

**WA HEALTH - LHMU - ENROLLED NURSES, ASSISTANTS IN NURSING,
ABORIGINAL AND ETHNIC HEALTH WORKERS INDUSTRIAL AGREEMENT
2011**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES THE MINISTER FOR HEALTH IN HIS INCORPORATED
CAPACITY UNDER S.7 OF THE HOSPITALS AND HEALTH
SERVICES ACT 1927 (WA) AS THE HOSPITALS FORMERLY
COMPRISED IN THE METROPOLITAN HEALTH SERVICE
BOARD, THE PEEL HEALTH SERVICES BOARD, WA
COUNTRY HEALTH SERVICE AND THE WESTERN
AUSTRALIAN DRUG AND ALCOHOL AUTHORITY

APPLICANT

-v-

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION,
WESTERN AUSTRALIAN BRANCH

RESPONDENT

CORAM COMMISSIONER J L HARRISON

DATE WEDNESDAY, 11 MAY 2011

FILE NO/S AG 10 OF 2011

CITATION NO. 2011 WAIRC 00331

Result Agreement registered

Representation

Applicant Mr N Fergus

Respondent Ms E Palmer

Order

HAVING heard Mr N Fergus on behalf of the applicant and Ms E Palmer on behalf of respondent and by consent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* hereby orders:

THAT the WA Health - LHMU - Enrolled Nurses, Assistants in Nursing, Aboriginal and Ethnic Health Workers Industrial Agreement 2011 in the terms of the agreement filed on 15 April 2011 and amended on 5 May 2011 be registered on 5 May 2011 under s 41 of the *Industrial Relations Act 1979* as an industrial agreement in substitution for the WA Health – LHMU – Enrolled Nurses and Assistants in Nursing Industrial Agreement 2007 (No AG 15 of 2008) and the WA Health – LHMU – Aboriginal and Ethnic Health Workers Industrial Agreement 2009 (No AG 7 of 2009).

Commissioner J L Harrison

**WA HEALTH – LHMU – ENROLLED NURSES, ASSISTANTS IN
NURSING, ABORIGINAL AND ETHNIC HEALTH WORKERS
INDUSTRIAL AGREEMENT 2011**

AG 10 of 2011

PART 1 – APPLICATION & OPERATION OF AGREEMENT

1. TITLE

This Agreement will be known as the WA Health – LHMU – Enrolled Nurses, Assistants in Nursing, Aboriginal and Ethnic Health Workers Industrial Agreement 2011. This Agreement replaces the WA Health – LHMU – Enrolled Nurses and Assistants in Nursing Industrial Agreement 2007 and the WA Health – LHMU – Aboriginal and Ethnic Health Workers Industrial Agreement 2009.

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3. DEFINITIONS

- 3.1 “Accrued Day(s) Off” means the paid day(s) off accruing to an employee resulting from an entitlement to the 38 hour week as prescribed in Clause 18 – Hours of Work of this Agreement.

- 3.2 “Agreement” means the WA Health – LHMU – Enrolled Nurses, Assistants in Nursing, Aboriginal and Ethnic Health Workers Industrial Agreement 2011.
- 3.3 “AIN in Training” means an Assistant in Nursing undertaking the AIN Training Program.
- 3.4 “AIN Training Program” means the paid Certificate III training program conducted or commissioned by the employer.
- 3.5 “Assistant in Nursing” (AIN) means an employee, other than a person registered under the *Health Practitioner Regulation National Law (WA) Act 2010*, whose substantial employment in terms of the purpose to be achieved, is the provision of “care” to persons.
- 3.6 “Care” in connection with the role of an Assistant in Nursing, encompasses:
- (a) Giving assistance to persons who because of disability, illness, or decreased mobility are unable to maintain their bodily needs without frequent assistance;
 - (b) Carrying out tasks which are directly related to the maintenance of persons a person’s bodily needs where that person because of disability, illness, or decreased mobility is unable to carry out those tasks for themselves;
 - (c) Assisting a person registered under the *Health Practitioner Regulation National Law (WA) Act 2010* to carry out the work described herein or any other work directly related to a person's care.
- 3.7 “Casual Employee” means an employee engaged by the day, subject to subclause 14.4.
- 3.8 “Commission” means the Western Australian Industrial Relations Commission.
- 3.9 “Employee” means Enrolled Nurse, Assistant in Nursing, Aboriginal or Ethnic Health Worker, unless specified otherwise.
- 3.10 “Employer” means any employer party to this Agreement as defined in subclause 4.2 and subclause 4.3 of this Agreement.
- 3.11 “Enrolled Community Nurse” means a Registered Enrolled Nurse employed to work in the community health area.
- 3.12 “Enrolled Community School Nurse” means a Registered Enrolled Nurse employed to work in a school or schools.
- 3.13 “Enrolled Nurse” or “Nurse” means a person registered under the *Health Practitioner Regulation National Law (WA) Act 2010* in the nursing and midwifery profession whose name is entered on Division 2 of the register of nurses kept under that Law as a registered enrolled nurse.
- 3.15 “Health Service” means any public hospital, health care facility or other facility controlled by one of the employers party to this Agreement.
- 3.16 “Health Worker” means an employee classified as an Aboriginal or Ethnic Health Worker.

- 3.17 “Hospital” means any public hospital, health care facility or other facility controlled by one of the employers’ party to this Agreement.
- 3.18 “Multi Purpose Service” (MPS) means an integrated health and aged care service delivery model provided by one service provider for rural communities within a designated area. Current services provided by an MPS may include but are not limited to Hospital, nursing home, hostel/lodge, home and community care (HACC) child health, community health, allied health and other health services which may change from time to time.
- 3.19 “Ordinary Rate of Pay” means the weekly rate of pay as prescribed in Clause 24 – Classification Structure and Wages of this Agreement.
- 3.20 “Partner” means either a spouse or de facto spouse/partner. A de facto spouse/partner means a person who is in a ‘marriage like’ relationship with the employee and includes same sex partners.
- 3.21 “Part Time Employee” means an employee who regularly works less than an average of 38 hours per week.
- 3.22 “Union” means the Liquor, Hospitality and Miscellaneous Union, Western Australian Branch.

4. AREA, INCIDENCE AND PARTIES BOUND

- 4.1 This Agreement operates throughout the state of Western Australia and is binding on the parties and on employees to which the Enrolled Nurses and Nursing Assistants (Government) Award No. 7 of 1978 applies and to employees engaged by the employer to work in any of the classifications listed in Clause 24 – Classification Structure and Wages of this Agreement and who are members of, or eligible to be members of, the Liquor, Hospitality and Miscellaneous Union, Western Australian Branch.
- 4.2 The parties to the agreement are:
- (a) The Liquor, Hospitality and Miscellaneous Union, WA Branch.
 - (b) The Minister for Health in his incorporated capacity under s.7 of the *Hospitals and Health Services Act 1927* (WA) as:
 - (i) the Hospitals formerly comprised in the Metropolitan Health Service Board;
 - (ii) the Peel Health Services Board;
 - (iii) the WA Country Health Service.
 - (c) The Western Australian Alcohol and Drug Authority.
- 4.3 The Director General of Health is the delegate of the Minister for Health in his incorporated capacity under s.7 of the *Hospitals and Health Services Act 1927* (WA). In this capacity the Director General acts as the “Employer” for the purposes of this Agreement.
- 4.4 The estimated number of employees bound by this Agreement at the time of registration is 2,162.

5. PERIOD OF OPERATION

This Agreement will operate from the date of registration until its expiry on 6 October 2013 provided that the first pay increase prescribed by Clause 24 – Classification Structure and Wages of this Agreement will apply from the first pay period on or after 7 October 2010.

6. RENEGOTIATION OF REPLACEMENT AGREEMENT

6.1 The parties agree to commence negotiations for a replacement agreement no later than three months prior to the date this Agreement expires.

6.2 The employer will provide Union Delegates paid leave to participate in the process of negotiating a replacement agreement to this Agreement:

- (a) Six (6) months prior to the expiry date of this Agreement the employer will release an agreed number of accredited delegates to attend negotiation planning meetings.
- (b) In the absence of any agreement on the number of delegates to be released, the maximum number to be released will be fifteen (15).
- (c) The Union may determine from which workplaces delegates will be drawn, provided that, if more than one delegate is drawn from any one facility, the operation of that facility will not be unduly affected.
- (d) Any dispute about the number to be released from any particular facility will be dealt with in accordance with Clause 66 – Dispute Settlement Procedure of this Agreement.
- (e) The conditions under which leave is granted will be same as prescribed for granting Union Training Leave pursuant to Clause 63 – Union & Delegates Recognition & Rights of this Agreement.
- (f) The maximum entitlement to leave during the prescribed period will be a total of twelve (12) hours plus the reasonable travel time required to attend meetings.
- (g) The employer will facilitate phone and video link-ups where necessary to enable the participation of Union representatives from remote areas in the negotiation of a replacement agreement.

7. RELATIONSHIP TO AWARDS

This Agreement is comprehensive and applies to the exclusion of the Enrolled Nurses and Nursing Assistants (Government) Award No. 7 of 1978, the Miscellaneous Government Conditions and Allowances Award No A4 of 1992 and the Health Workers Community and Child Health Services Award 2000 as replaced.

8. AIMS OF AGREEMENT

The aims of the Agreement are to enable the parties to develop and implement strategies which recognise and achieve productivity improvements without impairing the quality of support services and of patient care; and to enhance job satisfaction, security and remuneration.

9. SCOPE OF PRACTICE

- 9.1 There will be no artificial limitations placed on the scope of enrolled nurses' practice.
- 9.2 Enrolled Nurses will to the fullest extent reasonably practicable in each clinical setting in which they are employed be afforded the opportunity to work within the scope of enrolled nursing practice.
- 9.3 Assistants in Nursing will not be required to work outside the scope of work which may appropriately be undertaken by Assistants in Nursing.
- 9.4 The Chief Nursing Officer of Western Australia (CNO) will oversee the implementation of the policy on the scope of enrolled nursing practice, published in August 2005 under the title of OC 1988/05 – Scope of Enrolled Nursing Practice and Enrolled Nurse Competencies. The policy will have uniform application in all Hospitals and give uniform effect to the Report of the Scope of Nursing Practice Project (2002), including the Decision Making Framework.
- 9.5 The Chief Nursing Officer of Western Australia (CNO) will oversee the implementation of the policy on the recognition of competencies related to the scope of enrolled nursing practice, which was published in August 2005 under the title of OC 1988/05 – Scope of Enrolled Nursing Practice and Enrolled Nurse Competencies. The policy will have uniform application in all Hospitals. Without limiting the scope of the policy, it provides for mechanisms to ensure mutual recognition of competencies amongst all Hospitals.

10. COMMITMENT TO BARGAINING

The parties agree that no employee to whom this Agreement applies will be offered or employed under any form of individual contract or non-union agreement.

11. NO FURTHER CLAIMS / AGREEMENT FLEXIBILITY

- 11.1 Except where specifically provided for in this Agreement, it is a condition of this Agreement that the parties will not make any further claims with respect to wages and working conditions covered by this Agreement during the term of this Agreement.
- 11.2 Notwithstanding subclause 11.1, the employer and the Union may agree in writing to alternative terms and conditions to be implemented in substitution of those specified in this Agreement.

PART 2 – NURSING WORKLOAD MANAGEMENT

12. NURSING HOURS PER PATIENT DAY

- 12.1 The employer will continue to manage nursing workloads and consult with nurses and the Union in accordance with the principles established in the Nurses (WA Government Health Services) Exceptional Matters Order 2001 (PR914193) (“EMO”) relating to workloads (Nursing Hours per Patient Day) during the life of this Agreement.
- 12.2 The EMO is reproduced at Schedule A – Workload Management of this Agreement. Subject to this clause, the employer will comply with Schedule A – Workload Management of this Agreement in relation to managing nursing

workloads. A copy of the current NHpPD benchmarks are contained in Schedule B – NHpPD Guiding Principles of this Agreement and apply as amended from time to time.

- 12.3 The employer recognises the Union and enrolled nurses as parties on equal standing with the Australian Nursing Federation and registered nurses in the disposition of nursing workload matters pursuant to the principles established in the EMO.
- 12.4 The Union recognises the Australian Nursing Federation and the Health Services Union as interested parties in the disposition of nursing workload matters pursuant to the principles established in the EMO. The employer will not reach agreement with the Australian Nursing Federation or the Health Services Union on changes to established workload consultative processes other than with the concurrence of the Union. The Union will not unreasonably withhold agreement on changes to established consultative processes.
- 12.5 To avoid doubt, the duties imposed on the employer under the EMO, will have effect as if the operative provisions of the EMO which are capable of contemporary application were express terms of this Agreement. The duties imposed on the unions and the employees will likewise be binding on the Union party to this Agreement and the employees covered by this Agreement.
- 12.6 The employer will ensure that the processes for managing nursing workloads through the ongoing implementation of the NHpPD model are both transparent and visible to all nurses at the ward or unit level so that the processes are readily able to be understood by all nurses. The precise mechanism for ensuring that this transparency / visibility / understanding is achieved may vary from site to site, health service to health service, but will result in the NHpPD being applied to identify a work roster that is readily able to be understood by nurses at the ward or unit level.
- 12.7 The following grievance procedure will apply to a workload grievance in place of the procedure set out in Clause 10 of Schedule A – Workload Management.
 - (a) A workload grievance is a grievance stated in writing by a nurse, by the Union, or by the employer, as a person aggrieved, about the nursing workload that a nurse is required to undertake, on the ground that:
 - (i) an unreasonable or excessive patient care or nursing task work load is being imposed on the nurse other than occasionally and infrequently;
 - (ii) to perform nursing duty to a professional standard, a nurse is effectively obliged to work unpaid overtime on a regularly recurring basis;
 - (iii) the workload requirement effectively denies any reasonably practicable access to the nurse's quota of time for professional development, within 12 months of the entitlement arising;
 - (iv) within a workplace or roster pattern, no effective consultative mechanism and process is available in respect of the determination of bed closures or patient workload for the available nursing resources in the workplace or roster pattern;

- (v) a reasonable complaint to the appropriate hospital authority about capacity to observe professional mandatory patient care standards has not been responded to or acted upon within a reasonable time; or
 - (vi) a particular member or set of members of a patient care team are being consistently placed under an unreasonable or unfair burden or lack of adequate professional guidance because of the workload or the staffing skill mix of the team.
- (b) A workload grievance will be progressed in accordance with Clause 66 – Dispute Settlement Procedure of this Agreement.
- 12.8 During the life of this Agreement the parties agree to review the NHpPD benchmarks contained in Schedule B – NHpPD Guiding Principles of this Agreement.
- 12.9 On each occasion the employer determines the NHpPD category of a ward or unit in the first instance or subsequently reviews and determines the NHpPD category of a ward or unit the employer will publish the determination in a form which is consistent with the requirement that the ongoing implementation of the NHpPD model is both transparent and visible to nurses.
- 12.10 On each occasion the employer determines the NHpPD category of a ward or unit the employer will so advise the Union in writing within 21 days.
- 12.11 During the life of this Agreement the employer will systematically review and determine the NHpPD category of all wards or units and will consult fully with the Union at all stages of the process.
- 12.12 The Union may, on behalf of an employee who is a member who believes he or she would be prejudiced by raising a workload grievance personally, ask the employer to review the NHpPD category of a ward or unit and the employer will as soon as reasonably practicable undertake the review and advise the Union in writing of the outcome within 21 days.

PART 3 – MODES OF EMPLOYMENT

13. CONTRACT OF SERVICE

- 13.1 Probation – Enrolled Nurses and Assistants in Nursing
- (a) All employees will initially be employed on a probationary period of three months, unless otherwise specified in this clause.
 - (b) Prior to the expiry of a probationary period of employment, the employer will:
 - (i) confirm the appointment in writing; or
 - (ii) where performance issues have been identified and appropriate support and training to enhance performance have been documented, extend the employee’s period of probation for a further period as determined by the line manager, but will not exceed a further three months.

- (c) Upon the expiry of the second probationary period as described under subclause 13.1 (b)(ii) the employer will:
 - (i) confirm the appointment in writing; or
 - (ii) terminate the appointment in writing due to unsatisfactory performance.

13.2 Probation – Health Workers

- (a) Subject to subclause 13.2(b), every new Health Worker, other than a casual Health Worker, including Health Workers engaged for a fixed term, will be on probation for a period of three (3) months.
- (b) A Health Worker who is appointed from the Public Sector of Western Australia, and who has at least three months of continuous satisfactory service immediately prior to appointment will not be required to serve a period of probation.
- (c) At any time during the period of probation the employer may annul the appointment and terminate the service of the Health Worker by the giving of two (2) weeks’ notice or payment in lieu thereof.
- (d) At any time during the period of probation the Health Worker may resign by giving two (2) weeks’ notice.
- (e) A lesser period of notice may be agreed, in writing between the employer and the Health Worker.

13.3 For the purpose of subclause 13.1(a), an AIN in Training will be on probation for the period of time taken to complete the AIN Training Program. The AIN in Training’s ongoing permanent employment will be subject to satisfactory progress and completion of the AIN Training Program.

13.4 An AIN in Training who prior to engagement under this Agreement was engaged as a permanent employee under the WA Health – LHMU – Support Workers Industrial Agreement 2007 will be entitled to return to employment under the previous engagement if the employee does not successfully complete the requisite training.

13.5 Notice of termination by the employer

- (a) Subject to subclause 13.5 (f), the employment of an employee, other than a casual employee as defined by Clause 3 – Definitions, must not be terminated unless the employer has given the employee the required period of notice in accordance with the following table or the employer provided the employee with payment in lieu of notice:

Period of continuous service	Required period of notice
Not more than three years	At least two weeks
More than three years but not more than five years	At least three weeks
More than five years	At least four weeks

- (b) The period of notice for an employee, who at the time of being terminated is over 45 years of age and has completed at least two years’ continuous service with the employer, will be increased by one week.

- (c) The employee may be terminated by the employer giving the employee part of the required period of notice with payment in lieu for the remainder of the required period of notice.
- (d) Payment in lieu of notice must equal or exceed the total amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay the employee because of the employment continuing during that period.
- (e) Payment in lieu of notice must be worked out on the basis of:
 - (i) the employee's ordinary hours of work, even if they are not standard hours;
 - (ii) the amounts ordinarily payable to the employee in respect of those hours including, for example, allowances, loadings and penalties;
 - (iii) any other amounts payable under the employee's contract of employment.
- (f) Termination of an employee for serious misconduct
 - (i) The employer may terminate an employee without notice or payment in lieu of notice if the employee is guilty of misconduct. In such cases, wages will be paid up to the time of dismissal only.
 - (ii) "Serious misconduct" means misconduct of such a nature that it would be unreasonable to require the employer to continue the employment of the employee concerned during the required period of notice.
- (g) Notwithstanding the foregoing provisions trainees who are engaged for a specific period of time will once the traineeship is completed and provided that the trainees' services are retained have all service including the training period counted in determining entitlements. In the event that a trainee is terminated at the end of his or her traineeship and is re-engaged by the same employer within six months of such termination the period of traineeship will be counted as service in determining any future termination.

13.6 Notice of termination by employee

Except by agreement with the employer no employee will resign without first giving a fortnight's notice and in the absence of such notice the employer may withhold holiday or other pay up to the amount of a fortnight's wages.

13.7 An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training, including work which is incidental or peripheral to the employee's main tasks or functions.

13.8 Statement of employment

An employer will, in the event of termination of employment, provide upon request to the employee who has been terminated, a written statement specifying the period of employment and the classification or type of work performed by the employee.

13.9 Job search entitlement

- (a) During the period of notice of termination given by the employer, an employee will be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment. The time off will be taken at times that are convenient to the employee after consultation with the employer.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee will, at the request of the employer, be required to produce proof of attendance at an interview or they will not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

13.10 RRR Agreement

Schedule C – Redundancy, Retraining and Redeployment applies to all employees engaged by the employer to work in any of the classifications listed in Clause 24 – Classification Structure and Wages of this Agreement. The settlement of any dispute in relation to the provisions of Schedule C – Redundancy, Retraining and Redeployment will be in accordance with Clause 66 – Dispute Settlement Procedure of this Agreement.

13.11 This clause will not apply to casual employees.

14. CASUAL EMPLOYEES

- 14.1 A casual employee will be paid a loading of twenty per cent (20%) of the prescribed base salary for the class of work.
- 14.2 An enrolled community nurse or enrolled community school nurse will be deemed to be a casual employee if employed for a period of less than four weeks either part time or full time.
- 14.3 The minimum period of engagement of a casual enrolled community nurse or an enrolled community school nurse will be two hours.
- 14.4 Provided however that, notwithstanding the provisions of Clause 13 – Contract of Service of this Agreement, the contract of employment for a casual enrolled community nurse or an enrolled community school nurse will be by the hour.
- 14.5 Casual employees are not entitled to paid leave under this Agreement, unless a clause in this Agreement specifically provides the entitlement. Casual employees are entitled to not be available to attend work, or to leave work for the purposes of caring responsibilities.
- 14.6 Casual Health Workers may only be engaged for unplanned short term work requirements.
- 14.7 The employer will take into account prior experience when determining the appropriate classification for casual employees.

15. PART-TIME EMPLOYEES

- 15.1 Notwithstanding anything contained herein, the employer will be at liberty to employ part-time employees.

- 15.2 Subject to paragraph (a) and (b) of this subclause, part-time employees will be remunerated at a weekly rate pro-rata to the rate prescribed for the class of work on which they are engaged in the proportion which their ordinary weekly hours bear to 38.
- (a) Part time enrolled community nurses, except school nurses, who work more than twenty hours per week will be remunerated at a weekly rate pro rata to the rate prescribed for the class of work on which they are engaged in the proportion which their ordinary weekly hours bear to 40 and such nurses will accrue time towards accrued days off, as prescribed in Clause 18 – Hours of Work of this Agreement, for full time employees in the same proportion as used for calculating the weekly wage.
 - (b) Where a part time Health Worker's hours of work cycle allows for an accrued day off, as defined in Clause 18 – Hours of Work of this Agreement, such Health Worker will be remunerated at a weekly rate pro rata to the rate prescribed for the class of work on which they are engaged in the proportion which their ordinary weekly hours bear to 40.
- 15.3 Part time employees will be allowed annual leave and personal leave, as prescribed by Clause 40 – Annual Leave and Clause 45 – Personal Leave of this Agreement, in the same ratio as their ordinary weekly hours averaged over the qualifying period, bear to 38.
- 15.4 An Enrolled Nurse or AIN who works less than 16 hours per week is not eligible to accrue ADOs. Where a regular part time Health Worker's hours of work are less than 16 hours per week, the employer may require the Health Worker to work a cycle which does not allow for an accrued day off.
- 15.5 The employer must give the employee one day's clear notice, during any roster period, of a proposed increase in hours. If the employee agrees to the increase in hours, then for the remainder of that roster the increased hours will be considered to be the employee's ordinary hours of work.
- 15.6 Health Workers
- (a) At the time of engagement the employer and regular part time employee will agree in writing, on a regular pattern of work, specifying at least the hours of work each day, which days of the week the employee will work and the actual starting and finishing times each day.
 - (b) Any agreed variation to the regular pattern of work will be recorded in writing.
 - (c) An employer is required to roster a regular part time Health Worker for a minimum of three consecutive hours on any shift. Exceptions to this clause are:
 - (i) Where special circumstances exist as agreed between the employer, the Health Worker and the Union, a period less than three hours will apply; or

- (ii) Where that shift is for the provision of home and community care (HACC) duties within a rural health service, and where the regular client need is less than three hours the minimum will be one hour per shift.
- (d) All time worked in excess of the hours as mutually arranged, will be overtime and paid for at the rates prescribed in Clause 22 – Overtime of this Agreement.

16. PERMANENCY OF EMPLOYMENT AND RELIEF COVER

16.1 Commitments

- (a) The parties to this Agreement agree that permanent employment is the preferred form of engagement for employees covered by this Agreement.
- (b) The parties to this Agreement agree that casual employment and agency engagements are not the preferred methods of delivery of services, and the employer will work towards minimising the use of casual and agency Employees in Hospitals.
- (c) The parties to this Agreement agree that all leave will ordinarily be covered, provided that nothing in this agreement requires the employer to provide leave cover where it can be demonstrated that such cover is not operationally necessary in a particular case.

16.2 Fixed Term Contracts

- (a) Fixed term employees may only be engaged for the following situations:
 - (i) Unexpected or unplanned leave;
 - (ii) Parental leave;
 - (iii) Long service leave;
 - (iv) Long term sick leave;
 - (v) Worker's compensation;
 - (vi) Special projects;
 - (vii) Employees undertaking an accredited course of study;
 - (viii) To temporarily fill vacancies, where a decision has been made that the vacancy will be filled, while the recruitment process is undertaken;
 - (ix) Leave without pay;
 - (x) Where the substantive occupant is working in another position for a temporary period which may involve higher duties;
 - (xi) The substantive occupant agrees to work part-time for one or more periods;
 - (xii) The substantive occupant is seconded to another position;

- (xiii) Annual leave where staffing arrangements are such that it is impractical to maintain a pool of staff to provide annual leave cover;
 - (xiv) Accrued days off where staffing arrangements are such that it is impractical to maintain a pool of staff to provide ADO leave cover;
 - (xv) Any other situations as agreed between the employer and the Union, either at an industry or local level.
- (b) The contract of employment of a fixed term contract employee will include the starting and finishing dates of employment, or in lieu of a finishing date, the specific circumstances relating to the situations as prescribed in subclause 16.2(a).
 - (c) The employer will provide to the Union, on request, the particulars of fixed term contract utilisation in a particular facility or part of a facility. The employer will provide such detail as is reasonably necessary to demonstrate that the fixed term contract utilisation is in each case consistent with the commitment given in this clause.
 - (d) Where fixed term employees are engaged for more than 12 months (including a succession of consecutive short term contracts) in relation to the same role (other than for a defined project role or parental leave relief), the role will be reviewed by the Director of Nursing to ascertain why it is not being made permanent.

16.3 Agency Employment

- (a) Agency engagements are not the preferred method of delivery of services and will only be used:
 - (i) If there are no other suitably qualified employees available in the short term;
 - (ii) If there is a bona fide emergency or urgent work requirement;
 - (iii) If the skills required cannot be obtained internally in the short term.
- (b) The employer will provide to the Union, on request, the particulars of agency utilisation in a particular facility or part of a facility as follows:
 - (i) Number of individual Agency staff engaged in each classification;
 - (ii) Number of hours worked by Agency staff in each classification;
 - (iii) The name of each Agency that has supplied staff;
 - (iv) The amount paid per month for Agency staff in each classification.

16.4 Casual Engagement

- (a) The employer will provide to the Union, on request, the particulars of casual utilisation in a particular facility or part of a facility as follows:
 - (i) Number of individual casual employees engaged in each classification;

(ii) Number of hours worked by casual employees in each classification;

(iii) The amount paid per month for casual staff in each classification.

16.5 The Union may negotiate for increases in the number of permanent positions where an excessive use of agency employees, casual employment or fixed term contract employment is identified.

16.6 For the purposes of this clause “impractical” means not operationally viable because of factors such as the cost, the size or location of a facility.

16.7 The employer will respond in writing to a request for particulars of fixed term contract, casual employment and agency utilisation within 21 days of the request being made in writing by the Union.

17. CLINIC NURSES

17.1 Notwithstanding subclause 18.6, the following provisions will apply to Enrolled Nurses employed in clinics and departments.

17.2 Hours of Work

Enrolled Nurses employed in clinics and departments or where the service needs require them to function between 8.00am and 6.00pm Monday to Friday inclusive will be employed on the basis of 38 hours per week. There will be no accrual of days off.

17.3 Public Holidays

The provisions of Clause 42 – Public Holidays of this Agreement will apply.

17.4 Long Service Leave

The provisions of Clause 43 – Long Service Leave of this Agreement will apply.

17.5 Annual Leave

(a) An Enrolled Nurse employed in clinics and departments will be entitled to 4 weeks’ annual leave with payment of ordinary wages after each twelve month’s continuous service.

(b) A loading of 17.5% will be paid in addition to the ordinary wage payable under this subclause.

17.6 Overtime

The provisions of Clause 22 – Overtime of this Agreement will apply.

PART 4 – HOURS OF WORK

18. HOURS OF WORK

18.1 Subject to the provisions of Clause 20 – Meal and Tea Breaks of this Agreement, the ordinary working hours will be an average of 38 hours per week over any five days of the week or ten days of the fortnight, worked over any one of the following cycles.

(a) A four week cycle of nineteen days of eight hours each with 0.4 of one hour each day worked accruing as an entitlement to take the twentieth day in each cycle as a day off and paid for as though worked.

- (b) Actual hours of 76 hours over nine days per fortnight with the tenth day to be taken as an unpaid rostered day off.
 - (c) Actual hours of 40 per week or 80 per fortnight with two hours of each week's work accruing as an entitlement to a maximum of twelve days off in each twelve month period.
- 18.2 The work cycles prescribed by subclauses 18.1(a) and (b) may only be worked by agreement between a Health Worker and the employer. In reaching agreement pursuant to this subclause, the Union must be informed of the intention by the employer to use the facilitative provision and must be given a reasonable opportunity to participate in the negotiations. Union involvement in the process does not mean that the consent of the Union is required prior to the introduction of the new work cycle.
- 18.3 In addition to sub-clause 18.1 by agreement between the employer and the Union a work cycle of 38 hours per week or 76 hours per fortnight or any other method agreed may be worked.
- 18.4 Subject to the provisions of this clause where practicable, the ordinary hours of work for an Enrolled Nurse or AIN will be rostered over not more than six consecutive days.
- 18.5 The provisions of this clause apply to a part-time employee in the same proportion as the hours normally worked bear to a full-time employee. In circumstances where less than sixteen hours per week are worked an employer may pay an employee for all hours actually worked at an hourly rate based on a 38 hour week in lieu of the accrual of accrued days off.
- 18.6 Notwithstanding anything to the contrary in this clause and at the option of the employer, Enrolled Nurses employed in clinics or departments which function during the normal hours of duty on Monday, Tuesday, Wednesday, Thursday, Friday and Saturday may be granted hours of duty as are generally applicable to the clerical staff employed in the said clinics or departments in accordance with Clause 17 – Clinic Nurses of this Agreement. The daily hours of duty will include a break of not more than one hour for lunch and such time will not be included as part of the normal working week of 38 hours.

19. ACCRUED DAYS OFF

- 19.1 Subject to this clause and to subclause 15.4, employees may accrue days off in accordance with Clause 18 – Hours of Work of this Agreement. The inclusion of this clause will not be taken of itself to imply that there is any ground for diminishing employees' entitlements to accrued days off.
- 19.2 Accrued days off will be taken in a minimum period of five consecutive days or in single day absences where the employer and employee mutually agree.
- 19.3 A roster for accrued days off may allow an employee to take accrued days off before they become due.
- 19.4 An employer and an employee may by agreement substitute the accrued days off which the employee is entitled to take for another day in which case the accrued day off will become the ordinary working day.

19.5 Accrued days off may be accumulated, provided that, where an employee has accumulated 11 or more days off, the employer may direct the employee in any year to take any number of days off in order to progressively reduce the accumulated days off to 10, provided that the employer must give not less than:

- (a) Twenty four (24) hours' notice to the employee where one accrued day off is to be taken;
- (b) Two weeks' notice to the employee where two or more accrued days off are to be taken consecutively.

19.6 Accrued days off will be taken in conjunction with a period of annual leave or at any time where agreed to by the employer and employee, providing an employee's request to take an accrued day off will not unreasonably be denied.

19.7 A roster for accrued days off will be posted at least four weeks before the time it comes into operation.

19.8 Payment of Penalties

Penalties are paid on actual hours worked. For example in the case of a full time employee who works an 8 hour shift, the employee is paid 8 hours of shift penalty loading plus the ordinary time rate for 7.6 hours with the balance of time actually worked (0.4 hours) being credited toward an accrued day off. When an accrued day off is taken, payment is made at the ordinary time rate because the shift penalty loading has already been paid.

19.9 An employee subject to the provisions of subclause 19.1 of this Agreement who has not taken any accrued days off accumulated during a work cycle in which employment is terminated, will be paid the total of hours accumulated towards the accrued day off for which payment has not already been made.

19.10 An employee who has taken any accrued day off during a work cycle in which employment is terminated will have the wages due on termination reduced by the total hours for which payment has already been made but for which the employee had no entitlement toward those accrued days off.

19.11 Workers' Compensation

- (a) 20 Day Work Cycle
 - (i) Where an employee is on workers' compensation for periods of less than one complete 20 day cycle, such employee will accrue towards and be paid for the succeeding accrued day off following such absence.
 - (ii) An employee will not accrue accrued days off for periods of workers' compensation where such period of leave exceeds one or more complete 20 day work cycles.
 - (iii) Where an employee is on workers' compensation for less than one complete 20 day work cycle and an accrued day off falls within the period, the employee will not be re-rostered for an additional accrued day off.
- (b) Twelve Months Work Cycle

- (i) Where an employee is on workers' compensation for periods less than a total of 20 consecutive work days in a work cycle such employee will accrue towards and be paid for the succeeding accrued days off following such absence.
- (ii) Where an employee is on workers' compensation for periods greater than a total of 20 consecutive days in a work cycle such employees will have the period of workers' compensation added to the work cycle.
- (iii) Where an employee is on workers' compensation for periods greater than 20 consecutive work days and an accrued day off as prescribed in sub-clause 18.1 of this Agreement falls within the period the employee will be re-rostered for another accrued day off on completion of the 20 day work cycle following such absence.

19.12 Leave Without Pay

(a) Twenty (20) Day Work Cycle

An employee who is absent on any form of leave without pay during a twenty (20) day work cycle will not accumulate an entitlement to an accrued day off for the period of such leave nor will the employee be entitled to an accrued day off whilst on leave without pay.

(b) Twelve Month Work Cycle

- (i) An employee who is absent on any form of leave without pay for less than a total of five days in any work cycle will not have payment reduced when proceeding on accrued days off.
- (ii) An employee who is absent on any form of leave without pay for a total of five days or more in any work cycle will have such period of leave added to the work cycle.

20. MEAL AND TEA BREAKS

20.1 All employees

Meal breaks will not be less than 30 minutes but will not be counted as time worked. Provided that where an Enrolled Nurse or Health Worker is called on duty during a mealtime the period worked will be counted in the ordinary working hours of duty.

20.2 Enrolled Nurses and Assistants in Nursing

Where an employee is unable to access their 30 minute unpaid meal break they will be paid for a straight through shift at ordinary rates.

20.3 The time allowed for morning and afternoon tea will not exceed seven minutes for each such break which will be taken when convenient to the employer without deduction of pay for such time.

21. ROSTERS

21.1 Days off duty

Subject to subclauses 21.4, 21.5 and 21.8, employees will be rostered off duty for a minimum of two full consecutive days per week or four full consecutive days per fortnight. Rosters may however provide for non-consecutive days off duty in the case of an emergency or by agreement between the employer and the employee. Provided that where the days off duty as specified in this subclause are missed and not taken within four weeks, equivalent time will be added to the annual leave of the employee.

- 21.2 A roster of the working hours will be exhibited in such place as it may conveniently and readily be seen by each Employee concerned. The roster will be available to the Union Secretary or the Secretary's nominee for inspection at all reasonable times. Rosters may be altered at any time if the hospital exigencies render any alteration necessary.
- 21.3 Where practicable rosters will be posted at least 14 days prior to the commencing date of the first working period in the roster. Rosters will in any event be posted not less than 7 days prior to the commencing date of the first working period in the roster.
- 21.4 Shift change
- (a) An employee changing from night duty to day shift, or from day shift to night shift will be free from duty during the 20 hours immediately preceding the commencement of the changed duty, unless agreed otherwise between the employee and the employer.
 - (b) An employee changing from evening duty to day duty will not be required to commence such duty until a period of nine and one half hours has elapsed since ceasing evening duty except in country hospitals below Regional level, where a period of eight hours will suffice.
- 21.5 An employee other than one engaged to work part time will not be required to work a combination of shifts exceeding the following:
- (a) in the case of a weekly roster; all night, day or evening shifts, or both day and evening shifts;
 - (b) in the case of a fortnightly roster; all night, day or evening shifts or both day and evening shifts in either or both halves of the roster.
- 21.6 Subject to the provisions of this clause the ordinary hours to be worked by an Enrolled Nurse or AIN in any one day will be a maximum of eight. No broken shifts will be worked. A maximum of ten-hour night shifts may be worked without incurring overtime penalties by agreement between the employee and the employer.
- 21.7 The spread of hours for a Health Worker in any one day will not exceed ten hours provided where conditions are such that the employer requires Health Workers to work outside of the spread of hours the Health Worker and the employer may agree to such variations of the spread of hours as is considered appropriate in which case overtime will only be computed on the time worked in excess of the ordinary working hours as prescribed in sub-clause 18.1.
- 21.8 The provisions of subclauses 21.4 and 21.5 will not apply if the employee is required to perform duty to enable the nursing services of the hospital to be carried

on when an employee is absent from duty or in an emergency or where the employer and the Union mutually agree to vary the provisions of this subclause.

21.9 Shifts

- (a) No employee will be required to work in excess of five shifts per week or 10 shifts per fortnight except as provided by subclauses 21.9(c) and 21.9 (d).
- (b) Subject to the provisions of this clause and where practicable, the ordinary hours of work will be rostered over not more than six consecutive days.
- (c) By mutual agreement between the employer and the Union the scale of shifts for employees working night duty can be varied to four shifts per week or eight shifts per fortnight.
- (d) An employee may be required to work on any day off in the case of an emergency and such time will be paid for in accordance with Clause 22 – Overtime of this Agreement.

21.10 Night duty in North West hospitals and Goldfields hospitals where the staff including the Director of Nursing is three or more, will not exceed seven consecutive nights when a majority of the employees who are required to do night duty so decide, in which case it will rotate after seven nights.

21.11 In addition to the time off duty hereinbefore provided, Enrolled Nurses engaged in X-ray or radium work will be allowed such other time off duty as in the opinion of the Medical Officer in charge of such work may be necessary consequent upon such work for the purpose of maintaining or restoring them to normal health, and all such time will be computed as part of the normal working time and there will be no reduction in the wage in respect thereof.

21.12 Where an employee is required to travel as part of their duty such travelling time will be considered as part of their working time and there will be no reduction in respect thereof.

21.13 Any dispute between an employer and the Union concerning rostering of employees and the operation of this clause will be dealt with in accordance with the provisions of Clause 66 – Dispute Settlement Procedure of this Agreement.

21.14 Notwithstanding anything else herein contained, the following provisions relating to hours of work will apply to employees stipulated hereunder.

- (a) The ordinary hours of work for an enrolled community school nurse will be 38 per week, with the ordinary hours worked each day to be no more than seven hours 36 minutes between Monday to Friday inclusive. Any meal or tea break during which the nurse is required to be available to work or working will be counted as time worked and included as part of the seven hours 36 minutes day.
- (b) The ordinary hours of duty for an enrolled community nurse will be an average of 38 per week with the hours actually worked being 40 per week to be between 8.00 a.m. and 6.00 p.m. Monday to Friday inclusive and no day will exceed eight hours without payment of overtime.

- (c) The ordinary hours will be worked within a twenty day, four week cycle with 0.4 of an hour for each day worked accruing as an entitlement to take the twentieth day in each cycle as an Accrued Day Off.

21.15 Review of Rostering Arrangements

- (a) Any change in rostering arrangements will be designed to improve productivity, efficiency and cost effectiveness in the work place.
 - (i) Any proposed roster variations for each site or sub site will be explained to the employees concerned and to the union who will consider them.
 - (ii) The affected parties (i.e. site management and employees) will then consult with each other with a view to agreeing to the proposed roster.
 - (iii) Where agreement cannot be reached, the issues will be referred to the Commission for conciliation and, if necessary, arbitration.
- (b) The following principles will apply when considering major changes relating to rostering:
 - (i) New rosters will take into account the needs of the health care unit and those of employees. The emphasis will be on patient care.
 - (ii) When an employer seeks to implement a new roster appropriate consultation will take place at the workplace and the Union and nominated employee representatives notified in writing. At a minimum this should involve discussions with the affected staff. Matters to be discussed with staff include impact on patient care, family needs, job satisfaction, absenteeism and loss of income.
 - (iii) Any proposal to alter rostering in a particular area will be put to a ballot (including those on leave or worker's compensation who can be contacted as far as reasonably practicable), and must be supported by sixty per cent of affected employees, or such other proportion as is agreed between the employer and the Union.
 - (iv) The Union and nominated employee representatives will be notified in writing fourteen (14) days before the holding of the ballot and will be provided with a copy of the proposed roster.
 - (v) When a new roster is agreed education and consultation with staff will occur. The purpose of consultation is to ensure that any concerns raised by affected employees are taken into account.
 - (vi) A minimum lead time of four (4) weeks will be provided for the implementation of the new roster. The minimum lead time may be reduced by agreement between the employer and the employees.
 - (vii) During and after a six month period, meetings will be held with staff to evaluate the new roster. This will include matters referred to in paragraph (b)(ii) of this subclause.
 - (viii) A record will be kept of the process followed and the outcome by the relevant Hospital and the Union.

- (ix) At no stage of the process will the Union or the employer veto considerations of any new rostering proposal.

22. OVERTIME

22.1 Entitlement

All employees

- (a) Except as hereinafter provided, all time worked in excess of the ordinary working hours prescribed in Clause 18 – Hours of Work or Clause 15 – Part-Time Employees of this Agreement will be overtime and will be paid for at time and one-half for the first two hours and double time thereafter.
- (b) All work performed by employees on any day on which they are rostered off duty or days worked in excess of those provided in Clause 18 – Hours of Work or Clause 15 – Part-Time Employees will be paid for at the rate of double time.
- (c) The rates prescribed in subclauses 22.1(a) and 22.1(b) will apply to part-time employees who work outside of the employee's ordinary hours as agreed to by the employee and employer, except where the employer and the employee have agreed to a temporary variation to the employee's ordinary working hours.

Health Workers

- (d) Subject to subclause 21.7, and except as provided for by subclause 22.1(b), work performed by a Health Worker at the direction of the employer outside the spread of hours, or on a Saturday or Sunday will be paid or compensated for as hereunder:
 - (a) One and one-half times the ordinary rate for the first two hours and double time thereafter on any day Monday to Saturday inclusive; and
 - (b) Double time on a Sunday.
- (e) A Health Worker who is recalled to work will be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

22.2 Time off in lieu

- (a) Where the employee and the employer so agree, time off in lieu of payment for overtime may be allowed proportionate to the payment to which they are entitled.
- (b) Such time off to be taken at the convenience of the hospital provided that:
 - (i) such time off is in unbroken periods according to each period of overtime worked; and
 - (ii) the time off is rostered and is granted within twenty-eight days from the time when it became due, except where it arises from the changeover from night duty to day duty, or day duty to night duty; or

- (iii) by mutual agreement between the employer and the employee, the time off may be accumulated beyond twenty-eight days from when it accrued so as to be taken in conjunction with periods of approved annual and/or long service leave.
- (c) If the employer does not grant time off in lieu within twenty-eight days from the time when it accrued and no further agreement as prescribed in subclause 22.2(b)(iii) is reached, the time will be paid at the appropriate overtime rate within twenty-eight days of the time when it accrued.
- (d) An employee may request to take time off in lieu at a particular time and the employer will not unreasonably deny such a request.

22.3 Meal allowance

- (a) Where an employee has not been notified the previous day or earlier that he/she is required to work overtime the employer will ensure that employees working such overtime for an hour or more will be provided with any of the usual meals occurring during such overtime or be paid an allowance of \$11.62 for each meal.
- (b) The allowance provided for in Clause 22.3(a) will be adjusted in accordance with the Consumer Price Index – Meals Out & Take Away Foods – Perth (ABS Cat. No. 6455.0.40.001).

22.4 Ten Hour Break

- (a) When overtime work is necessary it will, wherever reasonably practicable, be so arranged that the employee may have at least ten consecutive hours' off duty between the work of successive days.
- (b) An employee who works so much overtime between the termination of their ordinary work on one day and the commencement of their work on the next day that they have not at least ten consecutive hours off duty between those times will, subject to this paragraph, be released after completion of such overtime until they have had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (c) If, on the instructions of the employer, such employee resumes or continues work without having had such ten consecutive hours off duty, they will be paid at double rates until they are released from duty for such period and they will then be entitled to be absent until they have had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (d) The provisions of this subclause will apply in the case of shift employees who rotate from one shift to another, as if eight hours were substituted for ten hours when overtime is worked:
 - (i) for the purpose of changing shift rosters; or
 - (ii) where a shift employee does not report for duty; or
 - (iii) where a shift is worked by arrangement between the employees themselves.

22.5 Enrolled Community Nurses or Enrolled Community School Nurses

- (a) Work performed by an enrolled community nurse or an enrolled community school nurse at the direction of the employer outside the spread of hours, or in addition to the daily hours prescribed in subclause 18.5 of this Agreement or on a Saturday or Sunday will be paid or compensated for as hereunder:
- (i) one and one half times the ordinary rate for the first two hours and double time thereafter on any day Monday to Friday inclusive;
 - (ii) double time on Saturday or Sunday;
 - (iii) double time and one half on public holidays.
- (b) Time off in lieu
- (i) In lieu of making payment in accordance with subclauses 22.5(a)(i) and (ii), and by agreement between the employee and the employer concerned, time off proportionate to the payment to which the employee is entitled may be taken at a time convenient to the employer, provided that such time off is in unbroken periods, according to each period of overtime worked;
 - (ii) In lieu of making payment in accordance with subclause 22.5(a)(iii) and by agreement between the nurse and the employer, payment may be made at the rate of time and one half with equivalent time to that worked being taken off at a time convenient to the employer.

23. ON CALL & RECALL

23.1 On call

- (a) For the purposes of this Agreement an employee is on call when the employee is directed by the employer to remain at such a place as will enable the employer to readily contact the employee during the hours when the employee is not otherwise on duty. In so determining the place at which the employee will remain, the employer may require that place to be within a specified radius from the hospital or place of employment.
- (b) An employee rostered to be on call will be paid the allowance prescribed in subclause 23.1(c) for each hour or part thereof the employee is on call.
- (c) An employee rostered to be on call will be paid 18.75% of 1/38th of the rate prescribed for a Level 1.2 Registered Nurse and will be adjusted in line with the percentage wage increases prescribed in Clause 24 – Classification Structure and Wages of this Agreement in accordance with the following table:

First pay period on or after date of Registration	First pay period on or after 7 October 2011	First pay period on or after 7 October 2012
\$5.03 per hour	\$5.24 per hour	\$5.47 per hour

- (d) The payments referred to in subclause 23.1(c) will not be made in respect to any period for which overtime is paid when the employee is recalled to work.

- (e) If the usual means of contact between the employer and the employee is a telephone and if the employee pays or contributes towards the payment of the rental of such telephone the employer will pay the employee an amount being a proportion of the telephone rental calculated on the basis that for each seven days on which an employee is required to be on call the employer will pay the Employee 1/52nd of the annual rental paid by the employee.
- (f) Provided that where the employer and the Union agree in writing, other arrangements may be made for compensation of on call work to enrolled community nurses or enrolled community school nurses.
- (g) Where it is determined that the means of contact is to be by pager or mobile telephone the employer will provide the employee with the device at no charge.
- (h) An employee will not be required to remain on call whilst on leave or the day before commencing leave, or whilst on accrued days off, or the day before commencing accrued days off, unless by mutual agreement between the nurse and employer.

23.2 Ten hour break for employees on call

- (a) Where an employee who is on call is recalled to perform overtime duty, the employee will be provided with a continuous break of not less than 10 hours from when the overtime duty was completed to immediately prior to the commencement of the next ordinary rostered shift.
- (b) In the event that the 10 hour break provided for in paragraph (a) of this subclause is not available between when the overtime duty was completed to immediately prior to the commencement of the next ordinary rostered shift, the employee will be entitled to be absent from duty without loss of pay for ordinary working time, until the employee has been provided with a continuous break of 10 hours.
- (c) Provided that, if instructed by the employer the employee is required to work without the break provided for in paragraph (a) and (b) of this subclause, the employee will be paid at the overtime rate of double time until released from duty.
- (d) The preceding paragraphs of this subclause will not apply where an employee is recalled to work within three hours of the commencement of the employee's next ordinary rostered shift and the employee has had a continuous break of at least 10 hours immediately prior to the commencement of the recall overtime duty.
- (e) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this subclause, where the employer and the Union agree in writing, other arrangements may be made to ensure an adequate break for employees on call in accordance with Clause 11 of this Agreement. Such arrangement will ensure the health, safety and welfare of the employee or employees concerned and will take into account the safety and welfare of patients.
- (f) The provisions of this subclause do not apply to casual employees.

23.3 Recall to Work

- (a) An employee, other than a casual employee, who is recalled to work for any purpose will be paid a minimum of two hours at the appropriate overtime rate provided that the employee will not be required to work for two hours if the work for which the employee was recalled to perform is completed in less time. Provided that for part time employees who are placed on call and who are recalled to duty, the same overtime provision will apply as applies to full time employees.
- (b) Where a casual employee, is recalled to work for any purpose payment will be made in accordance with Clause 14 – Casual Employees of this Agreement. Payment will commence from the time the casual employee commences the work for which they were recalled. In the event that the work for which the casual employee was recalled is cancelled for any reason, the casual employee will be paid for a minimum period of two hours.
- (c) Where an employee, other than a casual employee, is recalled to work within two hours of starting work on a previous recall, the minimum overtime period will commence from the time of the second, or subsequent recall. Provided that the effect of this subclause will not be to pay two hours of overtime for each and every recall within the original two hour period, as a discrete period of overtime.
- (d) Where an employee, other than a casual employee, is recalled to work for any purpose within two hours of commencing normal duty, the employee will be paid at the appropriate overtime rate for that period up to and until the commencement time of normal duty, but the employee will not be obliged to work for the full period if the work for which the employee was recalled is completed in less time.
- (e) Where an employee, other than a casual employee, is recalled to duty in accordance with subclauses 23.2(a), 23.2(c) and 23.2(d), then the payment of the appropriate overtime rate will commence from:
 - (i) in the case of an employee who is on call, from the time the employee starts work;
 - (ii) in the case of an employee who is not on call, time spent travelling to and from the place of duty where the employee is actually recalled to perform emergency duty will be included with actual duty performed for the purpose of overtime payment.

Provided that where an employee is recalled within three hours of commencing normal duty, only time spent in travelling to work will be included with actual duty for the purpose of overtime payment.

23.4 The provisions of this Clause will not apply to Health Workers.

PART 5 – RATES OF PAY

24. CLASSIFICATION STRUCTURE & WAGES

24.1 An employee who is employed by the employer on the date of registration of this Agreement will receive a payment equivalent to the additional wages that would have been paid had the wages in subclauses 24.3, 24.4 or 24.8 been payable from the first pay period commencing on or after 7 October 2010.

24.2 An employee who resigned or retired or whose employment was otherwise terminated prior to the registration of this Agreement is not entitled to the retrospective payment provided in subclause 24.1.

24.3 Enrolled Nurses

(a) The classification structure for Enrolled Nurses will be as follows:

- (i) “Enrolled Nurse Level 1” is an Enrolled Nurse in the first year of employment.
- (ii) “Enrolled Nurse Level 2” is an Enrolled Nurse in the second year of employment.
- (iii) “Enrolled Nurse Level 3” is an Enrolled Nurse in the third year of employment.
- (iv) “Enrolled Nurse Level 4” is an Enrolled Nurse in the fourth year of employment.
- (v) “Advanced Skill Enrolled Nurse Level 1” (ASEN 1) is an Enrolled Nurse who has:
 - (1) a post registration qualification of at least 6 months’ duration relevant to their area of clinical practice and at least 3 years’ experience as an Enrolled Nurse; or
 - (2) sufficiently demonstrated competencies relevant to their area of clinical practice and at least 4 years’ experience as an Enrolled Nurse.
- (vi) “Advanced Skill Enrolled Nurse Level 2” (ASEN 2) is an Advanced Skill Enrolled Nurse in the second year of employment as an Advanced Skill Enrolled Nurse.

(b) Competencies

- (i) “sufficiently demonstrated competencies” means the employee has satisfied the competencies process contained in the Advanced Skill Enrolled Nurse Competencies Workbook.
- (ii) The “Advanced Skill Enrolled Nurse Competencies Workbook” will be as agreed from time to time between the employer(s) and the Union.

(c) Subject the subclause 24.7, the weekly rates of pay for Enrolled Nurses will be as follows:

Classification	First pay period on or after 7 October 2010	First pay period on or after 7 October 2011	First pay period on or after 7 October 2012
EN Level 1	\$882.89	\$918.21	\$959.53
EN Level 2	\$902.52	\$938.62	\$980.86
EN Level 3	\$922.13	\$959.02	\$1,002.17
EN Level 4	\$941.76	\$979.43	\$1,023.50
ASEN 1	\$981.00	\$1,020.24	\$1,066.15
ASEN 2	\$1,020.24	\$1,061.05	\$1,108.79

24.4 Assistants in Nursing

(a) The weekly rates of pay for Assistants in Nursing covered by this Agreement will be as follows:

(i) Full rates

Classification	First pay period on or after 7 October 2010	First pay period on or after 7 October 2011	First pay period on or after 7 October 2012
Year 1	\$784.80	\$816.19	\$852.92
Year 2	\$804.40	\$836.58	\$874.23
Year 3	\$824.03	\$857.00	\$895.56

(ii) Under 19 years of age

The rate will be a percentage of the total wage prescribed for an Assistant in Nursing in his/her first year of employment in subclause 26.4 (a)(i) per week, as follows:

Under 17 years of age	73%
Under 18 years of age	81%
Under 19 years of age	87%

(b) Where an AIN undertakes duties other than providing care those duties will be consistent with the range of duties undertaken by nurses generally in the setting in which the AIN is employed.

(c) An AIN will work within the limits of their competency as assessed consistent with nationally recognised training and competency standards applicable to assistants in nursing.

(d) An AIN will not be required to provide care other than under the direction of a person registered under the *Health Practitioner Regulation National Law (WA) Act 2010* and where that nurse remains professionally accountable for the care provided.

(e) An AIN who has completed their first year of service and who is accepted for training as an Enrolled Nurse, will be paid not less than the employee would have received had the employee continued as an AIN.

- (f) An AIN in Training is paid in accordance with subclause 24.4 (a) as a Level 1 AIN.

24.5 When the term “year of employment” is used in this clause it will mean all service whether full time or part time in any of the classifications contained in this Agreement with any hospital covered by this Agreement and will be calculated in periods of completed months from the date of commencement of work covered by this Agreement. Provided that:

- (a) “Service” in this context will have the same meaning as it does in the subclause 43.4 of Clause 43 – Long Service Leave of this Agreement.
- (b) Subject to subclause 24.5(c), where an employee is appointed to a position, previous relevant experience at that level, or in a similar level under a differing career structure, will be taken into account for determining the appropriate increment level.
- (c) For the purpose of determining length of service, the onus of proof of previous relevant experience will rest with the employee.
- (d) Employees will be paid the rates shown in this clause according to their year of employment calculated in accordance with the provisions of this subclause.
- (e) Notwithstanding the provisions of subclause 24.5(b), an Enrolled Nurse who successfully completes a re-registration course following a break in service will commence employment on the rate prescribed as follows:
 - (i) Five year break in service - at EN Level 3;
 - (ii) Six year but less than eight year break in service - at EN Level 2;
 - (iii) Greater than eight year break in service - at EN Level 1.
- (f) A casual employee, who has worked an average of 24 hours per week or less in a year will be required to work a further twelve months before being eligible for advancement to the next succeeding experience increment (if any), within the level in which the employee is employed.

Provided further that those employees who reach the full time equivalent hours (1976 hours) before two years have elapsed will progress to the next experience increment upon reaching the full time equivalent hours.

24.6 Minimum Wage: No employee employed under this agreement who is 21 years of age or over will receive less than the minimum wage prescribed from time to time by the Western Australian Industrial Relations Commission.

24.7 The wage rate for an enrolled community school nurse, where such a nurse is not required by the employer to present for duty on any day when the school is not open, will be calculated as follows:

Weekly wage = the normal rate for an enrolled nurse as prescribed in subclause 26.3(c) of this Agreement multiplied by 48.5, and divided by 52.1666.

24.8 Health Workers

- (a) The weekly rates of pay will be as follows:

Classification	First pay period on or after 7 October 2010	First pay period on or after 7 October 2011	First pay period on or after 7 October 2012
Level 1 Aboriginal Health Worker			
1 st year of employment	\$784.80	\$816.19	\$852.92
2 nd year of employment	\$804.40	\$836.58	\$874.23
3 rd year of employment	\$824.03	\$857.00	\$895.56
Level 2 Qualified Aboriginal Health Worker			
1 st year of employment	\$838.66	\$872.21	\$911.46
2 nd year of employment	\$853.05	\$887.18	\$927.10
3 rd year of employment	\$867.43	\$902.13	\$942.73
4 th year of employment	\$881.69	\$916.96	\$958.22
5 th year of employment	\$895.54	\$931.36	\$973.27
6 th year of employment	\$903.17	\$939.30	\$981.57
Level 3 Senior Aboriginal Health Worker			
1 st year of employment	\$946.17	\$984.02	\$1,028.30
2 nd year of employment	\$987.96	\$1,027.48	\$1,073.71
3 rd year of employment	\$1,022.19	\$1,063.07	\$1,110.91
Level 4 Manager of Aboriginal Health Work			
1st year of employment	\$1,079.88	\$1,123.08	\$1,173.62
2nd year of employment	\$1,123.09	\$1,168.02	\$1,220.58
3rd year of employment	\$1,166.21	\$1,212.86	\$1,267.44
4th year of employment	\$1,220.98	\$1,269.82	\$1,326.96
Level 5 State Co-ordinator Aboriginal Health Worker			
1st year of employment	\$1,235.36	\$1,284.78	\$1,342.59
2nd year of employment	\$1,278.63	\$1,329.77	\$1,389.61
3rd year of employment	\$1,321.84	\$1,374.71	\$1,436.57
4th year of employment	\$1,379.48	\$1,434.66	\$1,499.22
Level 1 Ethnic Health Worker			
1st year of employment	\$784.80	\$816.19	\$852.92
2nd year of employment	\$804.40	\$836.58	\$874.23
3rd year of employment	\$824.03	\$857.00	\$895.56
4th year of employment	\$837.35	\$870.84	\$910.03
Level 2 Ethnic Health Worker			
1 st year of employment and thereafter	\$863.96	\$898.52	\$938.95

Definitions

- (c) For the purpose of this Agreement, Level 1 – “Aboriginal Health Worker” means an Aboriginal Health Worker who does not hold an Advanced Certificate in Aboriginal Health Work or has not gone through a recognition of prior learning process when employed. Once this qualification has been achieved, the Health Worker can progress to Level 2.

- (d) For the purpose of this Agreement, Level 2 – “Qualified Aboriginal Health Worker” means an Aboriginal Health Worker who provides a broad range of direct primary health care services and possesses as a minimum, the Advanced Certificate in Aboriginal Health Work, obtained through an accredited education provider or an alternative qualification acceptable to the employer and the Union.
- (e) For the purpose of this Agreement, Level 3 – “Senior Aboriginal Health Worker” means an Aboriginal Health Worker who, in addition to any of the duties performed by a Level 2:
 - (i) provides specialist health care services in the areas of sexually transmitted diseases, health promotion, epidemiology, mental health, or alcohol, tobacco, and other drug use required by the Health Service, and possesses as a minimum, the Advanced Certificate in Aboriginal Health Work, obtained through an accredited education provider or an alternative qualification acceptable to the employer and Union; and/or
 - (ii) has supervisory responsibilities in the provision of health care services to a single community, urban location, individual clinic setting and/or to the health service in which the Health Worker is employed, and possesses, as a minimum, the Advanced Certificate of Aboriginal Health Work, obtained through an accredited education provider, or an alternative qualification acceptable to the employer and the Union.
- (f) For the purpose of this Agreement, “Level 3 – Sole Remote Area Health Worker” means an Aboriginal Health Worker who, in addition to the duties performed by a Level 2:
 - (i) is employed as the only Remote Area Health Worker (as defined in subclause 37.4) in a Remote Area (as defined in subclause 37.1 and 37.2)
 - (ii) possesses, as a minimum, the Advanced Certificate of Aboriginal Health Work, obtained through an accredited education provider, or an alternative qualification acceptable to the employer and the Union, and
 - (iii) has obtained an additional approved qualification acceptable to the employer and the Union.
- (g) Where the definitions of subclauses 24.8(e) and 24.8(f) do not apply to a Remote Area Health Worker, for the purpose of this Agreement, a Remote Area Health Worker who, in addition to the duties performed by a Level 2:
 - (i) is employed as the only Remote Area Health Worker (as defined in subclause 37.4) in a Remote Area (as defined in subclauses 37.1 and 37.2), and
 - (ii) possesses, as a minimum, the Advanced Certificate of Aboriginal Health Work, obtained through an accredited education provider, or an alternative qualification acceptable to the employer and the Union,

will be eligible to be paid an allowance to Level 3.1.

- (h) For the purpose of this Agreement, “Level 4 – Manager, Aboriginal Health Work” means an Aboriginal Health Worker who:
- (i) ensures culturally appropriate, effective and efficient management of human, financial and physical resources associated with the delivery of health services to Aboriginal communities;
 - (ii) identifies requirements for the provision and evaluation of Aboriginal Health Work services and programs, and the development, implementation and monitoring of policies and quality processes and programs;
 - (iii) provides a consultative service to communities, departments and agencies and represents Aboriginal Health Work at appropriate forums; and
 - (iv) possesses, as a minimum, the Advanced Certificate of Aboriginal Health Work, obtained through an accredited education provider or an alternative qualification acceptable to the employer and the Union.
- (i) Level 5 State Co-ordinator Aboriginal Health Worker

Means an Aboriginal health worker employed in the government health industry who has responsibility for providing strategic direction to Western Australian government health industry Aboriginal health workers.

A Level 5 State Co-ordinator Aboriginal Health Worker must possess as a minimum an approved qualification in Aboriginal Health Work to Level 4 within the Australian Qualifications Framework i.e. the Advanced Certificate of Aboriginal Health Work or a Certificate 4 equivalent and have substantial experience in the provision of Aboriginal health services.

A Level 5 Aboriginal Health Worker is required to perform a range of work tasks based on the achievement of Western Australian and Commonwealth health objectives in the provision of health services to Aboriginal people. Duties include but are not confined to:

- setting and implementing policy direction for the government health industry Aboriginal health workforce
- inputting into the planning of Western Australia’s government health industry services for Aboriginal people

Skill acquisition

A Level 5 Aboriginal Health Worker will continue to develop skills, knowledge and expertise through knowledge and experience in strategic planning and policy development to support the provision of health services for Aboriginal people.

Positions at Levels 3 and 5 inclusive will be filled by competition between applicants against prescribed essential and desirable selection criteria. Progression to Levels 3 to 5 inclusive will not be automatic.

(j) Level 1 Ethnic Health Worker

Means an ethnic health worker who is employed in the government health industry who does not possess the National Accreditation Authority for Translators and Interpreters (NAATI), Level 2 Certificate or higher in language required by the employer.

A Level 1 Ethnic Health Worker carries out a range of duties determined in accordance with regional need. Duties include but are not confined to:

- health promotion/education;
- health needs assessment;
- clinical services in consultation with community nurse/doctor; and
- the development, implementation and evaluation of community health programs.

Skills acquisition

A Level 1 Ethnic Health Worker will continue to develop skills, knowledge and expertise through:

- familiarity with and understanding of community needs;
- experience in the provision of primary health care;
- participation in community health programs; and
- opportunities to apply knowledge to practice.

(k) Level 2 Ethnic Health Worker

Means an ethnic health worker who is employed in the government health industry and possesses the National Accreditation Authority for Translators and Interpreters (NAATI) Level 2 Certificate or higher in a language required by the employer.

A Level 2 Ethnic Health Worker carries out a range of duties determined in accordance with regional needs. Duties include but are not confined to:

- health promotion/education;
- disease prevention and control;
- rehabilitation services;
- health needs assessment;
- clinical services in consultation with community nurse/doctor; and
- the development, implementation and evaluation of community health programs.

Skills acquisition

A Level 2 Ethnic Health Worker will continue to develop skills, knowledge and expertise through:

- familiarity with and understanding of community needs;
- experience in the provision of primary health care;
- participation in community health programs; and
- opportunities to apply knowledge to practice.

24.9 Reclassification

- (a) Health Workers who are employed by a hospital/health service can apply for a reclassification of their position in accordance with the above definitions and using the Reclassification Request Form. Copies of the Reclassification Request Form are available from the local Human Resource Services on request.
- (b) Reclassification Request Forms are to be submitted to the Health Service General Manager for assessment using the Health Services established classification processes.
- (c) If the employer agrees with the claim, the Health Worker is reclassified in line with the above definitions.
- (d) If the employer does not accept the claim the Health Worker can either:
 - (i) Accept the decision of the employer in which case the process is complete; or
 - (ii) Refer the application to a Review Committee made up of an independent chair, a representative nominated by the Union, and a representative nominated by the employer.
- (e) Where an application is referred to the Review Committee, the Health Worker may request the Union to advocate on their behalf at the Review Committee.
- (f) It is the responsibility of the employer to forward all information relating to the Health Worker's claim to the Review Committee and to the Union where requested by the Health Worker.
- (g) After consideration of the claim, the Review Committee will notify the Health Worker and the employer of its decision, in writing, within 5 working days of the hearing. The decision of the Review Committee will be final.
- (h) Should an application for reclassification be successful, it will be effective from the date the completed Reclassification Request Form is submitted to the Health Service General Manager for assessment.
- (i) Where an application for reclassification is unsuccessful, the Health Worker may not apply for reclassification again until 12 months has elapsed from the date the previous claim was submitted to the Health Service General Manager for assessment.

25. WORKFORCE DEVELOPMENT

25.1 Review of competencies and progression to Advanced Skill Enrolled Nurse level

A joint reference group will be established to conduct a review of the process for completing the Advanced Skill Enrolled Nurse Competencies Workbook and satisfying the competencies contained therein.

25.2 The reference group will be constituted as an industry consultative committee, with an agreed number of members nominated by the Employer and by the Union, and will be convened by the Chief Nursing and Midwifery Officer of Western Australia by no later than one month after the operative date of the Agreement. Union representation will include at least six Enrolled Nurse members including two employed by the WA Country Health Service.

25.3 The review will be commenced within one month and completed within 12 months of the operative date of the Agreement.

25.4 Introduction of Advanced Skill Enrolled Nurse classification in Mental Health

The parties agree that the Advanced Skill Enrolled Nurse classification will be made available to enrolled nurses employed or specialising in the mental health area within six months of the operative date of the Agreement.

25.5 In order to achieve the commitment given in subclause 25.4, a joint reference group will be established to develop appropriate mental health competencies to be contained in the Advanced Skill Enrolled Nurse Competencies Workbook. The reference group will be constituted as an industry consultative committee with an equal number of members nominated by the employer and the Union and will be convened by the Chief Nursing and Midwifery Officer of Western Australia by no later than one month after the operative date of the Agreement.

25.6 The joint reference group will finalise the mental health competencies within six months from the date the group first meets.

25.7 An employee who completes the mental health competency recognition process within six months of the specification of the mental health competencies, and who can demonstrate that they were applying the mental health competencies from the date of commencement of the Agreement is entitled to back-payment to the ASEN 1 rate from that date.

26. HIGHER DUTIES ALLOWANCE

26.1 Enrolled Nurses and Assistants in Nursing

Where an Enrolled Nurse is required at the request of the Director of Nursing or delegate to temporarily perform the duties of an Advanced Skill Enrolled Nurse (ASEN) for two or more hours in any one shift such employees will be paid at the ASEN 1 rate of pay for the entire shift.

26.2 Where an Enrolled Nurse is required to be on duty where the Health Service Manager/Registered Nurse is on call, the Enrolled Nurse will be paid at the ASEN 1 rate for the entire shift. Provided that where an Enrolled Nurse is in receipt of the allowance in accordance with subclause 26.1, this subclause will not apply.

26.3 Health Workers

- (a) A Health Worker who is instructed to temporarily perform duties which carry a higher minimum rate than that which such Health Worker usually performs will be entitled to the higher minimum rate while so employed.
- (b) Where such Health Worker is engaged in the higher grade of work for more than two hours on any day or shift, the Health Worker will be paid the higher rate for the whole day or shift.
- (c) Notwithstanding the provisions of this clause payment for higher duties will not apply to a Health Worker required to act in another position whilst the permanent Health Worker is on a single accrued day off as prescribed by subclause 18.1 of this Agreement.

27. PAYMENT OF WAGES

- 27.1 Wages will be paid fortnightly. Overtime and penalty rates, where applicable, will be paid at least monthly.
- 27.2 Accompanying each payment of wages a pay advice slip will be provided to the employee. The employer will retain a copy. On this slip the employer will clearly detail the gross wages, where practical its composition, the net wages payable and show details of each deduction.
- 27.3 Overtime will be calculated and based on the aggregate wage as provided in Clause 24 – Classification Structure and Wages of this Agreement before any deduction is made for board and/or lodging.
- 27.4 On termination of employment the employer will pay to the employee all monies payable to that employee before the employee leaves the place of employment or the same will be forwarded to the employee by post in the following week.
- 27.5 Wages will be paid by direct funds transfer to the credit of an account nominated by the employee at such bank, building society or credit union approved by the employer, except that payment by cheque may be made where such form of payment is impractical or where some exceptional circumstances exist and by agreement between the employer and the Union.
- 27.6 An employee who performs shift or weekend work irregularly may be paid shift or weekend penalties during the pay period in which the work is performed.
- 27.7 Subject to the provisions of this clause, no deduction will be made from an employee's wages unless the employee has authorised such deduction in writing.

28. SHIFT WORK

- 28.1 The provisions of this clause will apply to a Health Worker where, by agreement between the employer and a Health Worker, the Health Worker is employed within a hospital setting and is rostered to work shifts.
- 28.2 All employees

For the purposes of this clause:

- (a) “Afternoon Shift” means any rostered shift, which commences on or after 12.00 noon and finishes after 6.00pm on weekdays.

- (b) “Night shift” means:
 - (i) any rostered shift, which commences on or after 8.30pm and before 4.00am for Enrolled Nurses or AINs;
 - (ii) any rostered shift completed between the hours of 6.00pm and 7.30am on a weekday for Health Workers.
- (c) “Saturday shift” means ordinary hours worked between midnight on Friday and midnight on the following Saturday.
- (d) “Sunday shift” means ordinary hours worked between midnight on Saturday and midnight on the following Sunday.

28.3 The afternoon shift allowance will not apply to an employee who on any day commences his/her ordinary hours of work after 12.00 noon and completes those hours before 6.00pm.

28.4 In addition to the ordinary rate of wage prescribed in this Agreement the following will apply:

- (a) A loading of 15% per hour or pro rata for part thereof will be paid to an employee rostered on Afternoon shift for each hour worked.
- (b) A loading of 35% per hour or pro rata for part thereof will be paid to an employee rostered on Night Shift for each hour worked.
- (c) A loading of 50% per hour or pro rata for part thereof will be paid to an employee rostered to work on Saturday Shift for each hour worked.
- (d) A loading of 75% per hour or pro rata for part thereof will be paid to an employee rostered to work on Sunday shift for each hour worked.

28.5 The rates prescribed in subclauses 28.4 (a), and 28.4 (b) will be in substitution for and not cumulative on the rates prescribed in subclauses 28.4 (c), and 28.4 (d).

28.6 Enrolled Nurses and Assistants in Nursing

Where an employee works a broken shift each portion of that shift will be considered a separate shift for the purpose of this clause. Provided that a shift broken by a meal break of one hour or less will not constitute a broken shift.

28.7 Where the ordinary hours of work span 12 midnight on a Friday night or Sunday night the additional payments for shift work and work during the weekend will be made by calculating for each part of the shift according to the rate applicable for the additional payment for shift work and work during the weekend as the case may be.

28.8 Notwithstanding subclause 28.7, an employee who commences work prior to 12 midnight on a Sunday and continues to work after midnight will continue to receive the 75% loading on ordinary hours worked up to 7.30 am on the following Monday. The provisions of this clause do not apply where the following Monday is a Public Holiday pursuant to Clause 42 – Public Holidays of this Agreement.

28.9 The provisions of this clause will not apply to community nurses or enrolled community nurses.

28.10 Health Workers

- (a) Where a Health Worker's rostered hours of duty on any day are extended by an early start or a late finish the afternoon/night shift work or weekend rates as the case may be will be paid for such additional time in addition to any overtime payable under Clause 22 – Overtime of this Agreement.
- (b) Where a Health Worker who is regularly rostered to work day duty Monday to Friday is required to work on a Sunday he/she will be paid at the rate of double time for all time worked on the Sunday.

29. RECOVERY OF UNDERPAYMENTS AND OVERPAYMENTS

29.1 Underpayments

- (a) Where an employee is underpaid in any manner:
 - (i) the employer will, once the employer is aware of the underpayment, rectify the error as soon as practicable;
 - (ii) where possible the underpayment will be rectified no later than in the pay period immediately following the date on which the employer is aware that an underpayment has occurred; and
 - (iii) where an employee can demonstrate that an underpayment has created serious financial hardship, the employee will be paid by way of a special payment as soon as practicable.
- (b) An employer will compensate an employee for costs resulting directly from an underpayment, where it is proven that the costs resulted directly from the underpayment. This includes compensation for overdraft fees, dishonoured cheque costs, and dishonour fees related to routine deductions from the bank account into which an employee's salary is paid.
- (c) Nothing in this clause will be taken as precluding the employee's legal right to pursue recovery of underpayments.

29.2 Overpayments

- (a) The employer has an obligation under the *Financial Management Act 2006* (WA) to account for public monies. This requires the employer to recover overpayments made to an employee.
- (b) Any overpayment will be repaid to the employer within a reasonable period of time.
- (c) Where an overpayment is identified and proven, the employer will provide the employee with the written details of the overpayment and notify the employee of their intent to recover the overpayment.
- (d) Where the employee accepts that there has been an overpayment, arrangements for the recovery of the overpayment will be negotiated between the employer and employee.

- (e) If agreement on a repayment schedule cannot be reached within a reasonable period of time, the employer may deduct the amount of the overpayment over the same period of time that the overpayment occurred provided:
 - (i) the employer may not deduct or require an employee to repay an amount exceeding 5% of the employee's net pay in any one pay period without the employee's agreement; and
 - (ii) in case of financial hardship, the employer will agree to a lesser repayment amount than that specified in paragraph (i) of this subclause; and
 - (iii) in case of financial hardship, the employer may deduct money over a period of time greater than the period of time over which the overpayment occurred.
- (f) If the employee disputes the existence of an overpayment and the matter is not resolved within a reasonable period of time, the matter should be dealt with in accordance with Clause 66 – Dispute Settlement Procedure of this Agreement. No deductions relating to the overpayment will be made from the employee's pay while the matter is being dealt with in accordance with the Dispute Settlement Procedure.
- (g) The Commission may determine an alternative maximum amount to that specified in subclause (e)(i) if the Commission finds that repayment at that rate would impose severe financial hardship on the employee.
- (h) Nothing in this clause will be taken as precluding the employer's legal right to pursue recovery of overpayments.
- (i) Where an employer alters the pay cycle or pay day, any consequential variations to an employee's fortnightly salary and/or payments to compensate will not be considered an overpayment for the purposes of this clause.

30. SALARY PACKAGING

- 30.1 For the purposes of this Agreement, salary packaging will mean an arrangement whereby the wage or salary benefit arising under a contract of employment is reduced, with another or other benefits to the value of the replaced salary being substituted and due to the employee.
- 30.2 An employee may, by agreement with the employer, enter into a salary packaging arrangement.
- 30.3 The employer will not unreasonably withhold agreement to salary packaging on request from an employee.
- 30.4 The employer will not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.
- 30.5 A salary packaging arrangement will be formulated and operate on the basis that, on balance, there will be no material disadvantage of the employee concerned, and will be cost neutral in relation to the total employment cost to the employer.

- 30.6 A salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.
- 30.7 In the event of any increase or additional payments of tax or penalties associated with the employment of the employee, or the provision of employer benefits under the salary packaging agreement, such tax, penalties and any other costs will be borne by the employee.
- 30.8 An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.
- 30.9 The employer may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice if the employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the employer cannot retrospectively cancel any salary packaging arrangement.
- 30.10 Notwithstanding subclauses 30.8 and 30.9, the employer and the employee may agree to forgo the notice period.
- 30.11 The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.
- 30.12 For the purposes of this provision, any penalty rate, loading or other salary related allowances which would ordinarily be calculated on the basis of the salary rates expressed in Clause 24 – Classification Structure and Wages, will continue to be so calculated despite an election to participate in any salary packaging arrangement.
- 30.13 For the purposes of this provision, employer contributions to the Government Employees Superannuation Board administered West State Superannuation Scheme will be made on the basis of pre-packaging salary rates. To avoid doubt, employer contributions will not be reduced as a result of an employee participating in salary packaging pursuant to this provision.
- 30.14 The employer may at any time vary the range of benefits provided or the conditions under which benefits are provided however the employer will not differentiate between different class of employees across WA Health in terms or range of benefits or the conditions under which benefits are provided.
- 30.15 If an employee is found to have committed misconduct in the claiming a salary packaging benefit the employer is entitled to prospectively cease to provide some or all salary packing benefits either indefinitely or for any period determined by the employer.

PART 6 – ALLOWANCES

31. DISTRICT ALLOWANCE

- 31.1 The terms of the District Allowance (Government Wages Employees) General Agreement 2010 which have prospective application on and from 1 July 2010 will apply as if those terms were express terms of this Agreement.
- 31.2 Any District Allowance payments made on and from 1 July 2010 to the date of registration of this Agreement pursuant to Clause 31 – District Allowance of the WA Health – LHMU – Enrolled Nurses and Assistants in Nursing Industrial Agreement 2007 will be deducted from the payment made under subclause 31.1.

- (a) Notwithstanding any other provision of this Agreement, the employer will back pay the difference between the district allowance payable pursuant to the District Allowance (Government Wages Employees) General Agreement 2010 and the district allowance paid pursuant to the District Allowance (Government Wages Employees) General Agreement 2005.

31.3 Where an employee is entitled to a Rural Gratuity pursuant to Clause 32 – Rural Gratuities of this Agreement, the Rural Gratuity payment will be discounted in accordance with subclause 32.2 of this Agreement.

31.4 Superseded District Allowance

The provisions of this subclause reflect Clause 31 – District Allowance of the WA Health – LHMU – Enrolled Nurses and Assistants in Nursing Industrial Agreement 2007 and are superseded by subclause 31.1.

- (a) For the purposes of this subclause the following terms will have the following meaning:

- (i) Dependant in relation to an employee means:

- (1) a partner; or
- (2) where there is no partner, a child or any other relative resident within the State who relies on the employee for their main support;

who does not receive a district or location allowance of any kind.

- (ii) Partial dependant in relation to an employee means:

- (1) a partner; or
- (2) where there is no partner or a child or any other relative resident within the State who relies on the employee for their main support;

who receives a district or location allowance of any kind less than that applicable to an employee without dependants under any award, agreement or other provision regulating the employment of the partial dependant.

- (iii) For the purposes of this clause, the boundaries of the various districts will be as described in paragraph (b) of this subclause and as delineated in paragraph (f) of this subclause.

- (b) District

- (i) District 1

The area within a line commencing on coast; then east along latitude 28 to a point north of Tallering Peak; then due south to Tallering Peak; then southeast to Mt Gibson and Burracoppin; then to a point southeast at the junction of latitude 32 and longitude 119; then south along longitude 119 to coast.

(ii) District 2

That area within a line commencing on the south coast at longitude 119 then east along the coast to longitude 123; then north along longitude 123 to a point on latitude 30; then west along latitude 30 to the boundary of No. 1 District.

(iii) District 3

The area within a line commencing on coast at latitude 26; then along latitude 26 to longitude 123; then south along longitude 123 to the boundary of No. 2 District.

(iv) District 4

The area within a line commencing on the coast at latitude 24; then east to the South Australian border; then south to the coast; then along the coast to longitude 123; then north to the intersection of latitude 26; then west along latitude 26 to the coast.

(v) District 5

That area of the State situated between the latitude 24 and a line running east from Carnot Bay to the Northern Territory border.

(vi) District 6

That area of the State north of a line running east from Carnot Bay to the Northern Territory border.

- (c) An employee will be paid a district allowance at the standard rate prescribed in Column II of paragraph (f) of this subclause, for the district in which the employee's headquarters is located. Provided that where the employee's headquarters is situated in a town or place specified in Column III of paragraph (f) of this subclause, the employee will be paid a district allowance at the rate appropriate to that town or place as prescribed in Column IV of paragraph (f) of this subclause.
- (d) An employee who has a dependant will be paid double the district allowance prescribed by paragraph (f) of this subclause for the district, town or place in which the employee's headquarters is located.
- (e) Where an employee has a partial dependant the total district allowance payable to the employee will be the district allowance prescribed by paragraph (f) of this subclause, plus an allowance equivalent to the difference between the rate of district or location allowance the partial dependant receives and the rate of district or location allowance the partial dependant would receive if he or she was employed in a full time capacity under this Agreement or other provision regulating the employment of the partial dependant.
- (f) The weekly rate of district allowance payable to employees pursuant to paragraph (c) of this subclause will be as follows:

COLUMN I	COLUMN II	COLUMN III	COLUMN IV
DISTRICT	STANDARD RATE	EXCEPTIONS TO STANDARD RATE	RATE
	\$ per week	Town or place	\$ per week
6	89.50	Nil	Nil
5	64.35	Fitzroy Crossing	132.10
		Halls Creek	95.15
		Nullagine	98.40
		Marble Bar	113.70
		Karratha	75.80
		Port Hedland	70.50
4	55.30	Warburton Mission	91.85
		Denham	51.05
		Carnarvon	32.90
		Eucla	85.30
3	52.15	Meekatharra	43.20
		Leonora	60.45
2	48.05	Kalgoorlie/ Boulder	21.50
		Ravensthorpe	49.00
		Esperance	26.45
1	Nil	Jerramungup	48.05

(Note: In accordance with paragraph (d) of this subclause, employees with dependants will be entitled to double the rate of district allowance shown.)

- (g) When an employee is on approved annual leave in accordance with Clause 40 – Annual Leave of this Agreement, the employee will for the period of such leave, be paid the district allowance to which the employee would ordinarily be entitled.
- (h) When an employee on long service leave or other approved leave with pay (other than annual leave), the employee will only be paid district allowance for the period of such leave if the employee, dependants or partial dependants remain in the district in which the employee's headquarters is situated.
- (i) When an employee leaves his or her district on duty, payment of any district allowance to which the employee would ordinarily be entitled will cease after the expiration of two weeks unless the employee's dependant/s or partial dependant/s remain in the district or as otherwise approved by the employer.
- (j) Except as provided in paragraph (i) of this subclause, a district allowance will be paid to any employee ordinarily entitled thereto in addition to reimbursement of any travelling transfer or relieving expenses or camping allowance.
- (k) Where an employee whose headquarters is located in a district in respect of which no allowance is prescribed in paragraph (f) of this subclause, is required to travel or temporarily reside for any period in excess of one month in any district or districts in respect of which such allowance is so payable, the employee will be paid for the whole of such period a district allowance at the appropriate rate pursuant to paragraph (c), (d), or (e) of this subclause, for the district in which the employee spends the greater period of time.

- (l) When an employee is provided with free board and lodging by the employer or a public authority the allowance will be reduced to two-thirds of the allowance the employee would ordinarily be entitled to under this clause.
- (m) An employee who is employed on a part-time basis will be entitled to district allowance on a pro-rata basis. The allowance will be determined by calculating the hours worked by the employee as a proportion of the full-time hours prescribed by the Agreement under which the employee is employed. That proportion of the appropriate district allowance will be payable to the employee.

32. RURAL GRATUITIES – TRANSITIONAL PROVISIONS

32.1 This Clause applies to enrolled nurses who were eligible employees as defined by subclause 32.3(c) of this clause at the date of registration of this Agreement, providing it does not apply to enrolled nurses who commence employment in an eligible area after the date of registration of this Agreement.

32.2 Where an enrolled nurse is entitled to a rural gratuity payment in accordance with this clause it will be reduced by the district allowance increase as defined in subclause 32.3(b) of this clause.

32.3 For the purposes of this clause:

- (a) “continuous service” means any period for which an enrolled nurse is paid including any period when the enrolled nurse is absent from their duties on full or part pay, but does not include any cumulative period exceeding nine working days during which the enrolled nurse is absent on leave without pay, on workers compensation, or on parental leave.
- (b) “district allowance increase” means the annual district allowance paid as per subclause 31.1 minus the superseded district allowance rate prescribed by subclause 31.4 for the same period.
- (c) “eligible employees” means enrolled nurses employed by the WA Country Health Service on a permanent basis located within Zone 1, Merredin Health Service, Geraldton Health Service, Mid West Health Service as defined in this clause. (Does not include casual employees, temporary contract employees or agency staff).
- (d) Zone 1 encompasses the health services formerly known as the Kimberley Health Service, East Pilbara Health Service, West Pilbara Health Service, Ashburton Health Service, Murchison Health Service, Gascoyne Health Service, Laverton Leonora Health Service and Kalgoorlie Boulder Health Service as contained in Clause 37 – Rural Gratuities of the Nurses (WA Government Health Services) Agreement 2001.

32.4 Gratuity payments will be payable subject to:

- (a) Following the completion of a minimum term of two years’ continuous service with the WA Country Health Service in a Zone 1 locality, eligible employees will be entitled to a gratuity payment. The initial payment following the two year accrual will be calculated as a percentage of 8 weeks substantive base weekly wage dependent on the location in which the employee served. (See table below).

- (b) Subsequent gratuity payments will be made at the end of each additional year(s) of continuous service completed by the employee. The subsequent payment will be calculated as a percentage of 4 weeks substantive base weekly wage dependent on the location in which the employee served.
- (c) In lieu of the provisions of subclauses 32.4(a) and (b) of this clause, the following provisions will apply to enrolled nurses engaged within the former Kimberley Health Service as contained in Clause 37 – Rural Gratuities of the Nurses (WA Government Health Services) Agreement 2001:
- (i) Following the completion of a minimum term of one years' continuous service with the health service formerly known as the Kimberley Health Service as contained in Clause 37 – Rural Gratuities of the Nurses (WA Government Health Services) Agreement 2001, eligible employees will be entitled to a gratuity payment. The initial payment following the one year accrual will be calculated as a percentage of three weeks substantive base weekly wage dependent on the location in which the employee served. (See table below)
- (ii) A second gratuity payment will be made at the end of an additional year of service completed by the employee. The subsequent payment will be calculated as a percentage of 5 weeks substantive base weekly wage dependent on the location in which the employee served.
- (iii) Subsequent gratuity payments will be made at the end of each additional year(s) of continuous service completed by the employee. The subsequent payment will be calculated as a percentage of 4 weeks substantive base weekly wage dependent on the location in which the employee served.

32.5 The proportion of the gratuity payable depends on which location the eligible employee is employed. The gratuity proportions for locations within Zone 1 are as follows:

Group A	Group B	Group C
No Gratuity	75%	100%
Broome	Carnarvon	Coonana
	Coolgardie	Cue
	Derby	Fitzroy Crossing
	Kalgoorlie	Halls Creek
	Kambalda	Laverton
	Karratha	Leonora
	Kununurra	Marble Bar
	Newman	Meekatharra
	Port Hedland	Menzies
	Tom Price	Mount Magnet
	Exmouth	Onslow
		Paraburdoo
		Roebourne
		Sandstone
		Wickham

- 32.6 Eligible employees who permanently move from one location within Zone 1 to another location within Zone 1 and maintain continuity of service, can transfer their accrual, providing they serve at least six months at each location, on each occasion.
- (a) Eligible employees who serve less than six months in a Zone 1 location, who permanently move from one location within Zone 1 to another location within Zone 1 and maintain continuity of service, may only transfer their accrual if they have the written approval from the General Managers of the Health Services concerned.
 - (b) If the percentage of the gratuity differs from one location to the other then a pro-rata calculation will be made and paid accordingly upon the gratuity falling due.
- 32.7 Eligible employees who are promoted, demoted, or elect to take on a position at a lower level than their initial position, on a permanent basis during a qualifying period, will receive a gratuity that is pro rata to the time spent at each level and paid accordingly upon the gratuity falling due.
- 32.8 Eligible employees who act in higher duties positions during the life of this Agreement are not eligible for the higher gratuity payment regardless of the length of acting undertaken.
- 32.9 Part-time employees will receive a payment that is pro-rata to the average number of hours worked during the qualifying period.
- 32.10 Casual employees, temporary employees, and agency staff are not eligible for payment of a gratuity. Any length of service accrued as a casual employee will not be recognised should that casual employee become a permanent employee.
- 32.11 The offer of a gratuity payment to new employees as per this clause will cease upon the expiry of this Agreement. Existing employees part way through a qualifying period will only be able to access their next due gratuity payment at the end of that qualifying period, notwithstanding that such qualifying period may be completed subsequent to expiry of this Agreement. The continuance of gratuity payments will be addressed in future Agreements.
- 32.12 An employee who commences employment with a Zone 1 locality after the expiry of this Agreement will not be entitled to payment of a gratuity as per the conditions of this Agreement.
- 32.13 When paying the gratuity the following provisions must be observed:
- (a) where possible the gratuity will be paid as a lump sum on the first pay day following the completion of each qualifying period. However, for tax purposes, the payment should be averaged (taxed at the marginal rate);
 - (b) gratuity payments will not be cumulative;
 - (c) paid leave is included as part of a qualifying period. The cash equivalent of paid leave will not be included as service for the purpose of this payment;
 - (d) the gratuity does not apply for superannuation purposes;

- (e) the gratuity is not “all purpose” and should not be included for the calculation of overtime, penalties and leave loading;
- (f) the increment level, within a classification level, that the employee was receiving at the time the gratuity payment fell due will be used to calculate the base weekly wage; and
- (g) for pro rata calculations following a change in classification level of an employee during a qualifying period, the increment level, within a classification level, that the employee was receiving prior to changing classification level will be used to calculate the base weekly wage for that pro rata period.

32.14 It is acknowledged that a gratuity payment provision has been included in this Agreement as a bona fide attempt to improve the recruitment and retention of enrolled nurses by the Zone 1 locality. It is agreed that twelve months prior to the expiry of this Agreement a working party will evaluate the success of this initiative in improving recruitment and reducing staff turnover. Any future incentives to be offered will take into account the recommendations of the working party.

Merredin Health Service

32.15 Enrolled nurses directly employed by the WA Country Health Service within the health service formerly known as the Merredin Health Service as contained in Clause 38 – Gratuity Payment – Merredin Health Service of the Nurses (WA Government Health Services) Agreement 2001 who complete a period of 18 months of continuous service with the health service formerly known as the Merredin Health Service will be entitled to a gross payment of \$1200 at the completion of each 18 month period of continuous service.

32.16 Part time employees will be paid on a pro rata basis as their hours bear to 38.

32.17 For the purposes of this clause, service will not be deemed to include periods of leave without pay, unpaid parental leave and other leave in excess of 13.5 weeks per 18 month period.

32.18 The continuation of the incentive payment will be linked to satisfactory performance management outcomes to be reviewed within six months of the expiration of this Agreement.

32.19 No pro rata payment will be made to employees who complete less than eighteen months service.

Geraldton Health Service

32.20 This clause relates to enrolled nurses employed by the WA Country Health Service within the health service formerly known as the Geraldton Health Service’s Accident and Emergency, Intensive Nursing, Maternity and Operating Theatre Units as contained in Clause 39 – Gratuity Payment – Geraldton Health Service of the Nurses (WA Government Health Services) Agreement 2001.

32.21 Following the completion of eighteen months continuous service within the health service formerly known as the Geraldton Health Service’s Accident and Emergency, Intensive Nursing, Maternity and Operating Theatre Units, the employee is entitled to a payment of \$1200.

- 32.22 Part time enrolled nurses will receive a payment that is pro rata to the average number of hours worked during the eighteen month period.
- 32.23 Casual employees are not eligible for payment.
- 32.24 Continuous service is defined as any period where an employee is paid including any period when the employee is absent from their duties on full or part pay but does not include any cumulative period exceeding two weeks during which the employee is absent on leave without pay.
- 32.25 An employee can elect to take the retention payment as a lump sum or over a period of six pay periods.
- 32.26 Where at the instruction of the employer, the employee works at other locations than in subclause 32.20 of this clause then this will count as service. However, if the employee opts to work in another location then this period of employment will be excised from the period of continuous service.
- 32.27 The payment of the retention allowance is only valid for those employees employed during the life of this Agreement.

Mid West Health Service

- 32.28 This clause relates to enrolled nurses employed by the WA Country Health Service within the health service formerly known as the Midwest Health Service as contained in Clause 40 – Gratuity Payment – Midwest Health Service of the Nurses (WA Government Health Services) Agreement 2001.
- 32.29 Following the completion of eighteen months continuous service within the health service formerly known as the Midwest Health Service, the employee is entitled to a payment of \$1200.
- 32.30 Part time enrolled nurses will receive a payment that is pro rata to the average number of hours worked during the eighteen month period.
- 32.31 Casual employees are not eligible for payment.
- 32.32 Continuous service is defined as any period where an employee is paid including any period when the employee is absent from their duties on full or part pay but does not include any cumulative period exceeding two weeks during which the employee is absent on leave without pay.
- 32.33 An employee can elect to take the retention payment as a lump sum or over a period of six pay periods.
- 32.34 Where at the instruction of the employer, the employee works at other locations than in subclause 32.28 of this clause then this will count as service. However, if the employee opts to work in another location then this period of employment will be excised from the period of continuous service.
- 32.35 The payment of the retention allowance is only valid for those employees employed during the life of this Agreement.

33. MOTOR VEHICLE ALLOWANCE

33.1 Where an employee is required and authorised to use their own motor vehicle in the course of their duties they will be paid an allowance not less than that provided for in the schedules set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangements as to car allowance not less favourable to the employee.

33.2 Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein will be made at the appropriate rate applicable to each of the separate areas traversed.

33.3 A “year” for the purpose of this clause will commence on the first day of July and end on the thirtieth day of June next following.

33.4 Rates of hire for use of employee's own vehicle on employer's business:

(a) Motor Vehicle Allowance

	Engine Displacement (in cubic centimetres)		
	OVER 2600CC	1600 – 2600CC	UNDER 1600CC
Area and Details	Cents	per	Kilometre
Metropolitan Area	89.5	64.5	53.2
South West Land Division	91.0	65.4	54.0
North of 23.5° South Latitude	98.6	70.6	58.3
Rest of State	94.3	67.5	55.6

(b) Motor Cycle Allowances

Distance Travelled During a Year on Official Business	Rate Cents per Kilometre
Rate Per Kilometre	31.0

33.5 Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

33.6 The allowance prescribed in this clause will be adjusted in accordance with any movement in the allowances in the Public Service Award 1992.

34. EMPLOYEES LIVING NORTH OF THE 26 DEGREE SOUTH LATITUDE

34.1 The conditions and allowances specified in this clause will apply to all employees whose headquarters are located north of the 26 degrees south latitude.

34.2 An employee will receive an additional five day's annual leave on the completion of each twelve (12) months' continuous service in the region.

34.3 An employee who proceeds on annual leave before having completed the necessary year of continuous service may be given approval for the additional five working days' leave provided the leave is taken at the employer's convenience and provided the employee returns to that region to complete the necessary service.

34.4 Where an employee has served continuously for at least a year north of the 26 degrees south latitude, and leaves the region because of promotion or transfer, a pro rata annual leave credit to be cleared at the employer's convenience will be approved on the following basis:

Completed Months of Additional Service in the region after initial year of service	1	2	3	4	5	6	7	8	9	10	11
Pro Rata Additional annual leave(working days)	0	0	1	1	2	2	2	3	3	4	4

- 34.5 Where payment in lieu of pro rata annual leave is made on the death, resignation or retirement of an employee in the region, in addition to the payment calculated on a four week basis, payment may be made for the pro rata entitlement contained in subclause 34.4 of this clause.
- 34.6 Employees who are tenants occupying Government Regional Officers Housing (GROH) houses equipped with gas hot water systems are eligible for a reimbursement up to a maximum of \$29.00 per month.

35. DISTANT APPOINTMENTS

- 35.1 Employees other than Enrolled Community Nurses or Enrolled Community School Nurses
- (a) Subject to subclause 35.1(b), when an employee is engaged for service in a hospital or place outside a radius of forty kilometres of the General Post Office, Perth, they will be entitled to first-class fare and travelling allowance as prescribed from the place of engagement to the place of employment, and their term of employment will be deemed to commence as soon as they leave their place of engagement.
 - (b) If the employee resigns other than for a reason which in the opinion of the employer is a good and sufficient reason or is dismissed for misconduct before the completion of three months' service they will refund to the employer the cost of the fare from their place of engagement to the place of employment.
 - (c) Except in the case of dismissal for misconduct, if an employee is dismissed before the period for which they were engaged has expired or if none is stipulated then before the period of six months from the date of their appointment, the employee will be entitled to first-class accommodation and travelling allowance as above to the place of engagement should they desire to return there. Where the employee was originally engaged in Perth and has been employed continuously at more than one public hospital without returning to Perth, then they will be entitled to first-class accommodation and travelling allowance to Perth, should they desire to return there.
 - (d) In the circumstance described in subclause 35.1(c), should an employee elect to return to their place of engagement or to Perth by other conveyance than that stipulated by the employer, they will be entitled, upon production of receipts, to actual transport expenses incurred; but such transport expenses will not exceed the amount of either a first-class rail, boat, plane and/or coach fare at the employer's option, from the place of their last employment to the place of their engagement, or to Perth as the case may be.
 - (e) Any employee whose duties will require them to travel will be entitled to travelling accommodation at the expense of their employer.

- (f) Any employee engaged for duty in a hospital or place outside a radius of forty kilometres from the place of engagement, who remains in that duty for at least six months, will be entitled to return fare and travelling allowance, in accordance with subclause 35.1(a) , to the place of original engagement upon lawful termination of the employment.
- (g) Upon termination of their employment, an employee engaged under the provisions of subclause 35.1(a) or 35.1(f) will receive payment before they leave the hospital of all money due to them up to the termination of their employment.

35.2 Enrolled Community Nurses or Enrolled Community School Nurses

- (a) The provisions of this clause will apply to an enrolled community nurse or an enrolled community school nurse when such a nurse is engaged for service at a location outside a radius of 40 kilometres from the place of appointment. For the purposes of this clause the place of employment will be Perth except where the nurse is appointed at a place other than Perth.
- (b) The employment of a nurse will be deemed to have commenced at the time the nurse leaves the place of appointment.
- (c) The employer will pay the fares, travelling expenses and an amount agreed between the employer and the nurse prior to engagement for the cost of transporting the employee's personal effects from the place of appointment to the place of employment. Provided further that the employer will determine the method of public transport to be utilised by the nurse in moving from the place of appointment to the place of employment.
- (d) A nurse who elects to drive their own vehicle to the work location will be paid an allowance equal to half the rate prescribed in Clause 33 – Motor Vehicle Allowance of this Agreement provided that such an allowance will not exceed the cost of transport by public conveyance to the work location.
- (e) If the nurse resigns, other than for a reason which in the opinion of the employer is a good and sufficient reason or is dismissed for misconduct before the completion of three months' service the nurse will refund to the employer the cost of the fare as prescribed in subclause 35.2(d).
- (f) Should a nurse be dismissed, other than for misconduct warranting instant dismissal, prior to the completion of six months, the nurse will be entitled to a return fare and travelling allowance as provided in subclause 35.2(d).
- (g) A nurse will upon completion of six months' service or any lesser period for which the nurse was appointed, or when the employee has been employed continuously at more than one centre without returning to the place of employment, be entitled to return expenses as provided in subclause 35.2(d).

36. PUBLIC SERVICE AWARD PROVISIONS

The provisions of Clause 42 – Camping Allowance, Clause 44 – Disturbance Allowance, Clause 48 – Property Allowance, Clause 50 – Relieving Allowance, Clause 51 – Removal Allowance, Clause 53 – Transfer Allowance, Clause 54 – Travelling Allowance, Clause 55 – Weekend Absence From Residence, Schedule C – Camping Allowance and Schedule I – Travelling, Transfer and Relieving

Allowance of the Public Service Award 1992 will apply as they exist at the date of registration of this Agreement. Increases in any allowances or other amounts payable subsequent to the date of registration will prevail over those imported at the date of registration.

37. REMOTE AREA CONDITIONS

37.1 Definition of Remote Area

For the purposes of this Agreement, a Remote Area is defined as a place that is characterised as having very restricted/very little accessibility of goods, services and opportunity for relevant health professional interaction. Key considerations include lack of access to a resident medical practitioner and restrictions in access to medical practitioners and other relevant medical professionals and other services at other locations.

37.2 For the purposes of this Clause, the following health care sites are determined to be located in Remote Areas:

Burringurrah
Coondana
Gibb River Mobile
Kalumbaru
Loombadine
Looma
Nookenhah
One Arm Point
Oombulgurri
Tjuntjunjarra
Wangkatjunka
Warmun
Yandeyarra

37.3 The Parties will from time to time determine and at least once during the term of this Agreement review the approved list of Remote Areas for Aboriginal Health Worker services.

37.4 Availability Allowance

Remote Area Health Workers will be paid 6.34% of the hourly wage of a Level 2 Year 6 Health Worker, per hour, as an availability allowance outside ordinary or overtime hours actually worked:

- (a) where there is only one Health Worker at the health care site;
- (b) where there is more than one Health Worker at the health care site then the Worker available to work will receive the allowance; or
- (c) where health service provision requires that two or more Health Workers be available and such is directed by the employer, each Health Worker available to work will receive the availability allowance.

37.5 Respite Leave

Respite Leave is designed to compensate the Remote Area Health Workers for long periods of being continuously available and will be used as recreation leave only.

A Remote Area Health Worker will not be required to use Respite Leave for staff development purposes.

- 37.6 Health Workers will be entitled to one week's Respite Leave after the completion of each twelve weeks in a Remote Area.
- 37.7 For each period of Respite Leave, the Health Worker will, if required, be provided with travel into and out of the Remote Area to the nearest airport serviced by a scheduled passenger service.
- 37.8 Notwithstanding Clause 36 – Public Service Award Provisions of this Agreement, the provisions of Clause 50 – Relieving Allowance, Clause 53 – Transfer Allowance, Clause 54 – Travelling Allowance of the Public Service Award 1992 do not apply to travel undertaken as part of Respite Leave.
- 37.9 Respite Leave will not accrue on a pro rata basis and does not accrue from year to year.
- 37.10 Respite Leave is not subject to Public Service Portability policies and may not be transferred between Health Industry employers.
- 37.11 This clause will not apply to Health Workers who undertake periods of relief in Remote Areas, where their period of continuous relief in Remote Areas does not exceed 13 weeks.

38. LANGUAGE ALLOWANCE

- 38.1 A Health Worker will be paid a language allowance where they are required as part of their duties to use one or more Aboriginal or Torres Strait Islander languages in addition to English to perform those duties.
- 38.2 The Health Service may consult with the Co-ordinator, Aboriginal Health Work at the Office of Aboriginal Health when considering whether a Health Worker qualifies for the allowance.
- 38.3 Where the Health Service still remains uncertain, it may require the Health Worker to undergo an assessment by the local Aboriginal Language Centre to establish their proficiency in the required language/languages. Where such an assessment is required, this will be undertaken at a time mutually convenient to both Health Worker and employer. The Health Service will bear the cost of the assessment.
- 38.4 The language allowance will be a weekly amount as follows, provided that part time Health Workers will be entitled to the allowance on a pro rata basis:

First pay period on or after date of Registration	First pay period on or after 7 October 2011	First pay period on or after 7 October 2012
\$26.10	\$27.15	\$28.37

- 38.5 The language allowance is not payable during any period of paid or unpaid leave.

39. LAUNDRY AND UNIFORMS

- 39.1 Uniform issue
 - (a) The employer will provide free of charge the following number and type of uniforms to each employee:

- (i) 2 jackets or cardigans; and
 - (ii) 6 pairs of trousers/culottes/shorts and 6 short or long sleeved shirts;
or
 - (iii) 6 dresses
- (b) The employee will choose which combination of the above best suits their needs.
 - (c) Uniforms will be replaced as and when necessary on a fair wear and tear basis.
- 39.2 The employer will determine the material, colour, pattern and conditions of the uniforms issued.
- 39.3 At all times the uniform issued to the employee will remain the property of the employer.
- 39.4 No staff member will be required to wear stockings.
- 39.5 All staff must wear a suitably enclosed shoe, however the employer may not specify colour or brand.
- 39.6 The standard uniform issue may be varied by agreement between the employer and the Union where a hospital has the need for particular items of clothing to be worn. Each employee will have a sufficient number of uniforms to ensure a clean uniform daily.
- 39.7 By agreement between an employer and an employee and where a hospital is situated north of 26° south latitude, jackets and cardigans need not be supplied.
- 39.8 Laundry
- (a) All washable clothing forming part of the uniform supplied by the employer will be laundered free of cost to the employees. Provided that in lieu of such free laundering the employer may pay the employee a weekly allowance in accordance with the following table:
- | First pay period on or after date of Registration | First pay period on or after 7 October 2011 | First pay period on or after 7 October 2012 |
|---|---|---|
| \$2.23 | \$2.32 | \$2.42 |
- (b) Laundering of jackets and cardigans issued as part of the uniform will be the responsibility of the employee. No laundry allowance will be paid for this work.
- 39.9 Enrolled Community Nurses and Enrolled Community School Nurses
- (a) The provisions of this subclause will apply to enrolled community nurses and enrolled community school nurses only.
 - (b) The employer will provide nurses with all uniforms that will at all times remain the property of the employer.
 - (c) Provided further that in lieu of providing uniforms the employer may pay a weekly allowance in accordance with the following table, and the nurse will

wear uniforms which conform to the uniform stipulated by the employer with respect to material, colour, pattern and conditions.

First pay period on or after date of Registration	First pay period on or after 7 October 2011	First pay period on or after 7 October 2012
\$6.88	\$7.16	\$7.48

- (d) Where the employer does not require the nurse to wear a uniform no allowance will be paid.

39.10 Health Workers

- (a) The provisions of this subclause will apply to Health Workers.
- (b) A weekly allowance may be paid by the employer in lieu of providing uniforms in accordance with the following table:

First pay period on or after date of Registration	First pay period on or after 7 October 2011	First pay period on or after 7 October 2012
\$6.88	\$7.16	\$7.48

- (c) Laundering of jackets and cardigans issued as part of the uniform will be the responsibility of the employee. No laundry allowance will be paid for this work.
- (d) The employer will pay a weekly allowance for the laundering of uniforms in accordance with the following table:

First pay period on or after date of Registration	First pay period on or after 7 October 2011	First pay period on or after 7 October 2012
\$2.23	\$2.32	\$2.42

PART 7 – LEAVE

40. ANNUAL LEAVE

40.1 Entitlement

- (a) Except as hereinafter provided a period of seven consecutive weeks' leave will be allowed to an enrolled nurse or AIN by their employer for each period of twelve months' continuous employment with such employer.
- (b) A period of four consecutive weeks' leave will be allowed to enrolled community nurses, enrolled community school nurses and Health Workers by the employer for each period of twelve months' continuous employment with such employer.
- (c) The entitlement in subclause 40.1(a) and (b) accrues pro rata on a weekly basis and is cumulative.
- (d) An employee may with the approval of the employer be allowed to take the annual leave prescribed by this clause before the completion of twelve months' continuous service.

- 40.2 Prior to commencing leave, an enrolled nurse or AIN will be paid for that period of leave:

- (a) Where an employee has worked less than the full time hours per week specified in Clause 18 – Hours of Work of this Agreement over the accrual period for which annual leave is being taken, the hours for which payment is made will be calculated on an average of the number of hours worked per week during the accrual period;
- (b) the rate of wage the employee would have received had the employee not proceeded on leave. In the case of rostered employees that wage will include the shift work and weekend penalties that employee would have received had the employee not proceeded on leave;

where it is not possible to calculate the shift and weekend penalties the employee would have received the employee will be paid the average of such payments made each week over the four weeks prior to taking leave;

OR

- (c) For 5/7ths of that leave, the rate of wage shown in Clause 24 – Classification Structure and Wages of this Agreement for their class of work and in addition be paid a loading of 18.75% percent of that wage and for the remaining 2/7ths of that leave due in each year, be paid according to subclause 40.2(b);

whichever is the greater benefit to the employee. Provided that the loading prescribed by this subclause will not apply to pro rata annual leave on termination.

- (d) A loading of 17.5% will be paid in addition to the ordinary wage payable under this subclause to enrolled community nurses, enrolled community school nurses.

40.3 Prior to commencing leave a Health Worker will be paid for any period of leave:

- (a) At the ordinary rate of wage the Health Worker received for the greatest proportion of the calendar month prior to taking such leave; and
- (b) A loading equivalent to 17.5% of normal salary is payable to Health Workers proceeding on leave, including accumulated leave. The loading is paid on a maximum of four weeks' leave or five weeks in the case of shift workers who are granted an additional week's leave.
- (c) The loading is calculated on a rate of the normal fortnightly salary including any allowances, which are paid as a regular fortnightly or annual amount. Any allowance paid to a Health Worker for undertaking additional or higher level duties is only included if the allowance is payable during that period of normal leave.
- (d) Provided that the maximum loading payable for each week of leave will not exceed one quarter of the amount set out in the Australian Bureau of Statistics publication 'average weekly earnings per male employed unit', in Western Australia for the September quarter immediately preceding the date the leave became due, provided further that the limitation will not affect an employee's entitlement to any payments by way of shift or weekend penalties under this subclause.

- (e) The leave loading prescribed by this subclause will not apply on termination to leave accrued since a Health Workers last anniversary date.

40.4 Subject as hereinafter provided:

- (a) If after one month's continuous employment an employee lawfully terminates their employment, or their employment is terminated by the employer through no fault of the employee:
 - (i) An enrolled nurse or AIN, will be paid 5.11 hours pay at the rate prescribed by subclause 40.2 in respect of each completed week of continuous service for which annual leave has not already been taken.
 - (ii) An enrolled community nurse, enrolled community school nurse or Health Worker will be paid 2.92 hours' pay in respect of each completed week of continuous service in that qualifying period.
- (b) If the services of an enrolled community nurse, enrolled community school nurse or Health Worker terminates and the employee has taken a period of leave in accordance with subclause 40.1 (d), and if the period of leave so taken exceeds that which would become due pursuant to subclause 40.4 (a)(i) or (ii), the employee will be liable to pay the amount representing the difference between the amount received by the employee for the period of leave taken in accordance with subclause 40.1(d) and the amount which would have accrued in accordance with subclause 40.4 (a)(i) or (ii). The employer may deduct this amount from moneys due to the employee by reason of the other provisions of this Agreement at the time of termination.
- (c) In addition to any payment to which they may be entitled under this subclause, an employee whose employment terminates after they have completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this Agreement in respect of that qualifying period will be given payment in lieu of that leave unless they have been justifiably dismissed for misconduct and the misconduct for which they have been dismissed occurred prior to the completion of that qualifying period, providing that an enrolled community or enrolled community school nurse who is dismissed for misconduct which occurred after the completion of a twelve monthly qualifying period will, subject to Clause 13 – Contract of Service of this Agreement, be given payment for the leave accrued but not taken.

40.5 By mutual agreement between the employer and employee annual leave may be taken in multiple portions. This may include up to 5 single days. However at least one portion taken will be not less than two consecutive weeks.

40.6 By agreement between the employer and employee, an employee may elect to take twice the period of any portion of their annual leave at half pay.

40.7 Any time in respect of which an employee is absent from work except paid sick leave or unpaid sick leave up to three months, the first 26 weeks of any absence on worker's compensation, annual leave, long service leave and bereavement leave, will not count for the purpose of determining annual leave entitlements.

- 40.8 Leave will be granted as soon as practicable after falling due and will not accumulate except with the consent of the employee.
- 40.9 Before going on annual leave each employee will be given at least two weeks' notice of the date leave is to be taken, unless the employee and the employer agree on a lesser period.
- 40.10 When an enrolled nurse or AIN proceeds on the first four weeks of their seven weeks' annual leave or an enrolled community nurse, enrolled community school nurse or Health Worker proceeds on four weeks leave, as prescribed by subclause 40.1 there will be no accrual towards an accrued day off as prescribed in subclauses 18.1 and 18.3 of this Agreement. Accrual towards an accrued day off will continue during any other period of annual leave prescribed by this clause.
- 40.11 Enrolled Community Nurses and Enrolled Community School Nurses

- (a) Notwithstanding anything else herein contained, the provisions of this subclause will only apply to enrolled community nurses and enrolled community school nurses.
- (b) An enrolled community school nurse will not be required to present for duty on any day when the school is not open. Subject to subclause (40.4 (c)(i), an enrolled community school nurse will be paid ordinary wages on any day of which they are relieved of the obligation to present for work.

If an enrolled community school nurse is required to work on any day observed as a school holiday they will be paid at the rate of double time and a half.

- (c) An enrolled community school nurse who works a minimum of four weeks continuously but less than a full school year will be entitled to payment at the ordinary rate of pay for or in lieu of the Christmas and term vacation periods related to that school year on the basis on 9.75 hours' pay for each week the enrolled community school nurse was employed to actually work in the school.
- (d) An enrolled community school nurse absent from work on leave without pay will lose all entitlements to payment at the ordinary rate of pay for or in lieu of Christmas and term vacation periods in accordance with the following table:

Working Days Absent	Vacation Days Lost
0-4	Nil
5-9	1
10-19	5
20-34	9
35-49	14
50-69	19
70-89	24
90-109	28
110-129	33
130-149	38
150-169	43
170-189	48
190-199	52

200 and over	All
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- (e) An annual leave loading will be included in the last payment of ordinary wages made prior to Christmas Day or in the event of termination prior to the end of the school year, in the final payment made to the enrolled community school nurse.

Subject to subclause 40.11(d) annual leave loading will be 17.5% of four weeks' wages at the rate of pay applicable at the time of payment.

Where an enrolled community school nurse is employed for less than the full school year, the annual leave loading will be paid on a pro rata basis in the same proportions as the number of weeks which the enrolled community school nurse was actually employed to work in the school bears to the number of weeks in the same year.

- (f) In addition to any payment to which the enrolled community school nurse may be entitled under subclause 40.4(a)(ii), an enrolled community school nurse whose employment terminates after completing a twelve monthly qualifying period and who has not been allowed the leave prescribed under this Agreement in respect of that qualifying period, will be given payment in lieu of that leave unless the enrolled community school nurse has been justifiably dismissed for misconduct and the misconduct for which the enrolled community school nurse has been dismissed occurred prior to completion of that qualifying period.
- (g) Notwithstanding subclause 40.5, enrolled community school nurses will be required to clear annual leave during periods of school vacation.
- (h) For the purposes of this sub-clause, a school is deemed to be open on the days on which teachers are required to be present.

40.12 Health Workers – Additional Leave for Shift Workers

- (a) A Health Worker whose ordinary hours of work regularly rotate afternoon and/or night shift with day shift as defined in this clause will be granted an additional week's annual leave.
- (b) A Health Worker who works afternoon and/or night shifts, which are not subject to regular rotation, will be granted an additional day's leave (up to an extra five days) for each seven weeks actually worked on afternoon and/or night shift.
- (c) A Health Worker who has worked thirty-one weeks on non-rotating shifts will be granted an additional weeks leave.

40.13 The provisions of this clause will not apply to casual employees.

41. ANNUAL LEAVE TRAVEL CONCESSIONS

41.1 Employees stationed in remote areas

The travel concessions contained in the following table are provided to employees, their dependent partners and their dependent children when proceeding on annual leave from headquarters situated in District Allowance Areas 3, 5 and 6, and in that portion of Area 4 located north of 30 degrees South latitude, as described in subclause 31.4(b) of this Agreement.

- 41.2 Employees are required to serve 12 continuous months in these areas before qualifying for travel concessions. However, employees who have less than 12 months continuous service in these areas and who are required to proceed on annual leave to suit the employer's convenience will be allowed the concessions. The concession may also be given to an employee who proceeds on annual leave before completing the year's service provided that the employee returns to the area to complete the year's service at the expiration of the period of leave and should such employee not return or complete the required service the employer may recover the value of the concession provided.
- 41.3 The employer will provide the concession by paying or reimbursing costs of annual leave travel for the employee, his/her dependent partner and his/her dependent children travelling with him/her up to the cost of economy return fully flexible and refundable airfares to Perth inclusive of GST.
- 41.4 Where an employee elects to use transport other than their own, the employer may require that the travel be booked through the employer.
- 41.5 An employee travelling other than by air is entitled to payment of up to the equivalent fare calculated in accordance with this clause prior to the commencement of his/her leave.
- 41.6 Travel concessions not utilised within twelve months of becoming due will lapse.
- 41.7 Part-time employees are entitled to travel concessions on a pro rata basis according to the usual number of hours worked per week.
- 41.8 Travelling time will be calculated on a pro rata basis according to the number of hours worked.

	Approved Mode of Travel	Travel Concession	Travelling Time
(a)	Air	Air fare for the Employee, and dependent partner and/or dependent children	One day each way
(b)	Road	Full motor vehicle allowance rates, but reimbursement not to exceed the cost of the return air fare for the employee, dependent partner and/or dependent children, travelling in the motor vehicle.	On or North of 20° South Latitude - two and one half days each way. Remainder - two days each way.
(c)	Air and Road	Full motor vehicle allowance rates for car trip, but reimbursement not to exceed the cost of the return air fare for the employee. Air fares for the dependent partner and/or dependent children.	On or North of 20° South Latitude - two and one half days each way. Remainder - two days each way.

42. PUBLIC HOLIDAYS

42.1 All employees

For the purposes of this clause the following days, or days observed in lieu thereof, will be considered public holidays:

New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

42.2 Where any of the days referred to in subclause 42.1 falls on a Saturday or a Sunday the holiday will be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday will be observed on the next succeeding Tuesday.

42.3 Where:

- (a) a day is proclaimed as a public holiday or as a public half-holiday under Section 7 of the *Public and Bank Holidays Act 1972* (WA); and
- (b) that proclamation does not apply throughout the State or to the metropolitan area of the State,

that day will be a public holiday for the purposes of this Agreement within the district or locality specified in the proclamation.

42.4 Enrolled Nurses and Assistants in Nursing

- (a) "Public Holiday shift" means ordinary hours worked on any public holiday named in this Clause.
- (b) A loading of 50% per hour or pro rata for part thereof will be paid to an Enrolled Nurse or AIN rostered to work on a Public Holiday for each hour worked.
- (c) The rates prescribed in subclauses 28.4(a), and 28.4(b) will be in substitution for and not cumulative on the rate prescribed in subclause 42.4(b).

42.5 Enrolled Community Nurses and Enrolled Community School Nurses

- (a) Notwithstanding anything else contained in this clause, the following provisions will apply to enrolled community nurses and enrolled community school nurses.
- (b) In any branch or department in the community health service area where the clerical and administrative staff observe additional holidays with pay, such days will be allowed to nurses as holidays with pay. The provisions of this paragraph will not apply where the nurse is required to maintain a service to other employees of a respondent to this Agreement.
- (c) Work performed by a nurse at the direction of the employer on a day mentioned in subclause 42.1 will be paid or compensated for as hereunder:
 - (i) double time and one half, or
 - (ii) in lieu of making payment in accordance with paragraph (a) of this subclause, and by agreement between the nurse and the employer, payment may be made at the rate of time and one half with equivalent time to that worked being taken off at a time convenient to the employer.

42.6 Health Workers

- (a) The provisions of this subclause apply to Health Workers in addition to subclauses 42.1 to 42.3.
- (b) Notwithstanding 42.1 hereof, the employer is not required to allow Easter Tuesday as a holiday with pay provided that, in each year the employer does not allow a Health Worker Easter Tuesday as a holiday with pay the employer will allow such Health Worker an alternative, but mutually convenient, day upon which such Health Worker will be entitled to be absent from duty without loss of pay.
- (c) Where a Health Worker is required by the employer to work on any of the days observed as a holiday prescribed in this clause, payment for the time worked will be at the rate of two and one-half times the ordinary rate or alternatively payment at the rate of one and one-half times with equivalent time to that worked being taken off at a time convenient to the employer and the Health Worker.
- (d) When any of the days observed as a holiday prescribed in this clause fall on a day when a Health Worker is on an accrued day off the Health Worker will be allowed to take a day's holiday in lieu of the holiday on a day immediately following the Health Worker's annual leave or at a time mutually acceptable to the employer and the Health Worker.
- (e) A Health Worker whilst on a public holiday prescribed by this clause will continue to accrue an entitlement to an accrued day off as prescribed in subclauses 18.1 and 18.2 of this Agreement.
- (f) Casual Health Workers will be paid for all work performed on any of the days prescribed in subclause 42.1 at the rate of double time and one half.

43. LONG SERVICE LEAVE

43.1 Long Service Leave Entitlement

Subject to the conditions of this clause all employees will become entitled to 13 weeks long service leave.

- (a) after a period of ten (10) years continuous service.
- (b) after each further period of seven (7) years continuous service.

43.2 Notwithstanding subclause 43.1, upon application by an employee, the Employer may approve an employee clearing:

- (a) any accrued entitlement to long service leave in minimum periods of one day; or
- (b) double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on normal pay; or
- (c) half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on normal pay; or
- (d) any portion of their long service leave entitlement on normal pay, or double such period on half pay, or half such period on double pay; or

- (e) a lesser period of long service leave calculated by converting the part-time service to equivalent full time service where a full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take.

43.3 When an employee proceeds on long service leave there will be no accrual towards an accrued day off.

43.4 Service counted for Long Service Leave

- (a) For the purpose of this clause “service” means service as an employee of a Public Authority and will be deemed to include:
 - (i) absence of the employee on an annual leave or public holidays;
 - (ii) absence of the employee on paid sick or on an approved rostered day off;
 - (iii) absence of the employee on approved sick leave without pay except that portion of a continuous absence which exceeds three (3) months;
 - (iv) absence of the employee on approved leave without pay, other than sick leave but not exceeding two (2) weeks in any qualifying period;
 - (v) absence of the employee on National Service or other military training, but only if the difference between the employees’ military pay and his/her civilian pay is made up or would, but for the fact that his military pay exceeds his/her civilian pay, be made up by his/her employer;
 - (vi) absence of the employee on worker’s compensation for any period not exceeding six (6) months, or for such greater period as the employer may allow;
 - (vii) absence of the employee on long service leave;
 - (viii) absence of an employee on approved leave to attend Trade Union training courses or on approved leave to attend Trade Union business; and
 - (ix) employment in the service of the Commonwealth or another State of Australia as provided in subclause 43.16.
- (b) The service of an employee will be deemed not to include:
 - (i) service of an employee after the day on which he/she has become entitled to 26 weeks long service leave until the day on which he/she commences the taking of thirteen (13) weeks of that leave;
 - (ii) any period of service with an employer of less than twelve (12) months. Provided where an employee has service of a month or more but less than twelve (12) months immediately prior to being transferred by one State Government employer to another, becoming redundant or qualifying for pro rata payment in lieu of leave pursuant to subclause 43.11, such period of service will count;

- (iii) any period during which an employee has been paid as a casual; and
 - (iv) any other absence of the employee except such absences as are included in service by virtue of subclause 43.4(a).
- (c) Subject to the provisions of subclauses 43.4(a) and 43.4(b) of these conditions, the service of an employee will not be deemed to have been broken:
- (i) by resignation, if he/she resigns from one public authority in this State and commences with another public authority in this State within one (1) working week of the expiration of any period for which payment in lieu of annual leave and/or public holidays has been made by the employer from which the employee resigned, or, if no such payment has been made, within one (1) working week of the day on which his resignation become effective;
 - (ii) if his/her employment is ended by his/her employer for any reason other than serious misconduct, but only if:
 - (1) the employee resumes employment with the Government not later than six (6) months from the day on which his/her employment ended; and
 - (2) payment pursuant to subclause 43.11 has not been made; or
 - (iii) by any absence approved by the employer as leave whether with or without pay.

43.5 Application for leave without pay in respect of any absence must be made before the commencement of the absence unless the cause of the absence occurs after the employee has left the job, in which case the application must be made not later than 14 days after the day on which the employee resumes work.

43.6 Taking of Long Service Leave

- (a) Long service leave will be taken at a time convenient to the employer but not less than thirty (30) days notice will be given to each employee on the day on which his long service leave commences, except in cases where the employee and the employer agree to a lesser period of notice or in other exceptional circumstances.
- (b) Long service leave must be commenced within six (6) months of becoming due unless written permission of the employer concerned is obtained for postponement.

43.7 Public Holidays falling during Long Service Leave

Any public holiday occurring during an employee's absence on long service leave will be deemed to be a portion of the long service leave and extra days in lieu thereof will not be granted.

43.8 Alternative employment during Long Service Leave

No employee is to undertake during long service leave, without the written approval of the employer, any form of employment for hire or reward. Contravention of this subclause may be followed by disciplinary action which may include dismissal.

However, an employee may work casual shifts during a period of long service leave with the written approval of the relevant employer respondent to this Agreement.

43.9 Affect of termination of employment on payment in lieu of Long Service Leave

An employee who has become entitled to long service leave in accordance with subclause 43.1, and whose employment is ended before that leave is taken will be granted payment in lieu of that leave unless he/she has been dismissed for an offence committed prior to the day on which he/she became entitled to that leave.

43.10 Entitlement to Long Service Leave on death of employee

If an employee who has become entitled to long service leave in accordance with subclause 43.1, dies before taking that leave, payment in lieu of that leave will be made to such spouse or other dependant.

43.11 Pro Rata Long Service Leave

If the employment of an employee ends before he/she has completed the first further qualifying periods in accordance with subclause 43.1, payment in lieu of long service proportionate his/her length of service will not be made unless the employee:

- (a) has completed a total of at least three (3) years continuous service and his/her employment has been ended by his/her employer for reasons other than serious misconduct; or
- (b) is not less than 55 years of age and resigns but only if the employee has completed a total of not less than twelve (12) months continuous service prior to the day from which the resignation has effect; or
- (c) has completed a total of not less than twelve (12) months continuous service and his/her employment has been ended by his/her employer on account of incapacity due to old age, ill health or the result of an accident; or
- (d) has completed a total of not less than three (3) years' continuous services and resigns because of her pregnancy and who produces at the time of resignation or termination certificate of such pregnancy and the expected date of birth from a legally qualified medical practitioner; or
- (e) dies after having served continuously for not less than twelve (12) months before his/her death and leaves his/her spouse, children, parent or invalid brother or sister dependent on him/her in which case the payment will be made to such a spouse or other dependant; or
- (f) has completed a total of not less than three (3) years continuous service and resigns in order to enter an Invitro Fertilisation Programme provided the employee produces written confirmation from an appropriate medical authority of the dates of involvement in the programme.

43.12 Notwithstanding the provisions of subclauses 43.11(a) and 43.11(c), an employee whose position has become redundant and when refuses an offer by the employer of reasonable alternative employment or who refuses to accept transfer in accordance with the terms of his/her employment will not be entitled to payment in lieu of long service leave proportionate to his/her length of service.

43.13 For the purpose of subclause 43.11(c), a medical referee will, if there is disagreement between the employee's doctor and the employer's doctor as to the employee's incapacity, be selected from an appropriate panel of doctors by agreement between the employer and employee.

43.14 Rate of Pay During Long Service Leave

- (a) Subject to the provision of this clause an employee will be paid during long service leave at his/her permanent classification rate of pay.
- (b) Except where otherwise approved by the employer the rate of pay of an employee will be deemed to be the total wage applicable to the classification which, for the purpose of this clause is or is deemed to be his or her permanent classification.
- (c) If an employee has been employed in one or more positions each of which carries a higher rate than his/her permanent classified rate for a continuous period of twelve (12) months ending not earlier than two (2) weeks before the day on which he/she commences long service leave or is paid pro rata in lieu of leave in accordance with subclause 43.11, the rate which he/she has received for the greatest proportion of that 12 month period will, for the purpose of this clause, be deemed to be the permanent classified rate.
- (d) If any variation occurs in the rate of wage applicable to an employee during any period when he/she is on leave will be varied accordingly and, if the employee has been paid in full for the leave before its commencement payments will be adjusted as soon as practicable after the employee resumes work.
- (e) District allowance will not be paid during long service leave unless the family or dependants of the employee remain in the district.

43.15 Part-time employee

- (a) A part-time employee, who during a qualifying period has been continuously employed on both full-time and part-time employment, may elect to take three (3) months long service leave at a rate determined by the proportion of service on a part-time basis to that on a full-time basis or to take a lesser period than three (3) months calculated by converting the part-time service to equivalent full-time service so that the employee qualifies for three (3) months long service leave at the full-time rate of pay.
- (b) If the hours of a part-time employee, have varied he/she will be paid a rate based on the average number of hours worked over the full qualifying period.
- (c) A full-time employee, who during a qualifying period has been continuously employed on both full-time and part-time employment, may elect to take 13 weeks' long service leave at the rate determined by the proportion of service on a part-time basis to that on a full-time basis or to take lesser period than 13 weeks calculated by converting the part-time service to the equivalent full-time service, or to work such additional time as will effectively make up the part-time service into full-time service so that the employee qualifies for 13 weeks long service leave at the full-time rate.

- (d) A part-time employee, who during the qualifying period has been continuously employed on both part-time and full-time employment, will be paid at a rate determined by the proportion of service on a part-time basis to that on a full-time basis.

43.16 Portability of Long Service Leave

- (a) Subject to subclause 43.16(c), where an employee was, immediately prior to being engaged, employed in the service of the Commonwealth or another State of Australia and that employment was continuous with this service as defined by this clause that employee will be entitled to long service leave determined in the following manner.
 - (i) Service with the previous employer will be converted into service for the purpose of these conditions by calculating the proportion that the service with the previous employer bears to a full qualifying period in accordance with the provisions that applied in the previous employment and applying that proportion to a full qualifying period in accordance with the provisions of this clause.
 - (ii) Service with the State necessary to complete a qualifying period for an entitlement of long service leave will be calculated in accordance with the provisions of these conditions.
 - (iii) An employee will not become entitled to long service leave or payment for long service leave unless he/she has completed three (3) years continuous service with the State.
 - (iv) Where an employee would, but for the provisions of paragraph (c) of this subclause, have become entitled to long service leave before the expiration of three (3) years' continuous service with the State, service subsequent to that date of entitlement will count towards the next grant of long service leave.
- (b) No employee will be entitled to the benefit of this clause if service with the previous employer was terminated for reasons which would entitle that employer to dismiss the employee without notice.
- (c) Nothing in these conditions confers on any employee previously employed by the Commonwealth or another State of Australia any entitlement to a complete period of long service leave that accrued prior to the date on which the employee was employed by the State.

43.17 Employee ill during Long Service Leave

- (a) Where an employee, through personal ill health is confined to his/her place of residence or a hospital for a continuous period of fourteen (14) days or more during any period of long service leave and such confinement, is certified to by a duly qualified medical practitioner, such period will be considered personal leave and subject to the provisions of this Agreement.
- (b) The period during long service leave for which paid personal leave has been approved will be given as additional long service at a time convenient to the employer.

43.18 Any period of service during which, or for which, an employee receives or has received payment, or any other compensation, in lieu of long service leave will not be counted as service for the purpose of determining any future entitlement to long service leave.

44. CASHING OUT LEAVE ENTITLEMENTS

44.1 The purposes of this clause is to allow employees the option of receiving payment in lieu of accrued entitlements to annual leave, long service leave and accrued days off when the employee's request stems from some personal circumstances which are out of the ordinary and have resulted in a particular need for money.

44.2 The inclusion of this clause will not be taken of itself to imply that there are any grounds for diminishing an employee's entitlements to annual leave, long service leave or accrued days off.

44.3 Application

(a) An employee may request, in writing, to be paid out part of his or her entitlement to annual leave, long service leave or accrued days off pursuant to this clause.

(b) The employer will consider the employee's application and respond in writing.

44.4 The rate of pay at which an accrued leave entitlement is paid out will be the rate that would have been paid had the leave been taken.

44.5 The maximum amount of accrued leave which may be paid out at any time is the balance in excess of 20 days leave. The minimum 20 days leave retained can be comprised of either annual leave or accrued days off or a combination of both.

45. PERSONAL LEAVE

45.1 Introduction

(a) The intention of Personal Leave is to give employees and employers greater flexibility by providing leave with pay for a variety of personal purposes. Personal leave is not to be used for circumstances normally met by other forms of leave.

(b) This clause does not apply to casuals with the exception of subclause 45.26 for the purposes of unpaid carer's leave.

45.2 Entitlement

(a) The employer will credit each permanent full time employee with 114 hours personal leave credits for each year of continuous service of which 98.8 hours are cumulative and 15.2 hours non-cumulative as follows:

	Personal Leave Cumulative	Personal leave Non-cumulative
On the day of initial appointment	49.4 hours	15.2 hours
On completion of 6 months continuous service	49.4 hours	0 hours
On the completion of 12 months continuous service	98.8 hours	15.2 hours

On the completion of each further period of 12 months continuous service	98.8 hours	15.2 hours
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- (b) Where employees access personal leave, it will be deducted from their non-cumulative entitlement in the first instance.
- (c) An employee employed on a fixed term contract for a period of twelve months or more will be credited with the same entitlement as a permanent employee. An employee employed on a fixed term contract for a period less than twelve months will be credited on a pro rata basis for the period of the contract.
- (d) A part time employee will be entitled to the same personal leave credits as a full time employee, but on a pro rata basis according to the number of hours worked each fortnight. Payment for personal leave will only be made for those hours that would normally have been worked had the employee not been on personal leave.
- 45.3 In the year of accrual the 114 hours personal leave entitlement may be accessed for illness or injury, carer's leave, unanticipated matters or planned matters in accordance with the provisions of this clause. On completion of each year of accrual any unused personal leave from that year up to a maximum of 98.8 hours will be cumulative and added to personal leave accumulated from previous years. Unused non-cumulative leave will be lost on completion of each anniversary year.
- 45.4 Whilst employees are able to access personal leave in accordance with subclause 45.13, access must be consistent with the *Minimum Conditions of Employment Act 1993* (WA).
- 45.5 In accordance with the *Minimum Conditions of Employment Act 1993* (WA) entitlement to paid sick leave, in an anniversary year the number of hours the employee is entitled to use for the purposes of carer's leave is up to 76 hours of this entitlement.
- 45.6 Notwithstanding subclause 45.5, access to carers leave is not limited to up to 76 hours per anniversary year, where the employee has accumulated personal leave credits in excess of 76 hours.
- 45.7 Personal leave will not be debited for public holidays, which the employee would have observed.
- 45.8 Personal leave may be taken on an hourly basis.
- 45.9 Personal leave will be paid at the ordinary rate of pay provided that, when personal leave is taken by a Health Worker for the purposes of:
- illness or injury (sick leave); or
 - to provide care or support to a member of the Health Worker's family or household who requires care or support because of an illness or injury to the member; or an unexpected emergency affecting the member (carers leave);
- the rate of pay will include the shift and weekend penalties that the Health Worker would have received had the Health Worker not proceeded on personal leave.
- 45.10 Variation of ordinary working hours

- (a) When an employee's ordinary working hours change during an anniversary year personal leave credits are adjusted to reflect the pro rata portion for that anniversary year.
- (b) At the time ordinary working hours change, personal leave credits are adjusted to reflect ordinary working hours up to that point in time as a proportion of the total ordinary working hours for the anniversary year.
- (c) Personal leave is credited pro rata on a weekly basis from the time ordinary working hours change until the next anniversary date such that total hours credited for that anniversary year is on a pro rata basis according to the number of ordinary working hours for the period.

45.11 Reconciliation

- (a) At the completion of an anniversary year, where an employee has taken personal leave in excess of their current and accrued entitlement the unearned leave must be debited at the commencement of the following anniversary year/s.
- (b) The requirements of the *Minimum Conditions of Employment Act 1993* (WA) must be met at the commencement of the following anniversary year. The remaining portion of debited personal leave, which exceeds the leave credited, is to be debited at the commencement of the subsequent and where necessary following anniversary year/s.
- (c) Where an employee ceases duty and has taken personal leave, which exceeds the leave credited for that anniversary year, the employee must refund the value of the unearned leave, calculated at the rate of salary as at the date the leave was taken. No refund is required in the event of the death of the employee.

45.12 Access

- (a) An employee is unable to access personal leave while on any period of parental leave or leave without pay. An employee is unable to access personal leave while on any period of annual or long service leave, except as provided for in subclauses 45.18 and 45.19.
- (b) If an employee has exhausted all accrued personal leave the employer may allow the employee who has at least twelve months service to anticipate up to 38 hours personal leave from next year's credit. If the employee ceases duty before accruing the leave, the value of the unearned portion must be refunded to the employer, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of the employee.
- (c) In exceptional circumstances the employer may approve the conversion of an employee's personal leave credits to half pay to cover an absence on personal leave due to illness.

45.13 Application for Personal Leave

Reasonable and legitimate requests for personal leave will be approved subject to available credits. Subject to subclause 45.2 the employer may grant personal leave in the following circumstances:

- (a) where the employee is ill or injured;
- (b) to provide care or support to a member of the employee's family or household who requires care or support because of an illness or injury to the member; or an unexpected emergency affecting the member;
- (c) for unanticipated matters of a compassionate or pressing nature which arise without notice and require immediate attention; or
- (d) by prior approval of the employer, having regard for agency requirements and the needs of the employee, planned matters where arrangements cannot be organised outside of normal working hours or be accommodated by the utilisation of flexible working hours or other leave. Planned personal leave will not be approved for regular ongoing situations.

45.14 Employees must complete the necessary application and clearly identify which of the above circumstances apply to their personal leave request.

45.15 The definition of family will be the definition contained in the *Equal Opportunity Act 1984* (WA) for "relative". That is, a person who is related to the employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the employee.

45.16 Where practicable, the employee must give reasonable notice prior to taking leave. Where prior notice cannot be given, the employee must advise the employer as soon as reasonably practicable of the inability to attend for work, the nature of the illness or injury and the estimated period of absence. This advice will be provided within 24 hours of commencement of the absence, other than in extraordinary circumstances.

45.17 Evidence

- (a) An application for personal leave exceeding two (2) consecutive working days will be supported by evidence that would satisfy a reasonable person of the entitlement.
- (b) Personal leave will not be granted where an employee is absent from duty because of personal illness attributable to the employee's serious and wilful misconduct in the course of the employee's employment.
- (c) If the employer has reason to believe that an employee is in such a state of health as to render a danger to themselves, fellow employees or the public, the employee may be required to obtain and furnish a report as to the employee's condition from a registered medical practitioner nominated by the employer. The fee for any such examination will be paid by the employer.

45.18 Re-crediting Annual Leave

Where an employee is ill during the period of annual leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the employer that as a result of the illness the employee was confined to their place of

residence or a hospital for a period of at least seven (7) consecutive calendar days, the employer may grant personal leave for the period during which the employee was so confined and reinstate annual leave equivalent to the period of confinement.

45.19 Re-crediting Long Service Leave

Where an employee is ill during the period of long service leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the employer that as a result of illness the employee was confined to their place of residence or a hospital for a period of at least 14 consecutive calendar days, the employer may grant personal leave for the period during which the employee was so confined and reinstate long service leave equivalent to the period of confinement.

45.20 Personal Leave Without Pay Whilst Ill or Injured

- (a) Employees who have exhausted all of their personal leave entitlements and are ill or injured may apply for personal leave without pay. Employees are required to complete the necessary application and provide evidence to satisfy a reasonable person. The employer will not unreasonably withhold this leave.
- (b) Personal leave without pay not exceeding a period of three months in a continuous absence does not affect salary increment dates, anniversary date of sick leave credits, long service leave entitlements or annual leave entitlements. Where a period of personal leave without pay exceeds three months in a continuous absence, the period in excess of three months is excised from qualifying service.
- (c) Personal leave without pay is not available to employees who have exhausted all of their personal leave entitlements and are seeking leave for circumstances outlined in subclauses 45.13(b), 45.13(c) or 45.13(d). However, other forms of leave including leave without pay may be available.

45.21 Other Conditions

- (a) Where an employee who has been retired from the Public Sector on medical grounds resumes duty therein, personal leave credits at the date of retirement will be reinstated. This provision does not apply to an employee who has resigned from the Public Sector and is subsequently reappointed.
- (b) Unused personal leave will not be cashed out or paid out when an employee ceases their employment.

45.22 Workers' Compensation

Where an employee suffers a disease or injury within the meaning of section 5 of the *Workers' Compensation and Injury Management Act 1981* (WA) which necessitates that employee being absent from duty, personal leave with pay will be granted to the extent of personal leave credits. In accordance with section 80(2) of the *Workers' Compensation and Injury Management Act 1981* (WA) where the claim for workers' compensation is decided in favour of the employee, personal leave credit is to be reinstated and the period of absence will be granted as leave without pay.

45.23 Portability

The employer will credit an employee additional personal leave credits up to those held at the date that employee ceased previous employment provided:

- (a) immediately prior to commencing employment in the Public Sector of Western Australia, the employee was employed in the service of:
 - (i) the Commonwealth Government of Australia, or
 - (ii) any other State of Australia, or
 - (iii) in a State body or statutory authority prescribed by Administrative Instruction 611; and
- (b) the employee's employment with the Public Sector of Western Australia commenced no later than one (1) week after ceasing previous employment, and
- (c) the personal leave credited will be no greater than that which would have applied had the entitlement accumulated whilst employed in a State body or statutory authority prescribed by Administrative Instruction 611.

45.24 The maximum break in employment permitted by subclause 45.23(b), may be varied by the approval of the employer provided that where employment with the Public Sector of Western Australia commenced more than one (1) week after ceasing the previous employment, the period in excess of one (1) week does not exceed the amount of accrued and pro rata annual leave paid out at the date the employee ceased with the previous employer.

45.25 Travelling Time for Regional Employees

- (a) Subject to the evidentiary requirements set out in subclause 45.17, a regional employee who requires medical attention at a medical facility in Western Australia located 240 km or more from their workplace will be granted paid travel time undertaken during the employee's ordinary working hours up to a maximum of 38 hours per annum.
- (b) The employer may approve additional paid travel time to a medical facility in Western Australia where the employee can demonstrate to the satisfaction of the employer that more travel time is warranted.
- (c) The provisions of subclauses 45.25(a) and 45.25(b) are not available to employees whilst on leave without pay or sick leave without pay.
- (d) The provisions of subclauses 45.20(a) and 45.20(b) apply as follows.
 - (i) An employee employed on a fixed term contract for a period greater than 12 months, will be credited with the same entitlement as a permanent employee for each full year of service and pro rata for any residual portion of employment.
 - (ii) An employee employed on a fixed term contract for a period less than 12 months will be credited with the same entitlement on a pro-rata basis for the period of employment.

- (iii) A part time employee will be entitled to the same entitlement as a full time employee for the period of employment, but on a pro-rata basis according to the number of ordinary hours worked each fortnight.
- (iv) The provisions not apply to casual employees.

45.26 Unpaid Carer's Leave

- (a) Subject to the provisions of subclause 45.26(b) an employee, including a casual employee, is entitled to unpaid carer's leave of up to two (2) days for each occasion (a "permissible occasion") on which a member of the employee's family or household requires care or support because of:
 - (i) an illness or injury of the member; or
 - (ii) an unexpected emergency affecting the member; or
 - (iii) the birth of a child of the member.
- (b) An employee is entitled to unpaid carers leave for particular permissible occasion only if the employee cannot take paid carers leave during the period.
- (c) The definition of family is the same as provided for at subclause 45.15.
- (d) The employer may grant an employee unpaid carers leave in excess of two (2) days.
- (e) Unpaid carers leave may be taken on an hourly basis.

46. BEREAVEMENT LEAVE

46.1 Enrolled Nurses and Assistants in Nursing

Employees, including casuals, will on the death of:

- (a) a partner of an employee;
- (b) a child, stepchild or grandchild of an employee (including an adult child, step-child or grandchild);
- (c) a parent, step-parent or grandparent of an employee;
- (d) a brother, sister, step-brother or step-sister; or
- (e) any other person who, immediately before that person's death, lived with an employee as a member of an employee's family;

be eligible for up to two days' paid bereavement leave, provided that at the request of an employee the employer may exercise discretion to grant bereavement leave to an employee in respect of some other person with whom the employee has a special relationship.

46.2 The two days need not be consecutive.

46.3 Bereavement leave is not to be taken during any other period of leave.

- 46.4 An employee will not be entitled to claim payment for bereavement leave on a day when that employee is not ordinarily rostered to work.
- 46.5 Payment of such leave may be subject to an employee providing evidence, if so requested by the employer, of the death or relationship to the deceased that would satisfy a reasonable person.
- 46.6 Employees requiring more than two days' bereavement leave in order to travel overseas or interstate in the event of the death overseas or interstate of a member of an employee's immediate family may, upon providing adequate proof, in addition to any bereavement leave to which the employee is eligible, have immediate access to annual leave and/or accrued long service leave and/or leave without pay, provided all accrued leave is exhausted.
- 46.7 Health Workers
- An Employee, including a casual employee, may, on the death of a relative or client, be entitled to two days' paid leave, including the day of the funeral.
- 46.8 Up to 3 days further paid leave or unpaid leave may be made available to the Health Worker at the discretion of the Health Service General Manager where this is necessary for the Health Worker to meet their cultural obligations.
- 46.9 An employee who has to travel interstate for a funeral will be granted three days' leave, additional to the initial two days.
- 46.10 In this subclause, "relative" will mean a person who is related to the Health Worker by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of the Health Worker.
- 46.11 Any dispute in relation to awarding the discretionary period of up to three additional days of bereavement leave may require advice from the Co-ordinator, Aboriginal Health Work at the Office of Aboriginal Health.

47. PARENTAL LEAVE

47.1 Definitions

For the purpose of this clause the following terms will have the following meaning:

- (a) "Child" all references in this clause to a child should be read as including children of multiple birth or adoption.
- (b) "Employee" includes full time, part time, permanent and eligible casual employees, and fixed term contract employees for the duration of their contract.
- (c) "Eligible casual employee" a casual employee is eligible if the employee:
 - (i) has been engaged in the public sector on a regular and systematic basis for a sequence of periods of employment during a period of at least twelve (12) months; and

- (ii) but for an expected birth of a child to the employee or employee's spouse or defacto partner or an expected placement of a child with the employee with a view to the adoption of the child by the employee, would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.
- (d) Without limiting subclause 47.1(c)(i) and (ii) a casual employee is also eligible if the employee:
 - (i) was engaged in the public sector on a regular and systemic basis for a sequence of periods during a period (the first period of employment) of less than twelve (12) months; and
 - (ii) at the end of the first period of employment, the employee ceased, on the employer's initiative, to be so engaged by the public sector employer; and
 - (iii) the public sector employer later again engaged the employee on a regular and systemic basis for a further sequence of periods during a period (the second period of employment) that started not more than three (3) months after the end of the first period of employment; and
 - (iv) the combined length of the first period of employment and the second period of employment is at least twelve (12) months; and
 - (v) the employee, but for an expected birth of a child to the employee or the employee's spouse or defacto partner or an expected placement of a child with the employee with a view to adoption of the child by the employee, would have a reasonable expectation of continuing engagement in the public sector on a regular and systematic basis.
- (e) "Primary care giver" means the employee who will assume the principal role for the care and attention of a newly born or newly adopted child as defined by this clause.
- (f) "Replacement employee" means an employee specifically engaged to replace an employee proceeding on parental leave.
- (g) "Public Sector" means all agencies, ministerial offices and non-SES organisation as defined in section 3 of the *Public Sector Management Act 1994* (WA).

Entitlement to Parental Leave

47.2 Unpaid Parental Leave

- (a) An employee is entitled to a period of up to 52 weeks' unpaid parental leave in respect of the:
 - (i) birth of a child to the employee or employee's partner; or
 - (ii) adoption of a child who is not the natural child or step child of the employee or employee's partner; is under the age of five (5); and has not lived continuously with the employee for six (6) months or longer.

- (b) An employee may request the employer to extend the period of parental leave to which the employee is entitled under subclause 47.2(a) for a further consecutive period of up to 52 weeks.

47.3 Paid Parental Leave

- (a) Subject to subclauses 47.3(b) and 47.7 an employee is entitled to 14 weeks paid parental leave.
- (b) The paid parental leave entitlement provided in subclause 47.3(a):
 - (i) can be accessed by a pregnant employee in accordance subclause 47.7(a);
 - (ii) can only be accessed by an employee who is the primary care giver of a newly born or newly adopted child;
 - (iii) can only be accessed by an employee who has completed 12 months continuous service in the Western Australian public sector;
 - (iv) is provided only in respect to the:
 - (1) birth of a child to the employee or the employee's partner; or
 - (2) adoption of a child who is not the natural child or the stepchild of the employee or the employee's partner; is under the age of five; and has not lived continuously with the employee for six months or longer.
 - (v) cannot be accessed by eligible casual employees; and
 - (vi) forms part of the 52 week unpaid parental leave entitlement provided in subclause 47.2(a).

47.4 An employee may take the paid parental leave specified in subclause 47.3 at half pay for a period equal to twice the period to which the employee would otherwise be entitled.

47.5 The period of paid parental leave taken by the primary care giver of a newly born or newly adopted child will not exceed the period specified in subclause 47.3 or its half pay equivalent.

47.6 Qualifying Service

- (a) Paid parental leave will count as qualifying service for all purposes under this Agreement.
- (b) Qualifying service for any purpose under this Agreement is to be calculated according to the number of weeks of paid parental leave that were taken at full pay or would have been had the employee not taken paid parental leave at half pay. Employees who take paid parental leave on half pay do not accrue Agreement entitlements beyond those that would have accrued had they taken the leave at full pay.

47.7 Commencement of paid parental leave

- (a) A pregnant employee may commence paid parental leave any time up to six weeks before the expected date of birth.
- (b) Provided that the period of paid parental leave is concluded within 12 months of the birth or placement of the child, an employee identified as the primary care giver of a newly born or newly adopted child may commence the period of paid parental leave from:
 - (i) the child's birth date; or
 - (ii) for the purposes of adoption, the date of placement of the child; or
 - (iii) a later date nominated by the primary care giver.
- (c) Notwithstanding subclause 47.7(b), the employer may, in exceptional circumstances, allow an employee to take a period of paid parental leave as prescribed in subclause 47.3 that will result in the employee being on paid parental leave more than 12 months after the birth or placement of the employee's child.
- (d) The employer may require evidence that would satisfy a reasonable person that the circumstances warrant allowing the employee to take their period of parental leave more than 12 months after the birth or placement of the employee's child.

47.8 Shared parental leave

- (a) Subject to subclause 47.8(b), the paid parental leave entitlement may be shared between partners assuming the role of the primary care giver of a newly born or newly adopted child.
- (b) Where both partners work in the public sector, the total paid parental leave entitlement provided to the employee will not exceed the paid parental leave quantum for a single employee as specified in subclause 47.3 or its half pay equivalent.
- (c) The unpaid parental leave entitlement may be shared between partners.
- (d) An employee and their partner may only take paid and/or unpaid parental leave concurrently in exceptional circumstances with the approval of the employer or in accordance with subclause 47.12(c).
- (e) An employee must take parental leave in one continuous period. Where less than the standard parental leave is taken the unused portion of the period of paid or unpaid leave cannot be preserved in any way.
- (f) Notwithstanding subclause 47.8(e):
 - (i) paid parental leave may be taken in more than one continuous period by an employee who meets the requirements of subclause 47.12; and
 - (ii) unpaid parental leave may be taken in more than one continuous period where the employee undertakes special temporary or casual employment in accordance with subclause 47.29. In these circumstances, the provisions of subclause 47.29 apply.

47.9 Payment for paid parental leave

- (a) Subject to subclause 47.9(b), an employee proceeding on paid parental leave is to be paid according to their ordinary working hours at the time of commencement of parental leave. Shift and weekend penalty payments and higher duties allowances are not payable during paid parental leave.
- (b) Payment for a part time employee proceeding on paid parental leave is to be determined according to:
 - (i) an average of the hours worked by the employee over the preceding 12 months; or
 - (ii) their ordinary working hours at the time of commencement of paid parental leave;whichever is the greater.
- (c) An employee may elect to receive pay in advance for the period of paid parental leave at the time the parental leave commences, or may elect to be paid the entitlement on a fortnightly basis over the period of the paid parental leave.
- (d) An employee is eligible, without concluding their parental leave and resuming duty, for subsequent periods of parental leave, including paid parental leave, in accordance with the provisions of this clause.
- (e) Where an employee has not concluded their period of parental leave and resumed duty, and the employee is entitled to a subsequent period of paid parental leave, the employee's paid parental leave is:
 - (i) to be paid according to the employee's status and classification at the time of commencing the original period of parental leave; and
 - (ii) not affected by any period of special temporary or casual employment undertaken in accordance with subclause 47.29.

47.10 Medical Certificates

- (a) An employee who has given the employer notice of their intention to take paid or unpaid parental leave, or unpaid partner leave will provide the employer with a medical certificate from a registered medical practitioner naming the employee, or the employee's partner, confirming the pregnancy and estimated date of birth.
- (b) Where an employee continues to work within the six (6) week period immediately prior to the expected date of birth, or where the employee elects to return to work within six (6) weeks after the birth of the child, the employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

47.11 If the pregnancy results in other than a live child or the child dies during the period of paid parental leave, the entitlement to paid parental leave as provided in subclause 47.3 remains intact. Such paid parental leave cannot be taken concurrently with paid sick or personal leave in accordance with subclause 47.19.

47.12 Paid parental leave when the mother is, for any period of her leave, incapable of being her child's primary care giver

- (a) An employee who commenced paid parental leave prior to her child's birth and:
 - (i) who is incapacitated following the birth of her child and is therefore incapable of being its primary care giver; or
 - (ii) whose child requires hospitalisation such that the employee and her partner are not their child's primary care giver; is entitled to remain on paid parental leave, notwithstanding that she is not the child's primary care giver.
- (b) An employee is not entitled to access paid parental leave when they are not their child's primary care giver other than in the circumstances identified in subclause 47.12(a).
- (c) If both parents work in the public sector and the mother is able to remain on paid parental leave in accordance with subclause 47.12(a)(i), the employees may choose which parent will access paid parental leave.
 - (i) If the mother chooses to remain on paid parental leave, her partner may access unpaid parental leave for the period they are their child's primary care giver.
 - (ii) If the mother's partner is their child's primary care giver and chooses to access paid parental leave, the mother may access unpaid parental leave for the period her partner is their child's primary care giver.
 - (iii) Where the mother's partner accesses paid parental leave in accordance with subclause 47.12(c)(ii), the mother is entitled to resume paid parental leave if/when she becomes her child's primary care giver, subject to the provisions of subclause 47.8(b).
 - (iv) If the mother resumes paid parental leave in accordance with subclause 47.12(c)(iii), her partner must cease paid parental leave.
- (d) An employee is not entitled to access the provisions of subclause 47.12(c) in the circumstances identified in 47.12(a)(ii).

47.13 Adoption of a child

- (a) An employee seeking to adopt a child will be entitled to two days unpaid leave to attend interviews or examinations required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional day's unpaid leave. The employee may take any paid leave entitlement to which the employee is entitled in lieu of this leave.
- (b) If an application for parental leave has been granted for the adoption of a child, which does not eventuate, then the period of paid or unpaid parental leave is terminated. Employees may take any other paid leave entitlement to which they are entitled in lieu of the terminated parental leave or return to work.

47.14 Confirmation of primary care giver status

- (a) For the purposes of subclause 47.3, an employer may require an employee to provide confirmation of their primary care giver status.
- (b) Where an employer requires an employee to confirm their status as the primary care giver of a newly born or newly adopted child, the employee is to provide the employer with evidence that would satisfy a reasonable person of the entitlement to paid parental leave. Such evidence may include a medical certificate or statutory declaration.

47.15 Partner Leave

- (a) An employee is entitled to unpaid partner leave as prescribed by this subclause in respect of the:
 - (i) birth of a child to the employee or the employee's partner; or
 - (ii) adoption of a child who is not the natural child or the stepchild of the employee or the employee's partner; is under the age of five; and has not lived continuously with the employee for six months or longer.
- (b) An employee who is not taking parental leave with respect to the birth of child to their partner will be entitled to a period of unpaid partner leave of up to one week at the time of the child's birth. In the case of adoption of a child this period will be increased to up to three weeks' unpaid leave.
- (c) The employee may request to extend the period of unpaid partner leave for a further period of not more than eight consecutive weeks.
- (d) The employer is to agree to an employee's request to extend their partner leave under subclause 47.15(c) unless:
 - (i) having considered the employee's circumstances, the employer is not satisfied that the request is genuinely based on the employee's parental responsibilities; or
 - (ii) there are grounds to refuse the request relating to its adverse effect on the employer's business and those grounds would satisfy a reasonable person. These grounds include, but are not limited to:
 - (1) cost;
 - (2) lack of adequate replacement staff;
 - (3) loss of efficiency; and
 - (4) impact on the production or delivery of products or servicesby the employer.
- (e) The employer is to give the employee written notice of the employer's decision on a request for extended partner leave. If the employee's request is refused, the notice is to set out the reasons for the refusal.

- (f) An employee who believes their request for extended partner leave under subclause 47.15(c) has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the employer to demonstrate that the refusal was justified in the circumstances.
- (g) The taking of partner leave by an employee will have no effect on their or their partner's entitlement, where applicable, to paid parental leave under this clause.

Other Leave Entitlements

47.16 Annual and long service leave

- (a) An employee proceeding on unpaid parental leave may elect to substitute any part of that leave with accrued annual leave or long service leave to which the employee is entitled for the whole or part of the period of unpaid parental leave.
 - (i) An employee may elect to substitute any part of their entitlement to one week's unpaid partner leave as provided for in subclause 47.15(b) with accrued annual or long service leave to which the employee is entitled for the whole or part of that period of unpaid partner leave.
 - (ii) Where an employer agrees to an employee's request to extend their period of unpaid partner leave under subclause 47.15(c), the employer must allow an employee to elect to substitute any part of that period of unpaid partner leave with accrued annual or long service leave to which the employee is entitled for the whole or part of that period of unpaid partner leave.

47.17 Time off in lieu of overtime

An employee proceeding on unpaid parental leave or unpaid partner leave may elect to substitute any part of that leave with accrued time off in lieu of overtime to which the employee is entitled for the whole or part of the period of unpaid parental leave or unpaid partner leave.

47.18 Leave without pay

- (a) Subject to all other leave entitlements being exhausted an employee will be entitled to apply for leave without pay following parental leave to extend their leave by up to two years. The employer is to agree to a request to extend their leave unless:
 - (b) having considered the employee's circumstances, the employer is not satisfied that the request is genuinely based on the employee's parental responsibilities; or
 - (c) there are grounds to refuse the request relating to its adverse effect on the employer's business and those grounds would satisfy a reasonable person. These grounds include, but are not limited to:
 - (i) cost;
 - (ii) lack of adequate replacement staff;

- (iii) loss of efficiency;
 - (iv) impact on the production or delivery of products or services by the employer.
- (d) The employer is to give the employee written notice of the employer's decision on a request for leave without pay under subclause 47.18(a). If the request is refused, the notice is to set out the reasons for the refusal.
 - (e) An employee who believes their request for leave without pay under subclause 47.18(a) has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the employer to demonstrate that the refusal was justified in the circumstances.
 - (f) Any period of leave without pay must be applied for and approved in advance and will be granted on a year-by-year basis. Where both partners work for the employer the total combined period of leave without pay following parental leave will not exceed two years.

47.19 Personal leave

- (a) An employee on paid or unpaid parental leave is not entitled to paid personal leave other than as specified in subclause 47.19(b).
- (b) Should the birth or adoption result in other than the arrival of a living child, the employee will be entitled to such period of paid personal leave to which the employee is entitled or unpaid leave for a period certified as necessary by a registered medical practitioner. Paid personal leave cannot be taken concurrently with paid parental leave.
- (c) Where a pregnant employee not on parental leave suffers illness related to the pregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid personal leave to which the employee is entitled or unpaid leave for a period as certified necessary by a registered medical practitioner.
- (d) An employee on unpaid partner leave is not entitled to paid personal leave.

47.20 Public holidays

Any public holidays that fall during paid or unpaid parental leave, or unpaid partner leave will be counted as part of the parental or partner leave and do not extend the period of parental or partner leave.

47.21 Notice and Variation

- (a) The employee will give not less than four weeks notice in writing to the employer of the date the employee proposes to commence paid or unpaid parental leave, or unpaid partner leave stating the period of leave to be taken.
- (b) An employee seeking to adopt a child will not be in breach of subclause 47.21(a) by failing to give the required period of notice if such failure is due to the requirement of the adoption agency to accept earlier or later placement of a child, or other compelling circumstances.

- (c) An employee proceeding on parental leave may elect to take a shorter period of parental leave to that provided by subclause 47.2 and may at any time during that period elect to reduce or extend the period stated in the original application, provided four weeks written notice is provided

Modification of Duties or Transfer to a Safe Job

47.22 Part time employment during pregnancy

- (a) A pregnant employee may work part time in one or more periods whilst she is pregnant where she provides her employer with a medical certificate from a medical practitioner advising that part time employment is, because of her pregnancy, necessary or preferable.
- (b) The terms of part time employment undertaken in accordance with subclause 47.22(a) will be in writing.
- (c) Such employment will be in accordance with the part time employment and parental leave provisions of this Agreement.
- (d) Unless otherwise agreed between the employer and employee, an employee will provide their employer with four weeks written notice of an intention to:
 - (i) vary part time work arrangements made under subclause 47.22(b); or
 - (ii) revert to full time employment during the employee's pregnancy.
- (e) An employee reverting to full time employment in accordance with subclause 47.22(d)(ii) will be entitled to the same position or a position equivalent in pay, conditions and status and commensurate with the employee's skill and abilities as the substantive position held immediately prior to undertaking part time employment.

47.23 If an employee gives the employer a medical certificate from a medical practitioner containing a statement to the effect that, in the medical practitioner's opinion, the employee is fit to work, but that it is inadvisable for her to continue in her present position for a stated period because of:

- (a) illness, or risks, arising out of her pregnancy; or
- (b) hazards connected with that position;

then the employer must modify the duties of the position or alternatively transfer the employee to a safe job at the same classification level for the period during which she is unable to continue in her present position.

47.24 If the employer does not think it to be reasonably practicable to modify the duties of the position or transfer the employee to a safe job the employee is entitled to paid leave for the period during which she is unable to continue in her present position.

47.25 An entitlement to paid leave provided in subclause 47.24 is in addition to any other leave entitlement the employee has and the employee is to be paid the amount she would reasonably have expected to be paid if she had worked during that period. This entitlement also applies to eligible casual employees.

47.26 An entitlement to paid leave provided in subclause 47.24 ends at the earliest of whichever of the following times is applicable:

- (a) the end of the period stated in the medical certificate;
- (b) if the employee's pregnancy results in the birth of a living child – the end of the day before the date of birth; or
- (c) if the employee's pregnancy ends otherwise than with the birth of a living child – the end of the day before the end of the pregnancy.

47.27 Communication During Parental Leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer will take reasonable steps to:
 - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
 - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) An employee will take reasonable steps to inform their employer about any significant matter that will affect the employee's decision regarding:
 - (i) the duration of parental leave to be taken;
 - (ii) whether the employee intends to return to work; and
 - (iii) whether the employee intends to return to work on a part-time or modified basis.
- (c) An employee will also notify their employer of changes of address or other contact details that might affect the employer's capacity to comply with subclause 47.27(a).

47.28 Replacement Employee

- (a) Prior to engaging a replacement employee the employer will inform the replacement person of:
 - (i) the temporary nature of the employment;
 - (ii) the entitlements relating to the return to work of the employee on parental leave or that employee's capacity to undertake special temporary or casual employment during their period of unpaid parental leave; and
 - (iii) any consequences for the replacement employee should the employee on parental leave return early from leave or seek an extension to their period of parental leave.

- (b) A replacement employee may be employed part time. Such employment will be in accordance with subclause Clause 15 – Part Time Employee of this Agreement.
- (c) Nothing in this subclause will be construed as requiring an employer to engage a replacement employee.

47.29 Employment During Parental Leave

- (a) The provisions of subclause 47.29 only apply to employment during:
 - (i) unpaid parental leave; and
 - (ii) leave without pay taken in conjunction with parental leave as provided for in subclause 47.18.
- (b) The employer cannot employ an employee in special temporary or casual employment whilst the employee is on a period of:
 - (i) paid parental leave; or
 - (ii) annual or long service leave taken concurrently with a period of unpaid parental leave.
- (c) Special temporary employment
 - (i) For the purposes of subclause 47.29, “temporary” means employment:
 - (1) of an intermittent nature;
 - (2) for a limited, specified period;
 - (3) undertaken during unpaid parental leave or leave without pay taken in conjunction with unpaid parental leave; and
 - (4) excluding employment undertaken in accordance with subclause 47.29(d).
 - (ii) Notwithstanding any other provision of the parental leave clause, an employee may be employed by their employer on a temporary basis provided that:
 - (1) both parties agree in writing to the special temporary employment;
 - (2) employees are employed at the level commensurate to the level of the available position under the relevant Award or Agreement;
 - (3) in the case of a fixed term contract employees, the period of temporary employment is within the period of the current fixed term contract;
 - (4) any such period of service will not change the employee’s employment status in regard to their substantive employment; and

- (5) any period of special temporary employment will count as qualifying service for all purposes of this Agreement.
- (d) Special casual employment
- (i) For the purposes of this subclause, “casual” means employment:
 - (1) on an hourly basis for a period not exceeding four weeks in any period of engagement;
 - (2) for which a casual loading is paid;
 - (3) undertaken during unpaid parental leave or leave without pay taken in conjunction with unpaid parental leave; and
 - (4) excluding employment undertaken in accordance with subclause 47.29(c).
 - (ii) Notwithstanding any other provision of the parental leave clause, an employee, may be employed by their employer on a casual basis provided that:
 - (1) both parties agree in writing to the special casual employment;
 - (2) employees are employed at the level commensurate to the level of the available position under the relevant Award or Agreement;
 - (3) in the case of a fixed term contract employee, the period of casual employment is within the period of the current fixed term contract;
 - (4) any such period of service will not break the employee’s continuity of service nor change the employee’s employment status in regard to their substantive employment; and
 - (5) any period of special casual employment will not count as qualifying service other than with respect to entitlements a casual employee would ordinarily be entitled to for any purpose under this Agreement.
- (e) For every period of special temporary or casual employment, the following records must be kept:
- (i) the agreements made between the parties for periods of special temporary or casual employment;
 - (ii) the dates of commencement and conclusion of each period of special temporary and/or casual employment;
 - (iii) the hours worked by the employee during such periods; and
 - (iv) the classification level at which the employee is employed during such periods.

- (f) Effect of special temporary or casual employment on unpaid parental leave
 - (i) Subject to subclause 47.29(f)(ii), periods of special temporary and/or casual employment will be deemed to be part of the employee's period of unpaid parental leave or leave without pay taken in conjunction with parental leave as originally agreed to by the parties.
 - (ii) An employee who immediately resumes unpaid parental leave or leave without pay following parental leave following the conclusion of a period of special temporary or casual employment:
 - (1) is entitled, on written notice, to extend their period of unpaid parental leave or leave without pay taken in conjunction with parental leave by the period of time in which they were engaged in special temporary and/or casual employment; and
 - (2) will give not less than four weeks notice in writing to their employer of the new date they intend to return to work and so conclude their period of parental leave or leave without pay taken in conjunction with parental leave.
 - (iii) An employee who does not immediately resume their period of unpaid parental leave or leave without pay taken in conjunction with parental leave at the conclusion of a period of special temporary or casual employment cannot preserve the unused portion of leave for use at a later date.

47.30 Return to Work on Conclusion of Parental Leave

- (a) An employee will confirm their intention to conclude their parental leave or leave without pay following parental leave and return to work by notice in writing to their employer not less than four weeks prior to the expiration of parental leave or leave without pay.
- (b) An employee who intends to return to work on a modified basis in accordance with subclause 47.30(d), will advise their employer of this intention by notice in writing not less than four weeks prior to the expiration of parental leave or leave without pay.
- (c) An employee on return to work following the conclusion of parental leave or leave without pay following parental leave will be entitled to the same position or a position equivalent in pay, conditions and status and commensurate with the employee's skill and abilities as the substantive position held immediately prior to proceeding on parental leave.
- (d) Where an employee was transferred to a safe job or proceeded on leave as provided for in subclauses 47.22 to 47.26, the employee is entitled to return to the position occupied immediately prior to the transfer or the taking of the leave.
- (e) Right to return to work on a modified basis

- (i) An employee may return on a part time or job-share basis to the substantive position occupied prior to the commencement of leave or to a different position at the same classification level in accordance with Clause 15 – Part-Time Employees of this Agreement.
 - (ii) An employee may return on a modified basis that involves the employee working on different days or at different times, or both; or on fewer days or for fewer hours or both, than the employee worked immediately before starting parental leave.
- (f) Right to revert
- (i) An employee who has returned on a part time or modified basis in accordance with subclause 47.30(d) may subsequently request the employer to permit the employee to resume working on the same basis as the employee worked immediately before starting parental leave or full time work at the same classification level.
 - (ii) The employer is to agree to a request to revert made under subclause 47.30(e)(i) unless there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of operations or business of the employer and those grounds would satisfy a reasonable person.
 - (iii) An employer is to give the employee written notice of the employer's decision on a request to revert under subclause 47.30(e)(i). If the request is refused, the notice is to set out the reasons for the refusal.
 - (iv) An employee who believes their request to revert under subclause 47.30(e)(i) has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the employer to demonstrate that the refusal was justified in the circumstances.

47.31 Effect of Parental Leave and Partner Leave on the Contract of Employment

- (a) An employee employed for a fixed term contract will have the same entitlement to parental leave and partner leave, how ever the period of leave granted will not extend beyond the term of that contract.
- (b) Absence on unpaid parental leave or unpaid partner leave will not break the continuity of service of employees.
- (c) Where an employee takes a period of unpaid parental leave or unpaid partner leave exceeding 14 calendar days in one continuous period, the entire period of such leave will not be taken into account in calculating the period of service for any purpose under this Agreement. Periods of unpaid leave of 14 days or less will, however, count for service.
- (d) An employee on parental leave or partner leave may terminate employment at any time during the period of leave by written notice in accordance with Clause 13 – Contract of Service of this Agreement.

- (e) An employer will not terminate the employment of an employee on the grounds of the employee's application for parental leave or partner leave or absence on parental leave or partner leave but otherwise the rights of the employer in respect of termination of employment are not affected.

47.32 Casual Employees

- (a) To avoid doubt, an eligible casual employee has no entitlement to paid leave under this clause with the exception of the entitlement to paid leave as provided under subclauses 47.22 to 47.26 (inclusive).
- (b) Nothing in this clause confers a change in the employment status of a casual employee.
- (c) Service performed by an eligible casual employee for a public sector employer will count as service for the purposes of determining 12 months continuous service as per subclause 47.3(b)(iii) where:
 - (i) the eligible casual employee has become a permanent or fixed term contract employee with the same employer; and
 - (ii) the break between the period of eligible casual employment and permanent or fixed term contract employment is no more than three months.

48. PURCHASED LEAVE – 42/52 SALARY ARRANGEMENT

- 48.1 (a) At the request of an employee an employer may agree to an arrangement ("the arrangement") whereby the employee can take a reduced salary spread over 52 weeks of the year and receive the following amounts of purchased leave:

Number of weeks salary spread over 52 weeks	Number of weeks purchased leave
42	10
43	9
44	8
45	7
46	6
47	5
48	4
49	3
50	2
51	1

- (b) Both the agreement to the arrangement and the time at which the additional leave is taken will be dependent on the operational requirements of the department where the employee works at the particular time.
- (c) Purchased leave will not be able to be accrued, from one year to the next, provided that the employee is to be entitled to pay in lieu of the purchased leave not taken.

- (d) Unless otherwise agreed between the employee and the employer, an employee who enters into an arrangement under this sub clause does so in blocks of 12 months.
- (e) For the purposes of this sub clause and without limiting the meaning of the term, “operational requirements” may include:
 - (i) the availability of suitable leave cover, if required;
 - (ii) cost implications;
 - (iii) impact on client/patient service requirements;
 - (iv) impact on the work of other employees; and
 - (v) the employee’s existing leave liabilities.
- (f) The portion of the employee's salary to be forfeited will be calculated as a fortnightly amount and their fortnightly salary will be decreased by that amount for the duration of the arrangement.
- (g) All annual leave taken during the course of the arrangement will be paid at the reduced rate.
- (h) The additional leave will continue to accrue while the employee is on leave during the course of the arrangement.
- (i) The reduced salary will be used for all purposes during the course of the arrangement.
- (j) The additional leave will not attract leave loading.

48.2 It is the responsibility of the employee to investigate the impact of any of the arrangements under this clause on their allowances, superannuation and taxation, and the options, if any, available for addressing these.

49. PURCHASED LEAVE – DEFERRED WAGES ARRANGEMENT

49.1 By written agreement between the employer and the employee, an employee may enter into a deferred salary scheme over a five year period in which the employee may be paid 80% of their ordinary salary over a four year period, with the unpaid component accrued over the four years, and paid out in equal instalments during the fifth year.

49.2 The fifth year will be treated as continuous service, but will not count as service for the purpose of accruing leave entitlements

49.3 Access to the leave when it falls due will not be unreasonably refused by the employer, but in any case the leave may only be deferred by agreement between the employer and employee.

49.4 When deciding whether to support a particular request for this arrangement, the employer will take into account factors such as operational requirements. In order to satisfy operational requirements, the number of employees allowed to work under the arrangement may be restricted at any one time, and/or the timing of the arrangement may need to be staggered.

- 49.5 By agreement the four year accrual period may be suspended. The employee will revert back to 100% of salary or access leave without pay, provided that except where longer periods of unpaid leave are otherwise prescribed by this Agreement (e.g. Parental Leave), such non participatory periods will not exceed 6 months. The commencement of the leave year will be delayed by the length of the non-participatory period.
- 49.6 Where an employee withdraws from this arrangement in writing, or the employee's contract of employment terminates for any reason, the employee will receive a lump sum equal to the accrued credit. The payment of the lump sum may be deferred for a period of up to 3 months upon the employee's request, provided that where the contract has terminated the payment will be made in his/her final pay.
- 49.7 Any paid leave taken during the first four years of this arrangement will be paid at 80% of the employee's ordinary salary.
- 49.8 It is the responsibility of the employee to investigate the impact of any of the arrangements under this clause on his/her allowances, superannuation and taxation, and the options, if any, available for addressing these.

50. DONOR LEAVE

50.1 Blood or Plasma Donation

Subject to operational convenience, an employee will be granted paid leave for the purpose of donating blood or plasma to approved donor centres.

50.2 Organ or Tissue Donation

- (a) Subject to the production of appropriate evidence, an employee will be entitled to up to six (6) weeks' paid leave for the purpose of donating an organ or body tissue.
- (b) Provided that where this paid leave is not sufficient and upon the production of a medical certificate, an employee may access their accrued personal leave or other paid leave in order to cover their absence.

51. EMERGENCY SERVICES LEAVE

- 51.1 Subject to operational requirements, paid leave of absence will be granted by the employer to an employee who is an active volunteer member of State Emergency Service, St John Ambulance Australia, Volunteer Fire and Rescue Service, Bush Fire Brigades, Volunteer Marine Rescue Services Groups or FESA Units, in order to allow for attendances at emergencies as declared by the recognised authority.
- 51.2 The employer will be advised as soon as possible by an employee, the emergency service, or other person as to the absence and, where possible, the expected duration of leave.
- 51.3 The employee must complete a leave of absence form immediately upon return to work.
- 51.4 The application form must be accompanied by a certificate from the emergency organisation certifying that the employee was required for the specified period.
- 51.5 An employee, who during the course of an emergency, volunteers their services to an emergency organisation, will comply with subclauses 51.2, 51.3 and 51.4.

52. LEAVE FOR TRAINING WITH DEFENCE FORCE RESERVES

52.1 The employer must grant leave of absence for the purpose of defence service to an employee who is a volunteer member of the Defence Force Reserves or the Cadet Force. Defence service means service, including training, in a part of the Reserves or Cadet Force.

52.2 Leave of absence may be paid or unpaid in accordance with the provisions of this clause.

52.3 Application for leave of absence for defence service will, in all cases, be accompanied by evidence that the request for leave relates to reserve service or training. At the expiration of the leave of absence granted, the employee will provide a certificate of attendance to the employer.

52.4 Paid leave

(a) An employee who is a volunteer member of the Defence Force Reserves or the Cadet Force is entitled to paid leave of absence for the purpose of attending a training camp, school, class or course of instruction, subject to the conditions set out hereunder.

(b) Part-time employees will receive the same paid leave entitlement as full time employees but payment will only be made for those hours that would normally have been worked but for the leave.

(c) On written application, an employee will be paid salary in advance when proceeding on such leave.

(d) Casual employees are not entitled to paid leave for the purpose of defence service.

52.5 Attendance at a Camp for Annual Continuous Obligatory Training

(a) An employee is entitled to paid leave for a period not exceeding ten 76 hours on full pay in any period of twelve months commencing on 1 July in each year.

(b) If the Officer in-Charge of a military unit certifies that it is essential for an employee to be at the camp in an advance or rear party, a maximum of 30.4 extra hours leave on full pay will be granted in the twelve-month period.

52.6 Attendance at One Special School, Class or Course of Instruction

(a) In addition to the paid leave granted under subclause 52.5, an employee is entitled to a period not exceeding 16 calendar days in any period of twelve months commencing on July 1 in each year, provided the employer is satisfied that the leave required is for a special purpose and not for a further routine camp.

(b) In this circumstance, an employee may elect to utilise annual leave credits. However, if the leave is not taken from annual leave, salary during the period will be at the rate of the difference between the normal remuneration of the employee and the defence force payments to which the employee is entitled if such payments do not exceed normal salary. In calculating the pay differential, pay for Saturdays, Sundays, Public Holidays and special

rostered days off is to be excluded and no account is to be taken of the value of any board or lodging provided for the employee.

52.7 Unpaid leave

- (a) Any leave for the purpose of defence service that exceeds the paid entitlement prescribed in subclauses 52.5 and 52.6 will be unpaid.
- (b) Casual employees are entitled to unpaid leave for the purpose of defence service.

52.8 Use of other leave

- (a) An employee may elect to use annual or long service leave credits for some or all of their absence on defence service, in which case they will be treated in all respects as if on normal paid leave.
- (b) The employer cannot compel an employee to use annual leave or long service leave for the purpose of defence service.

53. CULTURAL/CEREMONIAL LEAVE

53.1 Cultural/ceremonial leave will be available to all employees.

53.2 Such leave will include leave to meet the employee's customs, traditional law and to participate in cultural and ceremonial activities.

53.3 Employees are entitled to time off without loss of pay for cultural/ceremonial purposes, subject to agreement between the employer and employee and sufficient leave credits being available.

53.4 The employer will assess each application for ceremonial/cultural leave on its merits and give consideration to the personal circumstances of the employee seeking the leave.

53.5 The employer may request reasonable evidence of the legitimate need for the employee to be allowed time off.

53.6 Cultural/ceremonial leave may be taken as whole or part days off. Each day or part thereof, will be deducted from:

- (a) The employee's annual leave entitlements (where applicable); or
- (b) Accrued days off or time in lieu.

53.7 Time off without pay may be granted by arrangement between the employer and the employee for cultural/ceremonial purposes.

54. STUDY LEAVE

54.1 An employee may be granted time off with pay for part-time study purposes at the discretion of the employer.

54.2 Part-time employees are entitled to study leave on the same basis as full time employees.

- 54.3 Time off with pay may be granted up to a maximum of five hours per week including travelling time, where subjects of approved courses are available during normal working hours, or where approved study by correspondence is undertaken.
- 54.4 External students, who are obliged to attend educational institutions for compulsory sessions during vacation periods, may be granted time off with pay including travelling time up to the maximum annual amount allowed to an employee in the metropolitan area.
- 54.5 Employees will be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.
- 54.6 In every case the approval of time off to attend lectures and tutorials will be subject to:
- (a) hospital convenience; provided that Hospital inconvenience can not be claimed because it is necessary to replace the employee by utilising increased hours for part time staff, short term contract staff, or casual relief staff. Budgetary constraints should not factor into Hospital convenience.
 - (b) the course being undertaken on a part-time basis;
 - (c) employees undertaking an acceptable formal study load in their own time;
 - (d) employees making satisfactory progress with their studies;
 - (e) the course being relevant to the employee's career in the Health Service and being of value to the employer; and
 - (f) the course furthering the career of the employee.
- 54.7 An acceptable part-time study load should be regarded as not less than five hours per week of formal tuition, with at least half of the total formal study commitment being undertaken in the employee's own time, except in special cases such as where the employee is in the final year of study and requires less time to complete the course, or the employee is undertaking the recommended part-time year or stage, and this does not entail five hours of formal study.
- 54.8 In cases where employees are studying subjects which require fortnightly classes the weekly study load should be calculated by averaging over two weeks the total fortnightly commitment.
- 54.9 Travelling time returning home after lectures or tutorials is to be calculated as the excess time taken to travel home from such classes, compared with the time usually taken to travel home from the employee's normal place of work.
- 54.10 An employee will not be granted more than five hours time off with pay per week except in exceptional circumstances, where the employer may decide otherwise.
- 54.11 Time off with pay for those who have failed a unit or units may be considered for one repeat year only.
- 54.12 Approved Courses
- (a) Two year full-time Certificate courses and Diploma courses provided by a registered vocational education and training institutions.

- (b) Secondary courses leading to the Tertiary Entrance Examination or courses preparing students for the mature age entrance conducted by the Tertiary Institutions Service Centre.
- (c) A degree or Associate Diploma course at a post-secondary education institution.
- (d) Courses recognised by the National Authority for the Accreditation of Translators and Interpreters (NAATI) in a language relevant to the needs of the Public Sector.

55. HEALTH WORKER TRAINING

55.1 A Health Worker may receive up to two weeks' paid leave for the purposes of in service training, of which at least one week will be in a major centre (in one block or across a number of shorter sessions) with access to staff development courses and/or staff development resources. In service training will be provided in:

- (a) Induction/Orientation into the Health Service.
- (b) Information Technology where access to Information Technology is available at the worksite.
- (c) Grievance/dispute resolution.
- (d) Occupational Safety and Health.

55.2 Leave under this clause may encompass education/training in a number of areas including diet and nutrition; ear conditions and hearing; maternal and child health; aged care; dental care; diabetes; substance abuse/addiction; mental health; disabled care; renal dialysis; child care; men's health; women's health; sexual health and sexually transmitted diseases; counselling; youth issues; cultural security; cross cultural training; financial management; program and funding guidelines; health planning; health management and administration; health records and reporting.

55.3 Leave under this clause may also cover attendance at work related conferences.

55.4 Leave under this clause is designed to enhance the Health Worker's knowledge and skills to help meet the health service objectives in the delivery of health services to Aboriginal people.

55.5 Leave will be approved by the Health Service Manager or the person at the Health Service delegated to approve such leave giving consideration to the needs of the Health Service, to the benefits it provides in the provision of health services to Aboriginal people and to the objective of providing greater career progression opportunities for Aboriginal Health Workers

56. PROFESSIONAL DEVELOPMENT LEAVE

56.1 Basic Entitlement

- (a) All full-time employees are entitled to 16 hours of professional development leave on commencement and a further 16 hours of professional development leave on the completion of each period of 12 months service.

- (b) Full-time graduate nurses participating in a recognised graduate program are entitled to 40 hours of professional development leave on commencement.
- (c) Part-time employees are entitled to professional development leave on a pro rata basis.

56.2 Remote Area Entitlement

- (a) All employees working in locations between 200km and 400km from the Perth GPO are, in lieu of the basic entitlement, entitled to 24 hours of professional development leave on commencement and a further 24 hours of professional development leave on the completion of each period of 12 months service.
- (b) All employees working in locations more than 400km from the Perth GPO are, in lieu of the basic entitlement, entitled to 32 hours of professional development leave on commencement and a further 32 hours of professional development leave on the completion of each period of 12 months service.

56.3 Unused portions of professional development leave will accrue from year to year, but will not be paid out on resignation or termination of employment.

56.4 Employees will not receive travel time in addition to professional development leave entitlements.

56.5 The employer will not unreasonably withhold approval of professional development leave for non-employer provided development opportunities which are directly relevant to the current or emerging professional development needs of employees.

56.6 The employer will not require an employee to use their professional development leave under this clause for mandatory competency training, delivered by the employer, including but not limited to Advanced Life Support; Basic Life Support, Manual Handling or Fire and Safety Training which is to be provided in ordinary paid time.

56.7 Where an employee moves during an applicable period of service between locations or employers the prescribed entitlement will be credited on a pro rata basis.

56.8 The employer will provide to the Union on a quarterly basis information on the accrual and utilisation of professional development leave in the preceding period. The information provided will be in a form which enables the Union to establish the patterns of utilisation amongst different types of nursing staff at both an individual health service level and a whole of health level.

56.9 All levels of nursing staff are entitled to equal access to professional development leave. The employer will have regard to such when allocating professional development leave.

56.10 All other forms of leave will continue to accrue whilst an employee is accessing professional development leave.

56.11 Applications for all forms of professional development leave must be made in advance and in the form prescribed by the employer.

56.12 Professional development leave will be recorded and acquitted in hours.

57. PAID LEAVE FOR ENGLISH LANGUAGE TRAINING

57.1 Leave during normal working hours without loss of pay will be granted to employees from a non-English speaking background who are unable to meet standards of communication to advance career prospects, who constitute a safety hazard or risk to themselves and/or fellow employees, or who are not able to meet the accepted requirements of the employee's particular occupation or the health industry, to attend English training conducted by an approved and authorised authority. The selection of employees for training will be determined by consultation between the employer and the union.

57.2 Leave will be granted to enable employees selected to achieve an acceptable level of vocational English proficiency. In this respect the tuition content with specific aims and objectives incorporating the pertinent factors at subclause 63.3 will be agreed between the employer, the union and the Adult Multicultural Education Services or other approved authority conducting the training.

57.3 Subject to appropriate needs assessment, participation in training will be on the basis of minimum of 100 hours per employee per year.

57.4 The agreed desired proficiency level will take account of the vocational needs of an employee in respect of communication, safety, welfare, and productivity within their current position as well as those positions to which they may be considered for promotion or redeployment. It will also take account of issues in relation to training, retraining and multi-skilling, award restructuring, industrial relations and safety provisions, and equal opportunity employment legislation.

58. INTERNATIONAL SPORTING EVENTS LEAVE

58.1 Special leave with pay may be granted by the employer to an employee chosen to represent Australia as a competitor or official, at a sporting event, which meets the following criteria:

- (a) it is a recognised international amateur sport of national significance; or
- (b) it is a world or international regional competition; and
- (c) no contribution is made by the sporting organisation towards the normal salary of the employee.

58.2 The employer will make enquiries with the Department of Sport and Recreation on:

- (a) whether the application meets the above criteria; and
- (b) the period of leave to be granted.

59. WITNESS AND JURY SERVICE

59.1 An employee subpoenaed or called as a witness to give evidence in any proceeding will, as soon as practicable, notify the manager/supervisor who will notify the employer.

59.2 Where an employee is subpoenaed or called as a witness to give evidence in an official capacity, that employee will be granted by the employer leave of absence

with pay, but only for such period as is required to enable the employee to carry out duties related to being a witness. If the employee is on any form of paid leave, the leave involved in being a witness will be reinstated, subject to the satisfaction of the employer. The employee is not entitled to retain any witness fee but will pay all fees received into Consolidated Fund. The receipt for such payment with a voucher showing the amount of fees received will be forwarded to the employer.

- 59.3 An employee subpoenaed or called as a witness to give evidence in an official capacity will, in the event of non-payment of the proper witness fees or travelling expenses, as soon as practicable after the default notify the employer.
- 59.4 An employee subpoenaed or called as a witness on behalf of the Crown not in an official capacity will be granted leave with full pay entitlements. If the employee is on any form of paid leave, this leave will not be reinstated as such witness service is deemed to be part of the employee's civic duty. The employee is not entitled to retain any witness fee but will pay all fees received into Consolidated Fund.
- 59.5 An employee subpoenaed or called as a witness under any other circumstances other than specified in subclauses 59.2 and 59.4, will be granted leave of absence without pay except when the employee makes an application to clear accrued leave in accordance with the provisions of this Agreement.
- 59.6 An employee required to serve on a jury will, as soon as practicable after being summonsed to serve, notify the supervisor/manager who will notify the employer.
- 59.7 An employee required to serve on a jury will be granted by the employer leave of absence on full pay, but only for such period as is required to enable the employee to carry out duties as a juror.
- 59.8 An employee granted leave of absence on full pay as prescribed in subclause 59.7 is not entitled to retain any juror's fees but will pay all fees received into Consolidated Fund. The receipt for such payment will be forwarded with a voucher showing the amount of juror's fees received to the employer.

60. LEAVE WITHOUT PAY

- 60.1 Subject to the provisions of subclause 60.2, the employer may grant an employee leave without pay for any period and is responsible for that employee on their return.
- 60.2 Every application for leave without pay will be considered on its merits and may be granted provided that the following conditions are met:
 - (a) The work of the employer is not inconvenienced; and
 - (b) All other leave credits of the employee are exhausted.
- 60.3 An employee on a fixed term appointment may not be granted leave without pay for any period beyond that employee's approved period of engagement.
- 60.4 Leave without pay for full time study

The employer may grant an employee without pay to undertake full time study, subject to a yearly review of satisfactory performance.

Leave without pay for this purpose will not count as qualifying service for leave purposes.

60.5 Leave without pay for Australian Institute of Sport scholarships

Subject to the provisions of subclause 60.2, the employer may grant an employee who has been awarded a sporting scholarship by the Australian Institute of Sport, leave without pay.

PART 8 – CHANGE MANAGEMENT

61. INTRODUCTION OF CHANGE

61.1 Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have a significant effect on employees, the employer will notify the employees who may be affected by the proposed changes and the union.

“A significant effect” includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and restructuring of jobs.

61.2 The employer will discuss with the employees affected and the union, among other things, the introduction of the changes referred to in subclause 61.1, the effects the changes are likely to have on employees, measures to avert or minimise the adverse a significant effect and will give prompt consideration to matters raised by the employees and/or the union in relation to the changes. Where an employee is to be made redundant, the matters to be discussed also include the likely effects of the redundancy.

61.3 The discussion will commence as soon as reasonably practicable after a decision has been made by the employer to make the changes referred to in subclause 61.1.

61.4 For the purposes of such discussion, the employer will provide to the employees concerned and 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 employer will not be required to disclose information which may seriously harm the employer's business undertaking or the employer's interest in the carrying on, or disposition, of the business undertaking.

62. CONSULTATION

62.1 Enrolled Nurses and Assistants in Nursing

The parties recognise the need for effective communication to improve the business/operational performance and working environment in organisations. The parties acknowledge that decisions will continue to be made by the employer, who is responsible and accountable to Government for the effective and efficient operation of the organisation.

62.2 The parties agree that:

- (a) Where the employer proposes to make changes likely to affect existing practices, working conditions or employment prospects of the employees, the union and employees affected will be notified by the employer as early as possible.
- (b) For the purposes of such discussion, the employer will provide to the union and employees concerned relevant information about the changes, including the nature of the changes on the employees provided that the employer will not be required to disclose information which may seriously harm the employer's business undertaking or the employer's interest in the carrying on, or disposition, of the business undertaking.
- (c) In the context of such discussion the union and employees are able to contribute to the decision making process.

62.3 Health Workers

A Consultative Committee will be established at a workplace when the Union or the relevant employer notifies the other of its intention to do so.

- 62.4 The Union and relevant employer will meet and jointly determine the structure and process (including elections and timetables) of the Consultative Committee.
- 62.5 Consultative Committees will be made up of representatives of the employer and the Union.
- 62.6 Consultative Committees are for the purpose of progressing the issues raised in this Agreement.
- 62.7 Each Health Worker nominated by the Union who has not previously received training will be released to attend the Union training course before the first consultative committee meeting.
- 62.8 The employer will provide reasonable resources to ensure effective and informed Health Worker participation, including access to all relevant information and a reasonable period of time of release to facilitate the consultative process.
- 62.9 Union representatives will be paid for attendance at Consultative Committee meetings as if they had worked their normal roster.
- 62.10 Union representatives will be given time off in lieu when they attend a Consultative Committee meeting in their own time, such time to be equal to total travel and meeting time.
- 62.11 The employer will be responsible for the keeping of proper records of the Consultative Committee. At the conclusion of each meeting, the employer will forward minutes of the Consultative Committee to members of the Committee.
- 62.12 An officer of the Union is entitled to attend a meeting of the Consultative Committee and address the Committee on any issue, but will not vote on any motion.

PART 9 – UNION MATTERS

63. UNION & DELEGATES RECOGNITION & RIGHTS

63.1 Recognition

- (a) The employer recognises the rights of the Union to organise and represent its members. Union representatives (“Delegates”) in the Hospital have a legitimate role and function in assisting the Union in the tasks of recruitment, organising, communication and representing members interests in the workplace.
- (b) The employer will distribute, with any pre-employment and/or orientation package the employer ordinarily distributes to new employees, a flyer/information sheet provided by the Union. The flyer/information sheet will provide information regarding Union membership, pay and conditions and representation of Union members within the workforce.
- (c) All management representatives will treat Union Delegates with respect and without victimisation, and this respect will be mutually reciprocated.

63.2 Union Delegates will be granted:

- (a) An assurance that issues raised will be promptly dealt with in accordance with Clause 66 – Dispute Settlement Procedure of this Agreement.
- (b) Genuine consultation by the employer for decisions impacting on Union members or employees eligible to be Union members.
- (c) Paid time to communicate during the Delegates' ordinary working hours with Union members and attend to Union business in the workplace. This will be negotiated at each Hospital. For example, the total pool of time available to all delegates at Royal Perth Hospital & Sir Charles Gardiner Hospital will be eight (8) hours per fortnight, which may be increased by agreement between the parties for the incidence of site or broader industrial issues.
- (d) Delegates will consult with the employer when paid time off is required. Any disagreements will be dealt with in accordance with Clause 66 – Dispute Settlement Procedure of this Agreement.

63.3 The Union will give the names of Union Delegates to the relevant employers in writing.

63.4 Facilities

- (a) Information
 - (i) The relevant Awards and Agreements will be displayed on notice boards in the workplace where it is easily accessible to employees.
 - (ii) Employees on request will be provided with a copy of this Agreement by the employer. The employer will make sufficient copies available for this purpose.
- (b) Union Delegates will be provided with:

- (i) Access to facilities including basic communication and information resources such as telephone, fax, e-mail, photocopier, stationery and access to meeting rooms to meet with individual or groups of members and perform Union business.
- (ii) Access to all relevant information, including appropriate awards, agreements, job descriptions and policies.
- (iii) Lockable notice boards in the ratio of one (1) notice board for every 200 beds or part thereof. Access to the Notice Board will be restricted to authorised Union Delegates. It is the responsibility of the Delegate to ensure that only authorised Union material is placed on the notice board.
- (iv) A lockable cabinet.

63.5 Organising the Workplace

- (a) Provided appropriate notice is given and the operation of the organisation is not unduly affected, Union Delegates will have:
 - (i) A list of new employees, provided by the employer each month, which identifies the time of commencement of new employees, their employment status, occupation, hours of work and work location.
 - (ii) Time to discuss the benefits of Union membership with a new employee as part of their induction.
 - (iii) Where the employer conducts a group induction, which may be on or off site, the Union will be given at least 14 days notice of the time and place of the induction. The Union will be entitled to at least thirty minutes to address new employees without employer representatives being present.
- (b) Access to a private sheltered area for meetings of members. Details to be decided by local arrangement.
- (c) Access to rosters providing information regarding work location and shifts of employees. The rosters will be provided within five working days of request.
- (d) Quarterly paid general Union meetings, to a maximum duration of 1 hour. These meetings are to be arranged at a local level.
- (e) Delegate meetings
 - (i) Paid monthly Union delegate meetings for each Hospital to a maximum of two (2) hours.
 - (ii) Quarterly paid regional delegate meetings to a maximum of two hours (plus reasonable travel time).
 - (ii) The option to aggregate the time available for meetings, pursuant to subparagraphs (i) and (ii) of this paragraph, to meet the needs of country delegates.

- (iv) Where agreement is reached between the employer and the Union, the option for delegates within the Perth Metropolitan area to convene for meetings pursuant to subparagraph (i) at one Hospital site.
- (f) Subject to compliance with the relevant clinical protocols at each facility, the right to enter the employer's premises during working hours, including meal breaks, for the purpose of discussing with employees covered by this Agreement the legitimate business of the Union, or for the purpose of investigating complaints concerning the application of this Agreement, but will in no way unduly interfere with the work of the employees.
- (g) Subject to compliance with the relevant clinical protocols at each facility, the Secretary or authorised Union representative will be able to move freely within the Hospital, and will not be required to be accompanied by any employee or agent of the employer, but will in no way unduly interfere with the work of the employees.

63.6 Representation

- (a) The employer will grant paid leave during ordinary working hours to an employee:
 - (i) Who is required to give evidence before any industrial tribunal;
 - (ii) Who as a Union nominated representative of the employees is required to attend negotiations and/or conferences between the Union and employer;
 - (iii) When prior agreement between the Union and employer has been reached for the employee to attend official Union meetings preliminary to negotiations or industrial hearings;
 - (iv) Who as a Union nominated representative of the employees is required to attend joint Union/management consultative committees or working parties.

63.7 Union Dues

The employer agrees, upon receiving written authorisation from an employee, to provide to the Union within five (5) working days the employee's bank account details and subsequent changes from time to time for the purpose of enabling the employee to establish direct debit facility for the payment of Union dues.

63.8 Paid Leave for Union Training

- (a) The employer will grant paid leave of absence to employees who are nominated by their Union to attend short courses conducted by the Union.
- (b) Paid leave of absence will also be granted to attend similar courses or seminars as from time to time approved by agreement between the parties.
- (c) An employee will be granted up to six (6) days paid leave each calendar year for Union training or similar courses or seminars. However, leave in excess of six days, and up to twelve days, may be granted in any one calendar year, provided that the total leave being granted in that year and in the subsequent year does not exceed twelve (12) days.

- (d) Country delegates will be paid travel time during normal working hours at the ordinary rate of pay to attend such training.

63.9 Rates of Pay During Absence on Union Training

- (a) Leave of absence will be granted at the ordinary rate of pay the employee would have received had they not been on leave.
- (b) Where a public holiday or rostered day off (including a rostered day off as a result of working a 38 hour week) falls during a Union training course or seminar, a day off in lieu of that day will be granted.

63.10 Shift employees attending a Union training course or seminar will be deemed to have worked the shifts they would have worked had leave not been taken, and payment for such leave will include shift penalties.

63.11 Application for Union Training Leave

- (a) Any application by an employee will be submitted to the employer for approval at least four (4) weeks before the commencement of the leave, provided that the employer may agree to a lesser period of notice.
- (b) The employer will not be liable for any expenses associated with an employee's attendance at Union training.
- (c) Leave of absence granted under this clause will include any necessary travelling time in normal working hours immediately before or after the training.

63.12 Application

- (a) An employee will not be entitled to paid leave to attend Union business other than as prescribed by this clause.
- (b) The provisions of this clause will not apply to special arrangements made between the parties, which provide for unpaid leave for employees to conduct Union business.
- (c) The provisions of this clause will not apply when an employee is absent from work without the approval of the employer.

PART 10 – EMPLOYMENT RECORDS AND RIGHT OF ENTRY

64. EMPLOYMENT RECORDS

64.1 In this clause, “relevant person” means:

- (a) the employee concerned;
- (b) if the employee is a represented person, their representative. The term representative includes the Secretary and duly accredited officials of the union;
- (c) a person authorised in writing by the employee;
- (d) the Secretary or duly accredited official of the union; and

- (e) an officer referred to in section 93 of the *Industrial Relations Act 1979* (WA) authorised in writing by the Registrar.

64.2 Keeping of employment records

The employer will ensure that employment records are kept showing:

- (a) the employee's name and, if the employee is under 21 years of age, their date of birth;
- (b) any industrial instrument that applies;
- (c) the date on which the employee commenced employment with the employer;
- (d) for each day:
 - (i) the time at which the employee started and finished work, including roster details if applicable;
 - (ii) the period or periods for which the employee was paid; and
 - (iii) details of work breaks including meal breaks;
- (e) for each pay period:
 - (i) the employee's designation;
 - (ii) the gross and net amounts paid to the employee under the industrial instrument; and
 - (iii) all deductions and the reasons for them;
- (f) all leave taken by the employee, whether paid, partly paid or unpaid;
- (g) the information necessary for the calculation of the entitlement to, and payment for long service leave under the industrial instrument;
- (h) any other information in respect of the employee required under this Agreement to be recorded; and
- (i) any information, not otherwise covered by this clause, that is necessary to show that the benefits received by the employee comply with the industrial instrument.

64.3 The employer must ensure that:

- (a) the employment records are kept in accordance with the *Industrial Relations (General) Regulations 1997* (WA) as amended or superseded from time to time;
- (b) each entry in relation to long service leave is retained:
 - (i) during the employment of the employee; and
 - (ii) for not less than 7 years after the employment terminates; and

- (c) each other entry is retained for not less than 7 years after it is made.

64.4 Form of records

An employer is to ensure that the employment records of the employer are kept:

- (a) by:
 - (i) making entries in the English language in or on a separate page of a bound or loose-leaf book kept specifically for that purpose; or
 - (ii) recording or storing the particulars required to be entered in the employment records by means of a mechanical, electronic or other device, but so that the particulars so recorded or stored will remain in the form in which they were originally recorded or stored and will be capable of being reproduced in written form in the English language;
- (b) with only one employee's records appearing on any one page;
- (c) so that the record for each pay period of each employee is identifiable; and
- (d) in a manner that enables compliance with subclauses 64.4(b) and (c) to be readily ascertained.

64.5 A person is not to alter employment records unless the alteration is annotated so as to identify:

- (a) the nature of the alteration;
- (b) the person making the alteration; and
- (c) the date on which the alteration was made.

64.6 Access to employment records

An employer, on written request by a relevant person, must:

- (a) produce to the person the employment records relating to an employee; and
- (b) let the person inspect the employment records.

64.7 The duty placed on an employer by subclause 64.6:

- (a) continues so long as the records are required to be kept under subclause 64.3;
- (b) is not affected by the fact that the employee is no longer employed by the employer or that the industrial instrument no longer applies to them;
- (c) includes the further duties:
 - (i) to let the relevant person enter premises of the employer for the purpose of inspecting the records; and
 - (ii) to let the relevant person take copies of or extracts from the records; and

- (d) must be complied with not later than:
 - (i) at the end of the next pay period after the request is received; or
 - (ii) the seventh day after the day on which the request was made to the employer.

64.8 If the employer maintains a personal or other file on an employee, the employee will be entitled to examine all material contained on that file and take copies at a time that does not result in the employer's business being unduly interrupted or otherwise hampered.

65. RIGHT OF ENTRY

65.1 Right of entry for discussions with employees

(a) Definitions

In this clause:

- (i) "authorised representative" means a person who holds an authority in force under the *Industrial Relations Act 1979* (WA);
 - (ii) "relevant employee", when used in connection with the exercise of a power by an authorised representative of the union, means an employee who is a member of the union or who is eligible to become a member of the union.
- (b) An authorised representative of the union may, on notification to the employer, enter during working hours, any premises where relevant employees work, for the purpose of holding discussions at the premises with any of the relevant employees who wish to participate in those discussions.

65.2 Right of entry to investigate breaches

- (a) An authorised representative of the union may, on notification to the employer, enter during working hours, any premises where relevant employees work, for the purpose of investigating any suspected breach of an award, industrial agreement or order that applies to any such employee, or the *Industrial Relations Act 1979* (WA), the *Minimum Conditions of Employment Act 1993* (WA), or the *Occupational Safety and Health Act 1984* (WA).
- (b) An "authorised representative" and "relevant employees" have the same meaning as in subclause 65.1(a).
- (c) For the purpose of investigating a suspected breach in accordance with this clause, the authorised representative:
 - (i) subject to subclause 65.2(d), may require the employer to produce for the representative's inspection, during working hours at the employer's premises or at any mutually convenient time and place, any employment records of employees or other documents kept by the employer that are related to the suspected breach;

- (ii) will not conduct interviews during normal working hours in the circumstances that will result in the employer's business being unduly interrupted or otherwise hampered;
 - (iii) may make copies of the entries in the employment records or documents related to the suspected breach;
 - (iv) will treat with confidentiality any information obtained from employment records; and
 - (v) may, during working hours, inspect or view any work, material, machinery, or appliance that is relevant to the suspected breach.
- (d) In exercising a power under subclause 65.2(a), an authorised representative is not entitled to require the production of employment records or other documents unless, before exercising the power, the authorised representative has given the employer concerned:
- (i) at least 24 hours' written notice, if the records or other documents are kept on the employer's premises; or
 - (ii) at least 48 hours' written notice, if the records or other documents are kept elsewhere.
- (e) The provisions of subclause 65.2(d) apply except where, in accordance with section 49I (7) of the *Industrial Relations Act 1979* (WA), the Commission has waived the requirement for the authorised representative to give the employer concerned notice.
- (f) Where the Commission has waived the requirement to give the employer concerned notice of an intended exercise of a power, the authorised representative must, after entering the premises and before requiring the production of the records or documents, give the person who is apparently in charge of the premises the certificate or a copy of the certificate provided by the Commission under section 49I (8) of the *Industrial Relations Act 1979* (WA) authorising the authorised representative's exercise of a power without notice.

65.3 If:

- (a) a person proposes to enter, or is on, premises in accordance with subclauses 65.1 or 65.2; and
- (b) the occupier, including a person in charge of the premises, requests the person to show their authority;

the person is not entitled to enter or remain on the premises unless they show the occupier the authority in force under the *Industrial Relations Act 1979* (WA).

65.4 The occupier of premises must not refuse, or intentionally and unduly delay, entry to the premises by a person entitled to enter the premises under subclauses 65.1 or 65.2.

65.5 A person must not intentionally and unduly hinder or obstruct an authorised representative in the exercise of the powers conferred by this clause.

- 65.6 A person must not purport to exercise the powers of an authorised representative under this clause if the person is not the holder of a current authority issued by the Registrar under Division 2G of Part II of the *Industrial Relations Act 1979* (WA).
- 65.7 The parties will comply with the terms of Division 2G of Part II of the *Industrial Relations Act 1979* (WA).

PART 11 – DISPUTE SETTLEMENT

66. DISPUTE SETTLEMENT PROCEDURE

66.1 Preamble

- (a) Subject to the provisions of the *Industrial Relations Act 1979* (WA) (as amended) any grievance, complaint or dispute, or any matter raised by the Union, employer or employee(s), will be settled in accordance with the procedures set out herein.
- (b) The parties agree that no bans, stoppages or limitations will be imposed prior to, or during the time this procedure is being followed.

66.2 Procedure

- (a) Any grievance, complaint or dispute arising under the Agreement or in the course of the employment of employees covered by the Agreement will be dealt with in accordance with this clause.
- (b) The employee/s and the manager with whom the dispute has arisen will discuss the matter and attempt to find a satisfactory solution, within three (3) working days. An employee may be accompanied by a Union representative.
- (c) If the dispute cannot be resolved at this level, the matter will be referred to and be discussed with the relevant manager's superior and an attempt made to find a satisfactory solution, within a further three (3) working days. An employee may be accompanied by a Union representative.
- (d) If the dispute is still not resolved, it may be referred by the employee/s or Union representative to the Chief Executive Officer or his/her nominee.
- (e) Where the dispute cannot be resolved within five (5) working days of the Union representatives' referral of the dispute to the Chief Executive Officer or his/her nominee, either party may refer the matter to the Commission for conciliation and arbitration as required.
- (f) The period for resolving a dispute may be extended by agreement between the parties.
- (g) At all stages of the procedure the employee may be accompanied by a Union representative.
- (h) Notwithstanding the above the Union may raise matters directly with representatives of the employer. In each case the Union and the employer will endeavour to reach agreement. If no agreement is reached either party may refer the dispute to the Commission for conciliation and/or arbitration.

- (i) The status quo (i.e. the condition applying prior to the issue arising) will remain until the issue is resolved in accordance with the procedures outlined above.

66.3 Disciplinary Procedure

- (a) Where the employer seeks to discipline an employee, or terminate an employee, the following steps will be observed:
 - (i) In the event that an employee commits a misdemeanour, the employee's immediate supervisory or any other officer so authorised, may exercise the employer's right to reprimand the employee so that the employee understands the nature and implications of his/her conduct.
 - (ii) The first two reprimands will take the form of warnings, and if given verbally, will be confirmed in writing as soon as practicable after the giving of the reprimand.
 - (iii) Should it be necessary, for any reason, to reprimand an employee three times in a period not exceeding twelve months continuous service, the contract of service will, upon the giving of that third reprimand, be terminable in accordance with the provisions of this Agreement.
 - (iv) The above procedure is meant to preserve the rights of the individual employee, but it will not, in any way, limit the right of the employer to summarily dismiss an employee for gross misconduct.

66.4 Access To The Commission

- (a) The settlement procedures contained within this clause will be applied to all manner of disputes, including those arising under this agreement, referred to in subclause 66.1, and no party, or individual, or group of individuals, will commence any other action, of whatever kind, which may frustrate a settlement in accordance with its procedures. Observance of these procedures will in no way prejudice the right of any party in dispute to refer the matter for resolution in the Commission, at any time.
- (b) The status quo (i.e. the condition applying prior to the issue arising) will remain until the issue is resolved in accordance with the procedure outlined above.

66.5 Provision Of Services

- (a) The Union recognises that the Health Service has a statutory and public responsibility to provide health care services without any avoidable interruptions.
- (b) This grievance procedure has been developed between the parties to provide an effective means by which employees may reasonably expect problems will be dealt with as expeditiously as possible by the Hospital management.
- (c) Accordingly, the Union hereby agrees that during any period of industrial action, sufficient labour will be made available to carry out work essential for life support within the Hospital.

66.6 Definitions

For the purpose of this procedure:

- (a) “Employer” includes an authorised officer nominated by the employer.
- (b) “Senior Officer” means an officer nominated by management.

67. SIGNATORIES

Signed _____ 5 / 4 / 11
Marshall Warner Date
Director
Health Industrial Relations Service

Signed and Sealed _____ 29 / 03 / 11
Dave Kelly Date
Secretary
Liquor, Hospitality and Miscellaneous Union
Western Australian Branch

Common Seal

**SCHEDULE A – WORKLOAD MANAGEMENT
PR914193**

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996
s.99 notification of industrial dispute
s.120A application for orders of Commission on exceptional matters

Australian Nursing Federation and Others

and

The Honourable Minister for Health and Others
(C2001/1910)

Various employees

Health and welfare services

JUSTICE MUNRO
SENIOR DEPUTY PRESIDENT O'CALLAGHAN
COMMISSIONER O'CONNOR

SYDNEY, 11 FEBRUARY 2002

EXCEPTIONAL MATTERS ORDER

- A. Further to the decision issued by the Commission on 17 December 2001 [Print PR912571], and the supplementary decision issued on 11 February 2002 [Print PR914192], the following order is made:

TITLE

This Order will be known as the Nurses (WA Government Health Services) Exceptional Matters Order 2001.

PARTIES

The parties to this order are the Minister for Health in the State of Western Australia, (the Minister), the Australian Nursing Federation, (the ANF), and the employer respondents corresponding to those listed in Appendix 2 of the Nurses (WA Government Health Services) Agreement 2001, (the employer respondents), as identified in Attachment 1 to this Order.

APPLICATION

This Order applies to the employment in Western Australian Government Health Services by the Minister or by the employer respondents of employees, who are eligible to be members of the ANF and engaged within a classification provided for in clauses 9, 10, 11 and Appendix 1 of the Nurses (WA Government Health Services) Agreement 2001, and to work performed for each such employer that is work within the scope of the definitions for those classifications in clause 31 of the Nurses (ANF - WA Public Sector) Award 1994, (the Award), being work performed by an employee of the respondent employers.

PERSONS BOUND

This Order is binding upon the parties, and upon the officers and employees of each of the parties and upon employees who are the members of the ANF, or eligible to be members of the ANF.

DUTY TO PREVENT SUSTAINED UNREASONABLE WORKLOAD

5.1 Each respondent employer will ensure that the work to be performed by an employee to whom this Order applies:

5.1.1 is of a nature that is reasonably consistent with the performance, over the ordinary time hours of a regular periodic roster, of duties and tasks within the employee's classification description at the standard required for observance of the Nurses' Code of Conduct requirement that the nursing care provided or about to be provided to a patient will be adequate, appropriate, and not adversely affect the rights, health or safety of the patient client; and,

5.1.2 constitutes a workload that is not a sustained manifestly unfair or unreasonable workload having regard to the skills, experience and classification of the employee and the period over which the workload is imposed.

Provided that this clause will not operate in respect of work that a respondent employer directs in order to meet emergency or extra-ordinary circumstances of an urgent kind so long as such work is not work regularly added to the employee's weekly or daily roster.

DUTY TO ALLOCATE AND ROSTER NURSES IN ACCORDANCE WITH PROCESS CONSISTENT WITH REASONABLE WORKLOAD PRINCIPLES

6.1 The respondent employers will, from no later than 1 April 2002, implement in the allocation and rostering of nurses a developed form of the staffing model described as the "nursing hours per patient day model" (NHPPD), the main premises of which are set out in Attachment 2 to this Order.

6.2 Subject to clause 6.3, the premises of the NHPPD model will be developed to include criteria and benchmarking measures for nursing work in wards or units not covered by a ward category and associated criteria specified in Attachment 2 and in particular for:

6.2.1 intensive care units;

6.2.2 surgical operating theatres;

6.2.3 cardiac/coronary units;

6.2.4 mental health units; and

6.2.5 emergency and accident departments.

6.3 The implementation of the NHPPD model by the respondent employers will be undertaken in a way that allows for ongoing development and refinement of the model consistent with

overall allocation and rostering outcomes determining nursing staff resources to meet estimated workloads in accordance with the following key principles:

- 6.3.1** clinical assessment of patient needs;
- 6.3.2** the demands of the environment such as ward layout;
- 6.3.3** statutory obligations including workplace safety and health legislation;
- 6.3.4** the requirements of nurse regulatory legislation and professional standards; and
- 6.3.5** reasonable workloads.

DUTY TO CONSULT, COMMUNICATE AND CONSTRUCTIVELY INTERACT ABOUT HEALTH SERVICE PROVISION TO PATIENTS

7.1 General duties

- 7.1.1** Each respondent employer and the ANF will together constitute and participate in a process for consultation and communication at industry level and at hospital level about overall nursing workload issues as an element in the provision of health services to patients.
- 7.1.2** The ANF will not unreasonably oppose the best use being made of all available and appropriately skilled staff to bring about the most effective team for the optimal provision of health services to patients at general and ward level, without unnecessary conditions or task demarcations.

7.2 Nursing Workloads Consultative Process Committee

- 7.2.1** For the purpose of complying at industry level with the duties in clause 7.1, the Minister acting generally for Western Australian Government Health Industry (the WAGHI) respondent employers will establish a Nursing Workloads Consultative Process Committee (the NWCP Committee). The founding membership of the NWCP Committee will be four senior level representatives of the WAGHI respondent employers, including a chairperson, and two representatives from the ANF; plus a representative each from the Australian Liquor, Hospitality and Miscellaneous Workers Union (the LHMU), and the Health Services Union of Australia (the HSUA), if those organisations elect to nominate a representative for the purposes of representation on the NWCP Committee only in relation to that part of their memberships that deal with nursing and/or nursing care related issues directly. The NWCP Committee may by agreement increase or decrease its membership.
- 7.2.2** For the duration of this Order, every six months the Minister on behalf of WAGHI employers will provide a detailed report to the NWCP Committee in relation to the steps being taken and the evaluation of progress in minimising adverse effects on workloads or patient service capacity in public hospitals. Such reports will:
 - 7.2.2.1** provide available data about levels and changes in levels of workloads of employees eligible to be members of the ANF, the LHMU or the HSUA;

7.2.2.2 outline measures the employers have taken to address and/or relieve the workload of the relevant employees, including specific steps taken;

7.2.2.3 provide information as to the progress achieved in implementing these or other similar steps, or to generally relieve or alleviate the workload of these employees, and

7.2.2.4 provide information as to future plans or intentions in relation to proposals to address the question of workloads of these employees.

7.2.3 As far as practicable, the reports made under clause 7.2.2 will be provided in writing. The first such report will be provided to each member of the NWCP Committee on 22 March 2002. Reports will be provided every six months after that date for the duration of this Order.

7.2.4 A meeting of the NWCP Committee will be held on 29 March 2002 and thereafter meetings will be held at the discretion of the NWCP Committee timed in broad conformity with the provision of reports.

7.3 Hospital Nursing Workload Consultative Committees And Area Nursing Workload Consultative Committees

7.3.1 For the purpose of complying at metropolitan hospital level with the duties in clause 7.1, the respective respondent employer for each metropolitan hospital (as set out in Attachment 3 to this Order) will establish a Hospital Nursing Workload Consultative Committee (the HNWC Committee) to have an advisory role in reviewing, assessing and making recommendations to the Executive Nursing Team of each respective metropolitan hospital, on an as needs basis, regarding:

- nursing workloads generally;
- admissions, discharges and patient movements generally, including transfers;
- bed usage and management generally; and
- planning for bed or ward closures during downtimes or other exigencies (including a refusal by the Executive Nursing Team for the hospital to ratify the level of nursing care for a given patient load against nursing professional standards).

In establishing HNWC Committees, the respondent employer will allow for the participation of up to 6 ANF representatives on each HNWC Committee and a corresponding number of WAGHI representatives.

7.3.2 For the purposes of complying at regional and rural hospital and health care facility level with the duties in clause 7.1, the respective respondent employer for each Area Health Authority will establish an Area Nursing Workload Consultative Committee (the ANWC Committee) to have an advisory role in reviewing, assessing and making recommendations to the Executive Nursing Team of each hospital or health

care facility for which each respective Area Health Authority has responsibility, on an as needs basis, regarding:

- nursing workloads generally;
- admissions, discharges and patient movements generally, including transfers;
- bed usage and management generally; and
- planning for bed and ward closures during downtimes or other exigencies (including a refusal by the Executive Nursing Team for the hospital to ratify the level of nursing care for a given patient load against nursing professional standards.

In establishing the ANWC Committees, the Area Health Authority will allow for the participation of one ANF representative per health care facility for which it has responsibility and a corresponding number of WAGHI representatives.

7.3.3 If there is no Area Health Authority in existence that is responsible for a hospital or health care facility, the respective respondent employer for each such hospital or health care facility will establish an appropriate NHWC Committee, with the same membership and role as that detailed in clause 7.3.1 of this Order.

7.3.4 If an Area Health Authority comes into existence and becomes responsible for a hospital or health care facility, the individual HNWC Committee at all of the hospitals or health care facilities for which that Area Health Authority has responsibility, will cease, and an ANWC Committee, with the same membership and role as that detailed in clause 7.3.2 of this Order will be established for that Area Health Authority.

7.4 Each of the consultative processes established under this clause will operate as far as practicable without formality with a view to reaching a consensus about matters to be considered. By agreement of the relevant Committee, the matters to be considered may also include issues such as patient transfers to or from hospital through liaison with community health services units, the trauma service and the ambulance service, the refinement of the admissions and discharge policy for a hospital, and measures necessary to bring about the most effective team for the optimal provision of health services to patients at general ward level. Unless otherwise provided by this Order, the processes established under this clause are advisory. A respondent employer in relation to a particular matter referred to a committee may elect to be bound by any agreement reached at the relevant committee in respect of the matter referred.

VISIBILITY OF IMPLEMENTATION OF NHPPD MODEL AT WARD OR UNIT LEVEL

8. In giving effect to the duty in clause 6, each respondent employer will ensure for the duration of this Order that the implementation of the NHPPD model, and any other mechanisms that may be in place to manage the workloads of nurses, will be made clearly visible to and readily understood by, nurses at the ward or unit level. The precise mechanism for ensuring that this visibility and/or understanding is achieved may vary from site to site, health service to health service, but will result in the NHPPD being applied to identify a work roster that may be clearly understood by nurses at the ward or unit level.

MEASURES TO ENCOURAGE RE-ENTRY TO THE NURSING WORKFORCE

- 9.** For the purpose of giving effect to the duties created by this Order, the parties will take into account a commitment by the Department of Health of Western Australia and the respondent employers to continue to provide for the duration of this Order, free re-registration and refresher courses for nurses seeking to re-enter the nursing workforce; and for the Department of Health to continue to co-ordinate statewide recruitment for nurses to enter into these courses. The ANF will encourage use of such courses.

GRIEVANCE PROCEDURE

- 10.1** Notwithstanding clause 30 of the Award and clause 19 of the Nurses (WA Government Health Services) Agreement 2001, the following grievance procedure will apply to a workload grievance under this clause.
- 10.2** A workload grievance is a grievance stated in writing by an employee bound by this Order performing work to which this Order applies, by the ANF, or by a respondent employer, as a person aggrieved, about the nursing workload that a nurse is required to undertake, on the ground that:
- 10.2.1** an unreasonable or excessive patient care or nursing task work load is being imposed on the nurse other than occasionally and infrequently;
 - 10.2.2** to perform nursing duty to a professional standard, a nurse is effectively obliged to work unpaid overtime on a regularly recurring basis;
 - 10.2.3** the workload requirement effectively denies any reasonably practicable access to the nurse's quota of time for professional development, within 12 months of the entitlement arising;
 - 10.2.4** within a workplace or roster pattern, no effective consultative mechanism and process is available in respect of the determination of bed closures or patient workload for the available nursing resources in the workplace or roster pattern;
 - 10.2.5** a reasonable complaint to the appropriate hospital authority about capacity to observe professional mandatory patient care standards has not been responded to or acted upon within a reasonable time; or
 - 10.2.6** a particular member or set of members of a patient care team are being consistently placed under an unreasonable or unfair burden or lack of adequate professional guidance because of the workload or the staffing skill mix of the team.
- 10.3** Before initiating the formal grievance process under this clause, the person aggrieved will attempt to resolve with the appropriate and responsible employee, employer or organisation the matter giving rise to the grounds of the grievance. After such an attempt has failed, or if the attempt is manifestly likely to be unproductive of a resolution of the matter, the person aggrieved will lodge a statement setting out details of the grievance with the Director of Nursing at the work location, and in the case of an aggrieved employee, with the ANF.
- 10.4** Where the grievance is not resolved within five working days, the Director of Nursing will inform the Chief Executive Officer (CEO) of the Area Health Authority (or if one has not been established, the CEO or General Manager of the relevant hospital of health service as

the case may be) responsible for the work location of the grievance and supply as soon as practicable a statement outlining the grievance and setting out the principal reasons why it has not been or cannot be resolved. Thereupon, the CEO of the Area Health Authority and one person nominated by the ANF, will form a conciliation committee to attempt to resolve the grievance.

- 10.5** Where the grievance is not resolved within five working days of being brought to the Area Health Authority's CEO, the CEO of the Area Health Authority will inform the Director General of Health of the grievance and supply as soon as practicable a statement outlining the grievance and setting out the principal reasons why it has not been or cannot be resolved. Thereupon, the Director General of Health or one person nominated by the Director General of Health and one person nominated by the ANF, will form a conciliation committee to attempt to resolve the grievance.
- 10.6** A grievance will be resolved where the parties to the grievance reach agreement. Where agreement is reached the parties at the work location will be informed of the grievance resolution in writing including an implementation timetable and method of implementation.
- 10.7** The implementation of these procedures will take place without delay and be completed as soon as practicable. The employer and the ANF will each as far as practicable avoid action which may exacerbate the dispute or predetermine the outcome of an attempt to resolve the grievance.
- 10.8** A grievance that remains unresolved for a period of more than 15 working days Monday to Friday may be referred by the ANF or a respondent employer to a Board of Reference.
- 10.9** A Board of Reference under this clause will be constituted comprising two nominees of the ANF and two nominees of the employer, and a member of the Australian Industrial Relations Commission as Chairperson.
- 10.10** The function of the Board of Reference will be to resolve the grievance if practicable, without making a formal determination. If the Board of Reference is:
- 10.10.1** unable to resolve the grievance, but,
 - 10.10.2** is satisfied that the ground for the grievance has been established; and
 - 10.10.3** is satisfied that a determination on the basis of the grievance is necessary;
- the Board of Reference may make a determination in conformity with clause 10.11.
- 10.11** Subject to clause 10.10, a Board of Reference may determine:
- 10.11.1** in relation to a grievance under clause 10.2.1, 10.2.5, or 10.2.6, a principle to be applied for determining the workload relevant to the ground of the grievance being a principle capable of remedying the ground of grievance if applied by the responsible employer;
 - 10.11.2** in relation to a grievance under clause 10.2.2 or 10.2.3, a right for the employee or employees affected to, or a duty on the employer to grant an entitlement which, if granted or enforced, would remedy in part or whole the ground of the grievance;

10.11.3 in relation to a grievance under clause 10.2.4, a process for consultation and reporting upon management decisions about patient workload or bed closures, not being a process inconsistent with clause 7 of this Order, that if introduced, would be appropriate to remedy the ground of the grievance.

10.11 In the event of representative members of the Board being equally divided in opinion, the Chairperson will cast his or her vote to give a majority decision.

10.12 A determination by the Board will be binding upon the parties and the parties will abide by any such determination as though it is a provision of this Order having a term co-extensive with the duration of this Order.

COMMENCEMENT DATE OF ORDER AND PERIOD OF OPERATION

This Order commences on 1 March 2002 and will expire on 28 February 2004.

BY THE COMMISSION:

JUSTICE P.R. MUNRO

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SCHEDULE B – NHPPD GUIDING PRINCIPLES

Ward Category	NHPPD	Criteria for measuring diversity, complexity and nursing tasks required
ED		<p>ED Nursing Hours per Patient Presentation (NHpPP) Formula</p> <p>(Assessment Time) + (Ongoing Care component x ALOS) + (Observation Ward Occupied Bed Days x 5.75 hours where appropriate)</p>
ICU	31.60	<ul style="list-style-type: none"> • Tertiary designated ICU.
CCU	14.16	<ul style="list-style-type: none"> • Designated stand alone CCU.
HDU	12.00	<ul style="list-style-type: none"> • Designated stand alone HDU • High Dependency Unit @ >6 beds.
A	7.5	<ul style="list-style-type: none"> • High Complexity • High Dependency Unit @ or < 6 beds within a ward • Tertiary Step Down ICU • High Intervention Level • Specialist Unit/Ward Tertiary Level 1:2 staffing • Tertiary Paediatrics • Mental Health (MH) Secure Beds <ul style="list-style-type: none"> ▪ Seclusion used as per <i>Mental Health Act 1996</i> (WA) ▪ High risk of self harm and aggression ▪ Intermittent 1:1 /2 Nursing ▪ Patients frequently on 15 minutely observations
B	6.0	<ul style="list-style-type: none"> • High Complexity • No High Dependency Unit • Tertiary Step Down CCU/ICU • Moderate/High Intervention Level • Special Unit/Ward including Mental Health Unit • High Patient Turnover⁽¹⁾ > 50% • FHHS Paediatrics⁽²⁾ • Secondary Paediatrics • Tertiary Maternity • MH – High risk of self harm and aggression <ul style="list-style-type: none"> ▪ Patients frequently on 30 minute observations ▪ Occasional 1:1 nursing ▪ Mixture of open and closed beds ▪ Seclusion used as per <i>Mental Health Act 1996</i> (WA)
C	5.75	<ul style="list-style-type: none"> • High Complexity Acute • Care Unit/Ward • Moderate Patient Turnover > 35%, OR • Emergency Patient Admissions > 50% • MH – Moderate risk of self harm and aggression

		<ul style="list-style-type: none"> • Psychogeriatric Mental Health Unit • Mental Health unit incorporating ECT Facility
D	5.0	<ul style="list-style-type: none"> • Moderate Complexity • Acute Rehabilitation Secondary Level • Acute Unit/Ward • Emergency Patients Admissions > 40% OR • Moderate Patient Turnover > 35% • Secondary Maternity • MH – Medium to low risk of self harm and aggression <ul style="list-style-type: none"> • Mental Health Forensic Patients in open beds
E	4.5	<ul style="list-style-type: none"> • Moderate Complexity • Moderate Patient Turnover > 35% • Sub Acute Unit/Ward • Rural Paediatrics • Rural Maternity
F	4.0	<ul style="list-style-type: none"> • Moderate/Low Complexity • Low Patient Turnover < 35% • Care Awaiting Placement/Age Care • Sub Acute Unit/Ward • MH Slow stream rehabilitation
G	3.0	<ul style="list-style-type: none"> • Ambulatory Care including: • Day Surgery Unit
Renal (T)	3.02	<ul style="list-style-type: none"> • Stand alone Tertiary Renal Unit
Renal (S)	2.18	<ul style="list-style-type: none"> • Stand alone Satellite Renal Unit

SCHEDULE C – REDUNDANCY, RETRAINING AND REDEPLOYMENT

1. DEFINITIONS

- 1.1 "Government" means the Government of Western Australia and does not include the Commonwealth or Local Government.
- 1.2 "Public Sector" means all State Government departments, trading concerns, instrumentalities, agencies or statutory bodies established by or under a law of this State, including primary produce bodies, regulatory bodies, quasi-judicial bodies, trustees, advisory committees and regional bodies.
- 1.3 "Redeployment" means redeployment within the Public Sector.
- 1.4 "Redundancy" means a situation when a job performed by an employee ceases to exist or becomes surplus to requirements.

2. ACCESS TO PUBLIC SECTOR ENTITLEMENTS

Where redeployment, retraining and redundancy entitlements superior or additional to those provided for in this Schedule are offered generally to public sector employees, those superior or additional entitlements shall also be made available to employees covered by this Schedule under the same terms.

3. REDUNDANCY SITUATIONS

- 3.1 Subject to Clause 2 an employee whose job or position is subject to a redundancy situation shall be entitled to be dealt with in accordance with the procedures and entitled to the benefits provided in Clauses 4, 5 and 6.
- 3.2 Where a redundant employee, while still in the employ of an employer party, has received and accepted, an offer of suitable alternative employment not within the Public Sector, the provisions of Clause 8 shall apply in relation to the employee. For these purposes, "an offer" can only be made by an employer who has taken on, or is going to take on, a function of Government, the privatisation or contracting out of which has lead, or will lead, to the employee becoming redundant.
- 3.3 Where a redundant employee has not accepted an offer of suitable alternative employment not within the Public Sector, the provision of Clause 4 shall apply in relation to the employee until redeployed or until the employee's employment is terminated in accordance with that clause.

4. REDEPLOYMENT AND RETRAINING

Suitable Alternative Employment

- 4.1 Subject to this clause and to Clause 3, each employee whose position is redundant shall be transferred to suitable alternative employment either within his/her Department/Authority or with the consent of another Government employer, to that Government employer.

Suitable alternative employment shall be defined as that which provides the employee with a position which:

- (a) is for an indefinite period in a permanent position with a Government employer;
- (b) has a wage or salary as close as possible to that of the employee's existing position; and
- (c) does not require the employee to change his/her place of residence in order to take up the position, and has regard to:
 - (i) the relevance of the duties and responsibilities, to the qualifications and experience of the employee and the competence of the employee; and
 - (ii) the ordinary hours of duty being in general no less than those worked by the employee in his/her original position.

Alternative employment or training

- 4.2 (a) The suitability of alternative employment or training shall be determined by the Public Sector Management Division of the Department of Premier and Cabinet after consultation with the employer, employee and Union concerned in accordance with subclause 4.1 of this clause and having regard for the particular circumstances of each employee.

Any dispute between the parties over whether a position falls within the definition of suitable alternative employment as prescribed by subclause 4.1 of this Clause, subject to subclause 4.2(c) may be referred to the Commission by any party to the dispute.

- (b) Where suitable alternative employment is unable to be identified for an employee, the employee may elect within three months from the date the position becomes redundant to transfer to a position outside that defined as suitable or leave the services of the employer.

An employee who elects:

- (i) to leave the service of an employer shall be paid the severance and other payments prescribed by "Clause 6 - Selective Voluntary Severance or Early Retirement" of this Schedule; or
 - (ii) to transfer to a position under the terms of this clause shall be entitled to the provisions of "Clause 5 - Income Maintenance" of this Schedule.
- (c) Where suitable alternative employment is unable to be identified for an employee whose position is redundant, and the employee is unwilling to undergo training or retraining or to accept a position outside that defined as suitable, or to accept an offer of suitable alternative employment not within the Public Sector for the purposes of subclause 3.2, the employer may

initiate appropriate disciplinary proceedings against the employee. For the purposes of this Schedule and of such disciplinary proceedings, the unwillingness of the employee to accept training, retraining, position or employment respectively, if established, may be deemed to be an employment offence punishable by termination of employment but an employee terminated under this process shall be entitled to the severance and other payments prescribed by “Clause 6 - Selective Voluntary” Severance or Early Retirement of this Schedule.

Annual leave and long service leave

- 4.3 Annual and long service leave accrued prior to the date of redeployment shall be calculated in accordance with the relevant award or agreement applicable to that employee and transferred to and credited by the new employer.

Sick leave

- 4.4 Unused sick leave accrued prior to the date of redeployment shall be transferred to and credited by the new employer.

Leave and assistance to seek alternative employment

- 4.5 (a) The employer shall facilitate redeployment by granting employees to be redeployed reasonable leave to attend interviews and career counseling without loss of pay.
- (b) Where a prospective employer does not meet the cost of travel to an employment interview, the cost of reasonable travel and incidental expenses including if necessary over-night accommodation associated with the interview shall be borne by the employer.

Trial period in alternative employment

- 4.6 (a) An employee shall be granted a trial period of six months in any alternative employment during or at the completion of which the employee may elect to resign if that employment is not suitable, in which case the employee shall receive the entitlements provided by “Clause 6 - Selective Voluntary Severance or Early Retirement” of this Schedule.

This entitlement is only available to employees who fall within paragraph (b) of subclause 4.2 of “Clause 4 - Redeployment and Retraining” of this Schedule.

- (b) By agreement between the employer and employee, leave without pay may be approved with the consent of the Public Sector Management Division of the Department of Premier and Cabinet where it is sought by a redeployee as a means of exploring career options outside the Public Sector.

This period of leave without pay will not count as service for any reason. However, the employee's service shall be deemed continuous and the employee retains the right to accept the offer of severance in accordance

with “Clause 6 - Selective Voluntary Severance or Early Retirement” of this Schedule, prior to the completion of the period of leave without pay.

5. INCOME MAINTENANCE

Classification Maintenance

5.1 An employee placed in a new classification which carries a lower rate than the former classification, shall be paid a rate equivalent to the former classification for a total period of twelve (12) months from the date of transfer. Any adjustments or increments which would have occurred or are made to the former classification rate within the twelve month period shall be applied and paid to the employee.

Progression through the increments will be subject to the normal tests applied under the employee's award classification.

Wage and salary maintenance

5.2 (a) Where, after a period of twelve (12) months an employee remains employed on a classification carrying a lower rate than the rate of their former classification, that employee shall continue to be paid the rate applicable to the former classification at the twelve (12) months' anniversary date and such rate shall continue to be paid until the rate applicable to the employee's current classification exceeds that rate.

(b) For the purposes of subclause 5.1 of this clause and paragraph 5.2(a) of this subclause the total remuneration shall:

(i) exclude all allowances which represent:

(aa) an amount paid for overtime or as a bonus, or as an allowance instead of overtime;

(bb) except as provided in placitum (ii) of this paragraph, a relieving allowance;

(cc) an allowance for travelling, subsistence or other expenses;

(dd) an amount paid for rent or as a residence, housing or quarters allowance;

(ee) a climatic allowance or allowances for equipment or, a disability associated with the particular job e.g. site allowance;

(ff) an amount paid as compensation in lieu of the opportunity for private practice.

(ii) include allowances which represent:

(aa) a relieving allowance that has been paid continuously for twelve (12) months;

- (bb) a shift allowance which is paid on a regular basis and would continue to be paid during periods of annual leave.
- (c) Where an employee elects to undertake training or retraining within a period of six (6) months from the date of being nominated as redundant, the employee shall continue to receive their former classification rate for the period of training or retraining, provided that period does not exceed twelve (12) months. The period of training or retraining shall not be counted in determining the duration of the employee's entitlements under subclause 5.1 of this clause and paragraph (a) of subclause 5.2 of this clause.
- (d) For tally or piece workers, the level of income at the date of redeployment referred to in subclause 5.1 of this clause shall be at the average weekly income, including all allowances and loadings of a permanent nature, for the total number of weeks worked over the preceding twelve (12) months or part thereof.

6. SELECTIVE VOLUNTARY SEVERANCE OR EARLY RETIREMENT

Selective voluntary severance or early retirement

- 6.1 (a) Each employee identified as being surplus to the employer's requirements and who:
- (i) is dismissed without notice on grounds related to redundancy of the kind described in paragraph 4.2(c); or
 - (ii) cannot be found suitable alternative employment and who elects to resign; shall be entitled to the benefits of this clause.
- (b) Employees electing to terminate their services in accordance with subclause 4.6 of "Clause 4 - Redeployment and Retraining" of this Schedule shall be entitled to the benefits of this Clause.
- (c) Where an employee identified as surplus to requirements is able to carry out the duties and responsibilities in an equivalent manner to an employee not identified as surplus, the latter may, with the approval of the employer, elect to resign in place of the former, in which case the benefits of this clause shall apply to that employee.

Any dispute as to whether an employee identified as surplus to requirements is able to carry out the duties and responsibilities in an equivalent manner to an employee not identified as being surplus to requirements shall be determined by the Commission.

Severance Pay

- 6.2 Each employee referred to in subclause 6.1 of this Clause shall receive a severance payment from the employer in accordance with the following formula:

Three weeks pay for each completed year of continuous service provided that the maximum entitlement shall be 52 weeks salary.

Continuous service shall have the same meaning as that prescribed in the *State Government Wages Employees - Long Service Leave Conditions* (66 WAIG 319).

Payment will be at the rate of pay prescribed in subclause 5.1 of "Clause 5 - Income Maintenance" of this Schedule.

Payment for tally or piece workers will be based on the average weekly rate received for each week worked within the previous twelve (12) months.

Payment for Leave Entitlements

- 6.3 In addition to the severance payments prescribed by this clause, employees shall also receive:
- (a) Pro-rata annual leave calculated in accordance with the relevant award or industrial agreement at the rate of income as provided in subclause 5.1 of "Clause 5 - Income Maintenance" of this Schedule; and
 - (b) Pro-rata long service leave calculated on each completed twelve (12) months of service at a rate of income as provided in subclause 5.1 of "Clause 5 - Income Maintenance" of this Schedule.

7. RELOCATION EXPENSES

- 7.1 Subject to subclause 7.2 of this Clause an employee who accepts a position which requires the employee to be relocated will be reimbursed by the previous employer, all reasonable expenses incurred in moving the person's household belongings.
- 7.2 Where an award or order prescribes an entitlement to the reimbursement of relocation expenses, the provisions of that award shall apply, in lieu of subclause 7.1 of this clause.

8. SEVERANCE

Scope of clause

- 8.1 This Clause shall apply only in the case where a redundant employee, while still in the employ of the employer, has received and accepted an offer of suitable alternative employment from an employer not within the Public Sector. For these purposes "an offer" can only be made by an employer who has taken on, or is going to take on, a function of Government, the privatisation or contracting out of which has lead, or will lead, to the employee becoming redundant.

Discussions before termination

- 8.2 (a) Where, by reason of a decision taken to privatise or contract out a function of Government formerly fulfilled by the employer, an employee becomes or is going to become redundant, the employer shall hold discussions with the employees directly affected and with their Union.

- (b) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (a) hereof, and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.
- (c) For the purpose of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and their Union, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be inimical to the employer's interests.

Severance pay

8.3 Subject to further order of the Commission, an employee whose employment is terminated for reasons set out in subclause 8.1 hereof shall be entitled to the following amount of severance pay in respect of a continuous period of service:

Period of continuous service	Severance pay
Up to the completion of 2 years	4 weeks' pay
2 years and up to the completion of 3 years	6 weeks' pay
3 years and up to the completion of 4 years	8 weeks' pay
4 years and up to the completion of 5 years	10 weeks' pay
5 years and over	12 weeks' pay

"Weeks' pay" means the rate prescribed in subclause 5.1 of "Clause 5 - Income Maintenance".

Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

Employee leaving during notice

- 8.4 An employee to whom this clause applies may terminate his/her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he/she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.
- 8.5 Where an employee has received and accepted an offer in accordance with subclause 8.1, the employer has the right to determine the date upon which termination of employment shall occur.

9. EXCLUSIONS

This Schedule shall not apply to:

- 9.1 employees retired on the grounds of ill health; or
- 9.2 employees whose employment is terminated as a consequence of poor performance or misconduct on the part of the employee; or
- 9.3 an employee where an agreement has been reached between the employee, employer and the union that the employee is only engaged for a defined period under a fixed term contract at the conclusion of which their employment shall cease; or
- 9.4 casual employees.