



DECISION

Fair Work Act 2009

s.185 - Application for approval of a multi-enterprise agreement

Victorian Hospitals' Industrial Association
(AG2018/6037)

VICTORIAN PUBLIC HEALTH SECTOR (BIOMEDICAL ENGINEERS) ENTERPRISE AGREEMENT 2018 - 2022

Health and welfare services

DEPUTY PRESIDENT COLMAN

MELBOURNE, 12 APRIL 2019

Application for approval of the Victorian Public Health Sector (Biomedical Engineers) Enterprise Agreement 2018 - 2022.

[1] The Victorian Hospitals' Industrial Association has made an application for approval of an enterprise agreement known as the *Victorian Public Health Sector (Biomedical Engineers) Enterprise Agreement 2018 - 2022* (the Agreement) pursuant to s 185 of the *Fair Work Act 2009* (the Act), in their capacity as a bargaining representative for the employers bound by the Agreement, as set out in Appendix 1 of the Agreement. The Agreement is a multi-enterprise agreement.

[2] The Employer has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

[3] Subject to the undertakings referred to above, and on the basis of the material contained in the application and accompanying statutory declaration, I am satisfied that each of the requirements of ss 186, 187, 188 and 190 as are relevant to this application for approval have been met.

[4] The Agreement was approved on 12 April 2019 and, in accordance with s 54, will operate from 19 April 2019. The nominal expiry date of the Agreement is 12 September 2022.



DEPUTY PRESIDENT

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Annexure A



Victorian Hospitals' Industrial Association

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IN THE FAIR WORK COMMISSION

FWC Matter No.:

AG2018/6037

Applicant:

Victorian Hospitals' Industrial Association

Undertaking- section 190

I, Timothy Patrick Nagle, Interim Chief Executive Officer of the Victorian Hospitals' Industrial Association give the following undertakings with respect to the *Victorian Public Health Sector (Biomedical Engineers) Enterprise Agreement 2018 – 2022* ("the Agreement"):

1. I have the authority given to me to provide this undertaking in relation to this application before the Fair Work Commission.
2. The VHIA is the bargaining representative of each of the Employers listed in Appendix One (Employers) to the Agreement.
3. The VHIA is authorised to give the following undertakings on behalf of each of the Employers, and gives this undertaking on behalf of each of the Employers pursuant to subsection 190(3) of the *Fair Work Act 2009*.

4. Part Time Workers and Overtime

Where a part-time employee is required to work outside their agreed hours, they will receive overtime in accordance with the Overtime provisions of the Agreement.

Authority to sign:

Interim CEO

Signature:

Date: 5 April 2019

Note - this agreement is to be read together with undertakings given by the employers. The undertakings are taken to be a term of the agreement. A copy of the undertakings can be found at the end of the agreement.

VICTORIAN PUBLIC HEALTH SECTOR (BIOMEDICAL ENGINEERS) ENTERPRISE AGREEMENT 2018- 2022

PART A – PRELIMINARY

1 Title

This agreement shall be referred to as the Victorian Public Health Sector (Biomedical Engineers) Enterprise Agreement 2018 - 2022 (the **Agreement**).

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4 Definitions

- 4.1 **Act** means the Fair Work Act 2009.
- 4.2 **Agreement** means the Victorian Public Health Sector (Biomedical Engineers) Enterprise Agreement 2018 – 2022.
- 4.3 **Biomedical Engineer** means an adult person employed as such who is qualified to carry out professional engineering duties as defined and is employed to apply engineering method to the solution of problems in the area of medicine and other life sciences.
- 4.4 **Employee** has the same meaning as Biomedical Engineer.
- 4.5 **Employer** means one of the Employers listed in Appendix 1.
- 4.6 **Experienced Engineer** means a Professional engineer with the undermentioned qualifications engaged in any particular employment where the adequate discharge of any portion of the duties requires qualifications of the employee as (or at least equal to those of) a member of Engineers Australia. The qualifications are as follows:
- (a) membership of Engineers Australia; or
 - (b) having graduated in a four or five year course at a university recognised by Engineers Australia, four years' experience on professional engineering duties since becoming a Qualified engineer; or
 - (c) not having so graduated, five years of such experience.
- Note: An experienced engineer with 5 years experience must still hold a three year engineering degree or equivalent diploma.
- 4.7 **FWC** shall mean the Fair Work Commission.
- 4.8 **Immediate family** shall mean:
- (a) spouse (including a former spouse, a de facto partner and a former de facto partner) of the Employee. A de facto partner means a person, who although not legally married to the Employee, lives with the Employee in a relationship as a couple on a genuine domestic basis (whether the Employee and the person are of the same sex or different sexes); and

- (b) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the Employee or spouse of the Employee.

4.9 **NES** shall mean the National Employment Standards.

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

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

4.12 **Staff** means an Employee or Employees employed by the Hospital in either a full time, part time, temporary or casual capacity who is/are employed as a Biomedical Engineer

4.13 **Union** shall mean the Association of Professional Engineers, Scientists and Managers, Australia trading as Professionals Australia.

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

5 Coverage

5.1 This Agreement covers:

- (a) The Employers listed in Appendix 1;
- (b) All Employees employed by the Employers listed in Appendix 1 as Biomedical Engineers as defined by clause 4.3 of this Agreement; and
- (c) The Union as a bargaining representative for the Agreement entitled to be covered by the Agreement in accordance with section 183 of the *Fair Work Act 2009*.

6 Period of Operation

6.1 This Agreement shall commence operation seven days after the date of approval by Fair Work Commission and nominally expire on 12 September 2022. The Agreement will continue in force after the nominal expiry date in accordance with the *Fair Work Act 2009* (the Act).

7 Savings

7.1 Nothing in this Agreement will diminish any entitlement (whether accrued or otherwise) of Biomedical Engineers, other than where expressly varied by this Agreement.

7.2 This Agreement will not result in a reduction of an accrued entitlement for any Biomedical Engineer.

8 No Further Claims

- 8.1** This Agreement is reached in full and final settlement of all matters subject to claims by either party for the life of the Agreement.
- 8.2** Subject to the Employer meeting obligations to consult arising under this Agreement or a contract of employment binding on it, it is not the intent of this provision to inhibit, limit or restrict the Employer's right or ability to introduce change at the workplace.

9 Relationship to awards, Agreements and the NES

- 9.1** This is a comprehensive Agreement that operates to the exclusion of any awards or other previous enterprise agreements.
- 9.2** This Agreement is not intended to exclude any part of the NES or to provide any entitlement which is detrimental to an Employee's entitlement under the NES. For the avoidance of doubt, the NES prevails over this Agreement to the extent that any aspect of this Agreement would otherwise be detrimental to an Employee.

PART B – CONSULTATION, DISPUTE RESOLUTION AND DISCIPLINE

10 Consultation

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

10.1 Consultation regarding major change

- (a) Where an Employer proposes a major workplace change that may have a significant effect on an Employee or Employees, the Employer will consult with the affected Employee/s, the Union, and the Employee's other chosen representative (where relevant) before any proposed change occurs.
- (b) Workplace change includes (but is not limited to) technological change.
- (c) Consultation will include those who are absent on leave including parental leave.
- (d) The Employer will take reasonable steps to ensure Employees, HSRs (where relevant) and the Union can participate effectively in the consultation process.

10.2 Definitions

Under this clause 10:

- (a) **Consultation** means a genuine opportunity to influence the decision maker, but not joint decision making. It is not merely an announcement as to what is about to happen.
- (b) **Affected employee** means an Employee on whom a major workplace change may have a significant effect.
- (c) **Major change** means a change in the Employer's program, production, organisation, physical workplace, workplace arrangements, structure or technology that is likely to have a significant effect on Employees.
- (d) **Significant effect** includes but is not limited to:
 - (i) termination of employment;
 - (ii) changes in the size, composition or operation of the Employer's workforce (including from outsourcing) or skills required;
 - (iii) alteration of the number of hours worked and/or reduction in remuneration;
 - (iv) changes to an Employee's classification, position description, duties or reporting lines;
 - (v) the need for retraining or relocation/redeployment/transfer to another site or to other work;
 - (vi) removal of an existing amenity;
 - (vii) the removal or reduction of job opportunities, promotion opportunities or job tenure.
- (e) **Measures to mitigate or avert** may include but are not limited to:
 - (i) redeployment;

- (ii) retraining;
- (iii) salary maintenance;
- (iv) job sharing; and / or
- (v) maintenance of accruals.

10.3 Consultation Steps and Indicative reasonable timeframes

- (a) Consultation includes the steps set out below.
- (b) Timeframes for each step must allow a party to consultation (including a representative) to genuinely participate in an informed way having regard for all the circumstances including the complexity of the change proposed, and the need for Employees and their representative to meet with each other and consider and discuss the Employer’s proposal.
- (c) The following table makes clear the relevant steps and indicative timeframes for the consultation process.

Step	Action	Timeframe
1.	Employer provides change impact statement and other written material required by sub-clause 10.4.	
2.	Written response from Employees and / or union	14 days of step 1
3.	Consultation Meeting/s convened	7-14 days of step 2
4.	Further Employer response (where relevant)	After the conclusion of step 3
5.	Alternative proposal from Employees or Union	14 days of step 4
6.	Employer to consider alternative proposal/s consistent with the obligation to consult and, if applicable, to arrange further meetings with Employees or Union prior to advising outcome of consultation	14 days of step 5

10.4 Change Impact Statement (Step 1)

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

- (a) the details of proposed change;
- (b) the reasons for the proposed change;
- (c) the possible effects on Employees of the proposed change, including the effects on workload and other occupational health and safety impacts;

- (d) where occupational health and safety impacts are identified, a risk assessment of the potential effects of the change on the health and safety of Employees, undertaken in consultation with HSRs, and the proposed mitigating actions to be implemented to prevent such effects;
- (e) the expected benefit of the change;
- (f) measures the Employer is considering that may mitigate or avert the effects of the proposed change;
- (g) the right of an affected Employee to have a representative including a Union representative at any time during the change process; and
- (h) other written material relevant to the reasons for the proposed change (such as consultant reports), excluding material that is commercial in confidence or expose the Employer to unreasonable legal risk or cannot be disclosed under the *Health Services Act 1988* or other legislation.

10.5 Employee / Union response (step 2)

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

10.6 Meetings (step 3)

- (a) As part of consultation, the Employer will meet with the Employee/s, the Union and other nominated representative/s (if any) to discuss:
 - (i) the proposed change;
 - (ii) proposals to mitigate or avert the impact of the proposed change;
 - (iii) any matter identified in the written response from the affected Employees and / or the Union.
- (b) To avoid doubt, the 'first meeting' at step 3 does not limit the number of meetings for consultation.

10.7 Employer response (step 4)

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

10.8 Alternative proposal (step 5)

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

10.9 Outcome of consultation (step 6)

The Employer will give prompt and genuine consideration to matters arising from consultation, including an alternative proposal submitted under sub-clause 10.8, and will advise the affected Employees, the Union and other nominated representatives (if any) in writing of the outcome of consultation including:

- (a) whether the Employer intends to proceed with the change proposal;
- (b) any amendment to the change proposal arising from consultation;
- (c) details of any measures to mitigate or avert the effect of the changes on affected Employees; and

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

10.10 Consultation about changes to rosters or hours of work

- (a) Where an Employer proposes to change an Employee's regular roster or ordinary hours of work, the Employer must consult with the Employee or Employees affected and their representatives, if any, about the proposed change as soon as practicable.
- (b) The Employer must:
 - (i) consider health and safety impacts including fatigue;
 - (ii) provide to the Employee or Employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the Employee's regular roster or ordinary hours of work and when that change is proposed to commence);
 - (iii) invite the Employee or Employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
 - (iv) give genuine consideration to any views about the impact of the proposed change that is given by the Employee or Employees concerned and/or their representatives.
- (c) The requirement to consult under this clause does not apply where an Employee has irregular, sporadic, unpredictable working hours, self-rostering or, where permitted, a rotating roster.
- (d) These provisions are to be read in conjunction with the terms of the engagement between the Employer and Employee, other Agreement provisions concerning the scheduling of work and notice requirements.

10.11 Consultation disputes

Any dispute regarding the obligations under this clause will be dealt under the Dispute Resolution Procedure at clause 10.11 of this Agreement.

11 Redundancy and Associated Entitlements

11.1 Arrangement

This clause is arranged as follows:

- (a) Arrangement (subclause 11.1),
- (b) Definitions (subclause 11.2),
- (c) Redeployment (subclause 11.3),
- (d) Support to Affected Employees (subclause 11.4),
- (e) Salary maintenance (subclause 11.5),
- (f) Relocation (subclause 11.6),
- (g) Employment terminates due to redundancy (subclause 11.7), and
- (h) Exception to application of Victorian Government's policy with respect to severance pay (subclause 11.8)

11.2 Definitions

For the purpose of this clause:

- (a) **Affected Employee** for this clause 11 means an Employee whose role will be redundant.
- (b) **Comparable role** means an on-going role that:
 - (i) is the same occupation as that of the Affected Employee's redundant position or if not, is in an occupation acceptable to the Affected Employee; and
 - (ii) is any of the following:
 - (A) In the same clinical specialty as that of the Affected Employee's former position;
 - (B) in a clinical specialty acceptable to the Affected Employee; or
 - (C) a position that with the reasonable support described at 11.3(g), the Affected Employee could undertake; and
 - (iii) is the same grade as the Affected Employee's redundant position;
 - (iv) takes into account the number of ordinary hours normally worked by the Affected Employee;
 - (v) Is a Reasonable Distance from the Affected Employee's current work location;
 - (vi) takes the Affected Employee's personal circumstances, including family responsibilities, into account; and
 - (vii) takes account of health and safety considerations.
- (c) **Consultation** is as defined at clause 10 (Consultation) of this Agreement.
- (d) **Continuity of Service** means that the service of the Employee is treated as unbroken and that the cap on the transfer of personal leave at subclause 55.12 and 55.13 does not apply. However, continuity of service is not broken where an Employer pays out accrued annual leave or long service leave upon termination in accordance with this Agreement.
- (e) **Reasonable Distance** means a distance that has regard to the Employee's original work location, current home address, capacity of the Employee to travel, additional travelling time, effects on the personal circumstances of the affected Employee, including family commitments and responsibilities and other matters raised by the Employee, or assistance provided by their Employer.
- (f) **Redeployment period** means a period of 13 weeks from the time the Employer notifies the Affected Employee in writing that consultation under clause 10 is complete and that the redeployment period has begun.
- (g) **Redundancy** means the Employer no longer requires the Affected Employee's job to be performed by anyone because of changes in the operational requirements of the Employer's enterprise.
- (h) **Relocation** means an Affected Employee is required to move to a different campus as a result of an organisational change on either a temporary or permanent basis.
- (i) **Salary maintenance** means an amount representing the difference between what the Affected Employee was normally paid immediately prior to the Affected

Employee's role being made redundant and the amount paid in the Affected Employee's new role following redeployment.

11.3 Redeployment

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

(b) Employee to be advised in writing

The Affected Employee must be advised in writing of:

- (i) the date the Affected Employee's role is to be redundant,
- (ii) details of the redeployment process,
- (iii) the reasonable support that will be provided in accordance with subclause 11.3(g), and
- (iv) the Affected Employee's rights and obligations.

(c) Employer obligations

The Employer will:

- (i) make every effort to redeploy the Affected Employee to a Comparable Role in terms of classification, grade and income, including appointing a case manager to provide the Affected Employee with support and assistance; and
- (ii) take into account the personal circumstances of the Affected Employee, including family commitments and responsibilities.

(d) Employee obligations

The Employee must actively participate in the redeployment process including:

- (i) identifying appropriate retraining needs;
- (ii) developing a resume / CV to assist in securing redeployment;
- (iii) actively monitoring and exploring appropriate redeployment opportunities and working with the appointed case manager.

(e) Rejecting a comparable role

Where an Affected Employee rejects an offer of redeployment to a comparable role (as defined), the Affected Employee may be ineligible for a departure package referred to at subclause 11.7.

(f) Temporary alternative duties

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

(g) Support for redeployment

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

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

- (ii) a defined period of up to 12 weeks in which the Affected Employee works in a supernumerary capacity;
- (iii) support from educational staff in the clinical environment;
- (iv) a review at 12 weeks or earlier to determine what, if any, further training is required.

(h) Where no redeployment available

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

(i) Non-Comparable Role

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

11.4 Support to Affected Employees

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

- (a) counselling and support services;
- (b) retraining,
- (c) preparation of job applications;
- (d) interview coaching;
- (e) time off to attend job interviews; and
- (f) funding of independent financial advice for employees eligible to receive a separation package.

11.5 Salary Maintenance

(a) Entitlement to salary maintenance

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

- (i) is a lower grade;
- (ii) involves working fewer hours; and/or
- (iii) removes eligibility for penalties, loadings and the like.

(b) Period of salary maintenance

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

- (i) accepts another position within the salary maintenance period, and
- (ii) is paid in the other position an amount equal to or greater than the role that was made redundant.

(c) Preservation of accrued leave

An Affected Employee entitled to salary maintenance will have:

- (i) their long service leave and annual leave accruals preserved before redeployment. Specifically, the value of the leave immediately prior to redeployment will not be reduced as a result of redeployment; and
- (ii) their personal leave preserved in hours.

11.6 Relocation

(a) Employer to advise in writing of relocation

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

- (i) ensure the relocation is a Reasonable Distance, unless otherwise agreed;
- (ii) ensure that the Affected Employee is provided with information on the new location's amenities, layout and local operations prior to the relocation, and
- (iii) consult with the Union regarding the content of such information.

(b) Entitlement to relocation allowance

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

(c) Employee to provide written estimate

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

(d) Payment

- (i) The maximum relocation allowance payable by the Employer will be \$1900.00, paid as a lump sum.
- (ii) When considering the Affected Employee's estimate, the Employer may have regard to the Reasonable Distance
- (iii) In the event of a dispute about the Affected Employee's estimate it will be resolved under clause 12 – Dispute Resolution Procedure.

(e) Exceptions

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

(f) Fixed term employees not excluded

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

11.7 Employment terminates due to redundancy

The Victorian Government's policy with respect to public sector redundancy and the entitlements upon termination of employment as a result of redundancy are set out in the Public Sector Workplace Relations Policies 2015, as amended or replaced from time to time. The Victorian Government's policy applies to Employees but does not form part of this Agreement.

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

- (a) Where the Affected Employee's Employer secures a comparable role (as defined) with another Employer covered by this Agreement, which:
 - (i) is within a Reasonable Distance of the work site of the redundant position; and
 - (ii) provides continuity of service; and
 - (iii) where the comparable role results in a loss of income, salary maintenance at subclause 11.5 will apply; and
 - (iv) where relevant, consistent with the financial and other support provided to an internal redeployee;

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

12 Dispute Resolution Procedure

12.1 Resolution of disputes and grievances

- (a) For the purpose of this clause 12, a dispute includes a grievance.
- (b) This dispute resolution procedure will apply to any dispute arising in relation to:
 - (i) this Agreement;
 - (ii) the NES;
 - (iii) a request for flexible working arrangements; or
 - (iv) a request for an additional 12 months parental leave.
- (c) A party to the dispute may choose to be represented at any stage by a representative including a Union or employer organisation. A representative, including a Union or employer organisation on behalf of an Employer, may initiate a dispute.

12.2 Obligations

- (a) The parties to the dispute and their representatives must genuinely attempt to resolve the dispute through the processes set out in this clause and must cooperate to ensure that these processes are carried out expeditiously.
- (b) While the dispute resolution procedure is being conducted work will continue normally according to the usual practice that existed before the dispute, until the dispute is resolved.
- (c) This requirement does not apply where an Employee:
 - (i) has a reasonable concern about an imminent risk to his or her health or safety;
 - (ii) has advised the Employer of the concern; and
 - (iii) has not unreasonably failed to comply with a direction by the Employer to perform other available work that is safe and appropriate for the Employee to perform.
- (d) No party to a dispute or person covered by the Agreement will be prejudiced with respect to the resolution of the dispute by continuing work under this clause.

12.3 Dispute settlement facilitation

- (a) Where the chosen representative is another Employee of the Employer, that Employee will be released by the Employer from normal duties as is reasonably necessary to enable them to represent the Employee/s including:
 - (i) investigating the circumstances of the dispute; and
 - (ii) participating in the processes to resolve the dispute, including conciliation and arbitration.
- (b) An Employee who is part of the dispute will be released by the Employer from normal duties as is reasonably necessary to enable them to participate in this dispute settling procedure so long as it does not unduly affect the operations of the Employer.

12.4 Discussion of dispute at workplace

- (a) The parties will attempt to resolve the dispute at the workplace as follows:
 - (i) in the first instance by discussions between the Employee/s and the relevant supervisor; and
 - (ii) if the dispute is still unresolved, by discussions between the Employee/s and more senior levels of local management.
- (b) The discussions at subclause 12.4(a) will take place within fourteen days or such longer period as mutually agreed, save that agreement will not be unreasonably withheld.
- (c) If a dispute cannot be resolved at the workplace it may be referred by a party to the dispute or representative to the Commission for conciliation and, if the matter in dispute remains unresolved, arbitration.

12.5 Disputes of a collective character

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

12.6 Conciliation

- (a) Where a dispute is referred for conciliation, the Commission member will do everything the member deems right and proper to assist the parties to settle the dispute.
- (b) Conciliation before the Commission is complete when:
 - (i) the parties to the dispute agree that it is settled; or
 - (ii) the Commission member conducting the conciliation, either on their own motion or after an application by a party, is satisfied there is no likelihood that further conciliation will result in settlement within a reasonable period; or
 - (iii) the parties to the dispute inform the Commission member there is no likelihood the dispute will be settled and the member does not have substantial reason to refuse to regard conciliation as complete.

12.7 Arbitration

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

- (b) The Commission member that conciliated the dispute will not arbitrate the dispute if a party objects to the member doing so.
- (c) Subject to subclause 12.7(d) below, a decision of the Commission is binding upon the persons covered by this Agreement.
- (d) An appeal lies to a Full Bench of the Commission, with the leave of the Full Bench, against a determination of a single member of the Commission made pursuant to this clause.

12.8 Conduct of matters before the Commission

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

13 Discipline

13.1 Application

- (a) Where an Employer has concerns about:
 - (i) the conduct of an Employee; or
 - (ii) a performance issue that may constitute misconduct,
 the following procedure will apply.
- (b) There are two steps in a disciplinary process under this clause as follows:
 - (i) investigative procedure; and
 - (ii) disciplinary procedure.
- (c) An Employee will be provided a reasonable opportunity to be represented at any time (including by a Union) with respect to all matters set out in this clause.

13.2 Definitions

- (a) **Performance** means the manner in which the Employee fulfils his or her job requirements. The level of performance is determined by an Employee's knowledge, skills, qualifications, abilities and the requirements of the role.
- (b) **Conduct** means the manner in which the Employee behaviour impacts on their work.
- (c) **Misconduct** means an Employee's intentional or negligent failure to abide by or adhere to the standards of conduct expected by the Employer. A performance issue can be considered misconduct where, despite all reasonably practicable interventions by the Employer, the Employee is unable to fulfil all or part of their job requirements to a satisfactory level.
- (d) **Serious misconduct** is as defined under the Act and that is both wilful and deliberate. Currently the Act defines serious misconduct, in part, as:
 - (i) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;
 - (ii) conduct that causes serious and imminent risk to:
 - (A) the health or safety of a person; or
 - (B) the reputation, viability or profitability of the employer's business.

Conduct that is serious misconduct includes each of the following:

- (iii) the Employee, in the course of the Employee's employment, engaging in:
 - (A) theft; or
 - (B) fraud; or
 - (C) assault;
- (iv) the Employee being intoxicated at work;
- (v) the Employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.

Subclauses 13.2(d)(iii)-13.2(d)(v) do not apply if the Employee is able to show that, in the circumstances, the conduct engaged in by the Employee was not conduct that made employment in the period of notice unreasonable.

13.3 Investigative procedure

- (a) The purpose of an investigative procedure is to conclude whether, on balance, concerns regarding conduct or performance are well-founded and supported by evidence. An investigation procedure must be fair including proper regard to procedural fairness.
- (b) The Employer will:
 - (i) advise the Employee of the concerns and allegations in writing;
 - (ii) provide the Employee with any material which forms the basis of the concerns;
 - (iii) ensure the Employee is provided a reasonable opportunity to answer any concerns including a reasonable time to respond;
 - (iv) advise the Employee of their right to have a representative, including a Union representative;
 - (v) ensure that the reason for any interview is explained; and
 - (vi) take reasonable steps to investigate the Employee's response.

13.4 Disciplinary procedure

- (a) The disciplinary procedure applies if, following the investigation, the Employer reasonably considers that the Employee's conduct or performance may warrant disciplinary steps being taken.
- (b) The Employer will:
 - (i) notify the Employee in writing of the outcome of the investigation process, including the basis of any conclusion; and
 - (ii) meet with the Employee.
- (c) In considering whether to take disciplinary action, the Employer will consider:
 - (i) whether there is a valid reason related to the conduct or performance of the Employee arising from the investigation justifying disciplinary action;
 - (ii) whether the Employee knew or ought to have known that the conduct or performance was below acceptable standards; and
 - (iii) any explanation by the employee relating to conduct including any matters raised in mitigation.

13.5 Possible outcomes

- (a) Where it is determined that after following the procedures in this clause that disciplinary action is warranted, the Employer may take any of the following steps depending on the seriousness of the conduct or performance:
 - (i) counsel the Employee, with the counselling recorded on the Employee's personnel file;
 - (ii) give the Employee a first warning, which will be verbal and a record of the warning recorded on the Employee's personnel file;
 - (iii) give the Employee a second written warning in the event that the Employee has previously been given a first warning within the previous 12 months for that course of conduct;
 - (iv) give the Employee a final written warning in the event that the Employee has previously been given a second written warning within the preceding 18 month period for that course of conduct;
 - (v) terminate the Employee's employment on notice in the case of an employee who repeats a course of conduct for which a final warning was given in the preceding 18 months;
 - (vi) terminate the Employee's employment without notice where the conduct is serious misconduct within the meaning of the Act that is wilful and deliberate; or
 - (vii) as an alternative to subclause 13.5(a)(vi) above and in those circumstances, the Employer may issue the Employee with a final warning without following the steps in subclauses 13.5(a)(i) to 13.5(a)(iii) above.
- (b) The Employer's decision and a summary of its reasons will be notified to the Employee in writing.
- (c) If after any warning, a period of 12 or 18 months elapses (as relevant) without any further warning being required, all adverse reports relating to the warning must be removed from the Employee's personnel file.

A dispute over the clause is to be dealt with in accordance with the Dispute Resolution Procedure of this Agreement.

14 Individual Flexibility Arrangements

- 14.1** An Employer and Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
- (a) the agreement deals with arrangements about when work is performed;
 - (b) the arrangement meets the genuine needs of the Employer and Employee in relation the matter mentioned in clause 14.1(a); and
 - (c) the arrangement is genuinely agreed to by the Employer and Employee.

- 14.2** The Employer must ensure that the terms of the individual flexibility arrangement:
- (a) are about permitted matters under section 172 of the Act; and
 - (b) are not unlawful terms under section 194 of the Act; and
 - (c) result in the Employee being better off overall than the Employee would be if no arrangement was made.

- 14.3** The Employer must ensure that the individual flexibility arrangement:
- (a) is in writing; and
 - (b) includes the name of the Employer and Employee; and
 - (c) is signed by the Employer and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
 - (d) includes details of:
 - (i) the terms of the enterprise agreement the effect of which will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (e) states the day on which the arrangement commences.
- 14.4** The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 14.5** The Employer or Employee may terminate the individual flexibility arrangement:
- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the Employer and Employee agree in writing — at any time.

15 Flexible Working Arrangements

- 15.1** The Act entitles specified Employees to request flexible working arrangements in specified circumstances.
- 15.2** The specified Employees are:
- (a) full time or part Employees with at least 12 months continuous service; and
 - (b) long term casual Employees with a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.
- 15.3** The specified circumstances are if the Employee:
- (a) is the parent, or has responsibility for the care, of a child who is of school age or younger;
 - (b) is a carer within the meaning of the *Carer Recognition Act 2010* caring for someone who has a disability, a medical condition (including a terminal or chronic illness), a mental illness or is frail or aged;
 - (c) has a disability;
 - (d) is 55 or older;
 - (e) is experiencing violence from a member of the Employee's family; or
 - (f) provides care or support to a member of the Employee's immediate family, who requires care or support because the member is experiencing violence or abuse from the member's family.
- 15.4** Where a request for flexible work arrangements is made, an Employee or Employer is entitled to meet with the other party to discuss:
- (a) the request;

- (b) an alternative to the request; or
- (c) reasons for a refusal on reasonable business grounds.

15.5 The dispute resolution procedure in the Agreement will apply to any dispute / grievance arising in relation to a request for flexible working arrangements.

15.6 Other entitlements relevant to family violence can be found at clause 57 (Family Violence Leave).

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

16 Full-time employment

- 16.1** A full-time Biomedical Engineer is employed to work 38 hours per week or an average of 38 hours per week as specified in clause 42 – Hours of Work, as and when required by the Employer. Such Biomedical Engineer shall be entitled to the full weekly wage as prescribed by this Agreement irrespective of the number of hours worked not exceeding 38.
- 16.2** An Employer may employ a full-time Biomedical Engineer on either an ongoing or fixed term basis.

17 Part-time employment

- 17.1** Biomedical Engineers employed on a part-time basis shall be paid for hours worked, at an hourly rate equal to 1/38th of the weekly rate appropriate to the Biomedical Engineers classification. Biomedical Engineers employed under this subclause shall receive leave entitlements on a pro-rata basis.
- 17.2** The hours of work of part-time work shall be agreed upon between Employer and Biomedical Engineer and shall be confirmed in writing between the two parties. The hours of work may be varied by agreement.
- 17.3** An Employer may employ a part-time Biomedical Engineer on either an ongoing or fixed term basis.

18 Probationary Employment

This clause applies to the Royal Children's Hospital and the Royal Women's Hospital Only

- 18.1** All new Employees appointed to the Hospital shall be employed subject to a 6 month probationary period.
- 18.2** During the probationary period an Employee's employment may be terminated for a reason or reasons connected with the Employee's capacity or conduct.
- 18.3** During the probationary period such employment may be terminated by either party by the giving of two weeks notice.
- 18.4** Existing Employees of the Hospital appointed to a new position shall not be subject to probationary period provisions

19 Casual Employment

- 19.1** Employees may be engaged by the hour on a casual basis. Casuals may be employed to work in any classification.

- 19.2 Subject to the minimum engagement period, a casual employee's employment may be terminated without prior notice by either party.
- 19.3 The minimum engagement period for a casual employee is 3 hours.
- 19.4 Casual Employees will be paid for all work done on weekdays an amount equal to one thirty eighth (1/38th) of the weekly wage appropriate to the Employee's classification per hour plus 25 per cent and for all work done on Saturdays, Sundays and public holidays an amount equal to one thirty eighth (1/38th) of the weekly wage appropriate to the Employee's classification plus 75 per cent.
- 19.5 Overtime also applies to casual employees.
- 19.6 The hourly rate a casual staff member receives shall include a component paid in lieu of leave and public holiday entitlements.

20 Casual Conversion

- 20.1 Where a casual Employee has worked shifts on a regular and systematic basis over a period of 26 weeks, the Employer and the Employee recognise that the Employee may be more properly classified as part-time or full-time.
- 20.2 The Employee will not be considered rostered on a regular and systematic basis where these shifts are replacing an employee absence (including but not limited to parental leave, long service leave, workers compensation leave, personal leave) or flexible work arrangement.
- 20.3 Either the Employer or the Employee has the right to request in writing the conversion to full-time or part-time employment and that request will not be unreasonably refused by either party.
- 20.4 Where such a conversion occurs, the Employee will be provided with a Letter of Appointment setting out the revised employment arrangements, including any period/s of casual employment with the Employer.

21 Termination of Employment

- 21.1 Except where the conduct of the Biomedical Engineer justifies instant dismissal, at least four weeks' notice of termination of employment shall be given by either the Employer or the Biomedical Engineer, or four weeks' wages paid or forfeited as the case may be in lieu of such notice, except that the period of notice may be reduced by mutual agreement. A Biomedical Engineer who is over 45 years of age and has worked for two years or more shall be entitled to an additional week's notice.
- 21.2 Where an Employer has given notice to a Biomedical Engineer, the engineer shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the Biomedical Engineer after consultation with the Employer.
- 21.3 This clause 21 will not apply to casual Employees.

22 Transition to Retirement

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

- 22.2** Transition to retirement arrangements may be proposed and, where agreed, implemented as:
- (a) a flexible working arrangement (see clause 15 (Flexible Working Arrangements)),
 - (b) in writing between the parties, or
 - (c) any combination of the above.
- 22.3** A transition to retirement arrangement may include but is not limited to:
- (a) a reduction in their EFT;
 - (b) a job share arrangement;
 - (c) working in a position at a lower classification or rate of pay
- 22.4** The Employer will consider, and not unreasonably refuse, a request by an Employee who wishes to transition to retirement:
- (a) to use accrued Long Service Leave (LSL) or Annual Leave for the purpose of reducing the number of days worked per week while retaining their previous employment status; or
 - (b) be appointed to a role which that has a lower hourly rate of pay or hours (post transition role), in which case:
 - (i) the Employer will preserve the accrual of LSL at the time of reduction in salary or hours; and

where LSL is taken or paid out in lieu on termination, the Employee will be paid LSL hours at the applicable classification and grade, and at the preserved hours, prior to the post transition role until the preserved LSL hours are exhausted.

PART D- WAGES

23 Once off Lump Sum Payment

All Employees (excluding casual Employees) employed by the Employer as at 13 September 2018 will be eligible to receive a once-off lump sum payment of \$1,500 (pro-rata for part-time Employees).

24 Wage Adjustments

- 24.1 The minimum rates as specified in the previous enterprise agreements covering the Employers and the Employees will be increased by the following percentages:
- (a) 5% from the first full pay period commencing on or after 13 September 2018;
 - (b) 3% from the first full pay period commencing on or after 13 September 2019;
 - (c) 3% on the first full pay period commencing on or after 13 September 2020;
 - (d) 3% on the first full pay period commencing on or after 13 September 2021.
- 24.2 The wage rates to apply during the life of the Agreement are those set out in Appendix 2
- 24.3 All monetary based allowances (e.g. meal allowance) in this Agreement shall be adjusted by the same percentage amount and from the same dates as the percentage movement in wages specified in clause 24.1 of this Agreement.

25 Top of Band payment

- 25.1 **Top of Band payments for employees with progression opportunity based on vacancy (Class 2,3 or 4 only)**
- (a) In addition to the wage rates specified in the Agreement, an employee classified at the top level of his/her Class in Class 2,3 or 4 will be eligible for a Top of Band Payment of \$2000 subject to (b) below. A Top of Band Payment will be paid as an annual gross lump sum paid on the first full pay period on or after the anniversary date of their appointment to the highest pay point within their current class.
 - (b) To be eligible for a Top of Band Payment:
 - (i) The Employee must have been classified at the highest pay point for one full anniversary period;
 - (ii) The Employee must have given satisfactory performance over the preceding 12 months; and
 - (iii) Progression opportunity to the next Class must be based on vacancy only.

Example:

An Employee was appointed to Class 3 Year 3 on 1 March 2018. The Employee's anniversary date is 1 March 2019. On 1 March 2019, the Employee will be entitled to the Top of Band Payment provided that the Employee has given satisfactory performance between 1 March 2018 and 28 February 2019.

26 Peter MacCallum Cancer Centre Allowance

- 26.1** This clause only applies to Employees employed at Peter MacCallum Cancer Centre.
- 26.2** In addition to the wage set out at Appendix 2, an Employee will receive an additional 2.5% of the relevant weekly wage in recognition of the requirement to perform clinical work/radioactive/physicist support.
- 26.3** The allowance shall be paid pro rata for part time employees

27 Annualised Salaries (The Royal Children's Hospital only)

- 27.1** Any Employee or group of Employees may by agreement with their department head elect to annualise their rates of pay in accordance with the Employer's policy. The extent, to which various positions of this Agreement will apply, will be determined by the items annualised.

Where annualization occurs it will be subject to periodic review by the department head and will only continue on the basis of cost neutrality. Annualised rates shall not apply to long service leave payments.

In the event of under or over annualization the remedies the Employee and the department head will mutually agree on one of the following remedies

- (a) In the Event of over annualization
- (i) Increase exposure to hours of work that otherwise would have attracted penalties, shift allowances, loadings etc;
 - (ii) Overtime; or as a last resort; decrease the annualised rate.
- (b) In the event of under annualization:
- (i) Decreased exposure to hours of work that otherwise would have attracted penalties, shift allowances, loadings etc;
 - (ii) Time off in lieu;
 - (iii) One off additional payment;
 - (iv) Increase the annualised rate.

28 Payment of Salary

- 28.1** For Employees employed by health services other than the Royal Women's Hospital and Royal Children's Hospital, subject to any individual arrangement between an Employer and a Biomedical Engineer, salaries shall be paid no later than a Thursday following the end of the pay period.
- 28.2** For Employees employed by either the Royal Women's Hospital or the Royal Children's Hospital wages shall be paid no later than Wednesday following the end of the pay period, providing no unforeseen event outside the control of the Hospital frustrates the Hospital's ability to meet the requirements of this clause.
- 28.3** On or prior to the day the Employee shall state to each Biomedical Engineer in writing the amount of wages to which he/she is entitled, the amount of deductions there from, and the net amount being paid to him/her.
- 28.4** Payment will be made by electronic transfer direct into a bank or like account

- 28.5 Should an underpayment more than 5% of the Employee's fortnightly salary occur in the payment of the employee, the Employer agrees to correct an underpayment as soon as practicable.

29 Overpayment of Wages (Royal Children's Hospital and Royal Women's Hospital Only)

- 29.1 Should the error be an overpayment, the Employee will be notified in writing of the details of the error. The Hospital will correct the overpayment by fortnightly deduction from their pay, in a minimum instalment of 10% of their fortnightly salary or the total amount, until the full amount of the overpayment has been reimbursed to the Hospital.
- (a) This does not apply to errors of law.
 - (b) Where a single overpayment exceeds the Employee's normal four weekly salary, the hospital reserves the right to seek to have the overpayment repaid in more than 10% instalments.
 - (c) If the Employee satisfies the Hospital that he/she is unable to meet the repayment schedule, the Employee may apply to vary the payment schedule.

30 Access to Employee File

Upon request the Employee's personnel file will be available for the employee to view.

31 Superannuation

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

31.1 Definitions

In this clause:

- (a) **default fund** means the First State superannuation fund (or its successor) while it provides a "MySuper product" as defined by the Act.
- (b) **preferred superannuation fund** means a fund that meets the definition of a superannuation fund in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

31.2 Existing Employees

Where an Employee was employed prior to the commencement of this Agreement, the Employer will continue to make superannuation contributions to the Employee's current superannuation fund. An Employee may elect to have the Employee's contributions made to the Employee's preferred superannuation fund.

31.3 New Employees

The Employer will offer to make superannuation contributions on behalf of an Employee to:

- (a) the Employee's preferred superannuation fund;
- (b) HESTA (or successor); or

- (c) First State superannuation funds (or successor).

31.4 Where new Employee does not nominate fund

If the Employee does not nominate a fund, the Employer will pay the Employee's superannuation contributions to the default fund.

31.5 Calculation of superannuation contributions

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

- (a) ordinary time earnings as defined in the *Superannuation Guarantee (Administration) Act 1992 (Cth)* calculated on the Employee's pre salary packaging earnings, and
- (b) any additional amounts consistent with the trust deed of the superannuation fund.
- (c) any payment for a period of paid parental leave under subclauses 61.5(a)(i) or 61.5(a)(ii) from 13 September 2018.

32 Salary Packaging

32.1 An Employee may elect to salary package the current salary specified in [Appendix 2](#) in accordance with the Employer's policy.

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

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

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

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

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

33 Accident Make-up Pay

33.1 Entitlement to accident make-up pay

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

33.2 Definitions

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

- (i) In the case of an Employee with no current work capacity, a payment equal to the ordinary time earnings the Employee would ordinarily receive had the Employee been performing their normal duties and hours of work, less the amount of weekly compensation.
 - (ii) In the case of an Employee with a current work capacity, a payment equal to the ordinary time earnings the Employee would ordinarily receive, had the Employee been performing their normal duties and hours of work less the amount of weekly compensation and less the average amount the Employee is earning in suitable employment.
- (b) **Injury** under this clause has the same meaning as workers' compensation legislation and includes a disease contracted by an Employee in the course of the Employee's employment.
 - (c) **Ordinary time earnings** excludes additional remuneration by way of shift premiums, overtime payments, special rates or other similar payments.
 - (d) **Suitable Employment** for the purposes of this clause 33 has the same meaning as the definition in the WIRC Act.

33.3 **Maximum payment**

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

33.4 **Accident Make-Up Pay will not apply in some circumstances**

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

- (a) in respect of any injury during the first five normal working days of incapacity, except where the Employee contracts an infectious disease for which the Employee is entitled to receive workers compensation in which case accident make-up pay will apply from the first day of the incapacity;
- (b) to any incapacity occurring during the first two weeks of employment unless that incapacity continues beyond the first two weeks in which case accident make-up pay will apply only to the period of incapacity after the first two weeks;
- (c) during any period when the Employee fails to comply with the requirements of the WIRC Act with regard to examination by a medical practitioner;
- (d) where the injury for which the Employee is receiving weekly compensation payments is a pre-existing injury that work has contributed to by way of recurrence, aggravation, acceleration, exacerbation or deterioration, and the Employee failed to disclose the injury on engagement:
 - (i) following a request to do so by the Employer; and
 - (ii) the Employer providing the Employee details of the requirements of the position; and
 - (iii) where the Employee knew, or ought to have known, that the nature of the injury, may impact on the ability of the Employee to undertake the work;
- (e) where the injury subject to recurrence, aggravation or acceleration as provided under workers' compensation legislation or industrial diseases contracted by a gradual process, unless the Employee has been employed with the Employer at the time of the incapacity for a minimum period of one month;
- (f) where in accordance with the WIRC Act a medical practitioner provides information to an Employer of an Employee's fitness for work or specifies work for

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

- (g) when the claim has been ceased or redeemed in accordance with the WIRC Act;
- (h) in respect of any paid leave of absence.

33.5 Reduction of compensation

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

33.6 Termination of employment

- (a) Termination of Employment by the Employee

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

- (i) if an Employee with partial incapacity cannot obtain suitable employment from the Employer but such alternative employment is available with another Employer; and
- (ii) the Employee, if required, provides evidence to the Employer of the continuing payment of weekly compensation payments.

- (b) Termination of Employment by the Employer

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

33.7 Civil damage claims

- (a) An Employee receiving or who received accident make-up pay must advise the Employer of any action or claim the Employee may institute for damages. If requested, the Employee will provide an authority to the Employer entitling the Employer to a charge upon any money payable pursuant to any judgment or settlement on that injury.
- (b) Where an Employee obtains a judgment or settlement for damages in respect of an injury for which the Employee received accident make-up pay, the Employer's liability to pay accident make-up pay ceases from the date of such judgment or settlement where the damages are not reduced (in whole or part) by the accident make-up pay paid by the Employer. Where damages from a judgment or settlement are not reduced to take into account accident make-up pay paid by the Employer (in whole or part), the Employee must repay the Employer the accident make-up pay to the extent the damages were not reduced.
- (c) Where an Employee obtains a judgment or settlement for damages against a person other than the Employer in respect of an injury for which the Employee received accident make-up pay, the Employer's liability to pay accident make-up pay will cease from the date of such judgment or settlement where the damages are not reduced (in whole or part) by the amount of accident pay made by the Employer. The Employee must pay to her/his Employer any amount of accident pay already received in respect of that injury by which the judgment or settlement has not been so reduced.

PART E- ALLOWANCES AND REIMBURSEMENTS

34 Higher Qualifications Allowance

- 34.1** Where a Biomedical Engineer has a higher qualification which is relevant to the biomedical engineers position and duties they shall be paid the following allowances:
- (a) 4% for graduate certificate;
 - (b) 6.5% for graduate diploma;
 - (c) 7.5% for masters degree;
 - (d) 7.5% for MBA; and
 - (e) 10.0% for PhD or Doctorate of Engineering
- 34.2** The base rate of pay for the purposes of this clause shall be Biomedical Engineer, Grade 1 Year 3.

35 Shift Allowances

- 35.1** In addition to any rates prescribed elsewhere in this Agreement a Biomedical Engineer whose rostered hours of ordinary duty finish between 6:00pm and 8:00am or commence between 6:00pm and 6:30am shall be paid an amount equal to 2.5% of the rate applicable to first year of experience, Biomedical Engineer – Class 1 per rostered period of duty.
- 35.2** Provided that in the case of a Biomedical Engineer working on any rostered hours of ordinary duty finishing on the day after commencing duty or commencing after midnight and before 5:00am, he/she shall be paid for any such period of duty an amount equal to 4% of the rate applicable to first year of experience, Biomedical Engineer – Class 1 and provided further that in the case of a Biomedical Engineer permanently working on any such rostered hours of ordinary duty he/she shall be paid for any such period of duty an amount equal to 5% of the rate applicable to first year of experience, Biomedical Engineer – Class 1. Permanently working shall mean working any period in excess of four consecutive weeks.
- 35.3** Provided further that in the case of a Biomedical Engineer who changes from working on one shift to working on another shift the time of commencement of which differs by four hours or more from that of the first, he/she shall be paid an amount equal to 4% of the rate applicable to first year of experience, Biomedical Engineer – Class 1 on the occasion of each such change in addition to any amount payable under the preceding provisions of this clause.
- 35.4** The allowances payable pursuant to this clause shall be calculated to the nearest five cents, portions of a cent being disregarded.

36 Higher Duties Allowance

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

37 Travelling Allowance

Clauses 37.2 and 37.3 does not apply to Employees at the Royal Children's Hospital and the Royal Women's Hospital

- 37.1** Should a biomedical engineer be required to use his/her vehicle during normal working hours on Institution business, the engineer shall be paid allowances as determined from time to time by the Australian Taxation Office.
- 37.2** A Biomedical Engineer who is recalled to work outside the normal working hours and who uses his/her vehicle for transport to a place of work and return shall receive an allowance corresponding with the kilometres rate as determined and updated from time to time by the Australian Taxation Office. Any Biomedical Engineer who is recalled who does not use his/her vehicle shall be provided, at the expense of the Employer, with a hire car or taxi, for the inward and onward journeys.
- 37.3** A Biomedical Engineer on rostered shifts who is required to use public transport to journey to or from work between 9:00pm and 7:00am, shall be provided with transport (taxi or hire car) if no public transport is available for the inward and/or outward journey. The institution shall be responsible for the payment of such transport.
- 37.4** When an Employee is involved in travelling on duty, all reasonably incurred expenses in respect to fares, meals and accommodation will be met by the Employer on production of receipted account(s) or other evidence acceptable to the Employer.
- 37.5** Provided further that the Employee shall not be entitled to reimbursement for those expenses which exceed the mode of transport, meals or the standard of accommodation agreed for the purpose with the Employer.

38 Uniform and Protective Clothing Allowance

38.1 All Employees except Royal Children's Hospital and the Royal Women's Hospital

Where the Employer requires a Biomedical Engineer to wear a uniform or protective clothing, or where such uniform or protective clothing is necessary to protect the clothing or person of a Biomedical Engineer, the Employer must reimburse the Employee the cost of purchasing such uniform. The provisions of this clause do not apply where the uniform is paid for by the Employer.

38.2 Damaged Clothing

All Employees excluding the Royal Children's Hospital and the Royal Women's Hospital

Where a Biomedical Engineer in the course of his or her employment suffers any damage to or soiling of clothing or other personal effects the Employer must reimburse the Biomedical Engineer the cost of the replacement, repair or cleaning of such clothing or personal effects provided immediate notification is given of such damage or soiling.

This clause shall not apply in the case where the damage or soiling is occasioned by the negligence of the Biomedical Engineer.

38.3 Uniform Allowance

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

- (a) Employees who are required by the Hospital to wear uniforms shall be supplied with an adequate number of uniforms, overalls, caps or aprons appropriate to the occupation free of cost to the Employees.
- (b) Such uniforms, overalls, caps or aprons that are required to be work shall remain the property of the hospital and be laundered and maintained free of cost to the Employees.
- (c) In lieu of the provision of such caps and uniforms the Employer may, by agreement with the Employee, pay such Employee a uniform allowance at the rate of \$1.28 per day or part thereof on duty or \$6.40 per week whichever is the lesser amount. Where such Employee's uniforms are not laundered by or at the expense of the Hospital, the Employee shall be paid a laundry allowance of 30.0 cents per day or part thereof on duty of \$1.54 per week whichever is the lesser amount.
- (d) The uniform allowance but not the laundry allowance shall be paid during all absences on leave, except absences on long service leave and absences on personal/carers leave beyond 21 days. Where, prior to the taking of leave, an Employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave shall be the average of the allowance paid during the four weeks immediately preceding the taking of leave.
- (e) Rubber gloves and all necessary protective clothing and safety appliances shall be provided free of cost for the use of Employees and an adequate supply of same shall be maintained.

39 Childcare Costs

39.1 Where a Biomedical Engineer is required by the Employer to work outside their ordinary hours of work and where less than 24 hours' notice of the requirement to perform such overtime work has been given by the Employer, other than recall when the Biomedical Engineer is placed on-call, the Biomedical Engineer will be reimbursed for reasonable childcare expenses incurred.

39.2 Evidence of expenditure incurred by the Biomedical Engineer must be provided to the Employer as soon as practicable after working such overtime.

40 Telephone Allowance and Telephone Recall

40.1 Where an Employer requires a Biomedical Engineer to install and/or maintain a telephone for the purpose of being on-call, the Employer shall refund the installation costs and the subsequent six monthly rental charges on production of receipted accounts.

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

41 Meal Allowance

41.1 An Employee shall either be supplied with a meal or be paid an allowance as specified in clause 41.2 when:

- (a) overtime in excess of one hour is worked after the usual time of ceasing work for the day.
- (b) recalled to duty outside of usual working hours for a period in excess of two hours and when the time of such recall coincides with or over-runs normal hospital meal times.

41.2 The meal allowance shall be paid as follows:

First full pay period commencing on or after			
13-Sep-18	13-Sep-19	13-Sep-20	13-Sep-21
\$13.23	\$13.63	\$14.04	\$14.46

PART F – HOURS OF WORK AND RELATED MATTERS

42 Hours of Work

- 42.1 All Employers excluding the Royal Children’s Hospital and the Royal Women’s Hospital**
- 42.2** The hours for an ordinary week’s work shall be 38 hours, or be an average of 38 hours per week, in a two or four week period, or by mutual agreement, a five week period in the case of an Employee working ten hour shifts, and shall be worked:
- (a) in a week of five days in shifts of not more than seven hours and 36 minutes each; or
 - (b) by mutual agreement in a week of four days in shifts not more than ten hours each; or
 - (c) by mutual agreement, provided that the length of any ordinary shift shall not exceed ten hours.
- 42.3** Subject to the roster provisions 80 hours may be worked in any two consecutive weeks, but not more than 50 ordinary hours may be worked in any of such weeks.
- 42.4** With the exception of time occupied in having meals, the work of each shift shall be continuous.
- 42.5 The Royal Children’s Hospital and the Royal Women’s Hospital only:**
- 42.6** The hours of work for an ordinary week’s work shall be 38 hours, or be an average of 38 hours per week, in a two or four week cycle, and shall be worked:
- (a) by mutual agreement, provided that the length of any ordinary shift is not less than six hours and does not exceed 12 hours.
 - (b) In respect of part-time staff, overtime will apply where the Employee is requested to work in excess of ordinary hours for a day’s work.
- 42.7** The Employee must record all time worked on a Hospital timecard or other method determined by the Department.
- 42.8** In respect of part-time staff, overtime will apply where the Employee is requested to work in excess of ordinary hours for a day’s work.
- 42.9** By mutual agreement with the Hospital, an Employee who is required to work in excess of their ordinary hours for a day’s work shall be allowed to take time off in lieu at a single time, provided the time taken is within 28 days of the time being worked.
- 42.10** Any dispute arising from a proposed variation of work patterns may be referred to the dispute settlement procedures under the Agreement.

43 Accrued Days Off

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

- 43.2** An accrued day off may be deferred for a maximum of one month and only in exceptional circumstances and only with agreement between the Employer and Biomedical Engineer.

44 Meal Breaks

- 44.1** A meal interval of not less than 30 minutes and not more than 60 minutes shall be allowed during each shift in excess of five hours and shall not be counted as time worked.
- 44.2 The Royal Children's Hospital and the Royal Women's Hospital only:**
- (a) Each Employee on night duty who is not relieved from duty (an on-call) during the rostered meal interval shall be granted a meal interval of not less than 20 minutes to be commenced after completing three hours and not more than 5 hours of duty. Such time to be counted as time worked.
 - (b) The above crib time arrangement may also be adopted in any case where there is mutual agreement between the Employer and the Employee.

45 Tea Breaks

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

46 Rosters

- 46.1 All Employers except the Royal Children's Hospital and the Royal Women's Hospital**

A roster setting out a Biomedical Engineer's normal working hours, times of commencing duty, time off duty, times of ending duty and times "on-call" shall be kept posted or affixed in some conspicuous and readily accessible place. Except in the case of sickness or other emergency, the roster shall not be altered without at least three days' notice being given to the Biomedical Engineer affected by such alteration.

- 46.2 The Royal Children's Hospital and the Royal Women's Hospital only**

A roster of at least fourteen day's duration setting out Employee's daily ordinary working hours, commencing and finishing times and meal intervals shall be posted at least fourteen days before it comes into operation in each work location and where it may be readily seen by such Employees and their accredited representatives.

47 Special Rates (Saturday & Sunday)

- 47.1** Where Saturday or Sunday duties are required to be carried out in excess of the ordinary week's work, such duties shall be paid for at the rate of double time.
- 47.2** All rostered time of ordinary duty performed on a Saturday or on a Sunday shall be paid for at the rate of time and a half.
- 47.3** If the Saturday or Sunday duty involves duty in excess of the prescribed rostered hours, the excess period shall be paid for at the rate of double time for Saturday and Sunday.

48 Overtime (Other than the Royal Children's Hospital and the Royal Women's Hospital)

- 48.1** In accordance with the NES, an Employee may refuse to work additional hours if the request is unreasonable.
- 48.2** An Employer may require a Biomedical Engineer to work reasonable overtime and such Biomedical Engineer shall work overtime in accordance with such requirement.
- 48.3** **On authorised overtime shall be paid for and the following rates of overtime shall apply:**
- (a) In excess of the ordinary hours of work on any one day – time and a half for the first two hours and double time thereafter;
 - (b) Outside the spread of twelve hours from the commencement of the last rostered period of ordinary time – double time;
- 48.4** Except as provided for in clause 48.5 below, overtime shall be paid for and a Biomedical Engineer shall not be allowed to take time off in lieu thereof.
- 48.5** A biomedical Engineer – Class 4 and 5, may elect in lieu of payment of overtime, to take time off equivalent to the time worked at a time mutually agreed between the Employer and the Biomedical Engineer.
- 48.6** (The following clause does not apply to Employees at Barwon Health, Latrobe Regional Health and Western Health)
- Overtime shall be paid wherever work is performed in addition to the full-time rostered shift length for that work area. Where full time biomedical engineers in a particular work area work 8 hours per shift, overtime will be payable where a part time biomedical engineer in that same work area works beyond 8 hours in a shift. Where full time biomedical engineers work 10 hours per shift, overtime will be payable where a part-time biomedical engineer works beyond 10 hours.

49 Overtime (The Royal Children's Hospital and the Royal Women's Hospital only)

- 49.1** An Employer may require a Biomedical Engineer to work reasonable overtime at the appropriate overtime rate. When overtime work including recall (but excluding telephone recall) is necessary it should be arranged so that Employees have at least 10 consecutive hours off duty between that work and the next successive shifts.
- 49.2** In accordance with the NES, an Employee may refuse to work additional hours if the request is unreasonable.
- 49.3** Where a Biomedical Engineer works so much overtime or recall work such that they would not have had at least 10 consecutive hours off duty between overtime or recall work and their next succeeding rostered period of duty, the Biomedical Engineer shall be released after the completion of such overtime or recall worked until they have had 10 consecutive hours off duty, without loss of pay for rostered hours occurring during such absences.
- 49.4** If on the instructions of his or her Employer, a Biomedical Engineer resumes or continues work without having had 10 consecutive hours off duty they shall be paid at the rate of double time until they have been released from duty for such rest period and they shall then be entitled to 10 consecutive hours off duty without loss of pay for rostered hours occurring during such absences.

- 49.5** Only authorised overtime shall be paid for and the following rates of overtime shall apply:
- (a) In excess of the ordinary hours of work on any one day-time and a half for the first two hours and double time thereafter; and
 - (b) Provided that all overtime work outside the spread of 9 hours after commencing ordinary duty shall be paid at time and a half, and outside the spread of twelve hours double time.
- 49.6** An Employee may elect with the consent of the Hospital to take time off in lieu of payment for overtime at a time or times agreed with the Hospital. Overtime taken as time off in lieu of payment shall be taken at the ordinary time rate, the Hospital shall provide payment at the appropriate overtime rate as specified in this clause where time off in lieu has not been taken within 28 days of accrual.
- 49.7** For the purpose of this clause, in accruing or calculating payment of overtime, each period of overtime shall stand alone.
- 49.8** In the event of an Employee finishing any period of overtime at a time when reasonable means of transport are not available for the Employee to return to his or her place of residence the Hospital shall provide adequate transport free of cost to the Employee.
- 49.9** Provided that any Employee required to work more than six consecutive periods of ordinary duty without 24 hours off duty shall be paid for the seventh and any further consecutive periods of duty work at a rate of treble time until he or she has been given 24 hours off duty. For the purposes of this clause the working week shall commence at midnight on a Sunday.
- 49.10** Overtime shall be paid wherever work is performed in addition to the full-time rostered shift length for that work area. Where full-time Biomedical Engineers in a particular work area work 8 hours per shift, overtime will be payable where a part-time Biomedical Engineer in that same work area works beyond 8 hours in a shift. Where full-time Biomedical Engineers work 10 hours per shift, overtime will be payable where a part-time Biomedical Engineer works beyond 10 hours.

50 On-call/Recall Allowances

50.1 Recall – Overtime

- (a) An Employee who is recalled to work during an off duty period where that work is not continuous with the next succeeding rostered period of duty will be paid overtime for a minimum of three hours pay at the overtime rate as defined in clause 48 and 49 of this Agreement.
- (b) An Employee recalled to work will not be required to work the full three hours if the work to be performed is completed in a shorter period.
- (c) Clause 50.1(a) will not apply when overtime is continuous with completion or commencement of ordinary working time.

- 50.2** In lieu of receiving payment for overtime worked in accordance with this clause, Employees may, with the consent of the Employer, be allowed to take time off, for a period of time equivalent to the period worked in excess of ordinary rostered hours of duty, plus a period of time equivalent to the overtime penalty incurred. Such time in lieu shall be taken as mutually agreed between the Employer and the Employee, provided that the accrual of such leave shall not extend beyond a 28 day period. Where the leave is not taken within 28 days, such time shall be paid in accordance with this clause at the rate of pay which applied on the day the overtime was worked.

50.3 An Employer may require an Employee to work reasonable overtime at overtime rates and such an Employee will work overtime in accordance with such a requirement.

50.4 Rest Period after Recall - Overtime (including Saturday and Sunday)

- (a) When overtime work including recall work (but excluding telephone recall work) is necessary it should be arranged so that Employees have at least 10 consecutive hours off duty between that work and the next successive shift.
- (b) An Employee who works so much overtime or recall work (excluding telephone recall work) between the termination of her/his last previous rostered ordinary hours of duty and the commencement of her/his next succeeding rostered period of duty such that she/he would not have had at least 10 consecutive hours off duty between the completion of overtime/recall and the commencement of the next rostered shifts, then subject to this clause, she/he shall be released after completion of such overtime or recall work until she/he has had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.
- (c) If an Employee is required by the Employer to resume or to continue to work without having had 10 consecutive hours off duty she or he will be paid at the rate of double time until they have been released from duty for such rest period and she/he shall then be entitled to 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

50.5 Transport following overtime

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

50.6 Oncall/Recall

- (a) An Employee may be rostered to be "on call" (that is to be available to be recalled to duty in that period of time beyond the Employee's rostered hours of duty).
- (b) An Employee rostered to be on-call shall be paid the "on-call allowance" equal to 2.5% of the weekly rate for Biomedical Engineer – Class 1 Year 2, per 12 hour period or part thereof.
- (c) An Employee is entitled to four clear days in each fortnight of a four week roster cycle free of duty, including on-call/recall work.

50.7 Alternate On Call Allowance (Four Clear Days).

- (a) A Party may propose that all Employees at a particular campus be covered by an alternate arrangement to that in clause 50.6(c). The proposal may be implemented where the Employer, the Union (or other Employee nominated representative) and the majority of affected Biomedical Engineering staff genuinely agree.
- (b) Any arrangements adopted in accordance with this clause shall be recorded in writing and copies shall be provided to Employees to whom the arrangements apply.

50.8 Recall - Telephone Allowance

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

PART G – PUBLIC HOLIDAYS, LEAVE ARRANGEMENTS AND RELATED MATTERS

51 Public Holidays

51.1 A Biomedical Engineer shall be entitled to paid time off (or public holiday payments for time worked) in respect of public holidays in accordance with this clause.

51.2 The public holidays to which this clause applies are the days determined under Victorian law as public holidays in respect of the following occasions:

- (a) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and
- (b) Australia Day, Anzac Day, Queen's Birthday and Labour Day; and
- (c) Melbourne Cup Day or in lieu of Melbourne Cup, some other day as determined in a particular locality;
- (d) Any additional public holiday declared or prescribed in Victoria or a locality in respect of any occasion other than those set out in clause 51.2(a)– 51.2(c) above.

51.3 Public holiday benefits when substitute days/days in lieu are declared

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

51.4 Substitution by Agreement between the Employees and Employer

- (a) An Employer and Employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected Biomedical Engineers shall constitute agreement.
- (b) An agreement pursuant to clause 51.4(a) shall be recorded in writing and be available to every affected Biomedical Engineer.

51.5 Public holiday benefit for time worked on a public holiday

- (a) A Biomedical Engineer who works (excluding recall) on any day specified in clause 51.2 or 51.3 shall:
 - (i) be paid at the rate of time and a half in addition to the weekly wage prescribed herein for the time worked with a minimum of four hours wages; or
 - (ii) by mutual agreement be entitled to time off amounting to one and a half times the hours worked with a minimum of six hours time off without loss of pay; such time off shall be taken at a time mutually convenient to the hospital and the Biomedical Engineer within one month of the day on which the Biomedical Engineer worked – provided that where a Biomedical Engineer is entitled to a full working day off, such time off may be added to the Biomedical Engineer's annual leave by mutual consent.

- (b) A Biomedical Engineer who is recalled to duty and works on any day specified in clause 51.2 or 51.3 above shall be paid from the time of receiving the recall until the time of finishing such recall with a minimum of three hours payment for each such recall at double time and a half.

51.6 Public holiday benefit for when time is not worked on a public holiday

An Employee shall be entitled to a public holiday benefit for time not worked on a public holiday in accordance with the below clauses:

- (a) Where a public holiday is observed on a day a **full-time** or **part-time** Biomedical Engineer is **normally rostered to work**, but the Biomedical Engineer is **not required by the Employer to work**, the Biomedical Engineer is entitled to receive one day's ordinary pay based on the Employees ordinary hours of work for the relevant shift that would have fallen on such public holiday.
- (b) Subject to clause 51.6(d), where a public holiday is observed on a **full-time** Employee's **rostered day off** the full-time Biomedical Engineer shall be entitled to receive one day's pay in addition to the weekly wage or one day off at a time convenient to the hospital without loss of pay in lieu thereof.
- (c) Subject to clause 51.6(d), where a public holiday is observed on a **part-time** Employee's **rostered day off** the Employer must review the roster pattern of the Biomedical Engineer over the preceding six months. If the review shows that the Biomedical Engineer has worked over 50% or more on the days which the particular public holiday is observed, the Biomedical Engineer shall be entitled to receive a pro-rata payment according to the following formula.

Example:

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

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

- (d) Subject to clause 51.7 below if a public holiday is observed on a Saturday or Sunday then clause 51.6(b) and 51.6(c) will only apply for weekend workers. For the purpose of this clause a weekend worker is an Employee who regularly works ordinary hours on a Saturday or Sunday.
- (e) Rostered day off for a Biomedical Engineer for the purpose of this clause is a day in which the Employee is not rostered for duty for the relevant roster period. This is distinct from clause 51.6(a) in which an Employee is normally rostered but given the day off.

51.7 Easter Saturday for Monday to Friday Workers

In respect of Easter Saturday, a Biomedical Engineer who ordinarily works Monday to Friday only and who does not work on Easter Saturday, shall within four weeks following the date on which such holiday occurred be entitled to take one day off in lieu in respect of Easter Saturday, or where there is mutual consent the Biomedical Engineer may have one day added to his/her annual leave.

51.8 Substitution of Religious Public Holidays

Subject to the ongoing operational needs of the Employer an Employee may, with the prior agreement of the Employer, substitute a gazetted public holiday with a nominated religious holiday. Where a religious holiday is nominated to be a substitute and the Employee works on the gazetted holiday he or she will be paid at ordinary time. Applications are to be made at least one month in advance of the date on which the public holiday occurs.

52 Annual Leave

52.1 Period of leave

A full-time Biomedical Engineer will be granted 4 weeks annual leave at ordinary pay for each twelve month period. An Employee's entitlement to paid annual leave accrues progressively during a year of service according to the Employee's ordinary hours of work.

52.2 Annual Leave – Exclusive of public holidays

If the period during which an Employee takes paid annual leave includes a public holiday prescribed by clause 51 (Public Holidays), the Employee is taken not to be on paid annual leave on that public holiday.

52.3 Additional week of annual leave for being on-call 10 or more weekends

An Employee who is rostered on-call for more than four (4) hours on 10 or more weekends per annum will be entitled to an additional 38 hours annual leave (pro rata for part-time Employees). This entitlement is in addition to the Weekend Worker entitlement provided by subclause 52.9, but both entitlements cannot be claimed for the same bodies of work.

52.4 Leave to be taken

Except as provided for by clause 53 (Cashing Out of Annual Leave) payment shall not be made or accepted in lieu of annual leave.

52.5 Time of taking leave

- (a) To assist Biomedical Engineers in balancing their work and family responsibilities by agreement between the Employer and the Biomedical Engineer annual leave may be taken at any time within a period of 24 months from the date at which it falls due.
- (b) To assist Biomedical Engineers in balancing their work and family responsibilities by agreement between the Employer and the Biomedical Engineer may elect, with the consent of the Employer, to take annual leave in single periods not exceeding ten days in any calendar year at a time or times agreed between them.
- (c) The Employer must not unreasonably refuse to agree to a request by the Employee to take paid annual leave.

52.6 Leave allowed before the due date

- (a) An Employer may pay annual leave to a Biomedical Engineer before the right thereto has accrued. Where such leave is taken a further period of annual leave shall not commence to accrue until after the date at which the leave taken would have accrued had it not been taken.
- (b) Where leave has been granted to a Biomedical Engineer pursuant to this subclause before the right thereto has accrued and the Biomedical Engineer subsequently leaves or is discharged from the service of the Employer before

completing the twelve months continuous service in respect of which the leave was granted and the Biomedical Engineer subsequently leaves or is discharged from the service of the Employer and the sum paid by the Employer for the leave taken in advance exceeds the sum which the Employer is required to pay under clause 52.8, the Employer shall not be liable to make any payment to the Biomedical Engineer under clause 52.8 and shall be entitled to deduct the amount of such excess from remuneration payable to the Biomedical Engineer upon the termination of employment.

52.7 Payment for period of annual leave

Each Biomedical Engineer before going on leave shall be paid for the period of such leave provided the period is not less than one week.

52.8 Proportionate Leave

- (a) When the employment of a Biomedical Engineer ends, the Biomedical Engineer will be paid all accrued untaken annual leave to which they are entitled as at that date.
- (b) Nothing in this clause affects the obligations of an Employer to give or a Biomedical Engineer to take annual leave in accordance with this Agreement.

52.9 Weekend Worker

- (a) A Biomedical Engineer who is a shiftworker for the purposes of the National Employment Standards, is an Employee who is regularly rostered to work Sundays and public holidays.
- (b) A Biomedical Engineer who is a shiftworker for the purposes of the National Employment Standards, shall be entitled to one additional week's annual leave, in accordance with the Act.
- (c) **Full-Time Biomedical Engineer ONLY**
 - (i) A full-time Biomedical Engineer required to work and who works ordinary hours as prescribed under clause 42 (Hours of Work) on weekdays and on weekends throughout the qualifying twelve month period of service shall be entitled to 38 working hours additional leave.
 - (ii) A full-time Biomedical Engineer with twelve months continuous service who works ordinary hours on weekdays and on weekends, for part of the qualifying twelve month period shall have the leave prescribed in clause 52.1 increased by 3 hours 48 minutes for each month during which engaged as aforesaid.
 - (iii) A full-time Biomedical Engineer so engaged for the part of the qualifying twelve month period whose employment is terminated shall receive in addition to other annual leave due a pro-rata payment based on the amount payable under clause 52.9(c) for the full-qualifying twelve month period and the period so engaged.
 - (iv) This subclause shall not apply to any weekend on which the Biomedical Engineer works four hours or less.
- (d) **Part-time Biomedical Engineers Only – Sunday Worker**
 - (i) For the purposes of this Agreement, Sunday worker shall mean any Biomedical Engineer who in any one year of employment works a portion of his/her ordinary hours on a Sunday.
 - (ii) A Sunday worker who works on ten or more Sundays during the yearly period of which his/her leave accrues shall be allowed 38 working hours

leave additional to the leave herein before prescribed. This subclause shall not apply to any Sunday on which the Biomedical Engineer works four hours or less.

(e) No duplication of entitlements

For the avoidance of doubt, a shiftworker (as described in clause 52.9(a)) who is also an Employee as defined in either of clauses 52.9(c) or 52.9(d), will not be entitled to additional leave under clause 52.9(c) or 52.9(d).

52.10 Other periods of leave during annual leave

- (a) If a period during which a Biomedical Engineer takes paid annual leave includes a period of any other leave (other than unpaid parental leave) under Part 2-2 of the Act (the National Employment Standards), or a period of absence from employment under Division 8 of Part 2-2 of the Act (which deals with community services leave), the Biomedical Engineer is taken not to be on paid annual leave for the period of that other leave or absence.
- (b) If the Employer so requires, the Biomedical Engineer must give the Employer evidence that would satisfy a reasonable person that the other leave taken is for a reason specified in clause 55 (Personal/Carers Leave) or clause 58 (Compassionate Leave) of this Agreement, as the case may be. A Biomedical Engineer is not entitled to take leave under clause 55 or clause 58 unless he or she complies with any such requirement. Where a Biomedical Engineer complies with these provision the number of days specified in the required evidence shall be deducted from any personal/carer's leave entitlement standing to the Biomedical Engineer's credit, and shall be re-credited to his/her annual leave entitlement.
- (c) The amount of annual leave loading received for any period of annual leave converted to any other form of leave in accordance with clause 52.10(a) shall be deducted from any future entitlement to annual leave loading, or if the Biomedical Engineer, resigns, from termination pay.

52.11 Annual Leave loading

- (a) A loading of 17.5% shall be paid at the time leave is taken except when the Biomedical Engineer is in receipt of a weekly wage in excess of the rate for a Biomedical Engineer – Class 4 – 1st year and further provided that where the wage of a Biomedical Engineer is in excess of the rate for a Biomedical Engineer – Class 4 1st year per week, the 17.5% loading shall be replaced by and payable by the amount equal to 17.5% of the rate for a Biomedical Engineer – Class 4 – 1st year of experience.
- (b) The loading calculated according to clause 52.11(a) shall be payable on proportionate leave paid on termination and calculated according to clause 52.8.

53 Cashing out of Annual Leave

53.1 Subject to clause 53.2 below, where a Biomedical Engineer has accrued annual leave in excess of eight (8) weeks then by mutual written agreement between the Biomedical Engineer and the Employer, the Biomedical Engineer may cash out some of the annual leave (and annual leave loading as applicable) due to the Biomedical Engineer as a one off cash payment. Superannuation contributions will be paid by the Employer in respect of the period of annual leave to be paid out.

53.2 Cashing out of accrued annual leave in accordance with this clause is subject to:

- (a) Paid annual leave must not be cashed out if the cashing out would result in the Employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and
- (b) Each cashing out of a particular amount of paid annual leave must be by separate agreement in writing between the Employer and Employee; and
- (c) The Employee must be paid at least the full amount that would have been payable to the Employee had the Employee taken the leave that the Employee has foregone.

54 Purchased Leave

- 54.1** Notwithstanding any other provision of this Agreement, an Employee may, with the agreement of the Employer, work less than 52 weeks per year. Access to this entitlement may only be granted on application from an Employee and cannot be required as a precondition for employment.
- 54.2** Where the Employer and a Biomedical Engineer agree to a reduction in the number of working weeks under clause 54.1 above the Biomedical Engineer will receive purchased annual leave as follows:
- | | |
|-------------|-------------------------|
| 48/52 weeks | 4 weeks purchased leave |
| 49/52 weeks | 3 weeks purchased leave |
| 50/52 weeks | 2 weeks purchased leave |
| 51/52 weeks | 1 weeks purchased leave |
- 54.3** The Employee will receive a reduced salary equal to the period worked (for example, 48 weeks, 49 weeks, 50 weeks, 51 weeks) which will be spread over a 52 week period.
- 54.4** Accrual of personal/carers leave and long service leave by the Biomedical Engineer shall remain unchanged.

55 Personal/Carer's Leave

- 55.1** Biomedical Engineers will advise the Employer of their intention to take personal/carers leave prior to the commencement of their rostered shift, unless impractical to do so.
- 55.2** The provisions of this clause apply to full-time and regular part-time Employees. See clause 55.11 for casual Employees' entitlements.
- 55.3** Amount of paid personal/carers leave
- (a) Paid personal/carers leave will be available to an Employee when they are absent because of:
 - (i) personal illness or injury; or
 - (ii) personal illness or injury of an Immediate Family or household member who requires the Employee's care or support; or
 - (iii) an unexpected emergency affecting an Immediate Family or household member; or
 - (iv) the requirement to provide ongoing care and attention to another person who is wholly or substantially dependent on the Employee, provided that the care and attention is not wholly or substantially on a commercial basis.

- (b) The amount of leave a Biomedical Engineer is entitled to depends on how long the Biomedical Engineer has worked for the Employer and accrues as follows:
 - (i) During the first year of service – 7.6 hours for each month of service up to 91.2 hours;
 - (ii) During the second, third and fourth years of service – 106.4 hours will be available;
 - (iii) In the fifth and subsequent years of service – 159.6 hours will be available.
- (c) An Employee's entitlement accrues progressively during a year of service according to the Employee's ordinary hours of work, and unused personal/carer's leave accumulates from year to year.
- (d) The entitlement for a part-time Biomedical Engineer accrues on a pro-rata basis.

55.4 Use of accumulated personal/carer's leave

An Employee is entitled to use accumulated personal/carer's leave for the purposes of this clause where the current year's personal/carer's leave entitlement has been exhausted.

55.5 Notice requirements

A Biomedical Engineer must give notice:

- (a) As soon as reasonably practicable and during the ordinary hours of the first duty as far as practicable state the nature of the injury, illness or emergency and the estimated duration of the absence. If it is not reasonably practicable to inform the Employer during the ordinary hours of the first day or shift of such absence, the Biomedical Engineer will inform the Employer within 24 hours of such absence.
- (b) When taking leave to care for members of their Immediate Family or household who are sick and require care and support or who require care due to an unexpected emergency, the notice must include:
 - (i) The name of the person requiring such care and support and their relationship to the Biomedical Engineer;
 - (ii) The reasons for taking such leave; and
 - (iii) The estimated length of absence.

55.6 Evidence supporting the claim

- (a) When taking leave for personal illness or injury, the Biomedical Engineer must, if required by the Employer, establish by production of evidence that would satisfy a reasonable person that the leave taken is for a reason specified in clause 55.3(a) of this Agreement and that the Biomedical Engineer was unable to work because of injury or personal illness.
- (b) When taking leave to care for members of their Immediate Family or household who are sick and require care and support, the Biomedical Engineer must, if required by the Employer establish by production of evidence that would satisfy a reasonable person that the leave taken is for a reason specified in clause 55.3(a) of this Agreement, and that such a reason requires care by the Biomedical Engineer.
- (c) When taking leave to care for members of their Immediate Family or household who are sick and require care due to an unexpected emergency, the Biomedical Engineer must, if required by the Employer, establish by production of evidence that would satisfy a reasonable person that the leave taken is for a reason

specified in clause 55.3(a) of this Agreement, and that such a reason requires care by the Biomedical Engineer.

- (d) The following subclauses apply to Employees at the Royal Children's Hospital and the Royal Women's Hospital only:
- (i) For the purposes of providing expedient remuneration for personal/carers leave entitlement, certification of an Employee's personal leave, from the Employee's department head will be acceptable evidence under this clause 55.6.
 - (ii) A statutory declaration shall not be sufficient evidence for an Employee to obtain personal leave. In the case of carers leave, to satisfy the Head of Department of the entitlement to carer's leave an Employee may be required to submit a Statutory Declaration. Such statutory Declaration, if retained by the Hospital, will be retained only as a confidential record and for not more than the year of the entitlement to which each relates.

55.7 Single day absences (Excluding Employees at the Royal Children's Hospital and the Royal Women's Hospital)

A Biomedical Engineer may be absent through personal illness for one day, without furnishing evidence of such sickness, on not more than three occasions in any one year of service, except that where a Biomedical Engineer is rostered to work on a public holiday and fails to do so through sickness, they must furnish evidence of such illness within three days of their return to work.

55.8 Absences without documentary evidence (Employees at the Royal Children's Hospital and the Royal Women's Hospital only)

- (a) A Biomedical Engineer may be absent on six (6) days In any one year (either as single days or as two days at a time) without having to provide evidence to the hospital.
- (b) If the Employee Is not absent as provided in clause 55.8 above, she or he will be credited with one (1) day of annual leave for every two (2) days of personal leave not taken and the Employee' sick leave balance shall be reduced in a proportion of two to one, for each additional days leave so credited. However, if the Employee advises the Employer (in writing) not less than four (4) weeks prior to the conclusion of any one year, he/she may elect to retain the unused sick leave as accrued sick leave entitlements.

55.9 Absences on a public holiday

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

55.10 Unpaid carer's leave

Where an Employee has exhausted all paid personal/carers' leave entitlements, he/she is entitled to take unpaid carer's leave to provide care or support in the circumstances outlines in clause 55.3(a)(ii), clause 55.3(a)(iii) and clause 55.3(a)(iv). The Employer and the Employee will agree on the period. In the absence of agreement, the Employee is entitled to take up to two (2) days' unpaid carer's leave per occasion.

55.11 Casual Employees – Caring responsibilities

- (a) Casual Employees are entitled to be unavailable to attend work or to leave work If they need to care for members of their Immediate Family or household who are

sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

- (b) The Employer and Employee will agree on the period for which the Employee will be entitled to be unavailable to attend work. In the absence of agreement, the Employee is entitled to not be available to attend work for up to two (2) days per occasion. The casual Employee is not entitled to any payment for the period of non-attendance.
- (c) The Employer will require the casual Employee to provide evidence that would satisfy a reasonable person that the leave taken is for a reason specified in clause 55.3(a) of this Agreement to support the taking of this leave.

55.12 Transfer between hospitals (Employees at the Royal Children's Hospital and the Royal Women's Hospital only)

- (a) Where a Biomedical Engineer is and has been in the service of an Institution or Statutory Body recognised under the Nurses (Victorian Health Services) Award 2000 accumulated sick leave to his or her credit up to a maximum of 180 days shall be credited to such Employee in his or her new employment. The hospital may require the Biomedical Engineer to produce a written statement from their previous Employer specifying the amount of accumulated personal/carer's leave at the time of leaving that previous employment.
- (b) Provided that in respect of any period of absence from employment between engagement with one Employer and another or re-engagement with the same Employer, continuity of employment shall be deemed to be unbroken provided such period of absence does not exceed five weeks in addition to the total period of annual leave, long service leave and/or personal/carers leave which the Employee actually receives on termination or for which he or she is paid in lieu.
- (c) Provided further that where an Employee for the sole purpose of undertaking a course of study related to his/her Employer absent without pay for up to but not exceeding 52 weeks, such absences shall not be deemed to have broken continuity of service but shall not be counted in aggregating service for the purpose of establishing entitlement to sick leave portability.
- (d) Additional definitions
 - (i) For the purpose of this clause "day" means the number of hours in a shift that an Employee is ordinarily rosters to work and "days" has a corresponding meaning.
 - (ii) For the purpose of this clause "in any one year" shall mean the completion of the pay period after a date to be fixed by the Hospital.

55.13 Transfer between hospitals (Excluding Employees at the Royal Children's Hospital and the Royal Women's Hospital)

- (a) Where a Biomedical Engineer transfers to another hospital specified in this clause, accumulated personal/carer's leave to their credit up to a maximum of 2128 hours shall be credited to them in their new employment as accumulated personal/carer's leave. The hospital may require the Biomedical Engineer to produce a written statement from their previous Employer specifying the amount of accumulated personal/carer's leave at the time of leaving that previous employment.
- (b) The Specified Hospitals are:
 - (i) Albury Wodonga Health (Wodonga Hospital);
 - (ii) Alfred Health;

- (iii) Austin Health;
- (iv) Barwon Health;
- (v) Eastern Health;
- (vi) Goulburn Valley Health;
- (vii) Latrobe Regional Health;
- (viii) Melbourne Health;
- (ix) Mercy Public Hospitals Inc;
- (x) Northern Health
- (xi) Peter MacCallum Cancer Centre;
- (xii) Royal Children's Hospital
- (xiii) Royal Women's Hospital;
- (xiv) South West Heathcare;
- (xv) Monash Health;
- (xvi) Western Health.

56 Fitness for Work

56.1 Fit for Work

- (a) The Employer is responsible for providing a workplace that is safe and without risk to health for Employees, so far as is reasonably practicable.
- (b) Each Employee is responsible for ensuring that they are fit to perform their duties without risk to the safety, health and well-being of themselves and others within the workplace. This responsibility includes compliance with reasonable measures put in place by the Employer and any related occupational health and safety requirements.
- (c) In the event the Employee's manager forms a reasonable belief as defined at subclause 56.1(d) below that an Employee may be unfit to perform their duties, the manager will discuss their concerns with the Employee in a timely manner to promote physical, mental and emotional health so that employees can safely undertake and sustain work.
- (d) In this clause **reasonable belief** means a belief based on sufficient evidence that supports a conclusion on the balance of probabilities.
- (e) In this clause treating medical practitioner may, where relevant, also include programs such as the Nursing and Midwifery Health Program Victoria, or a psychologist.
- (f) The Employer will:
 - (i) take all reasonable steps to give the Employee an opportunity to answer any concerns;
 - (ii) recognise the Employee's right to have a representative, including a Union representative, at any time when meeting with the Employer;
 - (iii) genuinely consider the Employee's response with a view to promoting physical, mental and emotional health so that employees can safely undertake and sustain work; and

- (iv) take these responses into account in considering whether reasonable adjustments can be made in order that the employee can safely undertake and sustain work.
- (g) Where, after discussion with the Employee, the Employer continues to have a reasonable belief that the Employee is unfit to perform the duties, the Employer may request the Employee's consent to obtain a report from the Employee's treating medical practitioner regarding the Employee's fitness for work. The Employee will advise the Employer of the Employee's treating medical practitioner, and the Employer will provide to the Employee, in writing, the concerns that form the basis of the reasonable belief to assist and a copy of any correspondence to the Employee's treating medical practitioner.
- (h) The Employee will provide a copy of the report to the Employer.
- (i) The Employer and Employee will meet to discuss any report.
- (j) If, on receipt of the report, the Employer continues to have a reasonable belief that the Employee is unfit for duty, or the Employee does not provide a report from the treating medical practitioner, the Employer may require the Employee to attend an independent medical practitioner.
- (k) Where the Employee attends a medical practitioner under either subclauses 56.1(g) or 56.1(j) above:
 - (i) the Employee will be provided with a copy of any correspondence sent to the medical practitioner and any resulting report;
 - (ii) the Employer will pay for the cost of the appointment and report.
- (l) Nothing in this clause prevents an Employer from taking any reasonable step to ensure a safe work environment.

56.2 Reasonable Adjustments

- (a) Where Employees have a disability (whether permanent or temporary) the Employer is required to make reasonable adjustments to enable the Employee to continue to perform their duties, subject to subclause 56.2(b) below.
- (b) An Employer is not required to make reasonable adjustments if the Employee could not or cannot adequately perform the genuine and reasonable requirements of the employment even after the adjustments are made.
- (c) **Definitions**
 - (i) **Disability** has the same meaning as section 4 of the EO Act and includes:
 - (A) total or partial loss of a bodily function; or
 - (B) presence in the body of organisms that may cause disease;
 - (C) total or partial loss of a part of the body; or
 - (D) malfunction of a part of the body including a mental or psychological disease or disorder or condition or disorder that results in a person learning more slowly than those without the condition or disorder.
 - (ii) **Reasonable adjustments** has the same meaning as section 20 of the EO Act and requires consideration of all relevant facts and circumstances including:
 - (A) the employee's circumstances, including the nature of the disability;
 - (B) the nature of the Employee's role;

- (C) the nature of the adjustment required to accommodate the Employee's disability;
- (D) the financial circumstances of the Employer;
- (E) the size and nature of the workplace and the Employer's business;
- (F) the effect on the workplace and the Employer's business of making the adjustment including the financial impact, the number of persons who would benefit or be disadvantaged and the impact of efficiency and productivity;
- (G) the consequences for the Employer in making the adjustment,
- (H) the consequences for the Employee in not making the adjustment.

57 Family Violence Leave

NOTE: Family member is defined in section 8 of the Family Violence Protection Act 2008 (Vic) and is broader than the definition of immediate family in clause 4 (Definitions).

57.1 General Principle

- (a) Each Employer recognises that Employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. Therefore, each Employer is committed to providing support to staff that experience family violence.
- (b) Leave for family violence purposes is available to employees who are experiencing family violence and also to allow them to be absent from the workplace to attend counselling appointments, medical appointments, legal proceedings or appointments with a legal practitioner and other activities related to, and as a consequence of, family violence.

57.2 Definition of Family Violence

For the purposes of this clause, family violence is as defined by the *Family Violence Protection Act 2008 (Vic)* which defines family violence at section 5, in part, as follows:

- (a) behaviour by a person towards a family member of that person if that behaviour:
 - (i) is physically or sexually abusive; or
 - (ii) is emotionally or psychologically abusive; or
 - (iii) is economically abusive; or
 - (iv) is threatening; or
 - (v) is coercive; or
 - (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or
- (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in subclause (a) above.

57.3 Eligibility

- (a) Paid leave for family violence purposes is available to all Employees with the exception of casual Employees.

- (b) Casual Employees are entitled to access leave without pay for family violence purposes.

57.4 General Measures

- (a) Evidence of family violence may be required and can be in the form an agreed document issued by the Police Service, a Court, a registered health practitioner, a Family Violence Support Service, district nurse, maternal and child health nurse or Lawyer. A signed statutory declaration can also be offered as evidence.
- (b) All personal information concerning family violence will be kept confidential in line with the Employer's policies and relevant legislation. No information will be kept on an Employee's personnel file without their express written permission.
- (c) No adverse action will be taken against an Employee if their attendance or performance at work suffers as a result of experiencing family violence.
- (d) The Employer will identify contact/s within the workplace who will be trained in family violence and associated privacy issues. The Employer will advertise the name of any Family Violence contacts within the workplace.
- (e) An Employee experiencing family violence may raise the issue with their immediate supervisor, Family Violence contacts, union delegate or nominated Human Resources contact. The immediate supervisor may seek advice from Human Resources if the Employee chooses not to see the Human Resources or Family Violence contact.
- (f) Where requested by an Employee, the Human Resources contact will liaise with the Employee's manager on the Employee's behalf, and will make a recommendation on the most appropriate form of support to provide in accordance with clause 57.5 and clause 57.6.
- (g) The Employer will develop guidelines to supplement this clause and which details the appropriate action to be taken in the event that an Employee reports family violence.

57.5 Leave

- (a) An Employee experiencing family violence will have access to 20 days per year of paid special leave (pro rata for part time Employees) following an event of family violence and for related purposes such as counselling appointments, medical appointments, legal proceedings or appointments with a legal practitioner and other activities related to, and as a consequence of, family violence (this leave is not cumulative but if the leave is exhausted consideration will be given to providing additional leave). This leave will be in addition to existing leave entitlements and may be taken as consecutive or single days or as a fraction of a day and can be taken without prior approval.
- (b) An Employee who supports a person experiencing family violence may utilise their personal leave entitlement to accompany them to court, to hospital, or to care for children. The Employer may require evidence consistent with subclause 57.4(a) from an Employee seeking to utilise their personal/carer's leave entitlement.

57.6 Individual Support

- (a) In order to provide support to an Employee experiencing family violence and to provide a safe work environment to all Employees, the Employer will approve any reasonable request from an Employee experiencing family violence for:
 - (i) temporary or ongoing changes to their span of hours or pattern or hours and/or shift patterns;

- (ii) temporary or ongoing job redesign or changes to duties;
 - (iii) temporary or ongoing relocation to suitable employment;
 - (iv) a change to their telephone number or email address to avoid harassing contact;
 - (v) any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.
- (b) Any changes to an Employee's role should be reviewed at agreed periods. When an Employee is no longer experiencing family violence, the terms and conditions of employment may revert back to the terms and conditions applicable to the Employee's substantive position.
 - (c) An Employee experiencing family violence will be offered access to the Employee Assistance Program (EAP) and/or other available local employee support resources. The EAP will include professionals trained specifically in family violence.
 - (d) An Employee that discloses that they are experiencing family violence will be given information regarding current support services.

58 Compassionate Leave

58.1 Compassionate leave – Full and Part Time Employees

- (a) Employees are entitled to two days compassionate leave on each occasion, when a member of the Employee's Immediate Family or member of the Employee's household:
 - (i) contracts or develops a personal illness that poses a serious threat to his or her life;
 - (ii) sustains a personal injury that poses a serious threat to his/her life; or
 - (iii) dies.

Where such leave is taken:

 - (iv) to spend time with the member of the Employee's Immediate Family or household who has contracted or developed the personal illness or sustained the injury referred to above; or
 - (v) after the death of the member of the Employee's Immediate Family or household.
- (b) Any unused portion of compassionate leave will not accrue from year to year and will not be paid out on termination.
- (c) Such leave does not have to be taken consecutively.
- (d) An Employee may take unpaid compassionate leave by agreement with the Employer.
- (e) The organisation will require the Employee to provide evidence that would satisfy a reasonable person that the leave taken is for a reason specified in clause 58.1(a) of this Agreement to support the taking of compassionate leave.

58.2 Compassionate Leave for Casual Employees

- (a) Casual Employees are entitled to be unavailable to attend work or to leave work, if a member of the Employee's Immediate Family or a member of the Employee's household:

- (i) contracts or develops a personal illness that poses a serious threat to his or her life;
 - (ii) sustains a personal injury that poses a serious threat to his/her life; or
 - (iii) dies.
- (b) The Employer and the Employee will agree on the period for which the Employee will be entitled to be unavailable to attend work. In the absence of agreement, the Employee is entitled to not be available to attend work for two (2) days per occasion. The casual Employee is not entitled to any payment for the period of non-attendance.
- (c) The Employer will require the casual Employee to provide satisfactory evidence to support the taking of this leave.

59 Pre-Natal Leave

- 59.1** An Employee required to attend pre-natal appointments or parenting classes that are only available or can only be attended during the Employee's ordinary rostered shift may, subject to the provision of satisfactory evidence of attendance, access his or her personal leave credit.
- 59.2** The Employee must give the Employer prior notice of the Employee's intention to take such leave.

60 Pre-Adoption Leave

- 60.1** An Employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure.
- 60.2** The Employee and the Employer should agree on the length of the unpaid leave.
- 60.3** Where agreement cannot be reached, the Employee is entitled to take up to two days unpaid leave.
- 60.4** Where paid leave is available to the Employee, the Employer may require the Employee to take such leave instead.

61 Parental Leave

61.1 Structure of clause

This clause is structured as follows:

- (a) Definitions: subclause 61.2
- (b) Long parental leave – unpaid: subclause 61.3
- (c) Short parental leave – unpaid: subclause 61.4
- (d) Paid parental leave: subclause 61.5
- (e) Notice and evidence requirements: subclause 61.6
- (f) Parental leave associated with the birth of a Child – additional provisions: subclause 61.7
- (g) Unpaid pre-adoption leave: subclause 61.8

- (h) Where placement does not proceed or continue: subclause 61.9
- (i) Special maternity leave: subclause 61.10
- (j) Variation of period of unpaid parental leave up to 12 months: subclause 61.10
- (k) Right to request extension of period of unpaid parental leave beyond 12 months: subclause 61.12
- (l) Parental leave and other entitlements: subclause 61.13
- (m) Transfer to a safe job: subclause 61.14
- (n) Returning to work after a period of parental leave: subclause 61.15
- (o) Replacement Employees: subclause 61.16
- (p) Communication during parental leave – organisational change: subclause 61.17
- (q) Keeping in touch days: subclause 61.18

Other provisions associated with parental leave are also included in this Agreement. Specifically, prenatal leave at clause 48, flexible working arrangements which includes the right to request to return from parental leave on a part time basis at clause 61.15, leave to attend interviews and examinations relevant to adoption leave (pre-adoption leave) at clause 60 and breastfeeding at clause 62.

61.2 Definitions

For the purposes of this clause:

- (a) **Child** means:
 - (i) in relation to birth-related leave, a child (or children from a multiple birth) of the Eligible Employee or the Eligible Employee's Spouse; or
 - (ii) in relation to adoption-related leave, a child (or children) under 16 (as at the day of placement or expected day of placement) who is placed or who is to be placed with the Eligible Employee for the purposes of adoption, other than a child or step-child of the Eligible Employee or of the Spouse of the Eligible Employee or a child who has previously lived continuously with the Eligible Employee for a period of six months or more (**Adopted Child**).
- (b) **Continuous Service** includes continuous service with one and the same Employer or continuous service with more than one Employer including Institutions or Statutory Bodies (as defined at subclause 63.6), and includes any period of employment that would count as service under the Act.
- (c) **Eligible Casual Employee** means an Employee employed by the Employer in casual employment on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months and who has, but for the birth or expected birth of a Child or the decision to adopt a Child, a reasonable expectation of continuing engagement by the Employer on a regular and systematic basis.
- (d) **Eligible Employee** for the purposes of this clause 61 means an Employee who has at least 12 months' Continuous Service or an Eligible Casual Employee as defined above.
- (e) **Employee Couple** has the same meaning as under the Act.
- (f) **Long Parental Leave** means the 52 weeks' parental leave an Eligible Employee may take under subclause 61.3A person taking Long Parental Leave under subclause 61.3 is the Primary Carer for the purpose of this clause.

- (g) **Primary Carer** means the person who has or will have a responsibility for the care of the Child. For the purpose of clause 61.5, only one person can be the Child's Primary Carer on a particular day and means the person who meets the Child's physical needs more than anyone else.
- (h) **Short Parental Leave** means the up to eight weeks' concurrent parental leave an Eligible Employee who will not be the Primary Carer of a Child may take under subclause 61.4.
- (i) **Spouse** includes a person to whom the Eligible Employee is married and a de facto partner, former spouse or former de facto spouse of the Employee. A de facto Spouse means a person who lives with the Employee as husband, wife or same-sex partner on a bona fide domestic basis.

61.3 Long Parental Leave – Unpaid

- (a) An Eligible Employee is entitled to 52 weeks unpaid Long Parental Leave if:
 - (i) the leave is associated with:
 - (A) the birth of a Child of the Eligible Employee or the Eligible Employee's Spouse; or
 - (B) the placement of a Child with the Eligible Employee for adoption; and
 - (ii) the Eligible Employee is the Primary Carer.
- (b) The Eligible Employee must take the leave in a single continuous period.
- (c) Where an Eligible Employee is a member of an Employee Couple, except as provided at subclause 61.4 (Short Parental Leave – Unpaid), parental leave must be taken by only one parent of an Employee Couple at a time in a single continuous period.
- (d) Each member of an Employee Couple may take a separate period of up to 12 months of Long Parental Leave less any period of Short Parental Leave taken by the Eligible Employee.
- (e) An Eligible Employee may be able to extend a period of unpaid parental leave in accordance with subclause 61.10.

61.4 Short Parental Leave – Unpaid

- (a) This clause applies to an Eligible Employee who is a member of an Employee Couple.
- (b) An Eligible Employee who will not be the Primary Carer of a Child may take up to eight weeks' leave concurrently with any parental leave taken by the parent who will be the Primary Carer. Short Parental Leave may be taken in separate periods but, unless the Employer agrees, each period must not be shorter than two weeks.
- (c) The period of Short Parental Leave will be deducted from the period of Long Parental Leave to which the Eligible Employee is entitled under subclause 61.3 (if applicable).

61.5 Paid Parental Leave

- (a) Upon an Eligible Employee commencing parental leave:
 - (i) an Eligible Employee who will be the Primary Carer at the time of the birth or adoption of the Child will be entitled to 10 weeks' paid parental leave and superannuation in accordance with subclause 61.5(a)(i); or

- (ii) an Eligible Employee who will not be the Primary Carer at the time of the birth or adoption of the Child will be entitled to one week's paid parental leave.
- (b) Paid parental leave is in addition to any relevant Commonwealth Government paid parental leave scheme (subject to the requirements of any applicable legislation).
- (c) The Employer and Eligible Employee may reach agreement as to how the paid parental leave under this Agreement is paid. For example, such leave may be paid in smaller amounts over a longer period, consecutively or concurrently with any relevant Commonwealth Government parental leave scheme (subject to the requirements of any applicable legislation) and may include a voluntary contribution to superannuation.
- (d) Such agreement must be in writing and signed by the parties. The Eligible Employee must nominate a preferred payment arrangement at least four weeks prior to the expected date of birth or date of placement of the Child. In the absence of agreement, such leave will be paid during the ordinary pay periods corresponding with the period of the leave.
- (e) A variation to the payment of paid parental leave resulting in the paid leave being spread over more than 10 weeks does not affect the period of continuous service recognised. For example, an Employee taking 20 weeks at half pay will, for the purpose of calculating continuous service, have ten weeks of continuous service recognised. An Employee taking five (5) weeks at double pay will have 10 weeks of continuous service recognised.
- (f) The paid parental leave prescribed by this clause will be concurrent with any relevant unpaid entitlement prescribed by the NES / this Agreement.

61.6 Notice and evidence requirements

- (a) An Employee must give at least 10 weeks written notice of the intention to take parental leave, including the proposed start and end dates. At this time, the Employee must also provide a statutory declaration stating:
 - (i) that the Employee will become either the Primary Carer or non-Primary Carer of the Child, as appropriate;
 - (ii) the particulars of any parental leave taken or proposed to be taken or applied for by the Employee's Spouse; and
 - (iii) that for the period of parental leave the Employee will not engage in any conduct inconsistent with their contract of employment.
- (b) At least four weeks before the intended commencement of parental leave, the Employee must confirm in writing the intended start and end dates of the parental leave, or advise the Employer of any changes to the notice provided in subclause 61.6(a) unless it is not practicable to do so.
- (c) The Employer may require the Employee to provide evidence which would satisfy a reasonable person of:
 - (i) in the case of birth-related leave, the date of birth of the Child (including without limitation, a medical certificate or certificate from a registered midwife, stating the date of birth or expected date of birth); or
 - (ii) in the case of adoption-related leave, the commencement of the placement (or expected day of placement) of the Child and that the Child will be under 16 years of age as at the day of placement or expected day of placement.

- (d) An Employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by the birth of the Child or placement occurring earlier than the expected date or in other compelling circumstances. In these circumstances the notice and evidence requirements of this clause should be provided as soon as reasonably practicable.

61.7 Parental leave associated with the birth of a Child – additional provisions

- (a) Subject to the limits on duration of parental leave set out in this Agreement and unless agreed otherwise between the Employer and Eligible Employee, an Eligible Employee who is pregnant may commence Long Parental Leave at any time up to six weeks immediately prior to the expected date of birth.
- (b) Six weeks before the birth
 - (i) Where a pregnant Eligible Employee continues to work during the six week period immediately prior to the expected date of birth, the Employer may require the Eligible Employee to provide a medical certificate stating that she is fit for work and, if so, whether it is inadvisable for her to continue in her present position because of illness or risks arising out of the Eligible Employee's pregnancy or hazards connected with the position.
 - (ii) Where a request is made under subclause 61.7(b)(i) and an Eligible Employee:
 - (A) does not provide the Employer with the requested certificate within seven days of the request; or
 - (B) within seven days after the request, the Eligible Employee gives the Employer a medical certificate stating that the Eligible Employee is not fit for work;the Employer may require the Eligible Employee to commence their parental leave as soon as practicable.
 - (iii) Where a request is made under subclause 61.7(b)(i) and an Eligible Employee provides a medical certificate that states that the Eligible Employee is fit for work but it is inadvisable for the Eligible Employee to continue in her present position during a stated period, subclause 61.14(Transfer to a safe job) will apply.

61.8 Unpaid pre-adoption leave

Employees' entitlement to pre-adoption leave is set out at clause 60.

61.9 Where placement does not proceed or continue

- (a) Where the placement of the Child for adoption with an Eligible Employee does not proceed or continue, the Eligible Employee must notify the Employer immediately.
- (b) Where the Eligible Employee had, at the time, started a period of adoption-related leave in relation to the placement, the Eligible Employee's entitlement to adoption-related leave is not affected, except where the Employer gives written notice under subclause 61.9(c).
- (c) The Employer may give the Eligible Employee written notice that, from a stated day no earlier than four weeks after the day the notice is given, any untaken long adoption-related leave is cancelled with effect from that day.
- (d) Where the Eligible Employee wishes to return to work due to a placement not proceeding or continuing, the Employer must nominate a time not exceeding four weeks from receipt of notification for the Eligible Employee's return to work.

61.10 Special maternity leave

- (a) Entitlement to unpaid special birth-related leave
 - (i) A female Eligible Employee is entitled to a period of unpaid special leave if she is not fit for work during that period because:
 - (A) she has a pregnancy-related illness; or
 - (B) she has been pregnant, and the pregnancy ends within 28 weeks of the expected date of birth of the Child otherwise than by the birth of a living Child.
 - (ii) A female Eligible Employee who has an entitlement to personal leave may, in part or whole, take personal leave instead of unpaid special leave under this clause.
 - (iii) Where the pregnancy ends more than 28 weeks from the expected date of birth of the Child, the Eligible Employee is entitled to access any paid and/or unpaid personal leave entitlements in accordance with the relevant personal leave provisions.
- (b) Entitlement to paid special birth-related leave
 - (i) A female Eligible Employee is entitled to a period of paid special leave if the pregnancy terminates at or after the completion of 20 weeks' gestation or the Eligible Employee gives birth but the baby subsequently dies.
 - (ii) Paid special leave is paid leave not exceeding the amount of paid leave available to Primary Carers under subclause 61.5(a)(i) (plus superannuation).
 - (iii) Paid special leave is in addition to any unpaid special leave taken under subclause 61.10(a)(i).
 - (iv) Paid leave available to non-Primary Carers under subclause 61.5(a)(ii) will also apply in these circumstances.
- (c) Evidence

If an Eligible Employee takes leave under this clause the Employer may require the Eligible Employee to provide evidence that would satisfy a reasonable person of the matters referred to in subclause 61.10(a)(i) or 61.10(b)(i) or to provide a certificate from a registered medical practitioner. The Eligible Employee must give notice to the Employer as soon as practicable, advising the Employer of the period or the expected period of the leave under this provision.

61.11 Variation of period of unpaid parental leave (up to 12 months)

- (a) Where an Eligible Employee has:
 - (i) given notice of the taking of a period of Long Parental Leave under subclause 61.3; and
 - (ii) the length of this period of Long Parental Leave as notified to the Employer is less than the Eligible Employee's available entitlement to Long Parental Leave; and
 - (iii) the Eligible Employee has commenced the period of Long Parental Leave, the Eligible Employee may apply to the Employer to extend the period of parental leave on one occasion. Any extension is to be notified as soon as possible but no less than four weeks prior to the commencement of the changed arrangements. Nothing in this clause detracts from the basic entitlement in subclause 61.3 or subclause 61.11.

- (b) If the Employer and Eligible Employee agree, the Eligible Employee may further change the period of parental leave.

61.12 Right to request an extension of period of unpaid parental leave beyond 12 months

- (a) An Eligible Employee entitled to Long Parental Leave pursuant to the provisions of subclause 61.3 may request the Employer to allow the Eligible Employee to extend the period of Long Parental Leave by a further continuous period of up to 12 months immediately following the end of the available parental leave.

- (b) Request to be in writing

The request must be in writing and must be given to the Employer at least four weeks before the end of the available parental leave period.

- (c) Response to be in writing

The Employer must give the Eligible Employee a written response to the request stating whether the Employer grants or refuses the request. The response must be given as soon as practicable, and not later than 21 days, after the request is made.

- (d) Refusal only on reasonable business grounds

The Employer may only refuse the request on reasonable business grounds.

- (e) Reasons for refusal to be specified

If the Employer refuses the request, the written response must include details of the reasons for the refusal.

- (f) Reasonable opportunity to discuss

The Employer must not refuse the request unless the Employer has given the Eligible Employee a reasonable opportunity to discuss the request.

- (g) Employee Couples

Where a member of an Employee Couple is requesting an extension to a period of Long Parental Leave in relation to a Child:

- (i) the request must specify any amount of Long Parental Leave that the other member of the Employee Couple has taken, or will have taken in relation to the Child before the extension starts;
- (ii) the period of extension cannot exceed 12 months, less any period of Long Parental Leave that the other member of the Employee Couple has taken, or will have taken, in relation to the Child before the extension starts;
- (iii) the amount of Long Parental Leave to which the other member of the Employee Couple is entitled under subclause 61.3 in relation to the Child is reduced by the period of the extension.

- (h) No extension beyond 24 months

An Eligible Employee is not entitled to extend the period of Long Parental Leave beyond 24 months after the date of birth or day of placement of the Child.

61.13 Parental leave and other entitlements

An Eligible Employee may use any accrued annual leave or long service leave entitlements concurrently with Long Parental Leave, save that taking that leave does not have the effect of extending the period of Long Parental Leave.

61.14 Transfer to a safe job

- (a) Where an Employee is pregnant and provides evidence that would satisfy a reasonable person that she is fit for work but it is inadvisable for the Employee to continue in her present position for a stated period (the **risk period**) because of:

- (i) illness or risks arising out of the pregnancy, or
- (ii) hazards connected with the position,

the Employee must be transferred to an appropriate safe job if one is available for the risk period, with no other change to the Employee's terms and conditions of employment.

- (b) Paid no safe job leave

If:

- (i) subclause 61.14(a) applies to a pregnant Eligible Employee but there is no appropriate safe job available; and
- (ii) the Eligible Employee is entitled to Long Parental Leave; and
- (iii) the Eligible Employee has complied with the notice of intended start and end dates of leave and evidence requirements under subclause 61.6 for taking Long Parental Leave;

then the Eligible Employee is entitled to paid no safe job leave for the risk period.

- (c) If the Eligible Employee takes paid no safe job leave for the risk period, the Employer must pay the Eligible Employee at the Eligible Employee's rate of pay set out in **Appendix Two** for the Eligible Employee's ordinary hours of work in the risk period.

- (d) This entitlement to paid no safe job leave is in addition to any other leave entitlement the Eligible Employee may have.

- (e) If an Eligible Employee, during the six week period before the expected date of birth, is on paid no safe job leave, the Employer may request that the Eligible Employee provide a medical certificate within seven (7) days stating whether the Eligible Employee is fit for work.

- (f) If, the Eligible Employee has either:

- (i) not complied with the request from the Employer under (e) above; or
- (ii) provided a medical certificate stating that she is not fit for work; then

the Eligible Employee is not entitled to no safe job leave and the Employer may require the Eligible Employee to take parental leave as soon as practicable.

- (g) Unpaid no safe job leave

If:

- (i) subclause 61.14(a) applies to a pregnant Employee but there is no appropriate safe job available; and
- (ii) the Employee will not be entitled to Long Parental Leave as at the expected date of birth; and
- (iii) the Employee has given the Employer evidence that would satisfy a reasonable person of the pregnancy if required by the Employer (which may include a requirement to provide a medical certificate),

the Employee is entitled to unpaid no safe job leave for the risk period.

61.15 Returning to work after a period of parental leave

- (a) An Eligible Employee must confirm to the Employer that the Eligible Employee will return to work as scheduled after a period of Long Parental Leave at least four weeks prior to the end of the leave, or where that is not practicable, as soon as practicable.
- (b) An Eligible Employee will be entitled to return:
 - (i) unless subclause 61.15(b)(ii) or subclause 61.15(b)(iii) applies, to the position which they held immediately before proceeding on parental leave;
 - (ii) if the Eligible Employee was promoted or voluntarily transferred to a new position (other than to a safe job pursuant to subclause 61.14), to the new position;
 - (iii) if subclause 61.15(b)(ii) does not apply, and the Eligible Employee began working part-time because of the pregnancy of the Eligible Employee, or his or her Spouse, to the position held immediately before starting to work part-time.
- (c) Subclause 61.15(b) is not to result in the Eligible Employee being returned to the safe job to which the Eligible Employee was transferred under subclause 61.14. In such circumstances, the Eligible Employee will be entitled to return to the position held immediately before the transfer.
- (d) Where the relevant former position (per subclauses 61.15(b) and 61.15(c) above) no longer exists, an Eligible Employee is entitled to return to an available position for which the Eligible Employee is qualified and suited nearest in status and pay to that of their pre-parental leave position.
- (e) The Employer must not fail to re-engage an Eligible Employee because:
 - (i) the Eligible Employee or Eligible Employee's Spouse is pregnant; or
 - (ii) the Eligible Employee is or has been immediately absent on parental leave.
- (f) The rights of the Employer in relation to engagement and re-engagement of casual Employees are not affected, other than in accordance with this clause.

61.16 Replacement Employees

- (a) A replacement Employee is an Employee specifically engaged or temporarily promoted or transferred, as a result of an Eligible Employee proceeding on parental leave.
- (b) Before the Employer engages a replacement Employee, the Employer must inform that person of the temporary nature of the employment and of the rights of the Eligible Employee who is being replaced to return to their pre-parental leave position.

61.17 Communication during parental leave – organisational change

- (a) Where an Eligible Employee is on parental leave and the Employer proposes a change that will have a significant effect within the meaning of clause 10 (Consultation) of this Agreement on the Eligible Employee's pre-parental leave position, the Employer will comply with the requirements of clause 10 (Consultation) which include but are not limited to providing:
 - (i) information in accordance with subclause 10.4; and
 - (ii) an opportunity for discussions with the Eligible Employee and, where relevant, the Eligible Employee's representative in accordance with subclause 10.6.

- (b) The Eligible Employee will take reasonable steps to inform the Employer about any significant matter that arises whilst the Eligible Employee is taking parental leave that will affect the Eligible Employee's decision regarding the duration of parental leave to be taken, whether the Eligible Employee intends to return to work and whether the Eligible Employee intends to request to return to work on a part-time basis.
- (c) The Eligible Employee will also notify the Employer of changes of address or other contact details which might affect the Employer's capacity to comply with subclause 61.17.

61.18 Keeping in touch days

- (a) This clause does not prevent an Eligible Employee from performing work for the Employer on a keeping in touch day while the Eligible Employee is taking Long Parental Leave. If the Eligible Employee does so, the performance of that work does not break the continuity of the period of Long Parental Leave.
- (b) Any day or part of a day on which the Eligible Employee performs work for the Employer during the period of leave is a keeping in touch day if:
 - (i) the purpose of performing the work is to enable the Eligible Employee to keep in touch with his or her employment in order to facilitate a return to that employment after the end of the period of leave; and
 - (ii) both the Eligible Employee and Employer consent to the Eligible Employee performing work for the Employer on that day; and
 - (iii) the day is not within:
 - (A) if the Eligible Employee suggested or requested that they perform work for the Employer on that day – 14 days after the date of birth, or day of placement, of the Child to which the period of leave relates; or
 - (B) otherwise – 42 days after the date of birth, or day of placement, of the Child; and
 - (iv) the Eligible Employee has not already performed work for the Employer or another entity on ten days during the period of leave that were keeping in touch days.
- (c) The Employer must not exert undue influence or undue pressure on an Eligible Employee to consent to a keeping in touch day.
- (d) For the purposes of subclause 61.18(b)(iv) the following will be treated as two separate periods of unpaid parental leave:
 - (i) a period of Long Parental Leave taken during the Eligible Employee's available parental leave period under subclause 61.3; and
 - (ii) an extension of the period of Long Parental Leave under subclause 61.11.

62 Breastfeeding

62.1 Paid break

Each Employer will provide reasonable paid break time for an Employee to express breast milk for her nursing child each time such Employee has need to express the milk, or breastfeed the child within the workplace, for one year after the child's birth.

62.2 Place to express or feed

Employers will also provide a comfortable place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk or breastfeed a child in privacy.

62.3 Storage

Appropriate refrigeration will be available in proximity to the area for breast milk storage. Responsibility for labelling, storage and use is with the Employee.

63 Long Service Leave

63.1 Entitlements

- (a) A Biomedical Engineer shall be entitled to long service leave with pay, in respect of continuous service with one and the same Employer, or service with Institutions or Statutory Bodies, in accordance with the provisions of this clause.
- (b) Subject to clause 63.1(b)(iv), the amount of such entitlement shall be:
 - (i) On the completion by the Biomedical Engineer of fifteen years continuous service – six months long service leave and thereafter an additional two months long service leave of completion of each additional five years' service.
 - (ii) In addition, in the case of a Biomedical Engineer who has completed more than fifteen years' service whose employment is terminated otherwise than by the death of the Biomedical Engineer an amount of long service leave equal to 1/30th of the period of his/her service since the last accrual of entitlement to long service leave under clause 63.1(b)(i) above.
 - (iii) In the case of a Biomedical Engineer who has completed at least ten years' service, but less than fifteen years' service and whose employment is terminated for any cause other than serious and wilful misconduct, such amount of long service leave as equals 1/30th of the period of service.
 - (iv) For the purposes of determining the entitlement of any Biomedical Engineer under any provision of this clause in respect of a period of employment beginning before 31st December 1964, and ending after the said date, so much of that service as was completed before said date shall be reduced by one quarter.

63.2 Recognised Service

- (a) Subject to this subclause the service of a Biomedical Engineer of an Institution or Statutory Body shall include service for which long service leave, or payment in lieu, has not been received in one or more Institutions including Statutory Bodies directly associated with such Institution or Institutions, for the periods required by clause 63.1 of this Agreement.
- (b) Subject to this subclause service shall also include all periods during which a Biomedical Engineer was serving in Her Majesty's Forces or was made available by the Employer for National Duty.
- (c) When calculating the aggregate of service entitling to leave any period of employment with any one of the said Institutions or Statutory Bodies of less than six months shall be disregarded.
- (d) Where the business is transmitted from one Employer (the transmitter) to another Employer (the transmittee) a Biomedical Engineer who worked with the transmitter

and who continues in the services of the transmittee shall be entitled to count his/her service with the transmitter as service with the transmittee for the purposes of this clause.

- (e) Subject to clause 63.2(f) for the purposes of this clause service shall be deemed to be continuous notwithstanding:
 - (i) the taking of any annual leave or long service leave;
 - (ii) any absence from work of not more than fourteen days in any year on account of injury or illness or if applicable such longer period as provided in clause 55 – Personal Leave;
 - (iii) any interruption or ending of the employment by the Employer if such interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;
 - (iv) any absence on account of injury arising out of or in the course of the employment of the Biomedical Engineer for a period during which payment is made under clause 33 – Accident Pay;
 - (v) any leave or absence of the Biomedical Engineer where the absence is authorised in advance in writing by the Employer to be counted as service;
 - (vi) any interruption arising directly or indirectly from an industrial dispute;
 - (vii) any period of absence from employment between the engagement with one of the said Institutions or Statutory Bodies and another provided it is less than the Biomedical Engineer's allowable period of absence from employment. A Biomedical Engineers allowable period of absence from employment shall be five weeks in addition to the total period of paid annual leave and/or personal leave which the Biomedical Engineer actually receives on termination or for which he/she is paid in lieu;
 - (viii) the dismissal of a Biomedical Engineer if the Biomedical Engineer is re-employed within a period not exceeding two months from the date of such dismissal;
 - (ix) any absence from work of a Biomedical Engineer for a period not exceeding twenty four months in respect of an entitlement under clause 61 – Parental Leave;
 - (x) any other absence of a Biomedical Engineer by leave of the Employer, or on account of injury arising out of or in the course of his/her employment not covered by clause 63.2(e)(iv) of this Agreement.
- (f) In calculating the period of continuous service of any Biomedical Engineer; any interruption or absence of a kind mentioned in clause 63.2(e)(i) to clause 63.2(e)(v) of the last preceding subclause shall be counted as part of the period of his/her service, but any interruption or absence of a kind mentioned in clause 63.2(e)(vi) to clause 63.2(e)(x) of the said subclause shall not be counted as part of the period of service unless it is authorised in writing by the Employer.
- (g) The onus of providing a sufficient aggregate of service to support a claim for any long service leave entitlement shall at all times rest upon the Biomedical Engineer concerned. A certificate in the following form shall constitute acceptable proof:

CERTIFICATE OF SERVICE
.....

[Name of Institution]

.....

[date]

This is to certify that:

.....

[Name of Employee]

has been employed by this institution/society/board, for a period of:

.....

[years/months/etc.]

from

.....

[date] to [date].

Specify hereunder full details of paid or unpaid leave or absences including periods represented by payment made in lieu of leave on termination.

.....

.....

Specify hereunder full details of long service leave granted during service or on termination:

.....

.....

Signed.....

[Stamp of Institution]

- (h) Every Employer shall keep or cause to be kept a long service leave record for each Biomedical Engineer containing particulars of service, leave taken and payment made.

63.3 Payment in lieu of long service leave on the death of a Biomedical Engineer

Where a Biomedical Engineer who has completed at least ten years' service dies while still in employ of the Employer, the Employer shall pay to such Biomedical Engineers personal representative a sum equal to the pay of such Biomedical Engineer for 1/30th of the period of the Biomedical Engineers continuous service in respect of which leave has not been allowed or payment made immediately prior to the death of the Biomedical Engineer.

63.4 Payment for periods of long service leave

- (a) Payment to a Biomedical Engineer in respect of long service leave shall be made in one of the following ways:
 - (i) in full in advance when the Biomedical Engineer commenced his leave; or
 - (ii) at the same time as payment would have been made if the Biomedical Engineer had remained on duty; in which case payment shall, if the Biomedical Engineer in writing so requires, be made by cheque posted to a specified address; or
 - (iii) in any other way agreed between the Employer and the Biomedical Engineer.
- (b) Where the employment of a Biomedical Engineer is for any reason terminated before he/she takes any long service leave to which he/she is entitled or where any long service leave accrues to a Biomedical Engineer pursuant to clause 63.1(b)(ii) the Biomedical Engineer shall subject to the provisions of clause 63.4(c) be entitled to pay in respect of such leave as at the date of termination of employment.
- (c) Where any long service leave accrues to a Biomedical Engineer pursuant to clause 63.1(b)(iii) the Biomedical Engineer shall be entitled to pay in respect of such leave as at the date of termination of employment.
- (d) Provided in the case of a Biomedical Engineer of an Institution or Statutory Body who accrues entitlement pursuant to clause 63.1(b)(iii) and who intends to be re-employed by another Institution or Statutory Body.
 - (i) Such a Biomedical Engineer may in writing request payment in respect of such leave to be deferred until after the expiry of the Biomedical Engineer's allowable period of absence from employment provided in clause 63.2(e)(ix).
- (e) Except where the Biomedical Engineer gives the Employer notice in writing that the Biomedical Engineer has been employed by another Institution or Statutory Body the Employer shall make payment in respect of such leave at the expiry of the Biomedical Engineer's allowable period of absence from employment.
- (f) Where the Biomedical Engineer gives the Employer notice in writing that the Biomedical Engineer has been employed by another Institution or Statutory Body the Employer is no longer required to make payment to the Biomedical Engineer in respect of such leave.
- (g) Where an increase occurs in the ordinary time rate of pay during any period of long service leave taken by the Biomedical Engineer, the Biomedical Engineer shall be entitled to receive payment of the amount of any increase in pay at the completion of such leave.

63.5 Taking of leave

- (a) Where a Biomedical Engineer becomes entitled to long service leave such leave shall be granted by the Employer within six months from the date of the entitlement, but the taking of such leave may be postponed to such date as is mutually agreed, or in default of agreement as is determined by FWC, provided that no such determination shall require such leave to commence before the expiry of six months from the date of such determination.
- (b) Any long service leave shall be inclusive of public holidays occurring during the period when the leave is taken.
- (c) If the Employer and a Biomedical Engineer so agree:
 - (i) the first six months long service leave to which a Biomedical Engineer becomes entitled under this determination may be taken in two or three separate periods; and
 - (ii) any subsequent period of long service leave to which the Biomedical Engineer becomes entitled may be taken in two separate periods.

But save for the aforesaid long service leave shall be taken in one period.
- (d) An Employer may by agreement with a Biomedical Engineer grant long service leave to the Biomedical Engineer before the entitlement to that leave has accrued, provided that such leave shall not be granted before the Biomedical Engineer has completed ten years' service.
- (e) Where the employment of a Biomedical Engineer who has taken long service leave in advance is subsequently terminated for serious and wilful misconduct before entitlement to long service leave has accrued, the Employer may, from whatever remuneration is payable to the worker upon termination, deduct and withhold an amount equivalent to the amount paid to the Biomedical Engineer in respect of the leave in advance.

63.6 Definitions

For the purposes of this clause, the following definitions apply:

- (a) **Pay** means remuneration for a Biomedical Engineer's normal weekly hours of work calculated at the Biomedical Engineer's ordinary time rate of pay provided in clause 28 of this Agreement, at the time the leave is taken or (if he/she dies before the completion of leave so taken) as at the time of his/her death, and shall include the amount of any increase to the Biomedical Engineer's ordinary time rate of pay which occurred during the period of leave as from the date such increase operates.
- (b) **Month** shall mean a calendar month.
- (c) **Institution** shall mean any hospital or benevolent home, community health centre, Society or Association registered and subsidised pursuant to the Health Services Act, the Cancer Institute constituted under the Cancer Act or the Fairfield Hospital Board or the Bush Nursing Association (Inc).
- (d) **Statutory Body** means the former Hospitals and Charities Commission (Vic) and its successors, the Department of Health and Human Services and its predecessors,
- (e) **Transmission** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding interpretation.

63.7 Half or Double Pay Long Service Leave

Where a Biomedical Engineer is entitled to a period of long service leave, the Employer shall, at the request of the Biomedical Engineer and subject to the approval of the Employer (such approval shall not be unreasonably withheld) allow the Biomedical Engineer to take the whole or any part of the long service leave at double the quantum of leave at half pay or half the quantum of leave at double pay (as the case may be).

64 Donors Leave

Upon the request of a Biomedical Engineer, the Employer shall release a Biomedical Engineer to donate blood where a collection unit is on site or by arrangement at the local level.

65 Leave to engage in emergency relief activities

65.1 The Employer may, by agreement between the parties, develop a policy that facilitates the release of an Employee from duty without loss of pay where such Employee is a member of a recognised voluntary emergency relief organisation and where there is a local emergency situation, provided that such leave can be facilitated without unreasonably affecting the operations of the health service.

65.2 A Biomedical Engineer will be entitled to take unpaid leave in relation to an eligible community service activity subject to and in accordance with the National Employment Standards (Division 8 (Community Services) of Part 2-2 of the Act.

66 Jury Service

66.1 A Biomedical Engineer required to attend for jury service during his/her ordinary working hours shall be reimbursed by the Employer an amount equal to the difference between the amount paid in respect of his/her attendance for such jury service and the amount of salary he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on jury service.

66.2 A Biomedical Engineer shall notify his/her Employer as soon as possible of the date upon which he/she is required to attend for jury service.

66.3 The Employer may require the Employee to give the Employer evidence that would satisfy a reasonable person:

- (a) that the Employee has taken all necessary steps to obtain any amount of jury service pay to which the Employee is entitled; and
- (b) of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable, to the Employee for the period.

66.4 If, in accordance with subsection 66.3, the Employer requires the Employee to give the Employer the evidence referred to in that subsection:

- (a) the Employee is not entitled to payment under subsection 66.1 unless the Employee provides the evidence; and
- (b) if the Employee provides the evidence – the amount payable to the Employee under clause 66.1 is reduced by the total amount of jury service pay that has been paid, or is payable, to the Employee, as disclosed in the evidence.

67 Discretionary Leave without Pay(The Royal Children's and the Royal Women's Hospital only)

- 67.1** Department heads may grant discretionary leave without pay (DLWOP) up to a maximum of 3 months. Longer periods of DLWOP up to 52 weeks, require the approval of the Director.
- 67.2** With the exception of Parental Leave and Personal/Carers Leave, DLWOP is granted at the absolute discretion of the hospital.
- 67.3** DLWOP will only be considered after all other paid entitlements have been taken.
- 67.4** All DLWOP must be applied for and if appropriate, approved in advance, using the Hospital's standard form.
- 67.5** Absence on approved leave without pay does not break continuity of service, however such absences do not count in the calculation of benefits. An Employee will not be paid for public holidays whilst on DLWOP.

PART H – EDUCATION AND PROFESSIONAL DEVELOPMENT

68 Professional Development Allowance

This clause does not apply to Casual Employees.

- 68.1** Full time Employees will receive a professional development allowance as follows:
- (a) \$500 from the first full pay period commencing on or after 13 September 2018;
 - (b) \$500 from the first full pay period commencing on or after 13 September 2019;
 - (c) \$500 from the first full pay period commencing on or after 13 September 2020;
 - (d) \$500 from the first full pay period commencing on or after 13 September 2021;
- 68.2** Part time employees will receive a pro rata amount described in 68.1 above based upon their normal hours at the time of the payment.
- 68.3** The professional development allowance is additional to any other allowance or entitlement within this Agreement.

69 Professional Development Leave

- 69.1** This clause does not apply to Employees at Barwon Health, Latrobe Regional Hospital and Western Health.
- 69.2** All full-time biomedical engineers shall be entitled to three (Five days for employees at the Royal Children’s Hospital and the Royal Women’s Hospital) days professional development leave per annum for the purpose of furthering their professional development, including but not limited to research, home study and attendance at seminars and conferences.
- 69.3** A “day’s pay” shall be based on the individual biomedical engineer’s usual shift length.
- 69.4** Where possible the leave should be requested in writing 6 weeks in advance of the proposed leave dates.
- 69.5** The approval of leave will not be unreasonably withheld.
- 69.6** The Employer must notify the biomedical engineer in writing if the leave is approved within 7 days of the application being made. If the leave is not granted the reasons will be included in the notification to the applicant.

70 Conference/Seminar Leave

- 70.1** All full-time and part-time Employees are entitled to five days’ paid conference/seminar leave per annum. The five days’ paid conference/seminar leave will be based on the individual Employee’s usual shift length.
- 70.2** Leave pursuant to this clause does not accumulate from year to year.

- 70.3** Conference/seminar leave may be taken to attend a Biomedical Engineering, scientific or health related conference or seminar. The Employer will not unreasonably withhold its approval if the leave requested is for these purposes.
- 70.4** An Employee seeking leave in accordance with this clause can be requested to provide details of the conference/seminar name, venue and date/time.
- 70.5** Where possible the leave should be requested in writing six weeks in advance of the proposed leave date.
- 70.6** Wherever possible the Employer must within seven days of the application being made notify the Employee of where his or her request for study leave has been approved. In reaching a decision on approval the Employer may take account of operational requirements and the relevance of the conference or seminar.

71 Study leave

- 71.1** Paid study leave will be available to all full-time and part-time Employees at the Employer's discretion. The Employer will not unreasonably refuse a request for study leave provided the leave is for Biomedical Engineering, scientific or health related study appropriate to the Biomedical Engineer's role.
- 71.2** Unless otherwise agreed, paid study leave of up to a maximum of 4 hours per week for up to 26 weeks per annum shall be available to full-time and part-time Biomedical Engineers and be available on a pro-rata basis for a part-time Biomedical Engineer.
- (a) Paid Study leave relevant to the Biomedical Engineer's duties and classification shall be taken as mutually agreed by, for example, four hours per week, eight hours per fortnight or blocks of 38 hours at a residential school.
 - (b) An Employee wishing to take study leave in accordance with clause 71.1 must apply in writing to the Employer as early as possible prior to the proposed leave date. The Employee's request should include:
 - (i) details of the course and institution in which the Employee is enrolled or proposes to enrol; and
 - (ii) details of the relevance of the course to the Employee's employment.
 - (c) The Biomedical Engineer must also notify the Employer of any change to the course or institution (if relevant), provided that if such notice is not given approval for study leave may be withdrawn by the Employer.
 - (d) Wherever possible the Employer must within seven days of the application being made notify the Employee of whether his or her request for study leave has been approved. In reaching a decision on approval the Employer may take account of operational requirements and the relevance of the course.
 - (e) Leave pursuant to this clause does not accumulate from year to year.

72 Examination Leave

- 72.1** A Biomedical Engineer shall be granted leave with full wages in order to attend examinations necessary to obtain a qualification as specified in clause 34 of this Agreement, provided that such examinations are held within the Commonwealth of Australia.
- 72.2** The amount of such leave shall be sufficient to allow the Biomedical Engineer:

- (a) to proceed to and from the place of examination; and
- (b) in addition, allow three clear days prior to the oral examination and either three clear days or three single days prior to the written papers with a maximum of six days pre-examination study leave in any calendar year;

72.3 any leave granted under the provision of this clause shall be in addition to the provisions of clause 52 - Annual leave.

73 Staff Appraisals

(This clause does not apply to Employees at Peter MacCulum Cancer Centre)

73.1 Where a system of staff appraisals does not currently exist at a workplace, the Employer may implement and the Biomedical Engineers will participate in a performance appraisal process provided:

- (a) The Employer will first consult at the local level with Biomedical Engineers and/or their nominated representatives over a framework for staff appraisal process it is seeking to introduce;
- (b) The staff appraisal process is not used as a disciplinary tool;
- (c) The staff appraisal process is intended to allow genuine feedback by both Employer and Biomedical Engineer; and
- (d) The outcomes of the review are documented and confirmed and a written copy of the outcome is given to the Biomedical Engineers.

74 Replacement Positions (The Royal Children's and The Royal Women's Hospital Only)

74.1 The Employer shall discuss with affected Employees strategies to address workload issues arising from where an incumbent Employee is absent on prolonged leave, such as extended annual leave, parental leave, long service leave and WorkCover.

74.2 Such discussions shall occur in consultation with the relevant Department Head and any nominated representative chosen by the Employee (which may be the union) and shall have regard to the operational requirements of the particular workplace.

PART I – UNION MATTERS AND SERVICE DELIVERY PARTNERSHIP PLAN

75 Union Matters

75.1 Access to Employees – General

The Union will have access to Employees for any process arising under this Agreement.

75.2 Access to Employees – Electronic communication

The Employer will ensure that:

- (a) emails from the Union domain name are not blocked or restricted by or on behalf of the Employer, except in respect of any individual Employee who has made a written request to the Employer to block such emails;
- (b) emails from Employees to the Union are not blocked or restricted by or on behalf of the Employer;
- (c) access from health service computers and like devices to Union websites and online information is not blocked, or limited; and
- (d) where a genuine security concern arises regarding the above, the Employer will immediately notify the Union to enable the security concern to be addressed.

75.3 Access to Employees – Orientation

- (a) The Union may attend and address new Employees as part of orientation / induction programs for new Employees, provided that any attendance for the purposes of discussions with the Employees meets the right of entry requirements under Part 3-4 of the Act (**Entry Requirements**). The details of such attendance will be arranged by the Employer in consultation with the Union.
- (b) An Employer will advise the Union of the date, time and location of orientation/induction programs not less than 14 days prior to the orientation / induction program.
- (c) Those covered by this Agreement acknowledge the increasing role that technology plays in orientation / induction. An Employer and Union may agree to an alternative means by which the Union can access new Employees including where orientation / induction programs are conducted on-line or the Union cannot reasonably attend, provided that such access is consistent with the Entry Requirements.

75.4 Delegates and HSRs

NOTE: Additional rights of HSRs are contained in the OHS Act.

- (a) In this subclause 75.4 Representative means a Union Delegate, or HSR.
- (b) A Representative is entitled to reasonable time release from duty to:
 - (i) attend to matters relating to industrial, occupational health and safety or other relevant matters such as assisting with grievance procedures and attending committee meetings;

- (ii) access reasonable preparation time before meetings with management disciplinary or grievance meetings with a union member;
 - (iii) appear as a witness or participate in conciliation or arbitration, before the Commission;
 - (iv) present information on the Union at orientation sessions for new Employees.
- (c) A Representative required to attend management or consultative meetings outside of paid time will be paid to attend.
 - (d) A Representative will be provided with access to facilities such as telephones, computers, email, noticeboards and meeting rooms in a manner that does not adversely affect service delivery and work requirements of the Employer. In the case of an HSR, facilities will include other facilities as necessary to enable them to perform their functions as prescribed under the OHS Act.

75.5 Noticeboard

- (a) A noticeboard for the Union's use will be readily accessible in each ward/unit/work area or nearest staff room where persons eligible to be members of the Union are employed.
- (b) The Union and members covered by this Agreement will, during the life of this Agreement, consult over the development of an electronic noticeboard managed by the Union.

75.6 Meeting Space

In the absence of agreement on a location for the holding of Union meetings, the room where one or more of the Employees who may participate in the meeting ordinarily take meal or other breaks will be the meeting room for the purpose of Union meetings. Nothing in this clause is intended to override the operation of the Act.

75.7 Secondment to the Union

The Employer will, on application, grant leave without pay to an Employee for the purpose of secondment or other arrangement to work for the Union subject to the Employer's reasonable operational requirements.

75.8 Employees holding union official positions

The Employer will, on application by the Union, grant leave without loss of pay to an Employee for the purpose of fulfilling their duties as an official of the Association or Executive body of the Union.

75.9 Union Training

NOTE: an HSR may be entitled to any training in accordance with the OHS Act rather than, or in addition to, this clause.

- (a) Subject to the conditions in this subclause 75.9, Employees selected by the Union to attend training courses on industrial relations and/or health and safety will be entitled to a maximum of five days' paid leave per calendar year per Employee.
- (b) Leave in excess of five days and up to ten days may be granted in a calendar year subject to the total leave being granted in that year and in the subsequent year not exceeding ten days.
- (c) The granting of leave will be subject to the Employer's operational requirements. The granting of leave will not be unreasonably withheld.
- (d) Leave under this subclause is granted on the following conditions:

- (i) applications are accompanied by a statement from the Union advising that it has nominated the Employee or supports the application;
 - (ii) the training is conducted by the Union, an association of unions or accredited training provider; and
 - (iii) the application is made as early as practicable and not less than two (2) weeks before the training.
- (e) The Employee will be paid their 'ordinary pay' (as defined at 52 Annual Leave) for normal rostered hours (set out in [Appendix 2](#)), but excluding shift work, overtime and other allowances.
 - (f) Leave in accordance with this clause may include necessary travelling time in normal hours immediately before or after the course.
 - (g) Leave granted under this clause will count as service for all purposes of this Agreement.
 - (h) Expenses associated with attendance at training courses, including fares, accommodation and meal costs are not the responsibility of the Employer.

75.10 Workplace Implementation Committees

- (a) A local Workplace Implementation Committee (**WIC**) will continue or, if there is not currently a WIC in operation, be established at each Employer. Having regard for the size and location, a WIC may be appropriate at each facility/campus. The WIC will, where practicable, comprise equal numbers of representatives of the Employer and Professionals Australia for the purposes of:
 - (i) agreement implementation;
 - (ii) on-going monitoring and assessment of the implementation of this Agreement; and
 - (iii) to deal with any local disputes that may arise, without limiting the Dispute Resolution Procedure in this Agreement.
- (b) Priority items for consideration by the WIC will include the matters arising under clause 57 (Family Violence) and this clause 75 (Union Matters).

76 Service Delivery Partnership Plan

76.1 The parties have agreed to the following items for inclusion into an SDPP:

76.2 The parties are committed to improving the productivity and efficiency of the Victorian public health system in the following areas:

- (a) Reducing illness and injury through occupational health and safety interventions;
- (b) Facilitating and assisting the implementation of the Victorian Health Risk Management System, and the reduction of negative patient outcomes.
- (c) Adopting best practice leave management arrangements;
- (d) Enhancing patient safety and outcomes through increased immunization/vaccination rates;
- (e) Reducing the environmental impact of health services
- (f) Improving patient satisfaction levels through improved stakeholder response times
- (g) Best practice in addressing absenteeism;
- (h) Assisting the implementation of the Asset management accountability framework;

- (i) Gaining efficiencies and reducing costs associated with the use of fee-for-service arrangements for maintenance and repairs of medical equipment;
- (j) Reviewing the appropriateness of a cost neutral replacement of all or some of the current on-call/recall allowances with a Remote Technology Allowance;
- (k) Developing a training model to meet any mandatory registration requirements
- (l) Continuing cooperation for the development and implementation of a standardised/high cost equipment asset database for medical devices across Victorian Hospitals.

- 76.3** To facilitate the achievement of the above initiatives the parties agree to establish a Service Delivery Partnership Plan Working Group (**SDPPWG**) within six months of the Agreement being approved by the Commission. The role of the SDPPWG will be to discuss, implement and monitor progress towards achieving the initiatives outlined in this clause.
- 76.4** The SDDPWG will comprise nominated representatives from the Union, the VHIA and the Department of Health and Human Services (as required).
- 76.5** The SDPPWG may, by agreement, establish sub-groups or delegate individual matters to a relevant health service(s) as required.
- 76.6** A dispute over the implementation of this clause will be dealt with through conciliation in accordance with clause 12 – Dispute Resolution Procedure

PART J – CLASSIFICATIONS AND STAFFING

77 Classification matters

- 77.1** The parties agree that all Employees will be classified as per the classification descriptors in this clause.
- 77.2** The Employer shall notify each Employee in writing of their classification and terms of employment.

78 Disclosure of Qualification

A Biomedical Engineer who is employed in or who is an applicant for employment covered by this Agreement shall if and when required to do so by his/her Employer or an Employer to whom he/she has applied for employment produce to his/her Employer, written evidence that he/she possesses or has acquired the qualification of qualified engineer or experienced engineer (as the case may be)

79 Classification Definitions

79.1 Biomedical Engineers Class 1

- (a) Positions at Class 1 are regarded as entry level health professionals and for initial years of experience.
- (b) Classes 1 & 2 may be the entry level for new graduates who meet the requirement to practice as a health professional (where appropriate in accordance with their professional association's rules and be eligible for membership of their professional association) or such qualification as deemed acceptable by the Employer. It is also the level for the early stages of the career of a health professional.
- (c) Progression between Class 1 and 2 will be automatic.

79.2 Biomedical Engineers Class 2

- (a) A health professional at this level works independently and is required to exercise independent judgement on routine matters. They may require professional supervision from more senior members of the profession or health team when performing novel, complex or critical tasks. They have demonstrated a commitment to continuing professional development and may have contributed to workplace education through provision of seminars, lectures or in-services. At this level the health professional may be actively involved in quality improvement activities or research.
- (b) At this level the health professional contributes to the evaluation and analysis of guidelines, policies and procedures applicable to their clinical/professional work and may be required to contribute to the supervision of discipline specific students.
- (c) Progression between class 1 and 2 will be automatic.

79.3 Biomedical Engineers Class 3

- (a) The Biomedical Engineer Class 3 is capable of carrying out responsibilities and varied professional engineering work, and makes independent studies, analysis, interpretation and conclusions.
- (b) The Biomedical Engineer Class 3/1 is a Biomedical Engineer who is appointed and who either:
 - (i) Is in charge of Biomedical Engineering staff, but not other professional engineers as a regular or continuous responsibility; or
 - (ii) Performs without engineering supervision normal professional Biomedical Engineering tasks and accepts technical responsibility for such work; or
 - (iii) Under professional engineering supervision undertakes more novel, more complex and/or critical Biomedical Engineering tasks.
- (c) The Biomedical Engineer Class 3/1 is also a Biomedical Engineer who has:
 - (i) Assisted other Biomedical Engineering staff with the solution of technical problems; and/or
 - (ii) Demonstrated skill in the supervision of Biomedical Engineering staff; and/or
 - (iii) Demonstrated the ability to provide clinical staff with technical assistance relating to the safety, application, evaluation and/or selection of medical equipment;
- (d) The Biomedical Engineer Class 3/2 is a Biomedical Engineer who is appointed or after not more than one year as a class 3/1 Biomedical Engineer has been assessed as competent at that Class and who has:
 - (i) Demonstrated the knowledge and ability to prepare written specifications for medical equipment; and/or
 - (ii) Demonstrated the knowledge and skill required to develop biomedical technology.
- (e) The Biomedical Engineer Class 3/3 is a Biomedical Engineer who is appointed or after not more than one year as a Class 3/2 Biomedical Engineer has been assessed as competent at that Class and who has:
 - (i) Demonstrated the knowledge and ability to process medical product recalls, hazard alerts and incident investigations; and/or
 - (ii) Demonstrated a good understanding of the international standards and regulatory requirements relating to medical technology; and/or
 - (iii) Presented original research or biomedical technology design or development to a relevant professional group.
- (f) Progression to class 3 will be by appointment.

79.4 Biomedical Engineer Class 4

- (a) The Biomedical Engineer Class 4 is expected to possess mature engineering knowledge and judgement in Biomedical Engineering practice, to continue to develop expertise with advances in the relevant body of engineering knowledge, and, to seek and utilise other specialist advice when required. Such work normally is accepted as technically accurate and feasible.
- (b) The Biomedical Engineer Class 4/1 is a Biomedical Engineer who is appointed or reclassified from a lower Class and who:
 - (i) is in charge of graduate Biomedical Engineering staff; or

- (ii) has had the status of Experienced Engineer, as defined, for at least four years and is engaged upon Biomedical Engineering work of a research or development nature; or
 - (iii) works under broad policy control and direction on professional Biomedical Engineering work of a novel, complex and/or critical nature; or
 - (iv) is responsible for the organisation and supervision of the Biomedical Engineering work of a Department where considerations such as size, complexity of the work, or the scope of the managerial responsibility do not justify a position of engineer class 5.
- (c) In addition to clause 79.4(b) the Biomedical Engineer Class 4/1 is a Biomedical Engineer and who has:
- (i) demonstrated the ability to successfully manage material and financial resources allocated to a Biomedical Engineering department; and/or
 - (ii) developed policies and procedures for the successful operation of a Biomedical Engineering department; and/or
 - (iii) demonstrated the application of knowledge and skill to the development of specialist biomedical technology.
- (d) The Biomedical Engineer Class 4/2 is a Biomedical Engineer who is appointed or after not more than one year as a Class 4/1 Biomedical Engineer has been assessed as competent at that Class and who has:
- (i) demonstrated the skills required for the successful management of the staff of a Biomedical Engineering department; and/or
 - (ii) Developed or arranged for the development of training programs for other Biomedical Engineers or hospital professionals; and/or
 - (iii) Demonstrated initiatives in developing ad/or managing specialists biomedical technology.
- (e) The Biomedical Engineer Class 4/3 is a Biomedical Engineer who is appointed or after not more than one year as a class 4/2 Biomedical Engineer has been assessed as competent at that Class and who has:
- (i) provided the organisation with a medical equipment management service that is in accordance with best Biomedical Engineering practice; and/or
 - (ii) demonstrated the ability to provide clinical staff with engineering consultation relating to the safety, application, specification, evaluation and selection of medical equipment or systems; and/or
 - (iii) demonstrated the experience, knowledge and skill required for the development and/or management of specialist biomedical technology.
- (f) Single site managers will be classified at Class 4.
- (g) Progression to class 4 will be by appointment.

79.5 Biomedical Engineer Class 5

- (a) The Biomedical Engineer Class 5 works under broad policy control and direction and undertakes professional engineering work requiring either sustained managerial functions or in-depth engineering knowledge and competence, exercising experienced independent judgement and originality.
- (b) The Biomedical Engineer Class 5/1 is a Biomedical Engineer who is appointed or reclassified from a lower Class and who either:

- (i) is responsible for the organisation and supervision of Biomedical Engineering work of a department; or
 - (ii) is a specialist Biomedical Engineer and who undertakes sustained specialist Biomedical Engineering functions beyond that of a Biomedical Engineer Class 4.
- (c) The Biomedical Engineer Class 5/2 is a Biomedical Engineer who is appointed or after not more than two years as a Class 5/1 Biomedical Engineer has been assessed as competent at the leave and who:
- (i) has been assessed as a competent manager of the personnel resources of a Biomedical Engineering department; and/or
 - (ii) assisted in the development of medical technology related policies and procedures for the organisation; and/or
 - (iii) has demonstrated specialist expertise and experience in the development and/or management of specialist biomedical technology.
- (d) The Biomedical Engineer Class 5/3 is a Biomedical Engineer who is appointed or after not more than two years as a Class 5/2 Biomedical Engineer has been assessed as competent at that Class and who has:
- (i) demonstrated good management practices; and/or
 - (ii) provided a medical equipment management service that is in accordance with best Biomedical Engineering practice; and/or
 - (iii) provided clinical staff with a high level of engineering consultation relating to the safety, application, specification, evaluation and selection of medical equipment or systems; and/or
 - (iv) developed and/or managed specialist biomedical technology and who has presented original research or biomedical technology design or development information to a relevant professional group.
- (e) A multi-site manager will be classified as a Class 5.
- (f) Progression to class 5 will be by appointment.

80 Progression

Progression within each Class is based on years of service.

80.1 Biomedical Engineer – Class 1

- (a) A Biomedical Engineer who holds, or is qualified to hold a degree of Bachelor of Engineering after having undertaken a four or five year full-time course, or the equivalent part-time, recognised by the Institute of Engineers Australia, shall be entitled to be classified as a Biomedical Engineer Class 1 Year 2.
- (b) A Biomedical Engineer who holds, or is qualified to hold the degree of Masters of Engineering Science, Master of Engineering or the equivalent Masters degree, shall be entitled to be classified as a Biomedical Engineer Class 1 Year 3, provided further that a Biomedical Engineer so classified shall not be entitled to the higher qualification payment prescribed in clause 34 for a further period of two years.
- (c) A Biomedical Engineer who holds, or is qualified to hold the degree of Doctor of Philosophy or Doctor of Engineering shall be entitled to be classified as a Biomedical Engineer Class 1 Year 4, provided further that a Biomedical Engineer

so classified shall not be entitled to the higher qualification payment prescribed in clause 34 for a further period of two years.

- (d) A Biomedical Engineer who is an Experienced Engineer, as defined shall be entitled to be classified as a Biomedical Engineer Class 2 Year 1.
- (e) A sole Biomedical Engineer (i.e. one who is the only Biomedical Engineer employed in a Department), shall be paid at the rate of 5% of the Biomedical Engineer Class 1 Year 1 in addition to the appropriate rate applicable to a Biomedical Engineer Class 1 Year 1.

80.2 For the purpose of this clause:

- (a) The **"first year of experience after qualification"** referred to in clause 80.1 of this Agreement shall be deemed to commence on the 1st day of January in the year following the year during which the Biomedical Engineer presented himself/herself for final examination which, if successful, would entitle the Biomedical Engineer to the Degree of Bachelor of Engineering. Where a Biomedical Engineer was required to attend a supplementary examination, such Biomedical Engineer shall if successful, be deemed to have passed the final examination in the year during which such final examination was held.
- (b) Where a Biomedical Engineer Class 1 – 1st year of experience after qualification commences employment during the first year after qualification, such Biomedical Engineer shall be advanced to the classification Biomedical Engineer – Class 1 Year 2 as from the 1st day of January in the next succeeding year.

80.3 Incremental Progression

Biomedical Engineers shall be eligible for progression from one pay point to the next pay point within each classification if:

- (a) The Biomedical Engineer has given satisfactory performance over the preceding twelve months; and
- (b) The Biomedical Engineer has on assessment acquired and is required by the Employer to utilise new and/or enhanced skills within the ambit of the classification definition for the Biomedical Engineers position or other skills as agreed, and this has been certified to in writing following, and as part of, the assessment process.

80.4 Biomedical Engineers shall, subject to clause 80.3(a), be paid at the next pay point from the anniversary of their appointment to the classification.

80.5 In cases where the assessment is delayed, the anniversary date shall not be changed and the increase, if any, will be paid retrospectively to the anniversary date.

81 Workload

81.1 The Employer acknowledges the benefits to both the organisation and the individual Employees gained through Employees having a balance between both their professional and family life.

81.2 The Employer further recognises that the allocation of work must include consideration of the Employee's hours of work, health, safety and welfare.

81.3 However, the Employer may require the Employee to work reasonable overtime where:

- (a) such work is unavoidable because of work demands and reasonable notice of the requirement to work overtime is given by the Employer; or

(b) where due to an emergency, it has not been possible to provide reasonable notice.

81.4 In accordance with the NES the Employee may refuse to work additional hours referred to in clause 42.3 above if the request is unreasonable.

81.5 In the event an individual Employee identifies a particular workload issue affecting them, they should in the first instance discuss the issue with their immediate manager or supervisor.

82 Working from Home (RCH and RWH only)

An Employee, subject to operational requirements and with the approval of the Employee's Department Head, may work from his/her place of residence in circumstances where the work is project based and may be performed with a high level of autonomy.

SIGNATURES

SIGNED for and on behalf of each of the **EMPLOYERS** referred to in **Appendix 1** by the authorised representatives of the **Victorian Hospitals' Industrial Association** in the presence of:



Witness

Yunbin Lin

Name of Witness (print)

SIGNED for and on behalf of **ASSOCIATION OF PROFESSIONAL ENGINEERS, SCIENTISTS, AND MANAGERS AUSTRALIA** trading as **PROFESSIONALS AUSTRALIA** by its authorised officers in the presence of:



Witness

ALEXANDER GOUNIS

Name of Witness (print)



Signature

Tim Nagle

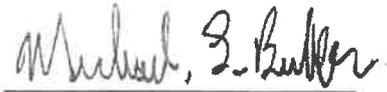
Name (print)

88 Maribyrnong Street Footscray

Address

Acting Chief Executive Officer

Authority to sign



Signature

Michael Butler

Name (print)

152 Miller St West Melbourne

Address

DIRECTOR INDUSTRIAL RELATIONS

Authority to sign

APPENDIX 1 - LIST OF EMPLOYERS

- 1 Albury Wodonga Health (Wodonga Hospital)
- 2 Alfred Health
- 3 Austin Health
- 4 Barwon Health
- 5 Eastern Health
- 6 Goulburn Valley Health
- 7 Latrobe Regional Hospital
- 8 Melbourne Health
- 9 Monash Health
- 10 Northern Health
- 11 Peter MacCallum Cancer Centre
- 12 Royal Children's Hospital
- 13 Royal Women's Hospital
- 14 South West Healthcare
- 15 Western Health

APPENDIX 2 – SALARIES, ALLOWANCES

The wage rates for Biomedical Engineers will be as follows:

Classification		Current	First Full Pay Period commencing on or after			
Class	Year		13-Sep-18	13-Sep-19	13-Sep-20	13-Sep-21
			5%	3%	3%	3%
Class 1	1	\$ 1,064.90	\$ 1,118.15	\$ 1,151.69	\$ 1,186.24	\$ 1,221.83
	2*	\$ 1,145.50	\$ 1,202.78	\$ 1,238.86	\$ 1,276.02	\$ 1,314.30
	3#	\$ 1,205.60	\$ 1,265.88	\$ 1,303.86	\$ 1,342.97	\$ 1,383.26
	4	\$ 1,265.30	\$ 1,328.57	\$ 1,368.42	\$ 1,409.47	\$ 1,451.76
	5	\$ 1,329.90	\$ 1,396.40	\$ 1,438.29	\$ 1,481.44	\$ 1,525.88
Class 2	1	\$ 1,350.20	\$ 1,417.71	\$ 1,460.24	\$ 1,504.05	\$ 1,549.17
	2	\$ 1,422.20	\$ 1,493.31	\$ 1,538.11	\$ 1,584.25	\$ 1,631.78
Class 3	1	\$ 1,497.90	\$ 1,572.80	\$ 1,619.98	\$ 1,668.58	\$ 1,718.64
	2	\$ 1,572.80	\$ 1,651.44	\$ 1,700.98	\$ 1,752.01	\$ 1,804.57
	3	\$ 1,600.50	\$ 1,680.53	\$ 1,730.94	\$ 1,782.87	\$ 1,836.36
Class 4	1	\$ 1,733.30	\$ 1,819.97	\$ 1,874.56	\$ 1,930.80	\$ 1,988.72
	2	\$ 1,779.40	\$ 1,868.37	\$ 1,924.42	\$ 1,982.15	\$ 2,041.62
	3	\$ 1,877.40	\$ 1,971.27	\$ 2,030.41	\$ 2,091.32	\$ 2,154.06
Class 5	1	\$ 2,009.50	\$ 2,109.98	\$ 2,173.27	\$ 2,238.47	\$ 2,305.63
	2	\$ 2,116.20	\$ 2,222.01	\$ 2,288.67	\$ 2,357.33	\$ 2,428.05
	3	\$ 2,265.20	\$ 2,378.46	\$ 2,449.81	\$ 2,523.31	\$ 2,599.01

*Commencement Rate for 4 Year Degree holder

#Commencement rate for Master's degree holder

First full pay period commencing on or after					
Allowances		13-Sep-18	13-Sep-19	13-Sep-20	13-Sep-21
	Meal Allowance	\$ 13.23	\$ 13.63	\$ 14.04	\$ 14.46
	On Call per 12 hour period or part thereof	\$ 30.07	\$ 30.97	\$ 31.90	\$ 32.86
Shift Allowances (Per occasion)	Change of Shift Allowance	\$ 44.73	\$ 46.07	\$ 47.45	\$ 48.87
	Morning Shift	\$ 27.95	\$ 28.79	\$ 29.66	\$ 30.55
	Afternoon Shift	\$ 27.95	\$ 28.79	\$ 29.66	\$ 30.55
	Night Shift	\$ 44.73	\$ 46.07	\$ 47.45	\$ 48.87
	Permanent Night Shift	\$ 55.91	\$ 57.58	\$ 59.31	\$ 61.09
Weekly Allowances					
Higher Qualifications	Graduate Certificate	\$ 50.64	\$ 52.15	\$ 53.72	\$ 55.33
	Graduate Diploma	\$ 82.28	\$ 84.75	\$ 87.29	\$ 89.91
	Masters Degree	\$ 94.94	\$ 97.79	\$ 100.72	\$ 103.74
	MBA	\$ 94.94	\$ 97.79	\$ 100.72	\$ 103.74
	PHD or Doctorate of Engineers	\$ 126.59	\$ 130.39	\$ 134.30	\$ 138.33

IN THE FAIR WORK COMMISSION

FWC Matter No.:

AG2018/6037

Applicant:

Victorian Hospitals' Industrial Association

Undertaking- section 190

I, Timothy Patrick Nagle, Interim Chief Executive Officer of the Victorian Hospitals' Industrial Association give the following undertakings with respect to the *Victorian Public Health Sector (Biomedical Engineers) Enterprise Agreement 2018 – 2022* ("the Agreement"):

1. I have the authority given to me to provide this undertaking in relation to this application before the Fair Work Commission.
2. The VHIA is the bargaining representative of each of the Employers listed in Appendix One (Employers) to the Agreement.
3. The VHIA is authorised to give the following undertakings on behalf of each of the Employers, and gives this undertaking on behalf of each of the Employers pursuant to subsection 190(3) of the *Fair Work Act 2009*.

4. Part Time Workers and Overtime

Where a part-time employee is required to work outside their agreed hours, they will receive overtime in accordance with the Overtime provisions of the Agreement.

Authority to sign:

Interim CEO

Signature:



Date: 5 April 2019