



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

St Vincent’s Hospital Sydney Limited; Karitane; Royal Society for the Welfare of Mothers and Babies; Calvary Health Care Sydney Limited; Calvary Mater Newcastle
(AG2021/8155)

NSW (NON-DECLARED) AFFILIATED HEALTH ORGANISATIONS’ STAFF SPECIALIST AGREEMENT 2021

Health and welfare services

DEPUTY PRESIDENT DEAN

CANBERRA, 11 NOVEMBER 2021

Application for approval of the NSW (Non-Declared) Affiliated Health Organisations’ Staff Specialist Agreement 2021.

[1] An application has been made for approval of an enterprise agreement known as the *NSW (Non-Declared) Affiliated Health Organisations’ Staff Specialist Agreement 2021* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by St Vincent’s Hospital Sydney Limited; Karitane; Royal Society for the Welfare of Mothers and Babies; Calvary Health Care Sydney Limited; Calvary Mater Newcastle. The Agreement is a multi-enterprise agreement.

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

[3] The Australian Salaried Medical Officers Federation, being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[4] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 18 November 2021. The nominal expiry date of the Agreement is 10 November 2024.



DEPUTY PRESIDENT

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**THE NSW (NON-DECLARED) AFFILIATED
HEALTH ORGANISATIONS' STAFF
SPECIALIST AGREEMENT 2021**

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1. TITLE, PARTIES AND DURATION

(a) This Agreement shall be known as the NSW (Non-Declared) Affiliated Health Organisations' Staff Specialist Agreement 2021

(b) Parties

This agreement will be binding on:

(i)

- St Vincent's Hospital Limited, Sydney
- Karitane
- Royal Society for the Welfare of Mothers and Babies (known as Tresillian Family Care Centres)
- Calvary Health Care Sydney Limited
- Calvary Mater Newcastle

(**"the Employer"** or **"the Hospital"**);

(ii) The Australian Salaried Medical Officers Federation (ASMOF) (**"the Union"**);
and

(iii) Employees employed in classifications listed in Table 1 – Salaries of Part B, Monetary Rates by one of the above mentioned Affiliated Health Organisation (Non-Declared) (including at locations other than those listed above).

(c) Duration

This agreement will commence seven days after approval by the Fair Work Commission and shall remain in force for three years from the date of approval.

2. DEFINITIONS

" Agreement " means the NSW (Non-Declared) Affiliated Health Organisations' Staff Specialist Agreement

"Employer" means those organisations identified in paragraph (i) of sub-clause (b) of Clause 1, Title, Parties and Duration

"Entitlements" means entitlements pursuant to this Agreement as varied from time to time.

"Health System" means the Public Health System of New South Wales.

"Hospital" means a public hospital as defined in section 15 of the *Health Services Act* 1997.

"Normal Duties" means clinical, teaching, research, administrative, quality improvement or other duties and responsibilities undertaken by the Staff Specialist.

"Part Time Working Arrangement" means an agreement between a Staff Specialist and the Employer for the Staff Specialist to provide their services on a part time employment basis pursuant to Clause 12 of this Agreement.

"Performance Agreement" is an agreement in accordance with the provisions of clause 11 of this Agreement.

"Postgraduate Fellow" means an employee who has completed postgraduate medical training but who has not yet been appointed as a specialist/senior specialist and who occupies a position classified as Postgraduate Fellow.

"Practice" means clinical, administrative, teaching, research, quality improvement or other duties and responsibilities undertaken by the Staff Specialist.

"Public Health Organisation" is as defined in section 7 of the *Health Services Act* 1997.

"Representative" means a nominated workplace representative who may be an official of the Union.

"Salary " means the salary set out in Part B, Schedule 1 to this Agreement as varied from time to time by Clause 5 of this Agreement.

"Staff Specialist" means a Specialist, Senior Specialist and Post Graduate Fellow (except where specifically excluded) employed on either a full time or a part time basis.

"Specialist" means a person appointed to a position of Specialist by the Employer. To be eligible for appointment a specialist must be a person who: –

(a) holds a medical qualification that is registrable in New South Wales; and

(b) after full registration has spent not less than five years in the practice of medicine in New South Wales in the Health System or in any other institution,

whether in New South Wales or elsewhere, deemed by the Employer to be of equivalent standing; and

(c) inclusive within the period described in (b) above has spent not less than three years in supervised specialist training and/or experience; and

(d) (i) has obtained a Fellowship of a recognised Australasian Specialist College (see Part C Schedule 2 for list of recognised Australasian Specialist Colleges); or

(ii) has proof of recognition as a specialist by the Specialists Recognition Advisory Committee; or

(iii) has conditional registration with the NSW Medical Board as an overseas-trained specialists (not including conditional registration as a general practitioner; or

(iv) does not have a qualification recognised under (i) (ii) or (iii) above, but has obtained an appropriate higher qualification in their specialty acceptable to the Employer after consideration by the Medical and Dental Advisory Committee of the Employer.

(e) Any decision made by the Employer in determining whether any person is eligible to be appointed as a specialist shall not contravene any applicable provision of the *Anti-Discrimination Act 1977*

Notwithstanding the provisions of subclause (d) above, Staff Specialists who are paid pursuant to this Agreement (or an Enterprise Agreement) in place immediately before the commencement of this Agreement will continue to be recognised as Staff Specialists for the purpose of this Agreement.

"Senior Specialist" means a person who: -

(a) has been employed by the Employer on the maximum salary provided by this Agreement or the Agreement for a Specialist for a period of at least three years; and/or

(b) has gained such experience and attained such ability in their specialty which is acceptable to the Employer after consideration by the Medical Appointments Advisory Committee of the employer to justify appointment to the classification; and

(c) is appointed to a position having such duties and responsibilities as are deemed by the Employer to require the services of a Senior Specialist.

"Union" means the Australian Salaried Medical Officers' Federation (New South Wales)

3. ISSUE RESOLUTION

(a) All Parties must:

- (i) use their best endeavours to co-operate in order to avoid grievances and disputes arising between the parties or between the Employer and individual Staff Specialists; and
- (ii) abide by the procedures set out in this Clause to resolve any issue which might arise; and
- (iii) place emphasis on negotiating a settlement of any issue at the earliest possible stage in the process.

(b) In this Clause, "issue" means any question, issue, grievance, dispute or difficulty which might arise between the parties about the interpretation, application or operation of this Agreement or the National Employment Standards ("NES").

(c) The following procedures will be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.

(d) Any issue should be discussed in the first instance by the Staff Specialist and their immediate supervisor or other appropriate manager.

(e) If the issue is not resolved within a reasonable time, it must be referred by the Staff Specialist's immediate supervisor to the Chief Executive Officer or General Manager of the Employer (or their authorised delegate) (however called) of the relevant Public Health Organisation (or his or her nominee). Discussions at this level must take place and be concluded within a reasonable time or such extended period as may be agreed.

(f) If the issue remains unresolved the Staff Specialist or their representative may then confer with the Chief Executive Officer or General Manager of the Employer (or their authorised delegate) with a view of resolving the issue. The conclusions reached by those representatives must be reported to the parties involved in the grievance/dispute within a reasonable time or such extended period as may be agreed.

(g) If these procedures are exhausted without the issue being resolved, either party may seek to have the matter mediated by an agreed third party being:

- (i) by way of preference, a person who is not employed as a Staff Specialist by the Employer and who has a knowledge of Staff Specialist arrangements, including this Agreement; or
- (ii) a suitably qualified mediator.

(h) If the issue remains unresolved either party may then:

- (i) refer the issue to the NSW Industrial Relations Commission for its assistance in resolving the issue where the matter deals with:
 - Interpretation of a NSW Health Policy Directive, where applicable; or
- (ii) refer to the Fair Work Commission where the issue relates to any matter contained in this Agreement or the National Employment Standards

- a. –The Fair Work Commission may deal with the dispute in two stages:
 - 1. the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - 2. if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
 - a. arbitrate the dispute; and
 - b. make a determination that is binding on the parties.

(i) If the Fair Work Commission arbitrates the dispute, it may use the powers that are available to it under the *Fair Work Act 2009* (Cth) (**FW Act**).

(j) A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purposes of Div 3 of Part 5.1 of the FW Act. Therefore, an appeal may be made against the decision.

(k) The parties agree that normal work will continue and there will be no stoppages of work or any other bans or limitations applied while these procedures are being followed. Unless agreed otherwise by the parties, the status quo before the emergence of the issue must continue whilst these procedures are being followed. For this purpose, “status quo” means the work procedures and practice in place:

(i) immediately before the issue arose; or

(ii) immediately before any change was made to those procedures or practices which caused the issue to arise.

(l) The Employer must ensure that all practices applied during the operation of these procedures are in accordance with safe working practices.

(m) Throughout all stages of these procedures adequate records must be kept of all discussions.

3A CONSULTATION REGARDING MAJOR WORKPLACE CHANGE

(1) Major Changes

- (a) Where an employer has made a definite decision to introduce changes in program, production, technology, organisation, structure, health service delivery, or technology that are likely to have significant effects on employees covered by this Agreement, the employer shall notify the Union and employees who may be affected by the proposed changes. Discussions shall commence as soon as practicable after such decision has been taken.
- (b) "Significant effects" includes:
 - (i) termination of employment;
 - (ii) major changes in the composition, operation or size of the employer's workforce or in the skills required;
 - (iii) changes in employment and/or promotional opportunities or job tenure for a class or group of employees;
 - (iv) the alteration of hours of work for a class or group of employees; or
 - (v) the need for training or transfer of a class or group of employees to other work or location, and the restructuring of jobs.
- (c) The employer shall discuss with the employees affected and the Union, inter alia, the introduction of the changes referred to in paragraph (a) above, the effects the changes are likely to have on employees and any measures proposed by the employer to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the Union in relation to the changes.
- (d) For the purpose of such discussion, the employer shall provide to the employees concerned and the Union all relevant information about the changes including the nature of the changes proposed and the expected significant effects of the changes on employees. Provided that the employer shall not be required to disclose confidential or commercially sensitive information, the disclosure of which would adversely affect the employer, the Ministry of Health or the Secretary of the Ministry of Health.
- (e) The provision of communication during maternity, adoption or parental leave is in accordance with Clause 21 E of this Agreement.
- (f) With respect to occupational health safety matters as referred to in the Work Health and Safety Act 2011, the provisions of that Act apply, and specifically the provisions under Section 47, "Duty to consult workers", as varied from time to time.
- (g) The relevant employees may appoint a representative for the purposes of the procedures in this term. If:
 - (i) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (ii) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.

(2) Changes to Rosters or Regular Hours of Work

- (a) As soon as practicable after proposing to introduce a change to rosters or regular hours of work, the employer must:
 - (i) discuss with the relevant employees the introduction of the change; and
 - (ii) for the purposes of the discussion – provide to the relevant employees:
 - 1. all relevant information about the change, including the nature of the change; and

- 2. information about what the employer reasonably believes will be the effects of the change on the employees; and
 - 3. information about any other matters that the employer reasonably believes are likely to affect the employees; and
- (iii) 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).
- (b) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (c) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (d) In this term 'relevant employees' means the employees who may be affected by a change referred to in subclause (a).
- (e) The relevant employees may appoint a representative for the purposes of the procedures in this term. If:
 - (iii) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (iv) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.

4. NORMAL DUTIES

Part A - General

(a) Normal Duties will be worked for:

- (i) Not less than 38 hours per week; or
- (ii) 10 sessions per week over five days per week.

(b) The Normal Duties hours set out in (a) above may be averaged over

- (i) four days per week; or
- (ii) a longer roster period as agreed between the Staff Specialist and the Employer, and specified in the Staff Specialist's performance agreement.

(c) (i) With the exception of Staff Specialists working in accordance with paragraph (d) below, Normal Duties will be worked within the span of hours of 7.00 am to 6.00 pm Monday to Friday inclusive.

- (ii) Where Normal Duties hours are averaged over a roster period longer than 1 week as provided for in (b) above, Normal Duties may be worked Monday to Sunday inclusive.

(d) Shift Work

(i) Staff Specialists who are employed in a specialty or category specified in Part C Schedule 3 to this Agreement may be required to undertake shiftwork as part of their Normal Duties as specified in (a) or (b) above. This shiftwork may comprise day or evening shifts.

(ii) For Staff Specialists working shift work, Normal Duties will be worked within the span of hours of 7.00 am to midnight Monday to Sunday inclusive;

(iii) For Staff Specialists who undertake shiftwork, the normal rostered duties hours will be paid at ordinary time plus the appropriate penalty rate:

- hours worked between 6.00 pm and midnight Monday to Friday – 12.5%;
- hours worked between 7.00 am and midnight Saturday – 50%;
- hours worked between 7.00 am and midnight Sunday – 75%; and
- all hours worked on Public Holidays – 150%.

The penalty rate will be calculated on the Staff Specialist's salary as set in Part B Schedule 1 Rates of Pay of this Agreement plus the Special Allowance and Level 1 Private Practice Allowance specified in the Salaried Senior Medical Practitioners Determination, as varied from time to time.

(iv) Additional specialties or categories may be included in Part C Schedule 3 to this Agreement from time to time by agreement between the employees and their elected representatives, and the Chief Executive Officer or General Manager of

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the Employer (or their authorised delegate). If agreement cannot be reached, either party may make application to the Fair Work Commission for a variation to Part C Schedule 3.

(e) Staff Specialists will be available for reasonable on call and recall duties outside of Normal Duties.

Part B - Normal Duties Roster Changes

(a) When developing rosters for Normal Duties in accordance with the provisions of Clause 4, Normal Duties of the Agreement, the Employer will ensure that:

(i) Staff specialists are consulted and regard is to be given to any family, carer or other personal and professional concerns and responsibilities identified by the staff specialist to ensure, where practicable, that the staff specialist is not adversely affected and that alternative arrangements can be made if possible (eg change of child care or outside practice arrangements); and

(ii) the principal outcome of changes to rosters is to maximise the effective delivery of clinical services by ensuring that senior medical staff are rostered to work Normal Duties at times and at places that most effectively meet the service delivery needs and operational requirements; and

(iii) rosters identify the general nature of the work to be performed on each shift (clinical/direct patient care, administrative, teaching, research or quality improvement) and the facility at which the shift is to be worked.

(b) On call rosters and responsibilities should align with Normal Duties roster days wherever practicable.

(c) Wherever practicable, the usual pattern of Normal Duties will be consistent from one roster period to the next.

(d) Notice Periods

(i) Wherever possible, the following notice periods will apply to changes to the Normal Duties roster:

- 3 months notice of an ongoing change; or
- 1 months notice of short-term change (eg to cover a planned absence or one-off event);

(ii) These provisions do not prevent the Employer from varying the roster of Normal Duties at short notice in an emergency, in response to an unplanned event or to cover an unplanned absence.

(e) Shifts are to be shared equally amongst the staff specialists unless otherwise agreed.

Part C - Transition Arrangements for Implementation of Clause 4 Normal Duties

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(a) Staff Specialists employed at the time of making this Agreement will continue to work in accordance with the rostering arrangements in place at that time for a period of 6 months, unless a shorter transitional period is agreed between the Employer and Staff Specialists.

(b) During this 6-month period, the Employer and Staff Specialists will work co-operatively to review the existing Normal Duties rostering arrangements and, where necessary, develop new Normal Duties rosters in accordance with the principles set out in the Normal Duties Roster Changes clause.

4A. MULTIPLE ASSIGNMENTS

- a) Multiple assignments exist when an employee has more than one position under this Agreement within the NSW Health Service. Each of these positions are referred to in this clause as “assignments”.
- b) The employee can only enter into a multiple assignment where the subsequent assignment is at the same grade and level within this Agreement.
- c) Where an employee has multiple assignments, the employee will progress from one increment (year step) to the next increment in accordance with Clause 5 (c) and (d) and Clause 12 (f).

Multiple Assignments within a single Public Health Organisation

- d) The following provisions apply to employees with two or more assignments within a single Public Health Organisation:
 - (i) The work performed in each of an employee’s assignments shall be aggregated for the purposes of determining all of the employee’s entitlements under this Agreement.

Hours of Duty

- (ii) The combined total number of ordinary hours worked under an employee’s multiple assignments will be in accordance with the provisions of Clause 4 Normal Duties Part A (General).
- (iii) Where the combined total number of ordinary hours worked under an employee’s multiple assignments is equivalent to those set out in Clause 4 Normal Duties Part A (General) they will be considered as a full time employee for the purposes of this Agreement and;
- (iv) Where the combined total number of ordinary hours worked under an employee’s multiple assignments is less than those set out in (d) (ii) of this subclause, the provisions of Clause 12 Part Time Employment and Arrangements shall apply.

Leave

- (v) All ordinary hours worked by an employee in multiple assignments shall count towards determining the employee’s leave entitlements.
- (vi) Employees with multiple assignments shall be entitled to take all forms of leave in any of their assignments. That is, leave accrued by an employee through work performed in one assignment, can be taken by that employee in their other assignment/s. Service in all assignments will be recognised for the purposes of subclause (b) of Clause 18 - Sick Leave.
- (vii) Where an employee’s combined total number of ordinary hours worked in their multiple assignments is equivalent to those set out in (d) (ii) of this subclause, the additional leave shall accrue from both assignments in accordance with the provisions of Clause 16 - Annual Leave.

- (viii) Service in all assignments will be recognised for the purposes of entitlements under Clause 21 - Maternity, Adoption and Parental Leave.
- (ix) Where an employee's assignment is terminated but the employee remains employed under another full time or part time assignment, all leave credits will be transferred to the remaining assignments. The employee shall not be paid out the monetary value of the annual leave or long service leave accrued in the terminated assignment.

Disclosures, Notifications and Approvals

- (x) Employees must, at the time they apply for any second or further assignment, disclose in writing that they are already employed by a Public Health Organisation and provide details of that assignment including:
 - 1. the position/s currently held
 - 2. the facility in which the existing position/s are worked
 - 3. the classification/s under which they are engaged in each position
 - 4. the number of ordinary hours worked in each position
 - 5. any regular additional hours that is worked in each position
 - 6. whether the position/s is worked according to a set roster and if so, the details of that roster arrangement; and
- (xi) Prior to accepting an offer for a second or further assignment, employees must provide to their current manager details of that proposed assignment including:
 - 1. the position they have applied for
 - 2. the facility in which the proposed new assignment is to be worked
 - 3. the classification under which they would be engaged in the new assignment
 - 4. the number of ordinary hours to be worked in the proposed assignment
 - 5. whether the position is to be worked according to a set roster and if so, the details of that roster arrangement.
- (xii) A Public Health Organisation may elect on reasonable grounds to withhold the approval of a second or further assignment to employees who are already employed in another assignment.
- (xiii) Before accepting any change in roster or undertaking additional hours that will impact on another assignment, employees who hold multiple assignments must notify their current manager of the details of their next shift in either assignment. Managers must not change rosters or require employees to work additional hours where these will impact on the employee's roster in the other assignment without first consulting the manager of the other assignment/s. (By way of example, if an employee is requested by Manager 1 in Assignment 1 to undertake additional hours in Assignment 1 that may impact on the roster in Assignment 2, the employee must notify Manager 1 of the impact. Manager 1 must not change rosters/hours that impact on Assignment 2 without first consulting Manager 2.)

Multiple Assignments Across Different Public Health Organisations

- e) Assignments in different Public Health Organisations will be regarded as entirely separate for all purposes under this Agreement, including the accrual and taking of leave. The only exceptions are the provisions of subclause (c) of this clause (regarding incremental progression) and:
 - (i) At the time an employee commences an assignment in another Public Health Organisation the employee's accrued leave will be apportioned across their assignments (for example, a 0.6 full time equivalent Staff Specialist who commences another 0.4 full time equivalent assignment in another Public Health Organisation will have 60% of their leave accruals allocated to the former assignment and 40% to the latter assignment) unless prior to commencing the new assignment the employee elects that this apportioning does not occur. After this apportioning, leave accrues separately in each assignment, based on the hours worked in each assignment. The employer will notify the employee of their right to make this election prior to the apportioning taking place.
 - (ii) Employees who have multiple assignments across different Public Health Organisations at the time this clause was inserted into this award may elect to apportion their accrued leave across their assignments.
 - (iii) Service in all assignments will be aggregated for the purposes of calculating long service leave entitlements under this Agreement.
 - (iv) Service in all assignments will be recognised for the purposes of entitlements under Clause 21 - Maternity, Adoption and Parental Leave.
 - (v) Service in all assignments will be recognised for the purposes of entitlements of Family and Community Services Leave as provided in Clause 19.
 - (vi) Where an employee terminates an assignment, any leave credits that are held against that assignment will be transferred to the remaining assignment/s.
 - (vii) Where an employee has three or more assignments, one or more of which are in different Public Health Organisations, subclause (d) of this clause shall apply to those assignments which are within a single Public Health Organisation.

Changes to the composition of Public Health Organisations

- f) The employer and the Federation agree to review this clause in the event that the boundaries of any Public Health Organisation change.
- g) Where any change to the boundaries of any Public Health Organisation causes an employee's multiple assignments to which subclause (d) of this clause previously applied to then be subject to subclause (e) of this clause, subclause (d) of this clause shall continue to apply (to the exclusion of subclause (e) of this clause) to those assignments until one of them is terminated.

5. SALARY

a) A full time Staff Specialist will be paid the salary as set out in Schedule 1 of Part B Monetary Rates of this Agreement.

b) A Postgraduate Fellow will be paid the salary as set out in Schedule 1 Part B Monetary Rates of this Agreement.

c) A Staff Specialist will progress to the next incremental step on the anniversary date of their commencement as a Staff Specialist pursuant to Clause 2, Definitions.

d) This clause does not preclude the Employer, at the Employer's sole discretion:

i) initially appointing a Staff Specialist to a higher step within the Staff Specialist range; or

ii) accelerating a Staff Specialist through the steps within the Staff Specialist range irrespective of the length service.

Such accelerated progression does not include the Senior Specialist rate, which can only be accessed by appointment to a Senior Specialist position, in accordance with the definition in Clause 2 of this Agreement.

(e) The weekly rate will be ascertained by dividing the annual salary by 52.17857.

(f) The hourly rate for calculation of penalty rates will be 1/38th of the weekly rate.

(g) Except as provided for elsewhere in this Agreement and other relevant industrial instruments, the salary set out in Part B Schedule 1, Rates of Pay of this Agreement will be full compensation for all aspects and hours of work.

5A REMUNERATION

The parties agree that any increases to wages or allowances under the *Staff Specialists (State) Award (the Award)* insofar as the Award is applicable to any employee, and as the Award is amended from time to time, will be reflected as increases in this Agreement. In accordance with section 206 of the *Fair Work Act 2009* (Cth), during the life of this Agreement, the base rate of pay for employees covered by this Agreement will not be less than the base rate of pay that would be payable to the employee under the *Medical Practitioners Award 2020*, as amended from time to time.

6. SALARY SACRIFICE – DEFINITION

For the purposes of Clauses 7, 8, 9 “salary sacrifice” means the reduction in legally payable salary and allowances in exchange for benefits provided by the Employer.

7. SALARY SACRIFICE

In this clause 'superannuable salary' means the Staff Specialist's salary as notified from time to time to the New South Wales public sector superannuation trustee corporations as per the relevant superannuation legislation governing the fund, or, in respect of Staff Specialists who elect to have contributions made to a non public sector superannuation scheme, 'superannuable salary' means the Staff Specialist's salary that would have been notified from time to time to the New South Wales public sector superannuation trustee corporations but for the Staff Specialist's election to have contributions made to a non public sector superannuation scheme.

(a) Subject to the other provisions of this clause, Staff Specialists may salary sacrifice from the range of benefits the Chief Executive Officer or General Manager of the Employer (or their authorised delegate) and the Union agree upon from time to time.

(b) Salary sacrifice arrangements must be formalized by an agreement between the Staff Specialist and the employer.

(c) The salary sacrifice agreement must be prospective, that is, the agreement must be made prior to the commencement of the period of service to which the earnings relate.

(d) Subject to Australian Taxation Law, the sacrificed amount of superannuable salary will reduce the Staff Specialist's remuneration subject to appropriate PAYE taxation deductions by the amount sacrificed.

(e) The fringe benefits tax on the benefits chosen by the Staff Specialist that would have been payable except for the public hospital fringe benefit exemption status, will be calculated for each Staff Specialist who enters into a salary sacrifice arrangement. This amount will be divided equally between the Employer and the Staff Specialist.

(f) Any fringe benefits tax applicable to the benefits packaged by a Staff Specialist will be deducted from the total amount sacrificed in that Staff Specialist's salary sacrifice agreement.

(g) The administration cost of each salary sacrifice agreement will be shared equally by the Employer and the participating Staff Specialist. The Staff Specialist's share will be deducted from the total amount sacrificed in that Staff Specialist's salary sacrifice agreement.

(h) Subject to Clause 9, the total amount sacrificed in any salary sacrifice agreement may be up to 100% of the Staff Specialist's superannuable salary.

(i) Any allowance, payment for unused leave entitlements, weekly workers' compensation or other payment, other than any payment for leave taken in service, to which a Staff Specialist is entitled under this Agreement or applicable Act or statute which is expressed to be determined by reference to a Staff Specialist's salary, shall be calculated by reference to the salary and allowances which would have applied to the Staff Specialist in the absence of any salary sacrifice arrangements made pursuant to this Agreement.

(j) Any pre-tax or post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be sacrificed. Such payroll deductions may

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include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees, and private health fund membership fees.

8. SALARY SACRIFICE FOR SUPERANNUATION

(a) In this clause 'superannuable salary' means the Staff Specialist's salary as notified from time to time to the New South Wales public sector superannuation trustee corporations as per the relevant superannuation legislation governing the fund, or, in respect of Staff Specialists who elect to have contributions made to a non public sector superannuation scheme, 'superannuable salary' means the Staff Specialist's salary that would have been notified from time to time to the New South Wales public sector superannuation trustee corporations but for the Staff Specialist's election to have contributions made to a non public sector superannuation scheme.

(b) Consistent with the provisions of Clause 7. Salary Sacrifice, a Staff Specialist may elect, subject to the agreement of the Staff Specialist's employer, to sacrifice a part or all of their superannuable salary to additional employer superannuation contributions. Such election must be made prior to the commencement of the period of service to which the earnings relate. Subject to Clause 9, the amount sacrificed may be up to 100% of the superannuable salary.

(c) Where the Staff Specialist has elected to sacrifice a part or all of that superannuable salary to additional employer superannuation contributions:

(i) Subject to Australian Taxation Law, the sacrificed amount of superannuable salary will reduce the Staff Specialist's remuneration subject to appropriate PAYE taxation deductions by the amount sacrificed; and

(ii) Any allowance, payment for unused leave entitlements, weekly workers' compensation, or other payment, other than any payment for leave taken in service, to which a Staff Specialist is entitled under this Agreement or any applicable Act or statute which is expressed to be determined by reference to a Staff Specialist's salary, shall be calculated by reference to the salary and allowances which would have applied to the Staff Specialist in the absence of any salary sacrifice arrangements made pursuant to this Agreement.

(d) The Staff Specialist may elect to have the amount of superannuable salary which is sacrificed to additional superannuation contributions:

(i) paid into the superannuation scheme established under the First State Superannuation Act 1992 as optional employer contributions; or

(ii) subject to the employer's agreement, paid into a private sector complying superannuation scheme as employer superannuation contributions.

(e) Where a Staff Specialist elects to salary sacrifice in terms of subclause (d) above, the employer will pay the specified amount into the relevant superannuation fund.

(f) Where the Staff Specialist is a member of a superannuation scheme established under:

(i) the Police Regulation (Superannuation) Act, 1906;

(ii) the Superannuation Act, 1916;

- (iii) the State Authorities Superannuation Act, 1987;
- (iv) the State Authorities Non-contributory Superannuation Act, 1987; or
- (v) the First State Superannuation Act, 1992.

The Staff Specialist's employer must ensure that the amount of any additional employer superannuation contributions specified in subclause (a) above is included in the Staff Specialist's superannuable salary which is notified to the New South Wales public sector superannuation trustee corporations.

(g) Where, prior to electing to sacrifice a part or all of their superannuable salary to superannuation, a Staff Specialist had entered into an agreement with the employer to have superannuation contributions made to a superannuation fund other than a fund established under legislation listed in subclause (f) above, the employer will continue to base contributions to that fund on the superannuable salary to the same extent as applied before the Staff Specialist sacrificed that amount of salary to superannuation. This clause applies even though the superannuation contributions made by the employer may be in excess of the superannuation guarantee requirements after the salary sacrifice is implemented.

(h) Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be sacrificed. Such payroll deductions may include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees and private health fund membership fees.

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9. LIMITATION ON THE AMOUNT TO BE SACRIFICED

If a Staff Specialist sacrifices under both Clauses 7 and 8, the total amount to be sacrificed may be up to 100% of the superannuable salary.

10. MANAGERIAL ALLOWANCE

(a) It is an expectation that a certain level of management responsibility is an essential part of the duties of a Staff Specialist.

(b) In addition to the salaries prescribed by this Agreement, a Staff Specialist required by the Employer to undertake additional responsibilities specifically associated with the management of a unit, department or service shall be paid an additional allowance as set out in Schedule 2 of Part B to this Agreement.

(c) To be eligible for payment of this allowance, the additional management responsibilities will include direct line responsibility for a unit, department or service and involvement in a number of, but not necessarily all, of the following:

- (i) cost centre management including budget preparation and management of allocated budget
- (ii) participation in planning and policy development
- (iii) responsibility for the co-ordination of research, training or teaching programs
- (iv) membership and participation in senior executive management teams

(d) In addition, it is expected that a Staff Specialist receiving a Level 1 allowance will:

- (i) perform human resource management responsibilities, which include:
 - A. the direct supervision of staff (including other Staff Specialists, Career Medical Officers and Junior Medical Officers where staff from these classifications are in the unit, service or department being managed);
 - B. the allocation of duties, approval of staff rosters, implementation of the provisions of Clause 11 Performance Agreement in respect of other Staff Specialists in the unit, service or department being managed;
 - C. monitoring of hours worked and other performance management matters.
- (ii) be responsible for ensuring that quality improvement and clinical governance activities are implemented.

(e) The Managerial Allowance at the Level 2 rate is payable to those Staff Specialists satisfying the criteria in (c) and (d) who, in the assessment of the Employer, have significant additional managerial responsibilities involving multiple units, services or departments, eg. Divisional responsibility.

(f) The Managerial Allowance at the Level 3 rate is payable to those Staff Specialists who, in addition to satisfying the criteria in (e), have a level of managerial responsibility deemed by the Employer to require an allowance at the Level 3 rate, eg. Area-wide responsibility. It is recognised that managerial responsibilities at this level may not involve the duties at a Department or unit level outlined in (d).

(g) The Managerial Allowances are not cumulative and are only payable for the period in which the Staff Specialist has been allocated the additional managerial responsibilities by the Employer.

(h) Managerial allowances may be withdrawn with one month's notice by the Employer if it determines that it no longer requires the Staff Specialist to undertake the relevant managerial responsibilities. This subclause does not apply to Staff Specialists who have been appointed to a position where the managerial duties for which the allowance is paid are an intrinsic part of the substantive position.

(i) The Managerial Allowances shall be paid during paid absences on approved leave, on termination of employment including voluntary redundancy (on the basis of pro rata the annual amount for each week of paid leave) and for superannuation.

(j) The Employer may direct a Staff Specialist, as a condition of receiving the managerial allowance, to attend training intended to support and improve management skills and competencies.

11. PERFORMANCE AGREEMENT

(a) Each full time and part time Staff Specialist will have a written annual Performance Agreement developed jointly by the Staff Specialist and their designated supervisor and signed by the Chief Executive Officer or General Manager of the Employer (or their authorised delegate) . The standard format to be used for performance agreements is:

- (i) the annexure to the *Staff Specialists (State) Award 2019* entitled Pro Forma Staff Specialist Performance Agreement; or
- (ii) a format to be developed by each Employer in consultation with the Union.

(b) The Performance Agreement will be developed and completed within one month of the offer of a draft performance agreement. A Staff Specialist who at the time of making of this Agreement does not have a written Performance Agreement, will develop and complete a Performance Agreement within one month of the offer of a draft performance agreement.

(c) In the event that agreement is not reached within a further 2 weeks, the matter must be resolved in accordance with the provisions of Clause 3, Issues Resolution of this Agreement.

(d) The Staff Specialist and their designated supervisor will jointly review the Staff Specialist's performance under the Performance Agreement once in each 12 month period. Each review is to include an evaluation of the Staff Specialist's level of achievement of any specified service improvement objectives which are agreed between the Staff Specialist and their supervisor.

(e) A Performance Agreement will include, but not necessarily be limited to, the following:

- Details of the time and place that the normal duties are to be worked
- The nature of work to be performed during normal duties, (whether that is clinical, teaching, administrative, research, quality improvement or other activities)
- The anticipated on call frequency and roster
- Any specific call back requirements
- Private billing expectations for Level 1 Staff Specialists
- Any agreement on the amount of time that the Staff Specialist will be released from Normal Duties eg to undertake college and other professional association activities
- Where appropriate, any financial, activity targets or health targets
- Specific commitments and standards from the Employer for the provision of clinical support, including staff, equipment, facilities and billing.
- Expectations in respect of management responsibilities, quality improvement and clinical governance activities, post graduate and undergraduate teaching activities, continuing education, research, health outcomes

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- Any part time working arrangement in accordance with clause 12 of this Agreement or outside practice approvals in accordance with clause 14 of this Agreement.

(f) The parties agree that clinical, research, teaching, administrative, quality improvement and managerial duties are important aspects of the Normal Duties of a staff specialist. The allocation of time to perform these duties will form part of the performance agreement process and be reviewed as part of the performance agreement review process.

12. PART TIME EMPLOYMENT AND ARRANGEMENTS.

(a) Staff Specialists covered by this Agreement may, with the approval of the Employer, work part-time with the Employer by entering into a written Part Time Working Arrangement which may be varied from time to time by agreement.

(b) The minimum period of work under a part time working arrangement is 0.1 full time equivalent (FTE).

(c) Part time Working Arrangements can either be on an on-going basis or for a fixed term (with subsequent return to full time hours for permanent Staff Specialists). The type of working arrangement must be specified in the Part time Working Arrangement and if the arrangement is for a fixed term, then the period of time must also be specified.

(d) Transfer from an on-going Part Time Working Arrangement to full time employment, or early termination of a fixed term Part time Working Arrangement (with consequential return to full time employment for permanent Staff Specialists) must be by agreement between the Staff Specialist and the Employer and recorded in writing.

(e) A Staff Specialist employed under a Part Time Agreement pursuant to this Clause will be entitled to accrue all entitlements including salary on a proportionate basis to a Staff Specialist employed on a full time basis.

(f) A Staff Specialist who works pursuant to a Part Time Agreement will progress to the next incremental step every 12 months from the date of the Staff Specialists commencement of employment, provided the work performed by the Staff Specialist extraneous to the Part Time Agreement is commensurate with the experience of a full-time Staff Specialist and is acceptable to the Employer. This subclause does not preclude accelerated progression.

(g) Staff Specialists employed pursuant to a Part Time Working Arrangement must participate in the on-call roster to a reasonable extent. The on-call obligations of part time Staff Specialists will be, wherever practicable, aligned to the part time Staff Specialist's normal duties.

(h) In determining reasonable on-call rosters for part time Staff Specialists, consideration should be given to the level of on-call participation applicable to full time and part time Staff Specialists on the same on-call roster.

(i) A Staff Specialist is required to provide a minimum notice period of three months when requesting the Employer's approval to reduce from full time to part time employment, or to reduce a fractional appointment. The Employer may consider a lesser period of notice of the request where pressing personal circumstances apply.

13. WORK LOCATION

(a) Subject to the provisions of this clause, a Staff Specialist may be required by the Employer to work at any of the hospitals, institutions or other health services conducted by the relevant public health organisation.

(b) Before a requirement under subclause (a) above is made, the Employer will ensure that:

(i) the Staff Specialist is consulted in regard to the proposal to require work at another location;

(ii) the duties are consistent with the Staff Specialist's area of specialty, expertise and seniority and the Labour Flexibility clause of this Agreement;

(iii) the travel requirements are reasonable having regard to:

(1) the number of work locations,

(2) the frequency of attendance at each work location

(3) the distance of those work locations from the Staff Specialist's place of residence at the time the Staff Specialist accepted their offer of appointment as a Staff Specialist and

(4) the travelling time normally involved in attending the place of work at the time of making this Agreement

(iv) while it is generally expected that Staff Specialists will not be required to provide services at more than two locations, in particular specialties, geographic circumstances or networking arrangements, Staff Specialists may be required to provide services at more than two locations;

(v) a Staff Specialist required to work at another location will have access to the same parking arrangements as those provided to other Staff Specialists at that location and shall be reimbursed by the Employer for any additional parking fees or road tolls paid as a consequence of working at more than one location;

(vi) where on call duties are rostered, the Staff Specialist is capable of returning to the workplace within a reasonable timeframe for an emergency call back (a change of the Staff Specialist's place of residence does not exempt the Staff Specialist from the on call obligations established at the time of his or her appointment or the obligations in place at the time of the making of this Agreement);

(vii) wherever practicable, on-call obligations are aligned to the Staff Specialist's normal duties. There shall be no additional on call obligations placed upon a Staff Specialist by reason of any requirement arising from this clause. In determining on-call rosters, consideration should be given to the level of on-call participation of other Staff Specialists on the same on-call roster;

(viii) the letter of appointment and/or the performance agreement will specify the locations where the Staff Specialist will be required to provide services. Where the Employer requires a Staff Specialist to commence work at an additional location not specified in the letter of appointment/annual performance agreement, the Employer will give 3 months notice;

(ix) regard is given to any family, carer or other personal responsibilities identified by the Staff Specialist so as to minimise any potential adverse impacts on those responsibilities;

(x) a Staff Specialist required to work at another location will not be financially disadvantaged in regard to drawings, accounting fees for partnerships and reimbursement of medical indemnity payments made from the No.1 Account, as a result of any such requirement;

(xi) the relevant factors for determining financial disadvantage will be:

(1) Drawings – percentage of maximum drawings paid to the Staff Specialist averaged over the last three full financial years (or for Staff Specialists where three years comparison is not available, such lesser periods as may be available by way of comparison) prior to the date on which the requirement to work at another location came into effect;

(2) Accounting fees for partnerships – the accounting fees for partnerships reimbursement received by or paid on behalf of the Staff Specialist, relative to her/his partnership share, averaged over the last three full financial years (or for Staff Specialists where three years comparison is not available, such lesser periods as may be available by way of comparison) prior to the date on which the requirement to work at another location came into effect; and

(3) Medical indemnity payments – percentage of indemnity reimbursement received by or paid on behalf of the staff specialist relative to the amount claimed where any differential is as a result of insufficient funds available in the No.1 Account, averaged over the last three full financial years (or for Staff Specialists where three years comparison is not available, such lesser periods as may be available by way of comparison) prior to the date on which the requirement to work at another location came into effect.

Where financial disadvantage occurs in relation to drawings, accounting fees for partnerships and medical indemnity reimbursement in accordance with these comparators, the Employer will provide supplementary funding to fully alleviate the financial disadvantage.

The supplementary funding, when provided, will be for an initial period of five years. At the conclusion of the five year period, the supplementary funding may be continued by approval of the Chief Executive Officer or General Manager of the Employer (or their authorised delegate)

- (xii) adequate resources are made available to the Staff Specialist at the additional work location;
 - (xiii) the next annual performance review process will be the means of determining whether non-clinical time should be changed as a result of the requirement to work at another location;
 - (xiv) reporting lines are clearly specified for each location at which the Staff Specialist is required to work;
 - (xv) the requirement for a staff specialist to work at another location will not impose an unreasonable workload on the staff specialists remaining at the primary work location.
- (c) In the event that a Staff Specialist is required to work at an additional location and the Staff Specialist contends that the requirement is unreasonable and/or would have a harsh or unfair impact, the Staff Specialist may invoke the Issue Resolution clause of this Agreement.
- (d) These arrangements in no way proscribe the Employer's capacity to direct a Staff Specialist to temporarily work at a location other than the Staff Specialist's primary work location or locations where there is an emergency situation, subject to the Employer considering any personal circumstances that may be raised by the Staff Specialist.

14. OUTSIDE PRACTICE AND OTHER BUSINESS ACTIVITIES

(a) A full time Staff Specialist must seek the Employer's approval to engage in medical practice, paid employment or other business activities otherwise than with the Employer.

(b) Any such approval must be in writing, may be time limited, and must not conflict with the Staff Specialist's commitments to the Employer or obligations under the Code of Conduct issued by NSW Health as varied from time to time.

(c) Details of the proposed outside practice commitments, including the location, employer (if any), working times, duration of work, and any on-call commitments must be included in the request for approval.

(d) Part time staff specialists must notify the Employer of any outside practice (including services provided for another public health organisation or Division of the NSW Health Service). Where the Employer has identified a conflict of interest, or a significant risk of a conflict of interest or conflict with the employer's duty of care arising, and the staff member refuses to cease, or to make necessary adjustments to, his or her outside practice, the Employer may take action to resolve the conflict consistent with any applicable Departmental policies and the Code of Conduct as varied from time to time.

(e) Subject to any commercial arrangement, a Staff Specialist is not to use any of the Employer's staff or property for activities associated with any outside practice they may undertake.

(f) No outside practice is to be performed by a Staff Specialist during the span of hours designated for the performance of normal duties as applicable to him or her.

15. POSTGRADUATE FELLOW

(a) Appointment as a post-graduate fellow will be limited to one year with eligibility for re-appointment on an annual basis for a maximum of 3 years unless there is specific agreement between the individual and the Employer for a lesser period.

(b) Remuneration will be as outlined in Schedule 1 of Part B Monetary Rates of this Agreement.

(c) Post-graduate fellows will be entitled to all other provisions of this Agreement as if they were appointed as a Staff Specialist, except for salary.

16. ANNUAL LEAVE AND ANNUAL LEAVE LOADING

A. Annual Leave

(a) All Staff Specialists shall be allowed 5 weeks annual leave on full pay which accrues progressively during a year of service according to the officer's ordinary hours plus 1 day on full pay in respect of each public holiday occurring within the period of such leave.

(b) Staff Specialists who are employed in a specialty or category specified in Part C Schedule 3 to this Agreement and who are required to work on Sundays during a qualifying period of employment for annual leave purposes shall be entitled to receive additional annual leave in respect of each shift so worked as follows:

- if 30 or more Sunday shifts have been worked – one week;
- if less than 30 have been worked – leave proportionately calculated on the basis of 40 hours leave for 30 such shifts worked.

(c) Annual leave shall be given and shall be taken within a period of 18 months after the date when the right to the annual leave accrued; provided that the giving and taking of the whole or any separate period of such annual leave may, by mutual agreement between the Employer and the Staff Specialist be postponed for a further period not exceeding 6 months.

(d) Except as provided by this clause, payment shall not be made by the Employer to a Staff Specialist in lieu of any annual leave or part thereof nor shall any such payment be accepted by the Staff Specialist.

(e) Subject to the provisions of the Fair Work Act 2009, the Staff Specialist and the Employer should determine a mutually agreeable date from which annual leave is to be taken and unforeseen circumstances excepted, agreement should be reached two months prior to the commencement of the annual leave.

(f) The Employer shall pay each Staff Specialist before entering upon annual leave their salary for the period of leave if requested by the Staff Specialist, otherwise, the payment will be made in the usual pay period.

(g) Where the employment of a Staff Specialist is terminated, the Staff Specialist shall be entitled to receive payment for any annual leave which has accrued but not, at the time of termination, been taken.

(h) Cashing Out Of Annual Leave

Subject to any relevant legislation, an employer may agree with their employee to cash out part of their accrued annual leave entitlement if:

- (i) The remaining accrual after the cashed-out period of annual leave is deducted is not less than four weeks; and
- (ii) The agreement to cash out part of their annual leave accrual is requested and authorised in writing by the employee and the employer.

B. Entitlement to Annual Leave Loading or Shift Allowances and Weekend Penalties

(a) Staff Specialists who become entitled to and take annual leave pursuant to Part A of this clause, shall be paid ordinary salary plus either:

- (i) an annual leave loading in respect of that entitlement equivalent to 17.5% of four weeks ordinary salary, not exceeding the amount equivalent to 17.5% of four weeks ordinary salary for the maximum salary of Clerk Grade 12 under the provisions of the Crown Employees (Administrative and Clerical Officers - Salaries 2007)

or

- (ii) in the case of a Staff Specialist employed in a specialty or category specified in Part C Schedule 3 to this Agreement who would have earned shift allowances and/or weekend penalties in excess of the amount of annual leave loading indicated in subclause (a) (i) above, had they not taken annual leave; those shift allowances and weekend penalties relating to the ordinary time the Staff Specialist would have earned had they not taken annual leave (provided that shift allowances and weekend penalties shall not be payable for public holidays which occur during a period of annual leave).

(b) In respect of a Staff Specialist who becomes entitled to take annual leave pursuant to subclause (a) of Part B of this clause, and takes that annual leave in broken periods; both the annual leave loading and the maximum amount referred to in subclause (a) (i) of Part B of this clause are to be calculated pro rata for the broken period being taken in the same proportion as the period being taken bears to four weeks. The resultant amount of annual leave loading calculated for the broken period of annual leave, not exceeding the maximum amount calculated for the same broken period, is to be paid to the Staff Specialist in addition to ordinary salary for the period.

(c) In respect of a Staff Specialist employed in a specialty or category specified in Part C Schedule 3 of this Agreement, who becomes entitled to take annual leave pursuant to Part A of this clause, and who takes that annual leave in broken periods, the entitlement to annual leave loading and the maximum amount are to be calculated in the same way as indicated in subclause (b) of Part B of this clause, for the period of annual leave being taken compared with the ordinary time shift allowances and weekend penalties the Staff Specialist would have earned had they not taken the annual leave (provided that shift allowances and weekend penalties shall not be payable for public holidays which occur during the period of annual leave), and the greater of either the calculated annual leave loading (not exceeding the calculated maximum amount) or ordinary time shift allowances and weekend penalties is to be paid to the Staff Specialist in addition to ordinary salary for the period.

(d) The entitlement to annual leave loading or shift allowances and weekend penalties referred to in subclauses (a) (b) and (c) of Part B of this clause are to be calculated and paid at the same time as the annual leave is paid.

(e) Annual leave loading is to be calculated at the rate of ordinary salary payable when the annual leave is taken, and excludes allowances, penalty or disability rates,

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commission, bonuses or incentive payments etc. Where the ordinary rate payable changes effective from a date falling within a period of annual leave, the changed rate is to be taken into account, and if necessary, adjustments calculated and corrections to pay made.

(f) Upon retirement of a Staff Specialist or upon termination by the Employer of a Staff Specialist for any reason other than misconduct, the Staff Specialist shall be paid annual leave loading on that annual leave which they had become entitled to take that the loading would have applied to had the annual leave been taken.

(g) In respect of that additional annual leave accrued by virtue of being rostered to work and working ordinary hours shifts on Sundays pursuant to subclause (b) of Part A of this clause, no annual leave loading is payable. Staff specialists employed in a specialty or category specified in Part C Schedule 3 of this Agreement are to be paid, in addition to ordinary salary for such annual leave period/s the ordinary time shift allowances and weekend penalties the Staff Specialist would have earned had they not taken the annual leave (provided that shift allowances and weekend penalties shall not be payable for public holidays which occur during the period of annual leave).

17. LONG SERVICE LEAVE

(a) Entitlement and Accrual

(i) After service for 7 years or more but not more than 10 years, a Staff Specialist is entitled to Long Service Leave, proportionate to his or her length of service, calculated at the rate of 2 months on full pay for 10 years served.

(ii) After service for more than 10 years, a Staff Specialist is entitled to Long Service Leave under subclause (i) above in respect of the first 10 years and additional long service leave, proportionate to his or her length of service, calculated at the rate of 5 months on full pay for each 10 years served after the first 10 years.

(b) Definition of Service

(i) For the purposes of this clause:

(1) service shall mean continuous service with the Employer (as defined by this Agreement),

(2) continuous service shall have the same meaning as in Schedule 2 of the *Government Sector Employment Regulation 2014* as varied from time to time,

(3) prior government service will be recognised in accordance with the provisions outlined in Schedule 2 of the *Government Sector Employment Regulation 2014* as varied from time to time.

(ii) Broken periods of service with the Employer in one or more public health organisations shall count as service.

(iii) Service shall not include any period of leave without pay except in the case of Staff Specialists who have completed at least ten years service (any period of absence without pay being excluded there from) in which case service shall include any period of leave without pay not exceeding 6 months taken after 22 August 1972.

(c) Taking Long Service Leave

(i) A staff specialist with an entitlement to long service leave may elect to access such entitlement:

(1) on full pay;

(2) on half pay; or

(3) on double pay.

(ii) When a Staff Specialist takes long service leave, the leave entitlement will be deducted on the following basis:

(1) a period of leave on full pay – the number of days so taken;

(2) a period of leave on half pay – half the number of days so taken; or

(3) a period of leave on double pay – twice the number of days so taken.

(iii) If a public holiday occurs whilst a Staff Specialist is taking long service leave and the Staff Specialist would have otherwise worked on that day but for the public holiday, the amount of long service leave to be deducted is to be reduced by the public holiday.

(iv) Long Service Leave shall be taken at a time mutually arranged between the Employer and the Staff Specialist.

(d) Payment on Termination

(i) On the termination of employment of a Staff Specialist with an entitlement to long service leave, otherwise than by their death, the Employer will pay the Staff Specialist the monetary value of all long service leave accrued and not taken at the date of such termination and such monetary value shall be determined according to the salary payable to the Staff Specialist at the date of such termination.

(ii) Where a Staff Specialist who has acquired a right to long service leave, or after 5 years and less than seven years service, dies, the accrued long service leave will be paid out on the death of an employee in accordance with Section 4 (Long Service Leave) – subsection (5), paragraph (b) of the *Long Service Leave Act 1955* (NSW).

(iii) Where the services of a Staff Specialist with at least 5 years service but less than seven years service, are terminated by the Employer for any reason other than the Staff Specialist's serious and wilful misconduct, or by the Staff Specialist on account of illness, incapacity or domestic or other pressing necessity, they shall be entitled to be paid a proportionate amount for long service leave on the basis of 2 months long service leave for 10 years service.

(e) Preservation of Rights to Long Service Leave

(i) Rights to long service leave under this Clause shall be in replacement of rights to long service leave, if any, which at the commencement of this Agreement may have accrued or may be accruing to a Staff Specialist and shall apply only to persons in the employ of the Employer on or after the date of commencement of this Agreement.

- (ii) Where a Staff Specialist has been granted long service leave or has been paid its monetary value prior to the date of commencement of this Agreement, the Employer shall be entitled to debit such leave against any leave to which the Staff Specialist may be entitled pursuant to this Clause.
- (f) Accrual of other entitlements whilst on long service leave
- (i) During a period of long service leave on half pay, a Staff Specialist will continue to accrue at the full time equivalent rate except for annual leave that will accrue at the rate of 50%.
 - (ii) During a period of long service leave on double pay, a Staff Specialist will continue to accrue at the full time equivalent rate including annual leave which will accrue at the single time rate.

18. SICK LEAVE

A full-time Staff Specialist shall be entitled to sick leave on full pay calculated by allowing ten working days, granted in advance, for each year of continuous service less any sick leave on full pay already taken, subject to the following conditions;

(a) the Employer may require the sickness to be certified to by a legally qualified medical practitioner approved by the Employer or may require other satisfactory evidence of the sickness.

(b) a Staff Specialist shall be granted sick leave progressively for the first 3 months of continuous service. At the completion of three months continuous service the employee shall be granted, in advance, the balance of their first year of entitlement of sick leave.

(c) a Staff Specialist shall not be entitled to sick leave on full pay for any period in respect of which such Staff Specialist is entitled to workers' compensation; provided, however, that the Employer shall pay to a Staff Specialist who has a sick leave entitlement under this clause the difference between the amount received as workers' compensation and full pay. The Staff Specialist's sick leave entitlement under this clause shall, for each week during which such difference is paid, be reduced by that proportion of 1 week which the difference paid bears to full pay.

(d) for the purposes of this clause "service" means service in any of the positions covered by this Agreement, provided that any person who was employed by the Employer immediately prior to becoming a Staff Specialist in any position covered by this Agreement shall be entitled to add to their service under this Agreement the service that they has had under any other award/agreement covering their employment by the Employer provided that Staff Specialists who are employed by the Employer at the date of the commencement of this Agreement shall retain to their credit until exhausted, any accumulation of sick leave to their credit immediately prior to such date, and provided further that such credit is not less than the entitlement otherwise prescribed by this clause.

(e) The Employer shall not terminate the services of a Staff Specialist, except on the grounds of misconduct, during the currency of any period of paid sick leave unless an agreed independent registered medical practitioner certifies that a Staff Specialist is fit to continue in employment and the Staff Specialist refuses to resume duty.

(f) If a dispute arises as to whether a Staff Specialist is fit to continue in employment, such dispute shall be addressed in accordance with Clause 3, Issue Resolution.

(g) An employee who ceases employment in one public health organisation and within two months of the last day of service commences employment in another public health organisation does not lose any accrued but untaken sick leave.

19. FAMILY AND COMMUNITY SERVICES LEAVE, FAMILY AND DOMESTIC VIOLENCE LEAVE AND COMPASSIONATE LEAVE

- (a) Family and Community Services (**FACS**) Leave, Family Violence Leave and Compassionate Leave are separate, standalone entitlements.

A. FACS Leave

(a) General

- (i) For the purpose of this clause relating to FACS leave:

“relative” means a person related by blood, marriage or affinity;

“affinity” means a relationship that one spouse because of marriage has to blood relatives of the other; and

“household” means a family group living in the same domestic dwelling.

- (ii) The Chief Executive Officer or General Manager of the Employer (or their authorised delegate) may grant FACS leave to a Staff Specialist:

(1) to provide care and/or support for sick members of the Staff Specialist’s relatives or household; or

(2) for reasons related to the family responsibilities of the Staff Specialist (e.g. to arrange and or attend a funeral of a relative; to accompany a relative to a medical appointment where there is an element of emergency; parent/teacher meetings; education week activities; to meet elder-care requirements of a relative); or

(3) for reasons related to the performance of community service by the Staff Specialist (e.g. in matters relating to citizenship; to office holders in local government, other than as a mayor, for attendance at meetings, conferences or other associated duties; representing Australia or the State in major amateur sport other than in Olympic/Commonwealth Games); or

(4) in a case of pressing necessity (e.g. where a Staff Specialist is unable to attend work because of adverse weather conditions which either prevent attendance or threaten life or property; the illness of a relative; where a child carer is unable to look after their charge).

- (iii) FACS leave is separate to compassionate leave.

- (iv) A Staff Specialist is not to be granted FACS leave for attendance at court to answer a criminal charge, unless the Chief Executive Officer or General Manager of the Employer (or their authorised delegate) approves the grant of leave in the particular case.

Applications for FACS leave to attend court, for reasons other than criminal charges, will be assessed on an individual basis.

(b) Entitlement

(i) The maximum amount of FACS leave on full pay that may be granted to a Staff Specialist is:

(1) 3 working days during the first year of service, commencing on and from 1 January 1995, and thereafter 6 working days in any period of 2 years; or

(2) 1 working day, on a cumulative basis effective from 1 January 1995, for each year of service after 2 years' continuous service, minus any period of FACS leave already taken by the Staff Specialist since 1 January 1995,

whichever method provides the greater entitlement.

(ii) FACS leave is available to part-time Staff Specialists on a pro rata basis, based on the percentage of the full time salary the Staff Specialist receives.

(d) Use of other leave entitlements

The Chief Executive Officer or General Manager of the Employer (or their authorised delegate) may grant a Staff Specialist other leave entitlements for reasons related to family responsibilities or community service of the Staff Specialist.

A Staff Specialist may elect, with the consent of the Employer, to take annual leave; long service leave; or leave without pay.

B. Family and Domestic Violence Leave

An employee is entitled to unpaid family and domestic violence leave in accordance with the NES. The NES prevails and once the employee has exhausted their NES entitlement, they may use any additional entitlement to family and domestic violence leave and/or domestic and family violence leave beyond the NES (if any). Any additional entitlement will not be cumulative on the NES entitlement.

C. Compassionate Leave

(i) An employee is entitled to compassionate leave in accordance with the NES.

(ii) Compassionate Leave under this subclause will apply in addition to clause 19A FACS Leave.

20. PERSONAL/CARER'S LEAVE

(a) Use of sick leave to care for the person concerned – definitions

A person who needs the Staff Specialist's care and support is referred to as the "person concerned" and is:

a. a current or former spouse or partner of the Employee, including a de facto partner; or

b. a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the Employee or of the current and former spouse or de facto partner of the Employee; or

c) a member of the household of the Employee.

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

"relative" means a person related by blood, marriage or affinity;

"affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

"household" means a family group living in the same domestic dwelling.

(b) Use of sick leave to care for the person concerned – entitlement

(i) The entitlement to use sick leave in accordance with this subclause is subject to:

(1) the Staff Specialist being responsible for the care and support of the person concerned; and

(2) the person concerned being as defined in subclause (a) of this clause.

(ii) A Staff Specialist with responsibilities in relation to a person who needs their care and support shall be entitled to use the untaken sick leave to provide care and support for such persons when they are ill.

(iii) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (ii) above, sick leave untaken may also be accessed by a Staff Specialist with responsibilities in relation to a person who needs their care and support.

(iv) The Chief Executive Officer or General Manager of the Employer (or their authorised delegate) may, in special circumstances, make a grant of additional

sick leave. This grant can only be taken from sick leave untaken prior to the period referred to in subclause (iii) above.

(v) The Staff Specialist shall, if required, establish, either by production of a medical certificate or statutory declaration, that the illness of the person concerned is such as to require care by another person.

(vi) The Staff Specialist has the right to choose the method by which the ground for leave is established, that is, by production of either a medical certificate or statutory declaration.

(vii) The Staff Specialist is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.

(viii) The Staff Specialist shall, wherever practicable, give the Employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the Staff Specialist, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the Staff Specialist to give prior notice of absence, the Staff Specialist shall notify the Employer by telephone of such absence at the first opportunity on the day of absence.

(ix) In normal circumstances, the Staff Specialist must not take leave under this part where another person has taken leave to care for the same person.

(c) Use of other leave entitlements

A Staff Specialist may elect, with the consent of the Employer, to take:

(i) annual leave, including annual leave not exceeding 10 days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties. A Staff Specialist and the Employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least 5 consecutive annual leave days are taken. A Staff Specialist may elect with the Employer's agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

(ii) long service leave; or

(iii) leave without pay for the purpose of providing care and support to the person concerned as defined in subclause (a) of this clause.

(d) Use of make-up time

(i) A Staff Specialist may elect, with the consent of the Employer, to work "make-up time". "Make-up time" is worked when the Staff Specialist takes time off during ordinary hours for family or community service responsibilities, and works those hours at another time, during the spread of normal duties hours defined in Clause 4 of this Agreement, at the ordinary rate of pay.

(ii) A Staff Specialist on shift work may elect, with the consent of the Employer, to work "make-up time" (under which the Staff Specialist takes time off during

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ordinary hours and works those hours at another time) at the applicable shift work rate which would have been applicable to the hours taken off.

21. MATERNITY, ADOPTION AND PARENTAL LEAVE

A Maternity Leave

(a) Eligibility

To be eligible for paid maternity leave a full time or part-time Staff Specialist must have completed at least 40 weeks continuous service prior to the expected date of birth.

A Staff Specialist who has once met the conditions for paid maternity leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid maternity leave, unless-

- (i) there has been a break in service where the Staff Specialist has been re-employed or re-appointed after a resignation, medical retirement, or after her services have been otherwise dispensed with: or
- (ii) the Staff Specialist has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act 1987* (NSW).

(b) Portability of Service for Paid Maternity Leave

Portability of service for paid maternity leave involves the recognition of service in government sector organisations for the purpose of determining a Staff Specialist's eligibility to receive paid maternity leave. For example, where a Staff Specialist moves between a Public Sector Department and a public hospital, previous continuous service will be counted towards the service prerequisite for paid maternity leave.

When determining a Staff Specialist's eligibility for paid maternity leave, continuous service with an organisation that is part of the government sector service as defined in the *Government Sector Employment Act 2013* will be recognised, provided that:

- (i) service was on a full-time or part-time basis:
- (ii) cessation of service with the former public sector service was not by reason of dismissal on any ground, except retrenchment or reduction of work;
- (iii) the Staff Specialist commences duty with the Employer within two months of ceasing employment with the former public sector service . Where there is such a break in service, such break will not be counted as service for the purpose of calculating any prior service prerequisite for paid maternity leave.

(c) Entitlement to Paid Maternity Leave

An eligible Staff Specialist is entitled to fourteen weeks at the ordinary rate of pay from the date maternity leave commences. This leave may commence up to fourteen weeks prior to the expected date of birth.

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It is not compulsory for a Staff Specialist to take this period off work. However, if a Staff Specialist decides to work during the nine weeks prior to the date of birth it is subject to the Staff Specialist being able to satisfactorily perform the full range of normal duties.

Paid maternity leave may be paid:

- on a normal fortnightly basis; or
- in advance in a lump sum; or
- at the rate of half pay over a period of twenty-eight weeks on a regular fortnightly basis.

Annual and/or long service leave credits can be combined with periods of maternity leave on half pay to enable a Staff Specialist to remain on full pay for that period.

(d) Unpaid Maternity Leave

(i) Full time and part time Staff Specialists who are entitled to paid maternity leave are entitled to a further period of unpaid maternity leave of not more than 12 months after the actual date of birth.

(ii) Full time and part time Staff Specialists who are not eligible for paid maternity leave are entitled to unpaid maternity leave of not more than 12 months.

(e) Applications

A Staff Specialist who intends to proceed on maternity leave should formally notify the Employer of such intention as early as possible, so that arrangements associated with her absence can be made.

Written notice of not less than eight weeks prior to the commencement of the leave should accordingly be given. This notice must include a medical certificate stating the expected date of birth and should also indicate the period of leave desired.

(f) Variation after Commencement of Leave

After commencing maternity leave, a Staff Specialist may vary the period of her maternity leave once only without the consent of the Employer by giving the Employer notice in writing of the extended period at least fourteen days' before the start of the extended period. The Employer may accept less notice if convenient.

A Staff Specialist may extend the period of maternity leave at any time with the agreement of the Employer.

(g) Staffing Provisions

Any person who occupies the position of a Staff Specialist on maternity leave must be informed that the Staff Specialist has the right to return to her former position. Additionally, since a Staff Specialist has the right to vary the period of her maternity leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should be also set down clearly; to a fixed date or until the Staff Specialist elects to return to duty, whichever occurs first.

(h) Effect of Maternity Leave on Accrual of Leave, Increments etc.

When the Staff Specialist has resumed duties, any period of full pay leave is counted in full for the accrual of annual leave, sick leave and long service leave and any period of maternity leave on half pay is taken into account to the extent of one half thereof when determining the accrual of annual leave, sick leave and long service leave.

Except in the case of Staff Specialists who have completed ten years' service the period of maternity leave without pay does not count as service for long service leave purposes. Where the Staff Specialist has completed ten years' service the period of maternity leave without pay shall count as service provided such leave does not exceed six months.

Maternity leave without pay does not count as service for incremental purposes. Periods of maternity leave at full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.

Where public holidays occur during the period of paid maternity leave, payment is at the rate of maternity leave received i.e., public holidays occurring in a period of full pay maternity leave are paid at full rate and those occurring during a period of half pay leave are paid at half rate.

(i) Illness Associated with Pregnancy

If, because of an illness associated with her pregnancy a Staff Specialist is unable to continue to work then she can elect to use any available paid leave (sick, annual and/or long service leave) or to take sick leave without pay.

Where a Staff Specialist is entitled to paid maternity leave, but because of illness, is on sick, annual, long service leave, or sick leave without pay prior to the birth, such leave ceases nine weeks prior to the expected date of birth. The Staff Specialist then commences maternity leave with the normal provisions applying.

(j) 'Safe Job' and 'no safe job leave'

- (i) This provision 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:

- (1) illness, or risks, arising out of her pregnancy; or
- (2) hazards connected with that position.

- (ii) 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.

- (iii) If there is no appropriate safe job available, then the employee may be entitled to paid no safe job leave or unpaid no safe job leave.

- (iv) An ("**appropriate safe job**") is a safe job that has:

- (1) the same ordinary hours of work as the employee's present position; or
- (2) a different number of ordinary hours agreed to by the employee.
- (v) 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.
- (vi) If the employee's pregnancy ends before the end of the risk period, the risk period ends when the pregnancy ends.
- (vii) Without limiting subclause (a), an employer may require the evidence to be a medical certificate.

(viii) Paid no safe job leave will be payable to an employee at their base rate of pay, for their ordinary hours of work during the risk period if:

- (1) the above subclause (x)(a)-(g) applies to the employee; and
- (2) the employee is entitled to unpaid parental leave in accordance with the *Fair Work Act 2009*; and
- (3) the employee has complied with any applicable notice and evidence requirements in accordance with the Act for taking unpaid parental leave.

(ix) An employee is entitled to unpaid no safe job leave during the risk period if:

- (1) the above subclause (x)(a)-(g) applies to the employee; and
- (2) the employee is not entitled to unpaid parental leave; and
- (3) if required by the employer – the employee has given evidence that satisfies the employer of the pregnancy.

(x) Without limiting subclause (i)(3), an employer may require the evidence to be a medical certificate.

(xi) Unpaid Special Maternity Leave

If, because of an illness associated with her pregnancy an employee is unable to continue to work 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.

then she is entitled to a period unpaid special maternity leave in accordance with the applicable provisions of the *Fair Work Act 2009* (Cth).

(k) Miscarriages

In the event of a miscarriage any absence from work is to be covered by the current sick leave provisions.

(l) Stillbirth

In the case of a stillbirth, (as classified by the Registry of Births, Deaths and Marriages) a Staff Specialist may elect to take sick leave, subject to production of a medical certificate, or maternity leave. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.

(m) Effect of Premature Birth on Payment of Maternity Leave

A Staff Specialist who gives birth prematurely and prior to proceeding on maternity leave shall be treated as being on maternity leave from the date leave is commenced to have the child. Should a Staff Specialist return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.

(n) Right to Return to Previous Position

A Staff Specialist returning from maternity leave has the right to resume her former position.

Where this position no longer exists the Staff Specialist is entitled to be placed in a position nearest in status and salary to that of her former position and to which the Staff Specialist is capable or qualified.

(xii) Keeping in touch days

(a) This Subclause 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.

(b) A day on which the employee performs work for the employer during the period of leave is a ("**keeping in touch day**") if:

(1) 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

(2) both the employee and the employer consent to the employee performing work for the employer on that day; and

(3) 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
- (4) 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.

- (c) The employer must not unduly influence or unduly pressure an employee to consent to performing work on a keeping in touch day.
- (d) For the purposes of paragraph (b)(4), treat as two separate periods of unpaid parental leave:
 - (1) a period of unpaid parental leave taken during the employee's available parental leave period; and
 - (2) a period of unpaid parental leave taken as an extension of the leave referred to in paragraph (1) for a further period immediately following the end of the available parental leave period.

(o) Further Pregnancy While on Maternity Leave

Where a Staff Specialist becomes pregnant whilst on maternity leave a further period of maternity leave shall be granted. If a Staff Specialist enters on the second period of maternity leave during the currency of the initial period of maternity leave, then any residual maternity leave from the initial entitlement ceases

A Staff Specialist who commences a subsequent period of maternity leave while on unpaid maternity leave under subclause (d)(i) of Part A of this clause or subclause (a)(ii) of Part D of this clause is entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on maternity leave).

A Staff Specialist who commences a subsequent period of maternity leave during the first 12 months of a return to duty on a part time basis as provided under subclause (a)(iii) of Part D of this clause is entitled to be paid at their substantive full time rate for the subsequent period of maternity leave.

A Staff Specialist who commences a subsequent period of maternity leave more than 12 months after returning to duty on a part time basis under subclause (a)(iii) of Part D of this clause, will be entitled to paid maternity leave for the subsequent period of maternity leave at their part time rate.

B Adoption Leave

(a) Eligibility

All full time and part time Staff Specialists who are adopting a child and are to be the primary care giver of the child are eligible for unpaid adoption leave.

To be eligible for paid adoption leave a full time or part-time Staff Specialist must also have completed at least 40 weeks continuous service prior to the date of taking custody of the child.

A Staff Specialist who has once met the conditions of paid adoption leave, will not be required to again work the 40 weeks continuous service in order to qualify for further periods of paid adoption leave, unless

(i) there has been a break in service where the Staff Specialist has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with; or

(ii) the Staff Specialist has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Worker's Compensation Act 1987* (NSW).

(b) Portability of Service for Paid Adoption Leave

As per maternity leave conditions.

(c) Entitlement

(i) Paid Adoption Leave

Eligible Staff Specialists are entitled to paid adoption leave of fourteen weeks at the ordinary rate of pay from and including the date of taking custody of the child.

Paid adoption leave may be paid:-

- on a normal fortnightly basis; or
- in advance in a lump sum; or
- at the rate of half pay over a period of twenty-eight weeks on a regular fortnightly basis.

Annual and/or long service leave credits can be combined with periods of adoption leave at half pay to enable a Staff Specialist to remain on full pay for that period.

(ii) Unpaid Adoption Leave

Eligible Staff Specialists are entitled to unpaid adoption leave as follows: -

- where the child is under the age of 12 months - a period of not more than 12 months from the date of taking custody;
- where the child is over the age of 12 months and under 18 years old - a period of up to 12 months, such period to be agreed upon by both the Staff Specialist and the employer.

(c) Unpaid Pre-Adoption Leave

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.

However, an employee is not entitled to take a period of unpaid pre-adoption leave if:

- the employee could instead take some other form of leave; and
- the employer directs the employee to take that other form of leave.

(d) Applications

Due to the fact that a Staff Specialist may be given little notice of the date of taking custody of a child, Staff Specialists who believe that, in the reasonably near future, they will take custody of a child, should formally notify the employer as early as practicable of the intention to take adoption leave. This will allow arrangements associated with the adoption leave to be made.

(e) Variation after Commencement of Leave

After commencing adoption leave, a Staff Specialist may vary the period of leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although the Employer may accept less notice if convenient.

(f) Staffing Provisions

As per maternity leave conditions.

(g) Effect of Adoption Leave on Accrual of Leave, Increments, etc

As per maternity leave conditions.

(h) Right to return to Previous Position

As per maternity leave conditions.

C Parental Leave

(a) Eligibility

To be eligible for parental leave a full time or part-time Staff Specialist must have completed at least 40 weeks continuous service prior to the expected date of birth or to the date of taking custody of the child.

A Staff Specialist who has once met the conditions for paid parental leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid parental leave, unless-

- (i) there has been a break in service where the Staff Specialist has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with: or

- (ii) the Staff Specialist has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act 1987* (NSW).

(b) Portability of Service for Paid Parental Leave

As per maternity leave conditions.

(c) Entitlements

Eligible Staff Specialists whose spouse or partner (including a same sex partner) is pregnant or is taking custody of a child, are entitled to a period of leave not exceeding 52 weeks, which includes one week of paid leave, and may be taken as follows:

- (i) an unbroken period of up to one week at the time of the birth of the child, taking custody of the child or other termination of the pregnancy (short parental leave), and

- (ii) a further unbroken period in order to be the primary caregiver of the child (extended parental leave).

- (iii) The entitlement of one week's paid leave may be taken at anytime within the 52 week period and shall be paid:

- at the Staff Specialists ordinary rate of pay for a period not exceeding one week on full pay, or

- two weeks at half pay or the period of parental leave taken, whichever is the lesser period.

- (iv) Extended parental leave cannot be taken at the same time as the Staff Specialist's spouse or partner is on maternity or adoption leave except as provided for in subclause (a)(i) of Part D Right to Request of this clause.

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Annual and/or long service leave credits can be combined with periods of parental leave on half pay to enable a Staff Specialist to remain on full pay for that period.

(d) Applications

A Staff Specialist who intends to proceed on parental leave should formally notify their employer of such intention as early as possible, so that arrangements associated with their absence can be made.

(i) In the case of extended parental leave, the Staff Specialist should give written notice of the intention to take the leave.

(ii) The Staff Specialist must, at least four weeks before proceeding on leave, give written notice of the dates on which they propose to start and end the period of leave, although it is recognised in situations of taking custody of a child, little or no notice may be provided to the Staff Specialist. In such an instance, the Staff Specialist should notify the employer as early as practicable.

(iii) The Staff Specialist must, before the start of leave, provide a certificate from a medical practitioner confirming that their spouse or partner is pregnant and the expected date of birth, or in the case of an adoption, an official form or notification on taking custody of the child.

(iv) In the case of extended parental leave, the Staff Specialist must, before the start of leave, provide a statutory declaration by the Staff Specialist stating:

(1) if applicable, the period of any maternity leave sought or taken by his spouse, and

(2) that they are seeking the period of extended parental leave to become the primary care giver of the child.

(e) Variation after Commencement of Leave -

After commencing parental leave, a Staff Specialist may vary the period of her/his parental leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although the Employer may accept less notice if convenient.

(f) Effect of Parental Leave on Accrual of Leave, Increments etc.

As per maternity leave conditions.

(g) Right to Return to Previous Position

As per maternity leave conditions.

D Right to Request

(a) A Staff Specialist entitled to maternity, adoption or parental leave may request the Employer to allow the Staff Specialist:

- (i) to extend the period of simultaneous maternity, adoption or parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid maternity, adoption or extended parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of maternity, adoption or parental leave on a part time basis until the child reaches school age;
- to assist the Staff Specialist in reconciling work and parental responsibilities.
- (b) The Employer shall consider the request having regard to the Staff Specialist's circumstances and, provided the request is genuinely based on the Staff Specialist's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (c) The Staff Specialist's request and the Employer's decision made under subclauses (a)(ii) and (iii) must be recorded in writing.
- (d) Where a Staff Specialist wishes to make a request under subclause (a)(iii):
- (i) the Staff Specialist is to make an application for leave without pay to reduce their full time weekly hours of work
 - (ii) such application must be made as early as possible to enable the Employer to make suitable staffing arrangements. At least four weeks notice must be given;
 - (iii) salary and other conditions of employment are to be adjusted on a basis proportionate to the Staff Specialist's full time hours of work i.e. for long service leave the period of service is to be converted to the full time equivalent and credited accordingly.
 - (iv) Staff Specialists who return from leave under this arrangement remain full time Staff Specialists.

E Communication During Leave

- (a) Where a Staff Specialist is on maternity, adoption or parental leave and a definite decision has been made to introduce significant change at the workplace, the Employer shall take reasonable steps to:
- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the Staff Specialist held before commencing the leave; and
 - (ii) provide an opportunity for the Staff Specialist to discuss any significant effect the change will have on the status or responsibility level of the position the Staff Specialist held before commencing the leave.

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

(c) The Staff Specialist shall also notify the Employer of changes of address or other contact details which might affect the Employer's capacity to comply with subclause (a).

NOTE:

(a) Where a temporary Staff Specialist is entitled to parental leave under the *Fair Work Act 2009*, the following provisions shall also apply in addition to those set out in the Act.

The Employer must not fail to re-engage a temporary Staff Specialist because:

- the Staff Specialist or Staff Specialist's spouse is pregnant; or
- the Staff Specialist is or has been immediately absent on parental leave.

The rights of the employer in relation to engagement and re-engagement of temporary Staff Specialists are not affected, other than in accordance with this clause.

(b) Liability for Superannuation Contributions

During a period of unpaid maternity, adoption or parental leave, the Staff Specialist will not be required to meet the employer's superannuation liability.

21A LACTATION BREAKS

- i) This clause applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this agreement.
- ii) A full time employee or a part time employee working more than four hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each day or per shift.
- iii) A part time employee working four hours or less on any day or shift is entitled to only one paid lactation break of up to 30 minutes each day or per shift worked.
- iv) A flexible approach to lactation breaks can be taken by mutual agreement between an employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the employee.
- v) The employer shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk. The space will be in an accessible location in the hospital or facility where the Employee is working.
 - a. A private space means a space that is lockable and is for the exclusive use of employees.
 - b. The space will include access to such facilities, including refrigeration, a sink and easily accessible power points for the use of pumps;
- vi) Where it is not practicable to provide these facilities, discussion between the manager and the employee will take place to attempt to identify reasonable alternative arrangements for the employee's lactation needs.
- vii) Employees experiencing difficulties in effecting the transition from home based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline or the Public Health System.
- viii) Employees needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilize sick leave or other leave in accordance with this agreement.

22. TELEPHONES

A Staff Specialist required by the Employer to have a telephone for the purposes of official duty at their home address shall, on presenting an account relating to that telephone be reimbursed -

- (a) three-quarters of the cost of the rental of the telephone; and
- (b) the cost of all official STD telephone calls or its equivalent.

No payment for residential fixed telephone will be made where the Employer has issued a mobile phone to the Staff Specialist (unless the Staff Specialist resides in an area with no mobile phone coverage).

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23. OFFICE, SECRETARIAL and ADMINISTRATIVE SUPPORT

Staff Specialists will have access to such office, secretarial and administrative support as may be reasonably necessary to undertake the requirements of the position.

24. SPECIALIST MEDICAL ADMINISTRATORS

(a) Where the Employer determines that Fellowship of the Royal Australian College of Medical Administrators is an essential requirement for appointment to a position, the holder of that position will be appointed as a Staff Specialist in accordance with the arrangements set out below.

(b) Pursuant to clause 5(c) of this Agreement, Staff Specialists appointed in accordance with this clause will progress to the next incremental step, up to and including Year 5, on the anniversary date of their commencement.

(c) Appointment or progression to Senior Staff Specialist grade may occur when the Employer requires the Staff Specialist to have duties and responsibilities:

(i) across an area health service; or

(ii) involving management of multiple services, units or department across two (2) or more facilities.

(d) Specialist Medical Administrators paid in accordance with this clause are not entitled to the provisions of Clause 10 Managerial Allowance.

(e) Except as otherwise provided, Staff Specialists paid in accordance with this clause are entitled to the terms and conditions of employment applicable to Staff Specialists. Staff Specialists paid in accordance with this clause are not entitled to the terms and conditions of employment applicable to medical superintendents.

25. LABOUR FLEXIBILITY

(a) The Employer may direct a Staff Specialist to carry out such duties as are reasonable, and within the limits of the Staff Specialist's skill, competence and training consistent with their classification, grouping and/or career stream provided that such duties are not designed to promote deskilling.

(b) The Employer may direct a Staff Specialist to carry out such duties and use such equipment as may be required provided that the Staff Specialist has been properly trained or has otherwise acquired the necessary skills in the use of and equipment.

(c) Any direction issued by the Employer pursuant to sub-clause (a) and (b) shall be consistent with the Employer's responsibilities to provide a safe and healthy work environment.

26. ANTI-DISCRIMINATION

(a) It is the intention of the parties bound by this Agreement to seek to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of racial origin, sex, age, marital status, physical or mental disability, sexual orientation, transgender status, religion, national extraction, colour, political opinion, pregnancy or breastfeeding or family or carer responsibilities.

(b) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Agreement the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Agreement are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Agreement which, by its terms or operation, has a direct or indirect discriminatory effect.

(c) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise a Staff Specialist because the Staff Specialist has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

(d) Nothing in this clause is to be taken to affect:

(i) any conduct or act which is specifically exempted from anti-discrimination legislation;

(ii) offering or providing junior rates of pay to persons under 21 years of age;

(iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;

(iv) a party to this Agreement from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

(e) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

NOTE –

Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

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27. REDUNDANCY

The provisions of the *Managing Excess Staff of the NSW Health Service* PD2012_021, as amended from time to time, shall apply.

28. UNDERPAYMENT AND OVERPAYMENT OF SALARIES

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

(a) Underpayment:

- (i) If the amount underpaid is equal to or greater than one day's gross base pay the underpayment will be rectified within three working days;
- (ii) If the amount underpaid is less than one day's gross base pay it will be rectified by no later than the next normal pay. However if the employee can demonstrate that rectification in this manner would result in undue hardship every effort will be made by the employer to rectify the underpayment within three working days.

(b) Overpayment

- (i) In all cases where overpayments have occurred, the employer shall as soon as possible advise the employee concerned of both the circumstances surrounding the overpayment and the amount involved. The employer will also advise the employee of the pay period from which the recovery of the overpayment is to commence.
- (ii) One off overpayments will be recovered in the next normal pay, except that where the employee can demonstrate that undue hardship would result, the recovery rate shall be at 10% of an employee's gross fortnightly base pay.
- (iii) 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.
- (iv) The recovery rate of 10% of an employee's gross fortnightly base pay referred to in subclause (b) (iii) above may be reduced by agreement, where the employee can demonstrate that undue hardship would result.
- (v) 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 subclause (b) (iii) above, the employer shall have 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.

29 AGREEMENT FLEXIBILITY

(a) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

(i) the agreement deals with 1 or more of the following matters:

- (1) arrangements about when work is performed;
- (2) overtime rates;
- (3) penalty rates;
- (4) allowances;
- (5) leave loading; and

(ii) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and

(iii) the arrangement is genuinely agreed to by the employer and employee

(b) The employer must ensure that the terms of the individual flexibility arrangement:

(i) are about permitted matters under section 172 of the *Fair Work Act 2009*; and

(ii) are not unlawful terms under section 194 of the *Fair Work Act 2009*

(iii) result in the employee being better off overall than the employee would be if no arrangement was made.

(c) The employer must ensure that the individual flexibility arrangement:

(i) is in writing; and

(ii) includes the name of the employer and employee; and

(iii) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and

(iv) includes details of:

- (1) the terms of the enterprise agreement that will be varied by the arrangement; and
- (2) how the arrangement will vary the effect of the terms; and
- (3) 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
- (4) state the day on which the arrangement commences.

(d) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

(e) The employer or employee may terminate the individual flexibility arrangement:

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- (i) by giving no more than 13 weeks' written notice to the other party to the arrangement (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013; or
- (ii) If the employer and employee agree in writing — at any time

30. PUBLIC HOLIDAYS

(a) Public Holidays shall be in accordance with the National Employment Standards prescribed by the Fair Work Act 2009 (Cth).

31. CEREMONIAL LEAVE

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

32. TERMINATION OF EMPLOYMENT

- (a) Employees shall be required to give one month's written notice of termination of employment.
- (b) Where termination of such employees is to be notified by the employer, otherwise than for misconduct, the employee shall be given one month's notice, in writing, or one month's pay in lieu thereof.
- (c) If the employee is over 45 years old and has completed at least 5 years' service, the notice period referred to at subclause (b) herein is increased to 5 weeks or 5 weeks' pay in lieu thereof.

33. NATIONAL EMPLOYMENT STANDARDS TO PREVAIL

This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

PART B – Monetary Rates

SCHEDULE 1: STAFF SPECIALISTS SALARY RATES

Staff Specialist	First Full Pay Period on or after 1/7/2021 \$ per annum
1	174,659
2	184,873
3	195,080
4	205,318
5	215,533
Senior	235,970
Postgraduate fellow	202,885

SCHEDULE 2: ALLOWANCES

Managerial allowances	First Full Pay Period on or after 1/7/2021 \$ per annum
Level 1	24,225
Level 2	42,396
Level 3	60,565

PART C - OTHER MATTERS

SCHEDULE 2 - RECOGNISED AUSTRALASIAN SPECIALIST COLLEGES

- Royal Australasian College of Surgeons
- Royal Australasian College of Physicians
- Adult Medicine Division
- Australasian Chapter of Addiction Medicine
- Australasian Chapter of Palliative Medicine
- Australasian Chapter of Sexual Health Medicine
- Australasian Faculty of Public Health Medicine
- Australasian Faculty of Rehabilitation Medicine
- Australasian Faculty of Occupational and Environmental Medicine
- Paediatrics and Child Health Division
- Chapter of Community Child Health
- Royal Australasian College of Medical Administrators
- Royal Australian and New Zealand College of Obstetricians and Gynaecologists
- Royal Australian and New Zealand College of Ophthalmologists
- Royal Australian and New Zealand College of Psychiatrists
- Royal Australian and New Zealand College of Radiologists
- Faculty of Radiation Oncology
- Royal College of Pathologists of Australasia
- Australian and New Zealand College of Anaesthetists
- Faculty of Pain Medicine
- Australasian College of Dermatologists
- College of Intensive Care Medicine of Australia and New Zealand
- Australasian College for Emergency Medicine
- Australasian College of Sports Physicians

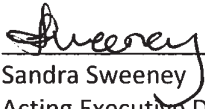
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SCHEDULE 3 - SPECIALTIES OR CATEGORIES OF POSITIONS COVERED BY
CLAUSE 4 (D)

(i) Emergency medicine

Signature Page

DATED this day 26 October 2021



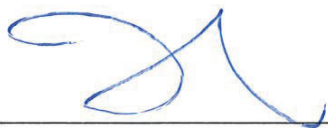
Sandra Sweeney
Acting Executive Director of People and Culture

on behalf of:
St Vincent's Hospital Sydney Limited,
390 Victoria Street
DARLINGHURST NSW 2010

EMMA EMILY UPTON
Witness (sign and print)


Signature Page

DATED this day 27th October 2021



Drew Kear
General Manager / Director of Nursing

on behalf of:
Calvary Health Care Sydney Limited
91-111 Rocky Point Road
Kogarah NSW 2217



PENNY ZAFIROPOULOS

Witness (sign and print)

Signature Page

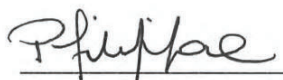
DATED this day 27 October 2021



Robert John Mills
Chief Executive Officer

on behalf of:

Royal Society for the Welfare of Mothers and Babies (Tresillian)
McKenzie Street
Belmore NSW 2192

 PINA FILIPPONE

Witness (sign and print)

Signature Page

DATED this day 28 October 2021



Liana O'Connor
Human Resources Manager

on behalf of:
Calvary Health Care (Newcastle) Limited
Edith Street
Waratah NSW 2298

 *Kim Kolmayer*
Witness (sign and print) *Registered Nurse*

Signature Page

DATED this day 28 October 2021

[NAME]: Grainne O'Loughlin

DocuSigned by:
Grainne O'Loughlin
757718B91F224B3...

[POSITION]: CEO Karitane

on behalf of:
Karitane
126 The Horsley Drive
CARRAMAR NSW 2163

Witness (sign and print)

Signature Page

DATED this day 2 November 2021



Dr Tony Sara
President

on behalf of employees as a bargaining representative and on behalf of:
The Australian Salaried Medical Officers' Federation (ASMOF)
Suite 46
Level 3
330 Wattle Street
ULTIMO NSW 2007



Witness
Andrew Holland