



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Melaleuca Home for the Aged Inc.
(AG2024/3864)

MELALEUCA HOME FOR THE AGED INC. GENERAL STAFF ENTERPRISE AGREEMENT 2024

Aged care industry

DEPUTY PRESIDENT GRAYSON

SYDNEY, 21 NOVEMBER 2024

Application for approval of the Melaleuca Home for the Aged Inc. General Staff Enterprise Agreement 2024

Introduction

[1] Melaleuca Home for the Aged Inc. (the Employer) has made an application for approval of an enterprise agreement known as the *Melaleuca Home for the Aged Inc. General Staff Enterprise Agreement 2024* (the Agreement) pursuant to s.185 of the *Fair Work Act 2009* (the Act). The Agreement is a single enterprise agreement.

Transitional arrangements under the Secure Jobs, Better Pay amendment

[2] The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (Amending Act) made a number of changes to enterprise agreement approval processes in Part 2-4 of the Act, that commenced operation on 6 June 2023. The notification time for the Agreement under s.173(2) was 25 March 2024 and the Agreement was made on 1 October 2024. Accordingly, both the *genuine agreement* and the *better off overall test* requirements are those applying on and from 6 June 2023.

Terms of the Agreement

[3] Clause 28(e) of the agreement provides that where the Employer facilitates acceptable alternative employment, the provisions of the Agreement which pertain to redundancy will not apply. Although clause 28(e) provides that redundancy payment obligations are subject to exclusions pursuant to ss.120 – 123 of the Act, it is not clear on the face of the clause that any variation to redundancy pay must be on application and upon satisfaction by the Commission. To the extent that the clause does not otherwise restate that exclusions to redundancy payments are subject to approval of an application to the Commission, I note that this clause is inconsistent with the Act and therefore unenforceable.

Delegates' Rights Term

[4] The Agreement does not contain a delegates' rights term, as required by s.205A(1) of the Act. Pursuant to s.205A(2) of the Act, the workplace delegates' rights term from the *Aged Care Award 2020* is taken to be a term of the Agreement.

Section 190 Undertakings

[5] The employer provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement. The undertakings are taken to be a term of the Agreement.

Section 186, 187, 188 and 190

[6] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

Section 183 Bargaining Representatives

[7] The Health Services Union (HSU) and the Australian Nursing and Midwifery Federation (ANMF), being bargaining representatives for the Agreement, have given notice under s.183 of the Act that they want the Agreement to cover them.

[8] In accordance with s.201(2), I note that the Agreement covers the HSU and the ANMF.

Approval

[9] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 28 November 2024. The nominal expiry date of the Agreement is 30 June 2027.



DEPUTY PRESIDENT

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ANNEXURE A

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2024/3864

Applicant:
Melaleuca Home for the Aged Inc.

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Simone Collins, Chief Executive Officer, have the authority given to me by Melaleuca Home for the Aged Inc. to give the following undertakings with respect to the Melaleuca Home for the Aged Inc. General Staff Enterprise Agreement 2024 ("the Agreement"):

1. Shiftworkers are employees required to work on a roster outside the spread of hours in 10.1(b), up to 8 hours on any shift other than a night shift, and up to 10 hours on a night shift. This definition applies for the purposes of the NES.
2. Clause 10.1(b) shall read that that the ordinary hours of work for employees (other than shift workers) are between the hours of 6.00 am and 6.00 pm.
3. Afternoon shift -
 - (a) Afternoon shift commencing at 10.00 am and before 1.00pm – 10% of the ordinary hourly rate.
 - (b) Afternoon shift commencing at 1.00 pm and before 4.00pm – 12.5% of the ordinary hourly rate.
 - (c) Afternoon shift penalties will apply to a shift that ends after 6.00pm and before 11.00pm – 15% of the ordinary hourly rate.Night shift - Rostered to work some or all hours between 11.00 pm and 6.00 am. 17.5% shift loading.
4. Clause 14.2(f)(i) shall read that overtime will be arranged so that employees have at least ten (10) consecutive hours off duty between the work of successive days.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature

Date: 20 November 2024



Melaleuca Home for the Aged Inc

GENERAL STAFF

Enterprise Agreement

2024

Note – the workplace delegates' rights term from the Award is taken to be a term of this agreement. This agreement is to be read together with an undertaking given by the employer. The undertaking is also taken to be a term of the agreement. A copy of these terms can be found at the end of the agreement.

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PART 1 - PRELIMINARIES

1. INTRODUCTION

This Agreement is made under section 172 of the *Fair Work Act 2009*.

2. TITLE

This Agreement shall be known as the:

The Melaleuca Home for the Aged Inc. General Staff Enterprise Agreement 2024.

3. PARTIES TO THE AGREEMENT

The parties to this agreement are as follows:

- (a) MELALEUCA HOME FOR THE AGED INC. ABN: 11 358 382 701
(‘the employer’),
- (b) The Health Services Union, Tasmania Branch;
- (c) The Australian Nursing and Midwifery Federation, Tasmanian Branch
- (d) Employees who are employed by the employer and are engaged in work in classifications contained within this Agreement.

This agreement intentionally excludes Registered and Enrolled Nurses; community service staff and management staff that would not normally be covered by or have application to, the Aged Care Award 2010.

4. COMMENCEMENT

The agreement will commence 7 days after the date of approval by the Fair Work Commission (FWC).

5. NOMINAL EXPIRY

The Agreement has a nominal expiry date of 30 June 2027 and shall remain in operation until at least that date, unless otherwise terminated or varied beforehand by the mutual agreement of the parties or operation of law. The Agreement will continue beyond the nominal expiry date, until replaced, or terminated in accordance with the Fair Work Act 2009.

6. AGREEMENT- COMPLETE CONDITIONS OF EMPLOYMENT

This Agreement is intended to cover all matters pertaining to the employment relationship, underpinned by the Fair Work Act 2009 and the associated National Employment Standards (NES). In this regard, it represents a complete statement of the mutual rights and obligations between the employer and the employees to the exclusion (to the extent permitted by law) of, awards, agreements (whether registered or unregistered), custom and practice and like instruments or arrangements.

7. FLEXIBILITY CLAUSE

- 1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - a. the agreement deals with 1 or more of the following matters:
 - i. arrangements about when work is performed;
 - ii. overtime rates;
 - iii. penalty rates;
 - iv. allowances;

- v. leave loading; and
 - b. the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - c. the arrangement is genuinely agreed to by the employer and employee.
- 2) The employer must ensure that the terms of the individual flexibility arrangement:
- a. are about permitted matters under section 172 of the Fair Work Act 2009; and
 - b. are not unlawful terms under section 194 of the Fair Work Act 2009; and
 - c. result in the employee being better off overall than the employee would be if no arrangement was made.
- 3) The employer must ensure that the individual flexibility arrangement:
- a. is in writing; and
 - b. includes the name of the employer and employee; and
 - c. is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - d. includes details of:
 - i. the terms of the enterprise agreement that will be varied by the arrangement; and
 - ii. how the arrangement will vary the effect of the terms; and
 - iii. how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - e. states the day on which the arrangement commences.
- 4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 5) The employer or employee may terminate the individual flexibility arrangement:
- a. by giving no more than 28 days written notice to the other party to the arrangement; or if the employer and employee agree in writing— at any time.

PART 2 - ENGAGEMENT

8. EMPLOYEE ENGAGEMENT-Classifications, Wages

8.1 Employee Categories

Employees under this Agreement will be employed in one of the following categories:

- (i) Full-time;
- (ii) Part-time; or
- (iii) Casual.

At the time of engagement the employer will inform each employee whether they are employed on a full-time, part-time or casual basis. An employer may direct an employee to carry out such duties that are within the limits of the employee's skill, competence and training, consistent with the respective classification.

8.2 Minimum Employment Period:

- (a) Employees (other than casual employees) will be on a period of probation for the first three months of engagement for the purpose of determining the employee's suitability for ongoing employment.
- (b) At any time during the probation period, the employer or the employee can terminate the employment by providing written notice in accordance with Termination of Employment clause of this agreement.

8.3 Full-time Employees:

- (a) A full-time employee is one who is engaged to work an average of 38 hours per week in accordance with clause 10.1 of this agreement.
- (b) Full-time employees will receive a minimum payment of four hours for each engagement in respect of ordinary hours of work.

8.4 Part-time Employees:

- (a) A part-time employee is an employee who is engaged to work less than full-time hours per week and has reasonably predictable hours of work each week.
- (b) Before commencing employment, the employer and employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day.
- (c) Any agreed variation to the hours of work will be in writing.
- (d) The terms of this agreement will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-time employees are an average of 38.
- (e) Payment in respect of personal/carer's leave (where an employee has accumulated an entitlement) for a part-time employee will be on a pro rata basis made according to the number of hours the employee would have worked on the day or days on which the leave was taken.
- (f) At the request of a part time employee, the hours worked by the employee will be reviewed and where the employee is regularly working (on a consistent and systematic basis) more than their guaranteed minimum number of hours (c) then the part-time employees minimum number of hours of work shall be renegotiated. Where the Employer is in a position to provide these hours on a permanent basis to the part-time employee such hours shall be adjusted and recorded in writing to reflect the hours regularly worked.
- (g) Any adjusted guaranteed minimum number of hours resulting from a review by the employer should, however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace. Additional hours worked in the following circumstances will not be considered for changing the part timers regular contracted hours;
 - i. if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, maternity leave, workers compensation; or
 - ii. if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a resident or client.
- (h) Permanent part-time employees will receive a minimum payment of four hours for each engagement.
- (i) If a part-time employee is regularly working more than their specified contract hours, the employee may request that the employer increase their contracted hours. The employer will not unreasonably refuse such a request.

This is agreed provided that this will not apply where:

- (i) the increase in hours is a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, parental leave, workers compensation.
- (ii) The increase in hours issue to a temporary increase in hours only due, for example, to the specific needs of a resident or client; or

(iii) the operational requirements or anticipated operation requirements of the employer do not support the variation of hours.

8.5 Casual Employees:

- (a) A casual employee is an employee engaged as such on an hourly basis, other than as a part-time, full-time or fixed term employee, to work up to and including an average of 38 ordinary hours per week. The work pattern will be irregular and unpredictable except in the case where the casual employee is replacing another employee on leave.
- (b) A casual employee will be paid per hour worked at the rate of 1/38th of the weekly rate appropriate to the employee's classification. In addition, a loading of 25% will be paid instead of the paid leave entitlements accrued by full-time and part-time employees.
- (c) Casual employees must be paid the same penalty rates for working Saturday, Sunday and Public Holidays as fulltime and part time employees.

Casuals will receive the applicable penalties in addition to the casual loading for all hours. However, overtime penalties will be in substitution of the casual loading and not cumulative. Where casual loading is in addition to penalty rates, then the penalty is added to casual loading and then multiplied to the applicable base rate of pay for the appropriate classification rate of a full time hourly rate. The penalty rate is not compounded to the base rate and casual loading figure.

EG: Penalty rate 150% plus casual loading 25% equals 175% of the applicable base fulltime hourly rate.

- (d) If a casual employee works overtime, they are to be paid the base rate+ casual loading+ overtime rate.
- (e) If a casual employee works on a public holiday, they are to be paid the base rate+ casual loading+ applicable penalty rate.
- (f) Casual employees will receive a minimum payment of two hours for each engagement.
- (g) Casual Conversion
 - i. A casual employee who has been rostered on a regular and systematic basis over a period of 26 weeks has the right to request conversion to permanent employment:
 - a. on a full-time contract where the employee has worked on a full-time basis throughout the period of casual employment; or
 - b. on a part-time contract where the employee has worked on a part-time basis throughout the period of casual employment. Such contract would generally be on the basis of the same number of hours as previously worked, however the hours must be capable of fitting within the existing shift and rostering arrangements. Other arrangements may be implemented by agreement between the employer and the employee.
 - ii. The employer may consent to or refuse the request, but shall not unreasonably withhold agreement to such a request.
 - iii. Casual conversion will not apply where a casual has covered absences of permanent staff that are expected to return to work.
- (h) Where the employer has engaged a casual employee in accordance with this clause, the employer may give notice of cancellation of the engagement up to twelve hours before the scheduled commencing time in the case of a day shift, and up to six hours before the scheduled commencing time of either an afternoon or night shift.

PROVIDED THAT if the minimum notice of cancellation is not given the employee is to be paid 3 hours pay.

- (i) A casual employee whose engagement is cancelled without the minimum notice specified in (4) above and who has incurred child care fees shall, upon providing the employer with documentary proof of the expenditure so incurred, be reimbursed in full.

PROVIDED THAT a claim for reimbursement must be made to the employer no later than four weeks from the date the expenditure was incurred.

8.6 National Criminal History Record Check

- (a) Operators of aged care services are required to ensure staff, contractors and volunteers, who have, or are reasonably likely to have access to care recipients undergo a National Criminal History Record Check, commonly known as a Police Check.
- (b) All costs associated with providing such evidence (Police Checks) are the responsibility of the individual employees and prospective employees.
- (c) Where the employer is in the possession of an employee Police Check, that Police Check will not be provided to any third party without the employee's express and written permission.

8.7 Classifications

Schedule A – Attached to this Agreement

8.8 Wage Rates

Schedule B – Attached to this Agreement

8.9 Annual Wage Increases

During the nominal life of this agreement wage rates outlined in Schedule B will increase annually from the same time as the FWC's Minimum Wage Panel's decision or its successor/equivalent indicates, currently the first full pay period occurring after the 1st of July each year in accordance with Schedule B.

8.10 Beyond the Nominal Expiry of Agreement

In the circumstance that this Enterprise Agreement is not replaced prior to the implementation of the FWC Minimum Wage Panel's national wage decision applicable to July 2023 (and all subsequent decisions until the EA is replaced), the FWC decision (amount or percentage) will apply only, without any additional percentage or amount applied, provided this Enterprise Agreement is still operational by law.

8.11 Supported Wage

Schedule C – Attached to this Agreement

9. PAYMENT OF WAGES

- (a) Wages are to be paid fortnightly and not later than Thursday of the week of payment.

- (b) Method of payment

Wages must be paid by electronic funds transfer or some other method agreed by the employer into the bank or financial institutional account nominated by the employee.

- (c) Delay

The employer will not be held liable for any unforeseen event outside the control of the employer which prevents the employer's ability to meet the requirements of (a), for example bank error or delay.

(d) Late payment of wages

Except in circumstances beyond the control of the employer, and subject to (e) below, an employee kept waiting for more than a quarter of an hour for wages, on the normal pay day after the usual time for ceasing work, is to be paid the appropriate overtime rate after that quarter of an hour, with a minimum payment for a quarter of an hour, and payment shall continue on that day until the employee is advised that payment will not be forthcoming on that day.

Payment at the appropriate overtime rate shall continue during all ordinary hours of work on each succeeding day or days, including rostered days off, up to a maximum of 7.6 hours per day, until such time as payment is made.

(e) Agreed alternative arrangements - no waiting time payment to apply

The provisions for payment of waiting time of above shall have no effect in circumstances whereby payment cannot be effected on pay day but the employer and employee agree to an alternative arrangement for payment to be made.

PROVIDED THAT if the employer fails to make payment of the employee's wages in accordance with an alternative arrangement provided for under this sub clause, the employee shall be deemed to have been kept waiting for payment since the usual pay day and shall be entitled to payment of waiting time in accordance with the provisions of (d) above until such time as the employee's wages are paid.

(f) Termination

When notice of termination of employment has been given by an employer or an employee's services have been terminated by an employer, payment of all wages and other moneys owing to an employee will be made to the employee by no later than the last day of the notice period (where applicable) or the next immediate pay day following the last day of work where a period of notice was not given.

10. HOURS

10.1 Hours of Work

- (a) The ordinary hours of work for employees will be an average of 38 hours per week, worked over 76 hours per 2 week period, or 114 hours over a 3 week period or 152 hours per 4 week period.
- (b) The ordinary hours of work for employees (other than shift workers) are between the hours of 7.00 am and 7.00 pm, Monday to Friday and will be worked up to 8 hours on any day.
- (c) Work performed outside of the ordinary hours is paid as overtime (other than for shift workers).
- (d) Shiftworkers are employees required to work on a roster outside the spread of hours in 10.1(b), up to 8 hours on any shift other than a night shift, and up to 10 hours on a night shift.
- (e) Employees (other than shift workers) who work outside the spread of hours will be paid at the applicable overtime rates.

10.2 Arrangement of Hours

- (a) Each employee shall be entitled to not less than four full days in each fortnight free from duty, or by agreement, two full days in each week free from duty (rostered days off), and such rostered days off to be consecutive, unless otherwise agreed.
- (b) Each shift shall consist of no more than 8 hours of work (up to 10 for night shifts) at ordinary time (not including unpaid breaks).

- (c) Except for unpaid meal breaks and the periods not worked in broken shifts, all time from the commencement to the cessation of duty each shift shall count as working time.
- (d) Unless agreed otherwise, an employee shall not be required to start a shift unless there has been a break of at least 8 hours since the employee's previous shift.

11. SHIFT WORK, SATURDAYS and SUNDAYS

Shift workers working afternoon or night shift will be paid the following percentages in addition to the applicable base rate for such shift in lieu of overtime payments:

Afternoon shift – a shift that ends after 7.00 pm and at or before 11.00 pm. **15% shift loading**

Night shift – Rostered to work some or all hours between 11.00 pm and 7.00 am. **17.5% shift loading**

- (a) An employee entitled to a shift allowance under this clause will be paid the shift allowance for the entire shift.
- (b) A casual employee will be paid the shift allowance calculated on the ordinary pay excluding the casual loading with the casual loading component then added to the shift penalty rate of pay. EG: Casual loading 25% plus shift loading 15% equals a total casual shift penalty of 40% on the applicable classification for the equivalent full time employee base rate of pay.

Saturday work– 150%

An employee, for working ordinary hours on a Saturday, will be paid at the rate of time and one half of the employee's base rate for all hours worked on that day, however, the rates are in substitution for and not cumulative upon any other shift penalty.

Sunday work-200%

An employee, for working ordinary hours, on a Sunday, will be paid at the rate of double time of the employee's base rate for all hours worked on that day, however the rates are in substitution for and not cumulative upon any other shift penalty.

12. ROSTERS

The roster will be documented setting out clearly the names of the employees required to work on that roster, the days, dates and hours during which each employee is required to work.

- (a) The roster will be based on a 28 day cycle and will be displayed at least two weeks prior to the commencing date of the first working period in any roster; however, it is not obligatory for the employer to display any roster of the ordinary hours of work of casual or relieving staff.
- (b) Rostered employees will be entitled to a minimum of 2 consecutive days off in each 7 day period, unless by mutual agreement between the employer and employee concerned, alternative arrangements are made.
PROVIDED THAT not more than eight shifts are worked in any nine consecutive days.
- (c) There will be at least 8 hours between the completion of a shift and the commencement of another shift for any employee except a casual, unless changed by mutual agreement between the employer and employee on any individual occasion.
- (d) Broken shifts are by mutual agreement between the employer and part time or casual employees only; payment is for time worked only. Broken shift for the purposes of this clause means a shift worked by a casual or permanent part-time employee that includes breaks (other a meal break) totalling not more than four hours and where the span of hours is not more than 12 hours. Payment for a broken shift will be at ordinary pay with penalty rates and shift allowances in accordance with the overtime and shift

allowances provisions of this agreement, with shift allowances being determined by the finishing time of the broken shift. All work performed beyond a maximum span of 12 hours for a broken shift will be paid at double time.

(e) Changes to Rosters

- i. Unless mutually agreed, 14 days' notice will be given by the employer of a change in a roster. Mutually agreed includes where a part time employee accepts more hours to cover shift requirements.
- ii. Where occasion arises that due to illness or in an emergency or for any other reason beyond the employer's control an employee is absent and no replacement employee has volunteered to accept additional hours or change roster times, then the roster may be altered at any time in consultation with affected staff to enable the service of the organisation to be carried out.
- iii. Employees wishing to swap a rostered shift with another employee may do so provided:
 - a. They identify a willing replacement staff member at the same or suitable classification level. A casual employee is not to be considered as suitable for shift swapping. Casuals should not have an expectation of guaranteed shifts, they form a vital role is supplementing ongoing (permanent) staff rosters when necessary.
 - b. The employer is not disadvantaged by paying the replacement employee overtime or penalty rates that would not have occurred with the original rostered shift
 - c. Shift swaps are limited to single shifts only (1day). Swapping that requires consecutive days off work does not fit the category of shift swapping under this clause and is to be dealt with by annual leave application.
 - d. Written notice is given to the Clinical Care Director, Senior RN or Senior Roster Clerk on the shift at the time, of such a shift swap.

Employer authorisations of shift swaps that are organised by the employee that fit the above criteria are restricted to 8 per calendar year. Swaps to rostered shifts are for non-usual occurrences and/or events that would be considered by a reasonable person having regard to all the circumstances, important to the individual employee. Annual leave requests can also be used to accommodate potential perceived necessary shift changes.

- iv. Requests for shift changes above 8 per calendar year will need to have sufficient notice (2 weeks) and also need to be made in writing stating the reason for requested shift change. Such changes will be at the discretion of management (CCD, CEO or delegate) and will be considered on a case by case basis.

(f) Daylight Savings

Upon the changeover of time as a result of daylight saving in October and March each year the following shall apply:

- i. Employees shall be paid for actual time worked irrespective of the length of the shift.
- ii. Employees paid in accordance with sub-clause (a) are not entitled to claim for the 1 hour lost, and those working the additional hour will be paid at the ordinary rate plus applicable shift rate

13. BREAKS

(a) Meal breaks

- i. For those Employees that were already employed at the time The General Staff Agreement 2021 came into effect:

Employees who work in excess of five (5) hours will be entitled to a paid meal break of thirty (30) minutes, to be taken at a mutually agreed time after commencing work.

- ii. For those Employees employed after The General Staff Agreement 2021 came into effect:

Employees who work in excess of five (5) hours will be entitled to an unpaid meal break of thirty (30) minutes, to be taken at a mutually agreed time after commencing work.

(b) Tea breaks

- i. Two separate 10 minute intervals (in addition to meal breaks) will be allowed to each employee on duty during each ordinary shift of 7.6 hours or more.
- ii. Where less than 7.6 ordinary hours are worked, employees will be allowed one 10 minute interval in each complete four hour period.
- iii. Subject to mutual agreement, such intervals may alternatively be taken as one 20 minute interval.
- iv. Tea breaks will count as time worked.

14. OVERTIME

The employer may require any employee to work reasonable overtime. An employee may refuse to work overtime if the additional hours are unreasonable including, but not limited to, having regard to the employee's personal circumstances, including family responsibilities. The Employer acknowledges that they will not unreasonably refuse overtime. No overtime may be worked without prior approval of the employer.

14.1 Overtime is paid where an employee:

- (a) works in excess of 8 hours per day/shift; or in the case of a shift worker, 10 hours on a night shift
- (b) works in excess of 76 hours per fortnight
- (c) For a part-time employee, all time worked in excess of their rostered ordinary hours on any one day unless there is agreement in writing to vary the ordinary hours, provided that such variation does not conflict with (i) and (ii) above.

14.2 Overtime shall be paid at the base rate of pay in accordance with the following:

- (a) Monday to Sunday - Overtime shall be paid at double time;
- (b) Public Holidays - Overtime shall be paid double time and one-half (2 ½).
- (c) Overtime rates under this clause will be in substitution for and not cumulative upon shift and weekend amounts prescribed in this Enterprise Agreement.
- (d) Overtime does not apply where arrangements for a swap of hours have been made between two or more employees at their own instigation.
- (e) Time off instead of payment for overtime

By mutual agreement, a full time or a part-time employee may be compensated by way of time off instead of payment of overtime (time for time) on the following basis:

- i. Time off instead of payment for overtime must be taken at ordinary rates within three months of it being accrued.

- ii. Where it is not possible for an employee to take the time off, instead of payment for overtime, within the three month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
- iii. Employees cannot be compelled to take time off in lieu of overtime and an employer cannot be compelled to agree to provide the employee with time off in lieu of overtime.
- iv. The employer must maintain records of all time in lieu of overtime owing and taken by employees.
- v. Where no election is made the employee shall be paid overtime rates in accordance with this Agreement.

(f) Ten Hour Break-Overtime

- i. When overtime work is necessary it will, it will be arranged so that employees have at least ten (10) consecutive hours off duty between the work of successive days provided that this may be reduced to eight (8) hours by mutual agreement.
- ii. Where the employee is directed by the employer to resume or continue work without having had ten consecutive hours off duty, the employee will be paid at overtime time rates until released from duty for such period, and will then be entitled to be absent until they have eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- iii. Where the employee is not directed by the employer, but elects to work a shift with less than eight consecutive hours off duty between the previous shift, the time will be paid as ordinary time and will also be counted as ordinary hours for the purpose of contracted hours.

14.3 Recall to Work Overtime

An employee recalled to work overtime after leaving the employer's premises will be paid for a minimum of four hours' work at the appropriate rate. A recalled employee who is required to work for more than four hours will be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours overtime; all such time will be counted as time worked. The meals referred to in this clause will be provided to the employee free of charge. Where the employer is unable to provide such meals, a meal allowance of \$13 will be paid to the employee concerned.

15. PUBLIC HOLIDAYS

15.1 Employees are entitled to leave on public holidays in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 10 of the Act).

- (a) All employees (other than casuals) are entitled to the following public holidays with pay if the Public Holiday falls on their rostered day of work:

Christmas Day, Boxing Day, New Year's Day, Australia Day, Eight Hours' Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (Devonport), Recreation Day; and shall be applied as prescribed by the Tasmanian Statutory Holidays Act 2000 as amended. Any future additional days that are recognised under the *Statutory Holidays Act 2000* shall apply, except those that are identified as government holidays or applying only to certain persons.

To avoid any doubt, the Devonport Cup and Easter Tuesday do not fall as public holidays to the employees covered by this agreement provided that should those days be declared as public holidays pursuant to the *Statutory Holidays Act 2000* they will be recognised as public holidays.

- (b) Payment for the public holidays with pay mentioned in subclause (a) above which are taken and not worked, will be at the normal rate of pay which would have applied to the employees concerned, had

they normally been at work having regard to the days of the week the employee works in the preceding six months or time so worked.

- (c) Where an employee who is entitled to a public holiday with pay and is required to work, either for part or the whole of the day they will be paid as follows:
- i. Non-shift worker

In the case of a non-shift worker who works their ordinary hours Monday to Friday between the hours of 7.00 am and 7.00 pm – double time and a half.
 - ii. Shift worker

In the case of a shift worker who regularly works outside the span of ordinary hours— double time and a half.

A shift worker will only be entitled to double time and a half payment for those public holidays that fall on days they work.

Payments under this subclause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.
 - iii. Casual

A casual employee will be paid only for those public holidays they work at the rate of double time and a half for hours worked replacing a shift worker, or double time and one half in all other cases.

Payments under this subclause are instead of and replace any casual loading otherwise payable under this Agreement.
- (d) Payments under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday. To avoid doubt, an employee who is required to and does work on any public holiday prescribed in this clause shall be paid in lieu of all other shift penalties, weekend penalties, casual loading.
- (e) The employer and individual employees may agree to substitute another day for a public holiday observed.

15.2 Public Holiday Entitlement

- (a) An employee is entitled to be absent from his or her employment on a day or part day that is a public holiday, however due to the nature of the industry and services provided, it is an explicit expectation of this agreement that shiftworkers may be requested to work on public holidays.
- (b) The employee may refuse the request (and take the day off) if the employer's request is not reasonable or the employee's refusal to work on the public holiday is reasonable. In determining whether the employer's request, or an employee's refusal of a request, is reasonable, regard must be had to the matters set out in section 114 of the Act.
- (c) Where the request is reasonable an employee who, without the consent of the employer or without reasonable cause (i.e. personal/carers leave), is absent from work on a public holiday after agreeing to work on a public holiday, is not entitled to any payment for such public holiday.

16. ALLOWANCES

16.1 Uniforms, Protective Clothing, Equipment and Materials

- (a) The employer provides a uniform allowance and a laundry allowance combined. Currently: \$6.81uniform allowance + \$4.09Laundry allowance = Total \$10.90per week

The current allowance is on a pro-rata basis for permanent part time/casual staff as follows:

Above 0.5 FTE (above 16.5 hrs per week) = full allowance = \$10.90

Below 0.5 FTE (below 16.5 hrs per week) = half (50%) of the full allowance = \$5.45

- (b) The uniform allowance, but not the laundry allowance, will be paid during all absences on paid leave, except absences on long service leave and absence on personal/carer's leave beyond 21 days. Where, prior to the taking of 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.
- (c) Where an employer requires an employee to wear rubber gloves, special clothing or where safety equipment is required for the work performed by an employee, the employer must provide such clothing or equipment or reimburse the employee for the cost of purchasing such special clothing or safety equipment.
- (d) These allowances are inclusive of the % increase for the first year of the Agreement.
- (e) These allowances receive the subsequent % pay increase for year 2 and 3 of the Agreement.

16.2 Travelling Allowance

Employees required to travel in the course of their duties are to be reimbursed for all valid travelling expenses incurred and all reasonable out-of-pocket expenses.

If employees are required to use their own motor vehicles in connection with the business of the employer, they are to be reimbursed on a per kilometre travelled basis of 99 cents per kilometre.

Travel to and from home to work is not considered using a vehicle in connection with the business of the employer.

In addition to the per kilometre travel allowance, employees are to be reimbursed for all reasonable travel costs associated with work related travel authorised by the employer. The employer and the employee will agree prior to travel, the amount that is reasonable in respect of travel costs relating to fares, meals and accommodation.

All such costs must be approved by the employer prior to the expense being incurred.

16.3 Driving Licence allowance

An employee directed by the employer to drive vehicles requiring a driving licence is to be reimbursed the cost of the driving licence.

PROVIDED THAT this provision does not apply to employees who are required to drive only on an occasional basis.

16.4 Nauseous work allowance

- (a) An allowance of .56 cents per hour or part thereof with a minimum of \$3.04 per week (rather than 56 cents) will be paid to an employee in any classification if they are engaged in handling linen of a nauseous nature other than linen sealed in airtight containers and/or for work which is of an unusually dirty or offensive nature having regard to the duty normally performed by such employee in such classification. Any employee who is entitled to be paid an allowance under this clause will be paid a minimum sum in accordance with the Award.
- (b) For the purpose of clarity and to avoid doubt, laundry staff will only be eligible for the nauseous work allowance when alginate bags or similar are not in use or are defective.

16.5 Buddy Allowance

Employees providing training/mentoring on identified orientation shifts for new staff will be eligible for a payment of \$1.25 per hour in addition to their base rate of pay for time spent training on such shifts. Payment for induction/orientation shifts is limited to 3 shifts per each individual new employee.

16.6 Meal allowance

An employee will be supplied with an adequate meal where an employer has adequate cooking and dining facilities or be paid a meal allowance of \$16.20 in addition to any overtime payment as follows:

- (a) When required to work after the usual finishing hour of work beyond one hour or, in the case of shiftworkers, when the overtime work on any shift exceeds one hour.
- (b) Provided that where such overtime work exceeds four hours a further meal allowance of \$14.60 will be paid.
- (c) Some employees are entitled to a meal allowance. A meal allowance must be paid when the duties of employees require them to:
 - i. travel from their headquarters; and
 - ii. they are more than 16 kilometres from their headquarters at their normal meal time.
- (d) The amount of the meal allowance depends on whether the employee purchases a meal or provided their own. The table below set out the rates:

Type of Meal	A Purchased Meal
Breakfast	\$9.00
Lunch (or midday meal)	\$9.90
Dinner (or evening meal)	\$17.55

- (e) The employer and the union will review the meal allowance rates annually taking into account increase awarded by the Australian Industrial Relations Commission to the Nurses (Tasmanian Private Sector) Award
- (f) Meal Charges

The maximum amount that can be charged or deducted where an employee receives a meal from his/her employer is set out in the table below:

Type of Meal	Rate per Meal
Lunch or Evening Meal	
Two or three courses	\$6.50
Single hot or cold main course	\$5.00
Single (other) course i.e. soup or sweet	\$4.00
All breakfasts	\$3.00

Where an employee is charged for a meal in accordance with the table above, no extra charge is to be made for beverages, toast, bread, butter or condiments.

16.7 Part-time and Casuals

All weekly based allowance amounts will be paid pro-rata to part-time and casual employees for the number of ordinary hours worked in the week the allowance was applicable, on the basis that the ordinary weekly hours of work for full-time employees are 38.

16.8 First Aid Certificate Allowance:

- (a) An employee that holds a current first aid certificate issued by the St John Ambulance Association or Australian Red Cross Society or equivalent qualification, and who is required by his or her employer to perform first aid duty at his or her work-place shall be paid an allowance of \$10.70 per week.
- (b) Furthermore the employer will cover any cost of the ongoing renewal of the employee's certificate in total including training costs.

16.9 Allowance Increases

All allowances and figures in the allowance clause of this agreement and the meal allowance referred to in 14.3 Recall to Work Overtime, will increase at the same time as wage increases as outlined in the Agreement for year 1,2 and 3.

16.10 Higher Duties Allowance

An employee engaged in any duties carrying a higher wage rate than the classification in which they are ordinarily employed in any one day or shift will be paid at the higher wage rate for:

- (a) the time so worked for two hours or less; or
- (b) a full day or shift where the time so worked exceeds two hours.

16.11 Influenza vaccinations

- (a) The employer will provide Influenza Vaccinations at no cost to the employee once a year.

PART 3 - LEAVE

17. ANNUAL LEAVE

17.1

- (a) Employees are entitled to annual leave in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 6 of the Act).
- (b) Casual employees have no entitlement to annual leave.

17.2 Accrual of Annual Leave

- (a) Excluding casuals, all employees are entitled to 4 weeks paid annual leave. Shiftworkers as defined in (b) are eligible for 1 weeks additional leave
- (b) Additional leave (Shiftworkers)

If a shiftworker as defined in this agreement (clause 11)is regularly rostered to work their ordinary hours outside the ordinary hours of work as a day worker as defined in this agreement and/or works for more than four ordinary hours on not less than 10 weekends during any one year— 5 weeks of paid leave (1 additional week annually). For the purposes of this clause, a weekend means rostered work in ordinary time on a Saturday and/or a Sunday in any one calendar week.

- (c) The entitlement to additional leave is based on the employee's average ordinary days per week and day. To avoid any doubt, 38 hours per week or 7.6 hours per day, for a full time employee or such lesser hours as the average weekly hours (over 12 month period) for a part time employee.
- (d) An employee's entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work.
- (e) If an employee's employment ends during what would otherwise have been a year of service, the employee accrues paid annual leave up to the time when the employment ends.

17.3 Payment of Annual Leave

If, in accordance with this clause, an employee takes a period of paid annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee if the employee had taken that period of leave.

17.4 Annual Leave Loading

- (a) In addition to their base rate of pay, an employee other than a shift worker will be paid an annual leave loading of 17.5% of their ordinary rate of pay including higher duties and any all purpose allowances..
- (b) Shift workers, in addition to their base rate of pay, will be paid the higher of the below for all annual leave taken.
 - i. Annual leave loading of 17.5% of their base rate of pay; or
 - ii. The weekend and shift penalties the employee would have received had they not been on leave during the relevant period.

17.5 Payment in Lieu of Annual Leave (Cashing Out)

Payment in lieu of Annual Leave may only be made as allowed by the NES, meaning:

- (a) Each agreement to cash out a particular amount of paid annual leave must be a separate agreement in writing.
- (b) The employer and the employee must not agree to the employee cashing out an amount of paid annual leave if the agreement would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (c) The employer must pay the employee at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

17.6 Taking of Annual Leave

- (a) An employee is entitled to take an amount of annual leave during a particular period if:
 - i. at least that amount of annual leave is credited to the employee; and
 - ii. the employer has authorised the employee to take the annual leave during that period.
- (b) In the taking of leave, the employee shall make written application to the employer, giving timely notice of the desired period of such leave.

- (c) Annual leave shall be taken in an amount and at a time which is approved by the employer subject to the operational requirements of the workplace. The employer shall not unreasonably withhold or revoke such approval.
- i. Generally annual leave will be taken in blocks of not less than 1 week (5 working days-7 calendar days), however requests for less than a weeks' leave including single days will be considered and generally granted unless it is not reasonably practical to do so.
 - ii. Reasonably practical includes the period of notice of request for leave (6 weeks minimum ideally in line with rosters and not less than 7 days before the intention to take leave) and weekend days will be considered as less practical (harder and more expensive to find replacement staff) for single day requests.
 - iii. Requests for single day annual leave periods with less than 7 days' notice will generally be refused by the employer for roster replacement reasons. Requests by an individual employee for greater than 5 single days leave in any given 12 month period is also unlikely to be approved due to the impractical nature of managing this practice for rostering.
- (d) Extensive accumulated annual leave: An employee must take an amount of annual leave if directed to do so by the employer if:
- at the time the direction is given, the employee has 2 years or more accrued annual leave which equates to 8 weeks (10 weeks in the case of a shiftworker) annual leave credited to him or her; provided the amount of annual leave left to the employees credit after direction is at least 6 weeks

18. PERSONAL/CARER'S LEAVE

For the purposes of this clause and clause 19, the following are members of an employee's immediate family:

- (a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee;
- (b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

A spouse includes a former spouse.

De facto partner of a national system employee:

- (a) means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
- (b) includes a former de facto partner of the employee.

18.1 Entitlement to paid Personal/Carers Leave

Employees are entitled to Personal Leave in accordance with the provisions of the NES, (refer to Chapter 2, Part 2-2, Division 7 of the Act).

- (a) For each year of service with the employer the employee is entitled to 20 days of paid personal/carer's leave. (10 plus 10 for Contagious = 20).
- (b) An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.

18.2 Taking of Personal/Carer's Leave

An employee may take paid personal/carer's leave;

- (a) where the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or
- (b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
 - i. a personal illness, or personal injury, affecting the member; or
 - ii. an unexpected emergency affecting the member.
- (c) where the employee is experiencing family violence;
- (d) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who is experiencing family violence.

18.3 Payment of Paid Personal/Carer's Leave

If an employee takes a period of paid personal/carer's leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

Meaning of *base rate of pay*

The *base rate of pay* is the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:

- (a) loadings;
- (b) monetary allowances (with the exclusion of the uniform allowance);
- (c) overtime or penalty rates;
- (d) any other separately identifiable amounts.

18.4 Notice and Evidence Requirements

(a) Notice

- i. An employee must give the employer notice of the taking of leave under this Clause.
- ii. The notice:
 - a. must be given to the employer as soon as reasonably practicable (which may be at a time before or after the leave has started); and
 - b. must advise the employer of the period, or expected period, of the leave.

(b) Evidence

- i. Paid Personal leave
 - a. An employee who has given the employer notice of the taking of leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that if it is paid personal leave – the leave is taken for reason of a personal illness, or personal injury, affecting the employee;
 - b. Five days per year, shall be accessible without the onus of proof on the employee, except at the discretion of the employer where prior written notification was given to the employee requesting that proof of personal leave will be required for each absence or as otherwise advised.

c. The Employer shall accept a medical certificate or a Statutory Declaration, as required to be provided by an employee in subclause 18.4(ii)(a), that is signed by a 'registered health practitioner'. A 'registered health practitioner' means a health practitioner that is registered as such with a recognised authority and includes, but not limited to the occupation of a medical practitioner, a pharmacist, an osteopath, a nurse practitioner, a psychologist, a podiatrist, a physiotherapist, a dental practitioner, a chiropractor, and an optometrist. (excluding a nurse with any association with Melaleuca Home for the Aged Inc. to avoid conflict of interest situations, either real or perceived).

ii. Paid carers leave

To be entitled to carer's leave during the period, the employee may be required to give the employer as soon as reasonably practicable (which may be at a time before or after the carer's leave has started) either:

- a. a medical certificate from a health practitioner stating that in their opinion the member requires or required care or support during the period due to personal illness or injury; or
- b. a statutory declaration made by the employee stating that the employee requires or required leave during the period to provide care or support to the member because the member requires or required care or support during the period because of personal illness, or injury, of the member or an unexpected emergency affecting the member.

iii. Paid family violence leave

An employee who has given the employer notice of the taking of paid family violence leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason specified in clause 18.2(c) or (d).

(c) Compliance

An employee is not entitled to take leave under this clause unless the employee complies with the notice and evidence subclause.

18.5 Lockdown-Contagious Sick (Personal) Leave

As a result of contracting a sickness in a period directly preceding, including or immediately post a site "lockdown" or at any time an employee is directed by the employer to remain absent from work due to the risk of contagious sickness spreading to the residents (periods of lockdown and post lockdown), the time absent is to be deducted from the employee's personal leave accrual (hence 20 days per calendar year).

An employee claiming contagious sick leave as Personal Leave may be required to provide evidence of such claim when requested by the employer. Evidence can include presenting either a medical certificate clearly identifying the transmittable/contagious sickness, or other such evidence that would satisfy a reasonable person.

18.6 Personal Leave and Infectious Diseases

Notwithstanding any other provisions in this clause, an employee who contracts an infectious disease and/or who, on examination, reveals a changed mantoux reaction in the course of his/her duties, and same having been certified to by a medical practitioner approved by the employer, shall receive full pay during the period of duty up to but not exceeding 12 weeks, and during this time shall be regarded as remaining in the employ of the employer.

18.7 Personal Leave During Annual Leave

An employee, who is certified as unfit for duty because of personal illness by a medical practitioner approved by the employer during a period of annual leave, shall be given credit for the time so certified and the paid annual leave shall be extended by the number of days that the employee has been so certified as unfit for duty.

18.8 Unpaid Carer's Leave

- (a) An employee is entitled to 2 days unpaid carer's leave for each occasion when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of:
 - i. a personal illness, or personal injury, affecting the member; or
 - ii. an unexpected emergency affecting the member.
- (b) An employee may take unpaid carer's leave as:
 - i. a single continuous period of up to 2 days; or
 - ii. any separate periods agreed with the employer.
- (c) An employee is entitled to unpaid carer's leave for a particular occasion only if the employee cannot take an amount of paid personal/carer's leave.

18.9 Service

- (a) A period of paid personal/carer's leave does not break an employee's continuity of service and counts as service for all purposes.
- (b) A period of unpaid personal/carer's leave does not break an employee's continuity of service, but does not count as service.

19. COMPASSIONATE AND BEREAVEMENT LEAVE

Compassionate leave is as provided for under NES.

(a) Compassionate Leave

Employees, other than casual employees, will be entitled to four (4) days' paid compassionate leave when an immediate family member or member of an employee's household:

- i. contracts or develops a personal illness that poses a serious threat to his or her life; or
- ii. sustains a personal injury that poses a serious threat to his or her life; or
- iii. dies. (In the case of death, there is an additional day of paid leave under the bereavement leave sub clause below)

The leave can be taken in four (4) consecutive days, four (4) single days or any separate periods if the employer and employee agree.

Additional leave may be granted at the discretion of the employer.

Proof of illness, injury or death, in the form of a medical certificate, death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer when requested.

(b) Bereavement Leave

- i. An employee, other than a casual employee, on the death of an immediate family member or member of the employee's household, will be entitled to leave without deduction of pay not exceeding the number of ordinary hours worked by the employee in four (4) ordinary days,

provided that no payment shall be made in respect to that employee's rostered days off. This leave is in lieu of compassionate leave and not additional to the four (4) days of compassionate leave.

- ii. Where the death of an immediate family member requires the employee to travel interstate or further, the employer will grant an additional 2 days bereavement leave without loss of pay or personal leave entitlements to account for such necessary travel.
- iii. Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of a reasonable person when requested, provided furthermore that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of leave.

(c) **Payment for Compassionate/Bereavement Leave**

If, in accordance with this clause, an employee, other than a casual employee, takes a period of compassionate leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

For casual employees, compassionate and bereavement leave is unpaid leave.

(d) **Service**

- i. A period of paid compassionate/bereavement leave does not break an employee's continuity of service and counts as service for all purposes.
- ii. A period of unpaid compassionate/bereavement leave does not break an employee's continuity of service, but does not count as service.

20. COMMUNITY SERVICE LEAVE

20.1 General

Community Service Leave is as per the NES, summarised in this clause.

An employee who engages in an eligible community service activity is entitled to be absent from his or her employment for a period if:

- (a) The period consists of one or more of the following:
 - i. Time when the employee engages in the activity;
 - ii. Reasonable travelling time associated with the activity;
 - iii. Reasonable rest time immediately following the activity; and
- (b) Unless the activity is jury service – the employee's absence is reasonable in all the circumstances.

Each of the following is an eligible community service activity:

- (a) avoluntary emergency management activity; or
- (b) jury service (including attendance for jury selection).

20.2 Voluntary Emergency Management Activity

- (a) A voluntary emergency management activity is one where the activity:
 - i. involves dealing with an emergency or natural disaster; and
 - ii. the employee is a member of, or has a member-like association with, a recognised emergency management body; and

- iii. the employee engages in the activity on a voluntary basis; and
 - iv. the employee was requested by or on behalf of the body to engage in the activity.
- (b) An employee who wants an absence from his or her employment to be covered by this clause must give his or her employer notice of the absence.
- (c) The notice:
- i. must be given to the employer as soon as practicable (which may be a time after the absence has started); and
 - ii. must advise the employer of the period, or expected period, of the absence.
- (d) Evidence

An employee who has given his or her employer notice of an absence under subsection (1) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in an eligible community service activity.

Absence under the voluntary emergency management activity clause is treated as unpaid leave

20.3 Jury Service

- (a) If an employee is absent from his or her employment for a period because of jury service, and the employee is not a casual employee, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (b) Evidence
- The employer may require the employee to give the employer evidence that would satisfy a reasonable person:
- i. that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and
 - ii. of 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.

The employee is not entitled to payment under this subsection unless the employee provides the evidence requested; and if the employee provides the evidence—the amount payable to the employee is reduced by the total amount of jury service pay that has been paid, or is payable, to the employee, as disclosed in the evidence.

- (c) If an employee is absent because of jury service in relation to a particular jury service summons for a period of more than 10 days in total, the employer is only required to pay the employee for the first 10 days of absence.

20.4 An employee who engages in an eligible community service activity is entitled to be absent from employment for a period consisting of:

- time when the employee engages in the activity;

And in the case of voluntary emergency management activity:

- reasonable travelling time associated with the activity;
- reasonable rest time immediately following the activity.

21. PARENTAL LEAVE

Employees who have been employed for 12 months may be eligible for unpaid parental leave (birth related leave and adoption related leave) in accordance with the provisions contained in the National Employment Standards (NES) (Division 5 – Parental Leave and Related Entitlements of the Fair Work Act 2009).

A copy of the relevant section of the Act is available from the employer on request.

In parallel to unpaid entitlements available under the NES, employees have some paid parental leave entitlements. An employee must be eligible under the Fair Work Act 2009 for unpaid parental leave to be eligible for paid parental leave under this agreement. All other conditions and requirements are as per the relevant sections of Act, and the NES that applies to parental leave.

- (a) An eligible female employee is entitled to be paid fourteen weeks (or alternatively 28 weeks at half pay) maternity leave at the relevant rate
and further –
- (b) an eligible male employee is entitled to one week paid paternity leave at the relevant rate in addition to two weeks unpaid leave provided consistent with the Australian Government's Dads and Partner Pay Scheme.

22. LACTATION AND EXPRESS BREAKS

Refer to Breastfeeding at work Policy.

23. LONG SERVICE LEAVE

Long Service Leave entitlements shall be in accordance with the Long Service Leave Act Tasmania 1976 (as amended). Transitional arrangements referring to staggering of taking accrued LSL do not apply under this Agreement. Employees with 10 or more years of continuous employment as defined under the LSL Act 1976 as amended, are eligible immediately to take long service leave subject to application and subject to the organisational needs of the employer provided the employer will not unreasonably delay or hinder an employee from taking due long service leave.

24. FAMILY/DOMESTIC VIOLENCE

The 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, the employer is committed to providing support to staff that experience family violence.

- (a) In recognition of this, an employee experiencing family violence will have access to Ten (10) days paid special leave per year for medical appointments, legal proceedings and other activities related to family violence which can be taken annually from 1 January each year. These days do not accrue from year to year and are not paid out at termination of employment.
- (b) Family violence leave may be taken as consecutive days or single days or as a fraction of a day and can be taken without prior approval, however, the employee will notify the employer as soon as reasonably practicable of their request to take leave under this clause.
- (c) The employer remains supportive of employees also using their other leave entitlements already accrued if required and the three (3) days of family violence leave per calendar year (1 January) are in addition to those entitlements.

Definition of Family Violence

Family violence includes physical, sexual, financial, verbal or emotional abuse by an immediate family member. It is the patterned use or coercive and controlling behaviour to limit and /or shape a person's thoughts, feelings and actions.

Evidence

Proof of family violence may be required and can be in the form of an agreed document issued by the Police Service, a Court, a Doctor, a family Violence Support Service, or lawyer. All personal information concerning family violence will be kept confidential. No information will be kept on an employee's personal file without their express permission.

Support

- (a) An employee experiencing family and domestic violence will be referred to the Employee Assistance Program and /or other local resources for assistance.
- (b) In order to provide support to an employee experiencing family violence and to provide a safe work environment to all employees, the employer will approve any reasonable request from an employee experiencing family violence for:
 - (i) Changes to their span of hours or pattern of hours;
 - (ii) Job redesign or change of duties
 - (ii) A change to their telephone number or email address to avoid harassing contact;
 - (iv) Any other appropriate measure including those available under existing provisions of family friendly and flexible work arrangements.

25. CEREMONIAL & CULTURAL LEAVE

An employee who is legitimately required by Aboriginal tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to 10 working days' unpaid leave in any one year, with the approval of the employer.

An employee who has legitimate cultural reason may also be absent from work for those cultural purposes. These employees will be entitled up to 10 working days' unpaid leave in any one year, with the approval of the employer.

PART 4 - OTHER PROVISIONS

26. WORKLOAD CLAUSE

The purpose of this clause is to ensure the delivery of safe quality care to residents whilst providing safe workloads, as far as is reasonably practicable, to employees, including but not limited to:

- (a) Ensuring, so far as is reasonably practicable, that workloads must not exceed what can be reasonably be performed through supervisor and manager awareness;
- (b) if additional hours are regularly worked or where unreasonable workloads are identified, explore reasonable changes that can be made including but not limited to technology, responsibility and /or extra resources; and
- (c) Filling vacant positions (including temporary vacancies) as soon as reasonably possible and consulting with employees as to how work will be managed until the position has been filled, or why it has not been filled, whichever is the case.

27. TERMINATION OF EMPLOYMENT

27.1. Prior to reaching any decision to terminate the employment of an employee, the employer will:

- (a) inform the employee that the termination of their employment is being considered;
- (b) advise the employee of the reasons or allegations, including providing relevant details, and /or specific particulars of such reasons or allegations; and
- (c) provide the employee with an opportunity to respond to the allegations prior to a final decision being made.

27.2 An employee shall be given reasonable time to respond, and shall be provided with details of any relevant material. Where a meeting is held with the employee, the employee is entitled to have a witness/support person present. The witness/support person may be e.g. a co-worker, a workplace union delegate, an officer of the union, a family member, or any other person.

27.3 Subject to dismissal for serious misconduct, employment, other than the employment of a casual, will be terminated by the employer or the employee on the provision of the applicable notice as set out in this agreement, or by the payment by the employer, or forfeiture by the employee, of wages in lieu of notice.

27.4 The employer may, without notice, summarily dismiss an employee at any time for serious misconduct or wilful disobedience. Payment is up to the time of dismissal only.

27.5 Provided that employment may be terminated by part of the period of notice specified, and part payment or part forfeiture, in lieu of the period of notice specified.

27.6 In respect of the requirement for an employer to provide or pay notice under this clause, nothing in this clause shall exclude the application of Subdivision C of Division 11 of Part 2-2 of the Fair Work Act 2009.

27.7 It is the intention of this clause that both the employer and the employee provide appropriate notice upon termination, or, in the case of the employer, pay such notice in wages. If an employee does not give the period of notice specified in this clause or does not work out the period of notice, the employee will only be paid, and entitlements calculated to, the last day of work performed or, if on leave, at the end of the actual period of notice actually given. The application and interpretation of this clause shall give this intention full effect.

27.8 Notice of termination

(a) Period of Continuous Service	Minimum Period of Notice
1 year or less	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

(b) Notice of termination or payment in lieu is provided for in the NES. Employees (other than casuals) aged 45 years or older will be entitled to an additional one week's notice if the employee has completed at least two years continuous service for the employer.

(c) Casuals are to be given notice to the end of the current shift worked.

(d) Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of the employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.

28. REDUNDANCY

Redundancy occurs where the employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour

Redundancy does not apply to any employee employed for a specified period of time or to a casual that is not employed as a regular and systematic casual.

For the purposes of this clause, "continuous service" has the same meaning as contained in the Fair Work Act 2009 – section 22 Meanings of service and continuous service.

(a) Requirement to Consult

For the purpose of this clause redundancy includes a situation where the employer believes for operational reasons that it is necessary to make one or more positions redundant, or to reduce the number of employees.

Where the employer believes that it may be necessary to implement a redundancy, the employer is to notify the affected employee(s) and commence a process of consultation with the affected employees and their representatives.

(b) Redeployment and Retraining

Consideration will be given to redeployment and re-training options where possible and practical, prior to the final decision regarding termination of employment due to genuine redundancy.

(c) Notice of Redundancy

The employer is to provide as much notice as is reasonably practicable of an intended redundancy.

The minimum period of notice to be given to an employee affected by a redundancy is the same as contained in the table for termination of employment referenced in this agreement, including the additional weeks' notice where an employee is over 45 years of age and has been employed for 2 years or more.

(d) Voluntary Redundancy

- i. Before a redundancy is implemented, the employer in the first instance will seek expressions of interest for voluntary redundancy from all employees.

PROVIDED THAT the employer is only required to seek such expressions of interest from employees employed at the same classification level and at the same worksite in which the redundancy is being affected.

- ii. In assessing expressions of interest for voluntary redundancy, the employer will take into account the skill and operational requirements of the organisation.
- iii. The employer will further consult with the affected employee(s) where a decision to proceed with involuntary redundancy has been made either due to insufficient voluntary redundancies being identified, and/or after declining an expression of interest for voluntary redundancy.

(e) Redundancy Package

Where retraining and/or redeployment opportunities are not available, the redundancy package to be paid to redundant employees is based on the years of service of the individual employees.

Employee's period of continuous service with the employer on termination	Redundancy pay
At least 1 year but less than 2 years	4 weeks' pay
At least 2 years but less than 3 years	6 weeks' pay
3 years or greater	2 weeks for each completed year of service pro-rata for any incomplete year of service, (minimum of 7 weeks) capped to a maximum of 20 weeks' redundancy pay.

In addition employees that are eligible for (and paid) a redundancy are also entitled to pro rata long service leave for employees with more than five years continuous service

Exclusions- where the employer facilitates acceptable alternative employment for a redundant employee, including the transfer of all entitlements, the provisions of this clause shall not apply.

Acceptable alternative employment will be deemed to be where the employee has gained employment in a position which reflects the skills of that employee and which provides substantially the same financial and employment benefits and classification level, in the same approximate location, as the position from which the employee was made redundant.

The exclusions to redundancy payment under the Fair Work Act 2009 still apply to the redundancy clause of this agreement, namely sections 120-123

(f) Partial Redundancy Package for Changed or Decreased Hours

Where an employee's hours are to decrease or there is a reduction in wage as a result of operational or structural change, then a partial redundancy could be considered where agreed by the employee instead of a full redundancy.

Partial redundancy is calculated in the same way as a full redundancy would under this clause; however it is the difference between the pre-partial redundancy weekly wage to the post partial redundancy wage that is used to determine the "weekly wage" for the purpose of calculating the redundancy pay.

EG:

Weekly wage of employee pre-partial redundancy based on 38 hours per week plus allowances = \$920.40

Weekly wage of employee post-partial redundancy revised position based on 25 hours per week plus allowances = \$502.50

Partial Redundancy figure is:

$\$920.40 - \$502.50 = \$417.90$ X redundancy pay week figure based on years of service.

Leave accruals (days accrued) remain as they were in situations of partial redundancy.

(g) Definition - week's pay

For the purposes of this clause a week's pay means the relevant rate, and any loadings and all-purpose on going allowances to which the employee is normally entitled.

(h) **Paid Time off to Seek Alternative Employment**

Employees who are made redundant are to be given assistance by the employer in seeking suitable alternative employment, including being granted paid time off to look for work. With consent from the employer (which may include evidence of job seeking activity), up to one day per week during the notice period may be accessed for the purpose of job seeking.

29. CONSULTATION REGARDING MAJOR WORKPLACE CHANGE

1. This term applies if the employer:

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

Major change

2. For a major change referred to in paragraph (1)(a):

- (a) the employer must notify the relevant employees of the decision to introduce the major change; and
- (b) subclauses (3) to (9) apply.

3. The relevant employees may appoint a representative for the purposes of the procedures in this term.

4. If:

- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.

5. As soon as practicable after making its decision, the employer must:

- (a) discuss with the relevant employees:
 - i. the introduction of the change; and
 - ii. the effect the change is likely to have on the employees; and
 - iii. measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
- (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
 - i. all relevant information about the change including the nature of the change proposed; and
 - ii. information about the expected effects of the change on the employees; and
 - iii. any other matters likely to affect the employees.

6. However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

7. The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

8. If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
9. In this term, a major change is likely to have a significant effect on employees if it results in:
 - (a) the termination of the employment of employees; or
 - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - (d) the alteration of hours of work; or
 - (e) the need to retrain employees; or
 - (f) the need to relocate employees to another workplace; or
 - (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

10. For a change referred to in paragraph (1)(b):
 - (a) the employer must notify the relevant employees of the proposed change; and
 - (b) subclauses (11) to (15) apply.
11. The relevant employees may appoint a representative for the purposes of the procedures in this term.
12. If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.
13. As soon as practicable after proposing to introduce the change, the employer must:
 - (a) discuss with the relevant employees the introduction of the change; and
 - (b) for the purposes of the discussion—provide to the relevant employees:
 - i. all relevant information about the change, including the nature of the change; and
 - ii. information about what the employer reasonably believes will be the effects of the change on the employees; and
 - iii. information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
14. However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
15. The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

16. In this term:

relevant employees means the employees who may be affected by a change referred to in subclause (1).

30. SALARY PACKAGING AND SACRIFICE

The rate of pay applicable to each classification specified in the wage rates of this Enterprise Agreement may be packaged in accordance with the employer's salary packaging program.

By agreement with the Employer, Employees who elect in writing to do so may convert a component of their weekly ordinary time wage to packaged benefits.

The terms and conditions of such a package are subject to the following provisions;

- (a) the employer shall ensure that the structure of any package complies with taxation and other relevant laws;
- (b) the employer shall confirm in writing to the employee the classification level and the current salary payable as applicable to the employee under this Agreement;
- (c) the employer shall advise the employee in writing of his or her right to choose payment of that salary referred to in sub-clause (b) above instead of a remuneration package;
- (d) the employer shall advise the employee, in writing, that all Agreement conditions, other than the salary and those conditions as agreed in sub-clause (e) below shall continue to apply;
- (e) when determining the remuneration package, the non-salary fringe benefit shall be in accordance with relevant Australian Taxation Office legislation;
- (f) a copy of the agreement shall be made available to the employee;
- (g) the employee shall be entitled to inspect details of the payments made under the terms of this agreement;
- (h) the configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer;
- (i) where at the end of the agreed period the full amount allocated to a specific benefit has not been utilised, by agreement between the employer and the employee, an unused amount may be carried forward to the next period, or paid as salary which will be subject to usual taxation requirements;
- (j) remuneration packaging is only offered on the strict understanding and agreement that in the event existing taxation law is changed regarding Fringe Benefit Tax or personal tax arrangements, and that change may impact on this agreement, all salary packaging arrangements may at the discretion of the employer be terminated. Upon termination in these circumstances the employee's rate of pay will revert to the rate of pay that applied immediately prior to a salary packaging agreement made pursuant to this clause, or the appropriate Agreement rate of pay, whichever is greater;
- (k) where changes are proposed to salary packaging arrangements other than to flow on wage increases, or salary packaging arrangements are to be cancelled for reasons other than legislative requirements, then the employer and/or the employee must give three months' notice of the proposed change;
- (l) in the event that an employee ceases to be employed by the employer, this agreement will cease to apply as at the date of termination and all leave entitlements due on termination shall be paid at the rates in accordance with sub-clause (b) above. Any outstanding benefit shall be paid on or before the date of termination; and

- (m) any pay increases granted to employees under this Agreement shall also apply to employees subject to remuneration packaging arrangements within this clause.

31. SUPERANNUATION

31.1 General

The employer will make superannuation contributions into an approved Superannuation Fund nominated by the employee in accordance with the Superannuation Guarantee (Administration) Act 1992 (SG) legislation as varied from time to time. Superannuation contributions shall be made as a minimum, on a monthly basis. In addition to the requirements of the Superannuation Guarantee obligations, the employer will pay contributions without regard for any age cap.

In circumstances where eligible employees do not inform the employer of their choice of superannuation fund, the employer will remit the appropriate contributions for such employees to the nominated fund.

For the purpose of this clause and this Agreement the nominated fund means the Health Employees Superannuation Trust Australia (HESTA) or any successor.

31.2 Salary Sacrifice to Superannuation

- (a) An employee can elect to sacrifice a portion of salary to superannuation. Such election must be made prior to the commencement of the period of service to which the earnings relate and be in accordance with relevant legislation.
- (b) Salary sacrifice to superannuation means the option of making additional superannuation contributions by electing to sacrifice a portion of the gross earnings (pre-tax dollars). This will give the effect of reducing the taxable income by the amount for salary sacrifice.
- (c) Employers will not use any amount that is salary sacrificed by an employee to count towards the employer's obligation to pay contributions under the SG legislation.
- (d) Contributions payable by the employer in relation to the SG legislation shall be calculated by reference to the salary which would have applied to the employee under this Agreement in the absence of any salary sacrifice.
- (e) Any additional superannuation contributions made in accordance with this clause shall be paid into the same superannuation fund that receives the employer's SG contributions.
- (f) Any allowance, penalty rate, overtime payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any salary sacrifice to superannuation. Payment for leave taken whilst employed will be at the post-salary sacrificed amount.

32. TRAINING

32.1 The parties to this Agreement recognise the benefits that flow to employees and to the employer from appropriate training and personal development

All training opportunities will be identified prior to the training commencing as either compulsory (required by the employer for the employee to attend) or discretionary (non-compulsory), so as there is no confusion as to whether payment must be provided or not.

32.2 Non-Compulsory Training

Where practical the employer will schedule all personal development training during an employee's rostered shift, whereby employees will be paid as if the shift was worked and not spent in training. Where it is not practical to schedule training during rostered shifts the employee can attend the training after work hours at the

employees discretion. This discretionary training attendance will generally not be paid. In some cases the employer may make the decision to treat this discretionary out of hours training as paid, in these instances employees will be notified prior to the commencement of the training. In these instances additional hours for the purpose of attending training will be paid at base rates of pay, overtime, shift or penalty rates will not apply.

32.3 Compulsory Training

Compulsory training is exclusive of professional development hours.

- (a) Employees must attend compulsory training where indicated as such by the employer, including fire and emergency training, OHS training and manual handling training or any other training as may be required by regulatory bodies or the employer.
- (b) Employees required to attend Compulsory training will be paid at the same rate of pay, for that period of training as if they had been on their normal rostered shift at that time. Paid compulsory training shall not be counted as time worked for the purposes of calculating overtime or shift penalties in the agreement.

Appropriate minimum engagements as prescribed in this agreement will apply.

Employees volunteering for compulsory training will be paid at the base rate of pay for the period of that training.

33. DISPUTE RESOLUTION PROCEDURE

This dispute resolution procedure will apply to disputes about:

- matters arising under this agreement;
 - matters in relation to the NES;
 - a workplace right as defined in the Fair Work Act 2009 subsection 341(1)
- (a) If a dispute arises about this agreement, the NES or workplace right, the parties to the dispute will attempt to resolve the dispute at the workplace by discussions between the employee or employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the employee or employees concerned and more senior levels of management as appropriate.
 - (b) If the matter arising under this agreement, or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under (a) have been taken, a party to the dispute may refer the dispute to FWC. The parties may agree on the process to be utilised by FWC including mediation, conciliation and consent arbitration.
 - (c) The employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
 - (d) The parties to the dispute and their representatives must act in good faith in relation to the dispute.
 - (e) The parties agree that FWC shall have the power to do all such things as are necessary for the just resolution of the dispute including mediation, conciliation and arbitration;
 - (f) While the dispute is being resolved, work must continue in accordance with this agreement and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

34. NOTICE BOARD

The employer is to permit a notice board to be erected in the workplace(s) for the use of employees and their unions.

The employer must ensure that copies of this Agreement and the NES are available to all employees to whom they apply either on a noticeboard located at each of the employer's workplaces and/or through electronic means, whichever makes them more accessible.

35. UNION DELEGATES

- (a) It is recognised that union delegates or elected workplace representatives, with approval of the Union and upon application in writing, shall be granted up to two days leave with pay each calendar year, non-cumulative, to:
- i. represent the interests of members to the employer;
 - ii. consult with union members and other employees for whom the delegate is a bargaining representative;
 - iii. participate in the operation of the Union which includes representing members on workplace issues;
 - iv. represent members on any relevant consultative committee at the workplace;
 - v. attend union education, subject upon application to and approval from the employer;
 - vi. address new employees about the benefits of union membership at the time that they enter employment;
 - vii. attend courses conducted by an approved training provider, that are designed to provide skills and competencies that will assist the delegate or workplace representative contribute to the prompt resolution of disputes and or grievances in the workplace, subject upon application to and approval from the employer;
 - viii. attend union annual Delegates Conference, subject upon application to and approval from the employer.
- (b) The application to the employer must be in writing, including the nature, content and duration of the course to be attended, and normally, 14 days' notice of the proposed training is required.
- (c) The granting of any leave pursuant to this clause shall be subject to the employer being able to make adequate staffing arrangements amongst current employees during the period of such leave. The employer shall not use this subclause to avoid an obligation under this clause.
- (d) Leave of absence granted pursuant to this clause, shall count as service for all purposes of this Agreement.
- (e) Each employee on paid leave approved in accordance with this clause, shall be paid all ordinary time earnings. For the purpose of this subclause "ordinary time earnings" for an employee means the classification rate, over-award payment, superannuation and shift loading, which otherwise would have been payable.
- (f) All expenses (such as travel, accommodation and meals) associated with or incurred by the employee attending a training course as provided in this clause shall be the responsibility of the employee or the Union.
- (g) An employee may be required to satisfy the employer of attendance at the course to qualify for leave.

- (h) An employee granted leave pursuant to this clause shall, upon request, inform the employer of the nature of the course attended and their observations on it.
- (i) In the event of a disagreement arising from the outcome of this clause, the matter may be settled using the dispute settlement procedures of the agreement.

36. NO EXTRA CLAIMS

The parties bound by this Agreement acknowledge that this Agreement settles all claims in relation to the terms and conditions of employment of the employees to whom it applies and agree that they will not pursue any extra claims during the term of this Agreement provided unions may provide a log of claims for the replacement agreement.

Without limiting the generality of the foregoing, there shall be no industrial action for the purpose of supporting or advancing claims against the employer until the nominal expiry date has passed and the requirements of the Act have been satisfied.

Where any disagreement arises, the parties shall follow the Dispute Settlement Procedure contained in this Agreement. The parties acknowledge that the terms of this Agreement represent the totality of all matters in the employment relationship and that no industrial action shall be taken in support of any matter(s) whatsoever which is (are) covered or not covered by this Agreement until its nominal expiry date has passed and the requirements of the Act have been satisfied.

SIGNATORIES:

FOR THE EMPLOYER

[Signature]

Signed:

(for and on behalf of Melaleuca Home for the Aged Inc.: by its authorised representative)

Date: 1/10/2024

Name in full (printed): WINNIE COLLINS

Position: C.E.O

Employer's Address: 713 MARY STREET

EAST DEVONPORT TAS 7310

Witnessed by (signature): *[Signature]*

Witness name in full (printed): Linda Gaddes

Witness address: 73 Mary Street

East Devonport TAS 7310

EMPLOYEE REPRESENTATIVE (HACSU)

[Signature]

Signed:

Name in full (printed): Robbie Moore

Address: 11 Clare Street New Town

7008

Date: 1/10/24

[Signature]

Witnessed by (signature):

Witness name in full (printed): James Milligan

Witness address: 11 Clare Street

New Town 7008

EMPLOYEE REPRESENTATIVE (ANMF)

[Signature]

Signed:

Name in full (printed): Emily Shepherd

Address: 182 Macquarie Street Hobart

TAS, 7000

Date: 02/10/2024

Witnessed by (signature): *[Signature]*

Witness name in full (printed): Phoebe Mansell

Witness address: 182 Macquarie Street, Hobart TAS 7000

SCHEDULE A - EMPLOYMENT CLASSIFICATIONS

CLASSIFICATIONS

Aged care employee—level 1

Entry level: An employee who has less than three months’ work experience in the industry and performs basic duties.

An employee at this level:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.

Indicative tasks performed at this level are:

Administration	General and Food services
General clerk	Food services assistant
	Laundry hand
	Cleaner
	Assistant gardener

Aged care employee—level 2

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

Indicative tasks performed at this level are:

Administration	General and Food services	Personal care
General clerk/Typist (between 3 months’ and less than 1 years’ service)	Food services assistant	Personal care worker grade 1
	Laundry hand	
	Cleaner	
	Gardener (non-trade)	
	Maintenance/Handyperson (unqualified)	
	Driver (less than 3 ton)	

Aged care employee—level 3

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative tasks performed at this level are:

Administration	General and Food services	Personal care
General clerk/Typist (second and subsequent years of service)	Cook	Personal care worker grade 2
Receptionist		Recreational/Lifestyle activities officer (unqualified)
Pay clerk		
	Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate	

Aged care employee—level 4

An employee at this level:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.
- In the case of a Personal care worker, is required to hold a relevant Certificate III qualification.

Indicative tasks performed at this level are:

Administration	General and Food services	Personal care
Senior clerk	Senior cook (trade)	Personal care worker grade 3
Senior receptionist		

	Maintenance/Handyperson (qualified)	
	Driver (3 ton and over)	
	Gardener (trade or TAFE Certificate III or above)	

Aged care employee—level 5

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

Administration	General and Food services	Personal care
Secretary interpreter (unqualified)	Chef	Personal care worker grade 4

Aged care employee—level 6

An employee at this level:

- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and

- may require formal qualifications at post-trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and Food services
Maintenance tradesperson (advanced)
Gardener (advanced)
Senior chef

Aged care employee—level 7

An employee at this level:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses developed administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

Administration	General and Food services	Personal care
Clerical supervisor	Chef /Food services supervisor	Personal care worker grade 5
Interpreter (qualified)	Gardener Superintendent	
	General services supervisor	

SCHEDULE B-PAY RATES

% Increases (or the percentage increase awarded by FWC, whichever is the greater)	5.75%	At the minimum 3.5%	At the minimum 3%
	Wage rate FFPP on or after 1 July 2024 5.75% increase \$ Per hour	Wage rate FFPP on or after 1 July 2025 3.5% increase \$ Per hour	Wage rate FFPP on or after 1 July 2026 3% increase \$ Per hour
Classification			
Level 1 Aged Care Employee - ECA	\$29.15	\$30.17	\$31.08
Level 1 Aged Care Employee - SERVICE	\$25.35	\$26.24	\$27.03
Level 2 Aged Care Employee - ECA	\$30.31	\$32.31	\$32.31
Level 2 Aged Care Employee - SERVICE	\$26.35	\$27.28	\$28.09
Level 3 Aged Care Employee - ECA	\$31.47	\$32.57	\$33.55
Level 3 Aged Care Employee - SERVICE	\$27.36	\$28.32	\$29.17
Level 4 Aged Care Employee - ECA	\$31.84	\$32.95	\$33.94
Level 4 Aged Care Employee - SERVICE	\$27.69	\$28.66	\$29.52
Level 5 Aged Care Employee - ECA	\$32.92	\$34.08	\$35.10
Level 5 Aged Care Employee - SERVICE	\$28.63	\$29.63	\$30.52
Level 6 Aged Care Employee - ECA	\$34.70	\$35.92	\$36.99
Level 6 Aged Care Employee - SERVICE	\$30.17	\$31.23	\$32.16
Level 7 Aged Care Employee - ECA	\$35.32	\$36.55	\$37.65
Level 7 Aged Care Employee - SERVICE	\$30.71	\$31.78	\$32.74
Level 7 Aged Care Employee - CHEF	\$35.32	\$36.55	\$37.65

SCHEDULE C- SUPPORTED WAGE SYSTEM

C.1 This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this Agreement.

C.2 In this schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this Agreement for the class of work for which an employee is engaged

supported wage system means the Commonwealth Government system to promote employment for people who cannot work at full Agreement wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Education, Employment and Workplace Relations that records the employee's productive capacity and agreed wage rate

C.3 Eligibility criteria

C.3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

C.3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this Agreement relating to the rehabilitation of employees who are injured in the course of their employment.

C.4 Supported wage rates

C.4.1 Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause C5)	Relevant minimum wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60

Assessed capacity (clause C5)	Relevant minimum wage
%	%
70	70
80	80
90	90

- C.4.2** Provided that the minimum amount payable must be not less than \$106 per week and will increase in accordance with the Award.
- C.4.3** Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.
- C.5** **Assessment of capacity**
- C.5.1** For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.
- C.5.2** All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.
- C.6** **Lodgement of SWS wage assessment agreement**
- C.6.1** All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with FWC.
- C.6.2** All SWS wage assessment agreements (SWSA) must be agreed and signed by the employee and employer parties to the assessment. Where a union, party to this agreement, is not a party to the SWSA, the assessment will be referred by FWC Australia to the union by certified mail and the SWSA will take effect unless an objection is notified to FWC within 10 working days.
- C.7** **Review of assessment**
- The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.
- C.8** **Other terms and conditions of employment**
- Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this Agreement on a pro rata basis.
- C.9** **Workplace adjustment**
- An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.
- C.10** **Trial period**

- C.10.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- C.10.2 During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- C.10.3 The minimum amount payable to the employee during the trial period must be no less than \$75 per week.
- C.10.4 Work trials should include induction or training as appropriate to the job being trialled.
- C.10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.

7A. Workplace delegates' rights

[7A inserted by [PR774723](#) from 01Jul24]

7A.1 Clause 7A provides for the exercise of the rights of workplace delegates set out in section 350C of the [Act](#).

NOTE: Under section 350C(4) of the [Act](#), the employer is taken to have afforded a workplace delegate the rights mentioned in section 350C(3) if the employer has complied with clause 7A.

7A.2 In clause 7A:

- (a) **employer** means the employer of the workplace delegate;
- (b) **delegate's organisation** means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and
- (c) **eligible employees** means members and persons eligible to be members of the delegate's organisation who are employed by the employer in the enterprise.

7A.3 Before exercising entitlements under clause 7A, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

7A.4 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

7A.5 Right of representation

A workplace delegate may represent the industrial interests of eligible employees who wish to be represented by the workplace delegate in matters including:

- (a) consultation about major workplace change;
- (b) consultation about changes to rosters or hours of work;
- (c) resolution of disputes;
- (d) disciplinary processes;
- (e) enterprise bargaining where the workplace delegate has been appointed as a bargaining representative under section 176 of the [Act](#) or is assisting the delegate's organisation with enterprise bargaining; and
- (f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible employees are entitled to be represented and which concerns their industrial interests.

7A.6 Entitlement to reasonable communication

- (a) A workplace delegate may communicate with eligible employees for the purpose of representing their industrial interests under clause 7A.5. This includes discussing membership of the delegate's organisation and representation with eligible employees.

Aged Care Award 2010

- (b) A workplace delegate may communicate with eligible employees during working hours or work breaks, or before or after work.

7A.7 Entitlement to reasonable access to the workplace and workplace facilities

- (a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:
 - (i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible employees;
 - (ii) a physical or electronic noticeboard;
 - (iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible employees and by eligible employees to communicate with each other, including access to Wi-Fi;
 - (iv) a lockable filing cabinet or other secure document storage area; and
 - (v) office facilities and equipment including printers, scanners and photocopiers.
- (b) The employer is not required to provide access to or use of a workplace facility under clause 7A.7(a) if:
 - (i) the workplace does not have the facility;
 - (ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or
 - (iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

7A.8 Entitlement to reasonable access to training

Unless the employer is a small business employer, the employer must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible employees, subject to the following conditions:

- (a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible employees.
- (b) The number of eligible employees will be determined on the day a delegate requests paid time to attend training, as the number of eligible employees who are:
 - (i) full-time or part-time employees; or
 - (ii) regular casual employees.
- (c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the delegate had not been absent from work to attend the training.

Aged Care Award 2010

- (d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.
- (e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.
- (f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.
- (g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

7A.9 Exercise of entitlements under clause 7A

- (a) A workplace delegate's entitlements under clause 7A are subject to the conditions that the workplace delegate must, when exercising those entitlements:
 - (i) comply with their duties and obligations as an employee;
 - (ii) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;
 - (iii) not hinder, obstruct or prevent the normal performance of work; and
 - (iv) not hinder, obstruct or prevent eligible employees exercising their rights to freedom of association.
- (b) Clause 7A does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible employees.
- (c) Clause 7A does not require an eligible employee to be represented by a workplace delegate without the employee's agreement.

NOTE: Under section 350A of the [Act](#), the employer must not:

- (a) unreasonably fail or refuse to deal with a workplace delegate; or
- (b) knowingly or recklessly make a false or misleading representation to a workplace delegate; or
- (c) unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate under the [Act](#) or clause 7A.

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2024/3864

Applicant:
Melaleuca Home for the Aged Inc.

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Simone Collins, Chief Executive Officer, have the authority given to me by Melaleuca Home for the Aged Inc. to give the following undertakings with respect to the Melaleuca Home for the Aged Inc. General Staff Enterprise Agreement 2024 ("the Agreement"):

1. Shiftworkers are employees required to work on a roster outside the spread of hours in 10.1(b), up to 8 hours on any shift other than a night shift, and up to 10 hours on a night shift. This definition applies for the purposes of the NES.
2. Clause 10.1(b) shall read that that the ordinary hours of work for employees (other than shift workers) are between the hours of 6.00 am and 6.00 pm.
3. Afternoon shift -
 - (a) Afternoon shift commencing at 10.00 am and before 1.00pm – 10% of the ordinary hourly rate.
 - (b) Afternoon shift commencing at 1.00 pm and before 4.00pm – 12.5% of the ordinary hourly rate.
 - (c) Afternoon shift penalties will apply to a shift that ends after 6.00pm and before 11.00pm – 15% of the ordinary hourly rate.Night shift - Rostered to work some or all hours between 11.00 pm and 6.00 am. 17.5% shift loading.
4. Clause 14.2(f)(i) shall read that overtime will be arranged so that employees have at least ten (10) consecutive hours off duty between the work of successive days.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature

Date: 20 November 2024