DECISION

Fair Work Act 2009
s.185 - Application for approval of a multi-enterprise agreement

Victorian Hospitals' Industrial Association
(AG2024/4957)

BIOMEDICAL ENGINEERS (VICTORIAN PUBLIC SECTOR) (SINGLE INTEREST EMPLOYERS) ENTERPRISE AGREEMENT 2024-2028

Health and welfare services

COMMISSIONER JOHNS MELBOURNE, 21 JANUARY 2025

Application for approval of the Biomedical Engineers (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2024-2028

[1] An application has been made for approval of an enterprise agreement known as the *Biomedical Engineers (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2024-2028* (**the Agreement**). The application was made pursuant to s.185 of the *Fair Work Act 2009* (**the Act**). It has been made by Victorian Hospitals' Industrial Association. The Agreement is a multi-enterprise agreement.

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

[3] The Association of Professionals Engineers, Scientists & Managers Australia being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[4] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 28 January 2025. The nominal expiry date of the Agreement is 31 July 2028.

COMMISSIONER

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BIOMEDICAL ENGINEERS (VICTORIAN PUBLIC SECTOR) (SINGLE INTEREST EMPLOYERS) ENTERPRISE AGREEMENT 2024-2028

PART A – PRELIMINARY

1 Title

This agreement shall be referred to as the *Biomedical Engineers (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2024-2028*.

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3 Arrangement

4 Definitions

4.1 **Act** means the *Fair Work Act 2009* (Cth), or its successor.

4.2 **Agreement** means the *Biomedical Engineers (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2024-2028*.

4.3 **Child** includes an adopted child, step child and ex-nuptial child.

4.4 **Commission** means the Fair Work Commission or any successor body.

4.5 **Employee** means a person employed by an Employer listed in **Appendix 1** of this Agreement who is qualified to carry out Professional Engineering Duties and is employed to apply engineering method to the solution of problems in the area of medicine and other life sciences (Biomedical Engineer).

4.6 **Employer** means each organisation listed in **Appendix 1** of this Agreement.

4.7 **Experienced Engineer** means a professional engineer with the undermentioned qualifications engaged in any particular employment where the adequate discharge of any portion of the duties requires qualifications of the employee as (or at least equal to those of) a member of Engineers Australia. The qualifications are as follows:

(a) membership of Engineers Australia; or

(b) having graduated in a four or five year course at a university recognised by Engineers Australia, four years' experience on professional engineering duties since becoming a Qualified Engineer; or

(c) not having so graduated, five years of such experience.

Note: An experienced engineer with 5 years' experience must still hold a three-year engineering degree or equivalent diploma.

4.8 **FFPPOA** means the first full pay period on or after.

4.9 **HSR** means a health and safety representative (including a deputy health and safety representative).

4.10 **Immediate Family** means:

(a) a Spouse, Child, parent, grandparent, grandchild or sibling of the Employee; or

(b) a child, parent, grandparent, grandchild or sibling of a Spouse of the Employee.

4.11 **National Employment Standards or NES** means Part 2-2 of the Act as amended from time to time.

4.12 **OHS Act** means the *Occupational Health and Safety Act 2004* (Vic), or its successor.

4.13 **Professional Engineering Duties** shall mean duties carried out by a person, in their particular employment, the adequate discharge of any portion of their duties requires the Employee to hold qualifications (or of at least equal to those of) a Graduate member of the Institute of Engineers Australia.

4.14 **Qualified Engineer** shall mean a Biomedical Engineer who is or is qualified to become a Graduate member of the Institute of Engineers Australia.

4.15 **Reasonable Business Grounds** include but are not limited to the request / proposal (however titled) being the following:

(a) too costly for the employer;

(b) that there is no capacity to change the working arrangements of other employees to accommodate;

(c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate

(d) likely to result in a significant loss in efficiency or productivity;

(e) likely to have a significant negative impact on customer service.

4.16 **Registered Health Practitioner** means an individual who is registered under the Health Practitioner Regulation National Law (as adopted in the applicable State or Territory) to practice a health profession, other than as a student.

4.17 **Regulations** means the *Fair Work Regulations 2009* (Cth), or its successor.

4.18 **Spouse** includes a person to whom an Employee is married, a de facto partner, former spouse, or former de facto partner of the Employee. A de facto partner means a person who, although not legally married to the Employee, lives with the Employee in a relationship as a couple (whether the same sex or different sexes) on a genuine domestic basis.

4.19 **Stillborn** or **Stillborn Child** means:

(a) a child who weighs at least 400 grams at delivery or whose period of gestation was at least 20 weeks; and

(b) who has not breathed since delivery; and

(c) whose heart has not beaten since delivery.

4.20 **Union** means the Association of Professional Engineers, Scientists and Managers, Australia trading as Professionals Australia.

4.21 **VHIA** means the Employer's Representative, the Victorian Hospitals' Industrial Association.

4.22 **WIRC Act** means the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), or if applicable in the particular situation the *Accident Compensation Act 1985* (Vic) or the *Workers Compensation Act 1958* (Vic).

4.23 **2022 Agreement** means the *Biomedical Engineers (Victorian Public Sector) Enterprise Agreement 2022-2023.*

5 Coverage

5.1 This Agreement covers:

(a) the Employers listed in **Appendix 1** of this Agreement;

(b) all Employees (as defined in subclause 4.5); and

(c) the Union if it is named by the Commission as an employee organisation covered by the Agreement (in accordance with section 183 of the Act).

6 Commencement Date and Period of Operation

6.1 This Agreement will come into effect seven days after the date of approval by the Commission.

6.2 This Agreement will nominally expire on 31 July 2028.

6.3 The Agreement will continue to operate after the nominal expiry date in accordance with the provisions of the Act.

7 No Extra Claims

7.1 This Agreement is reached in full and final settlement of all matters subject to claims by those covered by the Agreement and for the life of the Agreement no further claims will be made or supported by those covered by the Agreement.

7.2 Subject to an Employer meeting its obligations to consult arising under this Agreement or a relevant contract of employment, it is not the intent of subclause 7.1 to inhibit, limit or restrict an Employer's right or ability to introduce change at the workplace.

7.3 Replacement Agreement

The Employers agree to commence discussions with the Union no later than six months prior to the nominal expiry date of this Agreement. Provided that any claim made by a person covered by this Agreement during this period is not supported by industrial action. Such discussions will be undertaken in good faith for the purpose of concluding a replacement agreement to this Agreement to operate from the nominal expiry date of this Agreement.

8 Relationship to Previous Industrial Instruments and the NES

8.1 This is a comprehensive Agreement that operates to the exclusion of any award, workplace determination or other agreement which previously applied to Employees covered by this Agreement. However, any entitlement in the nature of an accrued entitlement to an Employee's benefit which has accrued under any such previous industrial instrument will not be affected by the making of this Agreement.

8.2 Nothing in this Agreement will diminish any existing entitlement of any Employee covered by this Agreement, except where expressly varied by this Agreement.

8.3 This Agreement is not intended to exclude any part of the NES or to provide any entitlement which is detrimental to an Employee's entitlement under the NES. For the avoidance of doubt, the NES prevails to the extent that any aspect of this Agreement would otherwise be detrimental to an Employee.

9 Copy of Agreement

The Employer will make a copy of the Agreement and the NES accessible to all Employees either physically or electronically.

10 Anti-Discrimination

10.1 Those covered by this Agreement respect and value the diversity of the work force and protection against unfair treatment and unlawful discrimination on the basis of race, colour, sex, sexual orientation, breastfeeding, gender identity, intersex status, age, physical or mental disability, marital status, family or carer's responsibilities, subjection to family and domestic violence, pregnancy, religion, political opinion, national extraction or social origin.

10.2 Accordingly, in fulfilling their obligations under the Dispute Resolution Procedure, those covered by the Agreement must make every reasonable endeavour to ensure that neither

the Agreement provisions nor their operation are directly or indirectly unlawfully discriminatory in their effects.

10.3 Nothing in this clause is taken to affect:

(a) any different treatment (or treatment having different effects) which is specifically exempted under Commonwealth or State anti-discrimination legislation;

(b) an Employee, Employer or registered organisation, pursuing matters of discrimination in any State or Federal jurisdiction, including any application to the Australian Human Rights Commission; or

(c) the exemptions in section 351(2) of the Act.

11 Individual Flexibility Arrangements

11.1 An Employer and Employee may agree to vary the application of the terms of this Agreement relating to any of the following in order to meet the genuine needs of both the Employee and the Employer:

(a) arrangements for when work is performed;

(b) overtime rates;

(c) penalty rates;

(d) allowances; or

(e) annual leave loading.

11.2 An individual flexibility arrangement (**IFA**) must be one that is genuinely agreed to by the Employer and Employee without coercion or duress.

11.3 An Employer who wishes to initiate the making of an IFA must:

(a) give the Employee a written proposal; and

(b) if the Employer is aware that the Employee has, or reasonably should be aware that the Employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the Employee understands the proposal.

11.4 The Employee may appoint a representative for the purposes of the procedure in this clause, including the Union. Except as provided in subclause 11.6(c), the arrangement must not require the approval or consent of a person other than the Employer and the individual Employee.

11.5 The Employer must ensure that the terms of the IFA:

(a) are about permitted matters under section 172 of the Act; and

(b) are not unlawful terms under section 194 of the Act; and

(c) result in the Employee being better off overall than the Employee would be if no IFA was made.

11.6 The Employer must ensure that the IFA:

(a) is in writing; and

(b) includes the name of the Employer and Employee; and

(c) is signed by the Employer and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and

(d) includes details of:

(i) the terms of the enterprise agreement which will be varied and how the IFA will vary the effect of the terms; and

(ii) how the Employee will be better off overall in relation to the terms and conditions of their employment as a result of the IFA; and

(e) states the date on which the IFA commences.

11.7 The Employer must give the Employee a copy of the IFA within 14 days after it is agreed to.

11.8 The Employer or Employee may terminate the IFA:

(a) by giving no more than 28 days written notice to the other party to the arrangement; or

(b) if the Employer and Employee agree in writing — at any time.

12 Transfer of Business

12.1 Maintenance of Public Sector Employment

(a) Those covered by the Agreement acknowledge the preference of public sector work continuing to be performed by the public sector.

(b) However, from time to time, an Employer may determine to transfer responsibility for the delivery of existing ancillary services to a private provider.

(c) The Victorian Government's policy with respect to transfer of functions to a private provider are set out in the *Public Sector Industrial Relations Policies 2015*. The Employer will ensure Employee entitlements on transfer are subject to the six (6) principles contained therein. The policy as at the time this Agreement comes into operation applies to Employers and Employees but does not form part of this Agreement.

12.2 Employee Entitlements

(a) Where the business of the employer is, before or after the date of the Agreement, transferred from the employer (in this clause 12 called the Transferor) to another employer (in this clause 12 called the Transferee) and an employee who at the time of such transfer was an employee of the Transferor in that business becomes an employee of the Transferee:

(i) the continuity of the employment of the employee will be deemed not to have been broken by reason of such transfer; and

(ii) the period of employment which the employee has had with the Transferor or any prior transferor will be deemed to be service of the employee with the Transferee;

save that where the Transferor pays out accrued annual leave and/or long service leave to the employee upon the employee ceasing to be employed by them, this accrued annual leave and/or long service leave is not transferred to the Transferee.

(b) In this clause 12:

(i) business includes trade, process, business or occupation and includes any part of any such business; and

(ii) transfer includes transmission, conveyance, assignment or succession whether by agreement or by operation of law and transferred has a corresponding meaning.

PART B – CONSULTATION, DISPUTE RESOLUTION AND DISCIPLINE

13 Consultation

Nothing in this clause 13 limits the Employer's obligations to consult with HSRs under the OHS Act.

13.1 Consultation regarding Major Change

(a) Where an Employer proposes a Major Change that may have a Significant Effect on an Employee or Employees, the Employer will consult with the Affected Employee/s, the Union, and the Employee's other chosen representative (where relevant) before any proposed change occurs.

(b) Consultation will, where reasonably practicable, include consultation with those who are absent on leave including on workers' compensation or parental leave.

(c) The Employer will take reasonable steps to ensure Employees, HSRs (where relevant) and the Union can participate effectively in the Consultation process.

13.2 Definitions

Under this clause 13:

(a) **Consultation** means a genuine opportunity to influence the decision maker, but not joint decision making. It is not merely an announcement as to what is about to happen.

(b) **Affected Employee** means an Employee on whom a Major Change may have a Significant Effect.

(c) **Major Change** means a change in the Employer's program, production, organisation, physical workplace, workplace arrangements, structure or technology that is likely to have a Significant Effect on Employees.

(d) **Significant Effect** includes but is not limited to:

(i) termination of employment;

(ii) changes in the size, composition or operation of the Employer's workforce (including from outsourcing) or skills required;

(iii) alteration of the number of hours worked and/or reduction in remuneration;

(iv) changes to an Employee's classification, position description, duties or reporting lines;

(v) the need for retraining or relocation/redeployment/transfer to another site or to other work;

(vi) removal of an existing amenity; and/or

(vii) the removal or reduction of job opportunities, promotion opportunities or job tenure.

(e) **Measures to mitigate or avert** may include but are not limited to:

(i) redeployment;

(ii) retraining;

(iii) salary maintenance;

(iv) job sharing; and/or

(v) maintenance of accruals.

13.3 Consultation steps and indicative reasonable timeframes

(a) Consultation includes the steps set out below.

(b) Timeframes for each step must allow a party to consultation (including a representative) to genuinely participate in an informed way, having regard to all the circumstances including the complexity of the change proposed, and the need for Employees and their representative to meet with each other and consider and discuss the Employer's proposal. The timeframes in this clause are indicative only.

(c) The following table makes clear the relevant steps and indicative timeframes for the consultation process:

Step	Action	Timeframe
1.	Employer provides change impact statement and other written material required by subclause 13.4	
2.	Written response from Employees and/or Union	14 days of step 1
3.	Consultation Meeting/s convened	7-14 days of step 2 The 'first meeting' at step 3 does not limit the number of meetings for consultation
4.	Further Employer response (where relevant)	After the conclusion of step 3
5.	Alternative proposal from Employees or Union	14 days of step 4
6.	Employer to consider alternative proposal/s consistent with the obligation to consult and, if applicable, to arrange further meetings with Employees or Union prior to advising of the outcome of consultation	14 days of step 5

13.4 Change Impact Statement (step 1)

(a) Prior to Consultation required by this clause, the Employer will provide affected Employee/s and Union with a written Change Impact Statement (**CIS**) setting out all relevant information including:

(i) the details of proposed change;

(ii) the reasons for the proposed change;

(iii) where relevant, the current position descriptions of positions that may be affected by the proposed change;

(iv) any proposed new position descriptions;

(v) the possible effect of the proposed change on Affected Employees' workload;

(vi) other occupational health and safety impacts; save that where occupational health and safety impacts are identified, a risk assessment of the potential effects of the change on the health and safety of Employees must be undertaken in consultation with HSRs and provided with the proposed mitigating actions to be implemented to prevent such effects;

(vii) the expected benefit of the change;

(viii) measures the Employer is considering that may mitigate or avert the effects of the proposed change;

(ix) the right of an Affected Employee to have a representative including a Union representative at any time during the change process; and

(x) other written material relevant to the reasons for the proposed change (such as consultant reports), excluding material that is commercial in confidence or exposes the Employer to unreasonable legal risk, or cannot be disclosed under the *Health Services Act 1988* (Vic) or other legislation.

(b) Concerns as to whether the CIS complies with subclause 13.4 will be raised as soon as practicable and before step 2.

13.5 Employee/Union response (step 2)

Following receipt of the CIS, Affected Employees and / or the Union may respond in writing to any matter arising from the proposed change.

13.6 Meetings (step 3)

(a) As part of Consultation, the Employer will meet with the Affected Employee/s, the Union and other nominated representative/s (if any) to discuss:

(i) the proposed change;

(ii) proposals to mitigate or avert the impact of the proposed change; and

(iii) any matter identified in the written response from the Affected Employees and / or the Union.

(b) To avoid doubt, the 'first meeting' at step 3 does not limit the number of meetings for Consultation.

13.7 Employer response (step 4)

The Employer will give prompt and genuine consideration to matters arising from Consultation and will provide a written response to the matters raised by the Affected Employees, Union and (where relevant) other representative/s.

13.8 Alternative proposal (step 5)

The Affected Employee/s, the Union and other representative (where relevant) may submit alternative proposal/s which will take into account the intended objective and benefits of the proposal. Alternative proposals should be submitted in a timely manner so that unreasonable delay may be avoided.

13.9 Outcome of consultation (step 6)

(a) The Employer will give prompt and genuine consideration to matters arising from Consultation, including an alternative proposal submitted under subclause 13.8, and will advise the affected Employees, the Union and other nominated representatives (if any) in writing of the outcome of Consultation including:

(i) whether the Employer intends to proceed with the change proposal;

(ii) any amendment to the change proposal arising from consultation;

(iii) details of any measures to mitigate or avert the effect of the changes on Affected Employees; and

(iv) a summary of how matters that have been raised by Affected Employees, the Union and their representatives, including any alternative proposal, have been taken into account.

13.10 Consultation disputes

Any dispute regarding the obligations under this clause will be dealt with under the Dispute Resolution Procedure at clause 14 of this Agreement.

13A Consultation about Changes to Rosters or Hours of Work

This clause 13A applies where a change to regular rosters or ordinary hours of work (which may impact upon an employee, particularly in relation to their family and caring responsibilities) does not constitute a 'Major Change' in accordance with subclause 13.2(c).

13A.1 Where an Employer proposes to change an Employee's regular roster or ordinary hours of work, the Employer must consult with the Employee or Employees affected and their representatives, if any, about the proposed change.

13A.2 The Employer must:

(a) consider health and safety impacts including fatigue;

(b) provide to the Employee or Employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the Employee's regular roster or ordinary hours of work and when that change is proposed to commence);

(c) invite the Employee or Employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and

(d) give genuine consideration to any views about the impact of the proposed change that is given by the Employee or Employees concerned and/or their representatives.

13A.3 The requirement to consult under this clause 13A does not apply to an Employee where the change to an Employee's regular roster or ordinary hours of work is as a consequence of that Employee's irregular, sporadic or unpredictable working hours, self-rostering or, where permitted, a rotating roster.

13A.4 The provisions of this clause 13A are to be read in conjunction with the terms of the engagement between the Employer and Employee, and other Agreement provisions concerning the scheduling of work and notice requirements.

14 Dispute Resolution Procedure

14.1 Resolution of disputes and grievances

(a) For the purpose of this clause 14, a dispute includes a grievance.

(b) This dispute resolution procedure will apply to any dispute arising in relation to:

(i) this Agreement (for the avoidance of doubt, this includes a request for flexible working arrangements or a request for an additional 12 months' parental leave); or

(ii) the NES.

(c) A **Party** for the purposes of this clause is the Employee/s or the Employer that are subject to the dispute.

(d) A Party subject to the dispute may choose to be represented at any stage by a representative including a Union or employer organisation. A representative, including a Union or employer organisation on behalf of an Employer, may initiate a dispute.

14.2 Obligations

(a) The Parties to the dispute and their representatives must genuinely attempt to resolve the dispute through the processes set out in this clause and must cooperate to ensure that these processes are carried out expeditiously.

(b) While the dispute resolution procedure is being conducted, work will continue normally according to the usual practice that existed before the dispute until the dispute is resolved.

(c) This requirement does not apply where an Employee:

(i) has a reasonable concern about an imminent risk to their health or safety;

(ii) has advised the Employer of the concern; and

(iii) has not unreasonably failed to comply with a direction by the Employer to perform other available work that is safe and appropriate for the Employee to perform.

(d) No Party to a dispute or person covered by the Agreement will be prejudiced with respect to the resolution of the dispute by continuing work under this clause.

14.3 Dispute settlement facilitation

(a) Where the chosen representative is another Employee of the Employer, that Employee will be released by the Employer from normal duties as is reasonably necessary to enable them to represent the Employee/s including:

(i) investigating the circumstances of the dispute; and

(ii) participating in the processes to resolve the dispute, including conciliation and arbitration.

(b) An Employee who is a Party to the dispute will be released by the Employer from normal duties as is reasonably necessary to enable them to participate in this dispute settling procedure so long as it does not unduly affect the operations of the Employer.

14.4 Discussion of dispute at workplace

(a) The Parties will attempt to resolve the dispute at the workplace as follows:

(i) in the first instance by discussions between the Employee/s and the Employee's line manager or other relevant manager; and

(ii) if the dispute is still unresolved, by discussions between the Employee/s and more senior managers.

(b) Nothing in this clause 14.4 prevents the Parties from agreeing, at any time, to conducting their discussions in writing, subject to clause 14.2.

(c) The discussions at subclause 14.4(a) will take place within fourteen days or such longer period as mutually agreed, save that agreement will not be unreasonably withheld.

(d) Where a Party believes the requirements of this clause 14.4 have not been complied with, they will notify the other of their concern in writing as soon as practicable.

(e) If a dispute cannot be resolved at the workplace it may be referred by a Party to the dispute or representative to the Commission for conciliation and, if the matter in dispute remains unresolved, arbitration.

14.5 Disputes of a collective character

Disputes of a collective character may be dealt with more expeditiously by an early reference to the Commission. However, no dispute of a collective character may be referred to the Commission directly without a genuine attempt to resolve the dispute at the workplace level.

14.6 Conciliation

(a) Where a dispute is referred for conciliation, the Commission member will do everything the member deems right and proper to assist the Parties to settle the dispute.

(b) Conciliation before the Commission is complete when:

(i) the Parties to the dispute agree that it is settled; or

(ii) the Commission member conducting the conciliation, either on their own motion or after an application by a Party, is satisfied there is no likelihood that further conciliation will result in settlement within a reasonable period; or

(iii) the Parties to the dispute inform the Commission member there is no likelihood the dispute will be settled and the member does not have substantial reason to refuse to regard conciliation as complete.

14.7 Arbitration

(a) If, when conciliation is complete, the dispute is not settled, either Party may request the Commission proceed to determine the dispute by arbitration.

(b) The Commission member that conciliated the dispute will not arbitrate the dispute if a Party objects to the member doing so.

(c) Subject to subclause 14.7(d) below, a decision of the Commission is binding upon the persons covered by this Agreement.

(d) An appeal lies to a Full Bench of the Commission, with the leave of the Full Bench, against a determination of a single member of the Commission made pursuant to this clause.

14.8 Conduct of matters before the Commission

(a) Subject to any agreement between the Parties to the dispute in relation to a particular dispute or grievance and the provisions of this clause, in dealing with a dispute or grievance through conciliation or arbitration, the Commission will conduct the matter in accordance with sections 577, 578 and Subdivision B of Division 3 of Part 5-1 of the Act.

(b) For the avoidance of doubt, nothing in this clause affects the operation of section 596 of the Act.

14A Alternative Dispute Resolution Procedure

14A.1 Application

The Alternative Dispute Resolution Panel (**Panel**) is empowered to hear and determine disputes under this Agreement in relation to the classification of an Employee or the progression between classifications.

14A.2 Composition and principles of the Panel

(a) The Panel for each dispute will comprise three persons being:

(i) a nominee of the Union (on behalf of the Employee/s);

(ii) a nominee of the VHIA (on behalf of the Employer); and

(iii) an independent chairperson (Chair) agreed by the Union and the VHIA or in the absence of agreement, as nominated by the Minister for Health.

Note: A nominee of the Union or VHIA may change at any stage depending on the nature of the matter being determined by the Panel.

(b) The Panel Chair shall act as an independent third party in deliberations of the Panel.

(c) A nominee on the Panel must recuse themselves from being involved in a matter if they are directly and/or personally affected by the outcome.

(d) The Panel will commence determining an application made under this clause within 21 days of receiving the application and conclude its deliberations as expeditiously as possible.

(e) The Panel shall act independently of the Union, the VHIA and the Victorian Government.

(f) The parties to an application to the Panel bear their own costs (save for the Chair).

(g) The Panel shall be responsible for determining its own procedure, provided that it applies the rules of natural justice and procedural fairness and be consistent with the requirements of clause 14 (Dispute Resolution Procedure).

(h) The Panel shall apply an inquisitorial procedure, rather than an adversarial one.

(i) The Panel may decide to hear a matter in the workplace. In such cases the Employer shall provide a suitable meeting room and other relevant facilities for any date agreed with the Panel. The Employer will allow the Panel to inspect any work site if the Panel believes this will assist it in determining a matter, subject to any health, safety, and privacy considerations. A party to a dispute may request that the Panel hear a matter in a workplace. The Panel will consider such a request and determine for itself the best location for hearing a matter.

(j) In the exercise of its functions, the Panel shall do such things as are necessary to ensure that:

(i) matters are dealt with expeditiously; and

(ii) where possible it does not deal with unnecessarily complex legal arguments in hearing/determining a matter.

(k) Lawyers and paid agents, who are not direct employees of the Union, VHIA, Department or an Employer may not be given permission to appear before the Panel.

(l) A party to a dispute that is being dealt with under this clause shall not make an application to the Commission for it to deal with the same dispute, other than an application made under subclause 14.8(j) – (n). Nothing prevents an application to

the Commission where the Panel ceases to deal with a dispute without having made a determination (including situations where an applicant has discontinued or withdrawn their matter).

14A.3 Functions of the Panel Chair

The Chair shall perform the following functions:

(a) notify all parties to the matter and the Department of the hearing dates;

(b) chair proceedings of the Panel;

(c) conciliate matters, by chairing conferences between the employer(s) and/or their representative/s, and the Union; and

(d) anything else necessary to give effect to the provisions of this clause.

14A.4 Application to Panel to deal with a dispute

(a) Either an Employer or an Employee/s (or their representatives) may make an application to the Panel to determine a dispute only where the Parties have attempted to resolve the dispute at the workplace as described at subclause 14.4 of the Agreement.

(b) If the provisions of subclause 14.4 (Discussion of dispute at workplace) or clause 14.2 (Obligations) have not been complied with prior to the application, the Chair will refer the parties back to the workplace to attempt resolution through discussion at the workplace level in the first instance.

(c) Applications to the Panel to deal with a dispute will be in the following or similar form:

Name of Applicant	
Employer	
Union	
Name of Employee/s involved	
Relevant Enterprise Agreement and Provision	
Description of the dispute and relevant issues	
Current status of matters	
Steps already taken to resolve the dispute	

(d) **Application by an Employee/s**

(i) An Employee/s may only make an application directly to the Panel where the matter directly involves and affects them.

(ii) The Chair shall notify the Union, VHIA and the Employer of an application made by an Employee directly to the Panel.

(iii) Before referral to the Panel for determination, the Chair in the first instance shall review the Employee's application to determine that the nature of the

dispute is within the scope of this clause and therefore able to be determined by the Panel.

(iv) The Chair will notify the Employee, the Union, VHIA and the Employer of their findings with respect to scope.

(v) If the Chair finds the Employee's application is not within the scope of this clause the Chair will notify the Employee that their application is not able to be heard by the Panel.

(vi) If the Chair finds the Employee's application is within the scope of this clause the Chair will notify the Employee that it will be dealt with under this clause.

14A.5 Roles, procedures, and determinations of the Panel

(a) In dealing with an application, the matters the Panel will have regard to include:

(i) available relevant material;

(ii) the provisions of the Agreement;

(iii) materials submitted by the Employee's and/or Union;

(iv) materials submitted by the Employer and/or VHIA;

(v) in the case of submissions under subclause 14A.6 below, any materials submitted by or on behalf of the Department.

(b) Subject to the provisions of this clause, proceedings of the Panel shall be conducted as informally as possible and undertaken with all possible expediency.

(c) The Panel may inform itself in any manner it sees fit including by seeking the views of an expert advisor (who is not an employee of the health service subject of the application) agreed by the Panel to provide clinical expertise in an area of clinical practice relevant to the classification matter under consideration.

(d) The Panel is not bound by the rules of evidence and procedure. The Panel will determine the manner in which an Employee/s providing evidence to the Panel will be questioned, save that where possible they will ensure that any questioning is not adversarial in nature.

(e) The:

(i) Employer and/or VHIA; and

(ii) the Employee/s and/or Union;

can advocate to the Panel.

(f) At the Panel's discretion, the parties to a matter will present submissions verbally and/or in writing.

(g) The parties to a dispute shall have full, unrestricted access to relevant information, except where the Panel determines that access to material is inappropriate for legal or confidentiality reasons.

(h) The Panel will determine applications by majority, with written reasons to be prepared by the Chair (including any dissenting determination or a summary of any dissenting determination) and provided to the parties.

(i) No determination of the Panel shall be regarded as a precedent.

(j) A determination of the Panel will be considered binding unless the:

(i) Employee/s and/or Union; and/or

(ii) Employer and/or VHIA

makes an application to have the Commission deal with the matter within 21 days of receiving the written determination and the matter is resolved in accordance with the dispute resolution procedure.

(k) An application to the Commission will include the application, determination, written reasons and supporting material.

(l) An application to the Commission under this clause will include a request that the President of the Commission will appoint a member of the Commission to preside over the matter.

(m) Where applicable, the Commission will be assisted by the Chairperson, who will explain their recommendation, the application and supporting material, and inform the Commission of the position of the Union and the VHIA.

(n) Where applicable, the Commission will adopt an inquisitorial procedure (rather than an adversarial procedure) and will in effect stand in the shoes of the Panel and determine whether the Panel decision under review was properly reached and may substitute or uphold the existing determination. Any determination under this clause will be final and binding upon the parties and will not be subject to an appeal of the Full Bench.

14A.6 Additional Role of the Chair in considering matters affecting an Employer's funding

(a) The Union and the VHIA recognise that the Victorian Government, represented by the Department, has a right to have its funding interests heard and considered in decisions of the Panel.

(b) The interests of the Victorian Government represented by the Department include significant funding, policy and service delivery considerations and implications.

14A.7 Materials to be provided to the Panel

(a) A Party shall provide all relevant material to the Panel and the other Party as soon as practicable. Relevant material may include the following:

(i) staffing/EFT levels and profiles;

(ii) position descriptions;

(iii) proposed and/or actual professional reporting lines for/to the proposed position/s; and/or

(iv) organisational structure.

14A.8 Notification of Panel determinations

(a) The Chair will notify the Union, Employer and Employee's (and their representative, where applicable) of the Panel's determination in writing within 14 days of the decision.

(b) The determined Class will apply from the date of the application.

(c) Until the determination of the Panel, the existing Class will continue to apply.

(d) Where the Panel or, on review the Commission, determines that a lower classification applies, the Employee will have their current salary maintained.

14A.9 Employee Release from normal duty

(a) An Employee/s who is involved in a dispute before the Panel, including a Union representative and/or panel nominee, will be released by the Employer with pay from normal duties as is reasonably necessary to enable them to participate in this dispute settling procedure so long as it does not unduly affect the operations of the Employer.

(b) For the purposes of this clause ‘pay’ shall include shift allowances and any other payment the Employee, including a Union representative and/or panel nominee would have received had they not been released from duty as described above.

14A.10 Withdrawal of application

(a) The notifier of a dispute to the Panel may withdraw their application at any time.

(b) Any notice of withdrawal of a matter shall be in writing and the Chair shall cause this to be communicated to other relevant parties.

15 Performance Management

15.1 Application

(a) An Employer is required to provide reasonable Performance Management to an Employee where performance issues are identified.

(b) **Performance Management** includes reasonable actions to address performance by identifying performance deficits, the Employer's expected outcomes and performance measures, and strategies to meet those measures.

(c) This clause applies to performance issues that:

(i) Occur after the first 6 months of employment;

(ii) Do not constitute Misconduct or Serious Misconduct (as defined at subclause 16.2);

(iii) Occur prior to the Employee having been provided all reasonably practicable interventions to correct performance.

(d) Nothing in this clause 15 will prevent the Employer from initiating the disciplinary procedure in accordance with clause 16 – Discipline where a performance issue constitutes Misconduct or Serious Misconduct (as defined).

15.2 Performance Management Process

An Employer may deal with performance issues either informally or formally.

(a) **Informal**

Informal Performance Management will generally involve direct discussions with the Employee, whilst a formal process will be more formal in character having regard to the performance management principles listed at 15.2(b)(i).

(b) **Formal**

Formal Performance Management will be more formal in character having regard to the performance management principles below, and may include the creation of a performance improvement plan.

(i) **Performance Management Principles**

The following principles will apply to a formal performance management process:

(A) Clearly identify and explain the aspects of the Employee's performance that are unsatisfactory and the required level of performance;

(B) Permitting an Employee to be represented in any formal meeting or process relating to formal performance development;

(C) Consult with the Employee and Employee's representative (where applicable) on the content of any performance improvement plan (however titled) and provide a written copy of the plan;

(D) Providing any additional reasonably practicable interventions (i.e. training, education and coaching) to support the employee to improve/develop their performance;

(E) Providing the employee with a reasonable opportunity to address any concerns over a reasonable time period;

(F) Scheduling regular feedback meetings to provide feedback on the employee's performance; and

(G) Genuinely co-operating to undertake the process contained within this clause.

16 Discipline

16.1 Application

(a) Except as provided at 16.1(e), where an Employer has concerns about:

(i) the Conduct of an Employee; or

(ii) a Performance issue that may constitute Misconduct,

the following procedure will apply.

(b) There are two steps in a disciplinary process under this clause as follows:

(i) investigative procedure; and

(ii) disciplinary procedure.

(c) An Employee will be provided a reasonable opportunity to be represented at any time (including by a Union) with respect to all matters set out in this clause.

(d) The Employer will notify the Employee in accordance with subclause 16.3(b) as soon as practicable following the Employer becoming aware of the alleged concerns at subclause 16.1(a).

(e) **Exception - Employees who have not completed a minimum period of employment with their Employer**

Where an Employee has not completed a period of employment with their Employer of at least the minimum employment period defined at section 383 of the Act, and the Employer is considering the termination of the Employee's employment, the Employer will:

(i) provide the concerns in writing to the Employee as soon as practicable following the Employer becoming aware of the alleged concerns;

(ii) advise the Employee of their right to have a representative, including a Union representative;

(iii) other than in the case of Serious Misconduct, provide the Employee with an opportunity to improve their Performance or Conduct;

(iv) meet with the Employee (and, where relevant, their representative); and

(v) consider any explanation by the Employee including any matters raised in mitigation before making a decision to terminate the employment.

The terms of clause 16.3 to 16.5 inclusive do not apply to Employees within the scope of the exception in this clause 16.1(e).

16.2 Definitions

(a) **Conduct** means the manner in which the Employee's behaviour impacts on their work.

(b) **Misconduct** means an Employee's intentional or negligent failure to abide by or adhere to the standards of conduct expected by the Employer. A Performance issue can be considered misconduct where, despite all reasonably practicable interventions by the Employer, the Employee is unable to fulfil all or part of their job requirements to a satisfactory level.

(c) **Performance** means the manner in which the Employee fulfils their job requirements. The level of performance is determined by reference to an Employee's knowledge, skills, qualifications, abilities and the requirements of the role.

(d) **Serious Misconduct** is as defined under the Act and that is both wilful and deliberate. Currently the Act defines serious misconduct, in part, as:

(i) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;

(ii) conduct that causes serious and imminent risk to:

(A) the health or safety of a person; or

(B) the reputation, viability or profitability of the employer’s business.

Conduct that is serious misconduct includes each of the following:

(iii) the Employee, in the course of the Employee's employment, engaging in:

(A) theft;

(B) fraud;

(C) assault; or

(D) sexual harassment;

(iv) the Employee being intoxicated at work;

(v) the Employee refusing to carry out a lawful and reasonable instruction that is consistent with the Employee's contract of employment.

Subclauses 16.2(d)(iii)-16.2(d)(v) do not apply if the Employee is able to show that, in the circumstances, the conduct engaged in by the Employee was not conduct that made employment in the period of notice unreasonable.

16.3 Investigative procedure

(a) The purpose of an investigative procedure is to conclude whether, on balance, concerns regarding Conduct or Performance are well-founded and supported by evidence. An investigation procedure must be fair including proper regard to procedural fairness.

(b) The Employer will:

(i) advise the Employee of the concerns and allegations in writing;

(ii) provide the Employee with any material which forms the basis of the concerns before seeking a response;

(iii) ensure the Employee is provided a reasonable opportunity to answer any concerns including a reasonable time to respond;

(iv) advise the Employee of their right to have a representative, including a Union representative;

(v) ensure that the reason for any interview is explained; and

(vi) take reasonable steps to investigate the Employee's response.

(c) Where the Employer has complied with subclause 16.3(b)(i)-(iv) and the Employee does not dispute the concerns, the Employee may opt to decline the opportunity to be interviewed.

(d) Where the Employee opts to decline the opportunity to be interviewed, the Employee may still raise matters under clause 16.4(c) including matters in mitigation if a disciplinary procedure (see clause 16.4) is proposed.

16.4 Procedure to address Misconduct or Serious Misconduct

(a) This procedure applies if, following the investigation, the Employer reasonably considers that the Employee's Conduct or Performance may warrant disciplinary steps being taken.

(b) The Employer will:

(i) notify the Employee in writing of the outcome of the investigation process, including the basis of any conclusion; and

(ii) provide the Employee with a reasonable opportunity to provide information about the matters in 16.4(c).

(c) In considering whether to take disciplinary action, the Employer will consider:

(i) whether there is a valid reason related to the Conduct or Performance of the Employee arising from the investigation justifying disciplinary action;

(ii) whether the Employee knew or ought to have known that the Conduct or Performance was below acceptable standards; and

(iii) any explanation by the Employee relating to Conduct including any matters raised in mitigation.

16.5 Possible outcomes

(a) Where, after following the procedures in this clause, it is determined that the Employee has engaged in Misconduct or Serious Misconduct and disciplinary action is warranted, the Employer may take disciplinary action which shall be recorded on the Employee's personnel file, as follows:

(i) where the Performance or Conduct issue constitutes Misconduct but does not constitute Serious Misconduct, disciplinary action will be taken in accordance with the following steps:

(A) counsel the Employee;

(B) give the Employee a first written warning in the event that the Employee has been counselled within the previous 12 months for that course of Conduct or Performance issue. The Employer may also give the Employee a first written warning where the seriousness of the conduct is such that counselling the Employee under subclause 16.5(a)(i)(A) is not appropriate.

(C) give the Employee a second written warning in the event that the Employee has previously been given a first written warning within the previous 12 months for that course of Conduct or Performance issue;

(D) give the Employee a final written warning in the event that the Employee has previously been given a second written warning within the preceding 18-month period for that course of Conduct or Performance Issue; and

(E) terminate the Employee's employment with notice in the case of an Employee who repeats a course of Conduct or Performance issue for which a final warning was given in the preceding 18 months;

(ii) where the Performance or Conduct issue constitutes Serious Misconduct:

(A) terminate the Employee's employment without notice; or

(B) alternatively, issue the Employee with a final warning without following the steps in subclause 16.5(a)(i) above.

(b) The Employer's decision and a summary of its reasons will be notified to the Employee in writing.

(c) If after any warning or counselling, a period of 12 or 18 months elapses (as relevant) without the Employee repeating a course of Conduct or Performance Issue for which the preceding warning or counselling was given, the Employer cannot rely on the preceding warning or counselling for the purpose of issuing a further warning.

16.6 Disputes

A dispute over the clause (including sub-clause 16.5) is to be dealt with in accordance with the Dispute Resolution Procedure of this Agreement.

16.7 Performance Management

Nothing in this clause 16 will prevent the Employer from undertaking performance management to support Employees in accordance with clause 15 - Performance Management.

PART C TYPES OF EMPLOYMENT, COMMENCEMENT OF EMPLOYMENT AND END OF EMPLOYMENT

17 Secure Employment

The Employer acknowledges the positive impact that secure employment has on Employees and the provision of quality services to the Victorian community. The Employer will give preference to ongoing forms of employment over casual and fixed term arrangements wherever possible.

18 Full-time Employment

18.1 An Employee who is required by the Employer to work 38 hours per week or an average of 38 hours per week as specified in clause 40 – Hours of Work, and is ready, willing and available to work the full number of hours as required by the Employer, will be paid the full weekly wage as prescribed by the Agreement irrespective of the number of hours worked not exceeding 38.

18.2 A full-time Employee may be employed on either an ongoing or fixed term basis.

19 Part-time Employment

19.1 A part-time Employee is an Employee who:

(a) works less than an average of 38 hours per week; and

(b) has reasonably predictable hours of work.

19.2 Before commencing employment, the Employer and Employee will agree in writing on a regular pattern of work including the:

(a) number of hours to be worked each week;

(b) days of the week the employee will work; and

(c) starting and finishing times each day.

19.3 The terms of the agreement in clause 19.2 may be varied by agreement and recorded in writing.

19.4 A part-time Employee may be employed on either an ongoing or fixed term basis.

19.5 Entitlements

The terms of this Agreement apply to part-time Employees on the basis that the ordinary weekly hours for full-time Employees are 38, including:

(a) payment at an hourly rate equal to 1/38th of the weekly rate appropriate for the Employee's classification; and

(b) leave entitlements on a pro rata basis.

19.6 Additional hours

(a) A part time Employee may be offered additional hours at the applicable ordinary time rates for the time worked, within the limits prescribed by this Agreement.

(b) A part-time Employee is entitled to decline an offer of additional ordinary hours.

(c) Where a part-time Employee is directed by the Employer to work reasonable additional hours, or works hours in excess of 38 in a week, an average of 38 hours a week or the limits prescribed by the Agreement, overtime rates will apply.

19.7 Part Time Hours Review

(a) Where over a period of 26 weeks or more a part-time Employee regularly and/or systematically works more than their contracted hours, the Employer or the Employee may request in writing a contract variation reflecting that the Employee's hours have increased on a permanent basis. Such a request will not be unreasonably refused by either party.

(b) Where the Employer makes the request under subclause 19.7(a), at the time of making the request the Employer will also notify the Employee in writing of their obligations under this subclause 19.7.

(c) An Employee will not be considered to be regularly and/or systematically rostered if the shifts the Employee has been working are replacing an absent Employee (for example parental leave, long service leave, or workers' compensation), a temporary flexible work arrangement or other fixed-term arrangement.

(d) A written response will be provided no later than 21 days from the date of a request (by either an Employee or Employer). Where the request is refused, the written response will include reasons for the refusal.

(e) Where such a conversion occurs, the Employee will be provided with a Letter of Appointment setting out the revised employment arrangements.

20 Casual Employment

20.1 An Employee is a casual Employee if they meet the definition of a casual Employee under section 15A of the Act.

20.2 Subject to the minimum engagement period, a casual Employee's employment may be terminated without prior notice by either the Employer or the Employee.

20.3 The minimum engagement period for a casual employee is 3 hours.

20.4 Payments

A casual Employee will be paid for all work, other than for overtime (see subclause 46.3(b)), performed on a:

(a) weekday - an amount equal to one thirty eighth (1/38th) of the weekly wage appropriate to the Employee's classification per hour plus 25%;

(b) Saturday or Sunday - an amount equal to one thirty eighth (1/38th) of the weekly wage appropriate to the Employee's classification plus 75%; and

(c) Public holiday - an amount equal to one thirty eighth (1/38th) of the weekly wage appropriate to the Employee's classification plus 75%.

20.5 Overtime also applies to casual employees.

20.6 The hourly rate a casual staff member receives shall include a component paid in lieu of leave and public holiday entitlements.

20.7 Casual Employees are entitled to Long Service Leave in accordance with the *Long* Service *Leave Act 2018* (Vic) (or applicable legislation).

21 Casual Conversion

21.1 Employee Requests

(a) A casual Employee may make a request to convert to permanent employment under this clause 21 if:

(i) the Employee has been employed by the Employer for a period of at least 6 months beginning the day the employment started;

(ii) the Employee has, in the period of 6 months ending the day the request is given, worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time Employee or a part-time Employee (as the case may be); and

(iii) all of the following apply:

(A) the Employee has not, at any time during the period referred to in subclause 21.1(a)(ii), refused an offer for casual conversion made to the Employee;

(B) the Employer has not, at any time during that period, given the Employee a notice in accordance with subclause 21.4(a);

(C) the Employer has not, at any time during that period, given a response to the Employee under clause 21.2 refusing a previous request made under this clause;

(D) the request is not made during the period of 21 days after the period referred to in subclause 21.1(a)(i).

(b) The request to convert to permanent employment under clause 21.1(a) must:

(i) be provided to the Employer in writing; and

(ii) be a request for the Employee to convert:

(A) for an Employee that has worked the equivalent of full-time hours or shifts on a regular and systematic basis during the period referred to in subclause 21.1(a)(ii) – to full-time employment; or

(B) for an Employee that has worked less than the equivalent of full-time hours or shifts on a regular and systematic basis during the period referred to in subclause 21.1(a)(ii) – to part-time employment that is consistent with the regular pattern of hours or shifts worked during that period.

21.2 Employer must give a response

The Employer must provide a written response to the request within 21 days after the request is received, either granting or refusing the conversion.

21.3 Refusals of requests

(a) The Employer must not refuse the request unless:

(i) the Employer has consulted the Employee;

(ii) there are reasonable grounds the refuse the request; and

(iii) the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of refusing the request.

(b) Without limiting subclause 21.3(a), reasonable grounds for refusing a request include the following:

(i) it would require a significant adjustment to the Employee's hours of work in order for the Employee to be employed as a full-time Employee or part-time Employee;

(ii) the Employee's position will cease to exist in the period of 12 months after giving the request;

(iii) the hours of work which the Employee is required to perform will be significantly reduced in the period of 12 months after giving the request;

(iv) there will be a significant change in either or both of the following in the period of 12 months after giving the request:

(A) the days on which the Employee's hours of work are required to be performed;

(B) the times at which the Employee's hours of work are required to be performed;

which cannot be accommodated within the days or times the Employee is available to work during that period; and

(v) granting the request would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.

(c) If the Employer refuses the request, the written response under clause 21.2 must include details of the reasons for the refusal.

21.4 Grants of requests

(a) If the Employer grants the request, the Employer must, within 21 days after the day the request is given to the Employer, give written notice to the Employee of the following:

(i) whether the Employee is converting to full-time employment or part-time employment;

(ii) the Employee's pattern of hours or shifts after the conversion takes effect; and

(iii) the day the Employee's conversion to full-time or part-time employment takes effect.

(b) However, the Employer must discuss with the Employee the matters the Employer intends to specify for the purposes of subclause 21.4(a)(i)-(iii) before giving the notice.

(c) The day specified for the purposes of subclause 21.4(a)(iii) must be the first day of the Employee's first full pay period that starts after the day the notice is given, unless the Employee and Employer agree to another day.

(d) To avoid doubt, the notice may be included in the written response under clause 21.2.

21.5 Effect of conversion

(a) An Employee is taken, on and after the day specified in a notice for the purposes of subclause 21.4(a)(iii), to be a full-time Employee or a part-time Employee of the Employer.

(b) Casual loading will cease, and, subject to this Agreement, any benefits relating to permanent employment will commence on the day specified in a notice for the purposes of subclause 21.4(a)(iii).

22 Fixed Term Employment

Fixed term contracts entered into after 6 December 2023 are subject to this clause and Part 2-9, Division 5 of the Act. Where there is any inconsistency between this clause and the Act, the terms of the Act will prevail.

22.1 General

(a) A fixed term Employee is an Employee who is employed for a specified period of time, which period is known at the commencement of the contract, or for a specified task such as a project or replacement of an absent employee.

(b) Subject to this clause 22, fixed term employment will not be used to fill an ongoing position, or offered through consecutive fixed term employment contracts for work that is otherwise ongoing.

(c) If the Employer enters into a fixed term contract with an Employee in contravention of subclauses 22.3(a), 22.4 and/or 22.5 below:

(i) the term of the contract that provides that the contract will terminate at the end of the specified period is taken to have no effect; and

(ii) the contravention is taken not to affect the validity of any other term of the contract.

22.2 Exceptions

Subclauses 22.3(a), 22.4 and 22.5 below do not apply to a fixed term contract if:

(a) the Employee is engaged:

(i) to perform only a distinct and identifiable task involving specialised skills; or

(ii) in relation to a training arrangement; or

(iii) to undertake essential work during a peak demand period; or

(iv) to undertake work during emergency circumstances; or

(v) during a temporary absence of another employee (e.g. Parental/Long Service Leave/Work Cover backfill); or

(b) in the year it's entered into, the amount of the Employee's earnings is above the high income threshold for that year; or

(c) it relates to a position for the performance of work that:

(i) is funded in whole or in part by government funding or funding of a kind prescribed by the Regulations for the purposes of this subclause; and

(ii) the funding is payable for a period of more than 2 years; and

(iii) there are no reasonable prospects that the funding will be renewed after the end of that period.

22.3 Time Limitations

(a) A fixed term contract will be for a maximum of 2 years duration. This time limitation includes any extensions or renewals.

(b) Where one of the exceptions outlined at subclause 22.2(a) or 22.2(c) applies, fixed term appointments to a specific position or consecutive fixed term appointments involving the same or substantially similar work, will be for a maximum of 3 years duration except in relation to:

(i) a training arrangement of longer than 3 years duration; or

(ii) special projects, or

(iii) research projects, or

(iv) a parental leave back-fill role, or

(v) back-fill of an Employee who is posted overseas.

(c) Where subclause 22.3(b) applies and the Employer wants to continue the role for a duration beyond 3 years, the Employer must follow the process for conversion to ongoing employment as outlined at **Appendix 3.**

22.4 Renewal Limitations

A fixed term contract cannot:

(a) include an option to extend or renew the contract more than once, or

(b) extend or renew the contract so that the period of employment is longer than 2 years.

22.5 Consecutive Contract Limitations

An Employee cannot be offered a new fixed term contract if:

(a) their previous contract was also for a fixed term, and

(b) their previous contract and the new contract are for the same, or substantially similar, work, and

(c) there is substantial continuity in the employment relationship between the previous and new contracts, and

(d) any of the following apply:

(i) the previous contract contained an option to extend that was used,

(ii) the total period of employment for both the previous and new fixed term contract is more than 2 years,

(iii) the new fixed term contract contains an option to renew or extend, or

(iv) there was an initial contract in place (before the previous contract):

(A) that was for a fixed term

(B) that was for the same or substantially similar work, and

(C) where there was substantial continuity in the employment relationship.

22.6 Disputes

In the event of a dispute arising over the provisions of this clause 22, the dispute resolution procedure at clause 14 of this Agreement applies.

23 Termination of Employment

This clause only applies to full-time and part-time Employees.

23.1 Notice of Termination by Employer

(a) An Employer may terminate the employment of an Employee by providing four weeks' notice in writing.

(b) The notice required will be increased by one week if the Employee is over 45 years of age and has completed at least two years of continuous service.

(c) An Employer may make payment in lieu of notice for part or all of the notice period. The payment in lieu of notice must equal or exceed the total of all amounts that the Employer would have paid had the Employee's employment continued until the end of the required notice period, including superannuation. That payment must be calculated on the basis of:

(i) the Employee's ordinary hours of work (even if not standard hours);

(ii) the amounts ordinarily payable to the Employee in respect of those hours, including (for example) allowances, loading and penalties; and

(iii) any other amounts payable under the Employee's contract of employment.

(d) Subclauses 23.1(a) 23.1(b) and 23.1(c) do not affect an Employer's right to terminate an Employee's employment without notice for serious misconduct (as defined for the purposes of the Act).

(e) **Time off work during notice period**

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

23.2 Notice of Termination by Employee

An Employee may terminate their employment by providing four weeks' notice to the Employer in writing.

23.3 Certificate of Service on Termination

A certificate of service including the information at **Appendix 4** will be provided to the Employee wherever practicable within 21 days of the date of termination including where a full-time or part-time Employee terminates employment and becomes a casual Employee.

24 Redundancy and Associated Entitlements

24.1 Arrangement

This clause is arranged as follows:

(a) Arrangement (subclause 24.1),

(b) Definitions (subclause 24.2),

(c) Redeployment (subclause 24.3),

(d) Support to Affected Employees (subclause 24.4),

(e) Salary maintenance (subclause 24.5),

(f) Relocation (subclause 24.7),

(g) Employment terminates due to redundancy (subclause 24.8), and

(h) Exception to application of Victorian Government's policy with respect to severance pay (subclause 24.9)

24.2 Definitions

For the purpose of this clause:

(a) **Affected Employee** means an Employee whose role will be redundant.

(b) **Comparable Role** means an ongoing role that:

(i) is the same occupation as that of the Affected Employee's redundant position or if not, is in an occupation acceptable to the Affected Employee; and

(ii) is any of the following:

(A) in the same clinical specialty as that of the Affected Employee's former position;

(B) in a clinical specialty acceptable to the Affected Employee; or

(C) a position that with the reasonable support described at 24.3(f), the Affected Employee could undertake; and

(iii) is the same class / subclass / increment as the Affected Employee's redundant position or is a different Level acceptable to the Affected Employee;

(iv) takes into account the number of ordinary hours normally worked by the Affected Employee or is a different number of ordinary hours acceptable to the Affected Employee;

(v) is a Reasonable Distance from the Affected Employee's current work location or is a distance that is not reasonable but is acceptable to the Affected Employee;

(vi) takes the Affected Employee's personal circumstances, including family responsibilities, into account; and

(vii) takes account of health and safety considerations.

(c) **Consultation** is as defined at clause 13 (Consultation) of this Agreement.

(d) **Continuity of Service** means that the service of the Affected Employee is treated as unbroken and that the cap on the transfer of personal leave at subclause 54.7 does not apply. However, continuity of service is not broken where an Employer pays out accrued annual leave or long service leave upon termination in accordance with this Agreement.

(e) **Reasonable Distance** means a distance that has regard to the Affected Employee's original work location, current home address, capacity of the Affected Employee to travel, additional travelling time, effects on the personal circumstances of the Affected Employee, including family commitments and responsibilities and other matters raised by the Affected Employee, or assistance provided by their Employer.

(f) **Redeployment Period** means a period of 13 weeks from the time the Employer notifies the Affected Employee in writing that consultation under clause 13 is complete and that the redeployment period has begun.

(g) **Redundancy** means the Employer no longer requires the Affected Employee's job to be performed by anyone because of changes in the operational requirements of the Employer's enterprise.

(h) **Relocation** means an Affected Employee is required to move to a different campus as a result of an organisational change on either a temporary or permanent basis.

(i) **Salary Maintenance** means an amount representing the difference between what the Affected Employee was normally paid immediately prior to the Affected Employee's role being made redundant and the amount paid in the Affected Employee's new role following redeployment.

24.3 Redeployment

An Affected Employee whose role will be redundant will be considered for redeployment during the redeployment period.

(a) **Employee to be advised in writing**

The Affected Employee must be advised in writing of:

(i) the date the Affected Employee's role is to be redundant;

(ii) details of the redeployment process;

(iii) the reasonable support that will be provided in accordance with subclause 24.3(f), and

(iv) the Affected Employee's rights and obligations.

(b) **Employer obligations**

The Employer will:

(i) make every effort to redeploy the Affected Employee to a Comparable Role, including appointing a case manager to provide the Affected Employee with support and assistance;

(ii) take into account the personal circumstances of the Affected Employee, including family commitments and responsibilities; and

(iii) where the Employer is creating a new role/s substantially similar to the Affected Employee's redundant role; give priority to the redeployment of an Affected Employee/s to the new position/s before considering applicants that are not Affected Employees.

Example:

The Employer needs fewer employees to do particular work and roles are being restructured to take this into account. In a 'spill and fill', the Employer will consider the Affected Employees for the new roles before other applicants.

(c) **Employee obligations**

The Affected Employee must actively participate in the redeployment process including:

(i) identifying appropriate retraining needs;

(ii) developing a resume/CV to assist in securing redeployment; and/or

(iii) actively monitoring and exploring appropriate redeployment opportunities and working with the appointed case manager.

(d) **Rejecting a Comparable Role**

Where an Affected Employee rejects an offer of redeployment to a Comparable Role (as defined), the Affected Employee may be ineligible for a departure package referred to at subclause 24.8.

(e) **Temporary alternative duties**

An Affected Employee awaiting redeployment may be transferred to temporary alternative duties within the same campus, or where part of the Affected Employee's existing employment conditions (or by agreement) at another campus. Such temporary duties will be in accordance with the Affected Employee's skills, experience, clinical area and profession.

(f) **Support for redeployment**

For an available role to be considered a Comparable Role, the Employer must provide the reasonable support necessary for the Affected Employee to perform the role which may include:

(i) theory training relevant to the clinical area or environment of the role into which the Affected Employee is to be redeployed;

(ii) a defined period of up to 12 weeks in which the Affected Employee works in a supernumerary capacity;

(iii) support from educational staff in the clinical environment; and/or

(iv) a review at 12 weeks or earlier to determine what, if any, further training is required.

(g) **Where no redeployment available**

If at any time during the Redeployment Period it is agreed that it is unlikely that the Affected Employee will be successfully redeployed, the Affected Employee may accept a redundancy package. Where this occurs, the Affected Employee will be entitled to an additional payment of the lesser of 13 weeks or the remaining Redeployment Period.

(h) **Non-Comparable Role**

An Affected Employee may agree to be redeployed to a role that is not a Comparable Role.

24.4 Support to Affected Employees

The Employer will provide Affected Employees whose position has been declared redundant with support and assistance which will include, where relevant:

(a) counselling and support services;

(b) retraining;

(c) preparation of job applications;

(d) interview coaching;

(e) time off to attend job interviews; and

(f) funding of independent financial advice for Affected Employees eligible to receive a separation package.

Other assistance may include but is not limited to career planning or employment services.

24.5 Salary Maintenance

(a) **Entitlement to Salary Maintenance**

An Affected Employee who is successfully redeployed will be entitled to Salary Maintenance where the Affected Employee's pay is reduced because the new role:

(i) is a lower class / subclass / increment;

(ii) involves working fewer hours; and/or

(iii) removes eligibility for penalties, loadings and the like.

(b) **Period of Salary Maintenance**

Salary Maintenance will be for a period of 52 weeks from the date the Affected Employee is redeployed except where the Affected Employee:

(i) accepts another position within the Salary Maintenance period; and

(ii) is paid in the other position an amount equal to or greater than the role that was made redundant.

24.6 Preservation of accrued leave

An Affected Employee entitled to Salary Maintenance will have:

(a) the long service leave and annual leave they have accrued prior to redeployment preserved. Specifically, the value of the leave and the number of hours accrued immediately prior to redeployment will not be reduced as a result of redeployment; and

(b) the number of hours of personal leave they have accrued prior to redeployment preserved.

24.7 Relocation

(a) **Employer to advise in writing of relocation**

As soon as practicable but no less than seven (7) days after a decision is made by the Employer to temporarily or permanently relocate an Affected Employee, the Employer will advise the Affected Employee in writing of the decision, the proposed timing of the Relocation and any other alternatives available to the Affected Employee. In addition, the Employer will:

(i) ensure the Relocation is a Reasonable Distance, unless otherwise agreed;

(ii) ensure that the Affected Employee is provided with information on the new location's amenities, layout and local operations prior to the Relocation; and

(iii) consult with the Union or other nominated Employee representative regarding the content of such information.

(b) **Entitlement to relocation allowance**

An Affected Employee is entitled to relocation allowance where permanent or temporary Relocation results in additional cost to the Affected Employee for travel and/or other expenses.

(c) **Employee to provide written estimate**

The Affected Employee must make a written application to the Employer with a written estimate of the additional travelling cost and other expenses for the period of redeployment up to a maximum of 12 months.

(d) **Payment**

(i) The Employer will pay the Affected Employee a relocation allowance up to $1900.00 based on the written estimate of the Affected Employee referred to at 24.7(c) where the Employer accepts that estimate represents the additional cost to the Affected Employee. The allowance shall be paid as a lump sum.

(ii) When considering the Affected Employee's estimate, the Employer may have regard to the Reasonable Distance.

(iii) In the event of a dispute about the Affected Employee's estimate it will be resolved under clause 14 – Dispute Resolution Procedure.

(e) **Exceptions**

An Affected Employee is not entitled to the relocation allowance if the site or campus to which the Affected Employee is being relocated is a location to which they can be expected to be deployed as part of their existing employment conditions.

(f) **Fixed term employees not excluded**

An Affected Employee on a fixed term contract who is relocated will be covered by the terms of this clause for the duration of the fixed term contract.

24.8 Employment terminates due to redundancy

The Victorian Government's policy with respect to public sector redundancy and the entitlements upon termination of employment as a result of redundancy are set out in the *Public Sector Industrial Relations Policies 2015*. The policy as at the time this Agreement comes into operation applies to Employees but does not form part of this Agreement.

24.9 Exception to application of Victorian Government's policy with respect to severance pay

Where the Affected Employee's Employer secures a Comparable Role (as defined) with another Employer covered by this Agreement, which:

(a) is within a Reasonable Distance of the work site of the redundant position;

(b) provides Continuity of Service;

(c) where the Comparable Role results in a loss of income, salary maintenance at subclause 24.5 will apply; and

(d) where relevant, is consistent with the financial and other support provided to an internal redeployee,

the Employee will be considered successfully redeployed as though the employment was with the same Employer and no severance pay will apply.

25 Transition to Retirement

25.1 An Employee may advise their Employer in writing of their intention to retire within the next five years and participate in a retirement transition arrangement.

25.2 Transition to retirement arrangements may be proposed. The Employer will provide details of the proposal for the Employee's consideration including any relevant information (including indicative changes to pay) about the implications of the proposal. The Employee will be given a reasonable opportunity to consider the proposal. Employees are encouraged to seek advice regarding the proposal.

25.3 Where a transition to retirement arrangement is agreed, it will be implemented as:

(a) a flexible working arrangement (see clause 85),

(b) an individual flexibility agreement (see clause 11),

(c) an agreement in writing between the parties, or

(d) any combination of the above.

25.4 A transition to retirement arrangement may include but is not limited to:

(a) alteration of working hours, e.g. part-time employment, shift pattern;

(b) a job share arrangement;

(c) working in a position at a lower classification or rate of pay; and/or

(d) flexible use of Long Service Leave (**LSL**) or Annual Leave entitlements.

25.5 The Employer will consider, and not unreasonably refuse, a request by an Employee to transition to retirement by:

(a) using accrued LSL or Annual Leave for the purpose of reducing the number of days worked or working hours but retaining their previous employment status;

Examples:

1. A full-time Employee may work 3 days per week and have 2 days of accrued long service leave per week, retaining their full-time status.
2. A part-time Employee employed for 24 hours per week may work 20 hours per week and take 4 hours of accrued annual leave per week, retaining their status as a part-time Employee employed for 24 hours per week.

or;

(b) facilitating an Employee's finishing date as being at the conclusion of any amount of accrued annual leave or long service leave the Employee seeks to take where the Employee provides a definite finishing date; or

(c) accepting appointment to a role that has a lower hourly rate of pay and/or reduced hours (post transition role), in which case:

(i) the Employee will retain the accrual of LSL they had immediately prior to the reduction in their rate of pay and/or hours (preserved LSL). Where LSL is taken, the Employee will be paid LSL hours at the wage rate and/or their hours of work prior to the post transition role until the preserved LSL hours are exhausted;

Examples:

1. An Employee's hourly rate of pay is reduced under this subclause (b) from $35 to $30. When the Employee takes LSL, their LSL will be paid at the rate of $35 per hour until the preserved LSL is exhausted.
2. An Employee's hours of work are reduced under this subclause (b) from 32 hours per week to 24 hours per week. When the Employee takes LSL, they will be paid for 32 hours of LSL per week until the preserved LSL is exhausted.
3. An Employee's hourly rate of pay is reduced under this subclause (b) from $40 to $35 and their hours of work from 38 to 30 hours per week. When the Employee takes LSL it will be paid at the rate of $40 per hour and they will be paid for 38 hours of LSL per week until the preserved LSL is exhausted.

(ii) however, if the Employee's hourly wage rate in the post-transition role over time exceeds the wage rate of the pre-transition role, the higher wage rate will be used to calculate LSL.

PART D- WAGES

26 Wages and Allowances

The weekly salaries and allowances over the life of the Agreement (incorporating the increases set out in this clause) are contained in ***Appendix 2****.*

26.1 The weekly rates of pay outlined in the 2022 Agreement will be increased over the life of the Agreement as follows:

(a) from the FFPPOOA 1 August 2024 – 3%;

(b) from the FFPPOOA 1 August 2025 – 3%;

(c) from the FFPPOOA 1 August 2026 – 3%; and

(d) from the FFPPOOA 1 August 2027 – 3%.

26.2 The above rates of pay will only come into operation on the approval of this Agreement by the Commission in accordance with the Act.

26.3 All monetary based allowances (e.g. meal allowance) in this Agreement shall be adjusted by the same percentage amount and from the same dates as the percentage movement in wages specified in subclause 26.1.

26.4 Cash Payments

(a) **Patience in Bargaining Payment**

Full-time Employees who are employed by an Employer upon commencement of this Agreement will be entitled to a once-off 'Patience in Bargaining' payment of $2,500.

(b) **Once-off Cash Incentive Payment**

Full-time Employees who are employed by an Employer upon commencement of this Agreement will be entitled to a once-off cash incentive payment of $5,180.

(c) **Entitlement**

(i) The payments at subclauses 26.4(a) and 26.4(b) will be made on a pro-rata basis for part-time and casual Employees as follows:

(ii) **Part-time Employee** – the Employee's contracted hours, save that where the part-time Employee's ordinary hours fluctuate because the Employee works additional ordinary shifts (but excluding a permanent variation) an average of the Employee's ordinary hours over:

(A) the preceding 12 months; or

(B) the Employee's period of service where the Employee has less than 12 months service;

will apply where this is more favourable to the Employee; or

(iii) **Casual Employee** – average of the Employee's ordinary hours of work over the preceding 12 months.

(iv) Employees will receive these payments as a lump sum no later than the FFPPOOA the Agreement has been in effect for 30 days. For avoidance of doubt, this 30-day period commences 7 days after the Commission approves this Agreement.

(d) **Entitlement for Terminated Employees**

Where an Employee:

(i) is employed by an Employer listed in **Appendix 1** (**initial employer**) on commencement of the Agreement;

(ii) their employment with the initial employer is terminated for any reason; and

(iii) commences their employment with another Employer listed in **Appendix 1** (**second employer**);

they are entitled to receive the payments outlined in subclauses 26.4(a) and 26.4(b) from the initial employer. Employees are not entitled to receive a second payment from the second employer.

27 Top of Band Payment

27.1 Eligibility

To be eligible for a Top of Band Payment:

(a) An Employee must have been classified at the highest pay point within their class (see subclause 27.2(d)) for one full anniversary period; and

(b) The Employee must have given satisfactory performance over the preceding 12 months.

Example:

An Employee was appointed to Class 3 Year 3 on 1 May 2024. The Employee's anniversary date is 1 May 2025. On 1 May 2025, the Employee will be entitled to the Top of Band Payment provided that the Employee has given satisfactory performance between 1 May 2024 and 30 April 2025.

27.2 Top of Band Payments

(a) A Top of Band Payment is in addition to the wage rates specified in **Appendix 2.**

(b) A Top of Band Payment will be paid as an annual gross lump sum paid on the FFPPOOA the anniversary date of the Employee's appointment to the highest pay point within their current class.

(c) The amount of the Top of Band Payment is as follows:

Anniversary date in the year commencing FFPPOOA	Amount
1 August 2024	$2060.00
1 August 2025	$2121.80
1 August 2026	$2185.45
1 August 2027 and each 1 August thereafter	$2251.02

(d) A Top of Band Payment only applies to the following classifications:

Classification

Class 2 Pay Point 2
Class 3 Pay Point 3
Class 4 Pay Point 3
Class 5 Pay Point 3*

**From FFPPOOA commencement of the Agreement.*

28 Peter MacCallum Cancer Centre Allowance

28.1 This clause only applies to Employees employed at Peter MacCallum Cancer Centre.

28.2 In addition to the wage set out at **Appendix 2**, an Employee will receive an additional 2.5% of the relevant weekly wage in recognition of the requirement to perform clinical work/radioactive/physicist support.

28.3 The allowance shall be paid pro rata for part time employees.

29 Payment of Wages

29.1 Frequency of payment

Wages will be paid not later than Thursday following the end of the pay period, providing no unforeseen event outside the control of the Employer frustrates the Employer's ability to meet the requirements of this subclause.

29.2 Method of payment

Wages will be paid by electronic funds transfer into the bank or financial institution account nominated by the Employee, unless otherwise agreed.

29.3 Payslip

(a) On or prior to pay day, the Employer will provide each Employee with a pay slip.

(b) The payslip will include the information required by the Act and Regulations, including but not limited to specifying:

(i) the period to which the pay slip relates;

(ii) the amount of wages to which the Employee is entitled;

(iii) if an amount was deducted from the gross amount of the payment, the name and number of the fund or account into which the deduction was paid; and

(iv) the net amount for each payment.

29.4 Records

The Employer will comply with its obligations under the Act and Regulations with respect to record keeping, including but not limited to:

(a) a requirement to keep a record that sets out any leave the Employee takes and the balance (if any) of the Employee's entitlement to that leave from time to time;

(b) the inspection and copying of an Employee record by the Employee or former Employee to whom the record relates; and

(c) the requirement to keep accurate Employee records.

29.5 Deductions

Any deductions from an Employee's pay must be in accordance with section 324 of the Act.

29.6 Underpayments

(a) Where an Employee considers they have been underpaid by reason of an error made by the Employer, the Employee may request that the Employer rectify the error.

(b) Unless the Employee agrees to defer the correction of the underpayment, the underpayment will be corrected as follows:

(i) if it is 5% or more of the Employee's net fortnightly wage – where possible, by the end of the next business day;

(ii) except in cases of hardship, if it is less than 5% of the Employee's net fortnightly wage – in the next pay period;

(iii) where the Employee notifies the Employer of hardship in respect of an amount owing less than 5% of the Employee's net fortnightly wage - as soon as possible.

(c) The Employer will notify the Employee of the adjustment being processed and provide the date of payment and any payment identification details.

(d) This subclause 29.6 will not apply where:

(i) the Employer and Employee are in genuine dispute as to whether the monies are owed to the Employee;

(ii) the underpayment is the result of an Employee error which includes, but isn't limited to, circumstances where the Employee hasn't complied with the Employer's policies dealing with the completion or approving of timesheets; or

(iii) the reason for the underpayment is an unforeseen event or circumstance outside the control of the Employer, frustrating the Employer's ability to meet the requirements of this clause.

30 Superannuation

The subject of superannuation is dealt with extensively by federal legislation which prescribes the obligations and entitlements regarding superannuation. This clause is ancillary to and supplements those provisions.

30.1 Definitions

In this clause:

(a) **Default Fund** means the Aware Super superannuation fund (or its successor) while it provides a "MySuper product" as defined by the Act.

(b) **Preferred Superannuation Fund** means a fund that meets the definition of a superannuation fund in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

(c) **Industry Superannuation Fund** means a complying superannuation fund, as defined in the *Superannuation Industry (Supervision) Act 1993*, that:

(i) has twenty or more participating employers;

(ii) excluding any independent directors, provides for half of the trustee board to be comprised of employee representatives and/or nominated by one or more

trade unions and half of the trustee board to be comprised of representatives of participating employers; and

(iii) operates on a “not for profit” basis.

30.2 Superannuation contributions

The Employer will make superannuation contributions on behalf of an Employee to any of the following superannuation funds nominated by an Employee:

(a) HESTA (Health Employees Superannuation Trust of Australia) or successor;

(b) Aware Super (Aware Super Pty Ltd), or successor;

(c) the Employee’s preferred superannuation fund where it is an Industry Superannuation Fund; or

(d) where relevant superannuation legislation requires choice of superannuation fund in an enterprise agreement, any other Preferred Superannuation Fund nominated by the Employee.

30.3 New Employee does not nominate fund

If the Employee does not nominate a fund, the Employer will pay the Employee's superannuation contributions to the Default Fund, or where required by superannuation legislation to the Employee’s stapled superannuation fund.

30.4 Calculation of superannuation contributions

Superannuation contributions paid by the Employer will be calculated and paid on:

(a) ordinary time earnings as defined in the *Superannuation Guarantee (Administration) Act 1992* (Cth), calculated on the Employee’s pre salary packaging earnings;

(b) any additional amounts consistent with the trust deed of the superannuation fund; and

(c) a period of paid parental leave until the FFPPOOA the commencement of this Agreement in accordance with subclause 30.5(c) of the 2022 Agreement, after which superannuation shall be paid on parental leave (paid and unpaid) in accordance with subclause 30.6.

30.5 Voluntary Employee Contributions

(a) An Employee may, in writing, authorise their Employer to pay on behalf of the Employee a specified amount from the post-taxation wages of the Employee.

(b) An Employee may adjust the amount the Employer authorises the Employer to pay from their wages from the first of the month following the giving of three (3) months’ written notice to the Employer.

(c) The Employer must pay the amount authorised under subclauses 30.5(a) or (b) no later than 28 days after the end of the month in which the authorised deduction was made.

30.6 Superannuation during parental leave - from the FFPPOOA the commencement of this Agreement

(a) From the FFPPOOA the commencement of this Agreement, the Employer will make superannuation contributions throughout any period of parental leave, paid or unpaid.

(b) Such contributions will be calculated as follows:

(i) the Employee's ordinary time earnings as defined in the *Superannuation Guarantee (Administration) Act 1992* (Cth) calculated on the Employee's pre-salary packaging earnings and any additional amounts consistent with the trust deed of the superannuation fund over 26 full pay periods (that is over 52 weeks) immediately prior to commencing parental leave and divided by 52 (Weekly Parental Leave Super Contribution);

(ii) the Weekly Parental Leave Super Contribution will be paid during each week of Parental Leave (both paid and unpaid) save that:

(A) the Employee will receive a pro rata payment for a period less than one (1) week; and

(B) where, during the period of parental leave (either paid or unpaid), the Employee's rate of pay increases under subclause 26.1, the Employee's pre-salary packaging earnings as calculated above will be increased accordingly from the relevant date and superannuation paid on the increased amount.

31 Salary Packaging

31.1 An Employee may elect to salary package the current salary specified in **Appendix 2** in accordance with the Employer's policy.

31.2 The Employee will compensate the Employer from within their salary, for any Fringe Benefits Tax (FBT) incurred as a consequence of the Employee's salary packaging arrangement. Where the Employee chooses not to pay any of the costs associated with their salary packaging, the Employer may cease the Employee's salary packaging arrangements.

31.3 The Employee may elect to convert the amount packaged to salary for any reason, including where salary packaging ceases to be an advantage to the Employee because of subsequent changes to FBT legislation. Any costs associated with the conversion to salary will be borne by the Employee and the Employer will not be liable to make up any benefit lost as a consequence of an Employee's decision to convert to salary.

31.4 The Employee will be responsible for all costs associated with the administration of their salary packaging arrangements, provided that such costs will be confined to reasonable commercial charges as levied directly by the external salary packaging provider and/or in-house payroll service (as applicable), as varied from time to time.

31.5 Employees who are considering salary packaging should seek independent financial advice. The Employer will not be responsible for the cost or outcome of any such advice.

31.6 Superannuation contributions paid by the Employer into an approved fund will be calculated on the Employee's pre-packaged rate of pay.

32 Accident Make-up Pay

32.1 Entitlement to accident make-up pay

An Employee receiving compensation for incapacity under the WIRC Act will be entitled to accident make-up pay from the Employer who is liable to pay compensation in accordance with this clause (including pro-rata for any part of a week).

32.2 Definitions

(a) **Accident make-up pay** means:

(i) In the case of an Employee with no current work capacity, a payment equal to the ordinary time earnings the Employee would ordinarily receive had the Employee been performing their normal duties and hours of work, less the amount of weekly compensation.

(ii) In the case of an Employee with a current work capacity, a payment equal to the ordinary time earnings the Employee would ordinarily receive, had the Employee been performing their normal duties and hours of work less the amount of weekly compensation and less the average amount the Employee is earning in suitable employment.

(b) **Injury** under this clause has the same meaning as workers' compensation legislation and includes a disease contracted by an Employee in the course of the Employee's employment.

(c) **Ordinary time earnings** excludes additional remuneration by way of shift premiums, overtime payments, special rates or other similar payments.

(d) **Suitable Employment** for the purposes of this clause 32 has the same meaning as the definition in the WIRC Act.

32.3 Maximum payment

The maximum period or aggregate of periods of accident make-up pay to be made by an Employer will be a total of 39 weeks for any one injury.

32.4 Accident Make-Up Pay will not apply in some circumstances

Accident make-up pay in accordance with this clause will not apply:

(a) in respect of any injury during the first five normal working days of incapacity, except where the Employee contracts an infectious disease for which the Employee is entitled to receive workers compensation in which case accident make-up pay will apply from the first day of the incapacity;

(b) to any incapacity occurring during the first two weeks of employment unless that incapacity continues beyond the first two weeks in which case accident make-up pay will apply only to the period of incapacity after the first two weeks;

(c) during any period when the Employee fails to comply with the requirements of the WIRC Act with regard to examination by a medical practitioner;

(d) where the injury for which the Employee is receiving weekly compensation payments is a pre-existing injury that work has contributed to by way of recurrence, aggravation, acceleration, exacerbation or deterioration, and the Employee failed to disclose the injury on engagement:

(i) following a request to do so by the Employer; and

(ii) the Employer providing the Employee details of the requirements of the position; and

(iii) where the Employee knew, or ought to have known, that the nature of the injury, may impact on the ability of the Employee to undertake the work;

(e) where the injury subject to recurrence, aggravation or acceleration as provided under workers' compensation legislation or industrial diseases contracted by a gradual process, unless the Employee has been employed with the Employer at the time of the incapacity for a minimum period of one month;

(f) where in accordance with the WIRC Act a medical practitioner provides information to an Employer of an Employee's fitness for work or specifies work for which an

Employee has a capacity and that work is made available by an Employer but not commenced by an Employee;

(g) when the claim has been ceased or redeemed in accordance with the WIRC Act;

(h) in respect of any paid leave of absence.

32.5 Reduction of compensation

Where an Employee receives a weekly payment under this clause and subsequently that payment is reduced pursuant to the WIRC Act, that reduction will not render the Employer liable to increase the amount of accident pay in respect of that injury.

32.6 Termination of employment

(a) **Termination of Employment by the Employee**

Accident make-up pay ceases where the Employee terminates their employment except:

(i) if an Employee with partial incapacity cannot obtain suitable employment from the Employer but such alternative employment is available with another Employer; and

(ii) the Employee, if required, provides evidence to the Employer of the continuing payment of weekly compensation payments.

(b) **Termination of Employment by the Employer**

An entitlement to accident make-up pay does not cease on termination where the Employer terminates the Employee's employment, except where the termination is for serious and wilful misconduct.

32.7 Civil damage claims

(a) An Employee receiving or who received accident make-up pay must advise the Employer of any action or claim the Employee may institute for damages. If requested, the Employee will provide an authority to the Employer entitling the Employer to a charge upon any money payable pursuant to any judgment or settlement on that injury.

(b) Where an Employee obtains a judgment or settlement for damages in respect of an injury for which the Employee received accident make-up pay, the Employer's liability to pay accident make-up pay ceases from the date of such judgment or settlement where the damages are not reduced (in whole or part) by the accident make-up pay paid by the Employer. Where damages from a judgment or settlement are not reduced to take into account accident make-up pay paid by the Employer (in whole or part), the Employee must repay the Employer the accident make-up pay to the extent the damages were not reduced.

(c) Where an Employee obtains a judgment or settlement for damages against a person other than the Employer in respect of an injury for which the Employee received accident make-up pay, the Employer's liability to pay accident make-up pay will cease from the date of such judgment or settlement where the damages are not reduced (in whole or part) by the amount of accident pay made by the Employer. The Employee must pay to her/his Employer any amount of accident pay already received in respect of that injury by which the judgment or settlement has not been so reduced.

PART E - ALLOWANCES AND REIMBURSEMENTS

33 Higher Qualifications Allowance

33.1 Where an Employee has a higher qualification which is relevant to the Employee's position and duties they shall be paid a weekly allowance calculated on the following percentage of the Class 1 Year 3 rate of pay:

(a) 4% for graduate certificate;

(b) 6.5% for graduate diploma;

(c) 7.5% for masters degree;

(d) 7.5% for MBA; and

(e) 10.0% for PhD or Doctorate of Engineering

34 Shift Allowances

The allowances payable pursuant to this clause shall be calculated to the nearest five cents, portions of a cent being disregarded.

34.1 Shift work allowance

(a) In addition to any rates prescribed elsewhere in this Agreement, an Employee whose rostered hours of ordinary duty finish between 6:00pm and 8:00am or commence between 6:00pm and 6:30am shall be paid an amount equal to 2.5% of the rate applicable to first year of experience, Biomedical Engineer – Class 1 per rostered period of duty.

(b) Provided that in the case of an Employee working on any rostered hours of ordinary duty finishing on the day after commencing duty or commencing after midnight and before 5:00am, they shall be paid for any such period of duty an amount equal to 4% of the rate applicable to first year of experience, Biomedical Engineer – Class 1 and provided further that in the case of an Employee permanently working on any such rostered hours of ordinary duty they shall be paid for any such period of duty an amount equal to 5% of the rate applicable to first year of experience, Biomedical Engineer – Class 1.

Permanently working *shall mean working any period in excess of four consecutive weeks.*

34.2 Change of shift allowance

Provided further that in the case of an Employee who changes from working on one shift to working on another shift the time of commencement of which differs by four hours or more from that of the first, they shall be paid an amount equal to 4% of the rate applicable to first year of experience, Biomedical Engineer – Class 1 on the occasion of each such change in addition to any amount payable under the preceding provisions of this clause.

35 Higher Duties Allowance

Where an Employee is absent from work for any cause and an Employee in a lower class is appointed to assume all the duties and responsibilities of the Employee who is absent for more than five consecutive working days, such Employee shall be entitled to be paid for the period for which they assumed such duties at not less than the minimum rate prescribed for the classification applying to the Employee so relieved.

36 Travelling Allowance

36.1 Travel - normal working hours

(a) Where an Employee is required to use their own vehicle during normal working hours on Employer business, the Employee shall be paid an allowance corresponding with the kilometres rate as determined and updated from time to time by the Australian Taxation Office.

(b) An Employee on rostered shifts who is required to use public transport to journey to or from work between 9:00pm and 7:00am, shall be provided with transport (taxi or hire car) if no public transport is available for the inward and/or outward journey. The Employer shall be responsible for the payment of such transport.

36.2 Travel - recall

(a) An Employee who is recalled to work outside the normal working hours and who uses their own vehicle for transport to a place of work and return shall be paid an allowance corresponding with the kilometres rate as determined and updated from time to time by the Australian Taxation Office.

(b) An Employee who is recalled who does not use their own vehicle shall be provided, at the expense of the Employer, with a hire car or taxi, for the inward and onward journeys.

36.3 Reimbursement

(a) When an Employee is involved in travelling on duty, all reasonably incurred expenses in respect to fares, meals and accommodation will be met by the Employer on production of receipted account(s) or other evidence acceptable to the Employer.

(b) Provided further that the Employee shall not be entitled to reimbursement for those expenses which exceed the mode of transport, meals or the standard of accommodation agreed for the purpose with the Employer.

37 Uniform and Protective Clothing

For the purposes of this clause 37, uniform means such specific apparel as may be required by the Employer.

37.1 Where an Employer requires an Employee to wear a uniform the Employer must reimburse the Employee for the cost of purchasing such uniform, unless the uniform is paid for by the Employer.

37.2 Where an Employer provides an Employee with a uniform:

(a) all articles so provided remain the property of the Employer, and

(b) the Employer will replace uniforms where necessary on a fair ‘wear and tear’ basis.

37.3 Notwithstanding subclause 37.1, the Employer may, by agreement with the Employee, pay a uniform allowance at the daily or weekly rate set out in **Appendix 2** (whichever is the lesser amount in total) when the Employee is expected to provide their own uniform.

37.4 When such Employee's uniform is not laundered by or at the expense of the Employer, the Employee will be paid a laundry allowance at the daily or weekly rate set out in **Appendix 2**, (whichever is the lesser amount in total).

37.5 The uniform allowance but not the laundry allowance will be paid during all absences on paid leave, except absence on long service leave, and absence on personal/carers leave beyond 21 days. Where, prior to taking leave, an Employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave will be the average of the allowance paid during the four weeks immediately preceding the taking of leave.

37.6 An Employer must not unreasonably refuse to allow an Employee to wear clothing suitable for a health setting (for example, scrubs), if the Employee does so at their own expense.

37.7 Damaged Clothing

(a) Reasonable and necessary costs, as determined by the Employer, will be reimbursed in relation to an Employee's clothing or other personal effects becoming damaged or soiled as a direct consequence of engaging in authorised duties.

(b) Reasonable and necessary costs are those that relate to cleaning, repair or replacement of such clothing or other personal effects.

(c) Employees may apply for reimbursement up to a maximum of $500 per calendar year where:

(i) immediate notification of the damage to the clothing or other personal effects, arising from the Employee engaging in authorised duties, has been given, and

(ii) evidence of the damage to the clothing has been sighted by the relevant authorising officer, and

(iii) the Employee presents a valid receipt for costs incurred as a result of clothing or other personal effects requiring cleaning, repair or replacement, and

(iv) the damage or soiling was not occasioned by the Employee's negligence.

37.8 Protective Equipment

(a) Employers and Employees are committed to the observance of safe working practices and the correct use of all personal protective equipment (**PPE**).

(b) Employees required to wear PPE in the course of their duties, will be provided with appropriate guidance and instruction on the use of PPE.

(c) The Employer will provide such gloves, masks, tunics, gowns and such PPE and safety appliances as are required for an Employee to properly and safely perform their work.

37.9 Laundering of Protective Clothing (however titled)

Protective clothing (however titled) shall be laundered at the expense of the Employer.

38 Childcare Costs

38.1 Where an Employee is required by the Employer to work outside their ordinary hours of work and where less than 24 hours' notice of the requirement to perform such overtime

work has been given by the Employer, other than recall when the Employee is placed on-call, the Employee will be reimbursed for reasonable childcare expenses incurred.

38.2 Evidence of expenditure incurred by the Employee must be provided to the Employer as soon as practicable after working such overtime.

39 Allowances Related to Overtime and On-call

39.1 Meal Allowance

(a) An Employee shall either be supplied with a meal or be paid an allowance as specified in subclause 39.1(b) where the Employee works:

(i) more than one hour of overtime after the end of a rostered shift; or

(ii) more than two hours of overtime when they have been recalled to duty outside of usual working hours and when the time of such recall coincides with or over-runs normal hospital meal times.

(b) The meal allowance shall be paid in accordance with the rates set out in **Appendix 2.**

39.2 On-call Allowance

An Employee rostered to be on-call (pursuant to subclause 44.1) shall be paid the on-call allowance outlined in **Appendix 2** in respect of any 12 hour period or part thereof during which the Employee is on-call.

39.3 Telephone Allowance

(a) Where the Employer requires an Employee to purchase, install and/or maintain a telephone (whether it be a land-line or a mobile phone) for the purposes of being on-call, the Employer will reimburse the purchase or installation costs and the subsequent rental charges or mobile phone charges on production of receipted accounts.

(b) In lieu of paying an Employee the telephone allowance, an Employer may provide an Employee with a mobile phone for the purposes of being on-call and pay any costs and charges associated with it.

PART F – HOURS OF WORK AND RELATED MATTERS

40 Hours of Work

40.1 All Employers excluding the Royal Children's Hospital and the Royal Women's Hospital

(a) The hours for an ordinary week's work shall be 38 hours, or be an average of 38 hours per week, in a two or four week period, or by mutual agreement, a five week period in the case of an Employee working ten hour shifts, and shall be worked:

(i) in a week of five days in shifts of not more than seven hours and 36 minutes each; or

(ii) by mutual agreement in a week of four days in shifts not more than ten hours each; or

(iii) by mutual agreement, provided that the length of any ordinary shift shall not exceed ten hours.

(b) Subject to the roster provisions 80 hours may be worked in any two consecutive weeks, but not more than 50 ordinary hours may be worked in any of such weeks.

(c) With the exception of time occupied in having meals, the work of each shift shall be continuous.

40.2 The Royal Children's Hospital and the Royal Women's Hospital only:

(a) The hours of work for an ordinary week's work shall be 38 hours, or be an average of 38 hours per week, in a two or four week cycle, and shall be worked by mutual agreement, provided that the length of any ordinary shift is not less than six hours and does not exceed 12 hours.

(b) Provided that any Employee required to work more than six consecutive periods of ordinary duty without 24 hours off duty shall be paid for the seventh and any further consecutive periods of duty work at a rate of treble time until they have been given 24 hours off duty. For the purposes of this subclause the working week shall commence at midnight on a Sunday.

(c) The Employee must record all time worked on a Hospital timecard or other method determined by the Department.

(d) Any dispute arising from a proposed variation of work patterns may be referred to the dispute settlement procedures under the Agreement.

40.3 Four Clear Days

(a) An Employee is entitled to four clear days in each fortnight of a four week roster cycle free of duty, including on-call/recall work.

(b) An Employer or Employee/s may propose that all Employees at a particular campus be covered by an alternate arrangement to that in clause 40.3(a). The proposal may be implemented where the Employer, the Union (or other Employee nominated representative) and the majority of affected Employees genuinely agree.

(c) Any arrangements adopted in accordance with this subclause shall be recorded in writing and copies shall be provided to Employees to whom the arrangements apply.

40.4 10-hour break between ordinary shifts

(a) Subject to subclause 40.4(b), the Employer will provide an Employee with at least ten consecutive hours off duty between successive ordinary shifts, which will be reflected in any rosters that apply to the Employee. See also clause 48 for the periods off duty involving overtime.

(b) Where for urgent operational issues there is not at least ten consecutive hours off duty between successive ordinary shifts as required at subclause 40.4(a), the Employee shall either:

(i) be released from duty without loss of pay until the Employee has had ten consecutive hours off duty; or

(ii) be paid at the rate of double time until released from duty for such rest period, where the employee is required to work without a ten-hour break on the instructions of the Employer.

41 Accrued Days Off

41.1 A full time Employee rostered to work on shifts of eight hours duration will work 152 hours in each four week roster cycle to be worked as 19 days each of eight hours with an accrued day off (**ADO**) in each four week roster cycle.

41.2 Deferment of ADOs

(a) Either the Employer or the Employee may request that the ADO not be taken in the four week roster cycle, and the other party must not unreasonably refuse to agree to the request.

(b) Where an ADO is deferred in accordance with subclause 41.2(a) no more than 2 ADOs can be deferred at any one time unless otherwise agreed between the Employee and Employer.

(c) Upon termination of employment, any untaken ADOs must be taken within the notice period prescribed by subclause 23.1. If this is not practicable, the Employee will be paid the untaken ADOs at the Employee's ordinary time rate of pay.

42 Meal Breaks

42.1 A meal break of not less than 30 minutes and not more than 60 minutes shall be allowed during each shift in excess of five hours and shall not be counted as time worked.

42.2 Crib time

(a) Where Employees are regularly unable to take their meal breaks (including because they are not relieved from duty (and on-call)), a 'crib time' arrangement will operate. The crib time arrangement entitles an Employee to a paid meal break of not less than 20 minutes to commence between three and five hours of duty.

(b) The above crib time arrangement may also be adopted in any case where there is mutual agreement between the Employer and the Employee.

42.3 Mandatory training

Except where it is not reasonably practicable, mandatory in-house training and/or in-house professional development will not be conducted during an Employee's meal break.

43 Tea Breaks

43.1 Employees shall be entitled to a ten-minute tea break in each four hours worked or part thereof being greater than one-hour. Such tea breaks shall be at a time suitable to the Employer and shall be counted as time worked.

44 Rosters

44.1 Posting a Roster

(a) Where Employees work according to a roster, a roster of at least fourteen day's duration setting out an Employee's:

(i) normal working hours,

(ii) start and finish times, and

(iii) meal intervals (unless self-managed),

will be posted in a place or places to allow an Employee to have ready access to the roster while at work, which may include ready electronic access.

(b) The roster must be posted at least two weeks before the commencement of the roster period.

44.2 Altering a Roster

Except in the case of:

(a) personal/carer's leave (clause 54),

(b) compassionate leave (clause 57),

(c) family violence leave (clause 56),

(d) an Employee resigning without notice, or

(e) any other emergency,

the roster shall not be altered without at least seven days' notice being given to the Employee affected by such alteration.

44.1 On-call

(a) An Employee may be rostered to be "on call" (that is to be available to be recalled to duty in that period of time beyond the Employee's rostered hours of duty).

(b) Where reasonably practicable, an Employee will be provided at least 28 days' notice of the requirement to be on call.

45 Rates for Saturdays & Sundays

45.1 All rostered time of ordinary duty performed on a Saturday or on a Sunday shall be paid for at the rate of time and a half.

45.2 All overtime performed on a Saturday and Sunday will be paid for in accordance with clauses 46 (Overtime) or 47 (Recall), as applicable.

46 Overtime

46.1 General

An Employer may require an Employee to work reasonable overtime and such Employee shall work overtime in accordance with such requirement.

46.2 Employee may refuse to work unreasonable overtime

An Employee may refuse to work overtime hours where they are unreasonable. In determining whether overtime hours are reasonable or unreasonable, the following must be taken into account:

(a) Any risk to Employee health and safety from working the additional hours;

(b) The employee's personal circumstances, including family responsibilities;

(c) The needs of the workplace or enterprise in which the Employee is employed;

(d) Whether the Employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours

(e) Any notice given by the Employer of any request or requirement to work the additional hours;

(f) Any notice given by the Employee of their intention to refuse to work the additional hours;

(g) The usual patterns of work in the industry, or the part of an industry, in which the Employee works;

(h) The nature of the Employee's role, and the Employee's level of responsibility;

(i) How frequently an Employee is required to perform overtime; and

(j) Any other relevant matter.

46.3 Overtime - meaning

For the purpose of this clause, in accruing or calculating payment of overtime, each period of overtime shall stand alone.

(a) Only authorised overtime shall be paid for and the following rates of overtime shall apply:

Other than the Royal Children's Hospital and the Royal Women's Hospital:

(i) In excess of the ordinary hours of work on any one day – 150% for the first two hours and 200% thereafter;

(ii) Outside the spread of twelve hours from the commencement of the last rostered period of ordinary time – 200%;

(iii) On a Saturday or Sunday: in excess of the ordinary hours of work on any one day or in excess of the ordinary week's work– 200%;

The Royal Children's Hospital and the Royal Women's Hospital only:

(iv) In excess of the ordinary hours of work on any one day – 150% for the first two hours and 200% thereafter; and

(v) Outside the spread of nine hours from the commencement of the last rostered period of ordinary time – 150%, and

(vi) Outside the spread of twelve hours from the commencement of the last rostered period of ordinary time – 200%.

(vii) On a Saturday or Sunday: in excess of the ordinary hours of work on any one day or in excess of the ordinary week's work– 200%;

(b) In lieu of the above penalty rates, the following apply to casual Employees who perform overtime:

(i) Monday to Saturday – 187.5% of the minimum hourly rate for the first 2 hours and 250% of the minimum hourly rate after 2 hours;

(ii) Sundays and Public Holidays – 250% of the minimum hourly rate.

(c) **The following clause does not apply to Employees at Barwon Health, Latrobe Regional Health and Western Health**

Overtime shall be paid wherever work is performed in addition to the full-time rostered shift length for that work area. Where full time Employees in a particular work area work 8 hours per shift, overtime will be payable where a part time Employee in that same work area works beyond 8 hours in a shift. Where full time Employee work 10 hours per shift, overtime will be payable where a part-time Employee works beyond 10 hours.

46.4 Time in Lieu

Except as provided for in subclauses 46.4(a) and 46.4(b) below, overtime shall be paid for and an Employee shall not be allowed to take time off in lieu thereof.

(a) **Other than the Royal Children's Hospital and the Royal Women's Hospital:**

An Employee who is classified as a Class 4 or 5 may elect, in lieu of payment of overtime, to take time off equivalent to the time worked at a time mutually agreed between the Employer and the Employee.

(b) **The Royal Children's Hospital and the Royal Women's Hospital only:**

An Employee may elect with the consent of the Employer to take time off in lieu of payment for overtime at a time or times agreed with the Employer. Overtime taken as time off in lieu of payment shall be taken at the ordinary time rate, and the Employer shall provide payment at the appropriate overtime rate as specified in this clause where time off in lieu has not been taken within 28 days of accrual.

46.5 Transport following overtime

In the event of any Employee finishing any period of overtime at a time when reasonable means of transport are not available for the Employee to return to their place of residence the Employer shall provide adequate transport free of cost to the Employee.

46.6 Rest Break during overtime

An Employee working overtime will take a paid rest break of 20 minutes after each four (4) hours of overtime worked if required to continue work after the break.

47 Recall

47.1 Recall – return to workplace

(a) An Employee who is recalled to work during an off duty period where that work is not continuous with the next succeeding rostered period of duty will be paid overtime for a minimum of three hours pay at the overtime rate as defined in clause 46 of this Agreement.

(b) An Employee recalled to work will not be required to work the full three hours if the work to be performed is completed in a shorter period.

(c) Clause 47.1(a) will not apply when overtime is continuous with completion or commencement of ordinary working time.

47.2 Time in lieu

(a) In lieu of receiving payment for overtime worked in accordance with this clause, Employees may, with the consent of the Employer, be allowed to take time off, for a period of time equivalent to the period worked in excess of ordinary rostered hours of duty, plus a period of time equivalent to the overtime penalty incurred.

(b) Such time in lieu shall be taken as mutually agreed between the Employer and the Employee, provided that the accrual of such leave shall not extend beyond a 28 day period.

(c) Where the leave is not taken within 28 days, such time shall be paid in accordance with this clause at the rate of pay which applied on the day the overtime was worked.

47.3 Recall – no return to workplace

Where recall to duty can be managed without the Employee having to return to their workplace, such as by telephone, such Employee will be paid a minimum of one hour's overtime, provided that multiple recalls within a discrete hour will not attract additional payment.

48 Rest Period After Overtime/Recall – Ten Hour Break

48.1 When overtime, including recall (but excluding recall – no return to workplace) is necessary, it should be arranged so that Employees have at least 10 consecutive hours off duty between that work and the next successive shift.

48.2 An Employee who works so much overtime or recall work (excluding recall – no return to workplace) between the termination of their last previous rostered ordinary hours of duty and the commencement of their next succeeding rostered period of duty such that they would not have had at least 10 consecutive hours off duty between the completion of overtime/recall and the commencement of the next rostered shifts, then subject to this clause, they shall be released after completion of such overtime or recall work until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

48.3 If an Employee is required by the Employer to resume or to continue to work without having had 10 consecutive hours off duty they will be paid at the rate of double time until they have been released from duty for such rest period and they shall then be entitled to 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

48.4 Recall – no return to workplace

(a) Where an Employee:

(i) performs Recall – no return to workplace on the instructions of the Employer, and

(ii) does not have at least 10 consecutive hours off duty between the termination of ordinary hours on one day and the commencement of ordinary hours on the next day,

the Employer will consult with the Employee about measures to mitigate any occupational health and safety risks associated with the Employee commencing their shift at the normal time.

(b) Measures to mitigate risks may include:

(i) Commencing work after receiving 10 consecutive hours off duty (or another agreed time period),

(ii) Finishing work at an earlier time, or

(iii) Taking a longer lunch break,

save that an Employee will receive pay for ordinary hours occurring during any absence.

49 Daylight Savings

See also clauses 46 (Overtime) and 41 (Accrued Days Off).

49.1 Despite the overtime provisions of this Agreement, if an Employee works on a shift during which time changes because of the introduction of, or cessation to, daylight saving, that Employee will be paid for the actual hours worked at the ordinary time rate of pay.

Example 1:

An Employee is rostered to work a ten hour night shift from 9pm through to 7:30am (including a 30 minute meal break). During the course of this shift, the clock is wound forward one hour due to the commencement of daylight saving.

The Employee therefore works nine hours. The Employee is paid nine hours at their ordinary time rate of pay (including any shift penalties or allowances ordinarily payable in respect of this shift).

Example 2:

An Employee is rostered in a ten hour night shift from 9pm through to 7.30am (including a 30 minute meal break). During the course of this shift, the clock is wound back one hour due to the cessation of daylight saving.

The Employee therefore works 11 hours. The Employee is paid 11 hours at their ordinary time rate of pay (including any shift penalties or allowances ordinarily payable in respect of this shift). No overtime is paid for the additional hour worked.

49.2 For the purpose of calculating accrued days off, Employees who work ordinary hours on a shift during which time changes because of the introduction of, or cessation to, daylight saving, will be taken to have worked the standard hours for a night shift in accordance with the roster.

PART G – PUBLIC HOLIDAYS, LEAVE AND RELATED MATTERS

50 Public Holidays

50.1 Entitlement to be absent with pay

(a) An Employee is entitled to be absent from their employment on a day or part-day that is a public holiday in the place where the Employee is based for work purposes.

(b) However, the Employer may request an Employee to work on a public holiday if the request is reasonable. If the Employer requests an Employee to work on a public holiday, in accordance with the NES, the Employee may refuse the request if:

(i) the request is not reasonable; or

(ii) the refusal is reasonable.

(c) If, in accordance with the NES, an Employee is absent from their employment on a day or part-day that is a public holiday the Employer must:

(i) pay the Employee at the Employee's ordinary time rate of pay for the Employee's ordinary hours of work on the day or part-day that the Employee is absent from their employment;

(ii) continue to accrue leave on the ordinary hours of work on the day or part day that the Employee is absent from their employment;

Note: If the Employee does not have ordinary hours of work on the public holiday, the employee is not entitled to payment under the NES (subject to subclause 50.6). For example, the Employee is not entitled to payment if the Employee is a casual employee who is not rostered on for the public holiday, or is a part-time employee whose part-time hours do not include the day of the week on which the public holiday occurs.

(d) The provisions of subclause 50.1(c) apply where the Employee is absent from their employment for part of their ordinary hours on the day or part-day that is a public holiday.

Example 1:

A part-time Employee is requested to work four (4) ordinary hours on the public holiday. If it was not for the public holiday, the Employee's ordinary hours would have been eight (8) on the day. The Employee is still entitled to their ordinary time rate of pay for the four (4) ordinary hours the Employee was not requested to work by the Employer. They will also accrue leave on what would have been their eight (8) ordinary hours on the day.

Example 2:

A full-time Employee is required to be on-call on the public holiday. If it was not for the public holiday, the Employee's ordinary hours would have been eight (8) on the day. The Employee is called in to work three (3) hours of overtime during what would have been part of their ordinary hours. The Employee is still entitled to their ordinary time rate of pay for the five (5) ordinary hours the Employee was

not recalled to work by the Employer. They will also accrue leave on what would have been their eight (8) ordinary hours on the day.

50.2 Prescribed public holidays

The public holidays to which this clause applies are the days in respect of the following occasions:

(a) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and

(b) The following days, as prescribed in the relevant States, Territories and localities: Australia Day, Easter Sunday, Anzac Day, King's Birthday, Friday before the AFL Grand Final and Labour Day; and

(c) Melbourne Cup Day or in lieu of Melbourne Cup, some other day as determined in a particular locality; and

(d) Any additional public holiday declared or prescribed in Victoria or a locality in respect of any occasion other than those set out in clause 50.2(a)– 50.2(c) above.

50.3 Public holidays in lieu

Where Christmas Day, Australia Day, Boxing Day or New Year's Day (Actual Day) is a Saturday or Sunday, and a substitute holiday/day in lieu is determined under Victorian law on another day in respect of those occasions (Other Day) the public holiday benefits will be observed on the other day, For the avoidance of doubt the public holiday benefits will be observed on the day determined under Victorian law for each occasion not the Actual Day.

50.4 Substitution of public holidays by agreement

(a) An Employer and Employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES or this Agreement.

(b) An agreement pursuant to subclause 50.4(a) shall be recorded in writing and a copy given to the Employee.

50.5 Public holiday benefit for time worked on a public holiday

(a) If an Employee works (excluding recall) on any such holiday, they will:

(i) be paid at the rate of 200% of the weekly wage prescribed at **Appendix 2** for the time worked with a minimum of four hours wages; or

(ii) by mutual agreement, be entitled to time off equivalent to the hours worked with a minimum of four hours time off without loss of pay; such time off shall be taken at a time mutually convenient to the Employer and the Employee within one month of the day on which the Employee worked; or by mutual agreement, where an Employee is entitled to a full working day off, such time off may be added to the Employee's annual leave balance.

(b) An Employee who is recalled to duty and works on any such holiday shall be paid from the time of receiving the recall until the time of finishing such recall with a minimum of three hours payment for each such recall at 200% of the weekly wage prescribed at **Appendix 2**.

50.6 Public holiday benefit for public holiday occurring on Employee's rostered day off

(a) Subject to subclause 50.6(c), where a public holiday is observed on a **full-time** Employee's **rostered day off** the full-time Employee shall be entitled to receive one day's pay in addition to the weekly wage or one day off at a time convenient to the Employer without loss of pay in lieu thereof.

(b) Subject to subclause 50.6(c), where a public holiday is observed on a **part-time** Employee's **rostered day off** the Employer must review the roster pattern of the Employee over the preceding six months. If the review shows that the Employee has worked over 50% or more on the days which the particular public holiday is observed, the Employee shall be entitled to receive a pro-rata payment according to the following formula.

Example:

Average Hours	Applicable Shift Length	Base Payment	Penalty	Total Payment
24 hours / 38 hours	X 8 hours	5.05 hours	Times by 1	5.05

***NOTE**: The above is an illustrative example only. To calculate the average weekly hours Employers must review the rosters over the previous six months. In addition, the shift length used in the calculation should be appropriate to the shift that is normally worked by the Employee.*

(c) If a public holiday is observed on a Saturday or Sunday then subclauses 50.6(a) and 50.6(b) will only apply for weekend workers. For the purpose of this clause a weekend worker is an Employee who regularly works ordinary hours on a Saturday or Sunday.

(d) Rostered day off for a Biomedical Engineer for the purpose of this clause is a day in which the Employee is not rostered for duty for the relevant roster period. This is distinct from clause 50.1 in which an Employee is normally rostered but given the day off.

51 Annual Leave

51.1 Basic Entitlement

(a) On and from the FFPPOOA 1 August 2024, an Employee (other than a casual Employee) is entitled to 5 weeks (190 hours) annual leave for each year of service with the Employer.

(b) Part-time Employees will be entitled to annual leave on a pro rata basis.

(c) Annual leave accrues progressively during a year of service according to the Employee's ordinary hours of work and accumulates from year to year.

51.2 Weekend Worker Definition

For the purposes of this clause, weekend worker means any Employee who in any one year of employment works a portion of their ordinary hours on a weekend.

51.3 Additional Leave

(a) **On-call 10 or more weekends**

(i) An Employee who is rostered on-call for more than four (4) hours on 10 or more weekends per annum will be entitled to an additional 38 hours annual leave (pro rata for part-time Employees).

(ii) This entitlement is in addition to the Weekend Worker entitlement provided by subclause 51.3(b), but both entitlements cannot be claimed for the same bodies of work.

(b) **Weekend Worker**

(i) An Employee who is a Weekend Worker who works for more than four ordinary hours on 10 or more weekends per year of continuous service is entitled to an additional 38 hours annual leave.

(ii) Where an Employee who is a Weekend Worker does not meet the 10 weekend threshold in subclause 51.3(b)(i) above, they will accrue additional annual leave at the rate of one tenth of a week (3.8 hours) for each weekend worked, up to a maximum of one week (38 hours) in a year.

(iii) The provisions of this clause have the same effect and give an Employee an entitlement to annual leave that is the same as the entitlement of the Employee under the NES relating to shiftworkers under section 87(1)(b)(ii) of the Act.

For the purposes of the NES only, a shiftworker is an Employee who is regularly rostered to work Sundays and public holidays.

(iv) An Employee's entitlement to annual leave under this clause operates in parallel with the Employee's NES entitlement, but not so as to give the Employee a double benefit.

(v) A Weekend Worker whose employment is terminated at the end of a period of employment which is less than one year computed from the date of commencement of the employment, or the date upon which the Employee last became entitled to annual leave from the Employer, will be paid in addition to any other amounts due to the Employee, an amount equal to 1/48th of his or her ordinary pay in respect of that period of employment.

(vi) This entitlement is additional to the On-Call 10 or more weekends entitlement provided by subclause 51.3(a), but both entitlements cannot be claimed for the same bodies of work.

51.4 Leave to be taken

Except as provided for by clause 52 (Cashing Out of Annual Leave) payment shall not be made or accepted in lieu of annual leave.

51.5 Time of Taking leave

(a) Annual leave may be taken for a period agreed between the Employee and the Employer. An Employee may access accrued annual leave prior to the completion of a year of service.

(b) The Employer will not unreasonably refuse to agree to a request by the Employee to take paid annual leave, including a request to take single day or part day periods of annual leave.

(c) **Leave applications for non-High Demand Holiday Periods**

(i) An Employee will submit a written request for annual leave as soon as reasonably practicable prior to the first day of the proposed leave period/s.

(ii) The Employer will respond to such an application as soon as possible, but no later than 2 weeks after the application has been made.

(iii) If the annual leave application is not approved, the Employer will provide the reasons for the leave not being approved.

(iv) Nothing in this clause prevents the application by an Employee for ad hoc annual leave for short periods (including a day or part-day) with less than 2

weeks' notice. In such situations, an Employer will make genuine attempts to respond as soon as possible.

(d) **Leave applications for High Demand Holiday Periods**

(i) An Employer will develop and publish to affected Employees requirements for a high demand holiday period. Where this occurs, the requirement must:

(A) identify the high demand holiday period;

(B) identify the date by which a written request for annual leave should be submitted; and

(C) identify the date by which the Employer will notify the Employee in writing that their annual leave request is approved or, if not approved, the reasons for the leave not being approved.

(ii) In determining applications for high-demand periods, the Employer will consider all the circumstances including but not limited to:

(A) the Employer's operational needs;

(B) the Employee's family responsibilities; and

(C) whether previous leave applications for the same high demand period were or were not successful.

Example:

A department generally receives more applications for annual leave over school term breaks than it can accommodate. This means that school term breaks are 'high demand periods' for that department within the meaning of this subclause 51.5(d) and the Employer must publish the information specified above at subclause 51.5(d)(i) and, when determining the applications, apply the considerations at subclause 51.5(d)(ii).

51.6 Leave in advance

(a) The Employer may allow an Employee to take annual leave in advance of accrual.

(b) Where the Employee remains in annual leave debt upon termination, such amount (including any leave loading paid) may be deducted from any amounts otherwise payable to the Employee upon termination of employment.

51.7 Payment for period of annual leave

(a) Employees will receive their ordinary pay and any amount required by subclause 51.8 (annual leave loading) for the period of leave so taken in the ordinary pay period.

(b) **Ordinary pay**, for the purposes of this clause, means remuneration for the Employee's weekly number of hours, calculated at the ordinary time rate of pay pursuant to **Appendix 2**.

51.8 Annual Leave loading

During annual leave, an Employee shall receive the following payments in addition to their ordinary pay:

(a) **An Employee, other than a Shiftworker**

(i) For an Employee classified at **Class 4 - 1st Year** or below, the allowance will be calculated as 17.5% of their minimum rate of pay and shall be paid at the time leave is taken.

(ii) For an Employee classified higher than **Class 4 - 1st Year,** the allowance will be calculated as 17.5% of the **Class 4 – 1st Year** minimum rate of pay.

(b) **Shiftworkers**

(i) A shiftworker will be paid the higher of:

(A) the 17.5% allowance prescribed in subclause 51.8(a); or

(B) the weekend and shift penalties the Employee would have received had they not been on leave during the relevant period.

51.9 Leave paid on termination

If, when the employment of an Employee ends, the Employee has a period of untaken accrued annual leave, the Employer must pay the Employee the amount that would have been payable to the Employee had they taken the period of accrued annual leave, including any annual leave loading.

51.10 Excess Annual Leave

(a) An Employee has an **excessive leave accrual** if the Employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a Weekend Worker, as defined by subclause 51.2).

(b) If an Employee has an excessive leave accrual, the Employer or the Employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.

(c) **Direction by Employer that leave be taken**

(i) If an Employer has genuinely tried to reach agreement with an Employee under subclause 51.10(b) but agreement is not reached (including because the Employee refuses to confer), the Employer may direct the Employee in writing to take one or more periods of paid annual leave.

(ii) However, a direction by the Employer under subclause 51.10(c)(i):

(A) is of no effect if it would result at any time in the Employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements are taken into account; and

(B) must not require the Employee to take any period of paid annual leave of less than one week; and

(C) must not require the Employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and

(D) must not be inconsistent with any leave arrangement agreed by the Employer and Employee.

(iii) The Employee must take paid annual leave in accordance with a direction under subclause 51.10(c)(i) that is in effect.

(iv) An Employee to whom a direction has been given under clause 51.10(c)(i) may request to take a period of paid annual leave as if the direction had not been given.

NOTE: the Employer must not unreasonably refuse to agree to a request by the Employee to take paid annual leave.

(d) **Request by Employee for leave**

(i) If an Employee has genuinely tried to reach agreement with an Employer under subclause 51.10(b) but agreement is not reached (including because

the Employer refuses to confer), the Employee may give a written notice to the Employer requesting to take one or more periods of paid annual leave.

(ii) However, an Employee may only give a notice to the Employer under subclause 51.10(d)(i) if:

(A) the Employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and

(B) the Employee has not been given a direction under subclause 51.10(c)(i) that, when any other paid annual leave arrangements are taken into account, would eliminate the Employee's excessive leave accrual.

(iii) A notice given by an Employee under subclause 51.10(d)(i) must not:

(A) if granted, result in the Employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements are taken into account; or

(B) provide for the Employee to take any period of paid annual leave of less than one week; or

(C) provide for the Employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or

(D) be inconsistent with any leave arrangement agreed by the Employer and Employee.

(iv) An Employee is not entitled to request by a notice under subclause 51.10(d)(i) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a Weekend Worker, as defined by subclause 51.2) in any period of 12 months.

(v) The Employer must grant paid annual leave requested by a notice under subclause 51.10(d)(i).

51.11 Employee not taken to be on paid annual leave at certain times

(a) **Public Holidays**

If an Employee takes paid annual leave during a period that includes a public holiday, the Employee is taken not to be on paid annual leave on that day and annual leave will not be deducted from an Employee's accrual for that day.

(b) **Other Periods of Leave**

(i) If a period during which an Employee takes paid annual leave includes a period of any other leave (other than unpaid parental leave) under Part 2-2 of the Act (the National Employment Standards), or a period of absence from employment under Division 8 of Part 2-2 of the Act (which deals with community service leave), the Employee is taken not to be on paid annual leave for the period of that other leave or absence.

(ii) If the Employer so requires, the Employee must give the Employer evidence that would satisfy a reasonable person that the other leave taken is for a reason specified in clause 54.1 (Personal/Carers Leave) or clause 57 (Compassionate Leave) of this Agreement, as the case may be. An Employee is not entitled to take leave under clause 54.1 or clause 57 unless they comply with any such requirement. Where an Employee complies with these provisions the number of days specified in the required evidence shall be deducted from any personal/carer's leave entitlement standing to the Employee's credit, and shall be re-credited to their annual leave entitlement.

(iii) The amount of annual leave loading received for any period of annual leave converted to any other form of leave in accordance with clause 51.11(b)(i) shall be deducted from any future entitlement to annual leave loading, or if the Employee resigns, from termination pay.

52 Cashing out of Annual Leave

52.1 Subject to subclause 52.2 below, where an Employee has accrued annual leave in excess of eight (8) weeks then by mutual written agreement between the Employee and the Employer, the Employee may cash out some of the annual leave (and annual leave loading as applicable) due to the Employee as a one off cash payment. Superannuation contributions will be paid by the Employer in respect of the period of annual leave to be paid out.

52.2 Cashing out of accrued annual leave in accordance with this clause is subject to:

(a) Paid annual leave must not be cashed out if the cashing out would result in the Employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and

(b) Each cashing out of a particular amount of paid annual leave must be by separate agreement in writing between the Employer and Employee; and

(c) The Employee must be paid at least the full amount that would have been payable to the Employee had the Employee taken the leave that the Employee has foregone.

52.3 An Employee's accrued annual leave entitlement will be reduced by the amount of annual leave paid out.

53 Purchased Leave

This clause does not apply to casual Employees.

53.1 An Employee may apply to purchase up to 20 working days (pro-rated for part-time Employees) additional paid leave in a twelve-month period at ordinary pay.

53.2 The additional paid leave is purchased through salary deductions made over the whole year. The amount deducted will correspond with the amount of leave purchased.

Example 1:

An Employee who purchases an additional four (4) weeks leave will be paid 48/52 or 92.31% of their ordinary pay throughout the relevant 12 month period.

Example 2:

An Employee who purchases an additional two (2) weeks leave will be paid 50/52 or 96.15% of their ordinary pay throughout the relevant 12 month period.

53.3 Purchased Leave may be taken in conjunction with other types of leave.

53.4 Purchased Leave must be used in the twelve-month period in which it is purchased.

53.5 Purchased leave will be taken at a time that is mutually agreed between the Employer and the Employee.

53.6 Once approval has been granted, the Employee may only vary or cancel the arrangement in extraordinary circumstances.

53.7 Where the:

(a) arrangement has been varied or cancelled because of extraordinary circumstances;

(b) Employee's employment terminates; or

(c) purchased leave has not been taken in the relevant 12-month period;

the Employer will refund the amount of salary deducted in respect of any unused purchased leave as a lump sum.

53.8 Where the Employee's employment terminates and the amount of purchased leave taken exceeds the amount deducted, the Employer may deduct a sum equal to the negative balance from any remuneration payable to the Employee upon termination of employment.

53.9 Purchased leave:

(a) counts as service for all purposes; and

(b) is not annual leave.

54 Personal/Carer's Leave

The provisions of this clause apply to full-time and part-time Employees. See subclause 54.8 for casual Employees' entitlements.

54.1 Access to Personal/Carer's Leave

Subject to the conditions set out in this clause, an Employee may take paid personal/carer's leave if the leave is taken:

(a) due to personal illness or injury (sick leave); or

(b) To care for or support to a member of the Employee's Immediate Family or household because of:

(i) a personal illness or injury affecting them; or

(ii) an unexpected emergency affecting them (carer's leave).

54.2 Amount of Paid Personal/Carer's Leave

(a) An Employee is entitled to the following amount of paid personal leave:

(i) 91.2 hours in the first year of service;

(ii) 106.4 hours in each year in the second, third and fourth years of service; and

(iii) 159.6 hours in each year in the fifth and subsequent years of service.

(b) Paid personal leave accrues progressively during a year of service according to the Employee's ordinary hours of work, and accumulates from year to year.

(c) The entitlement for a part-time Employee accrues on a pro-rata basis.

54.3 Payment for leave

(a) Payment will be made based on the Employee's ordinary pay for the ordinary hours the Employee would have worked on the day or days on which the leave was taken.

(b) An Employee utilising personal leave may take leave for part of a single day. Leave will be deducted from the Employee's accrued personal leave including, where relevant, for a part day.

54.4 Sick Leave

(a) **Evidence requirements**

(i) An Employee taking sick leave will, as soon as reasonably practicable, give the Employer evidence that would satisfy a reasonable person the Employee is absent due to personal illness or injury. Evidence that would satisfy a reasonable person that the Employee is absent due to personal illness or injury includes:

(A) a medical certificate from a Registered Health Practitioner; or

(B) Commonwealth or Victorian Statutory Declaration signed by the Employee.

(ii) **Exception to evidence requirement – absences without evidence as required at subclause 54.4(a)(i)**

(A) Excluding Employees at the Royal Children's Hospital and the Royal Women's Hospital

An Employee may be absent for a single day or part thereof without evidence of personal illness or injury on not more than three occasions per year of service.

(B) Employees at the Royal Children's Hospital and the Royal Women's Hospital only

An Employee may be absent on six (6) days per year of service (either as single days or as two days at a time) without evidence of personal illness or injury.

If the Employee is not absent as provided in clause 54.4(a)(ii)(B) above, they will be credited with one (1) day of annual leave for every two (2) days of personal leave not taken and the Employee' sick leave balance shall be reduced in a proportion of two to one, for each additional days leave so credited. However, if the Employee advises the Employer (in writing) not less than four (4) weeks prior to the conclusion of any one year, they may elect to retain the unused sick leave as accrued sick leave entitlements.

(b) **Notice requirements**

An Employee should inform the Employer of their absence at least two hours prior to the commencement of duty on the first day of absence, or otherwise as soon as reasonably practicable (which may be a time after the leave has started), and advise of the duration or estimated duration of the absence.

54.5 Carer's Leave

(a) **Evidence Requirements**

The Employee must, if required by the Employer, establish by production of a Commonwealth or Victorian statutory declaration, a medical certificate from a Registered Health Practitioner or other evidence that would satisfy a reasonable person that a member of the Employee's Immediate Family or household has either:

(i) an illness or injury; or

(ii) an unexpected emergency;

that requires their care or support. In the case of an unexpected emergency, the Employee will identify the nature of the emergency.

(b) **Notice requirements**

(i) The Employee must, where practicable, give the Employer notice of the intention to take leave prior to the absence that includes:

(A) the relationship to the Employee of the person requiring care or support;

(B) The reasons for taking such leave; and

(C) The estimated length of absence.

(ii) If it is not reasonably practicable for the Employee to give prior notice of absence, the Employee must notify the Employer of the absence as soon as practicable.

(c) **Unpaid carer's leave**

An Employee who has exhausted all paid personal/carer's leave entitlements is entitled to take unpaid carer's leave. The Employer and the Employee will agree on the period. In the absence of agreement, the Employee is entitled to take up to two (2) days' unpaid carer's leave per occasion, provided the notice and evidence requirements are met.

54.6 Personal leave on a public holiday

If the period during which an Employee takes paid personal/carer's leave includes a day or part day that is a public holiday in the place where the Employee is based for work purposes, the Employee is taken not to be on paid personal/carer's leave on that public holiday.

54.7 Portability of Personal Leave

(a) **Entitlement - Employees at the Royal Children's Hospital and the Royal Women's Hospital only**

(i) For the purposes of this subclause 54.7(a), **allowable period of absence** means:

(A) five weeks in addition to the total period of annual leave, long service leave and/or personal/carers leave which the Employee actually receives on termination or for which they are paid in lieu; and

(B) any unpaid absence of up to 52 weeks taken for the sole purpose of undertaking a course of study related to their employment.

(ii) Where an Employee is or has been in the service of an institution or statutory body recognised under the *Nurses (Victorian Health Services) Award 2000,* and commences employment with an (or another) Employer before the end of the allowable period of absence, the Employer will credit the Employee's accumulated personal leave from the previous employer up to a maximum of 1368 hours to the Employee in their new employment.

(b) **Entitlement - Excluding Employees at the Royal Children's Hospital and the Royal Women's Hospital**

(i) Where an Employee is or has been in the service of another employer specified at subclause 54.7(b)(ii), and commences employment with an (or another) Employer, the Employer will credit the Employee's accumulated personal leave from the previous employer up to a maximum of 2128 hours to the Employee in their new employment as accumulated personal/carer's leave.

(ii) The specified employers are:

(A) Albury Wodonga Health (Wodonga Hospital);

(B) Alfred Health;

(C) Austin Health;

(D) Barwon Health;

(E) Eastern Health;

(F) Goulburn Valley Health;

(G) Latrobe Regional Health;

(H) Melbourne Health;

(I) Mercy Public Hospitals Inc;

(J) Northern Health

(K) Peter MacCallum Cancer Centre;

(L) Royal Children's Hospital

(M) Royal Women's Hospital;

(N) South West Healthcare;

(O) Monash Health;

(P) Western Health.

(c) **Evidence**

The Employer may require the Employee to produce a written statement from their previous employer specifying the amount of accumulated personal/carer's leave at the time of leaving that previous employment.

54.8 Casual Employees – Caring responsibilities

(a) Subject to the evidence and notice requirements that apply to carer's leave under subclause 54.5, a Casual Employee is entitled to be unavailable to attend work, or to leave work, if they need to care or support a member of their Immediate Family or household because of:

(i) a personal illness, or personal injury, affecting them;

(ii) an unexpected emergency affecting them; or

(iii) the birth of a child.

(b) The Employer and Employee will agree on the period for which the Employee will be entitled to be unavailable to attend work. In the absence of agreement, the Employee is entitled to be unavailable to attend work for up to two (2) days per occasion, which may be taken as a single continuous period of up to two (2) days or any separate periods to which the Employer and Employee agree.

(c) A casual Employee is not entitled to any payment for the period of non-attendance.

55 Fitness for Work

55.1 Fit for Work

(a) The Employer is responsible for providing a workplace that is safe and without risk to health for Employees, so far as is reasonably practicable.

(b) Each Employee is responsible for ensuring that they are fit to perform their duties without risk to the safety, health and well-being of themselves and others within the workplace. This responsibility includes compliance with reasonable measures put

in place by the Employer and any related occupational health and safety requirements.

55.2 Addressing concerns about Fitness for Work

(a) In the event the Employee's manager forms a reasonable belief (as defined at subclause 55.2(b) below) that an Employee may be unfit to perform their duties, the Employer will act in a timely manner to promote physical, mental and emotional health so that employees can safely undertake and sustain work.

(b) In this clause **reasonable belief** means a belief based on sufficient evidence that supports a conclusion on the balance of probabilities. Nothing in this clause permits an Employer to act contrary to the *Health Records Act 2001* (Vic).

(c) In this clause, a treating medical practitioner may, where relevant, also include a psychologist.

(d) The Employer will:

(i) take all reasonable steps to give the Employee an opportunity to answer any concerns which are the subject of the reasonable belief;

(ii) recognise the Employee's right to have a representative, including a Union representative, at any time when meeting with the Employer;

(iii) genuinely consider the Employee's response with a view to promoting physical, mental and emotional health so that Employees can safely undertake and sustain work; and

(iv) take these responses into account in considering whether reasonable adjustments can be made in order that the Employee can safely undertake and sustain work.

55.3 Report from Treating Medical Practitioner

(a) Where, after discussion with the Employee, the Employer continues to have a reasonable belief that the Employee is unfit to perform the duties, the Employer may request the Employee to obtain a report from the Employee's treating medical practitioner regarding the Employee's fitness for work. Where this occurs, the Employer will provide to the Employee, in writing, the concerns and information that form the basis of the reasonable belief to assist the Employee's treating medical practitioner.

(b) The Employee will:

(i) advise the Employer of the Employee's treating medical practitioner;

(ii) provide a copy of the report to the Employer; and

(iii) meet with the Employer to discuss any report.

55.4 Report from IME

(a) If, on receipt of the report, and (where reasonably practicable) following discussion, the Employer continues to have a reasonable belief that the Employee is unfit for duty, or the Employee does not provide a report from the treating medical practitioner, the Employer may require the Employee to attend an independent medical practitioner (**IME**).

(b) The Employer will:

(i) pay for the cost and expenses of the appointment and report;

(ii) provide a copy of the IME report to the Employee; and

(iii) meet with the Employee to discuss any report.

55.5 Selecting an IME

The Employer will ensure that the medical practitioner appointed to conduct an IME is appropriately qualified to assess the Employee's fitness for duty.

55.6 Information to Employee before IME

Before the Employee attends an IME under subclause 55.4 above, the Employee will be provided with a copy of:

(a) the name of the proposed IME; and

(b) any correspondence (including any supporting material) proposed to be sent to the IME.

55.7 Employee consultation and right to supplement information

Before attending an IME, the Employee may:

(a) supplement the material to be provided to the IME; and/or

(b) request to meet with the Employer to consult about the material the Employer proposes to provide the IME. The Employee's representative may attend the meeting.

55.8 Relationship to WIRC

This clause 55 does not apply to an injury that is the subject of an active WorkCover claim. Matters regarding an Employee's Fitness for Work regarding an injury that is the subject of a WorkCover claim shall be managed in accordance with the WIRC Act including the Employer's obligation to provide a safe work environment.

55.9 Safe Work Environment is paramount

Nothing in this clause 55 prevents an Employer from taking any reasonable step in the workplace to ensure a safe work environment.

55.10 Reasonable Adjustments

(a) Where Employees have a Disability (whether permanent or temporary) the Employer is required to make Reasonable Adjustments to enable the Employee to continue to perform their duties, subject to subclause 55.10(b) below.

(b) An Employer is not required to make Reasonable Adjustments if the Employee could not or cannot adequately perform the genuine and reasonable requirements of the employment even after the adjustments are made.

(c) **Definitions**

(i) **Disability** has the same meaning as section 4 of the *Equal Opportunity Act 2010* (Vic) (**EO Act**) and includes:

(A) total or partial loss of a bodily function;

(B) presence in the body of organisms that may cause disease;

(C) total or partial loss of a part of the body; or

(D) malfunction of a part of the body including a mental or psychological disease or disorder or condition or disorder that results in a person learning more slowly than those without the condition or disorder.

(ii) **Reasonable adjustments** has the same meaning as section 20 of the EO Act and requires consideration of all relevant facts and circumstances including:

(A) the employee's circumstances, including the nature of the disability;

(B) the nature of the Employee's role;

(C) the nature of the adjustment required to accommodate the Employee's disability;

(D) the financial circumstances of the Employer;

(E) the size and nature of the workplace and the Employer's business;

(F) the effect on the workplace and the Employer's business of making the adjustment including the financial impact, the number of persons who would benefit or be disadvantaged and the impact of efficiency and productivity;

(G) the consequences for the Employer in making the adjustment; and

(H) the consequences for the Employee in not making the adjustment.

56 Family Violence Leave

NOTE: The definition of family member in this clause is broader than the definition of Immediate Family in clause 4.10 (Definitions).

56.1 Each Employer recognises that Employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. Therefore, each Employer is committed to providing support to staff that experience family violence.

56.2 The Employer will develop guidelines to supplement this clause which details the appropriate action to be taken in the event that an Employee discloses family violence.

56.3 Definitions

(a) In this Agreement, '**Family Violence**' has the same meaning as the *Family Violence Protection Act 2008* (Vic) (**Family Violence Act**) and also has the same meaning as 'Family and Domestic Violence' in the NES.

(i) Under the Family Violence Act, 'Family Violence' is defined, in part, as:

(A) behaviour by a person towards a family member of that person if the behaviour is:

(1) physically or sexually abusive; or

(2) emotionally or psychologically abusive; or

(3) economically abusive; or

(4) threatening; or

(5) coercive; or

(6) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or

(B) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in subclause 56.3(a)(i)(A).

(ii) Under the NES, the definition of **Family and Domestic Violence** is violent, threatening or other abusive behaviour by an Employee's close relative (as defined under the Act), Employee's household, or a current or former intimate

partner of an Employee that seeks to coerce or control the Employee and causes the Employee harm or to be fearful.

(b) **Affected Employee** means an Employee experiencing Family Violence as defined.

56.4 Amount of Leave

(a) An Affected full-time Employee will have access to 20 days per year of paid family violence leave.

(b) An Affected part-time Employee who works 19 ordinary hours or more per week will have access to 20 days per year of paid family violence leave on a pro-rata basis and a balance of unpaid family violence leave days so that the Employee has access to 20 days family violence leave in total per year.

Example:

A part-time Employee is 0.75 EFT, meaning they can access 15 days of family violence leave per year (the pro-rata entitlement of 20 days paid family violence leave per year). They would therefore be able to access a further 5 days of unpaid family violence leave per year for a total of 20 days of family violence leave per year they can access.

(c) An Affected part-time Employee who works below 19 ordinary hours per week will have access to 10 days per year (not pro-rata) of paid family violence leave and 10 days of unpaid family violence leave.

(d) An Affected casual Employee will have access to 10 days per year (not pro-rata) of paid family violence leave and 10 days of unpaid family violence leave.

(e) Family violence leave is available in full at the start of each 12-month period of the Employee's employment.

56.5 Taking of Leave

(a) An Affected Employee may take family violence leave where they require time release for activities related to and as a consequence of family violence including:

(i) accessing police services;

(ii) medical and legal assistance;

(iii) court appearances/hearings;

(iv) counselling (including financial counselling/assistance);

(v) relocation;

(vi) making safety arrangements.

(b) An Employee who supports a family member or household member experiencing Family Violence may also utilise their personal leave entitlement to accompany the family member or household member to court, to hospital, or to care for children.

(c) The leave may be taken as consecutive or single days or as a fraction of a day.

(d) The leave does not accumulate from year to year.

56.6 Payment of Leave

(a) Where an Affected Employee takes a period of family violence leave under this clause 56, the Employer must pay the Employee, in relation to the period:

(i) for an Employee other than a casual Employee — at the Employee's full rate of pay, worked out as if the Employee had not taken the period of leave;

(ii) for a casual Employee — at the Employee's full rate of pay, worked out as if the Employee had worked the hours in the period for which the casual Employee was rostered.

(b) Without limiting subclause 56.6(a)(ii), a casual Employee is taken to have been rostered to work hours in a period if the Employee has accepted an offer by the Employer of work for those hours.

(c) Subclause 56.6(a)(ii) does not prevent a casual Employee from taking a period of paid family violence leave that does not include hours for which the casual Employee is rostered to work. However, the Employer is not required to pay the casual Employee in relation to such a period.

56.7 Designated Contact Point

The Employer will identify contact/s within the workplace who will be trained in family violence and associated privacy issues. Employees will be advised of the designated contact point(s).

56.8 Disclosure of Family Violence and Support

(a) An affected Employee may disclose they are experiencing family violence to either their immediate supervisor or the designated contact point.

(b) Where an affected Employee makes a disclosure to their immediate supervisor, the supervisor will advise the designated contact point.

(c) Following consultation with the affected Employee, the relevant supervisor and designated contact point shall:

(i) Implement reasonable measures to manage any potential risk to health and safety. Such measures may include:

(A) changing the affected Employee's hours of work, duties, location of work or contact details;

(B) advising security staff consistent with the Employer's occupational violence policy where applicable;

(C) any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.

Changes to work arrangements may be agreed on a temporary or ongoing basis having regard to the circumstance. Periods of review should also be agreed.

(ii) Offer the affected Employee access to the Employer's 'Employee Assistance Program' (EAP) and/or other available local support resources. Where possible, the EAP will include professionals trained in family violence.

(iii) Provide information regarding current support services.

(d) Where the performance or attendance of an Employee at work suffers as a result of being a victim of family violence, the Employer shall:

(i) take into account the effect of the family violence; and

(ii) take all reasonable measures to support attendance and / or performance

when addressing the Employee's performance or attendance, taking into account all of the relevant circumstances.

56.9 Confidentiality

(a) All personal information concerning family violence will be kept confidential in line with the Employer's policies and relevant legislation.

(b) An Employer must not, other than with the consent of the Affected Employee, use such information for a purpose other than satisfying itself in relation to the Employee's entitlement to leave under this clause. In particular, an Employer must not use such information to take adverse action against an Affected Employee.

(c) Subclause 56.9(b) has effect subject to subclause 56.9(d).

(d) Nothing in this clause 56 prevents an Employer from dealing with information provided by an Affected Employee if doing so is required by an Australian law or is necessary to protect the life, health or safety of the Employee or another person.

Note: Information covered by this clause that is personal information may also be regulated under the Privacy Act 1988 (Cth).

56.10 Notice and Evidence Requirements

(a) **Notice Requirements**

The leave can be taken without prior approval where it is impractical for the affected Employee to provide notice of taking the leave.

(b) **Evidence Requirements**

(i) An affected Employee may be required by the Employer to provide evidence that their absence is due to the reasons specified in subclauses 56.5(a) and/or (b).

(ii) If required, such evidence will be in the form of an agreed document issued by a medical practitioner, Registered Health Practitioner, Police service, Court, Family Violence Support Service, social support service, financial counsellor or Lawyer. A statutory declaration may also be used.

57 Compassionate Leave

57.1 When Compassionate Leave is Available

(a) Compassionate leave may be available to an Employee under this clause 57:

(i) if a member of the Employee's Immediate Family or household:

(A) contracts or develops a personal illness or sustains a personal injury that poses a serious threat to their life;

(B) dies;

(ii) when a child is Stillborn, where the child would have been a member of the Employee's Immediate Family, or household member, if the child had been born alive; or

(iii) the Employee, or the Employee's spouse or de facto partner has a miscarriage.

(a **permissible occasion**)

(b) If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the Employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

57.2 Employees Other than Casual Employees

(a) An Employee is entitled to up to two (2) ordinary days' paid leave, on each permissible occasion.

(b) An Employee may take compassionate leave for a particular permissible occasion as:

(i) a single continuous two (2) day period;

(ii) two (2) separate periods of one (1) day each; or

(iii) any separate periods to which the Employee and Employer agree.

(c) An Employee may take unpaid additional compassionate leave by agreement with the Employer.

57.3 Casual Employees

Subject to the evidence requirements described at subclause 57.4, a casual Employee is entitled to two (2) days unpaid compassionate leave on each permissible occasion. Unpaid compassionate leave under this clause may be taken as:

(a) a single continuous period,

(b) two (2) separate periods of one (1) day each, or

(c) any separate periods to which the Employee and Employer agree.

57.4 Evidence – All Employees

Proof of the permissible occasion must be provided that would satisfy a reasonable person, if requested.

58 Reproductive Health Leave

58.1 In the event the Victorian Government introduces a policy conferring an entitlement to 'reproductive health leave', this will apply to Employees but will not form part of this Agreement.

58.2 Such policy will be incorporated as an entitlement in the enterprise agreement that replaces this Agreement.

59 Pre-Natal Leave

59.1 An Employee required to attend pre-natal appointments or parenting classes that are only available or can only be attended during the Employee's ordinary rostered shift may, subject to the provision of satisfactory evidence of attendance, access his or her personal leave credit.

59.2 The Employee must give the Employer prior notice of the Employee's intention to take such leave.

60 Pre-Adoption Leave

60.1 An Employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure.

60.2 The Employee and the Employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the Employee is entitled to take up to two days unpaid leave.

60.3 Where paid leave is available to the Employee, the Employer may require the Employee to take such leave instead.

61 Parental Leave

This clause deals with parental leave, including paid parental leave. The issue of superannuation and parental leave (both paid and unpaid) is addressed at subclause 30.6.

61.1 Structure of Clause

This clause 61 is structured as follows:

(a) Structure of Clause: subclause 61.1;

(b) Definitions: subclause 61.2;

(c) Unpaid Parental Leave: subclause 61.3;

(d) Hospitalised Children – Agreement to Not Take Unpaid Parental Leave: subclause 61.4;

(e) Flexible Parental Leave – Unpaid: subclause 61.5;

(f) Paid Parental Leave: subclause 61.6;

(g) Notice and Evidence Requirements: subclause 61.7;

(h) Parental Leave Associated with the Birth of a Child – Additional Provisions: subclause 61.8;

(i) Where Placement Does Not Proceed or Continue: subclause 61.9;

(j) Special Parental Leave: subclause 61.10;

(k) Variation of Period of Unpaid Parental Leave (up to 12 months): subclause 61.11;

(l) Right to Request Extension of Period of Unpaid Parental Leave Beyond 12 Months: subclause 61.12;

(m) Parental Leave and Other Entitlements: subclause 61.13;

(n) Transfer to a Safe Job: subclause 61.14;

(o) Returning to Work after a Period of Parental Leave: subclause 61.15;

(p) Replacement Employees: subclause 61.16;

(q) Communication During Parental Leave – Organisational Change: subclause 61.17; and

(r) Keeping in Touch Days: subclause 61.18.

Other provisions associated with parental leave are also included in this Agreement. Specifically, prenatal leave at clause 59, flexible working arrangements which includes the right to request to return from parental leave on a part-time basis at clause 85, leave to attend interviews and examinations relevant to adoption leave (pre-adoption leave) at clause 60 and breastfeeding at clause 62.

61.2 Definitions

For the purposes of this clause 61:

(a) **Child** means:

(i) in relation to birth-related leave, a child (or children from a multiple birth) of the Eligible Employee or the Eligible Employee's Spouse;

(ii) in relation to adoption-related leave, a child (or children) under sixteen (16) (as at the day of placement or expected day of placement) who is placed or who is to be placed with the Eligible Employee for the purposes of adoption, other than a child or step-child of the Eligible Employee or of the Spouse of the Eligible Employee or a child who has previously lived continuously with the Eligible Employee for a period of six (6) months or more (Adopted Child); or

(iii) as the case requires, includes a Stillborn Child.

(b) **Continuous Service** includes:

(i) continuous service with one and the same Employer, or

(ii) continuous service with more than one Employer including Institutions or Statutory Bodies (as defined at subclause 63.1(e) and (j)); and

(iii) includes any period of employment that would count as service under the Act, and

(iv) an Allowable Period of absence (as defined at subclause 63.1(a)).

(c) **Eligible Casual Employee** means a casual Employee that has been employed by the Employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months and who has, but for the birth or expected birth of a Child or the decision to adopt a Child, a reasonable expectation of continuing engagement by the Employer on a regular and systematic basis.

(d) **Eligible Employee** for the purposes of this clause 61 means a non-casual Employee who has at least 6 months' Continuous Service or an Eligible Casual Employee as defined above.

(e) **Employee Couple** has the same meaning as under the Act.

(f) **Flexible Parental Leave** means the 100 days' unpaid parental leave an Eligible Employee may take under subclause 61.5 as part of their 52 weeks' entitlement of Parental Leave.

(g) **Unpaid Parental Leave** means the 52 weeks' parental leave an Eligible Employee may take under subclause 61.3.

(h) **Notional Flexible Period** is the period during which the Eligible Employee would be on Flexible Parental Leave if the Eligible Employee took leave for all of the Eligible Employee's notified flexible days in a single continuous period.

(i) **Stillbirth** means the delivery of a Stillborn Child.

61.3 Unpaid Parental Leave

(a) An Eligible Employee is entitled to 12 months' Unpaid Parental Leave if:

(i) the leave is associated with:

(A) the birth, or expected birth, of a Child (including a Stillbirth) of the Eligible Employee or the Eligible Employee's Spouse; or

(B) the placement of a Child with the Eligible Employee for adoption; and

(ii) the Eligible Employee has or will have a responsibility for the care of the Child, or in the case of a Stillbirth, the Eligible Employee would have had a responsibility for the care of the Child if the Child had been born alive.

(b) Except as provided at subclause 61.5 (Flexible Parental Leave - Unpaid) and subclause 61.18 (Keeping in Touch Days), the Eligible Employee must take the leave in a single continuous period.

(c) Each member of an Employee Couple may take a separate period of up to 12 months of Unpaid Parental Leave.

(d) An Eligible Employee may be able to extend a period of unpaid parental leave in accordance with subclause 61.12 (Right to Request an Extension of Period of Unpaid Parental Leave Beyond 12 Months).

61.4 Hospitalised Children – Agreement to Not Take Unpaid Parental Leave

(a) If:

(i) a Child is required to remain in hospital after the Child's birth, or is hospitalised immediately after the Child's birth, including because:

(A) the Child was born prematurely;

(B) the Child developed a complication or contracted an illness during the child's period of gestation or at birth; or

(C) the Child developed a complication or contracted an illness following the Child's birth; and

(ii) an Employee, whether before or after the birth of the Child, gives notice in accordance with subclause 61.7 of the taking of a period of unpaid parental leave (the original leave period) in relation to the Child;

then the Employee may agree with their Employer that the Employee will not take unpaid parental leave for a period (the permitted work period) while the Child remains in hospital.

(b) If the Employee and Employer so agree, then the following rules have effect:

(i) the Employee is taken to not be taking unpaid parental leave during the permitted work period;

(ii) the permitted work period does not break the continuity of the original leave period; and

(iii) the Employee is taken to have advised the Employer, for the purposes of subclause 61.7(c), of an end date for the original leave period that is the date on which that period would end if it were extended by a period equal to the permitted work period.

(c) The permitted work period must start after the birth of the Child.

(d) The permitted work period ends at the earliest of the following:

(i) the time agreed by the Employer and Employee;

(ii) the end of the day of the Child's first discharge from hospital after birth; or

(iii) if the Child dies before being discharged, the end of the day the Child dies.

(e) Only one (1) period may be agreed to under subclause 61.4(a) for which the Employee will not take unpaid parental leave in relation to the Child.

(f) The Employee must, if required by the Employer, give the Employer evidence (including without limitation, a medical certificate) that would satisfy a reasonable person of either or both of the following:

(i) that subclause 61.4(a)(i) applies in relation to the child;

(ii) that the Employee is fit for work.

61.5 Flexible Parental Leave - Unpaid

(a) An Eligible Employee may take up to 100 days of their Unpaid Parental Leave entitlement (Flexible Parental Leave) during the 24-month period starting on the date of birth (including a Stillbirth) or day of placement of the Child if the requirements of this subclause 61.5 are satisfied in relation to the leave.

(b) The number of days of Flexible Parental Leave that the Eligible Employee takes must not be more than the number of flexible days notified to the Employer under subclause 61.7(b)(iv) (subject to any agreement under subclause 61.7(b)(v)).

(c) **Taking Leave That Starts Up to Six (6) Weeks Before the Expected Date of Birth of the Child**

(i) A pregnant Eligible Employee may take Flexible Parental Leave during the period that starts six (6) weeks before the expected date of birth of the Child.

(ii) The amount of Flexible Parental Leave to which an Eligible Employee is entitled under subclause 61.5(a) is reduced by the number of days of Flexible Parental Leave taken under subclause 61.5(c)(i).

(d) An Eligible Employee must take the Flexible Parental Leave as:

(i) a single continuous period of one (1) or more days; or

(ii) separate periods of one (1) or more days each.

(e) An Eligible Employee may take the Flexible Parental Leave whether or not they have taken Unpaid Parental Leave under this clause 61.

(f) An Eligible Employee may take Flexible Parental Leave after taking one (1) or more periods of unpaid Parental Leave under this clause 61 only if the total of those periods (disregarding any extension under subclause 61.11 or 61.12) is no longer than 12 months, less the employee's Notional Flexible Period, provided that the calculation for the Employee's Notional Flexible Period is based on the assumption that:

(i) the Eligible Employee ordinarily works each day that is not a Saturday or Sunday; and

(ii) there are no public holidays during the period.

61.6 Paid Parental Leave

See also subclause 30.6 (Superannuation during parental leave).

(a) From the FFPPOOA commencement of the Agreement, an Eligible Employee commencing unpaid parental leave is entitled to paid parental leave on the following basis:

(i) a **Primary Carer** taking Unpaid Parental Leave will be entitled to 14 weeks' paid parental leave, provided that the Unpaid Parental Leave is taken contemporaneously with the birth or placement of the Child; and

(ii) a **non-Primary Carer** taking Unpaid Parental Leave will be entitled to 2 weeks' paid parental leave;

save that an Eligible Employee is not entitled to both paid Parental Leave under subclause 61.6(a)(i) and paid Parental Leave under subclause 61.6(a)(ii) in respect of the same birth or adoption.

(b) **Primary Carer** in subclause 61.6(a) means the person who has responsibility for the care of the Child. Only one (1) person can be the Child's Primary Carer on a particular day.

(c) Subclause 61.6(a) is subject to subclause 61.4, in which case the Employee taking Unpaid Parental Leave may agree with the Employer that the Employee will not

take Unpaid Parental Leave during the permitted work period while the Child remains hospitalised.

(d) **Payment**

(i) Payment for paid Parental Leave will be based on the Employee's ordinary time rate of pay provided in **Appendix 2** and will be based on the following:

(A) **Full-time Employee** – 38 ordinary hours;

(B) **Part-time Employee** – the Employee's contracted hours, save that where the part-time Employee's ordinary hours fluctuate because the Employee works additional ordinary shifts (but excluding a permanent variation) an average of the Employee's ordinary hours over:

(1) the preceding 12 months; or

(2) the Employee's period of service where the Employee has less than 12 months service;

will apply where this is more favourable to the Employee; or

(C) **Casual Employee** – average of the Employee's ordinary hours of work over the preceding 12 months.

(ii) Paid parental leave is in addition to any relevant Commonwealth Government paid parental leave scheme (subject to the requirements of any applicable legislation).

(iii) The Employer and Eligible Employee may reach agreement on alternative arrangements as to how the paid Parental Leave under this Agreement is paid. For example, such leave may be paid in smaller amounts over a longer period, consecutively or concurrently with any relevant Commonwealth Government parental leave scheme (subject to the requirements of any applicable legislation) and may include a voluntary contribution to superannuation.

(iv) Such agreement must be in writing and signed by the parties. The Eligible Employee must nominate a preferred payment arrangement at least four (4) weeks prior to the expected date of birth or date of placement of the Child.

(v) In the absence of agreement, such leave will be paid during the ordinary pay periods corresponding with the period of the leave.

(vi) A variation to the payment of paid parental leave resulting in the paid leave being spread over more than 10 weeks does not affect the period of continuous service recognised. For example, an Employee taking 20 weeks at half pay will, for the purpose of calculating continuous service, have ten weeks of continuous service recognised. An Employee taking five (5) weeks at double pay will have 10 weeks of continuous service recognised.

(vii) The paid parental leave prescribed by this subclause 61.6 will be concurrent with any relevant unpaid entitlement prescribed by the NES/this Agreement.

61.7 Notice and Evidence Requirements

(a) **General Requirement to Give Notice of Taking Parental Leave**

An Eligible Employee must give the Employer written notice of the taking of Unpaid Parental Leave, or Flexible Parental Leave, or both, by the Eligible Employee.

(b) **Notice Requirements**

(i) The Eligible Employee must give the notice to the Employer:

(A) at least 10 weeks before starting any of the leave covered by the notice; or

(B) if that is not practicable, and:

(1) the first or only period of leave covered by the notice is Unpaid Parental Leave; or

(2) any of the leave covered by the notice starts before the Child's date of birth or expected date of birth;

as soon as practicable (which may be a time after any of the leave covered by the notice has started).

(ii) However, if the first or only period of leave covered by the notice is Flexible Parental Leave, the notice may be given at any later time if the Employer agrees.

(iii) If any of the leave covered by the notice is Unpaid Parental Leave, the notice must specify the intended start and end dates of the Unpaid Parental Leave.

(iv) If any of the leave covered by the notice is Flexible Parental Leave, the notice must specify the total number of flexible days that the Eligible Employee intends to take.

(v) If the Employer agrees, the Eligible Employee may:

(A) reduce the number of flexible days, including by reducing the number of flexible days to zero; or

(B) increase the number of flexible days, but not so as to increase the number of flexible days above 100.

(c) **Taking Unpaid Parental Leave – Confirming or Changing Intended Start and End Dates**

If any of the leave covered by the notice is Unpaid Parental Leave, at least four (4) weeks before the intended commencement of parental leave, or if that is not practicable as soon as practicable, the Eligible Employee must confirm in writing the intended start and end dates of the parental leave, or advise the Employer of any changes to the notice provided in subclause 61.7(a), unless it is not practicable to do so.

(d) **Flexible Parental Leave – Additional Notice Requirements**

(i) The Employee must give the Employer written notice of a flexible day on which the Employee will take Flexible Parental Leave:

(A) at least four (4) weeks before that day; or

(B) if that is not practicable, as soon as practicable (which may be a time after the leave has started).

(ii) If the Employer agrees, the Employee may change a day on which the Employee takes Flexible Parental Leave from a day specified in a notice under subsection 61.7(d)(i).

(e) **Evidence Requirements**

(i) The Employer may require the Eligible Employee to provide evidence which would satisfy a reasonable person of:

(A) in the case of birth-related leave:

(1) the date of birth, or expected date of birth of the Child (including without limitation, a medical certificate or certificate from a

registered midwife, stating the date of birth or expected date of birth); and

(2) if relevant, that their Child was Stillborn (including without limitation, a certification by a medical practitioner or registered midwife of the child as having been delivered); or

(B) in the case of adoption-related leave, the commencement of the placement (or expected day of placement) of the Child and that the Child will be under 16 years of age as at the day of placement or expected day of placement.

(f) An Employee will not be in breach of this subclause 61.7 if failure to give the stipulated notice is occasioned by the birth of the Child or placement occurring earlier than the expected date or in other unexpected circumstances. In these circumstances the notice and evidence requirements of this subclause 61.7 should be provided as soon as reasonably practicable.

61.8 Parental Leave Associated with the Birth of a Child – Additional Provisions

(a) Subject to the limits on duration of parental leave set out in this Agreement and unless agreed otherwise between the Employer and Eligible Employee, an Eligible Employee who is pregnant may commence Unpaid Parental Leave at any time up to six (6) weeks immediately prior to the expected date of birth.

(b) **Six Weeks Before the Birth**

(i) Where a pregnant Eligible Employee continues to work during the six (6) week period immediately prior to the expected date of birth, the Employer may require the Eligible Employee to provide a medical certificate stating that they are fit for work and, if so, whether it is inadvisable for them to continue in their present position because of illness or risks arising out of the Eligible Employee's pregnancy or hazards connected with the position.

(ii) Where a request is made under subclause 61.8(b)(i) and an Eligible Employee:

(A) does not provide the Employer with the requested certificate within seven (7) days of the request; or

(B) within seven (7) days after the request gives the Employer a medical certificate stating that the Eligible Employee is not fit for work;

the Employer may require the Eligible Employee to commence their parental leave as soon as practicable.

(iii) Where a request is made under subclause 61.8(b)(i) and an Eligible Employee provides a medical certificate that states that the Eligible Employee is fit for work but it is inadvisable for the Eligible Employee to continue in their present position during a stated period, subclause 61.14 (Transfer to a safe job) will apply.

61.9 Where Placement Does Not Proceed or Continue

(a) Where the placement of the Child for adoption with an Eligible Employee does not proceed or continue, the Eligible Employee will notify the Employer immediately.

(b) Where the Eligible Employee had, at the time, started a period of adoption-related leave in relation to the placement, the Eligible Employee's entitlement to adoption-related leave is not affected, except where the Employer gives written notice under subclause 61.9(c).

(c) The Employer may give the Eligible Employee written notice that, from a stated day no earlier than four (4) weeks after the day the notice is given, any untaken unpaid adoption-related leave is cancelled with effect from that day.

(d) Where the Eligible Employee wishes to return to work due to a placement not proceeding or continuing, the Employer must nominate a time not exceeding four (4) weeks from receipt of notification for the Eligible Employee's return to work.

61.10 Special Parental Leave

(a) **Entitlement to Unpaid Special Birth-Related Leave**

(i) An Eligible Employee is entitled to a period of unpaid special leave if they are not fit for work during that period because:

(A) they have a pregnancy-related illness affecting them; or

(B) all of the following apply:

(1) they have been pregnant; and

(2) the pregnancy ends after a period of gestation of at least 12 weeks otherwise than by the birth of a living Child; and

(3) the birth is not a Stillbirth.

(ii) An Eligible Employee who has an entitlement to personal leave may, in part or whole, take personal leave instead of unpaid special leave under this subclause 61.10(a).

(iii) Where the pregnancy ends more than 28 weeks from the expected date of birth of the Child, the Eligible Employee is entitled to access any paid and/or unpaid personal leave entitlements in accordance with the relevant personal leave provisions.

(b) **Entitlement to Paid Special Birth-Related Leave**

(i) An Eligible Employee is entitled to a period of paid special leave if their pregnancy terminates at or after the completion of 20 weeks' gestation or the Eligible Employee gives birth but the baby subsequently dies.

(ii) Paid special leave is paid leave up to the amount of paid leave available under subclause 61.6(a)(i) (plus superannuation) based on the amount of leave taken, in circumstances where the Employee intended to take Unpaid Parental Leave at the time of birth or placement.

(iii) Paid special leave is in addition to any unpaid special leave taken under subclause 61.10(a)(i).

(iv) Paid leave available under subclause 61.6(a)(ii) will also apply in these circumstances.

(c) **Evidence**

(i) If an Eligible Employee takes leave under this subclause 61.10 the Employer may require the Eligible Employee to provide evidence that would satisfy a reasonable person of the matters referred to in subclause 61.10(a)(i) or 61.10(b)(i) or to provide a certificate from a registered medical practitioner.

(ii) The Eligible Employee must give notice to the Employer as soon as practicable, advising the Employer of the period or the expected period of the leave under this provision.

61.11 Variation of Period of Unpaid Parental Leave (up to 12 months)

(a) Where an Eligible Employee has:

(i) given notice of the taking of a period of Unpaid Parental Leave under subclause 61.3;

(ii) the length of this period of Unpaid Parental Leave as notified to the Employer is less than the Eligible Employee's available entitlement to Unpaid Parental Leave; and

(iii) commenced the period of Unpaid Parental Leave;

the Eligible Employee may change the period of parental leave on one (1) occasion. Any change is to be notified (including the new end date for the leave) as soon as possible but no less than four (4) weeks prior to the commencement of the changed arrangements. Nothing in this subclause 61.11 detracts from the basic entitlement in subclause 61.3 (Unpaid Parental Leave) or subclause 61.12 (Right to request an extension of period of unpaid parental leave beyond 12 months).

(b) The Eligible Employee's available parental leave period is 12 months, less any periods of the following kinds:

(i) a period of Unpaid Parental Leave that the Employee has been required to take under subclause 61.8(b)(i) or 58.14(b)(v);

(ii) if the Employee has given notice in accordance with subclause 61.7(b) of the taking of Flexible Parental Leave—a period equal to the Employee's Notional Flexible Period.

(c) If the Employer and Eligible Employee agree, the Eligible Employee may further change the period of parental leave.

61.12 Right to Request an Extension of Period of Unpaid Parental Leave Beyond 12 Months

(a) An Eligible Employee entitled to Unpaid Parental Leave pursuant to the provisions of subclause 61.3 may request the Employer to allow the Eligible Employee to extend the period of Unpaid Parental Leave by a further continuous period of up to 12 months immediately following the end of the available parental leave period.

(b) **Request to be in Writing**

The request must be in writing and must be given to the Employer at least four (4) weeks before the end of the available parental leave period.

(c) **Response to be in Writing**

(i) The Employer must give the Eligible Employee a written response to the request within 21 days.

(ii) The response must:

(A) state that the Employer grants the request;

(B) if, following discussion between the Employer and Employee, the Employer and Employee agree to an extension of unpaid parental leave for a period that differs from the period requested – set out the agreed extended period; or

(C) state that the Employer refuses the request.

(d) **Refusal Only in Specific Circumstances**

The Employer may refuse the request only if:

(i) the Employer has:

(A) discussed the request with the Employee; and

(B) genuinely tried to reach an agreement with the Employee about an extension of the period of unpaid parental leave;

(ii) the Employer and the Employee have not reached such an agreement;

(iii) the Employer has had regard to the consequences of the refusal for the Employee; and

(iv) the refusal is on Reasonable Business Grounds.

(e) **Reasons For Refusal to Be Specified**

Where the Employer refuses the request, the written response must include:

(i) details of the reasons for the refusal;

(ii) the Employers particular business grounds for refusal and an explanation of how these grounds apply to the Employee's request;

(iii) either:

(A) set out the extension to the period of unpaid parental leave (other than the period requested) that the Employer would be willing to agree to; or

(B) state that there is no extension of the period that the Employer would be willing to agree to; and

(iv) set out the effect of subclause 61.12(g), including if a dispute is referred to the Commission.

(f) **No Extension Beyond 24 Months**

An Eligible Employee is not entitled to extend the period of Unpaid Parental Leave beyond 24 months after the date of birth or day of placement of the Child.

(g) **Disputes**

The dispute resolution procedure in the Agreement will apply to any grievance/dispute arising in relation to a request for an extension of unpaid parental leave beyond 12 months.

61.13 Parental Leave and Other Entitlements

An Eligible Employee may use any accrued annual leave or long service leave entitlements concurrently with Parental Leave, save that taking that leave does not have the effect of extending the period of Parental Leave. If the Employee does so, the taking of that other paid leave does not break the continuity of the period of Parental Leave.

61.14 Transfer To a Safe Job

(a) Where an Employee is pregnant and provides evidence that would satisfy a reasonable person that they are fit for work but it is inadvisable for the Employee to continue in their present position for a stated period (the risk period) because of:

(i) illness or risks arising out of the pregnancy; or

(ii) hazards connected with the position;

the Employee must be transferred to an appropriate safe job if one is available for the risk period, with no other change to the Employee's terms and conditions of employment.

(b) **Paid No Safe Job Leave**

(i) If:

(A) subclause 61.14(a) applies to a pregnant Eligible Employee but there is no appropriate safe job available;

(B) the Eligible Employee is entitled to Unpaid Parental Leave; and

(C) the Eligible Employee has complied with the notice of intended start and end dates of leave and evidence requirements under subclause 61.7 for taking Unpaid Parental Leave;

then the Eligible Employee is entitled to paid no safe job leave for the risk period.

(ii) If the Eligible Employee takes paid no safe job leave for the risk period, the Employer must pay the Eligible Employee at the Eligible Employee's ordinary rate of pay for the Eligible Employee's ordinary hours of work in the risk period.

(iii) This entitlement to paid no safe job leave is in addition to any other leave entitlement the Eligible Employee may have.

(iv) If an Eligible Employee, during the six (6) week period before the expected date of birth, is on paid no safe job leave, the Employer may request that the Eligible Employee provide a medical certificate within seven (7) days stating whether the Eligible Employee is fit for work.

(v) If the Eligible Employee has either:

(A) not complied with the request from the Employer; or

(B) provided a medical certificate stating that they are not fit for work;

then the Eligible Employee is not entitled to paid no safe job leave and the Employer may require the Eligible Employee to take parental leave as soon as practicable.

(c) **Unpaid No Safe Job Leave**

If:

(i) subclause 61.14(a) applies to a pregnant Employee but there is no appropriate safe job available;

(ii) the Employee will not be entitled to Unpaid Parental Leave as at the expected date of birth; and

(iii) the Employee has given the Employer evidence that would satisfy a reasonable person of the pregnancy if required by the Employer (which may include a requirement to provide a medical certificate);

then the Employee is entitled to unpaid no safe job leave for the risk period.

61.15 Returning To Work After a Period of Parental Leave

(a) An Eligible Employee will endeavour to notify the Employer of their intention to return to work after a period of Unpaid Parental Leave at least four (4) weeks prior to the end of the leave, or where that is not practicable, as soon as practicable.

(b) An Eligible Employee will be entitled to return:

(i) unless subclause 61.15(b)(ii) or subclause 61.15(b)(iii) applies, to the position which they held immediately before proceeding on parental leave;

(ii) if the Eligible Employee was promoted or voluntarily transferred to a new position (other than to a safe job pursuant to subclause 61.14), to the new position;

(iii) if subclause 61.15(b)(ii) does not apply, and the Eligible Employee began working part-time because of the pregnancy of the Eligible Employee, or their Spouse, to the position held immediately before starting to work part-time.

(c) Subclause 61.15(b) is not to result in the Eligible Employee being returned to the safe job to which the Eligible Employee was transferred under subclause 61.14. In such circumstances, the Eligible Employee will be entitled to return to the position held immediately before the transfer.

(d) Where the relevant former position (per subclauses 61.15(b) and 61.15(c) above) no longer exists, an Eligible Employee is entitled to return to an available position for which the Eligible Employee is qualified and suited nearest in status and pay to that of their pre-parental leave position.

(e) The Employer must not fail to re-engage an Eligible Employee because:

(i) the Eligible Employee or Eligible Employee's Spouse is pregnant; or

(ii) the Eligible Employee is or has been immediately absent on parental leave.

(f) The rights of the Employer in relation to engagement and re-engagement of casual Employees are not affected, other than in accordance with this clause 61.

(g) **Stillbirth or Death of Child – Cancelling Leave or Returning To Work**

(i) In the event of a Stillbirth, or if a Child dies during the 24-month period starting on the child's date of birth, then an Eligible Employee who is entitled to a period of parental leave in relation to the Child may:

(A) before the period of leave starts, give their Employer written notice cancelling the leave; or

(B) if the period of leave has started, give their Employer written notice that the Employee wishes to return to work on a specified day (which must be at least four (4) weeks after the date on which the Employer receives the notice).

(ii) Where notice under subclause 61.15(g)(i) is given, the Employee's entitlement to Parental Leave in relation to the Child ends:

(A) if the action is taken under subclause 61.15(g)(i)(A), immediately after the cancellation of the leave; or

(B) if the action is taken under subclause 61.15(g)(i)(B), immediately before the specified day.

(iii) This subclause 61.15(g) does not limit subclause 61.11 (dealing with the Employee varying the period of unpaid parental leave with the agreement of the Employer).

(h) **Employee Who Ceases to Have Responsibility For Care of Child**

(i) This subclause 61.15(h) applies to an Employee who has taken unpaid Parental Leave in relation to a Child if the Employee ceases to have any responsibility for the care of the Child for a reason other than because:

(A) of a Stillbirth; or

(B) the Child dies during the 24-month period starting on the child's date of birth.

(ii) The Employer may give the Employee written notice requiring the Employee to return to work on a specified day.

(iii) The specified day:

(A) must be at least four (4) weeks after the notice is given to the Employee; and

(B) if the leave is birth-related leave taken by an Employee who has given birth, must not be earlier than six (6) weeks after the date of birth of the Child.

(iv) The Employee's entitlement to Parental Leave in relation to the Child ends immediately before the specified day.

61.16 Replacement Employees

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

(b) Before the Employer engages a replacement Employee, the Employer must inform that person of the temporary nature of the employment and of the rights of the Eligible Employee who is being replaced to return to their pre-parental leave position.

61.17 Communication During Parental Leave – Organisational Change

(a) Where an Eligible Employee is on parental leave and the Employer proposes a change or makes a decision that will have a significant effect within the meaning of clause 13 (Consultation) of this Agreement on the Eligible Employee's pre-parental leave position and/or on the status, pay or location of the Eligible Employee's pre-parental leave position, the Employer will comply with the requirements of clause 13 (Consultation) which include but are not limited to providing:

(i) information in accordance with subclause 13.4; and

(ii) an opportunity for discussions with the Eligible Employee and, where relevant, the Eligible Employee's representative in accordance with subclause 13.6.

(b) The Eligible Employee will endeavour to take reasonable steps to inform the Employer about any significant matter that arises whilst the Eligible Employee is taking parental leave that will affect the Eligible Employee's decision regarding the duration of parental leave to be taken, whether the Eligible Employee intends to return to work and whether the Eligible Employee intends to request to return to work on a part-time basis.

(c) The Eligible Employee will also notify the Employer of changes of address or other contact details which might affect the Employer's capacity to comply with subclause 61.17.

(d) The Eligible Employee's pre-parental leave position is:

(i) unless subclause 61.17(d)(ii) below applies, the position the Eligible Employee held before starting parental leave;

(ii) if, before starting parental leave, the Eligible Employee:

(A) was transferred to a safe job because of their pregnancy; or

(B) reduced their working hours due to their pregnancy;

the position the Eligible Employee held immediately before that transfer or reduction.

61.18 Keeping In Touch Days

(a) This clause 61 does not prevent an Eligible Employee from performing work for the Employer on a keeping in touch day while the Eligible Employee is taking Parental Leave. If the Eligible Employee does so, the performance of that work does not break the continuity of the period of Parental Leave.

(b) Any day or part of a day on which the Eligible Employee performs work for the Employer during the period of leave is a keeping in touch day if:

(i) the purpose of performing the work is to enable the Eligible Employee to keep in touch with their employment in order to facilitate a return to that employment after the end of the period of leave;

(ii) both the Eligible Employee and Employer consent to the Eligible Employee performing work for the Employer on that day;

(iii) the day is not within:

(A) if the Eligible Employee suggested or requested that they perform work for the Employer on that day – 14 days after the date of birth, or day of placement, of the Child to which the period of leave relates; or

(B) otherwise – 42 days after the date of birth, or day of placement, of the Child; and

(iv) the Eligible Employee has not already performed work for the Employer or another entity on ten days during the period of leave that were keeping in touch days, subject to subclause 61.18(e)(ii).

(c) The duration of the work the Eligible Employee performs on that day is not relevant for the purposes of subclause 61.18(b).

(d) The Employer must not exert undue influence or undue pressure on an Eligible Employee to consent to a keeping in touch day.

(e) For the purposes of subclause 61.18(b)(iv) the following will be treated as two (2) separate periods of unpaid parental leave (meaning that an Eligible Employee can work up to ten (10) keeping in touch days during each period of leave):

(i) a period of Unpaid Parental Leave taken during the Eligible Employee's available parental leave period under subclause 61.3 (Unpaid Parental Leave) and 61.11 (Variation of period of unpaid parental leave (up to 12 months)); and

(ii) an extension of the period of Unpaid Parental Leave under subclause 61.12 (Right to request an extension of period of unpaid parental leave beyond 12 months).

(f) Subclause 61.18(a) does not apply in relation to the Eligible Employee on and after the first day on which the Employee takes flexible unpaid parental leave in relation to the Child.

62 Breastfeeding

62.1 Paid break

The Employer will provide reasonable paid break time for an Employee to express breast milk for their nursing child each time such Employee has need to express the milk, or breastfeed the child within the workplace, for one year after the child's birth.

62.2 Place to express or feed

The Employer will also provide a comfortable place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an Employee to express breast milk or breastfeed a child in privacy.

62.3 Storage

Appropriate refrigeration will be available in proximity to the area referred to in subclause 62.2 for breast milk storage. Responsibility for labelling, storage and use lies with the Employee.

63 Long Service Leave

Casual Employees are entitled to Long Service Leave in accordance with the Long Service Leave Act 2018 (Vic) (or applicable legislation).

63.1 Definitions

The following meanings shall apply to the terms referred to below for the purposes of this clause unless a contrary intention is apparent:

(a) **Allowable Period of Absence** means five weeks in addition to the total period of paid annual leave and/or personal leave that the Employee actually receives on termination, or for which they are paid in lieu.

(b) **Continuous Service** means continuous service with the same Employer plus any prior continuous service of six months or more with one or more Employers covered by this Agreement, an Institution or a Statutory Body.

(c) **Continuous Casual Employment** means, for the purpose of this clause, a period or periods of casual employment with the same Employer that are taken to be continuous, because one of the following applies:

(i) the period starting at the end of a particular instance of employment and ending at the start of another particular instance of employment did not exceed either the Allowable Period of Absence, or 12 weeks (whichever is greater); or

(ii) one of the circumstances described in section 12(3) of the LSL Act applies, namely:

(A) the casual Employee had been employed by an Employer on a regular and systematic basis and the casual Employee had a reasonable expectation of being re-engaged by the same Employer; or

(B) any absence was due to the terms of engagement of the casual employee; or

(C) any absence was caused by seasonal factors; or

(D) the casual Employee and Employer agreed, before the start of an absence, to treat the employment as continuous despite the absence.

(d) **Full-time Employee** means an Employee classified or employed as such at the time they apply for or commence long service leave;

(e) **Institution** means any hospital or benevolent home, community health centre, Society or Association registered and subsidised pursuant to the *Health Services Act 1988* (Vic), the Cancer Institute constituted under the *Cancer Act 1958* (Vic) or the Fairfield Hospital Board or the Bush Nursing Association (Inc).

(f) **LSL Act** means the *Long Service Leave Act 2018* (Vic).

(g) **Month** means a calendar month.

(h) **Pay** means, **for a Full-time Employee or Part-time Employee**, the remuneration for an Employee's normal weekly hours of work calculated at the Employee's ordinary time rate of pay at the time the leave is taken or (if they die before the completion of leave so taken) as at the time of their death, and will include the

amount of any increase to the Employee's ordinary time rate of pay which occurred during the period of leave as from the date of such increase operates.

Where a part-time Employee's hours fluctuate because the Employee works additional ordinary shifts (but excluding a permanent variation), the 'normal weekly hours of work' will be calculated by taking an average over the preceding 12 months where this is more favourable to the Employee.

(i) **Part-time Employee** means an Employee classified or employed as such at the time they apply for or commence long service leave;

(j) **Statutory Body** means the former Hospitals and Charities Commission (Vic) and its successors, the Victorian Department of Health and/or its predecessors and successors.

(k) **Transfer of business** occurs in the circumstances described at section 311 of the Act.

63.2 Entitlement

(a) Subject to subclause 63.4, Full-time and Part-time Employees are entitled to:

(i) six months' long service leave with Pay on completion of fifteen years of Continuous Service; and

(ii) thereafter, an additional two months' long service leave with Pay on completion of each additional five years of Continuous Service.

(b) Subject to subclause 63.4(d) and (e), the entitlement under subclause 63.2(a) may be taken in advance on a pro rata basis if the Employee has accrued at least 7 years' Continuous Service.

63.3 Calculating Continuous Service

(a) **Periods that count towards Continuous Service**

Service or prior service during the following periods will be deemed to be continuous and will count as Continuous Service for the purpose of subclause 63.1(b):

(i) an absence from work on any form of paid leave approved in writing by the Employer (e.g. annual leave, personal leave, long service leave and paid parental leave);

(ii) any interruption or ending of employment by the Employer if made with the intention of avoiding obligations in respect of long service leave or annual leave;

(iii) up to the FFPPOOA commencement of the Agreement, any absence on account of illness or injury arising out of or in the course of the employment of the Employee for a period during which an Employee is receiving accident make-up pay (see clause 32);

(iv) a period of absence on community service leave under the Act;

(v) any absence from employment on defence service in accordance with section 8 of the *Defence Reserve Service (Protection) Act 2001* (Cth);

(vi) in the case of casual employment:

(A) periods of Continuous Casual Employment with the current Employer (in a role covered by this Agreement); and

(B) prior Continuous Casual Employment of six months or more that was with one or more Employers, Institutions, or Statutory Bodies;

(vii) in the case of unpaid absences not otherwise referenced in this subclause:

(A) any unpaid leave that is authorised in advance in writing by the Employer to count as service; or

(B) up to the FFPPOOA commencement of the Agreement, any unpaid absence from work of not more than fourteen days in any year on account of illness or injury; or

(C) on and from the FFPPOOA commencement of the Agreement:

(1) any period of unpaid leave taken on account of illness or injury;

(2) a period of Parental Leave, including Parental Leave that is extended under subclause 61.12; and

(3) the first 52 weeks of any other type of unpaid leave not specifically referenced in this subclause,

save that if long service leave was already taken or paid in lieu in respect of any period referred to above, no further benefit to long service leave will arise in respect of that period.

(b) **Periods that do not break Continuous Service, but do not count towards Continuous Service**

Unless otherwise agreed in writing in advance between the Employer and the Employee, the following periods do not break Continuous Service but do not count towards an Employee's Continuous Service for the purpose of calculating the employee's long service leave entitlement:

(i) any authorised period of unpaid leave not referred to in subclause 63.3(a);

(ii) any period between the engagement with one Employer, Institution or Statutory Body and another provided it is equal to or less than the Allowable Period of Absence;

(iii) the dismissal of an Employee if the Employee is re-employed by the same Employer within a period not exceeding two months from the date of such dismissal;

(iv) subject to the requirements of the Act, any interruption arising directly or indirectly from an industrial dispute;

(v) up to the FFPPOOA commencement of the Agreement, any absence on account of injury arising out of or in the course of their employment not covered by a period in which the Employee is receiving accident make up pay or other paid leave; and

(vi) any absence from work for a period not exceeding 12 months in respect of a pregnancy, where the pregnancy is not covered by subclause 63.3(a)(i) or 63.3(a)(vii).

(c) **Transfer of business**

Where a Transfer of Business occurs, an Employee who worked with the old Employer and who continues in the service of the new Employer will be entitled to count their service with the old employer as service with the new Employer for the purposes of this clause.

(d) **Proof of sufficient aggregate of service**

The onus of proving a sufficient aggregate of service to support a claim for any long service leave entitlement will at all times rest upon the Employee concerned. A Certificate of Service in the same or a similar form as **Appendix 4** will constitute acceptable proof.

63.4 Taking of leave

(a) **When leave is to be taken**

(i) Subject to subclause 63.4(a)(ii), an Employee must be granted long service leave within six months from the date of the entitlement arising under subclause 63.2(a). By agreement, the taking of the leave may be postponed to such a date mutually agreed, or in default of agreement, by determination of the Commission (provided that no such determination shall require the leave to commence before the expiry of six months from the date of such determination); and

(ii) An Employee of Northern Health who is able to take a period of long service leave under this clause may nominate their preferred date(s) for the taking of leave, save that the Employer may refuse the date(s) so nominated on reasonable business grounds.

(b) **How leave is to be taken**

(i) Subject to subclause 63.4(b)(ii), an Employee may request to take long service leave as a single entitlement or in multiple separate periods, with each period being not less than 1 week.

(ii) An Employee may request to take long service leave for a period of less than one week (with each period being no less than one (1) day) if:

(A) the Employee is employed by Northern Health; or

(B) the Employee is employed by a different Employer, and the Employer can reasonably accommodate the request.

(iii) By agreement, Employees may also utilise their long service leave entitlements as part of a Transition to Retirement in accordance with clause 25.

(c) **Payment for period of leave**

(i) Payment will be made in one of the following ways:

(A) in full advance when the Employee commences their leave;

(B) at the same time as payment would have been made if the Employee had remained on duty; or

(C) in any other way agreed between the Employer and Employee.

(ii) Where an Employee has been paid in advance, and an increase to the Employee's ordinary time rate of pay occurs during the period of long service leave taken, the Employee will be entitled to receive payment of the amount of any increase in pay at the completion of such leave.

(d) **Long service leave in advance**

(i) An Employee who is not eligible to take long service leave (including on a pro rata basis under subclause 63.2(b)) may request to take leave in advance by mutual agreement with the Employer.

(ii) If an Employee takes long service leave in advance, the Employee is not subsequently entitled to any further long service leave or payment in lieu of long service leave for the period of employment in respect of which the leave in advance was taken.

(iii) If an Employee takes long service leave in advance, and the Employee's employment ends before the entitlement has manifested, the Employer may deduct from any payment payable to the Employee as a result of the ending

of the employment, an amount equal to the amount paid to the Employee for the leave, in respect of which the Employee will not become entitled.

(e) **Flexible taking of leave**

(i) An Employer may approve an application by an Employee to take double the period of long service leave at half Pay, or half the quantum of leave at double Pay (as the case may be). An Employer's approval under this clause will not be unreasonably withheld.

(ii) Employees should seek independent advice regarding the taxation and superannuation implications of seeking payment under this subclause 63.4(e). The Employer will not be held responsible in any way for the cost or outcome of any such advice.

(iii) The Employer, if requested by the Employee, will provide information as to the amount of tax the Employer intends to deduct where payment of long service leave is sought under subclause 63.4(e)(i).

(iv) If granting the request under this sub-clause would result in an additional cost to the Employer, the Employer may refuse the Employee's request.

(v) Flexible taking of long service leave does not affect an Employee's period of Continuous Service recognised. For example, an employee taking 12 months of long service leave at half pay will, for the purpose of calculating continuous service, have six months of continuous service recognised.

(f) **Payment in lieu of long service leave during employment**

An Employee may not cash out, or receive payment in lieu of accrued long service leave, except in accordance with clauses 63.4(e) and 63.5.

(g) **Public holidays**

Long service leave is inclusive of Public Holidays. See also clause 50 (Public Holidays).

63.5 Payment on termination of employment

(a) **Interpretation**

For the purposes of this subclause 63.5, termination of employment has its ordinary meaning, provided that it is taken to occur upon conversion from Full-time Employment or Part-time Employment to casual employment.

(b) **Basic entitlement at termination of employment**

Except where an election is made under subclause 63.5(c) below, an Employee with an entitlement to long service leave under subclause 63.2 is entitled to payment in lieu of untaken long service leave upon termination of employment, calculated as follows:

(i) if the termination occurs by reason of serious or wilful misconduct and the employee has accrued less than fifteen years' Continuous Service, one sixtieth of the period of Continuous Service; or

(ii) subject to subclause 63.4, if the termination occurs for any other reason, one thirtieth of the period of Continuous Service.

(c) **Election for payment of entitlement or transfer of entitlement at termination**

(i) A Full-time or Part-time Employee who has an entitlement to take long service leave on a pro rata basis under subclause 63.2(b) (who therefore has less than 15 years' Continuous Service) and who intends to be re-employed by another Employer as a Full-time or Part-time Employee may:

(A) request in writing that payment for accrued long service leave be deferred until after the Employee's Allowable Period of Absence (as defined above) has expired; and

(B) where the Employee notifies the initial Employer in writing within the Allowable Period of Absence that the Employee has been employed as an Employee by another Employer, the initial employer is no longer required to make payment to the Employee in respect of such service.

(ii) Where the notice referred to at 63.5(c)(i)(B) is not provided prior to or within the Allowable Period of Absence, the Employer will, upon the expiration of the allowable period of absence, make payment in lieu of long service leave as per subclause 63.5(b).

(iii) For the removal of doubt, an Employee who has an entitlement to take long service leave under subclause 63.2(a) may not make an election under this clause in respect of that entitlement.

(d) **Payment in lieu of long service leave on the death of an Employee**

Where an Employee who has an entitlement to long service leave (or pro rata long service leave) under subclause 63.2 dies while still in the employ of the Employer, payment in lieu of long service leave will be made to the Employee's personal representative equal to that in clause 63.5(b) above.

63.6 Transitional Arrangements for Parental Leave taken after 1 November 2018 and before the FFPPOOA commencement of the Agreement

Note 1: Unpaid Parental Leave taken prior to 1 November 2018 does not count as Continuous Service unless otherwise agreed, per subclause 63.3(a)(vii)(A).

Note 2: Unpaid Parental Leave taken after the FFPPOOA commencement of the Agreement will constitute Continuous Service, per subclause 63.3(a)(vii)(C)(2).

(a) As an exception to subclause 63.3(b), an Employee who took a period of unpaid Parental Leave that included any part of the period between 1 November 2018 and FFPPOOA commencement of the Agreement (inclusive) may have that service recognised for Long Service Leave purposes in the following circumstances:

(i) where the period of parental leave was taken with the Employee's current employer, and the Employer confirms in writing that the parental leave will be recognised for Long Service Leave purposes. Where this occurs, the Employer will ensure that the period is reflected in the Employee's Certificate of Service at the time their employment ceases; or

(ii) where the Employee makes a written application to their Employer for recognition of that service in the form required by the Employer. The Employer will approve any such application and provide to the Employee an updated Certificate of Service reflecting the adjusted service arrangements.

(b) An Employee electing to make an application under 63.6(a)(ii) must make the application to the Employer no later than 6 months of the following (whichever occurs last):

(i) the date on which this Agreement commences; or

(ii) the date on which the Employee returns to work after the qualifying period of unpaid Parental Leave.

(c) This subclause 63.6 shall apply to an Employee in respect of a former employer if the Employee took a qualifying unpaid period of Parental Leave under this clause while employed by that former employer.

63.7 Records

The Employer will keep a long service leave record for each Employee, containing particulars of service, leave taken, and payments made.

63.8 Savings

No Employee shall suffer any detriment as a result of the operation of this clause to their entitlement to long service leave existing immediately prior to the coming into force of this clause.

64 Blood Donors Leave

Upon the request of an Employee, the Employer shall release an Employee to donate blood where a collection unit is on site or by arrangement at the local level.

65 Leave to Engage in Voluntary Emergency Management Activities

65.1 An Employee who engages in a voluntary emergency management activity with a recognised emergency management body that requires the attendance of the Employee at a time when the Employee would otherwise be required to be at work is entitled to paid/unpaid leave for:

(a) time when the Employee engages in the activity;

(b) reasonable travelling time associated with the activity; and

(c) reasonable rest time immediately following the activity.

65.2 The Employee must advise the Employer as soon as reasonably practicable, which may be at a time after the absence has started, if the Employee is requested to attend a voluntary emergency management activity and must advise the Employer of the expected or likely duration of the Employee's attendance. The Employee must provide a certificate of attendance or other evidence that would satisfy a reasonable person of attendance where requested by the Employer.

65.3 Recognised emergency management bodies include but are not limited to, the Country Fire Authority, Red Cross, State Emergency Service and St John Ambulance.

65.4 An Employee who is required to attain qualifications or to requalify to perform activities in an emergency management body must be granted leave with pay for the period of time required to fulfil the requirements of the training course pertaining to those qualifications, provided that such training can be undertaken without unduly affecting the operations of the Employer.

65.5 The leave under this clause 65 will be paid up to two (2) weeks per calendar year, save that approval of paid leave is subject to the operational requirements of the Employer resulting from any emergency.

65.6 Nothing in this clause 65 limits the ability of an Employee to be absent from employment for engaging in eligible community service activity in accordance with Division 8 of the Act.

66 Ceremonial Leave

66.1 An Employee who is legitimately required by Aboriginal and/or Torres Strait Islander tradition to be absent from work for ceremonial purposes will be entitled to up to ten working days' unpaid leave in any one year, with the approval of the Employer.

66.2 Where an Employer receives a request to substitute a public holiday in accordance with clause 50.4 of this Agreement for a day during NAIDOC week, the Employer will consider all the circumstances including:

(a) any reason identified by the Employee with respect to the request; and

(b) the operational requirements of the Employer.

66.3 An Employer will not unreasonably refuse a request to substitute a public holiday under this subclause.

67 Jury Service

NOTE: Payments to Employees (other than casuals) for Jury Service is provided for in the NES. This clause contains supplementary terms. The Juries Act 2000 (Vic) provides further terms, including those that apply to casuals.

67.1 An Employee required to attend for jury service during their ordinary working hours shall be reimbursed by the Employer an amount equal to the difference between:

(a) the amount paid by the state of Victoria in respect of attendance for such jury service; and

(b) the amount the Employee could reasonably expect to have received from the Employer as earnings for the period at subclause 67.1(a) had they not been on jury service.

67.2 An Employee will notify the Employer as soon as possible of the date they are required to attend jury service.

67.3 The Employee will give the Employer evidence of:

(a) attendance at the court;

(b) the duration of such attendance; and

(c) the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable, to the Employee for the period.

67.4 The Employee is not entitled to payment until the Employee provides evidence required by subclause 67.3.

68 Absences on Defence Service

This clause does not apply to casual Employees.

68.1 An Employee absent on defence service will be reimbursed by the Employer an amount equal to the difference between:

(a) the amount paid in respect of a period during which the Employee was absent on defence service (as defined below); and

(b) the amount the Employee could reasonably have received from the Employer as earnings for that period had the Employee not been absent on defence service.

68.2 An Employee will notify the Employer as soon as possible of the date they require leave for defence service. The Employee will give the Employer proof that the absence relates to defence service, the duration of such absence and the amount received for the relevant defence service period.

68.3 In this clause 'absence [or absent] on defence service' has the meaning contained in section 24A of the *Defence Reserve Service (Protection) Act 2001* (Cth), as amended from time to time.

Example:

The Employee is on Defence Service leave for the duration of a particular pay period. Were the Employee not on Defence Service leave in that pay period they would have worked on the Sunday and Monday evening shift of each week of the pay period. The Employee is entitled to payment as though at work for each of the Sunday and Monday evening shifts less the amount of payment (not including reimbursements) from the Defence Service for the equivalent time of the Sunday and Monday evening shifts.

69 Special Disaster Leave

69.1 Special disaster leave of up to three (3) days per calendar year is payable where:

(a) the Employee is a full-time or part-time Employee;

(b) personal/carers leave is not available either because the Employee has exhausted the accrual or the circumstance does not qualify for personal/carers leave; and

(c) the Employee is unable to attend work due to a disaster (such as fire or flood) where:

(i) the Employee's residence is damaged or under imminent threat of major damage;

(ii) the lives or safety of their immediate family or household members are threatened; or

(iii) there is a formal closure, flooding or other unusual danger of the use of a road(s) which is the Employee's normal travel route to work and no alternative practicable travel route is available.

69.2 Special disaster leave is non-cumulative.

70 Leave Without Pay

70.1 Definitions

For the purposes of this clause 70 only, continuous service includes:

(a) continuous service with one and the same Employer, or

(b) continuous service with more than one Employer including institutions or statutory bodies (as defined at subclause 63.1(e) and (j)), and

(c) an allowable period of absence (as defined at subclause 63.1(a)).

70.2 Leave without pay for research or study

(a) A full-time or part-time Employee may make an application for a period of up to 12 months unpaid leave where:

(i) they have completed six (6) years continuous service, and

(ii) the sole purpose of the unpaid leave is to undertake a course of study or research relevant to their work.

(b) The onus of proving a sufficient aggregate of service to support a claim for unpaid leave will rest with the Employee.

(c) The application must be in writing and include details of the proposed course of study or research and its relevance to the Employee's work.

(d) The Employer will only refuse the application on Reasonable Business Grounds.

(e) Subject to the terms of this Agreement, an unpaid leave of absence taken in accordance with this clause will not count towards continuity of service (including for Long Service Leave purposes), however it will not break service.

70.3 Other leave without pay

(a) An Employer is not prohibited from granting discretionary leave without pay:

(i) that is longer than 12 months duration, and/or

(ii) for a reason other than study or research.

(b) Such applications may be granted by agreement only and in accordance with the Employer's policy.

PART H – EDUCATION AND PROFESSIONAL DEVELOPMENT

71 Supporting Professional Development

71.1 Employers will ensure Employees have equitable access to voluntary in-service training or professional development opportunities.

71.2 Employers will communicate such upcoming training or professional development opportunities to Employees through established channels, such as email notifications, intranet announcements, or team meetings.

71.3 If an application is made to access Professional Development Leave under clause 72 (or other leave under the Agreement), subject to the specific clause, approval of leave will not be unreasonably withheld.

71.4 Professional Development Allowance

This subclause does not apply to casual Employees.

(a) Full-time Employees will be entitled to an annual professional development allowance in accordance with the following table:

Payment Amount	Eligibility Date
$1500.00	FFPPOOA commencement of the Agreement
$1545.00	FFPPOOA 1 August 2025
$1591.35	FFPPOOA 1 August 2026
$1639.09	FFPPOOA 1 August 2027 and each 1 August thereafter

(b) **Additional payment**

Employees who were employed by an Employer on 13 September 2023 and are Employees on commencement of the Agreement are entitled to a once off $500 payment in recognition of the professional development allowance that was not received in 2023.

(c) The amounts at subclause 71.4(a) and (b) will be paid pro rata for part-time Employees.

(d) The professional development allowance is additional to any other allowance or entitlement within this Agreement.

72 Professional Development Leave

72.1 Professional Development is the means by which members of a profession maintain, improve and broaden their knowledge and expertise, and develop personal and professional qualities by:

(a) reviewing practice;

(b) identifying learning needs;

(c) planning and participating in relevant learning activities; and

(d) reflecting on the value of those activities.

Professional development may be for the Employee's current position or job, or another position or job that would be covered by this Agreement.

72.2 Professional Development Activities

Professional development activities include, but are not limited to:

(a) short courses;

(b) further tertiary studies;

(c) research;

(d) study (including home study);

(e) training;

(f) attending a conference;

(g) attending a seminar;

(h) attending a webinar; and

(i) attending a lecture.

72.3 Amount of Professional Development Leave

(a) A full-time Employee (including a fixed-term Employee) is entitled to seven (7) days' paid professional development leave per calendar year, in addition to other prescribed leave entitlements. Part-time Employees have a pro rata entitlement.

(b) An Employee may utilise professional development leave for part of a single day.

72.4 Payment

Day for the purposes of professional development leave is the Employee's usual shift length on the day the leave is taken.

72.5 Accumulation of Professional Development Leave

The leave is cumulative over two (2) calendar years.

72.6 Application Process

(a) Professional Development Leave is available only on written application by the Employee.

(b) Where practicable, the application must be made at least six (6) weeks prior to the proposed professional development leave date(s). Nothing prevents an application being made less than six (6) weeks before the proposed professional development leave activity.

(c) The application must include:

(i) the proposed date(s);

(ii) a brief description of the nature of the professional development activity to be undertaken and its applicability to the Employee's profession; and

(iii) where the leave is taken to attend a conference or seminar, the name, venue and date/time.

(d) Applications for leave may include the period of time in which the Employee is traveling to and from the Professional Development activity.

72.7 Response to Application

(a) Approval of the application will not be unreasonably withheld by the Employer.

(b) The Employer must respond to the Employee's application in writing as soon as possible, but no later than seven (7) days of the application being made.

(c) If leave is not approved the reasons will be included in the written notification to the Employee.

72.8 Professional development activities occurring on a day the Employee would not otherwise work

(a) Where a request for professional development leave which is approved by the Employer covers a period where the Employee is not rostered to work (e.g. on weekends, ADOs or after hours), the Employer will provide time off in lieu for such period of the professional development activity.

(b) Time off must be taken at a time or times agreed by the Employee and Employer.

(c) Time in lieu in this subclause 72.8 is on the basis of time for time at ordinary rates and does not include any benefit or payment for any overtime, penalties or allowances under this Agreement which would normally be paid for such periods of duty.

72.9 Report Back

An Employee may be required to provide a reasonable report back on a seminar or conference, provided they are:

(a) advised of this requirement prior to the Employee attending the professional development activity, and

(b) allocated sufficient time during their ordinary hours of work to prepare for and deliver this.

72.10 Mandatory Training

Any education or training (however titled):

(a) the Employer requires an Employee to attend, such as fire, workplace bullying and equal opportunity training; and/or

(b) that is necessary for an Employee to perform their position/role, such as learning how to use a new piece of equipment or updates on policies / procedure;

will occur within an Employee's paid time and no deduction will be made to an Employee's professional development leave entitlement for such education or training.

72.11 Childcare Expenses

(a) Upon the provision of evidence, an Employee will be entitled to the reimbursement of reasonable additional childcare expenses incurred during their approved Professional Development Leave where the Employee is the primary care giver of a child or children and has responsibility for the child(ren) during the professional development activity.

(b) Receipts identifying the expense incurred must be provided to the Employer as soon as practicable after the Professional Development Leave.

(c) Employees will be entitled to a maximum reimbursement of $250 per period of Professional Development Leave.

73 Study Leave

This clause does not apply to casual Employees.

73.1 Quantum of paid study leave available

(a) Unless otherwise agreed, Employees will be entitled to paid study leave of up to a maximum of 4 hours per week for up to 26 weeks per annum.

(b) A part-time Employee will be entitled to study leave on a pro-rata basis.

(c) Study leave pursuant to this clause does not accumulate from year to year.

73.2 When paid study leave available

(a) Study leave will be available at the Employer's discretion. The Employer will not unreasonably refuse a request for study leave provided the leave is for Biomedical Engineering, scientific or health related study appropriate to the Employee's role.

(b) Study leave relevant to the Employee's duties and classification shall be taken as mutually agreed by, for example, four hours per week, eight hours per fortnight or in blocks of 38 hours.

(c) Paid study leave may, where mutually agreed, be used for the purpose of completing online or in-person components of the approved course, including for the purpose of undertaking placement that cannot be provided by their Employer.

73.3 Application for paid study leave

(a) An Employee wishing to take study leave must:

(i) apply in writing to the Employer as early as possible prior to the proposed leave date; and

(ii) include with this application:

(A) details of the course and institution in which the Employee is enrolled or proposes to enrol; and

(B) details of the relevance of the course to the Employee's employment.

(b) The Employee must also notify the Employer of any change to the course or institution (if relevant), provided that if such notice is not given, approval for study leave may be withdrawn by the Employer.

73.4 Response to application for paid study leave

(a) Wherever possible, the Employer must notify the Employee of whether their request for study leave has been approved within seven days of the application being made.

(b) In reaching a decision on approval, the Employer may take account of operational requirements and the relevance of the course.

74 Examination Leave

74.1 An Employee shall be granted leave with full wages in order to attend examinations necessary to obtain a qualification as specified in clause 33 of this Agreement, provided that such examinations are held within the Commonwealth of Australia.

74.2 The amount of such leave shall be sufficient to allow the Employee:

(a) to proceed to and from the place of examination; and

(b) in addition, allow three clear days prior to the oral examination and either three clear days or three single days prior to the written papers with a maximum of six days pre-examination study leave in any calendar year.

74.3 Any leave granted under the provision of this clause shall be in addition to the provisions of clause 51 - Annual leave.

75 Staff Appraisals

This clause does not apply to Employees at Peter MacCallum Cancer Centre.

75.1 Where a system of staff appraisals does not currently exist at a workplace, the Employer may implement and the Employees will participate in a performance appraisal process provided:

(a) The Employer will first consult at the local level with Employees and/or their nominated representatives over a framework for staff appraisal process it is seeking to introduce;

(b) The staff appraisal process is not used as a disciplinary tool;

(c) The staff appraisal process is intended to allow genuine feedback by both Employer and Employee; and

(d) The outcomes of the review are documented and confirmed and a written copy of the outcome is given to the Employee.

76 Vacancies

76.1 This clause applies to a vacancy which relates to a position that, but for the vacancy occurring, would have been ongoing.

76.2 If the Employer elects to fill the vacancy, they will advertise the position as soon as reasonably practicable. Where an Employer elects not to fill the vacancy, or to make changes to the vacant position, they must review any obligations under clause 13 (Consultation).

76.3 During any period between a position becoming vacant and the position being filled, the Employer will ensure Employees' workloads are managed in accordance with clause 84 (Workload). This may include but is not limited to:

(a) Backfilling the vacant position;

(b) Prioritising work in the area the vacancy has occurred to ensure the work that was done by the Employee who has left is not required to be undertaken by any other staff member/s; or

(c) Prioritising work in the area the vacancy has arisen to ensure workloads of staff member/s who may be asked to perform the priority duties of the vacant position are adjusted by reducing their normal duties.

77 Replacement Positions (The Royal Children's and The Royal Women's Hospital Only)

77.1 The Employer shall discuss with affected Employees strategies to address workload issues arising from where an incumbent Employee is absent on prolonged leave, such as extended annual leave, parental leave, long service leave and WorkCover.

77.2 Such discussions shall occur in consultation with the relevant Department Head and any nominated representative chosen by the Employee (which may be the Union) and shall have regard to the operational requirements of the particular workplace.

PART I – UNION MATTERS AND BEST PRACTICE EMPLOYMENT COMMITMENT

78 Union Matters

78.1 Access to Employees – General

The Union will have access to Employees for any process arising under this Agreement.

78.2 Access to Employees – Electronic communication

The Employer will ensure that:

(a) emails from the Union domain name are not blocked or restricted by or on behalf of the Employer, except in respect of any individual Employee who has made a written request to the Employer to block such emails;

(b) emails from Employees to the Union are not blocked or restricted by or on behalf of the Employer;

(c) access from health service computers and like devices to Union websites and online information is not blocked, or limited; and

(d) where a genuine security concern arises regarding the above, the Employer will immediately notify the Union to enable the security concern to be addressed.

78.3 Access to Employees – Orientation

(a) The Union may attend and address new Employees as part of their orientation / induction, provided that any attendance for the purposes of discussions with the Employees meets the right of entry requirements under Part 3-4 of the Act (Entry Requirements).

(b) Within 3 months of a new Employee/s commencement date, the details of such attendance will be arranged by the Employer in consultation with the Union, save that an Employer will advise the Union of the date, time and location of any general orientation / induction programs not less than 14 days prior to the orientation / induction program.

(c) An Employer and Union may agree to an alternative means by which the Union can access new Employees (provided that such access is consistent with the Entry Requirements) including where:

(i) orientation / induction programs are conducted on-line,

(ii) the Union cannot reasonably attend, or

(iii) the Employer provides new Employees with written information from the Union.

78.4 Delegates and HSRs

NOTE: Additional rights of HSRs are contained in the OHS Act.

(a) In this subclause 78.4:

(i) **Representative** means a Union Delegate, or HSR;

(ii) **Relevant Employee** means

(A) In the case of a Union Delegate, members of the Union and any other persons eligible to be members of the Union; and

(B) In the case of a HSR, members of the designated work group eligible to be represented by the HSR.

(iii) **Union Delegate** means, for the purposes of this clause, an Employee who presents themselves as a delegate of a Union to their Employer, and is endorsed by the Union.

(b) A Union Delegate is entitled to:

(i) represent the industrial interests of Relevant Employees, including in disputes between that person and the Employer; and

(ii) reasonable communication with members of the Union, and any other persons eligible to be members of the Union, in relation to their industrial interests.

(c) For the purposes of representing the industrial interests of members of the Union and any other persons eligible to be members of the Union, a Union Delegate is entitled to reasonable access to the workplace of the Employer and any workplace facilities where work of the Employer is being undertaken.

(d) A Representative is entitled to reasonable time release from duty to:

(i) attend to matters relating to industrial, occupational health and safety or other relevant matters such as assisting with grievance procedures and attending committee meetings;

(ii) access reasonable preparation time before meetings with management disciplinary or grievance meetings with a union member;

(iii) in the case of a Union Delegate:

(A) appear as a witness or participate in conciliation or arbitration, before the Commission;

(B) present information on the Union at orientation sessions for new Employees.

(e) A Representative required to attend management or consultative meetings outside of paid time will be paid to attend.

(f) A Representative will be provided with access to facilities such as telephones, computers, email, noticeboards and meeting rooms in a manner that does not adversely affect service delivery and work requirements of the Employer. In the case of an HSR, facilities will include other facilities as necessary to enable them to perform their functions as prescribed under the OHS Act.

(g) Except as otherwise required by law, the Employer will not:

(i) unreasonably fail or refuse to deal with a Union Delegate; or

(ii) knowingly or recklessly make a false or misleading representation to a Union Delegate; or

(iii) unreasonably hinder, obstruct or prevent a Union Delegate from exercising any of their rights;

insofar as the Union Delegate is acting in their capacity as a Representative.

78.5 Noticeboard

(a) A noticeboard for the Union's use will be readily accessible in each ward/unit/work area or nearest staff room where persons eligible to be members of the Union are employed.

(b) The Union and members covered by this Agreement will, during the life of this Agreement, consult over the development of an electronic noticeboard managed by the Union.

78.6 Meeting Space

In the absence of agreement on a location for the holding of Union meetings, the room where one or more of the Employees who may participate in the meeting ordinarily take meal or other breaks will be the meeting room for the purpose of Union meetings. Nothing in this clause is intended to override the operation of the Act.

78.7 Secondment to the Union

The Employer will, on application, grant leave without pay to an Employee for the purpose of secondment or other arrangement to work for the Union subject to the Employer's reasonable operational requirements.

78.8 Employees holding union official positions

The Employer will, on application by the Union, grant leave without loss of pay to an Employee for the purpose of fulfilling their duties as an official of the Association or Executive body of the Union.

78.9 Union Training

NOTE: Where a Union Delegate is also appointed as an HSR under the OHS Act, they may be entitled to additional training in accordance with the OHS Act.

(a) Subject to the conditions in this subclause 78.9, Employees selected by the Union to attend training courses on industrial relations and/or health and safety will be entitled to a maximum of five days' paid leave per calendar year per Employee.

(b) Leave in excess of five days and up to ten days may be granted in a calendar year subject to the total leave being granted in that year and in the subsequent year not exceeding ten days.

(c) The granting of leave will be subject to the Employer's operational requirements. The granting of leave will not be unreasonably withheld.

(d) Leave under this subclause is granted on the following conditions:

(i) applications are accompanied by a statement from the Union advising that it has nominated the Employee or supports the application:

(ii) the training is conducted by the Union, an association of unions or accredited training provider; and

(iii) the application is made as early as practicable and not less than two (2) weeks before the training.

(e) The Employee will be paid their 'ordinary pay' (as defined at 51 Annual Leave) for normal rostered hours (set out in **Appendix 2**), but excluding shift work, overtime and other allowances.

(f) Leave in accordance with this clause may include necessary travelling time in normal hours immediately before or after the course.

(g) Leave granted under this clause will count as service for all purposes of this Agreement.

(h) Expenses associated with attendance at training courses, including fares, accommodation and meal costs are not the responsibility of the Employer.

78.10 Workplace Implementation Committees

(a) A local Workplace Implementation Committee (**WIC**) will continue or, if there is not currently a WIC in operation, be established at each Employer. Having regard for the size and location, a WIC may be appropriate at each facility/campus. The WIC will, where practicable, comprise equal numbers of representatives of the Employer and the Union for the purposes of:

(i) agreement implementation;

(ii) on-going monitoring and assessment of the implementation of this Agreement; and

(iii) to deal with any local disputes that may arise, without limiting the Dispute Resolution Procedure in this Agreement.

(b) Priority items for consideration by the WIC will include the matters arising under clause 56 (Family Violence) and this clause 78 (Union Matters).

79 Best Practice Employment Commitment

79.1 The parties agree to establish a committee to discuss Best Practice Employment Commitments (BPEC) during the life of the Agreement (BPEC Committee) on matters which include:

(a) monitoring the implementation of the Agreement;

(b) implementation of a best practice guide to address emerging equity issues arising from flexible working arrangements;

(c) any legislative requirement to undertake gender equity activities;

(d) an agreed framework distributing, considering and implementing the outcomes of the bullying-related trials conducted within the six health services;

(e) an agreed framework for publishing the outcomes of the 'Thriving in Health' initiatives that were aimed at preventing psychological harm in the workplace;

(f) consolidation of major agreement provisions to reduce complexity and inefficiencies within the public health system;

(g) template change impact statements;

(h) development of a proposal for a new 'advanced practice' classification, to inform the next round of bargaining; and

(i) review of Employees' remuneration with specific regard to work value and interstate comparisons, to inform the next round of bargaining.

79.2 The BPEC Committee will schedule a minimum of three (3) meetings per year.

79.3 The BPEC Committee will comprise nominated representatives from the Unions, the VHIA and the Department (as required). The BPEC Committee may, by agreement, establish subgroups or delegate individual matters to a relevant Health Service(s) as required.

PART J – CLASSIFICATIONS AND STAFFING

80 Classification and Reclassification

80.1 Employees will be classified (including a reclassification request) as per the classification descriptors in clause 82.

80.2 The Employer shall notify each Employee in writing of their classification and terms of employment.

80.3 Position Description Review

(a) An Employee may request a position description (PD) review at any time in writing.

(b) Upon receipt of the written request, the Employer will review the Employee's PD within 30 days with a view to ensuring it accurately reflects their role's substantive tasks and duties.

(c) If, following the review, agreement is not reached on the contents of the PD, the Employer or Employee may refer it to the dispute resolution procedure in this Agreement (clause 14).

80.4 Reclassification

(a) Where an Employee believes that the work performed and required by their position is better described by another classification with a higher rate of pay, the Employee may seek reclassification by notifying the Employer in writing, addressing why they believe another classification better describes the work performed and required by their position, having regard to both the current and proposed classification. The Employee's Manager may also make the reclassification request.

(b) The Employer will provide a written response to the requested reclassification within four (4) weeks. Where the Employer, in accordance with subclause 80.1, does not believe the work performed and required by the Employee's position is better described by another classification, the Employer will provide the reasons for this, having regard to both the current and proposed classification.

(c) Where the Employer determines, in accordance with subclauses 80.4(a) and 80.4(b), that another classification better describes the work performed and required by the Employee's position, the reclassification will take effect from the earlier of:

(i) where it can reasonably be determined, the date on which the Employee's work was better described by another classification; or

(ii) the date the written reclassification request was submitted.

(d) Reclassification of an Employee does not rely on a vacancy or funding for the position but will be determined solely in accordance with the classification descriptors at clause 82.

(e) Nothing in this clause prevents an Employer from clarifying the requirements of an Employee's role where an Employer becomes aware an Employee is performing work that is not required by their position.

(f) Either the Employee or Employer may refer a request for reclassification to the dispute settlement procedure in clause 14 of this Agreement or if unable to be resolved, the Alternative Dispute Resolution Panel (clause 0).

81 Disclosure of Qualification

An Employee who is employed in or who is an applicant for employment covered by this Agreement shall if and when required to do so by their Employer or an Employer to whom they have applied for employment, produce to their Employer, written evidence that they possess or have acquired the qualification of Qualified Engineer or Experienced Engineer (as the case may be).

82 Classification Definitions

82.1 Biomedical Engineers Class 1

(a) Positions at Class 1 are regarded as entry level health professionals and for initial years of experience.

(b) Classes 1 & 2 may be the entry level for new graduates who meet the requirement to practice as a health professional (where appropriate in accordance with their professional association's rules and be eligible for membership of their professional association) or such qualification as deemed acceptable by the Employer. It is also the level for the early stages of the career of a health professional.

(c) Progression between Class 1 and 2 will be automatic.

82.2 Biomedical Engineers Class 2

(a) A health professional at this level works independently and is required to exercise independent judgement on routine matters. They may require professional supervision from more senior members of the profession or health team when performing novel, complex or critical tasks. They have demonstrated a commitment to continuing professional development and may have contributed to workplace education through provision of seminars, lectures or in-services. At this level the health professional may be actively involved in quality improvement activities or research.

(b) At this level the health professional contributes to the evaluation and analysis of guidelines, policies and procedures applicable to their clinical/professional work and may be required to contribute to the supervision of discipline specific students.

(c) Progression between class 1 and 2 will be automatic.

82.3 Biomedical Engineers Class 3

(a) The Biomedical Engineer Class 3 is capable of carrying out responsibilities and varied professional engineering work, and makes independent studies, analysis, interpretation and conclusions.

(b) The Biomedical Engineer Class 3/1 is a Biomedical Engineer who is appointed and who either:

(i) Is in charge of Biomedical Engineering staff, but not other professional engineers as a regular or continuous responsibility; or

(ii) Performs without engineering supervision normal professional Biomedical Engineering tasks and accepts technical responsibility for such work; or

(iii) Under professional engineering supervision undertakes more novel, more complex and/or critical Biomedical Engineering tasks.

(c) The Biomedical Engineer Class 3/1 is also a Biomedical Engineer who has:

(i) Assisted other Biomedical Engineering staff with the solution of technical problems; and/or

(ii) Demonstrated skill in the supervision of Biomedical Engineering staff; and/or

(iii) Demonstrated the ability to provide clinical staff with technical assistance relating to the safety, application, evaluation and/or selection of medical equipment;

(d) The Biomedical Engineer Class 3/2 is a Biomedical Engineer who is appointed or after not more than one year as a class 3/1 Biomedical Engineer has been assessed as competent at that Class and who has:

(i) Demonstrated the knowledge and ability to prepare written specifications for medical equipment; and/or

(ii) Demonstrated the knowledge and skill required to develop biomedical technology.

(e) The Biomedical Engineer Class 3/3 is a Biomedical Engineer who is appointed or after not more than one year as a Class 3/2 Biomedical Engineer has been assessed as competent at that Class and who has:

(i) Demonstrated the knowledge and ability to process medical product recalls, hazard alerts and incident investigations; and/or

(ii) Demonstrated a good understanding of the international standards and regulatory requirements relating to medical technology; and/or

(iii) Presented original research or biomedical technology design or development to a relevant professional group.

(f) Progression to class 3 is not automatic. Progression to class 3 will be by appointment (see also clause 80 – Classification and Reclassification).

82.4 Biomedical Engineer Class 4

(a) The Biomedical Engineer Class 4 is expected to possess mature engineering knowledge and judgement in Biomedical Engineering practice, to continue to develop expertise with advances in the relevant body of engineering knowledge, and, to seek and utilise other specialist advice when required. Such work normally is accepted as technically accurate and feasible.

(b) The Biomedical Engineer Class 4/1 is a Biomedical Engineer who is appointed or reclassified from a lower Class and who:

(i) is in charge of graduate Biomedical Engineering staff; or

(ii) has had the status of Experienced Engineer, as defined, for at least four years and is engaged upon Biomedical Engineering work of a research or development nature; or

(iii) works under broad policy control and direction on professional Biomedical Engineering work of a novel, complex and/or critical nature; or

(iv) is responsible for the organisation and supervision of the Biomedical Engineering work of a Department where considerations such as size, complexity of the work, or the scope of the managerial responsibility do not justify a position of engineer class 5.

(c) In addition to clause 82.4(b) the Biomedical Engineer Class 4/1 is a Biomedical Engineer and who has:

(i) demonstrated the ability to successfully manage material and financial resources allocated to a Biomedical Engineering department; and/or

(ii) developed policies and procedures for the successful operation of a Biomedical Engineering department; and/or

(iii) demonstrated the application of knowledge and skill to the development of specialist biomedical technology.

(d) The Biomedical Engineer Class 4/2 is a Biomedical Engineer who is appointed or after not more than one year as a Class 4/1 Biomedical Engineer has been assessed as competent at that Class and who has:

(i) demonstrated the skills required for the successful management of the staff of a Biomedical Engineering department; and/or

(ii) Developed or arranged for the development of training programs for other Biomedical Engineers or hospital professionals; and/or

(iii) Demonstrated initiatives in developing ad/or managing specialists biomedical technology.

(e) The Biomedical Engineer Class 4/3 is a Biomedical Engineer who is appointed or after not more than one year as a class 4/2 Biomedical Engineer has been assessed as competent at that Class and who has:

(i) provided the organisation with a medical equipment management service that is in accordance with best Biomedical Engineering practice; and/or

(ii) demonstrated the ability to provide clinical staff with engineering consultation relating to the safety, application, specification, evaluation and selection of medical equipment or systems; and/or

(iii) demonstrated the experience, knowledge and skill required for the development and/or management of specialist biomedical technology.

(f) Single site managers will be classified at Class 4.

(g) Progression to class 4 is not automatic. Progression to class 4 will be by appointment (see also clause 80 – Classification and Reclassification).

82.5 Biomedical Engineer Class 5

(a) The Biomedical Engineer Class 5 works under broad policy control and direction and undertakes professional engineering work requiring either sustained managerial functions or in-depth engineering knowledge and competence, exercising experienced independent judgement and originality.

(b) The Biomedical Engineer Class 5/1 is a Biomedical Engineer who is appointed or reclassified from a lower Class and who either:

(i) is responsible for the organisation and supervision of Biomedical Engineering work of a department; or

(ii) is a specialist Biomedical Engineer and who undertakes sustained specialist Biomedical Engineering functions beyond that of a Biomedical Engineer Class 4.

(c) The Biomedical Engineer Class 5/2 is a Biomedical Engineer who is appointed or after not more than two years as a Class 5/1 Biomedical Engineer has been assessed as competent at the leave and who:

(i) has been assessed as a competent manager of the personnel resources of a Biomedical Engineering department; and/or

(ii) assisted in the development of medical technology related policies and procedures for the organisation; and/or

(iii) has demonstrated specialist expertise and experience in the development and/or management of specialist biomedical technology.

(d) `The Biomedical Engineer Class 5/3 is a Biomedical Engineer who is appointed or after not more than two years as a Class 5/2 Biomedical Engineer has been assessed as competent at that Class and who has:

(i) demonstrated good management practices; and/or

(ii) provided a medical equipment management service that is in accordance with best Biomedical Engineering practice; and/or

(iii) provided clinical staff with a high level of engineering consultation relating to the safety, application, specification, evaluation and selection of medical equipment or systems; and/or

(iv) developed and/or managed specialist biomedical technology and who has presented original research or biomedical technology design or development information to a relevant professional group.

(e) A multi-site manager will be classified as a Class 5.

(f) Progression to class 5 is not automatic. Progression to class 5 will be by appointment (see also clause 80 – Classification and Reclassification).

83 Progression

Progression within each Class is based on years of service.

83.1 Biomedical Engineer – Class 1

(a) A Biomedical Engineer who holds, or is qualified to hold a degree of Bachelor of Engineering after having undertaken a four or five year full-time course, or the equivalent part-time, recognised by the Institute of Engineers Australia, shall be entitled to be classified as a Biomedical Engineer Class 1 Year 2.

(b) A Biomedical Engineer who holds, or is qualified to hold the degree of Masters of Engineering Science, Master of Engineering or the equivalent Masters degree, shall be entitled to be classified as a Biomedical Engineer Class 1 Year 3, provided further that a Biomedical Engineer so classified shall not be entitled to the higher qualification payment prescribed in clause 33 for a further period of two years.

(c) A Biomedical Engineer who holds, or is qualified to hold the degree of Doctor of Philosophy or Doctor of Engineering shall be entitled to be classified as a Biomedical Engineer Class 1 Year 4, provided further that a Biomedical Engineer so classified shall not be entitled to the higher qualification payment prescribed in clause 33 for a further period of two years.

(d) A Biomedical Engineer who is an Experienced Engineer (as defined) shall be entitled to be classified as a Biomedical Engineer Class 2 Year 1.

(e) A sole Biomedical Engineer (i.e. one who is the only Biomedical Engineer employed in a Department), shall be paid at the rate of 5% of the Biomedical Engineer Class 1 Year 1 in addition to the appropriate rate applicable to a Biomedical Engineer Class 1 Year 1.

83.2 For the purpose of this clause:

(a) The "**first year of experience after qualification**" referred to in clause 83.1 of this Agreement shall be deemed to commence on the 1st day of January in the year following the year during which the Biomedical Engineer presented himself/herself

for final examination which, if successful, would entitle the Biomedical Engineer to the Degree of Bachelor of Engineering. Where a Biomedical Engineer was required to attend a supplementary examination, such Biomedical Engineer shall if successful, be deemed to have passed the final examination in the year during which such final examination was held.

(b) Where a Biomedical Engineer Class 1 – 1st year of experience after qualification commences employment during the first year after qualification, such Biomedical Engineer shall be advanced to the classification Biomedical Engineer – Class 1 Year 2 as from the 1st day of January in the next succeeding year.

83.3 Incremental Progression

(a) Biomedical Engineers shall be eligible for progression from one pay point to the next pay point within each classification if:

(i) The Biomedical Engineer has given satisfactory performance over the preceding twelve months; and

(ii) The Biomedical Engineer has on assessment acquired and is required by the Employer to utilise new and/or enhanced skills within the ambit of the classification definition for the Biomedical Engineers position or other skills as agreed, and this has been certified to in writing following, and as part of, the assessment process.

(b) The Employer must advise each Employee of any professional development or training reasonably required for annual progression. This advice shall be provided in a timely manner, allowing Employees genuine opportunity to undertake the necessary development or training.

(c) In cases where the Employer fails to fulfill the duty to advise an Employee of such professional development or training, a failure to complete such professional development or training cannot be relied upon to prevent annual progression where the requirements of subclause 83.3(a) have otherwise been met.

(d) Employees shall, subject to subclause 83.3(a), be paid at the next pay point from the anniversary of their appointment to the classification.

(e) In cases where the assessment is delayed, the anniversary date shall not be changed and the increase, if any, will be paid retrospectively to the anniversary date.

84 Workload

84.1 Purpose

(a) The Employer acknowledges the benefits to both the organisation and the individual Employees gained through Employees having a balance between both their professional and family life.

(b) The allocation of work must consider the Employee's hours of work, health, safety and welfare.

(c) The Employer is obliged by the OHS Act to provide a safe workplace. It is recognised that adequate staffing affects workload and is relevant to occupational health and safety in the workplace.

84.2 Reasonable Overtime

(a) Work will be allocated so that an Employee does not work routinely beyond their ordinary hours of work to complete their duties.

(b) However, the Employer may require the Employee to work reasonable overtime hours (in which case the provisions of clause 46 – Overtime will apply).

(c) The Employee may refuse to work overtime hours if the request is unreasonable (see subclause 46.2).

84.3 Safe Staffing

The Employer will ensure that it is sufficiently staffed and resourced so as to enable each Employee to:

(a) perform all aspects of their role/position during their ordinary hours;

(b) take rest intervals and meal breaks provided by this Agreement; and

(c) take leave provided for by this Agreement and the NES.

84.4 Allocation of work

The Employer will allocate work to each Employee so that they can perform all aspects of their position during their ordinary hours of work, including but not limited to:

(a) administrative and clerical duties (data entry etc);

(b) managerial/supervisory duties;

(c) educational duties; and

(d) attending meetings.

84.5 Workload concerns

(a) If Employees are routinely performing aspects of their position beyond their ordinary hours of work, the Employer will consult with Employees to determine whether they consider their workload to be unreasonable.

(b) In the event an individual Employee, or group of Employees, believes their workload is unreasonable, they may make a written request for a workload review:

(i) following consultation with the Employer pursuant to subclause 84.5(a); or

(ii) at any time;

which sets out details of the Employee/s workload and the reasons why the workload is considered unreasonable.

(c) The Employer will meet with the Employee/s to discuss the request as soon as practicable and within 21 days of the written request.

(d) The Employer and Employee/s will do all that is reasonable to resolve the workload issue. In doing so, the Employer will have regard to the allocation of work requirements at subclause 84.4.

(e) If, following a meeting at subclause 84.5(c), the workload issue is not resolved, the Employee/s or Employer may refer it to the dispute resolution procedure in this Agreement (clause 14).

PART K – WORKPLACE RIGHTS

85 Flexible Working Arrangements

Other entitlements relevant to family and domestic violence can be found at clause 56 - Family Violence Leave.

85.1 The Act entitles a specified Employee to request flexible working arrangements in specified circumstances.

85.2 A specified Employee is a:

(a) full-time or part-time Employee with at least 12 months continuous service; or

(b) casual Employee (as defined by subclause 20.1) who have been employed on a regular and systematic basis, and who has been employed on that basis for a sequence of periods of employment during a period of at least 12 months, and has a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.

85.3 The specified circumstances are if the Employee:

(a) is pregnant;

(b) is the parent, or has responsibility for the care, of a child who is of school age or younger;

(c) is a carer within the meaning of the *Carer Recognition Act 2010* caring for someone who has a disability, a medical condition (including a terminal or chronic illness), a mental illness or is frail or aged;

(d) has a disability;

(e) is 55 or older;

(f) is experiencing family and domestic violence; or

(g) provides care or support to a member of the Employee's Immediate Family, who requires care or support because the member is experiencing family and domestic violence.

85.4 Making a request

(a) A specified Employee may make a request to the Employer for a change in working arrangements relating to the circumstances at subclause 85.3.

(b) A request for a flexible work arrangement includes (but is not limited to) a request to work part-time upon return to work after taking leave for the birth or adoption of a child to assist the Employee to care for the child (which may, for example, include a reduction in existing part-time hours).

(c) Changes in working arrangements may include but are not limited to hours of work, patterns of work (including not being available to perform on-call for afterhours duty), and location of work.

(d) The request by the Employee must be in writing, set out the change sought and reasons for the change.

85.5 Responding to the request

(a) The Employer must give the Employee a written response to the request within 21 days.

(b) If the Employer cannot grant the request in full, the Employer may refuse the request only if:

(i) the Employer has:

(A) discussed the request with the Employee; and

(B) genuinely tried to reach an agreement with the Employee about making changes to the Employee's working arrangements to accommodate the Employee's circumstances;

(ii) the Employer and the Employee have not reached such an agreement;

(iii) the Employer has had regard to the consequences of the refusal for the Employee; and

(iv) the refusal is on Reasonable Business Grounds.

Note: The specific circumstances of the employer, including the nature and size of the enterprise carried on by the employer, are relevant to whether the employer has reasonable business grounds for refusing a request. For example, if the employer has only a small number of employees, there may be no capacity to change the working arrangements of other employees to accommodate the request (see subclause 4.15(b)).

(c) An Employee or Employer may choose to be represented at a meeting under clause 85.5(b)(i)(A) by a representative including a Union or employer organisation.

(d) The response must:

(i) state that the Employer grants the request;

(ii) if, following discussion between the Employer and Employee, the Employer and Employee agree to a change to the Employee's working arrangements that differs from that set out in the request – set out the agreed change; or

(iii) state that the Employer refuses the request.

(e) Where the Employer refuses the request, the written response must also include:

(i) details of the reasons for the refusal;

(ii) the Employers particular business grounds for refusal and an explanation of how these grounds apply to the Employee's request;

(iii) either:

(A) set out the changes (other than the requested change) in the Employee's working arrangements that would accommodate, to any extent, the circumstances of the Employee and that the Employer would be willing to make; or

(B) state that there are no such changes; and

(iv) set out the effect of subclause 85.6, including if a dispute is referred to the Commission.

85.6 Dispute Resolution

The dispute resolution procedure in the Agreement will apply to any grievance/dispute arising in relation to a request for flexible working arrangements.

86 Working from Home

86.1 The Employer recognises there may be mutual benefits for both Employees and the Employer to access home based work. The Employer will maintain a working from home policy that provides Employees with a genuine opportunity to work from home (WFH) where it is reasonable having regard for the circumstances, including:

(a) OHS considerations;

(b) any current Government directives or recommendations;

(c) service delivery requirements.

86.2 An Employee is entitled to make a request to WFH in accordance with the Employer's policy.

86.3 Where an application is made in accordance with the Employer's policy, such a request will not be unreasonably refused by the Employer. Without limiting subclauses 86.1 or 86.3, an Employer may refuse an Employee's request to WFH on Reasonable Business Grounds.

86.4 Nothing in this clause limits the right of an Employee to request a flexible working arrangement under clause 85 of this Agreement.

87 Occupational Health and Safety / Workplace Violence

87.1 OHS Risk Management

(a) Those covered by this Agreement will take a pro-active approach to the prevention and management of workplace injuries, and to the achievement of a reduction in workplace injuries through the implementation of risk management systems incorporating hazard identification, risk assessment and control, and safe work practices.

(b) The Employer recognises that its obligations to provide a safe workplace, extend to the places and localities it directs Employees to perform work.

(c) Those covered by this Agreement recognise that consultation with Employees and their representatives is crucial to achieving a healthy and safe work environment. To this end, Employers will consult Employees and their representatives around matters relating to health and safety in the workplace.

(d) The Employer will implement the hierarchy of controls to control hazards and will eliminate the hazard at the source wherever practicable.

(e) This Agreement recognises that hazards include, but are not limited to:

(i) repetitive stress;

(ii) occupational violence and aggression;

(iii) circumstances that give rise to adverse effects on psychological health, including aggression or violence, bullying or sexual harassment.

(iv) unsafe design and layout of workplaces;

(v) slips, trips and falls;

(vi) electrocution; and,

(vii) blood borne and other infectious diseases.

(f) The Employer will ensure that people in management positions will receive adequate education and support to ensure the following can occur:

(i) identification and the assessment of OHS risks;

(ii) the undertaking of OHS incident investigations; and

(iii) consultation with Employees over OHS issues.

(g) The Employer will provide such information, education, training and supervision to all Employees of the Employer required to enable them to perform their work in a manner which is safe and without risks to physical and psychological health. This will occur on a regular basis as required to enable Employees to remain informed in relation to health and safety hazards, policies and procedures.

87.2 Incident Reporting, Investigation and Prevention

(a) The Employer will facilitate timely reporting of incidents by Employees, and ensure Employees who report incidents are appropriately supported.

(b) Following an incident, the Employer will as soon as practicable:

(i) provide the Employee(s) with access to post incident support services;

(ii) take appropriate action to prevent further injury to Employees;

(iii) conduct an incident investigation in a timely manner and implement workplace controls to prevent the incident recurring; and

(iv) provide information regarding the Employee's rights as relevant including the making and lodging of a workers compensation claim or reporting to police.

(c) The Employer will provide information, instruction and training to Employees and management staff regarding the importance of timely reporting, procedures regarding incident reporting, and linking this to incident investigation and prevention.

87.3 HSR Training

(a) HSRs will be entitled and encouraged to attend a WorkSafe Victoria approved course as soon as practicable following their election.

(b) The Employer will permit HSRs to take such time as is necessary or prescribed to attend occupational health and safety training courses approved by WorkSafe Victoria.

(c) HSRs will have the right to choose which course to attend, provided it is a WorkSafe Victoria approved course. An Employer will not prevent or obstruct an HSR from attending a course chosen by them.

(d) When attending an approved course, HSRs will be paid as if the HSR had been at work.

(e) Where HSRs attend an approved course outside their normal working hours or roster, they will be paid as if they had been at work for the relevant time.

(f) The Employer is responsible for payment of course fees, travel costs and accommodation for HSR attendance at WorkSafe Victoria approved courses.

87.4 Facilities for HSRs

(a) HSRs will be provided with reasonable access to an office, telephone, computer (including email facilities where available), notice board, meeting room, and such other facilities as are necessary to enable them to perform their functions or duties as prescribed under the OHS Act.

(b) HSRs will have reasonable time release from duty to perform their functions and duties as is necessary or prescribed under the OHS Act.

(c) A Health and Safety Committee will be established where requested by a HSR.

87.5 Employee support and debriefing

(a) The Employer will provide support and debriefing to Employees who have directly or vicariously experienced a “critical incident” during the course of the work that results in personal distress or psychological trauma. The Employer is committed to assisting the recovery of Employees experiencing distress or trauma following a critical incident within the workplace with the aim of returning Employees to their pre-incident level of functioning as soon as possible.

(b) A critical incident is defined as an event outside the range of usual human experience within the workplace which has the potential to easily overcome a person's normal ability to cope with stress. It may produce a negative psychological response in an Employee who was involved in or witnessed, or otherwise deals with and/or is exposed through their course of their duties to the details of such an incident.

(c) Critical incidents in the workplace environment include, but are not limited to:

(i) violent assaults; or

(ii) suicide or attempted suicide; or

(iii) sudden or unexpected death; or

(iv) hostage or siege situations; or

(v) threats to kill; or

(vi) accounts of sexual violence; or

(vii) accounts of child abuse and domestic violence;

(viii) any other serious accidents or incidents.

87.6 Occupational Violence and Aggression Prevention and Management

(a) Employees are entitled to be provided a workplace free of occupational violence and aggression.

(b) The parties to the Agreement support action to end violence and aggression in workplaces.

(c) **Occupational Violence and Aggression Prevention Action Plan**

(i) The Employer will develop an action plan, which will be subject to ongoing review, to address occupational violence and aggression.

(ii) Any action plan will:

(A) implement proactive measures to identify and address risks;

(B) ensure a reporting culture and mechanisms to assist in investigation; and

(C) provide appropriate support following workplace incidents.

(iii) The action plan will be consistent with the WorkSafe Guidance note relevant to occupational violence and aggression.

(iv) In developing or reviewing an action plan the Employer will consult with HSRs, the Union and affected Employees to identify any gaps having regard for the requirements at (ii)87.6(c)(ii).

(v) The Employer will designate an occupational health and safety committee (which may be an existing committee) as responsible for overseeing the actions required by this clause.

(vi) Nothing in this clause limits an Employer from doing anything to support the reduction and prevention of occupational violence and aggression.

(d) **Key Principles**

In developing, reviewing and implementing any policies, the following matters will be considered:

(i) security;

(ii) risk identification;

(iii) incident reporting, investigation and action;

(iv) workplace design;

(v) training;

(vi) integration of policies and procedures;

(vii) post incident support;

(viii) application across all health disciplines;

(ix) empowering staff to expect a safe workplace.

(e) **Continuous Improvement**

The Employer will undertake annual audits of their occupational violence and aggression management strategy, in consultation with HSRs.

88 Access to Employee File

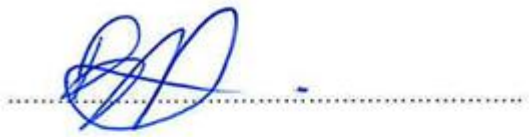
Upon request the Employee's personnel file will be available for the Employee to view.

SIGNATORIES

Executed as an Agreement:

Signed by the **Victorian Hospitals' Industrial Association** (VHIA) on behalf of the Employers listed in **Appendix 1**:

Stuart McCullough



Witness signature

Authority to sign:

Chief Executive Officer of VHIA, employer bargaining representative

Witness name:

BREE MARINIER

Address:

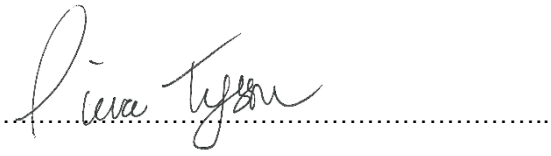
88 Maribyrnong Street,

Footscray, VIC 3011

Date: 12/12/24

Signed by the Association of Professional Engineers, Scientists and Managers, Australia (trading as **Professionals Australia**) on behalf of Employees covered by the Agreement:

Scott Crawford



Witness signature

Authority to sign:

Director – Victoria of Professionals Australia, employee bargaining representative

Witness name:

Pierce Tyson, Professionals Australia

……..

Address:

152 Miller Street,

West Melbourne, VIC 3003

Date: 12/12/24

APPENDIX 1 - LIST OF EMPLOYERS

1 Alfred Health
2 Austin Health
3 Barwon Health
4 Eastern Health
5 Goulburn Valley Health
6 Latrobe Regional Health
7 Melbourne Health
8 Monash Health
9 Northern Health
10 Peter MacCallum Cancer Institute
11 The Royal Children's Hospital
12 The Royal Womens Hospital
13 South West Healthcare
14 Western Health

APPENDIX 2 – SALARIES & ALLOWANCES

The wage rates for Biomedical Engineers will be as follows:

Classification		FFPPOOA 13 September 2022 (Current rates in 2022 Agreement)	From FFPPOOA			
			1 August 2024	1 August 2025	1 August 2026	1 August 2027
Class	**Year**		**3%**	**3%**	**3%**	**3%**
Class 1	1	$1,246.27	$1,283.66	$1,322.17	$1,361.83	$1,402.69
	2*	$1,340.59	$1,380.81	$1,422.23	$1,464.90	$1,508.85
	3#	$1,410.93	$1,453.26	$1,496.86	$1,541.76	$1,588.01
	4	$1,480.80	$1,525.22	$1,570.98	$1,618.11	$1,666.65
	5	$1,556.40	$1,603.09	$1,651.18	$1,700.72	$1,751.74
Class 2	1	$1,580.15	$1,627.55	$1,676.38	$1,726.67	$1,778.47
	2	$1,664.42	$1,714.35	$1,765.78	$1,818.76	$1,873.32
Class 3	1	$1,753.01	$1,805.60	$1,859.77	$1,915.56	$1,973.03
	2	$1,840.66	$1,895.88	$1,952.76	$2,011.34	$2,071.68
	3	$1,873.09	$1,929.28	$1,987.16	$2,046.78	$2,108.18
Class 4	1	$2,028.49	$2,089.34	$2,152.03	$2,216.59	$2,283.08
	2	$2,082.45	$2,144.92	$2,209.27	$2,275.55	$2,343.82
	3	$2,197.14	$2,263.05	$2,330.95	$2,400.87	$2,472.90
Class 5	1	$2,351.74	$2,422.29	$2,494.96	$2,569.81	$2,646.90
	2	$2,476.61	$2,550.91	$2,627.44	$2,706.26	$2,787.45
	3	$2,650.99	$2,730.52	$2,812.44	$2,896.81	$2,983.71

**Commencement Rate for 4 Year Degree holder*
#Commencement rate for Master's degree holder

The allowance rates for Biomedical Engineers will be as follows:

Allowance	FFPPOOA 13 September 2022 (Current rates in 2022 Agreement)	From FFPPOOA			
		1 August 2024	1 August 2025	1 August 2026	1 August 2027
		3%	3%	3%	3%
Uniform Allowance					
Per day	$1.28	$1.32	$1.36	$1.40	$1.44
Per week	$6.40	$6.59	$6.79	$6.99	$7.20
Laundry Allowance					
Per day	$0.30	$0.31	$0.32	$0.33	$0.34
Per week	$1.54	$1.59	$1.63	$1.68	$1.73
Meal Allowance	$14.75	$15.19	$15.65	$16.12	$16.60
On Call per 12-hour period or part thereof					
Monday - Friday	$33.52	$34.52	$35.56	$36.62	$37.72
Weekends and Public Holidays	$33.52	$51.78	$53.33	$54.93	$56.58
Shift Allowances (Per occasion)					
Change of Shift Allowance	$49.85	$51.35	$52.90	$54.50	$56.15
Morning Shift	$31.16	$32.10	$33.05	$34.05	$35.05
Afternoon Shift	$31.16	$32.10	$33.05	$34.05	$35.05
Night Shift	$49.85	$51.35	$52.90	$54.50	$56.15
Permanent Night Shift	$62.31	$64.20	$66.15	$68.15	$70.20
Higher Qualifications (Weekly Allowances)					
Graduate Certificate	$56.44	$58.13	$59.88	$61.67	$63.52
Graduate Diploma	$91.71	$94.46	$97.30	$100.21	$103.22
Masters Degree	$105.81	$108.98	$112.25	$115.62	$119.09
MBA	$105.81	$108.98	$112.25	$115.62	$119.09
PHD or Doctorate of Engineers	$141.10	$145.33	$149.69	$154.18	$158.81

APPENDIX 3 – FIXED TERM CONTRACT CONVERSION

Process for conversion where fixed term employment in the same or a substantially similar position exceeds the maximum duration of 3 years

(a) In accordance with this **Appendix 3**, an Employer must, assuming they wish to retain the Employee, make an offer of ongoing employment to a currently employed fixed term Employee if the Employee has been employed on fixed term contract(s) involving the same or substantially similar work pursuant to subclause 22.3(c).

(b) The offer must be:

(i) given to the Employee within the period of 21 days before their fixed term employment has reached 3 years' duration,

(ii) made in writing;

(iii) an offer to convert to ongoing employment at the same classification or equivalent as the Employee's fixed term role; and

(iv) consistent with the employee's existing number of ordinary hours.

(c) Notwithstanding subclause (b) above, the Employer is not required to make an offer under that subclause to an Employee if there are:

(i) reasonable business grounds not to do so (see subclause (e) below), or

(ii) exceptional or unforeseen circumstances.

(d) If subclause (c) above applies, the Employer must give written notice to the Employee. The notice must:

(i) advise the Employee that the Employer is not making an offer of ongoing employment;

(ii) provide details of the reasons for not making the offer, including the reasonable business grounds and details of any exceptional or unforeseen circumstances; and

(iii) be given to the Employee within the period of 21 days before their fixed term employment has reached 3 years' duration.

(e) For the purposes of subclause (c)(i) above, and without limitation, reasonable business grounds include:

(i) there is no ongoing vacancy available in which to place the Employee, and/or

(ii) the Employee's position will cease to exist in the coming 12 months.

(f) If an Employer fails to make an offer of ongoing employment to an eligible fixed term Employee, the Employee may request in writing conversion to ongoing employment. Approval to convert to ongoing employment will not be withheld unless one of the exceptions in subclause (c) above applies.

APPENDIX 4 – CERTIFICATE OF SERVICE

Certificate of Service

[Name of Institution] [date]

This is to certify that [Name of Employee] has been employed by this institution/society/centre/board for a period of [years/months/etc.] from [date] to [date].

Position held:
Classification Held:

During the above period, the Employee was employed on a casual basis from the period or periods between: ..... (years and days). Of this period, a total of ……(years and days) counted as eligible service for Long Service Leave purposes.

During the above period, the Employee had unpaid leave or absences that impact on the accrual of Long Service leave totalling ..... (years and days).

During the above period, the Employee utilised accrued Long Service Leave totalling ..... (years and days).

In addition, [Name of Institution] has recognised net additional service for Long Service Leave purposes with another employer or employers for the Employee totalling ..... (years and days) which was paid out/not paid out (strike out which is not applicable) by the former employer(s).

During the above period, the Employee transferred Long Service Leave accrued in respect of the period ……. to …….., to another employer or employers.

The Employee had accrued personal leave totalling ……. hours as at the date of cessation of employment with [Name of Institution].

Tick all boxes that apply:

[ ] The Employee received a payment in lieu of all unused, accrued Long Service Leave on cessation of employment with [Name of Institution]

[ ] The Employee remains employed with [Name of Institution]

[ ] The Employer has on record a Certificate of Service from another employer (attach any copies)

Signed.....[Stamp of Institution]