throughout all management levels of the employer as effective mechanisms for communication are fundamental to the achievements of greater productivity, efficiency, flexibility and job satisfaction.

#### **3.2 INTRODUCTION OF CHANGE**

##### **3.2.1 Notification of Intended Changes**

- 3.2.1(a)** Where the employer has made a definite decision to implement changes in production, program, organisation, structure or technology that are likely to have significant effects upon employees, the employer shall as soon as practicable, notify the employees who may be affected by the proposed changes and their chosen representative which may be the Union.
- 3.2.1(b)** **'Significant Effects'** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for re-training or transfer of employees to other work or locations and the restructuring of jobs. Provided that where this Enterprise Agreement makes provision for alteration to any of the matters referred to herein; an alteration shall be deemed not to have significant effect.

##### **3.2.2 Consultation with Employees and their Union**

- 3.2.2(a)** The employer shall discuss with the employees affected and their chosen representative which may be the Union, among other things, the introduction of the changes referred to in paragraph 3.2.1, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effect of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their chosen representative which may be the Union in relation to the changes.
- 3.2.2(b)** The discussions shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in paragraph 3.2.1

- 3.2.2(c)** For the purposes of such discussion, the employer shall provide in writing to the employees concerned and their chosen representative which may be the Union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that any employers shall not be required to disclose confidential information disclosure of which, which looked at objectively, would be against the employer's interests.

### **3.3 DISPUTE SETTLEMENT/RESOLUTION PROCEDURE**

- 3.3.1** In the event of a dispute in relation to a matter arising under this Enterprise Agreement, in the first instance the parties will attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 3.3.2** A party to the dispute may appoint another person, organisation or association to accompany or represent them in relation to the dispute.
- 3.3.3** Where any such attempt at settlement has failed, or where the dispute or claim is of such a nature that a direct discussion between the employee and the immediate supervisor would be inappropriate the employee may notify a representative of the employee's choice, who, if that representative considers that there is some substance in the dispute or claim, will forthwith take the matter up with the Employer or the Employer's representative.
- 3.3.4** If the matter is not settled it may be submitted to the **Commission** for resolution.
- 3.3.5** Without prejudice to either party, work should continue in accordance with the Agreement while the matters in dispute are being dealt with in accordance with this Clause.
- 3.3.6** The decision of the Commission will bind the parties, subject to either party exercising a right of appeal against the decision of the full bench

### **3.4 EMPLOYEE REPRESENTATION**

- 3.4.1** Each employee shall be accorded by the employer with a right to the representation of their choice in connection with performance and disciplinary procedures (clause 4.7), resolution of workplace disputes and grievances and under the external dispute settlement procedure referred to in clause 3.3.
- 3.4.2** For the purpose of this sub-clause "relevant employees" means those employees who have chosen an ANF officer or some other employee association officer or other representative (Accredited Worksite Representative) to represent them pursuant to this sub-clause).
- 3.4.3** Where the Accredited Worksite Representative in a particular case is an employee of the employer, the employer will allow the Accredited Worksite Representative to devote reasonable time during rostered hours if necessary to

the requested representation of the relevant employee(s) without loss of ordinary pay.

**3.4.4 Union Right of Entry**

Will be in accordance with Clause 11.3 of the Nurses (SA) Award

**3.4.5 Recognition of Worksite Representatives**

Will be in accordance with Clause 11.4 of the Nurses (SA) Award

## **4. EMPLOYMENT RELATIONSHIP**

### **4.1 CONTRACT OF HIRING**

- 4.1.1** The contract of hiring of every employee (other than casual employees) will, in the absence of a written contract to the contrary, be hiring by the fortnight.
- 4.1.2** Employment will be terminated in accordance with the notice provisions of clauses 4.8 - Termination of employment and 4.9 - Redundancy (severance). Notice may be given at any time provided that the termination of the employment takes effect at the end of a day's work or by the payment or forfeiture (as the case may be), of the salaries appropriate to the said notice period. The period of notice in this clause shall not apply in the case of dismissal for conduct that justifies instant dismissal.
- 4.1.3** An employee who is justifiably dismissed for any reason is entitled to payment for work in that fortnight only for the time actually worked.

### **4.2 CASUAL EMPLOYEES**

- 4.2.1** A casual employee must be paid the hourly rate as defined for the work performed plus a loading of 20% for ordinary working hours.
- 4.2.2** Casual employees are not entitled to annual leave, paid personal leave, compassionate leave, parental leave (for non-eligible casual employees) or payment for public holidays not worked.
- 4.2.3** Casual employees will not, unless temporarily replacing a full-time employee, work more than 76 hours in any one fortnight.

### **4.3 REGULAR PART-TIME EMPLOYEES**

- 4.3.1** In determining the regularity or otherwise of employment of a regular part-time employee, regard will be had to any period of four weeks. Any hours worked by an employee to replace temporarily another employee absent from duty which are in addition to those for which the employee is normally rostered will not be taken into account.
- 4.3.2** Part-time employees are those employees who work less than the full-time hours of 76 per fortnight.
- 4.3.3 Payment**

For ordinary working hours a regular part-time employee must be paid the hourly rate defined for the work performed, and be entitled on a pro rata basis to:
- 4.3.3(a)** annual leave, personal leave and public holidays;
- 4.3.4 Overtime**
- 4.3.4(a)** Overtime will be paid in accordance with clause 6.3.
- 4.3.4(b)** In the accumulation of pro rata entitlements under this Enterprise Agreement all authorised time worked in excess of rostered hours but within ordinary hours of work will receive credit for those hours.

#### **4.4 PART-TIME & CASUAL EMPLOYEES – SUPPLEMENTARY LABOUR**

- 4.4.1** It is the employer's policy, to limit use of casual staff to supplement the permanent workforce that is required to deliver a standard of care that has been established by the Federal Government and which is required according to resident care levels at any given time. It is the responsibility of site Directors of Nursing to roster staff to meet resident care needs that regularly vary.
- It is agreed that casual staff usage will be at levels required for supplementary labour force needs, ie; where demand is beyond anticipated levels of staff absenteeism and therefore, presents problems. New employees will be employed according to this policy.
- 4.4.2** The employer will endeavour to maintain a permanent workforce at a level to effectively deliver quality care to residents in line with Resident Classifications variations.
- 4.4.3(a)** The parties agree that the provisions as provided in this sub-clause are to be a condition of employment and will be available in the terms of the sub-clause by mutual agreement.
- 4.4.3(b)** Where a casual employee who is regularly rostered, works beyond fifteen (15) hours per week on a regular basis and would otherwise be regarded under 4.3 as a part-time employee, the employer and employee may mutually agree that they remain classified as a casual employee.
- 4.4.3(c)** In providing this offer the employer will detail the entitlements that apply to being a part-time employee, which will include the rate of pay to apply (minus the Casual Loading), Annual, Personal, Long Service Leave entitlements, Superannuation and Continuity of Service, and will also provide information about conditions that will apply if they remain a casual employee; eg redundancy payments.
- 4.4.3(d)** The parties agree that as a condition of this Enterprise Agreement, that an existing employee either Permanent, Part-time or Casual may elect not to be appointed as a permanent part-time employee and may retain their existing arrangements in terms of rate of pay and regularity of actual rostered hours in place for a minimum of twelve (12) months prior to the date of advice pursuant to sub clause 4.4.1 above. It is acknowledged these employees will have access to Notice of Termination as provided by 4.8. These employees will be acknowledged as Regular Employees. In addition regular employees will be entitled to access entitlements to parental leave and notification of change.
- 4.4.3(e)** Should an employee choose to retain their conditions (as per sub clause 4.4.1 above), as a casual employee, the employer will formally advise them of their conditions, such as the retaining of regular rostered hours, casual loading, continuity of service and Long Service Leave, the cessation of their entitlement to Annual and Personal Leave entitlements and the difference between that of a part-time employee.
- 4.4.4** Employees, who commence with the Employer during the life of the Enterprise Agreement, will be appointed in accordance with the conditions as provided by this Enterprise Agreement, applicable to the nature of hours being offered.

- 4.4.5 Regular employees (other than full-time and part-time employees) will work no more than 48 weeks per year and will take the remaining 4 weeks per year as unpaid recreational leave, at the direction of the employer.
- 4.4.6 Employees may work additional hours in excess to their minimum contracted hours by mutual agreement with the employer, however, these additional hours will not be considered as a permanent allocation.
- 4.4.7 All wage related entitlements such as annual leave, personal leave, redundancy, etc. will be based on the part time employee's actual hours worked over the previous 12 months, or from commencement of employment for those employees that have worked less than twelve (12) months.

#### **4.5 EMPLOYEES APPLYING FOR SHIFTS**

Where permanent or relief shifts become available and one or more employees express an interest in such shifts, existing employees are to be given the opportunity to apply for those shifts before an appointment of a new employee is made.

However, after Clinical Nurse and Management consultation, this clause does not restrict the employer from employing a new employee or allocating an available shift to any employee, if in the opinion of the employer, the decision is in the best interests of the employer.

#### **4.6 PERFORMANCE OF RANGE OF DUTIES/SKILLS - MULTI-SKILLING**

- 4.6.1 Where the employee is required to work in a new area and/or with unfamiliar equipment and the employer is made aware by the employee of their lack of experience or expertise in the area, the employer will have regard to the employee's advice and provide appropriate orientation and training. Any changes will be done in accordance with Clause 3.1
- 4.6.2 The employee will, at the direction of the employer, carry out such duties as are within the limits of the employee's skills, experience, training and classification provided that such duties are not designed to promote deskilling; and
- 4.6.3 The employer may direct the employee to carry out such duties and use such equipment as may be required provided that the employee has been properly trained in the use of such equipment.
- 4.6.4 Where the employer directs the employee to carry out duties in another area within the same work site, if that is the case, the employee must advise the employer of their lack of experience or expertise in that area and the employer will have regard to the employee's advice. This may involve the employee undertaking a combination of nursing, and clerical functions pertaining to nursing duties as prescribed in the relevant classification criteria.

## **4.7 PERFORMANCE AND DISCIPLINARY PROCEDURES**

### **4.7.1 Commitment to Procedural Fairness, Natural Justice and Communication**

- 4.7.1(a)** The parties recognise the mutual benefit in having a process for managing an employee's performance or conduct.
- 4.7.1(b)** The employer is committed to the principles of procedural fairness and natural justice in addressing performance issues or unsatisfactory performance or conduct that may give rise to disciplinary consequences.
- 4.7.1(c)** As part of this commitment, the employer will adhere to the performance and disciplinary procedures outlined in this clause.
- 4.7.1(d)** For the purposes of transparency, the employer will clearly communicate the performance and disciplinary procedures outlined in this clause to all employees.

### **4.7.2 Immediacy**

- 4.7.2(a)** Action to address performance issues or unsatisfactory performance or conduct that may give rise to disciplinary consequences should be initiated promptly after an incident takes place.
- 4.7.2(b)** Notwithstanding 4.7.2(a), action will not be taken without appropriate inquiries or investigation as this may prevent proper consideration being given to all of the circumstances.
- 4.7.2(c)** Notwithstanding 4.7.2(a) and (b), action will not be taken without affording an employee reasonable time to prepare a response to issues raised and/or to obtain representation of their choosing (which may be a union representative).

### **4.7.3 Counseling and Warnings**

- 4.7.3(a)** With the exception of conduct justifying summary dismissal (serious and willful misconduct), an employee whose performance or conduct is below the employer's expected standards shall not be dismissed unless the following process has been followed:
  - (i) Informal counseling;
  - (ii) Verbal warning;
  - (iii) Written warning.
- 4.7.3(b)** In relation to the process outlined in sub-clause 4.7.3(a), on each occasion, the employer commits to the following:
  - To provide the employee with appropriate written information regarding the nature and detail of the allegation(s) or concern(s);
  - To afford the employee reasonable time to prepare a response to the allegation(s) or concern(s) raised and to obtain representation of their choosing;
  - To afford the employee reasonable opportunity to respond to the allegation(s) or concern(s) raised by the employer, including mitigating circumstances;

- To advise the employee how the employer considers the allegation(s) or concern(s) can be resolved including the nature of the improvements sought and/or the expectations of the employer;
- To offer the employee reasonable assistance to meet the improvements or expectations identified by the employer (i.e. education and training, counseling or rehabilitation program);
- To provide the employee with a full opportunity to improve;
- When making a decision, to consider and take into account any responses or mitigating circumstances identified by the employee;
- When making a decision, the employer will not consider conduct or performance issues that:
  - Have not been brought to the attention of the employee; or
  - Are of a nature different to the allegation(s) or concern(s) currently in issue; or
  - Were raised over 12 months prior to the allegation(s) or concern(s) currently in issue;
- To advise the employee of the outcome of the performance or disciplinary process;
- To advise the employee of the next stage of the performance or disciplinary process should the employee fail to meet the improvements sought or the expectations of the employer.

**4.7.3(c)** In the event the outcome of the performance or disciplinary process is a written warning, the written warning shall specify details of the poor performance and the standards of performance expected. The employee shall also be given a reasonable period of time to improve.

**4.7.3(d)** Similarly, an employee shall not be dismissed for misconduct (except in the case of instant dismissal) unless he or she has been given appropriate written warning specifying the unacceptable behaviour.

**4.7.3(e)** Written warnings shall state that a repetition of the misconduct/poor performance will result in further disciplinary action being taken.

**4.7.3(f)** The written warning must also include the details of any corrective action plan, i.e. education and training, counseling and rehabilitation, or employee assistance scheme etc.

#### **4.7.4 Informed of allegation, evidence and potential consequences**

The employer shall provide the employee with all relevant details of the alleged misconduct. The employee shall also be advised of the process that will be followed and the range of disciplinary actions which may be taken if the allegation(s) is proven.

#### **4.7.5 Inquiry and Investigation**

The employer shall promptly take all reasonable steps to establish and confirm the facts of an alleged misconduct.

#### **4.7.6 Right to Representation and Reasonable Notice**

**4.7.6(a)** In the case of either alleged misconduct or poor performance, the employee shall be offered the opportunity to have a representative of their choice which may be the union (or other person) present as a witness, and to assist the employee during formal disciplinary action.

**4.7.6(b)** Reasonable notice must be provided to the employee prior to an interview to enable the employee to arrange for a representative/witness to be present if requested.

If the employee's first choice of representative/witness indicates they will not be available within a reasonable period, the employee may choose an alternative.

If an alternative is not available within a reasonable period, the interview will proceed at a time at the employer's discretion with such representative/witness (if any) the employee arranges within that reasonable period.

#### **4.7.7 Opportunity to Respond**

**4.7.7(a)** The employee shall be provided with a reasonable opportunity to provide a response to the allegations before a final decision is made.

**4.7.7(b)** The employee shall be given an opportunity to state whether there are any mitigating factors that are to be taken into account in determining the appropriate disciplinary action.

#### **4.7.8 Full Consideration and Reasons**

**4.7.8(a)** Following the completion of an investigation, full consideration must be given to all facts and information gathered during the investigation and through interviews with the employee.

**4.7.8(b)** If disciplinary action is taken, the employer shall clearly inform the employee of the reason(s). This includes advising the employee of how his or her performance does not meet the expected standards of the organisation, or in the case of misconduct what policies or instructions were breached.

### **4.8 TERMINATION OF EMPLOYMENT**

#### **4.8.1 Notice of termination by employer**

**4.8.1(a)** In order to terminate the employment of an employee, the employer must give the employee the following notice:

<b>Period of continuous service</b>	<b>Period of notice</b>
Not more than 3 years	2 weeks notice
More than 3 years but not more than 5 yrs	3 weeks notice
More than 5 years	4 weeks notice

- 4.8.1(b)** In addition to the notice in 4.8.1(a), employees over 45 years of age at the time of the giving of notice with not less than two years continuous service are entitled to additional notice of one week.
- 4.8.1(c)** Payment at the ordinary rate of pay in lieu of the notice prescribed in 4.8.1(a) and/or 4.8.1(b) must be made if the appropriate notice period is not given. Employment may be terminated by the provision of part of the period of notice specified and part payment in lieu.
- 4.8.1(d)** In calculating any payment in lieu of notice the employer must pay the wages an employee would have received in respect of the ordinary time the employee would have worked during the period of notice had the employee's employment not been terminated.
- 4.8.1(e)** The period of notice in this clause does not apply in the case of:
- 4.8.1(e)(i)** dismissal for conduct that at common law justifies instant dismissal;
  - 4.8.1(e)(ii)** casual employees;
  - 4.8.1(e)(iii)** employees engaged for a specific period of time for a specific task or tasks.

#### **4.8.2 Time off during notice period**

Where an employer has given notice of termination to an employee, the employee is entitled to up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

#### **4.8.3 Payment in lieu**

If an employer makes payment in lieu for all or any of the period of notice prescribed, the period for which such payment is made must be treated as service with the employer for the purposes of computing any service related entitlement of the employee.

#### **4.8.4 Notice of termination by employee**

In order to terminate employment, an employee must give the employer two weeks notice.

#### **4.8.5 Transfer of business**

The provisions of this clause are not applicable where a business is before or after the date of this Agreement, transferred from an employer (the old employer) to another employer (in this subclause called the new employer), in any of the following circumstances:

- (a) Where the employee accepts employment with the new employer which recognises the period of continuous service which the employee had with the old employer and any prior employer to be continuous service of the employee with the new employer; or
- (b) Where the employee rejects an offer of employment with the new employer:
  - (i) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and

conditions applicable to the employee at the time of ceasing employment with the transferor; and

- (ii) which recognises the period of continuous service which the employee had with the old employer and any prior employer to be continuous service of the employee with the new employer.

## **4.9 REDUNDANCY (SEVERANCE)**

### **4.9.1 Definition**

Business includes trade, process, business or occupation and includes part of any such business. Redundancy occurs where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.

Week's pay for the purposes of this clause, means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:

- overtime;
- penalty rates;
- disability allowances;
- shift allowances;
- special rates;
- fares and travelling time allowances;
- bonuses; and
- any other ancillary payments of a like nature.

### **4.9.2 Exclusions**

**4.9.2(a)** This clause does not apply to employees with less than one years continuous service. The general obligation of the employer is to give such employees and their chosen representatives, which may be the union, an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as must be reasonable to facilitate the obtaining by such employees of suitable alternative employment.

**4.9.2(b)** This clause does not apply where employment is terminated as a consequence of conduct that at common law justifies instant dismissal or in the case of casual employees or employees engaged for a specific period of time or for a specified task or tasks.

### **4.9.3 Period of notice of termination on redundancy**

**4.9.3(a)** If the services of an employee are to be terminated due to redundancy the employee must be given notice of termination as prescribed by clause 4.8 - Termination of employment.

**4.9.3(b)** Employees to whom notification of termination of service is to be given on account of the introduction or proposed introduction by the employer of automation or other like technological changes in the industry in relation to

which the employer is engaged must be given not less than three months notice of termination.

- 4.9.3(c)** Should the employer fail to give notice of termination as required in 4.8.1(a) or 4.8.1(b) the employer must pay to that employee the ordinary rate of pay for a period being the difference between the notice given and that required to be given. The period of notice to be given is deemed to be service with the employer for the purposes of the *Long Service Leave Act, 1987 (SA)* as amended.

**4.9.4 Time off during notice period**

- 4.9.4(a)** During the period of notice of termination given by the employer, an employee is entitled to up to one day off without loss of pay during each week of notice for the purpose of seeking other employment.
- 4.9.4(b)** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview. If such proof is not produced the employee is not entitled to receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

**4.9.5 Severance pay**

- 4.9.5(a)** In addition to the period of notice prescribed for termination in clause 4.8 - Termination of employment, an employee whose employment is terminated by reason of redundancy is entitled to the following amounts of severance pay in respect of a continuous period of service:

<b>Period of continuous service</b>	<b>Severance Pay</b>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks pay
2 years and less than 3 years	6 weeks pay
3 years and less than 4 years	7 weeks pay
4 years and less that 5 years	8 weeks pay
5 years and less that 6 years	10 weeks pay
6 years and less that 7 years	11 weeks pay
7 years and over	12 weeks pay

- 4.9.5(b)** The severance payment need not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee’s agreed date of retirement or the employee’s eligibility date for social security benefits.
- 4.9.5(c)** An employer may apply to the Commission for an order allowing the off-setting of all or part of an employee’s entitlement to severance payment on the basis that such payment or part of it is already provided for or included in the contributions which the employer has made over and above those

required by law to a superannuation scheme and which are paid or payable to the employee on redundancy occurring.

#### **4.9.6 Incapacity to pay**

An employer may make application to the Commission for an order to have the severance pay prescription varied on the basis of the employer's incapacity to pay.

#### **4.9.7 Alternative employment**

An employer may make application to the Commission to have the severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

#### **4.9.8 Redundancy notice and disputes**

Where an employer contemplates termination of employment due to redundancy, in addition to the written notice requirements set out at 4.9.2, as soon as practicable, but prior to any redundancy, the employer must notify and consult pursuant to clause 3.2 'Introduction of Change'. In particular, the employer must provide the affected employee/s and their chosen representative, which may be the union, in good time, with relevant information including:

- the reasons for any proposed redundancy;
- the number and categories of workers likely to be affected; and
- the period over which any proposed redundancies are intended to be carried out.

Where an employer contemplates termination of employment due to redundancy and a dispute arises ('a redundancy dispute') and discussions occur in accordance with this clause the employer will, as early as possible, consult on measures taken to avert or to minimise any proposed redundancies and measures to mitigate the adverse affects of any proposed redundancies on the employees concerned. Such disputes shall be resolved in accordance with clause 3.3 'dispute settlement/resolution procedure'.

#### **4.9.9 Transfer to lower paid duties**

Where an employee whose job has become redundant accepts an offer of alternative work by the employer the rate of pay for which is less than the rate of pay for the former position, the employee is entitled to the same period of notice of the date of commencement of work in the new position as if the employee's employment had been terminated. The employer may pay in lieu thereof an amount equal to the difference between the former rate of pay and the new lower rate for the number of weeks of notice still owing.

#### **4.9.10 Employee leaving during notice**

An employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in clause 4.9

Notice of Termination. In this circumstance the employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the employer until the expiry of the notice, but will not be entitled to payment in lieu of notice.

#### **4.9.11 Employer to notify Centrelink of proposed terminations in certain cases**

**4.9.11.1** This section applies if an employer decides to terminate the employment of 15 or more employees for reasons of an economic, technological, structural or similar nature.

**4.9.11.2** As soon as practicable after so deciding and before terminating an employee's employment because of the decision, the employer must give to Centrelink, a written notice of the intended terminations, that sets out:

- (i) the reasons for the terminations; and
- (ii) the number and categories of employees likely to be affected; and
- (iii) the time when, or the period over which, the employer intends to carry out the terminations.

#### **4.10 EXHIBITION OF ENTERPRISE AGREEMENT**

The employer must display a copy of it in a conspicuous place accessible to all employees.

## 5. RATES OF PAY AND RELATED MATTERS

### 5.1 CLASSIFICATION CRITERIA

#### 5.1.1 Enrolled nurses

**5.1.1(a) Pay point Y1** means the pay point to which an employee will be appointed as an EN, based on:

**5.1.1(a)(i)** Training and experience, which includes:

- having satisfactorily completed a hospital based course of training in nursing of not more than twelve months duration leading to enrolment as an EN; or
- having satisfactorily completed a course of training of twelve months duration in a specified branch of nursing leading to enrolment on a register or roll maintained by a State/Territory Nurses Registration Board; and
- having practical experience of up to but not more than twelve months in the provision of nursing care and/or services, and, the undertaking of in-service training, subject to its provision by the employing agency, from time to time.

**5.1.1(a)(ii)** Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill indicators at this pay point are as follows. The employee:

- has limited or no practical experience of current situations; and
- exercises limited discretionary judgment, not yet developed by practical experience.

**5.1.1(b) Pay point Y2** means the pay point to which an employee will be appointed as an EN or progress from Pay point Y1, having been assessed as being competent at Pay point Y1. This assessment will be based on:

**5.1.1(b)(i)** Training and experience, which includes:

- having satisfactorily completed a hospital based course of general training in nursing of more than twelve months duration and/or 500 or more hours theory content or a course accredited at advanced certificate level leading to enrolment as an EN; or
- not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Pay point Y1; and
- the undertaking of in-service training, subject to its provision by the employing agency, from time to time.

**5.1.1(b)(ii)** Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows. The employee is required to demonstrate some of the following skills in the performance of their work:

- a developing ability to recognise changes required in nursing activity and in consultation with the RN,
- implement and record such changes, as necessary; and/or is able to relate theoretical concepts to practice; and/or
- requires assistance in complex situations and in determining priorities.

**5.1.1(c)** **Pay point Y3** means the pay point to which an employee will be appointed as an EN or progress from Pay point Y2, having been assessed as being competent at Pay point Y2. This assessment will be based on:

**5.1.1(c)(i)** Training and experience, which includes:

not more than one further year of practical experience in the provision of nursing care and/or services, in addition to the experience, skill and knowledge requirements specified for Pay point Y2; and the undertaking of in-service training, subject to its provision by the employing agency, from time to time.

**5.1.1(c)(ii)** Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows. The employee is required to demonstrate some of the following in the performance of their work:

- an ability to organise, practice and complete nursing functions in stable situations with limited direct supervision; and/or
- the use of observation and assessment skills to recognise and report deviations from stable conditions; and/or
- demonstrated flexibility in the capacity to undertake work across the broad range of nursing activity and/or competency in a specialised area of practice; and/or
- uses communication and interpersonal skills to assist in meeting psycho-social needs of individuals/groups.

**5.1.1(d)** **Pay point Y4** means the pay point to which an employee will be appointed as an EN or progress from Pay point Y3, having been assessed as being competent at Pay point Y3. This assessment will be based on:

**5.1.1(d)(i)** Training and experience, which includes:

not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Pay point Y3; and

- the undertaking of in-service training, subject to its provision by the employing agency, from time to time; and

- 5.1.1(d)(ii)** Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows. The employee is required to demonstrate some of the following in the performance of their work:
- speed and flexibility in accurate decision making; and/or
  - organises own workload and sets own priorities with minimal direct supervision; and/or
  - uses observation and assessment skills to recognise and report deviations from stable conditions across a broad range of patient and/or service needs; and/or
- uses communication and interpersonal skills to meet psycho-social needs of individual/groups.
- 5.1.1(e)** **Pay point Y5** means the pay point to which an employee will be appointed as an EN or will progress from Pay point Y4, having been assessed as being competent at Pay point Y4. This assessment will be based on:
- 5.1.1(e)(i)** Training and experience, which includes:
- not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Pay point Y4; and
  - the undertaking of relevant in-service training, subject to its provision by the employing agency, from time to time.
- 5.1.1(e)(ii)** Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows. The employee is required to demonstrate all of the following in the performance of the employee's work:
- contributes information in assisting the RN with development of nursing strategies/improvements within the employee's own practice setting and/or nursing team, as necessary;
  - responds to situations in less stable and/or changed circumstances resulting in positive outcomes, with minimal direct supervision; and
  - efficiency and sound judgment in identifying situations requiring assistance from an RN.
- 5.1.1(f)** **Pay point Y6** means the pay point to which an employee will be appointed as an EN or will progress from Pay point Y5, having been assessed as being competent at Pay point Y5. This assessment will be based on:
- 5.1.1(f)(i)** Training and experience, which includes:
- not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Pay point Y5; and

- the undertaking of relevant in-service training, subject to its provision by the employing agency, from time to time.

**5.1.1(f)(ii)** Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows. The employee is required to demonstrate all of the following in the performance of the employee's work:

- contributes information in assisting the RN with development of nursing strategies/improvements within the employee's own practice setting and/or nursing team, as necessary;
- responds to situations in less stable and/or changed circumstances resulting in positive outcomes, with minimal direct supervision; and
- efficiency and sound judgment in identifying situations requiring assistance from an RN.

**5.1.1(g)** **Pay point Y7** means the pay point to which an employee will be appointed as an EN or will progress from Pay Point Y6, having been assessed as being competent at Pay Point Y6. This assessment will be based on the training and experience provided in 5.1.1(f)

**5.1.1(h)** **Specific definitions**

**5.1.1(h)(i)** **In-service training** means the formal and/or informal work related learning activities undertaken by an employee through opportunities provided by the employing agency, which contribute to an employee's professional development and efficiency by the acquisition and updating of skills and knowledge beneficial to effective performance within a team; and/or reducing the degree of direct supervision required by the employee; and/or enhancing the breadth and/or depth of knowledge and skills required by an employee in a specific area and/or range of areas of nursing practice, as the case may be.

**5.1.1(h)(ii)** **Supervision** means the oversight, direction, instruction, guidance and/or support provided to an employee by the RN responsible for

ensuring such an employee is not placed in situations where required to function beyond the preparation and competence of the employee. Specifically:

**direct supervision** means the employee works side by side continuously with an RN responsible for observing and directing the employee's activities in circumstances where, in the judgment of the RN, such an arrangement is warranted in the interests of safe and/or effective practice;

**indirect supervision** means such other supervision provided to an employee assuming responsibility for functions delegated by an RN in circumstances where, in the judgment of the RN accountable for such delegation, direct supervision of the employee is not required.

## **5.1.2 Registered nurses**

### **5.1.2(a) Registered nurses level 1 (RN-1)**

Means an RN who:

According to the employee's level of competence; and Under the general guidance of, or with general access to a more competent RN who provides work related support and direction, is required to perform general nursing duties which include substantially, but are not confined to:

Delivering direct and comprehensive nursing care and individual case management to patients or clients within the practice setting.

Coordinating services, including those of other disciplines or agencies, to individual patients or clients within the practice setting.

Providing education, counseling and group work services orientated towards the promotion of health status improvement of patients and clients within the practice setting.

Providing support, direction and education to newer or less experienced staff, including EN's, and student EN's and Student Nurses.

Accepting accountability for the employee's own standards of nursing care and service delivery.

Participating in action research and policy development within the practice setting.

Subject to higher duties 5.3.3, relieving Clinical nurses as described in 5.1.2(b).

### **5.1.2(b) Registered nurse level 2 (RN-2)**

Means an RN who:

**5.1.2(b)(i)** Holds any other qualification required for working in the employee's particular practice setting, and who is appointed as such by a selection process or by reclassification from a lower level in the circumstances that the employee is required to perform the duties detailed in this subclause on a continuing basis.

**5.1.2(b)(ii)** Appointed at this level (to be known as a Clinical nurse), is required in addition to the duties of an RN1, to perform duties delegated by a Clinical nurse consultant or higher level classification, and clinical nursing duties which will substantially include, but are not confined to:

**5.1.2(b)(ii)(1)** Delivering direct and comprehensive nursing care and individual case management to a specific group of patients or clients in a particular area of nursing practice within the practice setting;

**5.1.2(b)(ii)(2)** Providing support, direction, orientation and education to RN1's, EN's, student nurses and student EN's;

**5.1.2(b)(ii)(3)** Being responsible for planning and coordinating services relating to a particular group of clients or patients in the practice setting, as delegated by the Clinical nurse consultant;

**5.1.2(b)(ii)(4)** Acting as a role model in the provision of holistic care to patients or clients in the practice setting;

**5.1.2(b)(ii)(5)** Assisting in the management of action research projects, and participating in quality assurance programs and policy development within the practice setting; and

**5.1.2(b)(ii)(6)** Subject to 5.3.3 higher duties relieving RN-3's as required.

**5.1.2(c) Registered nurse level 3 (RN-3)**

Means an RN who:

**5.1.2(c)(i)** Holds any other qualification required for working in the employee's particular practice setting, and who is appointed as such by a selection process or by reclassification from a lower level in the circumstances that the employee is required to perform the duties detailed in this subclause on a continuing basis;

**5.1.2(c)(ii)** Appointed at this level (to be known as a Clinical nurse consultant, Nurse manager or a Nurse educator), according to practice setting and patient or client group, is required in addition to the duties of an RN-2:

**5.1.2(c)(ii)(1)** In the case of an employee appointed as an RN-3, subject to 5.3.3 - higher duties, to relieve an RN-4 as required.

**5.1.2(c)(ii)(2)** In the case of a Clinical nurse consultant to perform duties which will substantially include but are not confined to:

- providing leadership and role modeling, in collaboration with others including the Nurse manager and the Nurse educator, particularly in the areas of action research and quality assurance programs; staff and patient/client education; staff selection, management, development and appraisal; participating in policy development and implementation; and acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care;
- delivering direct and comprehensive nursing care to a specific group of patients or clients with complex nursing care needs, in a particular area of nursing practice within a practice setting;
- coordinating, and ensuring the maintenance of standards of the nursing care of a specific group or population of patients or clients within a practice setting; and
- coordinating or managing nursing or multi-disciplinary service teams providing acute nursing and community services.

**5.1.2(c)(ii)(3)** In the case of a Nurse manager, to perform duties which will substantially include, but are not confined to:

- providing leadership and role modeling, in collaboration with others including the Clinical nurse consultant and the Nurse educator, particularly in the areas of action research and quality assurance programs, staff selection and education, allocation and rostering of staff, occupational health, and initiation and evaluation of research related to staff and resource management; participating in policy development and implementation; and acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care;
- being accountable for the management of human and material resources within a specified span of control, including the development and evaluation of staffing methodologies; and managing financial matters, budget preparation and cost control in respect of nursing within that span of control.

**5.1.2(c)(ii)(4)** In the case of Nurse educator, to perform duties which will substantially include, but are not confined to:

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

**5.1.2(d) Registered nurse level 4 (RN-4)**

Means an RN who:

**5.1.2(d)(i)** Holds any other qualification required for working in the employee's particular practice setting, and who is appointed as such by a selection process or by reclassification from a lower level in the circumstances that the employee is required to perform the duties detailed in this subclause on a continuing basis.

**5.1.2(d)(ii)** An employee appointed at this level (to be known as an Assistant director of nursing (clinical), Assistant director of

nursing (management), or Assistant Director of nursing (education) is required, in addition to the duties of an RN-3:

- 5.1.2(d)(ii)(1)** In the case of any employee appointed as an RN-4, subject to higher duties – 5.3.3 to relieve the Director of nursing as required.
- 5.1.2(d)(ii)(2)** In the case of an Assistant Director of nursing (clinical) to perform duties which will substantially include, but are not confined to:
- providing leadership and role modeling, in collaboration with others including the Assistant director of nursing (management) and Assistant director of nursing (education),
  - particularly in the areas of selection of staff within the employee's area of responsibility, provision of appropriate education programs, coordination and promotion of clinical research projects; participating as a member of the nursing executive team; and contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
  - managing the activities of, and providing leadership, coordination and support to, a specified group of Clinical nurse consultants;
  - being accountable for the establishment, implementation and evaluation of systems to ensure the standard of nursing care for a specified span of control;
  - being accountable for the development, implementation and evaluation of patterns of patient care for a specified span of control;
  - being accountable for clinical operational planning and decision making for a specified span of control; and
  - being accountable for appropriate clinical standards, through quality assurance programs, for a specified span of control.
- 5.1.2(d)(ii)(3)** In the case of an Assistant director of nursing (management), to perform duties which will substantially include, but are not confined to:
- providing leadership and role modeling, in collaboration with others including the Assistant director of nursing (clinical) and Assistant director of nursing (education), particularly in the areas of selection of staff within the employee's area of responsibility, coordination and promotion of nursing

- management research projects; participating as a member of the nursing executive team; and contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
- managing the activities of, and providing leadership, coordination and support to, a specified group of Nurse managers;
- being accountable for the effective and efficient management of human and material resources within a specified span of control;
- being accountable for the development and coordination of nursing management systems within a specified span of control; and
- being accountable for the structural elements of quality assurance for a specified span of control.

**5.1.2(d)(ii)(4)** In the case of an Assistant director of nursing (education) to perform duties which will substantially include, but are not confined to:

- providing leadership and role modelling, in conjunction with others including the Assistant director of nursing (clinical) and the Assistant director of nursing (management), particularly in the areas of selection of staff within the employee's area of responsibility, coordination and promotion of nurse education research projects; participating as a member of the nursing executive team, and contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
- managing the activities of, and providing leadership, coordination and support to a specific group of Nurse educators;
- being accountable for the standards and effective coordination of education programs for a specified population;
- being accountable for the development, implementation and evaluation of education and staff development programs for a specified population;
- being accountable for the management of educational resources including their financial management and budgeting control; and
- undertaking career counseling for nursing staff.

- 5.1.2(d)(ii)(5)** Where significant and demonstrable reasons exist for two or more of these functions to be combined, the employer will seek the agreement of the employee and their chosen representative, which may be the union, which will not be unreasonably withheld.

## **5.2 CAREER STRUCTURE**

### **5.2.1 Enrolled Nurse with Certificate Qualifications**

A salary scale of seven (7) pay points as detailed in Appendix 1 for Enrolled Nurses with Certificate Qualifications applies to Enrolled Nurses with Certificate Qualifications and incremental progression through each step will occur in accordance with 5.3.1(b). Progression to pay point 7, available from the lodgment date of this Enterprise Agreement will be subject to existing criteria in 5.1.

### **5.2.2 Enrolled Nurse with Diploma of Nursing Qualifications**

A salary scale of seven (7) pay points for Enrolled Nurses with Diploma Qualifications applies to Enrolled Nurses with Diploma Qualifications and incremental progression through each step will occur in accordance with 5.3.1.(b). Progression to pay point 7, available from the lodgment date of this Enterprise Agreement will be subject to existing criteria in 5.1.

Employees classified in the EN with Certificate salary scale who undertake post graduate enrolment Diploma translate to the EN with Diploma qualification salary scale on a point to point basis.

### **5.2.3 Registered Nurse Level 1 (RN1)**

The RN 1 classification range is set out in Appendix 1.

### **5.2.4 Registered Nurse Level 2 (RN2)**

The RN2 classification range is set out in Appendix 1.

## **5.3 SALARIES – PROGRESSION AND ADVANCEMENT**

### **5.3.1 Calculation of salaries**

#### **5.3.1(a) Conversion of annual salaries to hourly rates**

Where, for the purpose of any provision of this Enterprise Agreement, it is necessary to convert an annual salary into an hourly rate, it will in every instance, be ascertained by using the following formula; multiply the annual rate by 12, divide by 313; calculated to the nearest ten cents and divided by 76.

#### **5.3.1(b) Incremental payments**

- 5.3.1(b)(i)** The parties to the Enterprise Agreement agree that the provisions for Incremental Payments regarding Employees who work less than full time will not apply for the life of this Enterprise Agreement. Incremental progression for employees who work less than full-time are set out below:

- Employees shall be entitled to increments for service in their respective Classification Level following the completion of 1786 actual ordinary hours of work per calendar year.
- Progression to the next applicable increment can not occur earlier than twelve (12) months at the previous or existing increment.
- This Incremental Progression will be applied in conjunction with the provisions of sub-clause 5.3 as currently applied, with no change to occur to any of the existing provisions, unless specifically varied by this clause.

### **5.3.2 Salary on appointment**

- 5.3.2(a)** An RN, on appointment will be paid a rate of salary by reference to the employee's relevant continuous experience since becoming an RN.
- 5.3.2(b)** An EN on appointment will be paid at a rate of salary by reference to the employee's relevant continuous experience since:
- 5.3.2(b)(i)** becoming an EN; or
- 5.3.2(b)(ii)** if employed as a Nurse attendant/direct client contact services employee immediately prior to undertaking a recognised course of study to become an EN and who is recognised as an EN by the Nurses Board of South Australia must, on appointment as an EN, receive a rate of pay within the EN salary scale which is consistent with the recognition of relevant training, experience and skill gained immediately prior to undertaking the recognised EN training course.
- 5.3.2(c)** For the purpose of 5.3.2(a) and 5.3.2(b), in determining relevant continuous experience:
- 5.3.2(c)(i)** any period of service prior to an absence of less than five years from active nursing duties relevant to the classification in which the employee is employed, or is to be employed, will be taken into account;
- 5.3.2(c)(ii)** any period of service prior to an absence of five years or more from active nursing duties relevant to the classification in which the employee is employed or is to be employed, will be taken into account where the employee has successfully completed a refresher course approved by the Nurses Board of South Australia, but will be subject to a reduction of one year on the relevant incremental scales;
- 5.3.2(c)(iii)** completed months will be taken into account;
- 5.3.2(c)(iv)** recognised service averaging less than fifteen hours per week in any year will not count, but be regarded as establishing continuous employment;
- 5.3.2(c)(v)** recognised service in a classification higher than that in which the employee is employed or is to be employed is that service directly relevant to the duties performed or to be performed;
- 5.3.2(c)(vi)** the onus of proof of previous continuous employment will be on the employee and will be established at the time of employment. An employer will, when provided with evidence by an employee, accept, reject or request further particulars to establish continuous experience; and

**5.3.2(c)(vii)** if an employee deliberately misrepresents previous continuous experience, such action will amount to misconduct and any service misrepresented will be disregarded in calculating the employee's position on the relevant incremental scale. When non-disclosure is not by virtue of deliberate misrepresentation, previous continuous experience will only be taken into account in determining the employee's position on the relevant scale from the time that it is made known to the employer.

### **5.3.3 Higher duties**

An employee (other than a Student nurse) who is required to perform the duties of a position carrying higher salary than their normal classification will be paid for the time worked at the relevant rate for each position.

### **5.3.4 Progression and accelerated advancement - Enrolled nurses**

#### **5.3.4(a) Pay point progression**

**5.3.4(a)(i)** Employees will progress in accordance with 5.3.1(b)(i) from one pay point to the next, having regard to 5.3.4(b) and subject also to the acquisition and utilisation of skills and knowledge through experience as defined in 5.1.1 in their practice setting(s) over such period.

**5.3.4(a)(ii)** An employee's progression may be deferred or refused by the employer, provided that any such deferral or refusal is referable only to the terms specified for each pay point in 5.1.1 and is not unreasonably nor arbitrarily imposed by the employer. It will be considered unreasonable if the employer has refused to provide training and/or opportunities to work in various practice settings in the employer's establishment.

#### **5.3.4(a)(iii) Appeal and review**

An employee may appeal a deferral or refusal. Where such an appeal results in a revocation of the employer's decision, pay point progression is deemed to operate and be payable from the employee's anniversary date for such progression pursuant to 5.3.4(a)(i).

**5.3.4(a)(iv)** An employer or employee may initiate a review of a deferral or refusal of a progression.

Where this review lifts the deferral or refusal, it will operate from such date, where circumstances have changed so that the employee appropriately falls within the terms specified for the next pay point as defined in clause 5.1 - Classification criteria.

**5.3.4(a)(v)** An appeal or review, for the purpose of this subclause, will be undertaken and resolved in accordance with clause 3.3 – Dispute settlement/resolution procedure.

#### **5.3.4(b) Accelerated advancement**

**5.3.4(b)(i)** An employee (other than an EN appointed in their first year of experience at Pay point Y2 pursuant to 5.1.1(b)), will be entitled to accelerated advancement by one pay point:

- for possession of a post enrolment qualification recognised by the employer; or

- on completion of a post enrolment course of at least six months duration, where such an employee is required to perform duties to which such training is directly relevant.

**5.3.4(b)(ii)** An employee who has advanced in accordance with 5.3.4(b)(i) will not be entitled to further accelerated advancement pursuant to this subclause.

### **5.3.5 Accelerated advancement - Registered nurses**

**5.3.5(a)** Subject to 5.3.5(b) an RN-1 will be entitled to progress one increment on that person's first appointment following registration with the Nurses Registration Board of South Australia, or at any one time during that person's employment history as an RN-1, on attainment of the following:

**5.3.5(a)(i)** An Undergraduate (UG1) degree in nursing; or

**5.3.5(a)(ii)** Registration in another branch of nursing or on another nursing register maintained by the Nurses Registration Board of South Australia where the employee is working in a particular practice setting which requires the additional registration; or

**5.3.5 a)(iii)** Successful completion of a post-registration course of at least twelve months duration, by an employee required to perform the duties of a position to which the course is directly relevant.

**5.3.5(b)** An RN-1 who has been advanced once in accordance with 5.3.5(a) will not be entitled to further advancement under this clause.

## **5.4 ALLOWANCES**

All allowances will be increased by percentage increase applying to the Wage Rates

### **5.4.1 On-call allowances**

**5.4.1(a)** Employees, other than RN-4's or RN-5's, rostered to be on-call at their private residence, or any other mutually agreed place:

(i) between rostered shifts of ordinary hours on a Monday to Friday inclusive, must receive the following amounts:

- \$13.76 from first full pay period on or after 1<sup>st</sup> April 2010
- \$14.30 from first full pay period on or after 1<sup>st</sup> April 2011
- \$14.76 from first full pay period on or after 1<sup>st</sup> July 2012

(ii) On a Saturday must receive the following additional amounts for the period or part thereof:

- \$19.65 from first full pay period on or after 1<sup>st</sup> April 2010
- \$20.63 from first full pay period on or after 1<sup>st</sup> April 2011
- \$21.45 from first full pay period on or after 1<sup>st</sup> July 2012

(iii) On a Sunday, public holiday or any other day the employee is not rostered to work must receive the following additional amounts for the period or part thereof:

- \$25.15 first full pay period on or after 1<sup>st</sup> April 2010
- \$26.15 from first full pay period on or after 1<sup>st</sup> April 2011
- \$27.00 from first full pay period on or after 1<sup>st</sup> July 2012

**5.4.1(b)** Employees other than RN-4's or RN-5's rostered to be on-call and recalled to duty will, in addition to the rates prescribed above, be entitled to receive normal overtime provisions in accordance with the provisions of clause 6.3 - Overtime.

**5.4.1(c)** Employees rostered to be on-call for a period spanning two days over which two different on-call allowances apply, must receive payment which is equal to the allowance payable for the day attracting the higher allowance.

**5.4.1(d)** Employees required to be on-call must be reimbursed all expenses actually and reasonably incurred in attending for duty and return home when called in. If the employee is required to use a private vehicle, the employee must be reimbursed at the rate per kilometre shown in 5.4.5. Travelling time from the normal place of residence and return must be deemed to be time worked.

#### **5.4.2 Nurse in-charge allowance**

An RN-1 or an RN-2 directed by the employer to take charge of a health unit, on a Saturday, Sunday, public holiday, or between the hours of 6.00 p.m. and 8.00 a.m. on any day, will:

**5.4.2(a)** If in charge of a worksite of 180 beds or greater, be paid an allowance to bring the employee's substantive rate of pay per hour to that of an RN-3, 1st year of service.

**5.4.2(b)** If in charge of a worksite of 100 beds or more but less than 180 beds, be paid an allowance to bring the employee's substantive rate of pay per hour to that of an RN-2, 3rd year of service.

**5.4.2(c)** If in charge of a worksite of greater than 60 beds but less than 100 beds, be paid an allowance to bring the employee's substantive rate of pay per hour to that of an RN-2, 2nd year of service.

**5.4.2(d)** If in charge of a worksite of less than 60 beds, be paid an allowance to bring the employee's substantive rate of pay per hour to that of an RN-2, 1st year of service.

#### **5.4.3 Telephone expenses**

**5.4.3(a)** Telephone expenses reasonably incurred by an employee with the authority of the employer must be reimbursed.

**5.4.3(b)** The additional payments prescribed by this clause do not form part of the employee's ordinary pay for the purpose of this Enterprise Agreement.

#### **5.4.4 Uniform allowance**

Uniform allowance will not be paid under this Enterprise Agreement. The employer's uniform dress code will specify the type and detail of apparel to be worn by the employees to make any claims for which they are eligible (if any) in their income tax assessment.

#### **5.4.5 Travelling expenses**

Employees required to travel at the direction of the employer must be reimbursed all expenses actually and reasonably incurred in undertaking such travel. If the employee is required to use a private vehicle, the employee must be reimbursed at the rate 65 cents per kilometre.

### **5.5 ALLOWANCES FOR ADDITIONAL QUALIFICATIONS**

The under-mentioned allowances for additional qualifications and associated conditions will apply from the beginning of the first full pay period on or after 1<sup>st</sup> April 2010. The amounts of the allowances and conditions regarding eligibility are set out in Appendix 1. The provisions of 5.3.5(a)(i) as it relates to a bachelors degree in nursing will not apply in addition to the terms of this Enterprise Agreement.

#### **5.5.1 Registered Nurses**

Levels 1, 2 and 3:

- A Registered Nurse Level 1, 2 and 3 who holds a Post Graduate Diploma in any of the following and is using this knowledge in their practice setting will be paid an amount 1% above the relevant incremental point effective from the first full pay period on or after 31 March 2010.
  - Post Graduate Diploma in Mental Health
  - Post Graduate Diploma in Palliative Care
  - Post Graduate Diploma in Gerontics

Payment will only be made from the first full pay period on or after when the employee presents their original Post Graduate Diploma to Management with a copy to be retained in the employee's personnel file. Payment will not be backdated.

#### **5.5.2 Minimum Essential Requirements**

In order to continue to receive the increase the Registered Nurse must:

- Continually apply and practice the knowledge obtained from such additional qualification to the practice setting;
- Apply the findings of current research to their practice in order to improve the nursing care provided to residents;
- Actively contribute to their own professional development.

Where, at performance appraisal/review it has been identified that a Registered Nurse has not met the minimum essential requirements during the review year, the Registered Nurse will be allowed three (3) months in order to meet the requirements before he/she is required to return to her/his substantive RN level/increment.

#### **5.5.3 Reclassification Review Process**

Where on reclassification an employee is dissatisfied with the determination they can seek a review by the Review Panel via the employee representative. A Review Panel will be constituted by the employer comprising an employer advocate, an employee

advocate, an employer representative, and an impartial clinical person acceptable to all parties.

#### **5.5.4 Enrolled Nurses**

An Enrolled Nurse who holds an Enrolled Nurse Diploma will be paid as stipulated in Appendix 1

### **5.6 ENROLLED NURSE LOW CARE ALLOWANCE**

- 5.6.1** When shifts are worked outside the span of ordinary hours and the Enrolled Nurse is required to take responsibility for determining the need for and contacting a Registered Nurse for making a care decision, an allowance will be paid for all or part of the Enrolled Nurse shift.
- 5.6.2** An allowance of 1% per afternoon shift and 2% per night shift of the ordinary rate of pay will be paid for the Enrolled Nurse Responsibility duties.

### **5.7 PAYMENT OF SALARIES**

- 5.7.1** Salaries must be paid fortnightly, unless there is a written contract to the contrary in which case the period is limited to a monthly maximum period.
- 5.7.2** Upon termination of the employment, salaries due to an employee must be paid to the employee on the day of such termination or forwarded to the employee by post on the next working day.
- 5.7.3** Employers must provide each employee in a written form at the time when salaries are paid, particulars as required by the Act
- 5.7.4** An employee who is rostered off duty on a pay day will be paid either during working hours before completing duty prior to the pay day or on the employee's next rostered period of duty, or if pay is not provided in the normal manner, the employees' salary must be available for collection on the pay day when requested by the employee.

### **5.8 WAGES**

- 5.8.1** First wage increment will be paid on following pay period after the signing of this Enterprise Agreement by all parties.
- 5.8.1** Wage Increases provided by this Enterprise Agreement will be payable from the First Full Pay period commencing on or after 1<sup>st</sup> April 2010
- 5.8.2** The Wage Increases are detailed in Appendix 1 – Wage Rates. The increments in wages will be paid in three (3) installments with the first to be effective from the first full pay period commencing on or after 1<sup>st</sup> April 2010 and approved by a valid majority of employees
- 1<sup>st</sup> 5% – effective first full pay period on or after 1<sup>st</sup> April 2010;
  - 2<sup>nd</sup> 4% – effective first full pay period on or after 1<sup>st</sup> April 2011;
  - 3<sup>rd</sup> 3.25% – effective first full pay period on or after 1<sup>st</sup> July 2012.
- These increases will be included in the finalised Appendix 1

**5.8.3** The provision of Pay Point 7 is not retrospective and will be effective from 1<sup>st</sup> April 2010. Employees eligible to progress to Pay Point 7 will do so from their anniversary date after 1<sup>st</sup> April 2010.

## **5.9 SUPERANNUATION**

### **5.9.1 Definitions**

The **Fund** shall mean the complying fund into which the employer is required by law to make contributions. At the date of making this agreement the parties apprehend that the employer is required to make contributions to The Local Government Superannuation Scheme (**Local Super**). Choice will be available from 1<sup>st</sup> January 2012. If at any stage during the period of operation of this Enterprise Agreement the parties establish that the employer can make contributions to a fund other than Local Super then the **Fund** for the purposes of this Enterprise agreement shall mean either HESTA or Local Super. **Ordinary time earnings** means the remuneration for the worker's normal weekly number of hours of work calculated at the ordinary time rate of pay, including all payments arising from the Enterprise Agreement, shift allowances, and other work related allowances applicable to the working of ordinary hours, but does not include bonuses, commission or payment for overtime

**5.9.2** The subject of superannuation contributions is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth). The legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

### **5.9.3 Employer contributions**

The employer will make contributions to the Fund for an employee in accordance with the legislative requirements in clause 5.9.2. These contributions will be based on the employee's ordinary time earnings.

### **5.9.4 Voluntary employee contributions**

**5.9.4.1** Employees who may wish to make voluntary contributions in addition to those paid by the employer pursuant to clause 5.9.3 shall be entitled to authorise the employer (subject to the agreement of the employer) to pay these additional

contributions from the employee's wages into the Fund from the employee's wages amounts specified by the employee.

**5.9.4.2** Upon such authorisation, the employer shall be required to make the deduction and forward it to the Fund.

**5.9.4.3** Additional employee contributions requested under this clause shall be subject to the following conditions:

- (a) The amount of the contribution shall be expressed in whole dollars; and
- (b) After the first contribution, the amount of contribution can only be adjusted from the first full pay period in July each year.

## **5.10 SALARY SACRIFICE ARRANGEMENTS**

**5.10.1** Salary Sacrificing under this Enterprise Agreement allows the employee to voluntarily elect to receive a component, which will not exceed the gross figure of \$16,050 (which when grossed up equals \$30,000 as prescribed by the Australian Tax Office), of their remuneration in a form other than take home pay.

**5.10.2** Where an employee enters into a salary sacrifice arrangement with the employer the employee will indemnify the employer against any taxation liability arising from that arrangement.

**5.10.3** The employer will nominate a provider of salary sacrificing services to manage these arrangements. The employee will be responsible for the costs of managing these arrangements by the provider.

**5.10.4** The employer shall meet the cost of implementing the administrative and payroll arrangements necessary for the introduction of salary sacrifice to the employees under this Enterprise Agreement.

**5.10.5** The employees will be offered the opportunity to choose from the list of benefits at 5.10.8 of this Clause, which will be paid by the employer, through the provider of the service, instead of receiving gross salary. Gross salary is reduced by the amount of the benefits paid by the employer. The new gross salary is then subject to Pay As You Go (PAYG) tax.

**5.10.6** All existing entitlements such as superannuation, leave loading, penalties and overtime etc., will be based on the pre-packaged salary.

**5.10.7** The employees covered under this Enterprise Agreement will have access to salary sacrifice arrangements subject to the following provisions:

**5.10.7(a)** Accessing a salary sacrifice arrangement is a voluntary decision to be made by the individual employee.

**5.10.7(b)** The employee wishing to enter into a salary sacrifice arrangement will be required to sign a document which indicates that:

- they have sought expert advice in relation to entering into such an arrangement and;
- they understand that in the event that Fringe Benefits Tax (FBT) becomes payable on the benefit items which are selected, the salary sacrifice arrangement shall lapse and a new arrangement be put in place whereby the total cost of salary sacrificing to the employer does not increase.
- If the employee elects to continue with sacrificing, the cost of the payment of the FBT will be passed back to the employee,

or benefit items can be converted back to the agreed salary as per this Enterprise Agreement.

- that upon resignation or termination of employment the employer shall be, by deduction from final payments or upon demand, reimbursed any amounts of over-expenditure.

**5.10.8** Benefits available to be packaged are as defined in this Clause.

Subject to the terms and conditions contained in this Enterprise Agreement, the employer shall pay to an employee who requests this option during the duration of this Enterprise Agreement an optional remuneration package equivalent to the weekly ordinary time wages otherwise payable consisting of:

**5.10.8(a)** a cash component within the limits (as described in paragraph 1) of the employee's ordinary time wages under this Enterprise Agreement (paid monthly one fortnight in arrears) and;

**5.10.8(b)** a benefit component of not more than the allowable amount of the employee's ordinary time wages under this Enterprise Agreement payable for the following as defined by the policy and procedures of the employer. These include:-

- superannuation;
- motor vehicle payments and running costs;
- mortgage and personal loan repayments;
- health, life and disability insurance;
- utility expenses (e.g. Electricity, gas, water, rates, etc.)
- school fees;
- child minding expenses;
- subscriptions and memberships;
- car parking; and
- credit card expenses (other than cash advances);

**5.10.9** Any agreement made pursuant to this Clause is terminable by either party providing at least 14 days notice of withdrawal from such agreement.

**5.10.10** The cost of the administration of the salary packaging arrangement is to be borne by the employee and deducted from the employee's account each fortnight. These fees are fixed for a period of one (1) year (31/3/08) under contract with the administrative provider.

**5.10.11** These arrangements are subject to the current legislation affecting salary packaging for Public Benevolent Institutions (PBI's) and may be negotiated accordingly.

## **6. HOURS OF WORK, SHIFT WORK, MEAL BREAKS AND OVERTIME**

### **6.1 ORDINARY HOURS OF WORK**

- 6.1.1** The maximum ordinary hours of work is an average of 38 per week, to be worked according to roster.

The parties accept that critical requirements for effective service provision by the organisation are flexible working conditions and hours of work to meet its needs, particularly considering resident care levels, funding for which is commensurate with the assessed level of resident care to be provided.

#### **6.1.2 Continuous work**

Except for meal breaks and for an additional break if required, the ordinary hours of work for employees will be continuous and will not exceed ten hours per day or shift.

- 6.1.2(a)** A shift must not exceed eight ordinary hours of work (exclusive of meal breaks and any additional breaks) unless research and trials have established the efficiency and effectiveness of such shifts in relation to the health unit operations and have assessed the impact of such shifts on the quality of nursing services and the occupational health of employees, and unless there is an agreement with the majority of employees affected by changes in shift length and there has been consultation with their chosen representative, which may be the Union.

- 6.1.2(b)** The provisions of this sub-clause as they relate to shift length may be set aside for specified periods of time by agreement between the health unit and the majority of employees affected by changes in shift length and after consultation with the employees and their representatives, to allow research and trials of the nature prescribed in this sub-clause relating to shift lengths.

- 6.1.2(c)** These provisions do not apply to employees engaged on night shift for up to ten hours per shift.

#### **6.1.3 Workcycle**

- 6.1.3(a)** The ordinary hours of work of a full-time employee will be worked on the basis of either:

- 6.1.3(a)(i)** 152 hours within a work cycle not exceeding 28 consecutive days, in the case of an employee working not more than eight ordinary hours on each shift. In such case, no full-time employee is required to work in ordinary hours for more than 80 hours per fortnight; or

- 6.1.3(a)(ii)** 760 hours within a work cycle not exceeding 140 consecutive days, for an employee working extended night shifts of between eight and ten ordinary hours each.

- 6.1.3(b)** Where staff rotate through day, afternoon, and extended night shifts, the ordinary hours of duty may be worked by a combination of the provisions of this subclause. All time worked in excess of eight hours on a rostered extended night shift will be a credit towards a programmed day off.

#### **6.1.4 Working hours**

##### **6.1.4(a) Average wages**

- 6.1.4(a)(i)** An employee whose ordinary hours are more or less than 38 in any particular week of a work cycle, will be paid on the basis of an average of 38 ordinary hours so as to avoid fluctuating wage payments each week.
- 6.1.4(a)(ii)** Except as provided in 6.1.3 the ordinary hours of work will be an average of 38 per week to be worked in accordance with 6.1.2(a) and 6.1.2(b).
  - 6.1.4(a)(ii)(1)** The method of implementation of working hours will be by rostering employees on various days of the week so that each employee works in accordance with 6.1.2, and 6.1.3 will have at least, one programmed day off during each 28 day roster cycle.
  - 6.1.4(a)(ii)(2)** By mutual agreement between the employer and the employee concerned, a full-time employee may work an average of 38 ordinary hours per week in a manner other than a programmed day off, by either having one shift in each week of less than eight ordinary hours, or by having one shift in each two week period of less than eight hours duration.

The day or days on which these shorter shifts will be worked must be mutually agreed between the employer and the employee.

##### **6.1.4(b) Banking of programmed days off**

- 6.1.4(b)(i)** At any time, a full-time employee may seek to defer or bank for up to six months any programmed day off which becomes due as a result of this sub clause. Such deferral or banking is only by mutual agreement between the employer and the employee.
- 6.1.4(b)(ii)** No more than five programmed days off may be banked at any given time.
- 6.1.4(b)(iii)** Deferred programmed days off may be taken as single days or as a block in a manner mutually agreed between the employer and employee.
- 6.1.4(b)(iv)** If agreement cannot be reached as to how this time off should be taken, the employer may by two weeks notice, inform the employee of the way in which the time off must be taken.

##### **6.1.4(c) Extended night shift employees**

A full-time employee, other than one exempted under 6.1.6, who is engaged to work an extended night shift of between eight and ten ordinary hours is entitled to at least four programmed days off in each twenty week period, such days off to be nominated by the employer in accordance with the rostering provisions in 6.1.5.

##### **6.1.4(d) Effect of leave without pay**

###### **6.1.4(d)(i) Employees working eight hour shifts**

Employees who are absent from duty on leave without pay for a whole day will, for each day absent, lose average wages for that day calculated by deducting 7 hours and 36 minutes from the average weekly wage.

Employees who are on leave without pay for a whole day will not accrue a credit because they would not have worked ordinary hours that day in excess of 7 hours and 36 minutes for which payment would otherwise have been paid.

**6.1.4(d)(ii) Employees working extended night shifts**

Employees who are absent from duty on leave without pay will have deducted from their average wage an amount calculated at the hourly rate for each hour or part thereof that the employee is absent.

**6.1.4(e) Annual leave**

Entitlement to a programmed day off will occur upon completion of the period of work required to have accrued the necessary credit appropriate to the working arrangement.

**6.1.4(e)(i)** An employee who is on annual leave will not accrue any credit (or debit in the case of employees working extended night shifts) for the first four weeks of leave taken from each years entitlement.

**6.1.4(e)(ii)** Any credit or debit standing at the start of the leave period will carry forward and be available, subject to normal rostering procedures, to the employee upon resumption of work.

**6.1.4(f) Termination of employment**

Where a full-time employee paid on the average pay system prescribed by this clause has the contract of employment terminated, or terminates the employee's own employment, the following procedures will apply:

**6.1.4(f)(i)** Where the employee has not taken a programmed day off in the work cycle in which termination occurs, the wages due to the employee will include the credits accrued as detailed in this clause.

**6.1.4(f)(ii)** Where the employee has already taken a day off during the work cycle in which the termination occurs, the wages due to the employee will be reduced by the total of credits which have not accrued during the work cycle.

**6.1.4(g) Work on programmed day off**

An employee required to work on a day otherwise nominated as a programmed day off and which is not substituted in accordance with 6.1.4 will be paid for work on such day in accordance with the provisions of clause 6.3 - Overtime.

**6.1.5 Rosters**

**6.1.5(a)** The ordinary hours of work for each employee must be displayed on a roster in a place conveniently accessible to employees at least seven days before the commencement of the day on which the roster commences. A roster may however, be altered at any time to enable the nursing service of the health unit to be carried on in an emergency or when another employee is absent from duty. Every employee is entitled to consecutive rostered days off duty except by mutual agreement.

No notice of change of roster is required when agreement exists between the employer and employee as to the change.

**6.1.5(b) Night duty**

**6.1.5(b)(i)** The period of night duty to be worked by an employee must not exceed eight weeks in any six monthly period. These provisions may be varied by agreement with the employee and will not apply if the employee is required to perform duty to enable the nursing service to be carried on in an emergency or when another employee is absent from duty because of illness.

**6.1.5(b)(ii)** Except in cases of emergency one week's notice will be given to an employee going on night duty.

**6.1.6 Senior staff**

**6.1.6(a)** There are no fixed hours of duty for Directors of nursing, Assistant directors of nursing or Principal nurse educators, but such employees will not normally be required to perform duties for more than 152 hours in any 28 day period.

**6.1.6(b)** If in an emergency or because of the services of the health unit it is necessary for any such employee to perform duties for aggregate periods exceeding those prescribed, the employee must, within the next succeeding four weeks, be granted additional time off equivalent to the extra time worked.

**6.1.7 Minimum interval between shifts**

An employee must wherever practicable have at least eight hours free from duty between the completion of one rostered shift and the commencement of the next rostered shift. Where the ordinary hours of work on a rostered shift have exceeded eight hours, the period free from duty must be at least equal to the number of ordinary hours of the shift being worked concurrently with the period free from duty.

**6.1.8 Changed duty**

An employee changing from night duty to day duty or from day duty to night duty must be free from duty during the next twenty hours immediately preceding the commencement of the changed duty. This subclause does not apply if the employee is required to perform duty to enable the nursing services of the health unit to be carried out in an emergency or when another employee is absent from duty.

**6.2 SHIFT WORK**

**6.2.1 Definitions**

In this Enterprise Agreement:

**6.2.1(a) Afternoon shift** means a complete rostered shift commencing not earlier than 12.00 noon and finishing after 6.00 p.m. on the day of the shift.

**6.2.1(b) Night shift** means a complete rostered shift worked between the hours of 6.00 p.m. and 7.30 a.m.

**6.2.2 Penalty rates**

All employees, with the exception of RN-4's and RN-5's, are to be paid the following penalty rates when working on shifts:

**6.2.2(a)** For all ordinary time worked on an afternoon shift Monday to Friday inclusive: 12.5%.

**6.2.2(b)** For all ordinary time worked on night shift Monday to Friday inclusive: 15%.

**6.2.2(c)** For all ordinary time worked between midnight Friday and midnight Saturday: 50%.

**6.2.2(d)** For all ordinary time worked between midnight Saturday and midnight Sunday: 75%.

**6.2.3** The additional payments specified above will not form part of an employee's ordinary pay for the purposes of this Enterprise Agreement. The rates in 6.2.2(c) and 6.2.2(d) are in substitution of and not cumulative upon the rates prescribed in 6.2.2(a) and 6.2.2(b).

**6.2.4 Daylight saving**

Despite anything contained elsewhere in this Enterprise Agreement, in any area where by reason of the *Daylight Saving Act, 1971*, South Australian Summer Time is prescribed as being in advance of South Australian Standard Time, the length of any shift:

**6.2.4(a)** commencing before the time prescribed by the said Act for the commencement of a South Australian Summer Time period; and

**6.2.4(b)** commencing on or before the time prescribed by the said Act for the termination of a South Australian Summer Time period:

will be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end thereof, the time of the clock in each case to be set to the time fixed pursuant to the said Act;

in this clause the expression South Australian Summer Time and South Australian Standard Time will bear the same meaning as are prescribed by the said Act.

**6.3 OVERTIME**

**6.3.1 Reasonable Overtime**

**6.3.1(a)** Subject to sub-clause 6.3.1(b), an employer may require an employee to work reasonable overtime at the overtime rates set out in sub-clause 6.3.2.

**6.3.1(b)** An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

- 6.3.1(b)(i)** any risk to employee health and safety;
- 6.3.1(b)(ii)** the employee's personal circumstances including any family responsibilities;
- 6.3.1(b)(iii)** the needs of the workplace or enterprise;
- 6.3.1(b)(iv)** the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
- 6.3.1(b)(v)** any other relevant matter.

**6.3.2** All employees, with the exception of RN-4's and RN-5's and Principal nurse educators, are paid at overtime rates for any authorised work in excess of the ordinary working hours of a full-time employee or rostered hours set out in clause 6.1 - Ordinary hours of work. The overtime rates are as follows:

- 6.3.2(a)** Monday to Saturday inclusive, is paid at the rate of 150% for the first three hours, and 200% thereafter until the completion of the overtime worked.
- 6.3.2(b)** Sunday, is paid at the rate of 200% for all time worked.
- 6.3.2(c)** Time-off equivalent to the additional hours worked may be granted in lieu of payment for overtime worked with the mutual agreement of the employer and employee.
- 6.3.2(d)** For all authorised time worked by part-time employees in excess of rostered hours but within ordinary hours of work, the employee will receive credit for those hours in the accumulation of pro rata entitlements under this Enterprise Agreement and be paid at the rate of ordinary time for all hours worked less than 38 per week.

### **6.3.3 Calculation of payments**

- 6.3.3(a)** The hourly rate to be used for such calculations defined in 5.3.1(a).
- 6.3.3(b)** Casual employees working overtime will continue to receive the 20% casual loading based on the hourly rate as prescribed in 6.3.3(a) above, so that:
  - 6.3.3(b)(i)** where time and a half is applicable the rate of pay will be 170% of the hourly rate;
  - 6.3.3(b)(ii)** where double time is applicable the rate of pay will be 220% of the hourly rate.
- 6.3.3(c)** In computing overtime payments, each days work will stand alone.

### **6.3.4 Recall to work**

- 6.3.4(a)** An employee who is recalled to work overtime after leaving the place of employment must be paid for a minimum of three hours work at the appropriate rate, provided that an employee is not be required to work the full three hours if the work is completed in a shorter period.
- 6.3.4(b)** Clause 6.3.4(a) does not apply when overtime is continuous (subject to a reasonable meal break) with completion or commencement of ordinary working time.

- 6.3.4(c)** An employee recalled to work without notice on the employees programmed day off must be paid overtime in accordance with this clause and is not entitled to substitute another day for the programmed day off.
- 6.3.4(d)** Where a full-time employee has been given prior notice (such notice to be given as soon as practicable) that the employee will be required to work on a programmed day off due to an emergency, the employee must be paid at ordinary time for that day and a substitute day off must be granted.
- 6.3.4(e)** Time worked in the circumstances of this sub clause is not regarded as overtime for the purpose of 6.3.6 when the actual time worked is less than the minimum of three hours on such recall or recalls.

### **6.3.5 Transport**

If an employee is required to work overtime and finishes work at a time when normal means of transport are not available, the employer must provide such employee with the cost of a conveyance to the employee's home. This will not apply where a conveyance is provided by the employer at employer cost.

### **6.3.6 Eight hour break**

- 6.3.6(a)** An employee (other than a casual employee) who works so much overtime between the termination of ordinary work one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least eight consecutive hours off duty between those times will, subject to this sub-clause, be released after completion of such overtime until the employee has eight consecutive hours off duty. There will be no loss of pay for ordinary time occurring during such absences.
- 6.3.6(b)** If on instructions of the employer such an employee resumes or continues to work without having eight consecutive hours off duty, the employee will be paid at appropriate overtime rates until so released and then be entitled to be absent until having had eight consecutive hours off duty without loss of pay occurring during such absence.

## **6.4 MEAL BREAKS**

- 6.4.1** By arrangement with the employees on each shift an unpaid meal break must be allowed of not less than 30 minutes but not more than 60 minutes, free of all duty. The meal break on the night shift must not exceed 30 minutes. Meal breaks are not regarded as working time.
- 6.4.2** When an employee is interrupted during a meal break by a call to duty, the extent of the interruption must be counted as time worked and the employee must be allowed to continue such meal break as soon as practicable. Should it be impracticable for the employee to complete such meal break during the remainder of the ordinary working hours, the employee must receive the appropriate overtime pay for the time so worked.
- 6.4.3** If an employee is not able to leave the premises during an unpaid meal break or is otherwise unable to take an unpaid meal break free of all duty, they will receive an allowance as follows:

Monday to Friday - \$6.35 per half hour of the meal break;

Saturdays, Sunday's and public holiday - \$8.27 per half hour of the break.

**6.4.4** There must be at least one tea break of not less than ten minutes per shift which will be counted as time worked.

## **6.5 CHARGES - EMPLOYER PROVIDED MEALS**

**6.5.1** Where the employer provides meals only to an employee the following charges will apply:

	<b>Rates</b>
Lunch and dinner	\$5.95 per main course \$1.05 for soup \$1.90 for sweets
Breakfast	\$4.50 per meal

## **6.6 HOURS OF WORK AND SHIFT PROVISIONS**

**6.6.1** The parties accept that critical requirements for effective service provision by the organisation are flexible work conditions and hours of work to meet its needs particularly considering resident care levels, funding for which is commensurate with the assessed level of resident care to be provided.

**6.6.2** The maximum daily ordinary hours may, by mutual agreement, be increased to 10 Total hours of each shift worked will not exceed 10 hours.

**6.6.3** Minimum Engagement / Shift Length will be three (3) hours.

## **7. TYPES OF LEAVE AND PUBLIC HOLIDAYS**

### **7.1 ANNUAL LEAVE**

#### **7.1.1 Entitlement to annual leave**

**7.1.1(a)** An employee (other than a casual employee) who is regularly rostered to work over seven days of the week (including Sundays and public holidays) is entitled to six weeks annual leave for each completed year of continuous service.

**7.1.1(b)** An employee who is regularly rostered to work on Saturdays and/or Sundays and Public Holidays but does not work on identified other days of the week shall be entitled to five (5) weeks annual leave for each year of service. However, an employee who requests a fixed day or days off each week shall only be entitled to four (4) weeks leave.

**7.1.1(c)** An employee who works only on the days between Monday and Friday inclusive shall be entitled to four (4) weeks annual leave for each year of service.

**7.1.1(d)** The entitlements prescribed in this sub clause will apply subject to the following provisions:

**7.1.1(d)(i)** Existing Roster as currently being applied will continue;

**7.1.1(d)(ii)** No variations to existing shifts will occur unless a vacancy becomes available;

**7.1.1(d)(iii)** The current practice of the employer regarding a Nurse working no more than six (6) straight days (shifts) will continue; and

**7.1.1(d)(iv)** The current practice of the employer of only rostering Nurses over six (6) days of the week with one identified day accepted as never to be worked, will continue.

**7.1.2** Annual Leave should be taken in the year accrued. Variations may only occur by mutual agreement between employer and employee where special circumstances exist.

**7.1.3** Leave is for refreshment purposes, therefore, will be taken in blocks of at least of two weeks duration unless there is mutual agreement between employer and employee and special circumstances exist.

**7.1.4** Payment must not be made or accepted in lieu of taking annual leave except in the case of termination of employment.

**7.1.5** Annual Leave Loading will be paid in one of the following manners:

**7.1.5(a)** On the occasion of Leave being taken; or

**7.1.5(b)** An annual payment paid at the end of a calendar year of service from the commencement of this Enterprise Agreement based on assessment of the loading entitlements pursuant to 7.1.10.

#### **7.1.6 Annual leave exclusive of public holidays**

The annual leave prescribed by this clause is exclusive of any public holiday prescribed in clause 7.6 - Public holidays. If any such holiday falls within an

employee's period of annual leave, the period of leave will be increased by one day for each public holiday, if:

- 7.1.6(a) the holiday is observed on a day which the employee would have normally been working; and
- 7.1.6(b) the employee commences work at the employee's ordinary starting time on the employee's working day immediately following the last day of the employee's annual leave, or provides proof of reasonable cause for absence on that day.

#### **7.1.7 Accrual of annual leave entitlement**

7.1.7(a) Employees entitled to six weeks annual leave accrue leave as follows for each completed year of continuous service:

- 7.1.7(a)(i) full-time employee - 228 hours per annum;
- 7.1.7(a)(ii) part-time employee - 228 x the average weekly ordinary hours worked for the previous twelve months divided by 38.

7.1.7(b) Employees entitled to four weeks annual leave accrue leave as follows:

- 7.1.7(b)(i) full-time employee - 152 hours per annum;
- 7.1.7(b)(ii) part-time employee - 152 x the average weekly ordinary hours worked for the previous twelve months divided by 38.

7.1.7(c) On termination of employment, after one month's continuous service, if the period of service is not exactly divisible into completed years, for each completed month of service:

- 7.1.7(c)(i) the seven day employee accrues nineteen hours annual leave;
- 7.1.7(c)(ii) all other employees accrue 12-2/3 hours annual leave;
- 7.1.7(c)(iii) a part-time employee accrues such annual leave on a pro rata basis.

#### **7.1.8 Time of taking annual leave**

7.1.8(a) Annual leave will be given, and taken, within three months of the due date.

7.1.8(b) By mutual agreement such leave may be deferred for a period not exceeding twelve months, less the period of the leave, from the day that such leave became due. However, the employer may approve deferment beyond such date.

7.1.8 (c) Leave allowed under the provisions of this clause will be given and taken in not more than two separate periods unless the employer and employee agree otherwise.

7.1.8(d) If an employer and an employee fail to agree on the time (or times) for taking annual leave or part thereof, the employer may require the employee to take annual leave in accordance with s236(6) of the Act and give the employee notice of the requirement to take leave at least two weeks before the period of annual leave is to begin.

**7.1.8(e)** If an employer determines the time for taking annual leave, the leave must be granted and must begin within twelve months after the entitlement to the leave accrues.

**7.1.8(f)** To assist employees in balancing their work and family commitments, an employee may elect, with the consent of the employer, to accrue and carry forward any amount of annual leave for a maximum of two years from the date the employee becomes entitled to the leave.

**7.1.8(g)** An employee may elect, with the consent of their employer, to take annual leave in single days, up to a maximum of 10 single days in any year.

### **7.1.9 Payment for annual leave**

**7.1.9(a)** Before going on annual leave an employee will be paid the amount of wages they would have received in respect of ordinary time worked had they not been on leave during that period.

**7.1.9(b)** The following payments, where applicable, will be included in determining the amounts payable for annual leave:

**7.1.9(b)(i)** The rate of pay provided by this Enterprise Agreement for the appropriate classification of the employee.

**7.1.9(b)(ii)** Nurse in charge allowance.

**7.1.9(b)(iii)** Other payments to which the employee is entitled in accordance with a contract of employment for ordinary hours of work other than:

special rates;

overtime;

reimbursement of expenses;

motor mileage.

### **7.1.10 Annual leave loading**

An employee is also entitled to payment of a loading as follows:

**7.1.10(a)** A loading of 17.5% computed on the normal rate of pay for the classification of the employee at the commencement of such leave; or the weekend and shift penalties the employee would have received had the employee not been on leave during the relevant period; whichever is the greater.

**7.1.10(b)** Annual leave loading payment is payable on leave accrued in accordance with 7.1.5.

**7.1.10(c)** An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

### **7.1.11 Illness on annual leave**

If an employee becomes ill during annual leave, their annual leave entitlement will be extended to offset the period of illness provided:

**7.1.11(a)** a medical certificate can be supplied; and

**7.1.11(b)** sick leave entitlements are available for the period of illness.

**7.1.12 Programmed day off**

No credit towards a programmed day off will accrue during an absence on annual leave for the first four weeks of leave taken from each years entitlement.

**7.1.13 Proportionate leave on termination**

**7.1.13(a)** On termination of employment payment in lieu of leave for untaken annual leave and pro rata leave will be made to the employee.

**7.1.13(b)** The monetary equivalent of annual leave and pro rata leave due to an employee at the time of the employee's death, may be paid to their legal or personal representative. Payment in terms of this sub-clause is subject to the provisions of the Administration and Probate Act of South Australia.

**7.2 Sick Leave and Carer's Leave**

The provisions of this clause apply to full-time and regular part-time employees (on a pro rata basis) but do not apply to casual employees. The entitlements of casual employees are set out in clause 4.2.

**7.2.1 Definitions**

**7.2.1(a)** The term **immediate family** includes spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the same or opposite sex to the employee who lives with the employee as his or her husband, wife or partner on a bona fide domestic basis;

**7.2.1(b)** child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

**7.2.2 Amount of paid sick leave**

**7.2.2(a)** Paid sick leave will be available to an employee, other than a casual employee, when they are absent:

- due to personal illness or injury; or
- for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires the employee's care due to an unexpected emergency.

**7.2.2(b)** an employee's entitlement to sick leave accrues as follows:-

- (i) for the first year of continuous service – at the rate of 1.46 hours for each completed 38 ordinary hours of work to a maximum of 76 hours, and
- (ii) for each later year of continuous service, at the beginning of each year a full time employee accrues 76 hours

- a part-time employee accrues pro rata hours in accordance with the following formula,  $76/38 \times$  average weekly ordinary hours over the previous 12 months

**7.2.2(c)** An employee's sick leave accumulates from year to year and any sick leave taken by the employee is deducted from the employee's sick leave credit.

### **7.2.3 Conditions for Payment of Sick Leave**

**7.2.3(a)** When an employee takes paid sick leave, the employer must pay the employee at the employee's ordinary rate of pay (not including payments in the nature of penalty rates, overtime, allowances or loadings) for the period of sick leave.

**7.2.3(b)** The employee at the request of the employer, provides a medical certificate or other reasonable evidence of sickness.

### **7.2.4 Personal leave for personal injury or sickness**

An employee is entitled to use the full amount of their sick leave entitlement including accrued leave for the purposes of personal illness or injury, subject to the conditions set out in this clause.

### **7.2.5 Carer's Leave**

**7.2.5(a)** Subject to 7.2.5(b) a full-time employee is entitled to use up to 10 days sick leave, including accrued leave each year to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency.

**7.2.5(b)** The entitlement in 7.2.5(a) is subject to the employee being responsible for the care and support of the person concerned. In normal circumstances an employee is not entitled to take leave for this purpose where another person has taken leave to care for the same person.

**7.2.5(c)** By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in 7.2.5(a) beyond the relevant limit set out in 7.2.5(a). In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

### **7.2.6 Employee must give notice**

**7.2.6(a)** The employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty and as far as practicable state:

- the nature of the injury, illness or emergency and the estimated duration of the absence.

If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of such absence.

**7.2.6(b)** When taking leave to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, the notice must include:

- Notice prior to the absence of the intention to take leave

- The name of the person requiring care and support and their relationship to the employee;
- The reasons for taking such leave; and
- The estimated length of absence.

### **7.2.7 Evidence supporting claim**

**7.2.7(a)** When taking leave for personal illness or injury, the employee must, if required by the employer, establish by production of a medical certificate from a registered medical practitioner or statutory declaration sworn by the employee, that the employee was unable to work because of injury or personal illness.

**7.2.7(b)** however, unless required by the employer, up to three days of personal leave absence may be allowed without the production of a medical certificate from a registered medical practitioner, or other reasonable evidence;

**7.2.7(c)** When taking leave to care for members of their immediate family or household who require care and support, the employee must, if required by the employer, establish by production of a medical certificate from a registered medical practitioner or statutory declaration sworn by the employee, the illness of the person concerned and that such illness requires care by the employee.

**7.2.7(e)** When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

### **7.2.8 Unpaid carer's leave**

Where an employee, including a casual employee, has exhausted all paid Carer's leave entitlements, they are entitled to take unpaid Carer's leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) of unpaid leave per occasion, provided the requirements of 7.2.5(a) and 7.2.5(b) are met.

## **7.3 COMPASSIONATE LEAVE**

### **7.3.1 Paid Compassionate leave entitlement**

The provisions of this clause apply to full-time and regular part-time employees (on a pro-rata basis).

An employee is entitled to a period of 2 days paid compassionate leave for each occasion when a member of the employee's immediate family or household:

- contracts or develops a personal illness that poses a serious threat to his or her life; or
- sustains a personal injury that poses a serious threat to his or her life; or
- dies.

Evidence that is reasonably required of the illness, injury or death must be given by the employee to the employer if so requested.

Compassionate leave is able to be taken as follows:

- a single unbroken period of 2 days; or
- 2 separate periods of 1 day each; or
- any separate periods to which the employee and his or her employer agree.

An employee is entitled to take compassionate leave at any time while the illness or injury persists.

The employer must pay the employee the amount the employee the ordinary base rate of pay in respect of leave taken during that period.

### **7.3.2 Unpaid Compassionate leave entitlement**

An employee may take unpaid compassionate leave by agreement with the employer.

## **7.4 OTHER LEAVE**

Managers may authorise any reasonable request for paid or unpaid leave subject to being satisfied that any request is legitimate prior to granting approval and any potential impact on the activities of the employer.

## **7.5 PARENTAL LEAVE**

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

The provisions of this clause apply to full-time, part-time and eligible casual employees, but do not apply to other casual employees.

An **eligible casual employee** means a casual employee:

- (a) employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and
- (b) who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.

For the purposes of this clause, **continuous service** is work for an employer on a regular and systematic basis (including any period of authorised leave or absence).

### **7.5.1 Definitions**

**7.5.1(a) Adoption** includes the placement of a child with a person in anticipation of, or for the purposes of adoption.

**7.5.1(b)** For the purpose of this clause **child** means a child of the employee under school age except for adoption of a child where 'child' means a person under school age who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

**7.5.1(c)** For the purposes of this clause, **spouse** includes a de facto spouse but does not include a former spouse.

### **7.5.2 Basic entitlement**

**7.5.2(a)** After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.

**7.5.2(b)** Subject to 7.5.2(b)(i) and 7.5.2(b)(ii), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

**7.5.2(b)(i)** for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;

**7.5.2(b)(ii)** for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

### **7.5.3 Variation of period of parental leave**

Unless agreed otherwise between the employer and employee, where an employee takes leave under 7.5.2(a) and 7.5.2(b) an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified as soon as possible but no less than four weeks prior to the commencement of the changed arrangements. Nothing in this clause shall detract from any entitlements set out in clause 7.5.2 and 7.5.4.

### **7.5.4 Right to request**

An employee entitled to parental leave pursuant to the provisions of 7.5.2 may request the employer to allow the employee:

**7.5.4(a)** to extend the period of simultaneous unpaid parental leave provided for in 7.5.2(b)(i) and 7.5.2(ii) up to a maximum of eight weeks;

**7.5.4(b)** to extend the period of unpaid parental leave provided for in 7.5.2 by a further continuous period of leave not exceeding 12 months;

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

**7.5.4(d)** to assist the employee in reconciling work and parental responsibilities.

The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

#### **7.5.5 Employee's request and employer's decision to be in writing**

The employee's request and the employer's decision made under 7.5.4 must be recorded in writing.

#### **7.5.6 Request to return to work part-time**

Where an employee wishes to make a request under 7.5.4(c), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

#### **7.5.7 Maternity leave**

**7.5.7(a)** An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

**7.5.7(a)(i)** of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least 10 weeks;

**7.5.7(a)(ii)** of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least four weeks.

**7.5.7(b)** When the employee gives notice under 7.5.7(a) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

**7.5.7(c)** An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.

**7.5.7(d)** Subject to 7.5.2(a) and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

**7.5.7(e)** Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

#### **7.5.8 Special maternity leave**

**7.5.8(a)** Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.

**7.5.8(b)** Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, special maternity leave.

**7.5.8(c)** Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid personal leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.

**7.5.8(d)** Where leave is granted, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

### **7.5.9 Paternity leave**

**7.5.9(a)** An employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave, with:

**7.5.9(a)(i)** a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and

**7.5.9(a)(ii)** written notification of the dates on which he proposes to start and finish the period of paternity leave; and

**7.5.9(a)(iii)** except in relation to leave taken simultaneously with the child's mother under 7.5.2(b) a statutory declaration stating:

that he will take the period of paternity leave to become the primary care-giver of a child; particulars of any period of maternity leave sought or taken by his spouse; and that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

**7.5.9(b)** The employee will not be in breach of 7.5.9(a) if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

### **7.5.10 Adoption leave**

**7.5.10(a)** The employee will notify the employer at least 10 weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

**7.5.10(b)** Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:

**7.5.10(a)(i)** the employee is seeking adoption leave to become the primary care-giver of the child;

**7.5.10(a)(ii)** particulars of any period of adoption leave sought or taken by the employee's spouse; and

**7.5.10(a)(iii)** that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

**7.5.10(b)** An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

**7.5.10(c)** Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

**7.5.10(d)** An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

**7.5.10(e)** An employee 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 employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

#### **7.5.11 Parental leave and other entitlements**

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks or a longer period as agreed under 7.5.4.

#### **7.5.12 Transfer to a safe job**

**7.5.12(a)** Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

**7.5.12(b)** If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

#### **7.5.13 Returning to work after a period of parental leave**

**7.5.13(a)** An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

**7.5.13(b)** An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to 7.5.12, the employee will be entitled to return to the position they held immediately before such transfer.

**7.5.13(c)** Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

**7.5.14 Replacement employees**

**7.5.14(a)** A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

**7.5.14(b)** Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

**7.5.15 Communication during parental leave**

**7.5.15(a)** Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

**7.5.15(a)(i)** make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

**7.5.15(a)(ii)** provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

**7.5.15(b)** The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

**7.5.15(c)** The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with this clause.

**7.5.16 Employer's responsibility to inform**

On becoming aware that:

- an employee is pregnant; or
- an employee's spouse is pregnant; or
- an employee is adopting a child

An employer must inform the employee of:

- the employee's entitlements under this clause; and
- the employee's responsibility to provide various notices under this clause.

### **7.5.17 Paid Maternity Leave**

**7.5.17(a)** An employee who is not a casual employee and who has completed 12 months continuous service prior to the expected date of birth is eligible to apply for 8 weeks paid maternity leave.

**7.5.17(b)** An employee who is not a casual employee and who has completed 12 months continuous service before the date of taking custody of an adopted child is eligible to apply for 8 weeks paid adoption leave.

**7.5.17(c)** Paid maternity leave and paid adoption leave is granted to an employee on the following conditions:-

- Leave must be taken in a single unbroken period;
- Unless additional leave is sought and granted, a combination of paid and unpaid leave must not exceed 52 weeks;
- For paid adoption leave purposes, paid adoption leave is only available to the primary care giver and from the date the primary care giver takes custody of the child;
- It is to be paid at an employee's base rate of pay (ie no shift or public holiday penalties or allowances); and
- It is not to be extended by public holidays, programmed days off or any other leave falling within the period of leave.

**7.5.17(d)** Part-time employees are entitled to the same provisions as full time employees on a pro-rata basis according to contracted hours.

**7.5.17(e)** During periods of paid or unpaid maternity leave personal (sick) leave with pay is not to be granted for a normal period of absence for confinement. However, any illness arising from the incidence of the pregnancy may be covered by personal/carer's leave to the extent available, subject to the usual provisions relating to production of a medical certificate and the medical certificate indicates that the illness had arisen from the pregnancy.

## **7.6 PUBLIC HOLIDAYS**

**7.6.1** Prescribed public holidays in this Enterprise Agreement are as follows:

New Year's Day;

Australia Day;

Good Friday;

the day after Good Friday;

Easter Monday;

Anzac Day;

Adelaide Cup Day;

Queen's Birthday;

Labour Day;

Christmas Day;

Proclamation Day,

and any other day which by proclamation or Act of Parliament may be declared a public holiday or any other day which may be substituted for any such day.

## **7.6.2 Payment and entitlements**

**7.6.2(a)** Employees (other than casual employees) must be allowed the public holidays prescribed in 7.6.1 without loss of pay.

**7.6.2(b)** Employees (other than casual employees) who would normally work on the day of the public holiday and are not required to work on such day will be paid at ordinary rates of pay as if they had worked their normal number of hours on that day.

**7.6.2(c)** Employees (other than casual employees) must be paid an additional 150% of the appropriate rate based on the ordinary hourly rate as defined, for actual hours worked, on the public holidays as prescribed in 7.6.1.

### **7.6.2(d) Casual employees**

**7.6.2(d)(i)** Ordinary time worked on any public holiday will be paid at the rate of 170% (inclusive of the 20% prescribed in 4.2.1 of the ordinary hourly rate.

**7.6.2(d)(ii)** All time worked on any public holiday in excess of the ordinary daily hours as prescribed in clauses 6.1 - Ordinary hours will be paid at the rate of 270% of the ordinary hourly rate (inclusive of the 20% prescribed in 4.2.1).

**7.6.2(e)** Payment for work performed by full-time or part-time employees on 25 December when Christmas Day falls on a Saturday or Sunday

**7.6.2(e)(i)** This clause applies when Christmas Day falls on a Saturday or Sunday and a substitute public holiday has been proclaimed.

**7.6.2(e)(ii)** An employee who works on 25 December shall be paid an additional 100% of the ordinary rate for the actual hours worked on that date. This payment is in substitution of other penalties that would usually apply to Saturday work.

**7.6.2(e)(iii)** The provisions of clause 7.6.2 - Payment and entitlements - will apply in relation to the substitute public holiday.

**7.6.2(e)(iv)** An employee who is rostered to work on both 25 December and the substitute public holiday shall be paid in accordance with sub-clause (ii) and (iii) of this clause provided that such an employee may elect to be paid at ordinary time rates for work on that substitute public holiday and take an additional day off work at a time convenient to the employer.

**7.6.2(e)(v)** An employer and the majority of their affected employees may agree to pay the higher penalty payment, (ie 150%) for work performed on 25 December and the lower penalty rate (ie 100%) for work performed on the substitute public holiday on the substitute public holiday.

**7.6.2(e)(vi)** Absence on day before/after

If an employee is absent from employment on any part of the day before or after a public holiday without reasonable cause or the

prior consent of the employer, the employee will not be entitled to payment for such holiday.

**7.6.3 Seven day shift workers**

If a public holiday falls between Monday and Friday inclusive:

**7.6.3(a)** Full-time seven day week shift workers, who do not work on any such day because it is their rostered day off, must receive an extra 7 hours and 36 minutes pay in respect of such day.

**7.6.3(b)** Part-time seven day week workers, who do not work on any such day because it is their rostered day off, must receive an extra days pay, that day being calculated by the number of hours that they would have been rostered for work but this will not exceed 7 hours and 36 minutes pay.

**7.6.4 Payment for night shifts**

When a night shift commences on one day and concludes on the next day, the public holiday shift will be regarded as being the shift on which more than half of the total rostered shift hours falls on the public holiday, for example:

**7.6.4(a)** If a rostered shift commences at 10.00 p.m., on a public holiday, that shift is not regarded as a public holiday shift.

**7.6.4(b)** If a rostered shift commences at 10.00 p.m. on the day before the public holiday and finishes at 6.00 a.m. on the public holiday such shift is regarded as the public holiday shift.

In the case noted in 7.6.4(b), a night shift worker would be entitled to a public holiday payment under the provisions of 7.6.2.

## 8. SAFETY, STAFFING AND DEVELOPMENT

### 8.1 OCCUPATIONAL HEALTH & SAFETY

#### 8.1.1 No Lift – No Injury

##### 8.1.1(a) Policy

As part of its commitment to the health and safety of staff, the employer will ensure that lifting tasks are eliminated where possible. The aim is to minimise the need for lifting by employing alternative methods of moving and lifting residents. All employees of the employer are expected to comply with the No Lift No Injury policy.

##### 8.1.1(b) Implementation will be subject to:

**8.1.1(b)(i)** Site OH&S Committees will conduct regular audits of equipment to check suitability, at least once (1) per year.

**8.1.1(b)(ii)** Subject to the outcome of audits as per above, site budgets will allocate funds for new and replacement equipment on a priority needs basis.

**8.1.1(b)(iii)** OH&S Committees will also conduct regular audits of incident and injury records to identify any issues relating to lifting that require attention.

**8.1.1(b)(iv)** Employees are required to work in conformity with the policy in order to meet their duty of care obligations to not place themselves or others at risk of injury.

#### 8.1.2 Fair Treatment Policy

**8.1.2(a)** In addition to the above strategy the parties to this Enterprise Agreement will adopt principles to respond to concerns covering inappropriate behaviour, in accordance with established policy and procedures:

**Fair Treatment Policies and Procedure** - policies and procedures equivalent to those outlined in **Appendix 3**.

### 8.2 SAFE STAFFING LEVELS & SKILL MIX

**8.2.1** Staffing levels and skills mix should be driven primarily by the need to achieve optimal health and quality of life outcomes for, and meet the needs of, people requiring or in receipt of aged care services.

**8.2.2** In determining staffing levels and skills mix, the following variables need to be taken into consideration:

- the resident or client profile and their nursing/health care needs;
- palliative;
- the complexity of care required, including factors such as: frailty or dementia;

- the location of the facility or service, whether metropolitan rural or remote; and
- the nature of the care provided, whether short or long term, rehabilitative or the type and design of the facility or the focus of the service.

**8.2.3** The level of staffing and the skills mix of staff must enable the employer and staff to meet their duty of care responsibilities in providing quality care to people requiring or in receipt of aged care services, especially special needs groups such as those requiring dementia care, palliative care or complex nursing care.

**8.2.4** The level of staffing and the skills mix of staff must also enable the employer to meet its responsibilities under occupational health and safety legislation and must aim for the promotion of a safe and healthy workplace.

**8.2.5** To meet optimal health and quality of life outcomes at an individual and service level, the employer will establish a process for determining staffing levels and skills mix, which provides flexibility at the local level to respond in a timely manner to changes in the care needs of residents in the facilities and clients in the community; and which also takes into consideration work and life balance for staff and gives priority to permanent employment.

**8.2.6** The level of staffing and the skills mix of staff should be regularly reviewed and adjusted at the local level with staff allocated/rostered according to the resident or client profile and any other changing service variable. Consultation with staff and their chosen representative, which may be the Union must occur when changes to the level of staffing and the skills mix of staff have an impact on staff working conditions or to their work and family balance.

**8.2.7** The employer will ensure that all staff have the necessary skills for them to be able to perform the role required of them or facilitate access to suitable training for the acquisition of such skills. All staff should have, or undertake, a basic qualification or equivalent experience for entry to work in the sector and be provided with opportunities for further education and professional development. This is an essential component of continuous quality improvement and the provision of quality care.

### **8.3 STAFF DEVELOPMENT**

**8.3.1** The employer recognises that training/education is essential for the maintenance and development of nursing practice in the care of the elderly. The objectives of staff development are to enhance the skills of the nurse so they may perform at optimum levels and meet best practice objectives. The employer will continue to provide and support training/education opportunities to ensure nurses are able to deliver appropriate resident care and to perform other related duties in accordance with relevant standards.

**8.3.2** The responsibility for staff development is shared between nurses and their employers. Nurses are expected to participate in professional skill development to ensure that they perform at a standard consistent with nursing competencies relevant to their classification and registration.

- 8.3.3** On the basis of assessed needs, a range of programs/topics relevant to resident lifestyle and nursing care delivery will be provided by the employer and nurses are encouraged to attend.
- 8.3.4** The provision of mandatory training and skills updates as per state and federal legislation is the responsibility of the employer. Attendance at mandatory training and skills update sessions provided by the employer is the responsibility of the nurse for a minimum of eight (8) hours per year regardless of employment status.
- 8.3.5** Mandatory training will be paid at the appropriate rate as per the applicable shift rate for those on duty and at the ordinary rate of pay for those attending in their own time.
- 8.3.6** Further staff development can be achieved through a formal course of study at a recognised institution, or developmental activities such as management and executive programs, conferences and seminars etc. Individual nurses are expected to show initiative in seeking developmental opportunities.
- 8.3.7** Full time RNs and ENs will be able to seek approval for two (2) days paid leave per financial year to complete Education / Development relevant to the nature of their role and activities of the employer.
- 8.3.8** Part time RNs and ENs working an average of greater than twenty (20) hours per week will be able to seek approval of leave pro rata, paid to complete Education / Development relevant to the nature of their role and activities of the employer.
- 8.3.9** Professional Education leave is non-cumulative.
- 8.3.10** Managers may approve leave and expenses or leave without pay, to attend organised seminars, courses or conferences. The application for leave or study assistance and the consideration for approval will be in accordance with the employer's 'Training and Staff Development Policy'.
- 8.3.11** The employer's Training/educational goals for nursing will be established and reviewed in consultation with nurses. Individual training/educational goals and needs will be established and reviewed as part of the employer's performance and competency appraisal system.

**9. SIGNATORIES**

SIGNED ON BEHALF OF THE EMPLOYER

Signature..... 

Date..... 4-8-10.....

Name in Full..... JUSTIN LYNCH.....

Position..... CEO, City of Holdfast Bay.....

Address..... 24 JETTY RD BRIGHTON.....

Witness..... 

Witness Name in Full  
..... Carola Bregenzer.....

SIGNED ON BEHALF OF THE AUSTRALIAN NURSING FEDERATION

Signature..... 

Date..... 18/8/10.....

Name in Full..... Elizabeth Dabars  
Secretary, ANMF (SA Branch).....

Position..... Australian Nursing & Midwifery Federation - SA  
191 Torrens Road  
RIDLEYTON SA 5008

Address.....

Witness..... 

Witness Name in full..... ROBERT ANDREACCHIO.....

## Appendix 1 - Aged Care Framework Classification

<b>Alwyndor Aged Care Enterprise Agreement 2010</b>				
<b><u>NURSES WAGES SCHEDULE</u></b>				
-	<b>FFPP on or after</b>			
<b>CLASSIFICATION</b>	31-Mar-10	01-Apr-10	01-Apr-11	01-Jul-12
		5%	4%	3.25%
<b>EN Certificate Plus 1% for Diploma</b>				
EN/1	38,664	40,597	42,221	43,593
EN/2	39,496	41,471	43,130	44,531
EN/3	40,324	42,340	44,034	45,465
EN/4	41,162	43,220	44,949	46,410
EN/5	41,995	44,095	45,859	47,349
EN/6	42,345	44,462	46,241	47,744
EN/7	42,695	44,830	46,623	48,138
<b>EN Diploma Plus 1% additional Post Graduate qualifications**</b>				
END/1	39,051	41,004	42,644	44,030
END/2	39,891	41,886	43,561	44,977
END/3	40,727	42,763	44,474	45,919
END/4	41,574	43,653	45,399	46,874
END/5	42,415	44,536	46,317	47,822
END/6	42,768	44,906	46,703	48,220
END/7	43,118	45,274	47,085	48,615
<b>RN Level 1 Plus 1% additional Post Graduate qualifications**</b>				
RN 1/1	42,412	44,533	46,314	47,819
RN 1/2	44,454	46,677	48,544	50,121
RN 1/3	46,567	48,895	50,851	52,504
RN 1/4	48,661	51,094	53,138	54,865
RN 1/5	50,744	53,281	55,412	57,213
RN 1/6	52,830	55,472	57,690	59,565
RN 1/7	54,912	57,658	59,964	61,913
RN 1/8	56,994	59,844	62,237	64,260
RN 1/9	59,086	62,040	64,522	66,619

RN Level 2 Plus 1% additional Post Graduate qualifications**				
RN 2/1	59,086	62,040	64,522	66,619
RN 2/2	60,465	63,488	66,028	68,174
RN 2/3	61,852	64,945	67,542	69,738
RN 2/4	63,243	66,405	69,061	71,306
RN Level 3 Plus 1% additional Post Graduate qualifications**				
RN 3/1	65,843	69,135	71,901	74,237
RN 3/2	67,406	70,776	73,607	76,000
RN Level 4 Plus 1% additional Post Graduate qualifications**				
RN 4/1	68,970	72,419	75,315	77,763
RN 4/2	70,533	74,060	77,022	79,525

**Please Note:** Pay rates as calculated above do not include the 1% for relevant qualifications or additional qualifications as stipulated in this Enterprise agreement. If these are attained and recognised, the 1% will be added to the base rate in the applicable year and that new base rate inclusive of the 1% becomes the basis for future additional wage increases eg END/3, on 31/03/2010 \$40727 plus 1% for recognised qualification (as outlined) \$41,134, plus 4% as of 1/07/2010 = \$42,780 ; plus 4% as of 1/07/2011 = \$44,491; plus 4% as of 1/07/2012

**Conditions**

- (i) The additional qualification must be in addition to the basic qualification/s required for an employee’s position and must be directly relevant\* (as determined by the employer) to the employee’s current practice, position or role. A qualification allowance cannot be claimed in respect of an employee’s base qualification leading to registration or enrolment;
- (ii) only one allowance is payable. Where more than one additional, relevant\* qualification (as determined by the employer) is held by an employee, only the higher or highest qualification allowance applicable will be paid;
- (iii) the allowance is available on a pro rata basis for part time employees;
- (iv) the allowance is payable on a fortnightly basis;
- (v) the allowance is payable during paid leave.
- (vi) an employee claiming entitlement to a qualification allowance must provide the employer with written evidence of having satisfactorily completed the requirements for the qualification for which the entitlement is claimed.

- \* For the purpose of this Clause, “directly relevant” means that the additional qualification is applicable to an employee’s current area of practice. In considering whether the qualification is relevant, the nature of the qualification together with the current area of practice, the classification and the position description of the qualification holder are the main criteria.

**\*\* Post Graduate diploma recognized for Registered Nurses Level 1, 2 or 3 to qualify for the additional 1% increase is Post Graduate Diploma in Mental Health, Post Graduate Diploma in Palliative Care or Post Graduate Diploma in Gerontics as outlined in clause 5.5.1**

## **Appendix 2 – Career Structure**

### **1. Enrolled Nurse Classification Range (Additional Pay Point 7)**

#### **1.1 Implementation Date**

- Appointments to the new Pay Point 7 are effective from their first full pay period after their anniversary date from 1<sup>st</sup> April 2010

#### **1.2 Progression**

- Progression to the new Pay Point 7 is in accordance with Clause 5.1.1 (f) and 5.1.1 (g).

**Appendix 3 - HRP06**

**Equal Opportunity Policy / Fair Treatment Policy**

Responsible Department	Social and Organisation
Proposed Adoption	2007
Proposed Review Date	2009
Related Procedure	Equal Opportunity/Fair Treatment Procedure: HRP06 PR01 Equal Opportunity Committee Terms of Reference:

**Policy Statement**

The employer is committed to the establishment and maintenance of a non-discriminatory work environment, free of discrimination on the basis of sex, marital status, age, physical or mental impairment, pregnancy, race, colour, national origin, religion, political conviction or sexual preference.

The employer will provide equal opportunity in all aspects of employment including recruitment, remuneration, conditions of employment, development, promotion and separation. This means that recruitment, remuneration, development and promotion decisions will be made on the basis of a staff member's merit and/or potential with reference to the job requirements.

People are our most important resource; their skills and potential should be realised, developed and utilised to the best advantage.

The employer will be seeking to call for EO Contact Officers in the workplace. Once this is formed, the EO Chairperson (usually this is the Manager Human Resources) will be seeking to bring together the current policies and procedures for EO, Sexual Harassment, Harassment, Discrimination, Bullying and Staff Conduct under one policy and procedure namely a "Fair Treatment Policy".

**Principles**

The employer is responsible for ensuring that employees are aware of their rights and obligations as outlined in this policy. The employer will raise awareness of appropriate equal opportunity practices to ensure that all staff are treated without discrimination and in a fair and equitable manner.

The principle of individual merit will be the only basis for making decisions that affect the human resource management of staff, recruitment practices and the selection of individuals for promotion.

All employees are expected to uphold equal opportunity principles.

**Definitions**

***Fair Treatment / Equal Opportunity:***

Fair treatment means people are given a "fair go" when they are at work, and when they are looking for work. This is referred as equal opportunity.

Fair treatment means:

- treating people as individuals with different skills and abilities, without making judgments based on stereotypes, or on characteristics (such as sex, age, race, sexuality, disability, pregnancy or marital status) that are irrelevant to a person's capacity to do the job.
- ensuring a work environment that allows all employees to work to their full potential, and that is free from all forms of discrimination and harassment, including sexual harassment.
- making sure work decisions are based on the merit principle. That is, the applicant who best meets the needs of the job is the one selected, and the worker who best meets the needs of the job is the one retained.

***Direct and Indirect Discrimination:***

Unlawful discrimination means treating someone differently and less favourably because of one of the grounds spelled out in law. In South Australia, these grounds are: sex, sexuality, marital status, pregnancy, race, disability or age.

Discrimination need not be DIRECT, or open. It can also be INDIRECT.

**HRP06 Equal Opportunity Policy / Fair Treatment Policy (Cont'd)**

**Definitions (continued)**

Indirect discrimination happens when there is a requirement that at first sight seems to treat everyone equally, but which in fact has an unfavourable effect on a certain group of people.

***Sexual Harassment:***

Sexual harassment covers unwelcome behaviours of a sexual nature which cause a person to feel intimidated, humiliated or offended and that it's reasonable for them to feel that way. With sexual harassment, what is important is how the behaviour was perceived, not necessarily how it was intended. These are some of the forms that sexual harassment can take:

- Unwelcome touching or kissing in a sexual way;
- Repeated comments or jokes, leering or staring, that are sexually suggestive;
- Sexually explicit pictures, objects or reading matter;
- Direct or implied sexual propositions, or unwelcome requests for dates;
  
- Intrusive questions about sexual activity;
- Abusing a position of power to try to obtain sexual favours.

All categories of employees are covered by this policy including full/part time, contract, casual, unpaid, agent and voluntary.

***What is not sexual harassment:***

Sexual harassment should not be confused with sexual attraction. It has nothing to do with mutual attraction or friendship. Humour, friendship and relationships based on mutual consent are not sexual harassment.

***Workplace Bullying:***

*Workplace bullying* usually refers to the persistent ill treatment of an individual at work by one or more other persons that causes risk to the health, safety and welfare of our employees. If an employee is intimidated, put down or humiliated (sometimes in front of others) on a regular basis, this may constitute workplace bullying. It need not involve physical ill treatment, such as punching and kicking. Most cases of bullying involve such treatment as verbal abuse, 'nit-picking', threats, sarcasm, ostracism, or sabotage of a person's work.

It is important to separate a manager's or employer's genuine right to oversee and monitor work from abuse or bullying. All employers have a right to direct and monitor how work is done, and managers have a responsibility to monitor workflow and comment on performance.

***Discrimination:***

The *Equal Opportunity Act 1984* (South Australia) makes unlawful discrimination on the grounds of:

- **Age** - (People of all ages)
- **Sex** - (Whether a person is female or male)
- **Race** - (This includes colour, descent, ethnic origin or nationality. It also applies if you are treated unfairly because of the race of the people you live with or associated with.)
- **Religion** - (Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.)

- **Physical Disability** - (This includes the total or partial loss of any function of the body, or the loss of a limb, or the malfunctioning of a part of a persons body, or any malformation or disfigurement – whether temporary or permanent. Thus, a wide range of disabilities is covered, such as blindness, deafness, epilepsy, AIDS, amputation, diabetes, asthma, heart conditions, paraplegia, skin conditions, cerebral palsy and so on.)
- **Intellectual Impairment** - (This includes permanent or temporary loss of imperfect development of mental faculties, resulting in reduced intellectual capacity. However, it excludes mental illness, which may be covered by Federal law but is not covered by the *SA Equal Opportunity Act*.)
- **Sexuality** – (This refers to whether a person is heterosexual, homosexual, bisexual or transgender.)
- **Marital Status** - (This refers to whether a person is single, married, divorced, separated, widowed, or living in a defacto relationship with a person of the opposite sex.)
- **Pregnancy** - (This includes whether a woman is pregnant, is suspected of being pregnant, or is expected to become pregnant in the future.)
- **Political belief, activity and affiliation** – (This refers to persons holding or not holding a lawful political belief or view, or engaging in, not engaging in or refusing to engage in a lawful political activity.)

#### **Victimisation:**

Victimisation means treating someone unfairly because they have acted on the rights given them by equal opportunity law, or because they have supported someone else who acted upon those rights—for instance, if your job is threatened because you have made a complaint to the Equal Opportunity Commissioner. Victimisation is unlawful, and may attract severe financial penalties.

#### **Purpose**

The intent of this policy is to ensure understanding and compliance with the *Equal Opportunity Act 1984* and the *Disability Discrimination Act 1992*, in relation to matters affecting employment by:-

- Maintaining an equal opportunity culture;
- Providing a process for resolving complaints of discrimination;
- Defining what behaviours constitute sexual harassment in the workplace;
- Providing a process for staff to take in dealing with grievances related to equal opportunity, disability discrimination, harassment and sexual harassment;
- Providing a process for responsible officers to follow in investigating and resolving complaints.

Compliance with this Policy will ensure a workplace free of discrimination that is more productive, increases job satisfaction and provides better services to the community.

#### **Reference**

*Equal Opportunity Act 1984*

*Disability Discrimination Act 1992*

*Fair Work Act 1994*

*Whistleblowers Protection Act 1993*

*Age Discrimination Act 2004*

*Sex Discrimination Act 1984*

## HRP06-PR01 Equal Opportunity Procedure/Fair Treatment Procedure

Responsible Department	Social and Organisation
Proposed Adoption	2007
Proposed Review Date	2009
Related Policy	Equal Opportunity/Fair Treatment Policy: HRP06

### Background

The employer is committed not only to creating and maintaining an environment that is free of discrimination but also to the principle of Equal Opportunity for employees and customers.

The Manager Human Resources will be looking at producing a combined policy titled "Fair Treatment Policy" in the future which will encompass Equal Opportunity, Sexual Harassment, Harassment and Bullying policies and procedures. This will also require staff elected Contact Officers, who will be trained in this area. When the new policy and procedure is developed, it will require re-training for all staff.

### Scope

All employees are expected to uphold equal opportunity principles. However, specific responsibility rests with General Managers/Executive Manager/Managers/Supervisors and Team Leaders to prevent wherever possible discrimination and promote equal opportunity in the workplace.

### Process

In accordance with the *Equal Opportunity Act 1984* and the *Disability Act 1992*, it is unlawful for anyone to be treated unfairly on the grounds of: (See HRP06 – *Equal Opportunity Policy / Fair Treatment Policy* for definitions)

- Age
- Disability
- Marital status
- Physical and intellectual impairment
- Pregnancy
- Political belief, activity and affiliation
- Race
- Religion
- Sex
- Sexuality

Discrimination and harassment are illegal, unwelcome and inappropriate. This behaviour, or any other form of behaviour that can lead to victimisation, will not be tolerated and will be dealt with under the Verbal Warning and Discipline Procedure (HRP02-PR01).

### Rights and Responsibilities

The *Equal Opportunity Act 1984* and *Disability Discrimination Act 1992* give rights and responsibilities to employees, employers and clients.

- Employees have the right to work in an environment free of discrimination, harassment and bullying
- Employees have the responsibility not to discriminate against, harass or bully other employees or clients
- Managers and Supervisors have specific responsibility to prevent discrimination, harassment and bullying and promote Equal Opportunity within the workplace

### Action an Employee can take

If an employee believes they have been treated unfairly (as defined in this policy), been discriminated against or require further information, they should seek advice from the Manager Human Resources or their General Manager/Executive Manager, Supervisor, EO Contact Officer or Union Representative. The Contact Officers are responsible for listening to the employee's grievance and advising options available to the employee. Any allegations need to be substantiated and cannot be deemed frivolous or vexatious.

HRP06-PR01 Equal Opportunity Procedure/Fair Treatment Procedure (Cont'd)

**Informal Action (Verbal)**

Where an employee feels they have experienced unfair treatment from another individual, the employee(s) can speak with a Contact Officer or the EO Chairperson about the matter. It is the responsibility of the Contact Officers and EO Chairperson to offer the choices available to employees under this policy ie that is that they can speak with the individual about the behaviour that is making them feel uncomfortable and that they wish for it to stop. The employee(s) should also be advised that should the behaviour continue the complaint will escalate or if the employee does not want to speak with the individual about their behaviour or take it any further, the Contact Officers or EO Chairperson can speak to the employee on different techniques to combat the other persons behaviour. This is the most informal approach which is encouraged before proceeding to a formal action.

Often bringing the other persons inappropriate behaviour to their attention is enough to make the behaviour stop. Should the individual feel that they are unable to meet with the other party to bring the issue to their attention, the individual can have a Contact Officer present as a support person and a meeting can be facilitated between all parties involved. The Facilitator can be either the EO Chairperson, the individual Manager or General Manager/Executive Manager to bring the issue to their attention and work to an appropriate resolution.

**Formal Action (Written)**

Written formal action should never be considered without going through the informal action first. Written formal action is serious and often the process involved can be difficult for all parties involved as it requires full investigation by the EO Chairperson and/or the General Manager/Executive Manager. It is a permanent record and can lead to formal disciplinary action and/or dismissal from Council in severe or serious and wilful misconduct cases. All allegations will need to be substantiated and cannot be deemed frivolous or vexatious. This is determined by the individual who is investigating the allegation ie EO Chairperson or General Manager.

All parties involved in the allegations including any witnesses will be interviewed as part of the investigation process. Once all the witnesses and the employee have been interviewed and a preliminary view is sought (without prejudice) the EO Chairperson or General Manager will then present the information collected to the individual being accused of the allegations so that the employee has an opportunity to respond to the allegations. This will be done verbally via a meeting initially and then in writing to the employee (with 1 or 2 working days after the meeting). The employee will then need to respond to the written allegations and this will then be presented to the employee who lodged the allegation for their comment.

The individual who lodged to complaint and the employee who was accused of the complaint will then be required to meet with the investigating person facilitating a meeting between the parties to reach a desired outcome. That outcome may be by way of the dismissal of the allegation, an apology, stop the inappropriate behaviour, undertake further training, in extreme circumstances a different location may need to be considered for either employee however, no change will be made to the location of the non-offending employee without their agreement. In situations of serious and/or wilful misconduct the disciplinary procedure will need to be followed.

In the event of complaints received any investigations that may need to take place to substantiate the complaint will occur confidentially and may involve relevant staff concerned. At all times, the principles of fairness and natural justice must be maintained. The investigating officer can be either the Manager Human Resources or the relevant Manager/General Manager/Executive Manager.

All documentation will be kept on the relevant parties' personnel files.

Where a claim is made under the Equal Opportunity provisions, it will be investigated and substantiated and investigated. When an employee raises a matter in the first instance with any of the officers listed, then it is the responsibility of that officer to notify the Manager Human Resources of the matter(s) being raised so that the claim can be investigated and therefore either substantiated or found to be frivolous or vexatious. The employee making the allegation must decide whether they wish for the matter to be pursued as per the employer's relevant policy and procedure.

All complaints will be investigated promptly, fairly and confidentially. The investigation will involve the interviewing of any parties involved in the allegations and any witnesses to the allegations. Each party will be given an

opportunity to respond to all the allegations made against them. Any other person(s) who may have been involved or who may have witnessed the incident(s) will also be interviewed as part of the investigation.

During any meetings or discussions, all employees will have the right to have the contact officer or an internal support person with them. It is always the employer's preferred option to have issues resolved internally, however, the employee has the right to seek external representation or advice at any time during such investigations. The employee also has the right to contact the Equal Opportunity Commission ([www.eoc.sa.gov.au](http://www.eoc.sa.gov.au)) if they are dissatisfied with the outcome or if they feel the process was not followed.

During the course of any investigations, allegations or complaints, any documentation generated from this process will be kept on relevant personnel files and maintained as confidential.

Any documentation and records and any findings will be kept in the appropriate personnel file and form part of the investigation process. Following the investigation, the employee who has made the complaint will be informed of what action (if any) is proposed to be taken by the employer and the reasons for such action, or that the lack of evidence resulted in no further action.

The Manager Human Resources or General Manager Social and Organisation will be responsible for determining whether there has been a breach of the EO policy and procedure based on the discrimination definition as outlined hereto. Should the complaint not support the definition as outlined, then the matter will not be able to be further pursued. The Manager Human Resources or General Manager Social and Organisation will also be responsible for determining whether the claim is vicarious or frivolous in any way.

In cases of severe breach of this policy and procedure, if it is deemed to be serious, wilful misconduct and substantiated, it can lead to instant dismissal. Anonymous accusations will not be investigated. Only accusations that are substantiated and received formally in writing will be processed following the procedure (HRP06).

In all cases, the employer will always endeavour to work through any substantiated equal opportunity issues with a view that all parties consider reconciliation where possible. The employer is unable to create positions if employees are unable to work together and therefore may have an effect on the employees performance should parties not be able to continue working together.