

WITHOUT PREJUDICE

Healthscope Queensland Clerical Services Employee Agreement 2019-202~~2~~³

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Part 1—Application and Operation

1. Title

This Agreement is the *Heathslope Queensland Clerical Services Employee Agreement 2019-202~~23~~* (the Agreement).

2. Date and period of operation

This Agreement will operate from seven (7) days after it is approved by the Fair Work Commission and will nominally expire on ~~1 March 2023~~ 30 September 2022.

3. Coverage

3.1 This Agreement applies to:

- (a) Healthscope Operations Pty Ltd – ACN 006 405 152 (**Healthscope**) in respect of Private Hospitals owned or operated by Healthscope in the State of Queensland;
- (b) Employees employed by Healthscope within the classifications provided in Schedule C of this Agreement; and
- (c) In accordance with section 183 of the Act, the Australian Municipal, Administrative, Clerical and Services Union, Queensland Together Branch (**Union**) has indicated that it will seek to be bound by this Agreement.

4. Relationship with Industrial Instruments and the National Employment Standards

4.1 This Agreement operates to the exclusion of all other enterprise agreements and awards, and replaces the *Healthscope Queensland Clerical Services Employee Agreement 2015-2019*.

4.2 Where a term of this Agreement is less beneficial than the National Employment Standards, then the National Employment Standards will apply to the extent that the term in this Agreement is less beneficial.

5. Definitions and interpretation

5.1 In this Agreement, unless the contrary intention appears:

'**Act**' means the *Fair Work Act 2009* (Cth), as amended or replaced from time to time.

'**Defined benefit member**' has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* (Cth).

'**FWC**' means the Fair Work Commission.

'Health Information Service' is a medical record department within a Healthscope Hospital.

'MySuper product' has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

NES means the National Employment Standards as contained in sections 59 to 131 of the *Fair Work Act 2009* (Cth) or as amended or replaced from time to time.

Private Hospital means a facility licensed as a Private Hospital in the State of Queensland, pursuant to the *Private Health Facilities Act 1999*, as amended or replaced from time to time.

- 5.2** Where this Agreement refers to a condition of employment provided for in the NES, the NES definition applies.

6. Variation to Agreement

This Agreement can only be varied in accordance with the Act.

7. No further claims

This is a comprehensive Agreement in settlement of all enterprise bargaining claims and it is a term of this Agreement that extra claims will not be pursued.

8. Access to the Agreement

A copy of the Agreement will be displayed in a common area for Employees covered by the Agreement to access and review.

9. Individual flexibility arrangements

- 9.1** Despite anything else in this Agreement, Healthscope and an individual employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:

- (a) the agreement deals with one (1) or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates; or
 - (iii) penalty rates; or
 - (iv) allowances; or
 - (v) annual leave loading; and
- (b) the arrangement meets the genuine needs of Healthscope and the relevant employee in relation to one (1) or more of the matters mentioned in this clause 9.1(a); and

- (c) the arrangement is genuinely agreed to by Healthscope and the relevant employee, without coercion or duress.

9.2 Healthscope must ensure that the terms of the individual flexibility arrangement:

- (a) are about permitted matters under s 172 of the Act, as amended or replaced from time to time;
- (b) are not unlawful terms under s 194 of the Act, as amended or replaced from time to time; and
- (c) result in the employee being better off overall than the employee would be if no arrangement was made.

9.3 Healthscope must ensure that the individual flexibility arrangement:

- (a) is in writing;
- (b) includes the name of the employer and employee
- (c) is signed by Healthscope and the employee and if the employee is under eighteen (18) years of age, signed by a parent or guardian of the employee;
- (d) includes details of:
 - (i) the terms of the Agreement that will be varied by the arrangement;
 - (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.

9.4 Healthscope must give the employee a copy of the arrangement within fourteen (14) days after it is agreed to.

9.5 An agreement may be terminated:

- (a) at any time, by written agreement between Healthscope and the employee; or
- (b) by Healthscope or the employee giving thirteen (13) weeks' written notice to the other party (reduced to four (4) weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

9.6 An agreement terminated as provided in clause 9.5 of this Agreement ceases to have effect at the end of the period of notice required under that clause.

10. Labour flexibility and incidental and peripheral tasks

10.1 The parties to this Agreement agree:

- (a) employees shall perform if or as required by Healthscope a wider range of duties including work which is incidental or peripheral to their main tasks or functions, provided such duties are reasonably within the limits of the employee's skill, competence and training;
- (b) employees shall perform such work as is reasonable and lawfully required of them by Healthscope, including accepting instructions from authorised personnel;
- (c) employees shall comply with all reasonable requests to perform any work provided for by this Agreement;
- (d) where necessary, training shall be provided by Healthscope to ensure employees are capable of meeting its requirements in relation to the quality and accuracy of the work assigned to them;
- (e) employees shall not unreasonably impose any limitations or continue to enforce any limitations on supervisors or technical personnel demonstrating the use of new equipment or machinery for the purpose of training clerical employees on the use of such equipment or machinery, provided that:
 - (i) consultation in relation to the introduction of new technology has taken place (where necessary) in accordance with the provisions of clause 11 of this Agreement; and
 - (ii) consultation with the employee's nominated representative (if any) has taken place, where necessary; and
- (f) employees shall use such equipment as may be required by Healthscope, provided that the employee has been properly trained in the use of such equipment and the direction is consistent with Healthscope's responsibilities to provide a safe and healthy working environment.

Part 2—Consultation and Dispute Resolution

11. Consultation about major workplace change

Healthscope to notify

11.1 Where Healthscope makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, Healthscope must:

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) discuss with affected employees and their representatives (if any):

- (i) the introduction of the changes; and
 - (ii) their likely effect on employees; and
 - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
- (c) commence discussions as soon as practicable after a definite decision has been made.

11.2 'Significant effects', as referred to in clause 11.1 of this Agreement, includes any of the following:

- (a) termination of employment;
- (b) major changes in the composition, operation or size of Healthscope's workforce or in the skills required;
- (c) loss of, or reduction in, job or promotion opportunities;
- (d) loss of, or reduction in, job tenure;
- (e) alteration of hours of work;
- (f) the need for employees to be retrained or transferred to other work or locations; or
- (g) job restructuring

provided that where this Agreement makes provision for alteration of any of these matters, an alteration is deemed not to have significant effect.

Healthscope to discuss change

11.3 Healthscope will consult with the employees affected and their representatives (if any), about the introduction of the change, the effects the changes are likely to have on employees and the ways to avoid or minimise the effects of the changes.

11.4 Consultation must occur as soon as practicable after Healthscope makes a definite decision as provided for in clause 11.1 of this Agreement.

11.5 For the purposes of such consultation, Healthscope must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

- (a) their nature; and
- (b) their expected effect on employees; and
- (c) any other matters likely to affect employees.

provided that Healthscope shall not be required to disclose any confidential information if its disclosure would be contrary to its interests.

11.6 Healthscope must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 11.3 of this Agreement.

12. Consultation about changes to rostering

Where Healthscope is proposing changes in rostering, then consultation will occur in accordance with the terms of Schedule 2.3 (Model Consultation Term) of the *Fair Work Regulations*, as replaced or amended from time to time, as set out in Schedule A—Model Consultation Term.

13. Dispute resolution

13.1 Unless otherwise stated, the terms ‘party’ or ‘parties’ referred to in this clause means Healthscope and the employee or employees, as the context requires.

13.2 This clause sets out the procedures to be followed if a dispute arises about a matter:

~~(a) under this Agreement (excluding matters relating to the termination of an employee’s employment);~~

~~(b)~~(a) in relation to the NES; or

~~(c)~~(b) a matter arising under this Agreement (excluding matters relating to the termination of an employee’s employment).

13.3 The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

13.4 If the dispute is not resolved through discussion as mentioned in clause 13.3 of this Agreement, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

13.5 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 13.3 and 13.4 of this Agreement, a party to the dispute may refer it to the Fair Work Commission.

13.6 The Fair Work Commission may deal with a dispute that is unresolved via mediation, conciliation and ultimately arbitration~~The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and, as a last resort, consent arbitration.~~

13.7 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the Act to use and that it considers appropriate for resolving the dispute.

- 13.8** A party to the dispute may appoint a person, union, organisation or association to support and/or represent them in any discussion or process under this clause 13.
- 13.9** While procedures are being followed under this clause 13 in relation to a dispute:
- (a) work must continue in accordance with this Agreement and the Act; and
 - (b) an employee must not unreasonably fail to comply with any direction given by Healthscope to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 13.10** Clause 13.9 of this Agreement is subject to any applicable work health and safety legislation.

Part 3—Types of Employment and Termination of Employment

14. Types of employment

14.1 Employment categories

- (a) Employees under this Agreement will be employed in one of the following categories:
 - (i) full-time;
 - (ii) part-time; or
 - (iii) casual.
- (b) At the time of engagement Healthscope will inform each employee whether they are employed on a full-time, part-time or casual basis.
- (c) Healthscope may direct an employee to carry out such duties that are within the limits of their skill, competence and training, consistent with the respective classification.

14.2 Full-time employment

A full-time employee is one who is engaged to work thirty-eight (38) hours per week or an average of thirty-eight (38) hours per week pursuant to clause 23—Ordinary hours of work~~Ordinary hours of work~~ of this Agreement.

14.3 Part-time employment

- (a) Healthscope may employ a part-time employee in any classification in the Agreement.
- (b) A part-time employee is a person who:

- (i) works less than full-time hours of thirty-eight (38) per week (or less than seventy-six (76) hours in a fortnight);
 - (ii) has reasonably predictable hours of work; and
 - (iii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (c) Before commencing employment, Healthscope and the employee will agree in writing on the agreed minimum number of ordinary hours to be worked per week during the working cycle permitted by clause 24–Span of hours of this Agreement.
- (d) The terms of the agreement referred to in clause 14.3(c) above may be varied by agreement and recorded in writing.
- (e) Where additional hours are available, Healthscope will attempt to offer extra work to part-time employees, provided that:
- (i) additional hours are paid at the ordinary rate of pay; and
 - (ii) Healthscope is able to offer sufficient hours to casual staff to ensure that a necessary pool of casual employees is attracted and retained.
- (f) A part-time employee must agree to working additional hours (over and above the agreed minimum number of ordinary hours) in any week, fortnight or month than before working those hours. By way of clarification, an agreement includes Healthscope recording additional hours in an electronic or paper based time and attendance system and the part-time employee attending for work or remaining at work for the additional hours. Healthscope will maintain time and attendance records for recording purposes. Where an agreement to work extra hours exists, then these hours will be paid at the ordinary time rate of pay (subject to the application of any penalty for work outside the spread of hours). Provided that all time worked by a part-time employee which are in excess of the rostered daily ordinary hours of work prescribed in this Agreement, or the ordinary hours of work averaged over a fortnight, per clause 14.3(b)(i) above, will be paid at the applicable overtime rates prescribed by this Agreement.
- (g) Any hours worked by the part-time employee, by mutual agreement above the agreed minimum number of ordinary hours, and paid at the ordinary time rates of pay, will count towards the accrual of annual leave, long service leave and personal leave.
- (h) Outside an agreement as described in clause 14.3(f) of this Agreement, no part-time employee will be directed to work, at ordinary time rates of pay, above the employee's agreed minimum number of ordinary hours.
- (i) Part-time employees shall be paid at an hourly rate equal to 1/38th of the weekly wage appropriate to the employee's classification. Employees employed under this clause shall accrue paid leave entitlements on a pro rata basis.

- (j) The minimum period of engagement of a part-time employee per shift is three (3) hours.
- (k) Where a part-time employee has worked regularly above their base ordinary hours consistently for twelve or more months, then the Employee may request Healthscope in writing to consider modifying the base number of ordinary hours. Where Healthscope assesses that there is an operational capacity to change base ordinary hours, then this may result in a written agreement between the parties. Healthscope will not unreasonably refuse a request made by a part-time employee under this clause to vary their agreed pattern of work.

14.4 Casual employment

- (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 thirty-eight (38) ordinary hours per week.
- (b) A casual employee will be paid per hour calculated at the rate of 1/38th of the weekly rate appropriate to the employee's classification. In addition, a loading of 25% of that rate will be paid instead of the paid leave entitlements of permanent employees. This loading compensates casual employees for not being entitled to receive paid entitlements under the NES, including, personal/carer's leave, annual leave entitlements and payment for public holidays (unless such days are worked), notice of termination, or redundancy pay.
- (c) The minimum period of engagement of a casual employee per shift is two (2) hours.

14.5 Right to request casual conversion

- (a) For the purposes of this clause, a '**regular casual employee**' is a casual employee who has in the preceding period of twelve (12) months worked a pattern of ordinary hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this Agreement.
- (b) A regular casual employee who has worked an average of thirty eight (38) or more ordinary hours a week in the preceding twelve (12) months may request to have their employment converted to full-time employment.
- (c) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of twelve (12) months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (d) Any request under this subclause must be provided to Healthscope in writing.
- (e) Where a regular casual employee requests to convert to full-time or part-time employment, Healthscope may agree to or refuse the request after there has been consultation with the employee.

- (f) Where Healthscope refuses a regular casual employee's request to convert, it must provide the casual employee with the reasons for refusal in writing within twenty-one (21) days of the request being made.
- (g) A regular casual employee who is eligible to make a request to convert to permanent employment under this clause may only make a request for conversion once every six (6) months.
- (h) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, Healthscope and the employee must discuss and record in writing:
 - (i) the form of employment to which the employee will convert – that is, full-time or part-time employment;
 - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 14.3(c) of this Agreement; and
 - (iii) the date the conversion will take effect (which will be the start of the next pay cycle following such agreement being reached, unless otherwise agreed)
- (i) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of Healthscope.
- (j) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.
- (k) Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits Healthscope to require a regular casual employee to so convert.
- (l) Nothing in this clause requires Healthscope to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (m) Healthscope will provide all new casual employees with a copy of the provisions of this clause (which can include giving the employee a copy of this Agreement or providing them with a link to an electronic copy of this Agreement) within the first twelve (12) months of the employee's engagement with Healthscope.
- (n) A casual employee's right to request to convert is not affected if Healthscope fails to comply with the notice requirements as required in this clause.

15. Termination of employment

15.1 Statement of employment

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

15.2 Termination by Healthscope

- (a) Healthscope may dismiss an employee only if the employee has been given the following notice:

Employee's period of continuous service at the end of the day the notice is given	Period of notice
Not more than 1 year	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) in addition to the notice in clause 15.2(a) above, employees forty-five (45) years old or over and who have completed at least two (2) years' continuous service with Healthscope shall be entitled to an additional weeks' notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given, provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts Healthscope would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee;
 - (ii) the amounts payable to the employee for the hours including, for example allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.
- (e) The period of notice in this clause 15.2(a) shall not apply in the case of:
- (i) dismissal for serious misconduct;
 - (ii) dismissal for other grounds that justify instant dismissal;
 - (iii) a casual employee;
 - (iv) an employee engaged by the hour or day; or

- (v) an employee engaged for a specific period or tasks.

15.3 Job search entitlement

- (a) Where Healthscope has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one (1) day for the purpose of seeking other employment.
- (b) The time off under clause 15.3(a) of this Agreement is to be taken at times that are convenient to the employee after consultation with Healthscope.

15.4 Notice of termination by an employee

- (a) An employee must give Healthscope notice of termination in accordance with the notice periods set out in clause 15.2(a) of this Agreement.
- (b) The notice of termination required to be given by an employee under clause 15.4(a) of this Agreement is the same as that required of Healthscope under clause 15.2(a) of this Agreement except that the employee does not have to give additional notice based on the age of the employee.
- (c) If an employee who is at least eighteen (18) years old does not give the period of notice required under clause 15.4(a) of this Agreement, then Healthscope may deduct from wages due to the employee under this Agreement an amount that is no more than one (1) week's wages for the employee.
- (d) If Healthscope has agreed to a shorter period of notice than that required under clause 15.4(a), then no deduction can be made under clause 15.4(c).
- (e) Any deduction made under clause 15.4(b) must not be unreasonable in the circumstances.

15.5 Casual employees

Subject to the requirement that Healthscope pay notice as required under clause 15.2(a) of this Agreement, the employment of a casual employee may be terminated by giving or receiving of one hours' notice or payment thereof.

16. Redundancy

16.1 Redundancy occurs where Healthscope decides that it no longer wishes the job an employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour.

16.2 Transfer to lower paid duties

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 16.1 of this Agreement, the employee shall be entitled to the same period of notice of transfer as the employee would have been

entitled to if the employee's employment had been terminated under clause 15.2(a) of this Agreement.

- (b) Healthscope may, at its option, make payment in lieu thereof of an amount equal to the difference between the former amounts it would have been liable to pay and the new lower amount it is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

16.3 Transmission of business

- (a) Where a business is, whether before or after the date of insertion of this clause in the Agreement transmitted from Healthscope ('**transmittor**') to another employer ('**transmittee**'), and an employee who at the time of such transmission was an employee of Healthscope, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with Healthscope or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In this clause 16.3, '**business**' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

16.4 Time off during notice period

- (a) Where a decision has been made to make an employee's position redundant in the circumstances outlined in clause 16.1 of this Agreement, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at Healthscope's request, be required to produce proof of attendance at an interview or the employee shall not receive payment

for the time absent. For this purpose a statutory declaration will be sufficient.

16.5 Severance pay

- (a) In addition to the period of notice prescribed at clause 15.2(a) for termination of employment, an employee whose position is made redundant in the circumstances outlined in clause 16.1 of this Agreement shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
At least 1 year but less than 2 years	4
At least 2 years but less than 3 years	6
At least 3 years but less than 4 years	7
At least 4 years but less than 5 years	8
At least 5 years but less than 6 years	10
At least 6 years but less than 7 years	11
At least 7 years but less than 8 years	13
At least 8 years but less than 9 years	14
At least 9 years but less than 10 years	16
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

- (b) **'Weeks' Pay'** means the ordinary time rate of pay for the employee concerned, provided that the following amounts are excluded from the calculation of the ordinary time rate of pay:
- (i) overtime;
 - (ii) penalty rates;
 - (iii) disability allowances;
 - (iv) shift allowances;
 - (v) special rates;
 - (vi) fares and travelling time allowances;
 - (vii) bonuses; and
 - (viii) any other ancillary payments.

16.6 Employee leaving during notice

- (a) An employee whose position is made redundant in the circumstances outlined in clause 16.1 of this Agreement, may terminate their employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had the employee remained employed with Healthscope until the expiry of such notice.
- (b) Where an employee elects to terminate their employment in accordance with clause 16.6(a) above, the employee will not be entitled to payment in lieu of notice.

16.7 Alternative employment

Healthscope may make application to the FWC to have the general severance pay prescription amended if it obtains acceptable alternative employment for an employee.

16.8 Employees with less than one year's service

- (a) Clause 16.5(a) of this Agreement shall not apply to employees with less than one (1) years' continuous service.
- (b) For employees with less than one (1) years' service whose position is to be made redundant in the circumstances outlined in clause 16.1 of this Agreement, Healthscope will not be required to do more than to:
 - (i) give the employee an indication of the impending redundancy at the first reasonable opportunity; and
 - (ii) take such steps, as may be reasonable, to facilitate redeployment to suitable alternative employment, where possible.

16.9 Exemptions for the operation of this clause

Clause 16 of this Agreement shall not apply:

- (a) where the employment is terminated as a consequence of the employee's misconduct prior to the employee's employment being terminated (and that termination taking effect) as a result of the redundancy;
- (b) to employees engaged for a specific period of time or for a specific task or task(s);
- (c) to casual employees; or
- (d) where a business is before or after the date of the insertion of this clause into the Agreement, transmitted from Healthscope (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with Healthscope, and any prior transmittor, to be continuous service of the employee with the transmittee; or

- (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with Healthscope; and
 - (B) which recognises the period of continuous service which the employee had with Healthscope and any prior transmitter to be continuous service of the employee with the transmittee.

Part 4—Minimum Wages and Related Matters

17. Classifications

17.1 Classification criteria

- (a) All employees covered by this Agreement must be classified according to the structure and definitions set out in Schedule C—Classifications.
- (b) The determinative factor in classifying an employee is the initiative, responsibility, accountability, competency and skill required to undertake the role at that level, not the duties per se.
- (c) Employees will be advised in writing of their classification upon commencement and of any subsequent changes to their classification.
- (d) With respect to Administrative staff:
 - (i) **‘Classification criteria’** are guidelines to determine the appropriate classification level under this Agreement and consists of characteristics and skills.
 - (ii) **‘Key characteristics’** referred to in the classifications are the principal guide to classification and are designed to indicate the basic knowledge of the position and associated level of responsibility/accountability of the position.
 - (iii) **‘Duties’** and **‘skills’** are non-exhaustive duties and skills that may be undertaken within a particular level and are indicative guides only. Employees may be required to undertake duties and utilise skills identified for lower levels.

18. Uniforms

- (a) Employees required by Healthscope to wear uniforms will be supplied, free of cost to employees, with an adequate number of uniforms appropriate to their roles.
- (b) Supplied uniforms remain the property of Healthscope and are to be returned to Healthscope where the employee’s employment terminates.

19. Allowances

19.1 Meal allowance

- (a) An employee will be supplied with an adequate meal where the relevant site has adequate cooking facilities or be paid a meal allowance of \$13.29 in addition to any overtime payment as follows:
 - (i) when required to work after the usual finishing hour of work beyond one (1) hour or, in the case of shiftworkers, when the overtime work on any shift exceeds one (1) hour;
 - (ii) provided that where such overtime work exceeds four (4) hours a further meal allowance of \$11.98 will be paid.
- (b) Clause 19.1(a) will not apply when an employee could reasonably return home for a meal within the meal break.
- (c) Where a meal allowance is paid, it will be paid in the next pay run.
- (d) The amount paid for this allowance will increase in line with any increases to this allowance under this Agreement.

19.2 Travelling, transport and fares

- (a) An employee required and authorised to use their own motor vehicle in the course of their duties will be paid a car allowance as per the Australian Tax Office schedule.
- (b) When an employee is involved in travelling on duty, if Healthscope cannot provide the appropriate transport, all expenses reasonably incurred in respect to fares, meals and accommodation which are in accordance with Healthscope policy relating to the incurring of expenses in respect of fares, meals and accommodation, will be met by Healthscope on production of receipted account(s) or other evidence acceptable to Healthscope.
- (c) Provided further that the employee will not be entitled to reimbursement for expenses referred to in clause 19.2(b) of this Agreement, which exceed the mode of transport, meals or the standard of accommodation agreed with Healthscope, for these purposes.

20. Payment of wages

20.1 Frequency of payment

Wages will be paid fortnightly to the employees.

20.2 Method of payment

Wages will be paid by electronic funds transfer into the bank or financial institution account nominated by the employee.

20.3 Payment on termination of employment

- (a) Healthscope will pay an employee no later than seven (7) days after the day on which the employee's employment terminates:
 - (i) the employee's wages under this Agreement for any complete or incomplete pay period up to the end of the day of termination; and
 - (ii) all other amounts that are due to the employee under this Agreement and the NES.
- (b) The requirement to pay wages and other amounts under clause 20.3(a) above is subject to further order of the Commission and Healthscope making deductions authorised by this Agreement or the Act.

21. Underpayment and overpayment of wages

The following process will apply once the issue of underpayment or overpayment is substantiated.

21.1 Underpayment

- (a) If the underpaid amount is equal to or greater than one (1) day's gross base pay, the underpayment will be rectified within five (5) working days.
- (b) If the underpaid amount is less than one (1) day's gross base pay it will be rectified by no later than the next pay period. However, if the employee can demonstrate that rectification in this timeframe would result in undue hardship, every effort will be made by Healthscope to rectify the underpayment within five (5) working days.

21.2 Overpayment

- (a) In all cases where overpayments have occurred, Healthscope shall, as soon as possible, advise the employee concerned of both the circumstances surrounding the overpayment and the amount involved. Healthscope will also advise the Employee of the pay period from which the recovery of the overpayment is to commence.
- (b) One-off overpayments will be recovered in the next normal pay period, except where the employee can demonstrate that undue hardship would result. In that case, the recovery rate shall be at 10% of the employee's gross fortnightly base pay.
- (c) Unless the employee agrees otherwise, the maximum rate at which cumulative overpayments can be recovered is an amount, calculated on a per-fortnight basis, equivalent to 10% of the employee's gross fortnightly base pay.
- (d) The recovery rate of 10% of an employee's gross fortnightly base pay referred to in clause 21.2(c) above may be reduced by agreement between Healthscope and the employee, where the employee can demonstrate that undue hardship would result.

- (e) Where an employee's remaining period of service does not permit the full recovery of any overpayment to be achieved on the fortnightly basis prescribed in clause 21.2(c) above, Healthscope has the right to deduct any balance of such overpayment from monies owing to the employee on the employee's date of termination, resignation or retirement, as the case may be.
- (f) Subject to the provisions of clause 21.2 above, where the circumstances make it appropriate, the State Manager, General Manager or delegate may exercise discretion in regard to recovery of overpayments.

22. Superannuation

22.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the Agreement covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

22.2 Healthscope contributions

- (a) Healthscope must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid Healthscope being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.
- (b) Superannuation contributions on behalf of each eligible employee shall be payable from the date of the employee's commencement of employment with Healthscope, notwithstanding the date a membership application was forwarded to the superannuation fund.
- (c) Superannuation contributions will be paid at least monthly.

22.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise Healthscope to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as Healthscope makes the superannuation contributions provided for in clause 22.2 of this Agreement.

- (b) An employee may adjust the amount the employee has authorised Healthscope to pay from the wages of the employee from the first of the month following the giving of three months' written notice to Healthscope.
- (c) Healthscope must pay the amount authorised under clauses 22.3(a) or 22.3(b) no later than twenty-eight (28) days after the end of the month in which the deduction authorised under clauses 22.3(a) or (b) was made.

22.4 Superannuation fund

- (a) Unless, to comply with superannuation legislation, Healthscope is required to make the superannuation contributions provided for in clause 22.2 to another superannuation fund that is chosen by the employee, Healthscope must make the superannuation contributions provided for in clause 22.2 and pay the amount authorised under clauses 22.3(a) or 22.3(b) to one of the following superannuation funds or its successor:
 - (i) Health Industry Plan;
 - (ii) Health Employees Superannuation Trust of Australia (HESTA);
 - (iii) Sunsuper;
 - (iv) any superannuation fund to which Healthscope was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector scheme; or
 - (v) a superannuation fund or scheme which the employee is a defined benefit member of.
- (b) Where an employee does not elect a specific superannuation fund, superannuation contributions for that employee will be paid into the default fund, which is HESTA.

22.5 Unpaid absences

Healthscope shall not be required to pay superannuation contributions on behalf of any eligible employee during any unpaid absences, except in the case where the employee is absent on an accepted Workers' Compensation claim and is in receipt of workers' compensation weekly payments.

Part 5—Hours of Work and Related Matters

23. Ordinary hours of work

- 23.1** The ordinary hours of work for a full-time employee will be an average of thirty-eight (38) hours per week in a fortnight or four (4) week period.
- 23.2** Not more than the (10) ordinary hours of work (exclusive of meal breaks) are to be worked in any one day.

24. Span of hours

- 24.1** Unless otherwise stated, the ordinary hours of work for a day worker will be worked between 6.00 am and 6.00 pm Monday to Friday.
- 24.2** The ordinary hours of work for a shiftworker are an average of 38 hours per week.

25. Rostering

- (a) The ordinary hours of work for each employee will be displayed on a fortnightly roster in a place conveniently accessible to employees. The roster will be posted at least two weeks before the commencement of the roster period.
- (b) Two (2) days' notice will be given of a change in a roster. However, a roster may be altered at any time to enable the functions of a hospital to be carried on where another employee is absent from duty pursuant to clauses 32—~~Personal/carer's leave~~ Personal/carer's leave and 38—~~Leave to deal with Family and Domestic Violence~~ Leave to deal with Family and Domestic Violence of this Agreement, or in an emergency.
- (c) The roster for all full-time employees shall provide for a minimum of ten (10) hours' break between the finish of ordinary hours on one day and the commencement of ordinary hours on the following day. In the case of changeover of rosters, eight (8) hours' break shall be substituted for ten (10) hours' break.

26. Saturday and Sunday work

- 26.1** For all ordinary hours worked between midnight Friday and midnight Sunday a full-time or part-time employee will be paid their ordinary hourly rate and an additional 50% loading.
- 26.2** A casual employee who works on a Saturday or Sunday will be paid a loading of 75% for all time worked instead of the casual loading of 25%.

27. Breaks

27.1 Meal breaks

- (a) An employee who works in excess of five (5) hours will be entitled to an unpaid meal break of not less than thirty (30) minutes and not more than sixty (60) minutes.
- (b) The time of taking the meal break may be varied by agreement between Healthscope and the employee.
- (c) No more than six (6) continuous hours are to be worked without a meal break of thirty (30) minutes being taken.

- (d) Where employees do not receive at least a thirty (30) minute break before the expiration of six (6) continuous hours of work, then such employees are to be paid at one and half times their ordinary rate until a break of thirty (30) minutes is taken.
- (e) An employee who works not more than six (6) hours may elect to forgo the meal break, with the consent of Healthscope.
- (f) A further meal break of thirty (30) minutes is to be provided where employees work more than five (5) hours after taking the first meal break. This further meal break is to be paid at ordinary rates.
- (g) Where employees are required to work overtime for one (1) hour or more after their normal rostered ceasing time, then the employee is allowed a meal break of at least thirty (30) minutes which is to be paid at ordinary time.

27.2 Tea breaks

- (a) Any employee who works at least 7.6 hours in any one work period, shall be entitled to two paid ten (10) minute tea breaks; the first to be taken in the first half of the shift and the second to be taken in the second half of the shift. Subject to agreement between Healthscope and the employee, such breaks may alternatively be taken as one twenty (20) minute tea break.
- (b) An employee who works at least four (4) ordinary hours shall be entitled to one paid ten (10) minute tea break during the shift.
- (c) Tea breaks will count as time worked.
- (d) Tea breaks are to be taken at such times as will not interfere with the continuity of work when continuity is necessary.

28. Overtime penalty rates

28.1 Prior authorisation required to work overtime

No employee shall work overtime without the prior authorisation of an authorised representative of Healthscope.

28.2 Overtime rates

- (a) An employee who works outside their ordinary hours on any day will be paid at the rate of:
 - (i) time and a half for the first two (2) hours; and
 - (ii) double time thereafter.
- (b) All overtime worked on a Sunday will be paid at the rate of double time.

- (c) These extra rates will be in substitution for and not cumulative upon the shift loading prescribed in clause 29 of this Agreement—Shiftwork~~Shiftwork~~.
- (d) Where agreement has been reached with a part-time employee to work additional hours, in accordance with clause 14.3 of this Agreement, such additional hours will be paid at ordinary rates.

28.3 Payment for overtime worked

- (a) Overtime is deemed payable when Healthscope authorises it in advance of it being worked and enters it on the employee's time sheet.
- (b) Payment for overtime authorised and worked shall be paid, where possible, following the end of the pay period in which the overtime was worked.

28.4 Rest period after overtime

- (a) An employee who works so much overtime between the termination of their ordinary work on one day and the commencement of ordinary work on the next day that they have not had at least ten (10) consecutive hours off duty will be released after completion of such overtime until they have had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during this absence.
- (b) If, on the instructions of Healthscope, the employee resumes or continues work without having had ten (10) hours off duty, the employee will be paid at the rate of double time until they are released from duty for such a period. The employee is then entitled to be absent until they have had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

28.5 Time off instead of payment for overtime

- (a) An employee and Healthscope may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement.
- (c) The required agreement under clause 28.5(b) of this Agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that Healthscope and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, Healthscope must pay the employee, for overtime covered by the agreement but not taken

as time off, at the overtime rate applicable to the overtime when worked; and

- (iv) that any payment mentioned in clause 28.5(c)(iii) above must be made in the next pay period following the request.
- (d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

Example

By making an agreement under clause 28.5 of this Agreement, an employee who worked two (2) overtime hours is entitled to two (2) hours' time off.

- (e) Time off must be taken:
 - (i) within the period of four (4) weeks after the overtime is worked; and
 - (ii) at a time or times within that period of four (4) weeks agreed by the employee and Healthscope.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 28.5 but not taken as time off, Healthscope must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of four (4) weeks as set out in clause 28.5(e), Healthscope must pay the employee for the overtime, in the next pay period following those four (4) weeks, at the overtime rate applicable to the overtime when worked.
- (h) Healthscope must keep a copy of any agreement under this clause 28.5 as an employee record.
- (i) If, on the termination of the employee's employment, time off for overtime worked by the employee to which this clause 28.5 applies has not been taken, Healthscope must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

28.6 Recall to work overtime

An employee who is recalled to work overtime after leaving Healthscope's premises will be paid for a minimum of two (2) hours' work at the appropriate overtime rate.

28.7 Rest break during overtime

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

29. Shiftwork

29.1 A 'shiftworker' is an employee who is regularly rostered to work their ordinary hours outside the ordinary hours of work of a day worker as defined in clause 23 of this Agreement.

- (a) 'Afternoon shift' shall mean all ordinary time worked where the major portion of the shift is worked between the hours of 4 pm and 8 am the following day; and
- (b) 'Night shift' shall mean a shift commencing at or after 6 pm or before 7:30 am the following day where the major portion of the shift is worked between 6 pm and 7:30 am.

29.2 A shiftworker who works an afternoon shift will be paid an additional loading of 15% for all ordinary hours worked that shift. A shiftworker who works a night shift will be paid an additional loading of 17% for all ordinary hours worked that shift.

29.3 A casual employee who works shiftwork as defined in clause 29.1 will be paid an additional loading of:

- (a) 40% of their ordinary rate of pay when rostered to work an afternoon shift; or
- (b) 42% of their ordinary rate of pay when rostered to work a night shift

but will not be paid the casual loading of 25%.

29.4 The shift penalties prescribed in this clause will not apply to shift work performed by any employee on Saturday, Sunday or Public Holidays where the extra payment prescribed in clause 26—~~Saturday and Sunday work~~ Saturday and Sunday work and clause 32—Personal/carer's leave and compassionate leave.

30. Higher duties

Where:

- (a) Healthscope requests that an employee engage in higher duties;
- (b) the employee agrees to engage in those higher duties;
- (c) the employee engages in those higher duties:
 - (i) for one (1) or more consecutive days; and
 - (ii) for the whole duration of the shift/s they would usually work in their substantive role; and
- (d) those higher duties carry a higher wage rate than the classification in which the employee is ordinarily employed,

the employee will be paid at the minimum rate prescribed for the classification level for the higher duties they are undertaking for the whole period in which they are undertaking such higher duties.

Part 6—Leave and Public Holidays

31. Annual leave

Annual leave is provided for in the NES (as set out in Schedule D of this Agreement). This clause contains additional provisions.

31.1 Entitlement to annual leave

All employees, except casual employees, have an entitlement to annual leave.

31.2 Quantum of leave

- (a) Annual leave entitlements accrue progressively during a year of service.
- (b) Full time employees (other than shiftworkers) accrue four (4) weeks per year.
- (c) Shiftworker employees accrue five (5) weeks per year.
- (d) Part-time employees accrue annual leave on a proportional basis.

31.3 Payment for annual leave – full time and part-time employees

Annual leave payment shall be calculated as follows for full time and part-time employees:

- (a) the employee's ordinary wage rate for the period of the annual leave (excluding shift premiums and weekend penalty rates); and
- (b) an annual leave loading of 17.5% of the amounts referred to in clause 31.3(a) and (b) above.

31.4 Payment for annual leave – shiftworkers

Annual leave payment shall be calculated as follows for shiftworkers:

- (a) the shiftworker's ordinary wage rate for the period of the annual leave (excluding shift premiums and weekend penalty rates); and
- (b) the higher of:
 - (i) an annual leave loading of 17.5% of their ordinary 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.

31.5 Payment of annual leave at beginning of annual leave period

Employees may request to have approved annual leave paid to them at the beginning of their annual leave period.

31.6 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement in accordance with this clause 31.6.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement in accordance with this clause 31.6.
- (c) Healthscope and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement must:
 - (i) state the amount of leave to be cashed out and the payment to be made to the employee for it;
 - (ii) state the date on which the payment is to be made; and
 - (iii) be signed by Healthscope and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (e) The cashed out payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (f) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than four (4) weeks.
- (g) The maximum amount of accrued paid annual leave that may be cashed out in any period of twelve (12) months is two (2) weeks.
- (h) Healthscope must keep a copy of any agreement made in accordance with this clause 31.5 as an employee record.

31.7 Excessive leave accruals

- (a) An employee has an '**excessive leave accrual**' if the employee has accrued more than eight (8) weeks' paid annual leave (or ten (10) weeks' paid annual leave for a shiftworker, as defined in clause 29.1 of this Agreement).
- (b) If an employee has an excessive leave accrual, Healthscope may direct the employee in writing to take one or more periods of paid annual leave.
- (c) A direction by Healthscope under paragraph (b) of this clause 31.7:
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than six (6) weeks when any other paid annual leave arrangements are taken into account; and

- (ii) must not require the employee to take any period of paid annual leave of less than one week; and
- (iii) must not require the employee to take a period of paid annual leave beginning less than four (4) weeks after the direction is given.
- (d) The employee must take paid annual leave in accordance with a direction under paragraph (b) of this sub-clause that is in effect.

32. Personal/carer's leave

Personal/carer's leave is provided for in the NES (as set out in Schedule D of this Agreement). This clause sets out a summary of an employee's entitlements to personal/carer's leave with additional provisions.

Personal/carer's leave

32.1 Entitlement to personal/carer's leave

- (a) All employees, except casual employees, have an entitlement to personal/carer's leave.
- (b) An employee may take personal/carer's leave if the leave is taken:
 - (i) because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or
 - (ii) 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:
 - (A) a personal illness, or personal injury, affecting the member; or
 - (B) an unexpected emergency affecting the member.
- (c) the meaning of 'immediate family' in this clause 32 is:
 - (i) a spouse, former spouse, ~~de facto partner~~, former de facto partner, child, adopted child, step-child, parent, grandparent, grandchild or sibling of the employee; or
 - (ii) a child, adopted child, step-child, parent, grandparent, grandchild or sibling of a spouse, former spouse, ~~or~~ ~~de facto partner~~, or former de facto partner of the employee.

Paid personal/carer's leave

32.2 Quantum of paid leave

- (a) Personal/carer's leave entitlements accrue progressively during a year of service.
- (b) Employees (other than casuals) are entitled to 10 days' paid personal/carer's leave per completed year of service.

- (c) Part-time employees accrue paid personal/carer's leave on a proportional basis.
- (d) The entitlement accumulates from year to year.
- (e) Personal/carer's leave may be taken for part of a day.
- (f) Any accrued and unused entitlement to personal/carer's leave is not payable on termination.

32.3 Payment for paid personal/carer's leave

Payment for paid personal/carer's leave is based on:

- (a) the employee's base rate of pay; and
- (b) the ordinary number of hours the employee would have worked if the employee were not absent on personal/carer's leave.

32.4 Preservation of paid entitlements

An employee's accrued but untaken personal/carer's leave requirements will be preserved by Healthscope when:

- (a) the employee is absent from work on unpaid leave granted by Healthscope; or
- (b) the employee terminates their employment with Healthscope and is re-employed with Healthscope within three (3) months of the termination.

32.5 Workers' compensation

Where an employee is in receipt of workers' compensation, the employee is not entitled to payment of personal/carer's leave.

32.6 Notice of taking paid or unpaid personal/carer's leave

- (a) An employee must give Healthscope notice of the taking of personal/carer's leave.
- (b) The notice:
 - (i) must be given to Healthscope as soon as practicable; and
 - (ii) must advise Healthscope of the period, or expected period, of the leave.

32.7 Evidence requirements for the taking of paid or unpaid personal/carer's leave

- (a) When an employee's absence from work is for two (2) or more days, the employee is required to provide Healthscope with a medical certificate from a registered health practitioner specifying the nature of the employee's illness and the period or approximate period during which the employee will be unable to work.

- (b) Alternatively, Healthscope may request that the employee provide a statutory declaration made by the employee in lieu of providing a medical certificate.
- (c) Despite clause 32.7(a) above, Healthscope may request evidence for the taking of paid or unpaid personal/carer's leave even if the employee has been absent for less than two (2) days.

32.8 Compliance

An employee is not entitled to take personal/carer's leave unless they comply with the notice and evidence requirements under clauses 32.4 and 32.7 above.

Unpaid personal/carer's leave

32.9 Entitlement to unpaid carer's leave

- (a) An employee is entitled to two (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) The meaning of '**immediate family**' used in this clause 32.9 is as defined in clause 32.1 above.
- (c) An employee may apply for additional unpaid carer's leave for each occasion only after they have taken the unpaid entitlement under clause 32.9(a) above. Healthscope retains the discretion to determine whether to grant the additional unpaid leave.

32.10 Taking unpaid carer's leave

- (a) An employee may take unpaid carer's leave for a particular permissible occasion if the leave is taken to provide care or support as referred to in clause 32.9 above.
- (b) An employee may take unpaid carer's leave for a particular permissible occasion as:
 - (i) a single continuous period of up to two (2) days; or
 - (ii) any separate periods to which the employee and Healthscope agree.
- (c) An employee cannot take unpaid carer's leave if the employee has a paid personal/carer's leave accrual which they could take instead.
- (d) An employee may elect, with Healthscope's consent, to take time off in lieu of payment for overtime at a time or times agreed with Healthscope to provide care or support as referred to in clause 32.9 above.

33. Compassionate leave

Compassionate leave is provided for in the NES. This clause sets out a summary of an employee's entitlements to compassionate leave with additional provisions.

33.1 Entitlement to paid compassionate leave

- (a) Employees, including casual employees, are entitled to two (2) days' compassionate leave for each occasion when a member of their immediate family or 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.
- (b) the meaning of '**immediate family**' used in this clause 33 is as defined in clause 32.1 of this Agreement.

33.2 Taking of compassionate leave

An employee may take compassionate leave for a particular permissible occasion if the leave is taken:

- (a) to spend time with the member of the employee's immediate family or household who has contracted or developed the personal illness or sustained the personal injury, as per clause 33.1 above; or
- (b) after the death of the member of the employee's immediate family or household, as per clause 33.1 above.

33.3 Notice of taking compassionate leave

- (a) An employee must give Healthscope notice of the taking of compassionate leave.
- (b) The notice:
 - (i) must be given to Healthscope as soon as practicable; and
 - (ii) must advise Healthscope of the period, or expected period, of the leave.

33.4 Evidence requirements for the taking of compassionate leave

- (a) Where an employee gives Healthscope notice of taking compassionate leave, the employee must, if required by Healthscope, provide Healthscope with evidence that would satisfy a reasonable person that the leave taken is for a permissible occasion as per clause 33.2 above.

- (b) Alternatively, Healthscope may request that the employee provide a statutory declaration made by the employee in lieu of providing a medical certificate.
- (c) Where the reason for the taking of compassionate leave involves a death, Healthscope may request proof of the death.

33.5 Payment for compassionate leave

- (a) Employees, other than casual employees, are entitled to payment for authorised compassionate leave.
- (b) Where compassionate leave is authorised, the employee will be paid their base rate for the ordinary hours they would have worked over that leave period.

34. Parental leave

Parental leave is provided for in the NES (as set out in Schedule D of this Agreement). This clause contains additional provisions.

34.1 Paid maternity leave eligibility and entitlement

- (a) Permanent full-time and part-time pregnant female employees who have at least twelve (12) months' continuous service are entitled to eight (8) weeks' paid maternity leave once they commence parental leave in relation that pregnancy.
- (b) The paid leave entitlement in clause 34.1(a) above:
 - (i) will be paid at the employee's ordinary rate of pay;
 - (ii) can be paid to eligible employees at half pay; and
 - (iii) is to be paid to eligible part-time employees on a prorata basis.

34.2 Notice for adoption leave

Prior to an employee commencing adoption leave, they must provide Healthscope with:

- (a) a statement from an appropriate regulatory body confirming the anticipated date of placement of the child with the employee for adoption; or
- (b) a statement from the appropriate government authority confirming that the employee is to be granted custody of the child, pending application of an adoption order.

35. Community service (including jury service) leave

Community service (including jury service) leave is provided for in the NES (as set out in Schedule D of this Agreement)

36. Long service leave

Long service leave entitlements are provided in relevant state-based legislation. This clause sets out a summary of an employee's entitlements to long service leave with additional provisions.

36.1 Long service leave eligibility

Employees with at least ten (10) years' continuous service with Healthscope shall be entitled to take paid long service leave.

36.2 Entitlement

- (a) Employees who are eligible to take paid long service leave, in accordance with clause 36.1 above, will be entitled to 1.3 weeks' paid leave on full salary for each year of continuous service (i.e. thirteen (13) weeks for ten (10) years' continuous service) and a proportionate amount of paid leave for an incomplete year of service after the ten (10) years' continuous service.
- (b) Long service leave will be paid at the ordinary rate paid to the employee immediately before the leave is taken.

36.3 Part time employees' entitlement to long service leave

Part time employees accrue long service leave on a proportionate basis of the entitlement for a full time employee.

36.4 Casual employees' entitlement to long service leave

As a general rule, prior to 23 June 1990, casual employees were not entitled to accrue long service leave. From 23 June 1990, casual employees received an entitlement to accrue long service leave. The table below sets out the accrual rate for casual employees:

Date	Entitlement
Prior to 23 June 1990	No entitlement to accrue long service leave.
Between 23 June 1990 to 30 March 1994	Service counting toward a long service leave accrual if the casual employee worked at least thirty-two (32) hours every four (4) weeks.
From 30 March 1994	Service counting toward a long service leave accrual if there is no break between casual engagements of more than three (3) months.

36.5 Early access to long service leave

- (a) Despite clause 36.1 above, an employee with less than ten (10) years' continuous service but with at least seven (7) years' continuous service is eligible to apply to Healthscope to take pro-rata long service leave where they have a domestic or other pressing necessity.

- (b) The eligible employee applying for early access to take long service leave will be required to provide Healthscope with specific details as to the domestic or other pressing necessity in clause 36.4(a) above. Healthscope may require the employee to provide evidence, to Healthscope's satisfaction, of the domestic or other pressing necessity.
- (c) Healthscope will consider the eligible employee's application for early access to their long service leave accrual and determine whether to grant the eligible employee early access to their long service leave accrual.

36.6 Taking long service leave

- (a) Employees eligible to take long service leave in accordance with clause 36.1 above are required to make a written application for leave in a form determined and required by Healthscope.
- (b) Employees are required to provide Healthscope with timely notice of their application for long service leave. Healthscope will provide employees with timely confirmation as to whether their long service leave application has been approved.
- (c) Part-time employees applying for long service leave should apply for the number of ordinary hours they would have been at work over the period for which they are applying for leave. If the application is approved, the actual number of hours the part-time employee is away from work on long service leave will be debited from their accrued leave.
- (d) Where an employee has worked a combination of full-time and part-time employment, their application for long service leave, if approved, will result in the actual number of hours they take away from work on long service leave being debited from their accrued leave.
- (e) In circumstances where Healthscope and an employee cannot agree on when an employee will take their long service leave accrual, Healthscope may:
 - (i) decide when the employee will take long service leave;
 - (ii) give the employee at least three (3) months' written notice of the date on which the employee must take at least four (4) weeks' long service leave.
- (f) The minimum period of long service leave which may be taken at any one time shall be two (2) weeks.

36.7 Payment in lieu of long service leave not taken

- (a) An employee who ceases to be an employee after ten (10) years' continuous service and who at the date of ceasing to be an employee has an entitlement to long service leave shall receive a payment in lieu of long service leave not taken.
- (b) The calculation of the amount of the in lieu payment shall be based on:

- (i) their entitlement; and
- (ii) the rate of ordinary salary which the employee was receiving at the date their employment terminated.

36.8 Potential for prorata cash equivalent of long service leave entitlement to be paid in specific circumstances

- (a) Healthscope may determine to pay an employee the cash equivalent of their long service leave entitlement in the following specific circumstances:
 - (i) where an employee's position is made redundant and they have at least one (1) year continuous service;
 - (ii) where the employee resigns from their employment due to ill health and they have at least five (5) years' continuous service;
 - (iii) where the employee retires from their employment within ten (10) years of reaching the age of 65 years and they have at least five (5) years' continuous service;
 - (iv) where the employee dies and they have at least five (5) years' continuous service.
- (b) Healthscope retains the discretion to determine whether to pay a cash equivalent for a long service leave entitlement to:
 - (i) employees with respect to the specific circumstances set out in clauses 36.4(a)(i)(ii) or (iii) above; or
 - (ii) employees' next of kin with respect to the specific circumstance set out in clause 36.4(a)(iv) above.

36.9 Payment instead of taking long service leave

- (a) Employees eligible to take long service leave under clause 36.1 above may apply to cash out part of their entitlement instead of taking it as leave.
- (b) Healthscope and the employee must agree by a signed agreement that the payment be made.
- (c) Healthscope will not agree to an employee cashing out part of a long service leave entitlement unless the employee's remaining long service leave accrual is a minimum six (6) weeks' at the time the cash out is to take effect.
- (d) Where Healthscope and the employee agree to the employee cashing out part of their long service leave accrual (subject to cl 36.9(c) above), Healthscope will make the payment to the employee as a lump sum in the following fortnightly pay, with the payment being taxed as required by law.

37. Public holidays

37.1 Meaning of public holidays

- (a) The following are public holidays with respect to this Agreement:
- (i) 1 January – New Year’s Day
 - (ii) 26 January – Australia Day
 - (iii) Good Friday
 - (iv) Easter Saturday (the day after Good Friday)
 - (v) Easter Monday
 - (vi) 25 April – Anzac Day
 - (vii) the Queen’s birthday
 - (viii) 25 December – Christmas Day
 - (ix) 26 December – Boxing Day
 - (x) any day appointed under the *Holidays Act 1983* (Qld) to be kept in place of any such holiday.
- (b) The Minister may also declare in the Industrial Gazette on the day appointed under the *Holidays Act 1983* (Qld) a public holiday for a district relating to the annual agricultural, horticultural or industrial show held at the principal city or town. Such public holiday will apply to employees working in that district only.

37.2 Substitution

Healthscope and the employees may, by agreement, substitute another day for a public holiday. Where there is no agreement, Healthscope may substitute another day but not so as to give an employee less time off work than the employee would have had if the employee had received the public holiday.

37.3 Payment for working on a public holiday

Any employee required to work on a public holiday will be paid double time and a half for all time worked with a minimum payment of four hours.

37.4 Payment for working on Labour Day

In relation to Labour Day (which falls on the first Monday in May or another day appointed under the *Holidays Act 1983* (Qld) to be kept in place of that holiday) all employees are entitled to be paid a full day's wage irrespective of whether they perform work on that day. If an employee is required to work on Labour Day, they will be paid:

- (i) a full day's wage for that day; and

- (ii) a payment, at the rate of time and a-half, for the hours actually worked, with a minimum payment of four (4) hours.

37.5 Show holiday

In a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, Healthscope and the employee must agree on an ordinary working day that is to be treated as a show holiday for all purposes.

37.6 Notice for work on a public holiday

Healthscope will give an employee at least two (2) days' notice if it requires that employee to work on a public holiday.

37.7 Arrangements for permanent employees who are not rostered on to work on the public holiday

- (a) Employees (other than casual employees) who:
 - (i) would normally or ordinarily work on the day of the week on which a public holiday arises;
 - (ii) and do not work on this day,

are entitled to be paid at ordinary rates of pay as if they had worked their normal number of hours on that day, subject to clause 37.8 of this Agreement.

- (b) Whether an employee would 'normally' or 'ordinarily' work on the particular day of the week on which a public holiday arises will be determined by the '50% Rule' as set out in clause 37.8 of this Agreement.
- (c) The 50% Rule is used to determine whether an employee has 'normal' or 'ordinary' hours of work on the day of the week on which a particular public holiday arises.

37.8 50% Rule

- (a) To be entitled to payment for a public holiday that occurs on a particular day of the week, a full-time or part-time employee must have worked, or have been rostered, on 50% or more of the occasions on that particular day of the week in the six (6) months (i.e. 26 weeks) immediately preceding the public holiday.

Example of an employee being entitled to payment of the public holiday

ANZAC Day falls on a Tuesday in a particular year. The employee has worked, or has been rostered, on seventeen Tuesdays in the six (6) months (i.e. 26 weeks) immediately preceding that public holiday.

The employee is not rostered to work on ANZAC Day.

Therefore, in accordance with the 50% Rule, the employee is entitled to a paid public holiday entitlement for the public holiday as the

employee has worked on more than 50% of the Tuesdays (i.e. 17 is more than 50% of 26) in the six (6) months immediately preceding that ANZAC Day.

Example of an employee not being entitled to payment of the public holiday

ANZAC Day falls on a Tuesday in a particular year. The employee has worked, or has been rostered, on ten Tuesdays in the six (6) months (i.e. 26 weeks) immediately preceding that public holiday.

The employee is not rostered to work on ANZAC Day.

Therefore, in accordance with the 50% Rule, the employee is **not** entitled to a paid public holiday entitlement for the public holiday as the employee has not worked on more than 50% of the Tuesdays (i.e. 10 is less than 50% of 26) in the six (6) months immediately preceding that ANZAC Day.

- (b) In the event that the employee has taken any form of paid or unpaid leave during the six (6) months immediately preceding a public holiday arising, then the number of working weeks (i.e. excluding periods of paid or unpaid leave) will be used to determine whether the employee has worked 50% or more of the occasions on the particular day of the week on which a public holiday falls.

Example

Australia Day falls on a Thursday in a particular year. The employee has taken four (4) weeks' annual leave during the six (6) months immediately preceding that public holiday arising.

For the employee to be entitled to receive a paid entitlement for that public holiday, the employee must have worked on eleven (11) or more Thursdays in the six (6) months immediately preceding that Australia Day holiday (i.e. 50% of 26 weeks minus four (4) weeks' annual leave).

- (c) Where the employee has less than six (6) months' continuous service with Healthscope immediately preceding a particular public holiday, then to be entitled to the Public Holiday that occurs on a particular day of the week, an employee must have worked on 50% or more of the occasions on that particular day of the week throughout the whole period of employment.

Example:

If an employee's length of service is only sixteen (16) weeks in total when a particular public holiday falls on a Wednesday, then the employee must have worked on eight (8) (i.e. eight (8) being 50% of the whole period of service, that is, sixteen (16) weeks) or more Wednesdays during the whole period of employment to be entitled to payment for the public holiday they do not work.

- (d) Where an employee has a variable number of rostered working hours (due to variability of the employee's roster) on the particular day of the week on which a public holiday falls, the employee will be paid based on the average number of ordinary hours the employee received for working on this particular day of the week over the preceding six (6) months.

Example

A public holiday falls on a Tuesday. An employee is entitled to payment for not working on the public holiday because the employee has worked on fifteen (15) Tuesdays in the six (6) months immediately preceding the public holiday (i.e. the employee has worked on more than 50% of the Tuesdays in the six (6) months immediately preceding the public holiday).

The employee's total number of hours of work on the fifteen (15) Tuesdays the employee has worked in the last six (6) months has varied from week to week.

The total number of ordinary hours worked by the employee over the fifteen (15) Tuesdays was 90 hours. Therefore, the employee is entitled to be paid for six (6) hours (i.e. $90 \div 15 = 6$) at ordinary time rates of pay for that public holiday.

- (e) Where a public holiday arises on a particular day of the week on which an employee has not worked or been rostered on 50% of the relevant occasions, then the employee is not entitled to receive payment for not working on the particular public holiday. Where an employee is rostered to work on a public holiday, then no extra payment will apply under this sub-clause, however the penalties payable for work on a public holiday will apply.
- (f) Any employee required to work on a public holiday will be paid double time and a half for all time worked. If a public holiday falls on a weekend day, this payment will be in substitution of clause 28.2(a) and (b) of this Agreement.
- (g) Absence from duty owing to illness or other reasonable causes, for periods immediately preceding and succeeding a public holiday or where application is made for leave and such leave is approved, will render an employee eligible for payment for the public holiday or holidays occurring within such period of absence.

37.9 Termination or standdown in December

Any employee, with two (2) weeks' or more continuous service, whose employment has been terminated by Healthscope or who has been stood down by Healthscope during the month of December, and who is re-employed in January of the following year, is entitled to payment at the ordinary rate as it would have been payable at the time of termination or stand down, for any one

or more of the following public holidays: Christmas Day, Boxing Day and New Year's Day.

38. Leave to deal with Family and Domestic Violence

This clause applies to all permanent employees, excluding casuals.

38.1 Definitions

(a) In this clause:

'family and domestic violence' means violent, threatening or other abusive behaviour (including physical, sexual, emotional, psychological or financial abuse) directed towards an employee by a member of the employee's immediate family or household that causes the employee physical or psychological harm that has been reported to the police and/or may be the subject of an Apprehended Violence Order.

'member of the employee's immediate family or household' means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
 - (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
 - (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
- (b) A reference to a spouse or de facto partner in the definition of family in clause 38.1(a) above includes a former spouse or de facto partner.

38.2 Entitlement to paid leave

- (a) A permanent employee experiencing family and domestic violence will have access to ten (10) days' paid leave per year to:
- (i) attend legal proceedings;
 - (ii) attend counselling;
 - (iii) attend appointments with a medical practitioner, social worker or legal practitioner; and
 - (iv) undertake relocation and safety activities directly associated with alleviating the effects of family and domestic violence.
- (b) the leave is available in full at the start of each twelve (12) month period of the employee's employment;
- (c) the leave does not accumulate from year to year;
- (d) the leave is available on a pro-rate basis to part-time employees.

Note: A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and Healthscope.

38.3 Entitlement to unpaid leave

Upon exhaustion of the paid leave entitlement in clause 38.2 of this Agreement, employees shall be entitled to up to two (2) further days' unpaid leave on each occasion where paid leave would be available under clause 38.2(a) of this Agreement.

38.4 Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

38.5 Notice requirements

An employee must give Healthscope notice of the taking of leave under this clause 38. The notice:

- (a) must be given to Healthscope as soon as practicable (which may be a time after the leave has started); and
- (b) must advise Healthscope of the period, or expected period, of the leave.

38.6 Evidence requirements

- (a) To access paid and unpaid family and domestic violence leave, the employee will provide Healthscope with evidence, where requested, substantiating, to Healthscope's satisfaction:
 - (i) the purpose(s) of the leave;
 - (ii) that the leave is related to alleviating the effects of family and/or domestic violence.
- (b) Whilst Healthscope may accept a variety of evidence in support of an application for family and domestic violence leave, if requested, the evidence shall constitute a Family Violence Order, Apprehended Violence Order or Police Report.

Part 7—Training, including Delegate training, rights and activities

39. Training

Where Healthscope requires an employee to complete training, Healthscope will meet the costs associated with the training, as well as provide the employee with time off work to attend the training.

40. Delegates

A 'Delegate' is a member of the Union who is endorsed by the Union to represent the industrial interests of Union members employed by Healthscope.

40.1 Delegate training

- (a) Delegates are entitled to up to three (3) days' paid leave per calendar year to attend industrial relations training, ACTU or specific union training courses approved by the Union's State Executive, or the Union Annual General Conference, provided:
 - (i) the Delegate provides specific details to Healthscope management supporting the reason for the leave;
 - (ii) the reason for the leave is consistent with the purposes outlined in this clause Part 7—Delegate training, rights and activities; and
 - (iii) Healthscope management gives prior approval to the Delegate to take the leave.
- (b) The leave referred to in this clause Part 7—Delegate training, rights and activities is non-cumulative.
- (c) In the event that the Delegate's proposed leave will create, or potentially create, operational difficulties, the Hospital will notify the Union of those difficulties.
- (d) Approval for leave under this clause 38.1 will not be unreasonably withheld.

40.2 Delegate rights

- (a) Healthscope will allow Delegates to perform their Delegate role without discrimination or adverse treatment.
- (b) Healthscope recognises and respects that authorised Delegates speak on behalf of the Union's members in the workplace.
- (c) Healthscope will allow Delegates:
 - (i) reasonable access to telephone, facsimile, photocopying, internet and email facilities for the purpose of carrying out the Delegate activities in clause 40.3 below; and
 - (ii) place Union information on a notice board in a prominent location in their workplace.
- (d) In the event that Delegates wish to undertake a secondment to the union to undertake the activities set out in clause 40.3(a) below, they can apply to Healthscope management for paid leave, using their accrued annual leave or long service leave entitlements (where long service leave is available to the Delegate to access), or an unpaid leave of absence.

- (e) Delegates seeking approval for leave to undertake the activities in clause 40.3(a) below must seek and receive management approval prior to taking leave. Approval will be subject to operational requirements.
- (f) Any unpaid leave of absence granted by Healthscope under clause 40.2(d) above will count as service for all purposes of this Agreement.

40.3 Delegate activities

Delegates may apply for paid or unpaid leave, in accordance with clause 40.2(d) above, to undertake the following activities:

- (a) prepare for and participate in collective bargaining on behalf of the Union and its members, or those who nominate them as their Bargaining Representative;
- (b) report back to and consult with the Union's members or any Bargaining Representatives during a bargaining process;
- (c) participate in consultations and access to reasonable information about the workplace and business;
- (d) consult with the Union's members regarding workplace and industrial issues;
- (e) participate in consultative forums with Healthscope;
- (f) participate in the operation of the Union;
- (g) attend accredited Union education;
- (h) address new employees about the benefits of membership with the Union at the time they commence employment; and
- (i) represent the interests of Union members to Healthscope and industrial tribunals.

40.4 Rate of pay for authorised leave to undertake Delegate training and activities

Where delegates take authorised leave or paid time off work under clauses 39 and 40.3 above to participate in Delegate training or Delegate activities, they shall receive paid time consistent with the earnings which they would have been received had they worked the time for that particular time period, inclusive of any shift, overtime or other penalties otherwise payable, including superannuation.

Schedule A— Model Consultation Term

Schedule 2.3 – Model Consultation Term

(regulation 2.09)

Model consultation term

- (1) This term applies if the employer:
 - (a) has made a definite 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).

Schedule B — Wage Rates

General Classifications	Wage rate at time of lodgement of agreement	Wage rate first full pay period on or after 01/10/2019	Wage rate first full pay period on or after 01/10/2020	Wage rate first full pay period on or after 01/10/2021
	Per hour	Per hour	Per hour	Per hour
ADMINISTRATION				
Administration Officer – Level 1				
1st Year of Service	\$23.7603	\$24.1761	\$24.5992	\$25.0297
2nd Year of Service	\$24.2430	\$24.6673	\$25.0989	\$25.5382
3rd Year of Service	\$24.7182	\$25.1508	\$25.5909	\$26.0387
4th Year of Service	\$25.0890	\$25.5281	\$25.9748	\$26.4294
Administration Officer – Level 2				
1st Year of Service	\$26.3835	\$26.8452	\$27.3150	\$27.7930
2nd Year of Service	\$27.0973	\$27.5715	\$28.0540	\$28.5449
Administration Officer – Level 3				
1st Year of Service	\$27.5731	\$28.0556	\$28.5466	\$29.0462
2nd Year of Service	\$28.2880	\$28.7830	\$29.2867	\$29.7993
Administration Officer – Level 4				
1st Year of Service	\$29.9527	\$30.4769	\$31.0102	\$31.5529
2nd Year of Service	\$30.6666	\$31.2033	\$31.7493	\$32.3049
Team Leader				
	N/A	\$32.4515	\$33.0194	\$33.5972
OFFICE MANAGER				
<i>Managing less than 5 FTE</i>	\$30.3656	\$33.1747	\$33.7553	\$34.3460
<i>Managing 5-10 FTE</i>	\$35.7926	\$36.4190	\$37.0563	\$37.7048

General Classifications	Wage rate at time of lodgement of agreement	Wage rate first full pay period on or after 01/10/2019	Wage rate first full pay period on or after 01/10/2020	Wage rate first full pay period on or after 01/10/2021
	Per hour	Per hour	Per hour	Per hour
<i>Managing more than 10 FTE</i>	\$38.1185	\$38.7856	\$39.4643	\$40.1549
EXECUTIVE ADMINISTRATION				
1st year of service	\$34.2679	\$34.8676	\$35.4778	\$36.0986
2nd year of service	\$35.4224	\$36.0423	\$36.6730	\$37.3148
CLINICAL CODER				
Trainee				
1st year of service	\$30.0151	\$30.5404	\$31.0748	\$31.6186
2nd year of service	\$30.7327	\$31.2705	\$31.8178	\$32.3746
Qualified Clinical Coder				
1st year of service	\$32.2218	\$32.7857	\$33.3594	\$33.9432
2nd year of service	\$33.2729	\$33.8552	\$34.4476	\$35.0505
3rd year of service	\$34.5384	\$35.1428	\$35.7578	\$36.3836
4th year of service	\$35.3828	\$36.0020	\$36.6320	\$37.2731
5th Year of Service	\$36.0678	\$36.6990	\$37.3412	\$37.9947
Senior Clinical Coder				
Grade 1				
1st year of service	\$39.9679	\$40.6673	\$41.3790	\$42.1031
2nd year of service	\$42.2898	\$43.0299	\$43.7829	\$44.5491
3rd year of service	\$42.7223	\$43.4699	\$44.2307	\$45.0047

General Classifications	Wage rate at time of lodgement of agreement	Wage rate first full pay period on or after 01/10/2019	Wage rate first full pay period on or after 01/10/2020	Wage rate first full pay period on or after 01/10/2021
	Per hour	Per hour	Per hour	Per hour
HEALTH INFORMATION MANAGER				
Grade 1				
1st year of service	\$38.5965	\$39.2719	\$39.9592	\$40.6585
2nd year of service	\$39.4881	\$40.1791	\$40.8823	\$41.5977
3rd year of service	\$40.3668	\$41.0732	\$41.7920	\$42.5234
Grade 2				
1st year of service	\$43.8815	\$44.6494	\$45.4308	\$46.2258
2nd year of service	\$44.4501	\$45.2280	\$46.0195	\$46.8248
3rd year of service	\$45.2253	\$46.0167	\$46.8220	\$47.6414
Health Information Service Manager				
<i>Managing less than 3 FTE</i>				
1st year of service	\$46.1298	\$46.9371	\$47.7585	\$48.5942
2nd year of service	\$46.7759	\$47.5945	\$48.4274	\$49.2749
<i>Managing 3-5 FTE</i>				
1st year of service	\$47.8096	\$48.6463	\$49.4976	\$50.3638
2nd year of service	\$48.5849	\$49.4351	\$50.3003	\$51.1805
<i>Managing more than 5 FTE</i>				
1st year of service	\$50.3939	\$51.2758	\$52.1731	\$53.0861
2nd year of service	\$51.6861	\$52.5906	\$53.5109	\$54.4474

Schedule C — Classifications

C.1 Administrative Staff—definitions

C.1.1 Administrative Officer – Level 1

Key characteristics	Typical duties and skills
<ul style="list-style-type: none"> • Accountability for own work • Exercise judgment & initiative • Perform specialised/non-routine tasks • works autonomously or with indirect supervision – general guidance given • Initiative, discretion, judgment required in carrying out assigned duties • High degree of interpersonal skills- able to interpret and explain policy • Training 	<ul style="list-style-type: none"> • Directing telephone calls to appropriate staff, Issuing and receiving standard forms • Relaying internal information and greeting visitors. • Maintenance of basic manual or computerised records • Filing, mail distribution, simple stock control, basic typing and/or dictation, medical terminology, computer skills and routine operation of administrative equipment • Basic data entry • Responding to enquiries (eg reception or switchboard) • Operation of telephone equipment • Maintenance of records • Intermediate typing skills • Broad range of clerical functions • Computer applications including basic IBA Webpas, Imaging RIS • Basic admissions and discharges, scheduling of appointments • Credit card transactions • Basic knowledge of HIC legislation – as applied to Imaging including Medicare Benefits Schedule • Basic Medical typing • Completion of full admission procedure, end of day checks • Working knowledge of HIC legislation – as applied to Imaging including Medicare Benefits Schedule • Thorough knowledge of Imaging RIS • Cash handling • Banking • Purchasing/inventory control • Health Fund Checks • Apply invoicing procedures and contract rules of payers

C.1.2 Administrative Officer – Level 2

Key characteristics	Typical duties and skills
<p>As for Level 1 plus:</p> <ul style="list-style-type: none"> • Industry specific knowledge re contracts and legislation • Coordinate workflow • Resolve problems • Planning, initiative, discretion, judgment used regularly • Training/mentoring of lower levels 	<ul style="list-style-type: none"> • Apply invoicing procedures and contract rules of payers • Admitting patients including financial responsibility • Patient billing/collection of fees • Thorough knowledge of HIC legislation – as applied to Imaging including Medicare Benefits Schedule • Cash reconciliation • Medical typing • Basic Human Resource administration • Supervises small size work groups up to four

C.1.3 Administrative Officer – Level 3

Key characteristics	Typical duties and skills
<ul style="list-style-type: none"> • Specialist knowledge/experience to enable them to independently advise on a range of activities • Prepare work procedures and guidelines • Responsible for own work • Supervise staff • Training staff • Planning, initiative, discretion, judgment used often 	<ul style="list-style-type: none"> • Responsible for effective administrative functions of site • Responsible for accuracy of financial data and reports • End of month responsibilities • Manages all functional areas in a small facility: admissions; billers / debtors; receptionists; switch; medical records; accounts payable; IT site contact • Supervise small to medium size work groups (4 to 6) • Transactional Accounting under the direction of a finance manager • Theatre bookings • Day program liaison coordinator • Volunteer Coordination • Patient Registration experienced • Patient Quotes / Financial consent

C.1.4 Administrative Officer – Level 4

Key characteristics	Typical duties and skills
<ul style="list-style-type: none"> • Specialist knowledge/experience to enable them to independently advise on health fund agreements that relates to billing • Prepare work procedures and guidelines • Responsible for own work 	<ul style="list-style-type: none"> • Patient Billing • Responsible for accuracy of financial data and reports • Accounts Payable \ Receivable

Key characteristics	Typical duties and skills
<ul style="list-style-type: none"> • Supervise staff • Training staff • Planning, initiative, discretion, judgment used often 	

C.1.5 Team Leader

Key characteristics	Typical duties and skills
<ul style="list-style-type: none"> • <u>Oversee and coordinate workloads of staff</u> • <u>Supervise and lead staff</u> • <u>Establishment and review of workflow processes, functionality of work stations to support optimal efficiency</u> • <u>Specialist knowledge/experience on health fund agreements that relate to billing</u> • <u>Negotiating, problem solving and conflict resolution skills</u> • <u>Identification of areas for improvement and the promotion of continuous improvement in the delivery of services</u> 	<ul style="list-style-type: none"> • <u>Consider and respond to any team concerns or queries prior to escalation to Office Manager</u> • <u>Involvement in recruitment of clerical team</u> • <u>management of facilitation of team meetings</u> • <u>identification of performance concerns and escalation to Office Manager</u> • <u>ensuring all team members are appropriately trained in systems and processes</u> • <u>review and management of staff learning modules to ensure compliance</u>

C.1.6 Office Manager

Key characteristics	Typical duties and skills
<ul style="list-style-type: none"> • Able to perform typical duties • Oversee and coordinate workloads of staff • Supervise staff • Set priorities and monitor workflow • Resolve operational matters • Previous experience in the discipline or from post secondary/tertiary study • Counseling staff for performance 	<ul style="list-style-type: none"> • Involved in recruitment of clerical team • Preparation and maintenance of rosters • Responsible for accuracy of financial data • Manages all functional areas in area of responsibility • Development of strategies or work practices • Responsibility for the development of training programs • Manages confidential staff information (if in Human Resources)

C.1.7 Executive Administrator

Key characteristics	Typical duties and skills
<ul style="list-style-type: none"> • Oversee and coordinate for GM /DON • Set priorities and monitor workflow • Resolve operational matters 	<ul style="list-style-type: none"> • Human resource administration • Doctor credentialing • Possible project coordination • Responsible for staff uniforms

C.2 Clinical Coder—definitions

C.2.1 Trainee Coder

A Clinical Coder who has less than twelve (12) months' experience and/or requires ongoing training

C.2.2 Qualified Clinical Coder

An experienced Clinical Coder, with at least twelve (12) months' experience, who is not required to work across the full range of clinical specialties.

C.2.3 Senior Clinical Coder (Grade 1)

An experienced Clinical Coder, with at least three (3) years' experience, who is able to work autonomously across the full range of clinical specialities and/or able to accurately code complex episodes.

~~C.2.4 Senior Clinical Coder (Grade 2)~~

~~An experienced Clinical Coder, with at least three (3) years' experience, who is undertaking coding audit and/or coding education tasks and/or required to perform work which in the opinion of the Health Information Services Manager requires special knowledge and depth of experience.~~

C.3 Health Information Manager—definitions

C.3.1 Health Information Manager—Grade 1

An employee who has one of the following qualifications: Bachelor of Science or a Health Information Manager qualification (or equivalent).

C.3.2 Health Information Manager—Grade 2

A Health Information Manager appointed to the Grade 1 classification with additional responsibilities, including for example where they are:

- appointed in charge in a department where no other Health Information Manager is employed; or
- required to perform work, which in the opinion of the Health Information Services Manager, requires special knowledge and depth of experience.

C.3.3 Health Information Service Manager

A Health Information Manager who is engaged to manage a Health Information Service and its employees. The level at which the Health Information Service Manager will be classified will be dependent on the number of employees they manage in the Health Information Service.

Schedule D— Leave provisions under the NES

Parental leave

Division 5—Parental leave and related entitlements

Subdivision A—General

67 General rule—employee must have completed at least 12 months of service

Employees other than casual employees

- (1) An employee, other than a casual employee, is not entitled to leave under this Division (other than unpaid pre-adoption leave or unpaid no safe job leave) unless the employee has, or will have, completed at least 12 months of continuous service with the employer immediately before the date that applies under subsection (3).

Casual employees

- (2) A casual employee, is not entitled to leave (other than unpaid pre-adoption leave or unpaid no safe job leave) under this Division unless:
 - (a) the employee is, or will be, a long term casual employee of the employer immediately before the date that applies under subsection (3); and
 - (b) but for:
 - (i) the birth or expected birth of the child; or
 - (ii) the placement or the expected placement of the child; or
 - (iii) if the employee is taking a period of unpaid parental leave that starts under subsection 71(6) or paragraph 72(3)(b) or 72(4)(b)—the taking of the leave; the employee would have a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

Date at which employee must have completed 12 months of service

- (3) For the purpose of subsections (1) and (2), the date that applies is:
 - (a) unless paragraph (b) or (c) applies:
 - (i) if the leave is birth-related leave—the date of birth, or the expected date of birth, of the child; or
 - (ii) if the leave is adoption-related leave—the day of placement, or the expected day of placement, of the child; or
 - (b) for an employee taking a period of unpaid parental leave that is to start within 12 months after the birth or placement of the child under subsection 71(6)—the date on which the employee’s period of leave is to start; or
 - (c) for a member of an employee couple taking a period of unpaid parental leave that is to start under paragraph 72(3)(b) or 72(4)(b) after the period of unpaid parental leave of the other member of the employee couple—the date on which the employee’s period of leave is to start.

Meaning of birth-related leave

- (4) **Birth-related leave** means leave of either of the following kinds:
 - (a) unpaid parental leave taken in association with the birth of a child (see section 70);
 - (b) unpaid special maternity leave (see section 80).

Meaning of adoption-related leave

- (5) **Adoption-related leave** means leave of either of the following kinds:
- (a) unpaid parental leave taken in association with the placement of a child for adoption (see section 70);
 - (b) unpaid pre-adoption leave (see section 85).

Meaning of day of placement

- (6) The **day of placement**, in relation to the adoption of a child by an employee, means the earlier of the following days:
- (a) the day on which the employee first takes custody of the child for the adoption;
 - (b) the day on which the employee starts any travel that is reasonably necessary to take custody of the child for the adoption.

68 General rule for adoption-related leave—child must be under 16 etc.

An employee is not entitled to adoption-related leave unless the child that is, or is to be, placed with the employee for adoption:

- (a) is, or will be, under 16 as at the day of placement, or the expected day of placement, of the child; and
- (b) has not, or will not have, lived continuously with the employee for a period of 6 months or more as at the day of placement, or the expected day of placement, of the child; and
- (c) is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or de facto partner.

69 Transfer of employment situations in which employee is entitled to continue on leave etc.

- (1) If:
- (a) there is a transfer of employment in relation to an employee; and
 - (b) the employee has already started a period of leave under this Division when his or her employment with the first employer ends;
- the employee is entitled to continue on that leave for the rest of that period.
- (2) If:
- (a) there is a transfer of employment in relation to an employee; and
 - (b) the employee has, in relation to the first employer, already taken a step that is required or permitted by a provision of this Division in relation to taking a period of leave;
- the employee is taken to have taken the step in relation to the second employer.

Note: Steps covered by this subsection include (for example) giving the first employer notice under subsection 74(1), confirmation or advice under subsection 74(4) or evidence under subsection 74(5).

Subdivision B—Parental leave

70 Entitlement to unpaid parental leave

An employee is entitled to 12 months of unpaid parental leave if:

- (a) the leave is associated with:
 - (i) the birth of a child of the employee or the employee's spouse or de facto partner; or

- (ii) the placement of a child with the employee for adoption; and
- (b) the employee has or will have a responsibility for the care of the child.

Note: Entitlement is also affected by:

- (a) section 67 (which deals with length of the employee's service); and
- (b) for pregnancy and birth—subsection 77A(3) (which applies if the pregnancy ends other than by the child being born alive, or if the child dies after birth); and
- (c) for adoption—section 68 (which deals with the age etc. of the adopted child).

71 The period of leave—other than for members of an employee couple who each intend to take leave

Application of this section

- (1) This section applies to an employee who intends to take unpaid parental leave if:
 - (a) the employee is not a member of an employee couple; or
 - (b) the employee is a member of an employee couple, but the other member of the couple does not intend to take unpaid parental leave.

Leave must be taken in single continuous period

- (2) The employee must take the leave in a single continuous period.

Note 1: An employee may take a form of paid leave at the same time as he or she is on unpaid parental leave (see section 79).

Note 2: Periods of unpaid parental leave can include keeping in touch days on which an employee performs work (see section 79A).

- (3) If the leave is birth-related leave for a female employee who is pregnant with, or gives birth to, the child, the period of leave may start:
 - (a) up to 6 weeks before the expected date of birth of the child; or
 - (b) earlier, if the employer and employee so agree;but must not start later than the date of birth of the child.

Note 1: If the employee is not fit for work, she may be entitled to:

- (a) paid personal leave under Subdivision A of Division 7; or
- (b) unpaid special maternity leave under section 80.

Note 2: If it is inadvisable for the employee to continue in her present position, she may be entitled:

- (a) to be transferred to an appropriate safe job under section 81; or
- (b) to paid no safe job leave under section 81A; or
- (c) to unpaid no safe job leave under section 82A.

Note 3: Section 344 prohibits the exertion of undue influence or undue pressure on the employee in relation to a decision by the employee whether to agree as mentioned in paragraph (3)(b) of this section.

- (4) If the leave is birth-related leave but subsection (3) does not apply, the period of leave must start on the date of birth of the child.

When adoption-related leave must start

- (5) If the leave is adoption-related leave, the period of leave must start on the day of placement of the child.

Leave may start later for employees whose spouse or de facto partner is not an employee

- (6) Despite subsections (3) to (5), the period of leave may start at any time within 12 months after the date of birth or day of placement of the child if:
 - (a) the employee has a spouse or de facto partner who is not an employee; and

- (b) the spouse or de facto partner has a responsibility for the care of the child for the period between the date of birth or day of placement of the child and the start date of the leave.

Note: An employee whose leave starts under subsection (6) is still entitled under section 76 to request an extension of the period of leave beyond his or her available parental leave period. However, the period of leave may not be extended beyond 24 months after the date of birth or day of placement of the child (see subsection 76(7)).

72 The period of leave—members of an employee couple who each intend to take leave

Application of this section

- (1) This section applies to an employee couple if each of the employees intends to take unpaid parental leave.

Leave must be taken in single continuous period

- (2) Each employee must take the leave in a single continuous period.

Note 1: An employee may take a form of paid leave at the same time as he or she is on unpaid parental leave (see section 79).

Note 2: Periods of unpaid parental leave can include keeping in touch days on which an employee performs work (see section 79A).

When birth-related leave must start

- (3) If the leave is birth-related leave:
 - (a) one employee's period of leave must start first, in accordance with the following rules:
 - (i) if the member of the employee couple whose period of leave starts first is a female employee who is pregnant with, or gives birth to, the child—the period of leave may start up to 6 weeks before the expected date of birth of the child, or earlier if the employer and employee so agree, but must not start later than the date of birth of the child;
 - (ii) if subparagraph (i) does not apply—the period of leave must start on the date of birth of the child; and
 - (b) the other employee's period of leave must start immediately after the end of the first employee's period of leave (or that period as extended under section 75 or 76).

When adoption-related leave must start

- (4) If the leave is adoption-related leave:
 - (a) one employee's period of leave must start on the day of placement of the child; and
 - (b) the other employee's period of leave must start immediately after the end of the first employee's period of leave (or that period as extended under section 75 or 76).

Limited entitlement to take concurrent leave

- (5) If one of the employees takes a period (the **first employee's period of leave**) of unpaid parental leave in accordance with paragraph (3)(a) or (4)(a), the other employee may take a period of unpaid parental leave (the **concurrent leave**) during the first employee's period of leave, if the concurrent leave complies with the following requirements:
 - (a) the concurrent leave must not be longer than 8 weeks in total;
 - (b) the concurrent leave may be taken in separate periods, but, unless the employer agrees, each period must not be shorter than 2 weeks;

- (c) unless the employer agrees, the concurrent leave must not start before:
 - (i) if the leave is birth-related leave—the date of birth of the child; or
 - (ii) if the leave is adoption-related leave—the day of placement of the child.
- (6) Concurrent leave taken by an employee:
 - (a) is an exception to the rule that the employee must take his or her leave in a single continuous period (see subsection (2)); and
 - (b) is an exception to the rules about when the employee’s period of unpaid parental leave must start (see subsection (3) or (4)).

Note: The concurrent leave is unpaid parental leave and so comes out of the employee’s entitlement to 12 months of unpaid parental leave under section 70.

73 Pregnant employee may be required to take unpaid parental leave within 6 weeks before the birth

Employer may ask employee to provide a medical certificate

- (1) If a pregnant employee who is entitled to unpaid parental leave (whether or not she has complied with section 74) continues to work during the 6 week period before the expected date of birth of the child, the employer may ask the employee to give the employer a medical certificate containing the following statements (as applicable):
 - (a) a statement of whether the employee is fit for work;
 - (b) if the employee is fit for work—a statement of whether it is inadvisable for the employee to continue in her present position during a stated period because of:
 - (i) illness, or risks, arising out of the employee’s pregnancy; or
 - (ii) hazards connected with the position.

Note: Personal information given to an employer under this subsection may be regulated under the *Privacy Act 1988*.

Employer may require employee to take unpaid parental leave

- (2) The employer may require the employee to take a period of unpaid parental leave (the **period of leave**) as soon as practicable if:
 - (a) the employee does not give the employer the requested certificate within 7 days after the request; or
 - (b) within 7 days after the request, the employee gives the employer a medical certificate stating that the employee is not fit for work; or
 - (c) the following subparagraphs are satisfied:
 - (i) within 7 days after the request, the employee gives the employer a medical certificate stating that the employee is fit for work, but that it is inadvisable for the employee to continue in her present position for a stated period for a reason referred to in subparagraph (1)(b)(i) or (ii);
 - (ii) the employee has not complied with the notice and evidence requirements of section 74 for taking unpaid parental leave.

Note: If the medical certificate contains a statement as referred to in subparagraph (c)(i) and the employee has complied with the notice and evidence requirements of section 74, then the employee is entitled to be transferred to a safe job (see section 81) or to paid no safe job leave (see section 81A).

When the period of leave must end

- (3) The period of leave must not end later than the earlier of the following:
 - (a) the end of the pregnancy;

- (b) if the employee has given the employer notice of the taking of a period of leave connected with the birth of the child (whether it is unpaid parental leave or some other kind of leave)—the start date of that leave.

Special rules about the period of leave

- (4) The period of leave:
 - (a) is an exception to the rule that the employee must take her unpaid parental leave in a single continuous period (see subsection 71(2) or 72(2)); and
 - (b) is an exception to the rules about when the employee's period of unpaid parental leave must start (see subsections 71(3) and (6), or subsection 72(3)).

Note: The period of leave is unpaid parental leave and so comes out of the employee's entitlement to 12 months of unpaid parental leave under section 70.

- (5) The employee is not required to comply with section 74 in relation to the period of leave.

74 Notice and evidence requirements

Notice

- (1) An employee must give his or her employer written notice of the taking of unpaid parental leave under section 71 or 72 by the employee.
- (2) The employee must give the notice to the employer:
 - (a) at least:
 - (i) 10 weeks before starting the leave, unless subparagraph (ii) applies; or
 - (ii) if the leave is to be taken in separate periods of concurrent leave (see paragraph 72(5)(b)) and the leave is not the first of those periods of concurrent leave—4 weeks before starting the period of concurrent leave; or
 - (b) if that is not practicable—as soon as practicable (which may be a time after the leave has started).
- (3) The notice must specify the intended start and end dates of the leave.

Confirmation or change of intended start and end dates

- (4) At least 4 weeks before the intended start date specified in the notice given under subsection (1), the employee must:
 - (a) confirm the intended start and end dates of the leave; or
 - (b) advise the employer of any changes to the intended start and end dates of the leave; unless it is not practicable to do so.
- (4A) Subsection (4) does not apply to a notice for a period of concurrent leave referred to in subparagraph (2)(a)(ii).

Evidence

- (5) An employee who has given his or her employer notice of the taking of unpaid parental leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person:
 - (a) if the leave is birth-related leave—of the date of birth, or the expected date of birth, of the child; or
 - (b) if the leave is adoption-related leave:
 - (i) of the day of placement, or the expected day of placement, of the child; and

- (ii) that the child is, or will be, under 16 as at the day of placement, or the expected day of placement, of the child.
- (6) Without limiting subsection (5), an employer may require the evidence referred to in paragraph (5)(a) to be a medical certificate.

Compliance

- (7) An employee is not entitled to take unpaid parental leave under section 71 or 72 unless the employee complies with this section.

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

75 Extending period of unpaid parental leave—extending to use more of available parental leave period

Application of this section

- (1) This section applies if:
 - (a) an employee has, in accordance with section 74, given notice of the taking of a period of unpaid parental leave (the ***original leave period***); and
 - (b) the original leave period is less than the employee's available parental leave period; and
 - (c) the original leave period has started.
- (2) The employee's ***available parental leave period*** is 12 months, less any periods of the following kinds:
 - (a) a period of concurrent leave that the employee has taken in accordance with subsection 72(5);
 - (b) a period of unpaid parental leave that the employee has been required to take under subsection 73(2) or 82(2);
 - (c) a period by which the employee's entitlement to unpaid parental leave is reduced under paragraph 76(6)(c).

First extension by giving notice to employer

- (3) The employee may extend the period of unpaid parental leave by giving his or her employer written notice of the extension at least 4 weeks before the end date of the original leave period. The notice must specify the new end date for the leave.
- (4) Only one extension is permitted under subsection (3).

Further extensions by agreement with employer

- (5) If the employer agrees, the employee may further extend the period of unpaid parental leave one or more times.

No entitlement to extension beyond available parental leave period

- (6) The employee is not entitled under this section to extend the period of unpaid parental leave beyond the employee's available parental leave period.

76 Extending period of unpaid parental leave—extending for up to 12 months beyond available parental leave period

Employee may request further period of leave

- (1) An employee who takes unpaid parental leave for his or her available parental leave period may request his or her employer to agree to an extension of unpaid parental leave for the employee for a further period of up to 12 months immediately following the end of the available parental leave period.

Note: Extended periods of unpaid parental leave can include keeping in touch days on which an employee performs work (see section 79A).

Making the request

- (2) The request must be in writing, and must be given to the employer at least 4 weeks before the end of the available parental leave period.

Agreeing to the requested extension

- (3) The employer must give the employee a written response to the request stating whether the employer grants or refuses the request. The response must be given as soon as practicable, and not later than 21 days, after the request is made.
- (4) The employer may refuse the request only on reasonable business grounds.
- (5) If the employer refuses the request, the written response under subsection (3) must include details of the reasons for the refusal.

Discussion

- (5A) The employer must not refuse the request unless the employer has given the employee a reasonable opportunity to discuss the request.

Special rules for employee couples

- (6) The following paragraphs apply in relation to a member of an employee couple extending a period of unpaid parental leave in relation to a child under this section:
 - (a) the request must specify any amount of unpaid parental leave that the other member of the employee couple has taken, or will have taken, in relation to the child before the extension starts;
 - (b) the period of the extension cannot exceed 12 months, less any period of unpaid parental leave that the other member of the employee couple has taken, or will have taken, in relation to the child before the extension starts;
 - (c) the amount of unpaid parental leave to which the other member of the employee couple is entitled under section 70 in relation to the child is reduced by the period of the extension.

No extension beyond 24 months after birth or placement

- (7) Despite any other provision of this Division, the employee is not entitled to extend the period of unpaid parental leave beyond 24 months after the date of birth or day of placement of the child.

77 Reducing period of unpaid parental leave

If the employer agrees, an employee whose period of unpaid parental leave has started may reduce the period of unpaid parental leave he or she takes.

77A Pregnancy ends (other than by birth of a living child) or child born alive dies

Application of this section

- (1) This section applies to unpaid parental leave, if:
 - (a) the leave is birth-related leave; and
 - (b) either:
 - (i) the pregnancy ends other than by the child being born alive; or
 - (ii) the child dies after being born.

Cancellation of leave

- (2) Before the leave starts:
 - (a) the employee may give the employer written notice cancelling the leave; or
 - (b) the employer may give the employee written notice cancelling the leave.

Example: Subsections (2) and (3) do not apply if:

- (a) the child dies after being born; and
- (b) the employee is the female employee who gave birth to the child.

This is because in this case the leave must not start later than the date of birth of the child (see subsection 71(3)).

- (3) If the employee or employer does so, the employee is not entitled to unpaid parental leave in relation to the child.

Note: If the employee is the female employee who was pregnant with the child and the employee is not fit for work, she may be entitled to:

- (a) paid personal leave under Subdivision A of Division 7; or
- (b) unpaid special maternity leave under section 80.

Return to work

- (4) The employee may give the employer written notice that the employee wishes to return to work:
 - (a) after the start of the period of leave, but before its end; and
 - (b) within 4 weeks after the employer receives the notice.
- (5) The employer:
 - (a) may give the employee written notice requiring the employee to return to work on a specified day; and
 - (b) must do so if the employee gives the employer written notice under subsection (4); unless the leave has not started and the employer cancels it under subsection (2).
- (6) The specified day must be after the start of the period of leave, and:
 - (a) if subsection (4) applies—within 4 weeks after the employer receives the notice under that subsection; or
 - (b) otherwise—at least 6 weeks after the notice is given to the employee under subsection (5).
- (7) The employee's entitlement to unpaid parental leave in relation to the child ends immediately before the specified day.

Interaction with section 77

- (8) This section does not limit section 77 (which deals with the employee ending the period of unpaid parental leave with the agreement of the employer).

78 Employee who ceases to have responsibility for care of child

- (1) This section applies to an employee who has taken unpaid parental leave in relation to a child if the employee ceases to have any responsibility for the care of the child.
- (1A) However, this section does not apply if section 77A applies to the unpaid parental leave (because the unpaid parental leave is birth-related leave and either the pregnancy ends other than by the child being born alive or the child dies after being born).
- (2) The employer may give the employee written notice requiring the employee to return to work on a specified day.
- (3) The specified day:
 - (a) must be at least 4 weeks after the notice is given to the employee; and
 - (b) if the leave is birth-related leave taken by a female employee who has given birth—must not be earlier than 6 weeks after the date of birth of the child.
- (4) The employee's entitlement to unpaid parental leave in relation to the child ends immediately before the specified day.

79 Interaction with paid leave

- (1) This Subdivision (except for subsections (2) and (3)) does not prevent an employee from taking any other kind of paid leave while he or she is taking unpaid parental leave. If the employee does so, the taking of that other paid leave does not break the continuity of the period of unpaid parental leave.

Note: For example, if the employee has paid annual leave available, he or she may (with the employer's agreement) take some or all of that paid annual leave at the same time as the unpaid parental leave.

- (2) An employee is not entitled to take paid personal/carer's leave or compassionate leave while he or she is taking unpaid parental leave.
- (3) An employee is not entitled to any payment under Division 8 (which deals with community service leave) in relation to activities the employee engages in while taking unpaid parental leave.

79A Keeping in touch days

- (1) This Subdivision does not prevent an employee from performing work for his or her employer on a keeping in touch day while he or she is taking unpaid parental leave. If the employee does so, the performance of that work does not break the continuity of the period of unpaid parental leave.
- (2) A day on which the employee performs work for the employer during the period of leave is a *keeping in touch day* if:
 - (a) the purpose of performing the work is to enable the employee to keep in touch with his or her employment in order to facilitate a return to that employment after the end of the period of leave; and
 - (b) both the employee and the employer consent to the employee performing work for the employer on that day; and
 - (c) the day is not within:
 - (i) if the employee suggested or requested that he or she perform work for the employer on that day—14 days after the date of birth, or day of placement, of the child to which the period of leave relates; or
 - (ii) otherwise—42 days after the date of birth, or day of placement, of the child; and

- (d) the employee has not already performed work for the employer or another entity on 10 days during the period of leave that were keeping in touch days.

The duration of the work the employee performs on that day is not relevant for the purposes of this subsection.

Note: The employer will be obliged, under the relevant contract of employment or industrial instrument, to pay the employee for performing work on a keeping in touch day.

- (3) The employee's decision whether to give the consent mentioned in paragraph (2)(b) is taken, for the purposes of section 344 (which deals with undue influence or pressure), to be a decision to make, or not make, an arrangement under the National Employment Standards.
- (4) For the purposes of paragraph (2)(d), treat as 2 separate periods of unpaid parental leave:
 - (a) a period of unpaid parental leave taken during the employee's available parental leave period; and
 - (b) a period of unpaid parental leave taken as an extension of the leave referred to in paragraph (a) for a further period immediately following the end of the available parental leave period.

Note: Performance of work on keeping in touch days is also dealt with, for the purposes of parental leave pay, in sections 49 and 50 of the *Paid Parental Leave Act 2010*.

79B Unpaid parental leave not extended by paid leave or keeping in touch days

If, during a period of unpaid parental leave, an employee:

- (a) takes paid leave; or
- (b) performs work for his or her employer on a keeping in touch day;

taking that leave or performing that work does not have the effect of extending the period of unpaid parental leave.

Subdivision C—Other entitlements

80 Unpaid special maternity leave

Entitlement to unpaid special maternity leave

- (1) A female employee is entitled to a period of unpaid special maternity leave if she is not fit for work during that period because:
 - (a) she has a pregnancy-related illness; or
 - (b) she has been pregnant, and the pregnancy ends within 28 weeks of the expected date of birth of the child otherwise than by the birth of a living child.

Note 1: Entitlement is also affected by section 67 (which deals with the length of the employee's service).

Note 2: If a female employee has an entitlement to paid personal/carer's leave (see section 96), she may take that leave instead of taking unpaid special maternity leave under this section.

Notice and evidence

- (2) An employee must give her employer notice of the taking of unpaid special maternity leave by the employee.
- (3) The notice:
 - (a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
 - (b) must advise the employer of the period, or expected period, of the leave.

- (4) An employee who has given her employer notice of the taking of unpaid special maternity 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 subsection (1).
- (5) Without limiting subsection (4), an employer may require the evidence referred to in that subsection to be a medical certificate.
- (6) An employee is not entitled to take unpaid special maternity leave unless the employee complies with subsections (2) to (4).

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

81 Transfer to a safe job

- (1) This section applies to a pregnant employee if she gives her employer evidence that would satisfy a reasonable person that she is fit for work, but that it is inadvisable for her to continue in her present position during a stated period (the *risk period*) because of:
 - (a) illness, or risks, arising out of her pregnancy; or
 - (b) hazards connected with that position.

Note: Personal information given to an employer under this subsection may be regulated under the *Privacy Act 1988*.

- (2) If there is an appropriate safe job available, then the employer must transfer the employee to that job for the risk period, with no other change to the employee's terms and conditions of employment.

Note: If there is no appropriate safe job available, then the employee may be entitled to paid no safe job leave under section 81A or unpaid no safe job leave under 82A.

- (3) An *appropriate safe job* is a safe job that has:
 - (a) the same ordinary hours of work as the employee's present position; or
 - (b) a different number of ordinary hours agreed to by the employee.
- (4) If the employee is transferred to an appropriate safe job for the risk period, the employer must pay the employee for the safe job at the employee's full rate of pay (for the position she was in before the transfer) for the hours that she works in the risk period.
- (5) If the employee's pregnancy ends before the end of the risk period, the *risk period* ends when the pregnancy ends.
- (6) Without limiting subsection (1), an employer may require the evidence to be a medical certificate.

81A Paid no safe job leave

- (1) If:
 - (a) section 81 applies to a pregnant employee but there is no appropriate safe job available; and
 - (b) the employee is entitled to unpaid parental leave; and
 - (c) the employee has complied with the notice and evidence requirements of section 74 for taking unpaid parental leave;
 then the employee is entitled to paid no safe job leave for the risk period.
- (2) If the employee takes paid no safe job leave for the risk period, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the risk period.

82 Employee on paid no safe job leave may be asked to provide a further medical certificate

Employer may ask employee to provide a medical certificate

- (1) If an employee is on paid no safe job leave during the 6 week period before the expected date of birth of the child, the employer may ask the employee to give the employer a medical certificate stating whether the employee is fit for work.

Note: Personal information given to an employer under this subsection may be regulated under the *Privacy Act 1988*.

Employer may require employee to take unpaid parental leave

- (2) The employer may require the employee to take a period of unpaid parental leave (the **period of leave**) as soon as practicable if:
 - (a) the employee does not give the employer the requested certificate within 7 days after the request; or
 - (b) within 7 days after the request, the employee gives the employer a certificate stating that the employee is not fit for work.

Entitlement to paid no safe job leave ends

- (3) When the period of leave starts, the employee's entitlement to paid no safe job leave ends.

When the period of leave must end etc.

- (4) Subsections 73(3), (4) and (5) apply to the period of leave.

82A Unpaid no safe job leave

- (1) If:
 - (a) section 81 applies to a pregnant employee but there is no appropriate safe job available; and
 - (b) the employee is not entitled to unpaid parental leave; and
 - (c) if required by the employer—the employee has given the employer evidence that would satisfy a reasonable person of the pregnancy;then the employee is entitled to unpaid no safe job leave for the risk period.
- (2) Without limiting subsection (1), an employer may require the evidence referred to in paragraph (1)(c) to be a medical certificate.

83 Consultation with employee on unpaid parental leave

- (1) If:
 - (a) an employee is on unpaid parental leave; and
 - (b) the employee's employer makes a decision that will have a significant effect on the status, pay or location of the employee's pre-parental leave position;the employer must take all reasonable steps to give the employee information about, and an opportunity to discuss, the effect of the decision on that position.
- (2) The employee's **pre-parental leave position** is:
 - (a) unless paragraph (b) applies, the position the employee held before starting the unpaid parental leave; or
 - (b) if, before starting the unpaid parental leave, the employee:
 - (i) was transferred to a safe job because of her pregnancy; or

- (ii) reduced her working hours due to her pregnancy;
the position the employee held immediately before that transfer or reduction.

84 Return to work guarantee

On ending unpaid parental leave, an employee is entitled to return to:

- (a) the employee's pre-parental leave position; or
- (b) if that position no longer exists—an available position for which the employee is qualified and suited nearest in status and pay to the pre-parental leave position.

84A Replacement employees

Before an employer engages an employee to perform the work of another employee who is going to take, or is taking, unpaid parental leave, the employer must notify the replacement employee:

- (a) that the engagement to perform that work is temporary; and
- (b) of the rights:
 - (i) the employer; and
 - (ii) the employee taking unpaid parental leave;
have under subsections 77A(2) and (3) (which provide a right to cancel the leave if the pregnancy ends other than by the birth of a living child or if the child dies after birth); and
- (c) of the rights the employee taking unpaid parental leave has under:
 - (i) subsections 77A(4) to (6) (which provide a right to end the leave early if the pregnancy ends other than by the birth of a living child or if the child dies after birth); and
 - (ii) section 84 (which deals with the return to work guarantee); and
- (d) of the effect of section 78 (which provides the employer with a right to require the employee taking unpaid parental leave to return to work if the employee ceases to have any responsibility for the care of the child).

85 Unpaid pre-adoption leave

Entitlement to unpaid pre-adoption leave

- (1) An employee is entitled to up to 2 days of unpaid pre-adoption leave to attend any interviews or examinations required in order to obtain approval for the employee's adoption of a child.

Note: Entitlement is also affected by section 68 (which deals with the age etc. of the adopted child).

- (2) However, an employee is not entitled to take a period of unpaid pre-adoption leave if:
 - (a) the employee could instead take some other form of leave; and
 - (b) the employer directs the employee to take that other form of leave.
- (3) An employee who is entitled to a period of unpaid pre-adoption leave is entitled to take the leave as:
 - (a) a single continuous period of up to 2 days; or
 - (b) any separate periods to which the employee and the employer agree.

Notice and evidence

- (4) An employee must give his or her employer notice of the taking of unpaid pre-adoption leave by the employee.

- (5) The notice:
- (a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
 - (b) must advise the employer of the period, or expected period, of the leave.
- (6) An employee who has given his or her employer notice of the taking of unpaid pre-adoption leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken to attend an interview or examination as referred to in subsection (1).
- (7) An employee is not entitled to take unpaid pre-adoption leave unless the employee complies with subsections (4) to (6).

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

Annual Leave

Division 6—Annual leave

86 Division applies to employees other than casual employees

This Division applies to employees, other than casual employees.

87 Entitlement to annual leave

Amount of leave

- (1) For each year of service with his or her employer, an employee is entitled to:
- (a) 4 weeks of paid annual leave; or
 - (b) 5 weeks of paid annual leave, if:
 - (i) a modern award applies to the employee and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards; or
 - (ii) an enterprise agreement applies to the employee and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards; or
 - (iii) the employee qualifies for the shiftworker annual leave entitlement under subsection (3) (this relates to award/agreement free employees).

Note: Section 196 affects whether the FWC may approve an enterprise agreement covering an employee, if the employee is covered by a modern award that is in operation and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards.

Accrual of leave

- (2) An employee's entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.

Note: If an employee's employment ends during what would otherwise have been a year of service, the employee accrues paid annual leave up to when the employment ends.

Award/agreement free employees who qualify for the shiftworker entitlement

- (3) An award/agreement free employee qualifies for the shiftworker annual leave entitlement if:
- (a) the employee:
 - (i) is employed in an enterprise in which shifts are continuously rostered 24 hours a day for 7 days a week; and
 - (ii) is regularly rostered to work those shifts; and
 - (iii) regularly works on Sundays and public holidays; or
 - (b) the employee is in a class of employees prescribed by the regulations as shiftworkers for the purposes of the National Employment Standards.
- (4) However, an employee referred to in subsection (3) does not qualify for the shiftworker annual leave entitlement if the employee is in a class of employees prescribed by the regulations as not being qualified for that entitlement.
- (5) Without limiting the way in which a class may be described for the purposes of paragraph (3)(b) or subsection (4), the class may be described by reference to one or more of the following:
- (a) a particular industry or part of an industry;
 - (b) a particular kind of work;
 - (c) a particular type of employment.

88 Taking paid annual leave

- (1) Paid annual leave may be taken for a period agreed between an employee and his or her employer.
- (2) The employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

89 Employee not taken to be on paid annual leave at certain times

Public holidays

- (1) If the period during which an employee takes paid annual leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid annual leave on that public holiday.

Other periods of leave

- (2) If the period during which an employee takes paid annual leave includes a period of any other leave (other than unpaid parental leave) under this Part, or a period of absence from employment under Division 8 (which deals with community service leave), the employee is taken not to be on paid annual leave for the period of that other leave or absence.

90 Payment for annual leave

- (1) If, in accordance with this Division, 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.
- (2) 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 had the employee taken that period of leave.

91 Transfer of employment situations that affect entitlement to payment for period of untaken paid annual leave

Transfer of employment situation in which employer may decide not to recognise employee's service with first employer

- (1) Subsection 22(5) does not apply (for the purpose of this Division) to a transfer of employment between non-associated entities in relation to an employee, if the second employer decides not to recognise the employee's service with the first employer (for the purpose of this Division).

Employee is not entitled to payment for untaken annual leave if service with first employer counts as service with second employer

- (2) If subsection 22(5) applies (for the purpose of this Division) to a transfer of employment in relation to an employee, the employee is not entitled to be paid an amount under subsection 90(2) for a period of untaken paid annual leave.

Note: Subsection 22(5) provides that, generally, if there is a transfer of employment, service with the first employer counts as service with the second employer.

92 Paid annual leave must not be cashed out except in accordance with permitted cashing out terms

Paid annual leave must not be cashed out, except in accordance with:

- (a) cashing out terms included in a modern award or enterprise agreement under section 93, or
- (b) an agreement between an employer and an award/agreement free employee under subsection 94(1).

93 Modern awards and enterprise agreements may include terms relating to cashing out and taking paid annual leave

Terms about cashing out paid annual leave

- (1) A modern award or enterprise agreement may include terms providing for the cashing out of paid annual leave by an employee.
- (2) The terms must require that:
 - (a) paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and
 - (b) each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; and
 - (c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

Terms about requirements to take paid annual leave

- (3) A modern award or enterprise agreement may include terms requiring an employee, or allowing for an employee to be required, to take paid annual leave in particular circumstances, but only if the requirement is reasonable.

Terms about taking paid annual leave

- (4) A modern award or enterprise agreement may include terms otherwise dealing with the taking of paid annual leave.

94 Cashing out and taking paid annual leave for award/agreement free employees

Agreements to cash out paid annual leave

- (1) An employer and an award/agreement free employee may agree to the employee cashing out a particular amount of the employee's accrued paid annual leave.
- (2) 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.
- (3) Each agreement to cash out a particular amount of paid annual leave must be a separate agreement in writing.
- (4) 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.

Requirements to take paid annual leave

- (5) An employer may require an award/agreement free employee to take a period of paid annual leave, but only if the requirement is reasonable.

Note: A requirement to take paid annual leave may be reasonable if, for example:

- (a) the employee has accrued an excessive amount of paid annual leave; or
- (b) the employer's enterprise is being shut down for a period (for example, between Christmas and New Year).

Agreements about taking paid annual leave

- (6) An employer and an award/agreement free employee may agree on when and how paid annual leave may be taken by the employee.

Note: Matters that could be agreed include, for example, the following:

- (a) that paid annual leave may be taken in advance of accrual;
- (b) that paid annual leave must be taken within a fixed period of time after it is accrued;
- (c) the form of application for paid annual leave;
- (d) that a specified period of notice must be given before taking paid annual leave.

Paid personal/carer's leave

Division 7—Personal/carer's leave, compassionate leave and unpaid family and domestic violence leave

95 Subdivision applies to employees other than casual employees

This Subdivision applies to employees, other than casual employees.

96 Entitlement to paid personal/carer's leave

Amount of leave

- (1) For each year of service with his or her employer, an employee is entitled to 10 days of paid personal/carer's leave.

Accrual of leave

- (2) 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.

97 Taking paid personal/carer's leave

An employee may take paid personal/carer's leave if the leave is taken:

- (a) because 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.

Note 1: The notice and evidence requirements of section 107 must be complied with.

Note 2: If a female employee has an entitlement to paid personal/carer's leave, she may take that leave instead of taking unpaid special maternity leave under section 80.

98 Employee taken not to be on paid personal/carer's leave on public holiday

If the period during which an employee takes paid personal/carer's leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carer's leave on that public holiday.

99 Payment for paid personal/carer's leave

If, in accordance with this Subdivision, 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.

100 Paid personal/carer's leave must not be cashed out except in accordance with permitted cashing out terms

Paid personal/carer's leave must not be cashed out, except in accordance with cashing out terms included in a modern award or enterprise agreement under section 101.

101 Modern awards and enterprise agreements may include terms relating to cashing out paid personal/carer's leave

- (1) A modern award or enterprise agreement may include terms providing for the cashing out of paid personal/carer's leave by an employee.
- (2) The terms must require that:
 - (a) paid personal/carer's leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid personal/carer's leave being less than 15 days; and
 - (b) each cashing out of a particular amount of paid personal/carer's leave must be by a separate agreement in writing between the employer and the employee; and
 - (c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

Subdivision B—Unpaid carer’s leave

102 Entitlement to unpaid carer’s leave

An employee is entitled to 2 days of unpaid carer’s leave for each occasion (a *permissible occasion*) when a member of the employee’s immediate family, or a member of the employee’s household, requires care or support because of:

- (a) a personal illness, or personal injury, affecting the member; or
- (b) an unexpected emergency affecting the member.

103 Taking unpaid carer’s leave

- (1) An employee may take unpaid carer’s leave for a particular permissible occasion if the leave is taken to provide care or support as referred to in section 102.
- (2) An employee may take unpaid carer’s leave for a particular permissible occasion as:
 - (a) a single continuous period of up to 2 days; or
 - (b) any separate periods to which the employee and his or her employer agree.
- (3) An employee cannot take unpaid carer’s leave during a particular period if the employee could instead take paid personal/carer’s leave.

Note: The notice and evidence requirements of section 107 must be complied with.

Compassionate leave

Subdivision C—Compassionate leave

104 Entitlement to compassionate leave

An employee is entitled to 2 days of compassionate leave for each occasion (a *permissible occasion*) when a member of the employee’s immediate family, or a member of the employee’s household:

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

105 Taking compassionate leave

- (1) An employee may take compassionate leave for a particular permissible occasion if the leave is taken:
 - (a) to spend time with the member of the employee’s immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in section 104; or
 - (b) after the death of the member of the employee’s immediate family or household referred to in section 104.
- (2) An employee may take compassionate leave for a particular permissible occasion as:
 - (a) a single continuous 2 day period; or
 - (b) 2 separate periods of 1 day each; or
 - (c) any separate periods to which the employee and his or her employer agree.

- (3) If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

Note: The notice and evidence requirements of section 107 must be complied with.

106 Payment for compassionate leave (other than for casual employees)

If, in accordance with this Subdivision, 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.

Note: For casual employees, compassionate leave is unpaid leave.

Subdivision D—Notice and evidence requirements for personal/carer's and compassionate leave

107 Notice and evidence requirements

Notice

- (1) An employee must give his or her employer notice of the taking of leave under this Division by the employee.
- (2) The notice:
 - (a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
 - (b) must advise the employer of the period, or expected period, of the leave.

Evidence

- (3) An employee who has given his or her employer notice of the taking of leave under this Division must, if required by the employer, give the employer evidence that would satisfy a reasonable person that:
 - (a) if it is paid personal/carer's leave—the leave is taken for a reason specified in section 97; or
 - (b) if it is unpaid carer's leave—the leave is taken for a permissible occasion in circumstances specified in subsection 103(1); or
 - (c) if it is compassionate leave—the leave is taken for a permissible occasion in circumstances specified in subsection 105(1); or
 - (d) if it is unpaid family and domestic violence leave, and the employee has met the requirement specified in paragraph 106B(1)(a)—the leave is taken for the purpose specified in paragraph 106B(1)(b), and the requirement specified in paragraph 106B(1)(c) is met.

Compliance

- (4) An employee is not entitled to take leave under this Division unless the employee complies with this section.

Modern awards and enterprise agreements may include evidence requirements

- (5) A modern award or enterprise agreement may include terms relating to the kind of evidence that an employee must provide in order to be entitled to paid personal/carer's leave, unpaid carer's leave or compassionate leave.

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

Community service (including jury service)

Division 8—Community service leave

108 Entitlement to be absent from employment for engaging in eligible community service activity

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.

109 Meaning of *eligible community service activity*

General

- (1) Each of the following is an *eligible community service activity*:
 - (a) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
 - (b) a voluntary emergency management activity (see subsection (2)); or
 - (c) an activity prescribed in regulations made for the purpose of subsection (4).

Voluntary emergency management activities

- (2) An employee engages in a *voluntary emergency management activity* if, and only if:
 - (a) the employee engages in an activity that involves dealing with an emergency or natural disaster; and
 - (b) the employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity); and
 - (c) the employee is a member of, or has a member-like association with, a recognised emergency management body; and
 - (d) either:
 - (i) the employee was requested by or on behalf of the body to engage in the activity; or
 - (ii) no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.
- (3) A *recognised emergency management body* is:
 - (a) a body, or part of a body, that has a role or function under a plan that:
 - (i) is for coping with emergencies and/or disasters; and
 - (ii) is prepared by the Commonwealth, a State or a Territory; or
 - (b) a fire-fighting, civil defence or rescue body, or part of such a body; or
 - (c) any other body, or part of a body, a substantial purpose of which involves:
 - (i) securing the safety of persons or animals in an emergency or natural disaster; or
 - (ii) protecting property in an emergency or natural disaster; or

- (iii) otherwise responding to an emergency or natural disaster; or
 - (d) a body, or part of a body, prescribed by the regulations;
- but does not include a body that was established, or is continued in existence, for the purpose, or for purposes that include the purpose, of entitling one or more employees to be absent from their employment under this Division.

Regulations may prescribe other activities

- (4) The regulations may prescribe an activity that is of a community service nature as an eligible community service activity.

110 Notice and evidence requirements

Notice

- (1) An employee who wants an absence from his or her employment to be covered by this Division must give his or her employer notice of the absence.
- (2) The notice:
 - (a) must be given to the employer as soon as practicable (which may be a time after the absence has started); and
 - (b) must advise the employer of the period, or expected period, of the absence.

Evidence

- (3) 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.

Compliance

- (4) An employee's absence from his or her employment is not covered by this Division unless the employee complies with this section.

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

111 Payment to employees (other than casuals) on jury service

Application of this section

- (1) This section applies if:
 - (a) in accordance with this Division, an employee is absent from his or her employment for a period because of jury service; and
 - (b) the employee is not a casual employee.

Employee to be paid base rate of pay

- (2) Subject to subsections (3), (4) and (5), 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.

Evidence

- (3) The employer may require the employee to give the employer evidence that would satisfy a reasonable person:
 - (a) that the employee has taken all necessary steps to obtain any amount of jury service

- pay to which the employee is entitled; and
- (b) 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.

Note: Personal information given to an employer under this subsection may be regulated under the *Privacy Act 1988*.

- (4) If, in accordance with subsection (3), the employer requires the employee to give the employer the evidence referred to in that subsection:
 - (a) the employee is not entitled to payment under subsection (2) unless the employee provides the evidence; and
 - (b) if the employee provides the evidence—the amount payable to the employee under subsection (2) 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.

Payment only required for first 10 days of absence

- (5) If an employee is absent because of jury service in relation to a particular jury service summons for a period, or a number of periods, of more than 10 days in total:
 - (a) the employer is only required to pay the employee for the first 10 days of absence; and
 - (b) the evidence provided in response to a requirement under subsection (3) need only relate to the first 10 days of absence; and
 - (c) the reference in subsection (4) to the total amount of jury service pay as disclosed in evidence is a reference to the total amount so disclosed for the first 10 days of absence.

Meaning of jury service pay

- (6) **Jury service pay** means an amount paid in relation to jury service under a law of the Commonwealth, a State or a Territory, other than an amount that is, or that is in the nature of, an expense-related allowance.

Meaning of jury service summons

- (7) **Jury service summons** means a summons or other instruction (however described) that requires a person to attend for, or perform, jury service.

112 State and Territory laws that are not excluded

- (1) This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to engaging in eligible community service activities, to the extent that those entitlements are more beneficial to employees than the entitlements under this Division.

Note: For example, this Act would not apply to the exclusion of a State or Territory law providing for a casual employee to be paid jury service pay.

- (2) If the community service activity is an activity prescribed in regulations made for the purpose of subsection 109(4), subsection (1) of this section has effect subject to any provision to the contrary in the regulations.