



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Eastern Palliative Care Association Incorporated
(AG2020/4104)

EASTERN PALLIATIVE CARE ASSOCIATION INCORPORATED ALLIED HEALTH EMPLOYEES ENTERPRISE AGREEMENT 2020

Health and welfare services

DEPUTY PRESIDENT COLMAN

MELBOURNE, 1 FEBRUARY 2021

Application for approval of the Eastern Palliative Care Association Incorporated Allied Health Employees Enterprise Agreement 2020.

[1] Eastern Palliative Care Association Incorporated has made an application for approval of an enterprise agreement known as the *Eastern Palliative Care Association Incorporated Allied Health Employees Enterprise Agreement 2020* (the Agreement) pursuant to s 185 of the *Fair Work Act 2009* (the Act). The agreement is a single enterprise agreement.

[2] On the basis of the material contained in the application and accompanying employer declaration, I am satisfied that each of the requirements of ss 186, 187 and 188 as are relevant to this application for approval has been met. In particular, I have had regard to the matters raised in the F18 declaration by the Health Service Union (relevantly trading as the Victorian Allied Health Professionals Association (VAHPA)) and am satisfied that the agreement passes the ‘better off overall test’.

[3] The VAHPA, being a bargaining representative for the Agreement, has given notice under s 183 of the Act that it wants the Agreement to cover it. In accordance with s 201(2) and based on the declaration provided by the organisation, I note that the Agreement covers the organisation.

[4] The Agreement was approved on 1 February 2021 and, in accordance with s 54, will operate from 8 February 2021. The nominal expiry date of the Agreement is 1 October 2024.



DEPUTY PRESIDENT

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EASTERN PALLIATIVE CARE ASSOCIATION INCORPORATED

ALLIED HEALTH EMPLOYEES

ENTERPRISE AGREEMENT

2020

ENTERPRISE AGREEMENT

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2. NAME OF THE AGREEMENT

This Agreement shall be known as the *Eastern Palliative Care Association Incorporated Allied Health Employees Enterprise Agreement 2020* (Hereinafter referred to as 'the Agreement').

3. PARTIES TO THE AGREEMENT

The parties to this Agreement are:

- (a) Eastern Palliative Care Association Incorporated ("EPC") (ABN: 62982157121); and
- (b) Employees employed by the Employer as classified in Schedule A of this Agreement.

4. APPLICATION FOR COVERAGE

- (a) This Agreement is made under section 172 of the Act. The Employer will take the necessary steps to seek approval of this Agreement under section 186 of the Act.
- (b) The Employer will formally advise the Health Services Union Victoria No. 3 Branch (trading as the Victorian Allied Health Professionals Association) when the Agreement is made in order for it to apply under section 183 of the Act to be covered by the Agreement.
- (c) It is the intention of this Agreement that the Health Services Union Victoria No. 3 Branch, trading as the Victorian Allied Health Professionals Association ("VAHPA") will be covered by this Agreement.
- (d) The Employer shall act in good faith in all dealings with Employees.

5. SCOPE OF THE AGREEMENT

This Agreement contains all the terms and conditions of employment for Employees covered by the Agreement and shall apply to all Employees employed pursuant to the classifications listed in Schedule A employed by the Employer.

6. DATE AND PERIOD OF OPERATION

This Agreement shall commence operation from the 7th day after the Agreement is approved by the FWC and shall remain in force until 1st October 2024 and thereafter in accordance with the Act.

The parties agree that discussions shall commence for a new enterprise agreement no later than six months prior to the expiry date of the Agreement.

7. POSTING OF THE AGREEMENT

A copy of this Agreement shall be displayed in a conspicuous and convenient place at the workplace so as to be easily read by all Employees.

8. RELATIONSHIP TO THE NATIONAL EMPLOYMENT STANDARDS

Entitlements in accordance with the National Employment Standards ("NES") are provided for under the Act. Where this Agreement also has provisions regarding matters dealt with under the NES and the provisions in the NES set out in the Act are more favourable to an Employee in a particular respect than those provisions, then the NES will prevail in that respect, and the provisions dealing with that matter in this Agreement will have no effect in respect of that Employee. The provisions in this Agreement otherwise apply.

9. DEFINITIONS

For the purposes of this Agreement:

- (a) "the Act" shall mean the *Fair Work Act 2009* (Cth), as amended.
 - (b) "Employee" means a person employed by the Employer in a classification defined in Schedule A of this Agreement.
 - (c) "Employer" means Eastern Palliative Care Association Incorporated.
 - (d) "FWC" means the Fair Work Commission.
 - (e) "Immediate family" of an Employee means:
 - o A Spouse (includes former Spouse), de facto partner* (includes a former de facto partner), child, parent, grandparent, grandchild or sibling of the Employee; or
 - o A child, parent, grandparent, grandchild or sibling of a spouse or de facto partner* of the Employee.
 - o Step relations (e.g. step-parents and step-children) and adoptive relations.
- * 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.
- (f) "NES" means the National Employment Standards as contained in sections 59 to 131 of the Act.
 - (g) "Permanent Care" means a Permanent Care Order made by the Children's Court of Victoria under the *Children, Youth and Families Act 2005* (Vic) which transfers custody and guardianship of the child to the permanent care parent. The intention of the order is to provide the child with a permanent family in circumstances where the birth family is unable to care for the child.
 - (h) "Union" or "VAHPA" means the Health Services Union Victoria No. 3 Branch, trading as the Victorian Allied Health Professionals Association.

10. CONSULTATION REGARDING CHANGE

- (a) This clause 10 will apply when the Employer intends to introduce either:
 - 1) a major change to production, program, organisation, structure, or technology in relation to its enterprise or any other change that may result in the termination of employment of Employees or financial detriment to the Employees, and the change is likely to have a significant effect on Employees of the Employer; or
 - 2) a change to Employees' regular roster or ordinary hours of work.
- (b) If the Employer determines on a preliminary basis, but prior to a final decision being made, that there is a need for major change the Employer will as soon as practicable thereafter consult with Employees who may be affected by that workplace change, and the Union. This initial consultation will address the issues which have arisen, the need for workplace change, and any approaches preferred by the Employer to address these issues, with this information to be provided in writing to Employees and the Union.
- (c) Where the Employer then makes a definite decision to introduce major change, the Employer must notify the relevant Employees and the Union of the proposed introduction of major change.

(d) If:

- 1) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
- 2) the Employee or Employees advise the Employer of the identity of the representative;

the Employer must recognise the representative.

(e) As soon as practicable after making its decision, the Employer must

- 1) discuss with the relevant Employees and the Union:
 - (a) the introduction of the change; and
 - (b) the effect the change is likely to have on the Employees; and
 - (c) measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees; and
- 2) for the purposes of the discussion — provide, in writing, to the relevant Employees and the Union:
 - a. all relevant information about the change including the nature of the change proposed; and
 - b. information about the expected effects of the change on the Employees; and
 - c. any other matters likely to affect the Employees.
- 3) Subject to (e) 1) and 2), for a change to the Employees' regular roster or ordinary hours of work, the Employer is required to:
 - a. provide information to the Employees about the change; and
 - b. invite the Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities); and
 - c. consider any views given by the Employees about the impact of the change.

(f) However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

(g) The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees and the Union.

(h) If a term in the Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Employer, the requirements set out in subclauses (b), (c) and (e) are taken not to apply.

(i) In this term, a major change is likely to have a significant effect on Employees if it results in the termination of the employment of Employees; or major change to the composition, operation or size of the Employer's workforce or to the skills required of Employees; or the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or the alteration of hours of work; or the need to retrain Employees; or the need to relocate Employees to another workplace; or the restructuring of jobs.

(j) In this clause 10, relevant Employees means the Employees who may be affected by the major change.

11. DISPUTE RESOLUTION PROCEDURE

(a) In the event of a dispute in relation to a matter arising under this Agreement or the NES, in the first instance the parties will attempt to resolve the matter at the workplace by discussions between the Employee or Employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the Employee or Employees concerned and more senior levels of management as appropriate.

(b) A party to the dispute may appoint another person, organisation or association, which may include a VAHPA representative, to accompany or represent them in relation to the dispute.

(c) If a dispute in relation to a matter arising under the Agreement or the NES is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, a party to the dispute may refer the matter to the FWC.

- (d) The FWC may deal with the dispute in 2 stages:
- 1) the FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - 2) if the FWC is unable to resolve the dispute at the first stage, the FWC may then:
 - o arbitrate the dispute; and
 - o make a determination that is binding on the parties;where a party or parties to the dispute request that the FWC proceed to determine the dispute by arbitration.
 - 3) If FWC arbitrates the dispute, it may also use the powers that are available to it under the Act. A decision that the FWC makes when arbitrating a dispute is a decision for the purpose of Div. 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.
- (e) While the dispute resolution procedure is being conducted, work shall continue normally according to custom or practice existing before the dispute arose, until the dispute is resolved. No party shall be prejudiced as to the final settlement of the dispute by the continuance of work in accordance with sub-clause 11(e). Health and safety matters are exempted from this sub-clause.
- (f) The parties to the dispute agree to be bound by a decision made by the FWC in accordance with this term.

12. WAGES

- (a) Wages will be determined as set out in Appendix 1.
- (b) The wage increases in subclause (a) hereof shall be payable as follows:-
- 1) The amount shown in the column entitled "New Hourly Rate 1.10.20" shall be paid from the beginning of the first full pay period that commenced on or after 1 October 2020.
 - 2) The amount shown in the column entitled "New Hourly Rate 1.10.21" shall be paid from the beginning of the first full pay period to commence on or after 1 October 2021.
 - 3) The amount shown in the column entitled "New Hourly Rate 1.10.22" shall be payable from the beginning of the first full pay period to commence on or after 1 October 2022.
 - 4) The amount shown in the column entitled "New Hourly Rate 1.10.23" shall be payable from the beginning of the first full pay period to commence on or after 1 October 2023.
- (c) The wage increases referred to in sub-clause 12(a) shall apply to any payment made to the Employee beyond the minimum rates contained within this Agreement.
- (d) Any further wage increase shall be at the discretion of the Employer, unless the Employee's rate of pay falls below the Prescribed Rate, the rate of pay shall automatically default to the Prescribed Rate. The Prescribed Rate for the purposes of this clause means the minimum rate of pay for the Employee's applicable *Health Professionals and Support Services Award 2020* classification.
- (e) Rates of pay as increased by this Agreement are set out in Appendix 1.

13. INCREMENTAL PROGRESSION

- (a) Introduction of Year Levels

Year Levels are to be implemented for Classification Levels in the Agreement as specified in the classification structure in Appendix 1 – Wage Rates. New Year Levels will be implemented annually over the life of the Agreement:

- 1) Year 1 will apply on commencement of the Agreement;
- 2) Year 2 will apply from 1 October 2021;
- 3) Year 3 will apply from 1 October 2022; and

4) Year 4 will apply from 1 October 2023.

(b) Progression through Year Levels

Advancement by an Employee through Year Levels within a Classification Level will occur upon the completion by the Employee of each 12 month period of service calculated from the Employee's commencement in a level within the classifications irrespective of whether a 12 month period of service (or any part) was served as a full-time, part-time or casual Employee. Any unpaid leave of absence of greater than 10 days for a 12 month period does not count for service for the purposes of calculating a 12 month period for progression.

(c) Existing Employees

Employees who commenced employment with the Employer prior to the commencement of the Agreement shall commence at Year 1 of their existing classification level. They will then progress (subject to sub-clause 13 (b)) to:

- 1) Year 2 on 1 October 2021;
- 2) Year 3 on 1 October 2022; and
- 3) Year 4 on 1 October 2023.

(d) New Employees

An Employee who commences employment with the Employer after the commencement of the Agreement shall commence at Year 1 of the classification level to which they are appointed. Save that a new Employee can commence at higher than Year 1 of their relevant classification level only where the Employee has obtained the relevant number of years of experience at an equivalent classification level in their profession within the last five years.

14. PAYMENT OF WAGES

- (a) Wages must be paid fortnightly unless otherwise mutually agreed up to a monthly maximum period.
- (b) Employees will be paid by electronic funds transfer into the bank or financial institution account nominated by the Employee.
- (c) When notice of termination of employment has been given by an Employee or an Employee's services have been terminated by the Employer, payment of all wages and other monies owing to an Employee will be made to the Employee on the next usual pay day.

15. SUPERANNUATION

- (a) The subject of superannuation is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth). This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.
- (b) Within 28 days upon commencement of employment, the Employee will provide to the Employer their choice of fund documentation, otherwise the Employer shall forward contributions and Employee details to Aware Super.
- (c) In addition to the Organisation's statutory contributions to the Fund an Employee may make additional contribution from their salary, and on receiving written authorisation from the Employee the Organisation must commence making contributions to the Fund in accordance with the *Superannuation Guarantee Charge Act 1992* (Cth).
- (d) Superannuation fund payments will be made in accordance with trust fund deeds.

- (e) Where an Employee salary packages their wages in accordance with this Agreement, superannuation shall be paid on the pre-packaged wages.

16. SALARY PACKAGING

- (a) The Employer offers salary packaging which is administered by an external provider. All Employees may be able to make voluntary pre-tax contributions or payments through payroll to the provider in accordance with the provider's guidelines. The Employer will pay the salary packaging amount in accordance with the salary packaging agreement between the Employee and the provider.
- (b) An Employee may apply to have their ordinary time earnings reduced by an amount nominated by them as a salary packaging contribution for their benefit.
- (c) The total value of the reduced salary and the agreed value of the benefits provided will not be less than the amount that would otherwise be paid if the salary packaging arrangement was not in place.
- (d) The Employer recognises the need for Employees to consider independent financial and taxation advice and recommends that Employees consider such advice prior to entering into salary packaging arrangements.
- (e) In the event that the law governing superannuation and/or taxation make the objective of this clause 16 ineffective, unattainable or illegal, the Employer will advise the Employee concerned. The salary packaging contribution arrangement will be terminated or amended to comply with such laws.
- (f) An Employee may revoke or vary their salary packaging contribution/payment by notifying the provider in accordance with the provider's guidelines.

17. TYPES OF EMPLOYMENT

At the time of engagement, the Employer shall provide each Employee with written advice of the terms of their employment which specifies whether they are full-time, part-time or casual, an outline of the duties of the position, details of hours and days of work, and pursuant to this Agreement, the position and rate of pay of the position, and any other relevant details attaching to the employment arrangement.

(a) **Full-time employment**

A full-time Employee shall mean an Employee who is engaged to work 38 hours of ordinary time per week in accordance with the provisions of hours of work under this Agreement, and who shall be entitled to all the benefits of this Agreement.

(b) **Part-time employment**

- 1) A part-time Employee shall mean an Employee who is engaged to work regular ordinary hours of less than 38 hours per week and shall be entitled to all the benefits of this Agreement on a pro rata basis, save for paid family violence leave, which is to be provided in full to part-time Employees.
- 2) The Employer will agree in writing with a part-time Employee on a regular pattern of work including the number of hours to be worked each week, days of the week the Employee will work, and starting and finishing times each day.
- 3) Any agreed variation to the regular pattern of work will be recorded in writing.
- 4) The minimum period of work on any day for a part time Employee is 2 hours.
- 5) The provisions of this Agreement in respect to annual leave, personal leave and public holidays shall apply on a pro rata basis to part-time Employees.
- 6) Additional Working Hours
 - a. The Employer requires flexibility in the hours of work. There will arise occasions where additional work may become available for part-time Employees over and above their normal range of duties. The work arrangements detailed here are designed to accommodate this need, at the same time this clause 17(b) is designed to minimise the impact for the Employer while preserving and enhancing Employee entitlements.

- b. Part-time Employees will be offered a minimum number of hours work per week, as specified in writing pursuant to sub-clause 17(b) 2).
- c. Additional hours up to a maximum of 38 hours per week, may be negotiated and agreed upon between the Employer and the Employee with advanced notice (minimum of 48 hours) for set periods of time (where organisational operations require). Where this occurs, providing the hours of work do not exceed 38 hours per week and /or do not occur outside of the span of agreed hours, Monday-Friday, these additional hours worked shall be paid at the normal hourly rate of the Employee and shall not attract any additional recompense.
- d. Additional hours worked shall accrue personal leave and other entitlements proportionate to the number of hours worked.
- e. Any hours worked in excess of 38 hours per week or outside of an Employee's agreed span of hours, Monday – Friday shall attract overtime rates of pay.
- f. The Employer agrees to ensure that no part-time Employee is placed under any coercion to work additional hours and to respect an Employee's right to work the minimum number of hours as detailed in the Employee's employment contract.
- g. Where a part-time Employee does not agree to work additional hours with advanced notice, but the Employer requires a part-time Employee to complete such additional hours, such work shall be considered overtime and treated as prescribed in clause 20.

(c) Casual employment

- 1) A casual Employee means an Employee who is engaged intermittently for work of an unexpected or casual nature and does not include an Employee who could properly be engaged as a full-time or part-time Employee.
- 2) A casual Employee shall be engaged for a minimum of three consecutive hours each shift.
- 3) A casual Employee shall be paid for such hours worked at a rate prescribed in Appendix 1, plus a loading of 25% for ordinary working hours without entitlement to paid personal leave or annual leave.
- 4) Right to request casual conversion
 - (a) A regular casual Employee may request that their employment be converted to full-time or part-time employment.
 - (b) A regular casual Employee is a casual Employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the Employee could continue to perform as a full-time Employee or part-time Employee under the provisions of the Agreement.
 - (c) A regular casual Employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
 - (d) A regular casual Employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
 - (e) Any request under sub-clause 17(c) 4) must be in writing and provided to the Employer.
 - (f) Where a regular casual Employee seeks to convert to full-time or part-time employment, the Employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the Employee.
 - (g) Reasonable grounds for refusal include that:
 - (i) it would require a significant adjustment to the casual Employee's hours of work in order for the Employee to be engaged as a full-time or part-time Employee in accordance with the

provisions of the Agreement – that is, the casual Employee is not truly a regular casual Employee as defined in sub-clause 17(c) 4) b);

- (ii) it is known or reasonably foreseeable that the regular casual Employee's position will cease to exist within the next 12 months;
 - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual Employee is required to perform will be significantly reduced in the next 12 months; or
 - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the Employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the Employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) Where the Employer refuses a regular casual Employee's request to convert, the Employer must provide the casual Employee with the Employer's reasons for refusal in writing within 21 days of the request being made.
- (j) If the Employee does not accept the Employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 11—Dispute Resolution Procedure. Under that procedure, the Employee or the Employer may refer the matter to the FWC if the dispute cannot be resolved at the workplace level.
- (k) Where it is agreed that a casual Employee will have their employment converted to full-time or part-time employment as provided for in sub-clause 17(c) 4), the Employer and Employee must discuss and record in writing:
- (i) the form of employment to which the Employee will convert – that is, full-time or part-time employment; and
 - (ii) if it is agreed that the Employee will become a part-time Employee, the number of hours to be worked each week, days of the week the Employee will work, and starting and finishing times each day in accordance with sub-clause 17(b) 2).
- (l) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (m) Once a casual Employee has converted to full-time or part-time employment, the Employee may only revert to casual employment with the written agreement of the Employer.
- (n) A casual Employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under sub-clause 17(c) 4).
- (o) Nothing in sub-clause 17(c) 4) obliges a regular casual Employee to convert to full-time or part-time employment, nor permits the Employer to require a regular casual Employee to so convert.
- (p) Nothing in sub-clause 17(c) 4) requires the Employer to increase the hours of a regular casual Employee seeking conversion to full-time or part-time employment.

18. HOURS OF WORK

- (a) The hours for an ordinary week's work shall be 38 and shall be worked between the hours of 8:30am and 5:00pm Monday to Friday. A regular roster of starting and finishing times will be required.
- (b) An Employee may request that their ordinary hours of work be worked between 8:00am and 6:00pm Monday to Friday, in order to accommodate family, carer and/or other responsibilities. The Employer

will not unreasonably refuse to agree to such a request. Any such request by an Employee and the response from the Employer will be in writing. An Employee wishing to revert to the default span of ordinary hours (8:30am – 5:00pm Monday to Friday) shall be entitled to do so:

- 1) by providing 4 weeks written notice to the Employer; or
- 2) at any time by written mutual agreement with the Employer.

19. REST PERIODS

At times suitable to the Employer, two rest periods of ten minutes each shall be given to each Employee during each period of ordinary rostered hours and shall be counted as time worked.

20. OVERTIME

(a) Only authorised overtime shall be worked.

(b) The following overtime rates shall be paid for all work done:

- 1) Outside of work performed during an Employee's agreed span of hours, Monday – Friday, or in excess of 38 hours in a week, or in excess of 8 hours in a day, as the case may be - time and a half for the first two hours and double time thereafter.

Examples:

- a. For those Employees who normally work on a particular day, 8:30am – 5:00pm, and they are requested to work later or earlier due to operational needs, all work outside these hours is overtime.
 - b. For those Employees who normally work on a particular day, 9:00am – 5:30pm and they are requested to work later or earlier due to operational needs, all work outside these hours is overtime.
 - c. For those Employees who normally work on a particular day, 9:30am – 6:00pm and they are requested to work later or earlier due to operational needs, all work outside these hours is overtime.
 - d. For Employees who normally work from 12:00pm – 5:00pm, and they are required to work until 7:00pm, all work after 5:00pm is overtime.
- 2) Outside a spread of twelve hours from commencement of the last previous rostered period of duty - double time;
 - 3) Outside a spread of nine hours from the time of commencing work by an Employee required to work broken shifts - time and one half;
 - 4) Outside a spread of twelve hours from the time of commencing work - double time.

(c) Ten hour break

- 1) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that Employees have at least ten consecutive hours off duty between the work of successive shifts.
- 2) An Employee who works so much overtime between the termination of their last previous rostered ordinary hours of duty and the commencement of their next succeeding rostered period of duty that they would not have at least ten consecutive hours off duty between those times, shall, subject to sub-clause 20(c), be released after completion of such overtime worked until they have had ten consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absences.
- 3) Further, an Employee who does not receive at least ten consecutive hours off duty between the termination of their last previous rostered ordinary hours of duty and the commencement of their

next succeeding rostered period of duty shall be paid at the rate of double time until they are released from duty for such a period.

- (d) In lieu of receiving payment for overtime worked in accordance with this clause 20, 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 accrual of such leave shall not extend beyond a 28 day period. Where such time in lieu is not taken within 28 days of accrual, the overtime accrued will be paid out at the appropriate overtime rate.
- (e) An Employee who has requested and subsequently accrued time in lieu as per sub-clause 20(d) may, at any time prior to taking such time in lieu, revoke such election and be paid for the overtime worked at the applicable overtime rate. Such payment is to be made on the next usual pay day.
- (f) The Employer may require an Employee to work reasonable overtime at overtime rates. However, an Employee may refuse to work overtime in circumstances where the working of such overtime would result in the Employee working hours which are unreasonable having regard to:
 - 1) any risk to Employee's health and safety;
 - 2) the Employees' personal circumstances including any family responsibilities;
 - 3) the need of the workplace or enterprise;
 - 4) the notice (if any) given by the Employer of the overtime and by the Employee of their intention to refuse it; and
 - 5) any other relevant matter.
- (g) For the purposes of this clause 20, in accruing or calculating payment of overtime, each period of overtime shall stand alone.
- (h) For the avoidance of doubt, accrued time in lieu that has not been taken by an Employee will be paid out on termination of employment at the applicable overtime rate.

21. ACCIDENT PAY

- (a) The conditions under which an Employee shall qualify for accident make-up payment shall be as prescribed hereunder:
 - 1) The Employer shall pay an Employee accident make-up payment where the Employee receives an injury for which weekly payment of compensation is payable by or on behalf of the Employer pursuant to the provisions of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (or any predecessor or successor legislation) ("WIRC Act") as amended from time to time.
 - 2) Accident make-up payment means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the Employee pursuant to the WIRC Act and the Employee's appropriate Agreement rate, or, where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the said Agreement rate for that period.
 - 3) The Employer shall pay, or cause to be paid, accident make-up payment during the incapacity of the Employee within the meaning of the WIRC Act until such incapacity ceases or until the expiration of a period of 39 weeks from the date of injury, payment prescribed shall apply only in respect of an incapacity which results from an injury which is current during the first pay period commencing on or after or which occurs subsequent to that pay period.

- 4) The liability of the Employer to pay make-up payment in accordance with this clause 21 shall arise as at the date of the injury or accident in respect of which compensation is payable under the WIRC Act, and the termination of the Employee's employment for any reason during the period of any incapacity shall in no way affect the liability of the Employer to pay accident make-up payment as provided in this clause 21.
- 5) In the event that the Employee receives a lump sum in redemption of weekly payments under the WIRC Act, the liability of the Employer to pay accident make-up payment as herein provided shall cease from the date of such redemption.

22. ON CALL AND RECALL

- (a) An Employee required by the Employer to be on call will receive the following additional amounts for each 24 hour period or part thereof:
 - 1) when the on call period is between Monday and Friday inclusive, an amount as stated in Appendix 1 will be paid;
 - 2) when the on call period is on a Saturday, Sunday or public holiday an amount as stated in Appendix 1 will be paid.
- (b) An Employee who is on call may only be recalled to duty where the performance of such duty can be undertaken remotely. An Employee cannot be required to attend to the workplace in person in the event they are recalled to duty.
- (c) Recall Payment
In the event of an Employee who is on call being recalled to duty such Employee shall be paid from the time of receiving recall until the time of finishing such recall duty, with a minimum payment of one hour at overtime rates for each recall as per Clause 20, provided that multiple recalls within a discrete hour will not attract additional payment.
- (d) The allowance will be adjusted in accordance with wage rate increases as set out in clause 12 – Wages, and set out in Appendix 1.

23. PUBLIC HOLIDAYS

- (a) An Employee shall be entitled to holidays that fall on their normal working day on the following days without deduction of pay:
 - 1) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and
 - 2) The following days, as prescribed in the State of Victoria: Australia Day, Anzac Day, Queen's Birthday and Labour Day; and
 - 3) Melbourne Cup Day. In the case of rural localities an alternate agreed day may be substituted in lieu of Melbourne Cup Day.
- (b) The following provisions shall also apply:
 - 1) when Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December (hereafter referred to as a substitute day);
 - 2) when Boxing Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on 28 December (substitute day); and
 - 3) when New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday (substitute day).
- (c) Where in a Victoria or a locality of Victoria, public holidays are declared or prescribed on days other than those set out in sub-clauses 23(a) and (b) those days shall constitute additional holidays for the purpose of this Agreement.
- (d) An Employee who is rostered to work and works on any day specified in sub-clause 23(a), (b) or (c) hereof shall:

- 1) be paid for the time so worked at the rate of time and one-half in addition to the weekly wage prescribed by this Agreement; or
 - 2) be entitled to equivalent time off without loss of pay. Such time off shall be taken at a time mutually convenient to the Employer and the Employee within one month of the day on which the Employee worked, provided that where an Employee is entitled to a full working day off such time off may be added to the Employee's annual leave by mutual consent.
- (e) Where an Employee has a flexible working arrangement that includes provision for a rostered day off, the Employee shall be entitled to receive one day's pay in addition to the usual weekly wage or one day off without loss of pay at a time convenient to the Employer when a public holiday falls on the rostered day off.
- (f) The Employer and an Employee may agree to substitute another day for any prescribed in this clause. An agreement pursuant to this provision shall be recorded in writing.

24. TRAVEL ALLOWANCES AND EXPENSES

- (a) Where an Employee is required to provide their own mode of conveyance in connection with their duties, they shall be paid an allowance per kilometre as detailed in Appendix 1.

25. MEAL BREAK AND MEAL ALLOWANCE

- (a) An Employee shall not be required to work more than five hours continuously without a meal interval of not less than 30 minutes and not more than 60 minutes. Such meal interval shall not be counted as time worked, and the Employee shall be free of all duty during such interval.
- (b) An Employee who works not more than 6 hours may elect to forgo the meal break, with the consent of the Employer.
- (c) Employees are entitled to a meal allowance in accordance with the *Health Professionals and Support Services Award 2020*.
- (d) Where overtime work exceeds 4 hours, a further meal allowance will be paid. This will not apply if the Employee could reasonably return home for a meal within the meal break.

26. HIGHER DUTIES ALLOWANCE

An Employee who is called upon to perform the duties of another Employee in a higher position under this Agreement for a period of one or more consecutive days shall be paid for the period for which duties are assumed at a rate not less than the minimum rate prescribed for the position applying to the Employee so relieved.

27. QUALIFICATION ALLOWANCE

- (a) An Employee will be entitled to a qualification allowance (paid per hour in addition to hourly rate) set out below, subject to the following:
- 1) An Employee holding more than one qualification is only entitled to one qualification allowance, being the allowance for the highest qualification held having regard to sub-clause 27(a) 2).
 - 2) It must be demonstrated that at least one component of the qualification is applicable to the relevant Employee's current area of practice. In situations where a component of a postgraduate qualification is relevant to that Employee's current area of practice, an allowance is payable. In considering whether a component of the qualification is relevant, the nature of the qualification and the current area of practice of the qualification holder are the main criteria. Other considerations may include:
 - (a) the clinical or other area of work of the Employee;

- (b) the position description of the Employee;
 - (c) whether the qualification would assist the Employee in performing their role and/or assist in maintaining quality client care and/or assist in the administration of the Employer in which the relevant Employee is employed.
- 3) An Employee claiming entitlement to a qualification allowance must provide to the Employer evidence of that Employee holding the qualification for which the entitlement is claimed.
 - 4) For the avoidance of doubt, an Employee cannot claim a qualification allowance in respect of that Employee's base qualification leading to registration for their specific discipline.
- (b) An Employee who holds a **Post-Graduate Certificate** shall be paid an allowance, in addition to their salary, as set out in Appendix 1.
 - (c) An Employee who holds a **Post-Graduate Diploma or a Degree** (or equivalent) shall be paid an allowance, in addition to their salary, as set out in Appendix 1.
 - (d) An Employee who holds a **Masters or Doctorate** shall be paid an allowance, in addition to their salary, as set out in Appendix 1. This also applies for any Family Support Consultant or Family Support Worker who holds General Registration under the Psychology Board of Australia and advised of such qualification prior to operation of this Agreement.
 - (e) The above allowances are to be paid during all periods of leave except sick leave beyond 21 days and long service leave.
 - (f) The allowance will be adjusted in accordance with wage rate increases as set out in Appendix 1.

28. UNIFORMS AND PROTECTIVE CLOTHING

Where it is necessary that an Employee wear a uniform or protective clothing on duty, the Employer must reimburse the Employee for the cost of purchasing, laundering and maintenance of such clothing. The provisions of this clause 28 do not apply where the clothing is supplied to the Employee and laundered at the Employer's expense.

29. RECLASSIFICATION PROCEDURE

- (a) Where the nature of the work undertaken by an Employee changes, such that the majority of the work regularly performed is work of a type normally associated with a higher classification and has been performed for a period of at least 3 months or where there has been a change in their Position Description, the Employee may apply to have their position reclassified to a higher classification.
- (b) An application for re-grading by an Employee will be made in writing.
- (c) The Employer will respond to the request in writing within a reasonable timeframe and, where possible, no more than one month after receiving the written request, indicating whether the application is approved or denied. Where an application for re-grading is unsuccessful the Employer will also provide the Employee with the reasons for the decision in writing.
- (d) Simply performing more work at the same classification or different work at the same classification does not qualify for re-grading.
- (e) Factors with a bearing on the decision may include whether the changes:
 - a. involve the exercise of skills, responsibility and/or autonomy normally undertaken at a higher classification and/or in the Employee's present classification; and/or
 - b. are permanent or temporary

30. STAFFING LEVELS

Eastern Palliative Care Association Inc. is committed to ensuring that staffing levels are appropriate in order to ensure the delivery of high quality client care.

31. ADVERTISING VACANCIES

- (a) Where a vacancy arises, the Employer will advertise the vacant position, internally in the first instance, and then externally if necessary.
- (b) The Employer will advertise all vacancies that arise where the vacancy relates to a position that, but for the vacancy occurring, would have been ongoing.
- (c) Vacancies shall be advertised as soon as practicable.
- (d) Following advertisement, the Employer shall appoint an Employee to a vacant position as soon as practicable.
- (e) The Employer may appoint a prospective Employee to a vacant position without advertisement in the event that the prospective Employee has applied for a similar advertised role in the previous 6 months and been deemed suitable for the position.

32. ANNUAL LEAVE AND LEAVE LOADING

- (a) **Period of leave**

Employees shall be entitled to annual leave on full pay for a period equal to four working weeks for each continuous twelve months' service with the Employer. Such annual leave accrues progressively during a year of service according to the Employee's ordinary hours of work and untaken annual leave accumulates from year to year.
- (b) **Annual leave exclusive of public holidays**

The annual leave prescribed in sub-clause 32(a) shall be exclusive of any of the holidays prescribed in clause 23 - Public holidays and if any such holiday falls within an Employee's period of annual leave and is observed on a day on which in the case of an Employee would have been an ordinary working day there shall be added to the period of annual leave time equivalent to the ordinary time which the Employee would have worked if such day had not been a holiday.
- (c) **Quantum of leave**

For the purposes of the NES, a shift worker is an Employee who works for more than four ordinary hours on 10 or more weekends and is entitled to an additional week's annual leave on the same terms and conditions
- (d) **Leave to be taken**
 - 1) The annual leave provided for in this clause 32 shall be allowed and shall be taken and except as provided by sub-clause 32(e), payment shall not be made or accepted in lieu of annual leave.
 - 2) Except on application the payment of wages during annual leave for a period of less than one week shall be paid at the completion of the pay cycle rather than the commencement of the leave.
- (e) **Time of taking leave**
 - 1) Paid annual leave may be taken for a period agreed between the Employee and Employer.
 - 2) The Employer must not unreasonably refuse to agree to a request by the Employee to take paid annual leave. An Employee is entitled to take annual leave that has accrued progressively during a year of service at any time after it has accrued, including single days.
 - 3) If an Employee has an annual leave accrual of greater than 8 weeks, the Employer may seek to confer with the Employee and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.

- 4) If the Employer has genuinely tried to reach agreement with an Employee under sub-clause 32(e) 3) but agreement is not reached, the Employer may direct the Employee in writing to take one or more periods of annual leave.
- 5) A direction to take annual leave must not require the Employee to take a period of paid annual leave beginning less than 13 weeks after the direction is given.
- 6) The Employer must not direct the Employee to take annual leave if this would result in the remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements are taken into account.
- 7) The Employer must not require the employee to take a period of annual leave of less than one week.
- 8) The direction must not be inconsistent with any leave arrangement agreed to by the Employer and Employee.

(f) Annual leave loading

- 1) In addition to the payment prescribed in sub-clause 32(a) hereof, a loading of 17.5% shall be paid to an Employee other than a shiftworker at the time leave is taken or at such other time as may be mutually agreed between the Employer and the Employee, always providing that the maximum allowance payable in respect of any one year's service shall not exceed four weeks leave in respect of any year of employment.
- 2) A shiftworker will be paid the higher of a loading of 17.5% as per sub-clause 32(f) 1) above, or the weekend and shift penalties the Employee would have received had they not been on leave during the relevant period.
- 3) The loading shall apply to accrued but untaken leave on termination of employment.
- 4) An Employee and Employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

(g) Sickness during annual leave

Where an Employee becomes sick whilst on annual leave on a day on which they would otherwise have worked, and as soon as practicable, forwards to the Employer a certificate of a registered medical practitioner or other relevant health practitioner, then the number of days specified in the certificate shall be deducted from any personal leave entitlement standing to the Employee's credit, and shall be re-credited to their annual leave entitlement. If annual leave loading as provided for in sub-clause 32(f) has been paid in respect of personal leave days referred to in this sub-clause 32(f), such leave loading shall not be re-credited.

(h) Cashing out paid annual leave

Upon receipt of a written request by an Employee, the Employer may authorise the Employee to receive pay in lieu of an amount of annual leave in accordance with the following:

- 1) 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;
- 2) where an Employee forgoes an entitlement to take an amount of annual leave, the Employee must be paid at least the full amount that would have been payable to the Employee had the Employee taken the leave that the Employee has forgone;
- 3) superannuation guarantee contributions will be paid in relation to the amount of annual leave and annual leave loading for which payment is received in lieu; and
- 4) each cashing out of arrangement must be recorded in writing between the Employee and Employer.

33. PERSONAL/CARER'S LEAVE

(a) Paid personal/carer's leave is available to an Employee, when they are absent:

- 1) due to personal illness or injury; or
- 2) for the purposes of providing care or support to an immediate family or household member who is ill or injured and requires the Employee's care or support or who requires care or support due to an unexpected emergency.

(b) Paid personal/carer's leave accrues progressively based on ordinary hours of work and untaken leave accumulates from year to year. The entitlement is as follows:

- 1) during the first year of service, one working day for each month of service;
- 2) during the second, third and fourth years of service, fourteen working days in each year; and
- 3) thereafter 21 working days in each year.

(c) Personal Leave

- 1) To be entitled to personal leave due to illness or injury on full pay an Employee shall produce a certificate from a registered health practitioner or Statutory Declaration immediately on return to work, or otherwise as soon as practicable; provided that single days up to a maximum of three in any one calendar year may be taken without the production of such a certificate or Statutory Declaration.
- 2) Provided further that an Employee's entitlement to payment for personal leave for personal injury or sickness upon production of a Statutory Declaration shall be limited to not more than three occasions in each year in respect to absences each not exceeding three consecutive working days' duration.
- 3) Provided further that an Employee's entitlement to payment for personal leave for personal injury or illness either side of a public holiday shall be subject to the Employee providing a medical certificate from a registered health practitioner, Statutory Declaration or other evidence that would satisfy a reasonable person within ten working days, or otherwise as soon as practicable, after their return to work.

(d) Carer's leave

- 1) An Employee, other than a casual Employee, shall be entitled to use, in accordance with this sub-clause 33(d), any personal/carer's leave entitlement for absences to provide care or support to either members of their immediate family or members of their household when they are ill or injured or are affected by an unexpected emergency.
- 2) The Employee shall, if required, establish by production of a certificate from a registered health practitioner or statutory declaration, evidence that the leave is taken due to illness or injury of an immediate family or household member.

When taking leave to provide care or support for members of their immediate family or household who require care or support due to an unexpected emergency, the Employee must, if required by the Employer, establish by production of documentation acceptable to a reasonable person or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care or support by the Employee.

- 3) The term immediate family is defined in clause 9 of this Agreement.
- 4) The Employee shall, as soon as practicable, give the Employer notice of the intention to take leave, the relationship to the Employee of the person requiring care or support, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the Employee to give prior notice of absence, the Employee shall notify the Employer by telephone of such absence as soon as practicable (which may be a time after the leave has started).
- 5) Unpaid leave for family purpose

An Employee may elect to take unpaid leave for the purpose of providing care or support to a family member or household member who is ill/injured or due to an unexpected emergency. The Employer and Employee shall agree on the period. In the absence of agreement, the Employee (including a casual Employee) is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements in sub-clauses 33(d) 2) - 4) (as relevant) are met.

34. COMPASSIONATE LEAVE

- (a) An Employee is entitled to 4 days of compassionate leave for each occasion (a *permissible occasion*) when a member of the Employee's immediate family, or a member of the Employee's household:
 - 1) contracts or develops a personal illness that poses a serious threat to their life; or
 - 2) sustains a personal injury that poses a serious threat to their life.

- (b) An Employee is entitled to 5 days of compassionate leave for each occasion (a permissible occasion) when a member of the Employee's immediate family, or a member of the Employee's household, dies.
- (c) An Employee may take compassionate leave for a particular permissible occasion if the leave is taken:
 - 1) to spend time with the member of the Employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in sub-clause 34(a); or
 - 2) after the death of the member of the Employee's immediate family or household referred to in sub-clause 34(b).
- (d) An Employee may take compassionate leave for a particular permissible occasion as a single continuous period; or any separate periods to which the Employee and the Employer agree.
- (e) If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the Employee may take the compassionate leave for that occasion at any time while the illness or injury persists.
- (f) If, in accordance with this clause 34, an Employee, other than a casual Employee, takes a period of compassionate leave, the Employer must pay the Employee at the Employee's base rate of pay for the Employee's ordinary hours of work in the period. For casual Employees, compassionate leave is unpaid leave.
- (g) The Employee, if required by the Employer, shall supply relevant evidence of the requirement for such leave. Such evidence may include a requirement to supply a medical certificate, or other evidence that would satisfy a reasonable person that the leave is taken for a permissible occasion in circumstances specified in sub-clause 34(a) or (b).

35. JURY SERVICE

- (a) An Employee required to attend for jury service during their ordinary working hours shall be reimbursed by the Employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the amount of ordinary wage they would have received in respect of the ordinary time they would have worked had they not been on jury service.
- (b) An Employee shall notify the Employer as soon as possible of the date upon which they are required to attend for jury service. Further the Employee shall give the Employer proof of their attendance at the court, the duration of such attendance and the amount received in respect of such jury service.
- (c) Entitlement to jury service pay will not jeopardise other entitlements.

36. REPRESENTATIVE LEAVE

- (a) Leave to attend trade union and union delegate courses/seminars shall be as follows:
 - 1) To a maximum of 3 days per year (1 January to 31 December) for the totality of all applications of paid trade union, union delegate training leave, attendance at union conferences, meetings and courses provided that:
 - a. the scope, content and level of the courses are directed to the enhancement of the operation of the settlement of dispute/dispute settlement procedure/s;
 - b. that two weeks period of notice is provided to the Employer;
 - c. the approval of leave must have regard to the operational requirements of the Employer; and
 - d. this leave shall be paid at the ordinary time rate of pay.

Leave of absence granted pursuant to this clause 36 shall count as service for all purposes of this Agreement.

37. FAMILY VIOLENCE LEAVE

The Employer recognises that Employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. The Employer seeks to develop a supportive workplace in which victims of family violence can come forward for help and support.

(a) Definition of Family Violence

The Employer accepts the definition of Family violence as stipulated in the *Family Violence Protection Act 2008* (Vic). The definition of family violence includes physical, sexual, financial, verbal or emotional abuse by a family member.

(b) General Measures

- 1) Proof of family violence may be required and can be in the form of an agreed document issued by the Police Service, a Court, a Doctor, district nurse, maternal and health care nurse or a Family Violence Support Service or Lawyer.
- 2) All personal information concerning family violence will be kept confidential in line with the Employer's Privacy Policy and relevant legislation.
- 3) Contact officer/s in EPC will be trained in family violence and privacy issues. Employees will be made aware of the contact officer/s.
- 4) An Employee experiencing family violence may raise the issue with their immediate supervisor/manager and/or the contact officer. The supervisor/manager may also seek advice from Human Resources if the Employee chooses not to see the contact officer.
- 5) Where requested by an Employee, the contact officer will liaise with the Employee's supervisor/manager on the Employee's behalf, and will make a recommendation on the most appropriate form of support to provide in accordance with sub-clauses 37(c) and (d).

(c) Individual Support

- 1) 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 a request from an Employee experiencing family violence for the following, providing the request is reasonable, and a viable option in all circumstances:
 - a. changes to their span of hours or pattern or hours and/or shift patterns;
 - b. job redesign or changes to duties within their skills and capabilities;
 - c. relocation to suitable employment within the workplace;
 - d. a change to their telephone number or email address to avoid harassing contact;
 - e. any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.
- 2) An Employee experiencing family violence will be offered a referral to the Employee Assistance Program (EAP) and/or other local resources.
- 3) The Employer will make available a pack of resource information in regard to family violence and support services available. An Employee that discloses to Human Resources or their supervisor that they are experiencing family violence will be given a resource pack of information regarding support services.

(d) Leave

- 1) The Employer will provide Employees who are victims of family violence and need time off work for medical or legal assistance, court appearances, counselling, relocation, or to make other safety arrangements with flexibility to use their personal/carer's leave for such purposes.
- 2) In addition, the Employer will provide ten paid days' family violence leave per annum. This leave may be taken as consecutive or single days or as a fraction of a day. This leave will not be accrued. The ten days' leave can be accessed prior to an Employee having exhausted their accrued personal leave. If legislation changes prior to the end date of the Agreement, the Employer will comply with that legislation.
- 3) The Employer will apply in advance for this leave wherever possible.

- 4) An Employee who supports a person experiencing family violence may make an application to take their accrued carer's leave to support the person.

38. PARENTAL LEAVE

- (a) Employees are entitled to parental leave in accordance with the provisions of the Act, as amended from time to time. In addition, Employees entering into Permanent Care arrangements will be entitled to access the provisions of this clause 38.
- (b) Paid Leave
Employees eligible for parental leave in accordance with sub-clause 38(a) shall be entitled to the following paid parental leave:
- 1) Twelve weeks' pay for the primary carer.
 - 2) A second or subsequent period of paid parental leave, as per sub-clause 38(b) 1), shall only be payable where such Employee has:
 - a. returned to work after their prior period of parental leave; and
 - b. has subsequently undertaken a further period of 12 months' continuous service as at the date they propose to proceed on the second or subsequent period of parental leave.
 - 3) The payment provided in this Agreement shall not be reduced in terms of its monetary value by the Commonwealth Government's scheme of publicly funded paid parental leave (however titled or styled).
- (c) Entitlement to unpaid parental leave
An Employee is entitled to 12 months of unpaid parental leave if:
- 1) the leave is associated with:
 - a. the birth of a child of the Employee or the Employee's spouse or de facto partner; or
 - b. the placement of a child with the Employee for adoption; and
 - 2) the Employee has or will have a responsibility for the care of the child.
- (d) At the request, in writing, of the Employee, and then by agreement with the Employer, paid parental leave entitlements may be taken as double the quantum of leave at half pay.
- (e) The period of leave – Employee Couple
- 1) If the leave is birth-related leave:
 - a. one Employee's period of leave must start first, in accordance with the following rules:
 - if the member of the Employee couple whose period of leave starts first is pregnant with, or gives birth to, the child — the period of leave may start up to 6 weeks before the expected date of birth of the child, or earlier if the Employer and Employee so agree, but must not start later than the date of birth of the child;
 - if sub-clause 38(e) 1) a. does not apply — the period of leave must start on the date of birth of the child; and
 - b. the other Employee's period of leave must start immediately after the end of the first Employee's period of leave (or that period as extended under sub-clause 38 (f) or (h)).
 - 2) If the leave is adoption-related leave:
 - a. one Employee's period of leave must start on the day of placement of the child; and
 - b. the other Employee's period of leave must start immediately after the end of the first Employee's period of leave (or that period as extended under sub-clause 36(f) or (h)).
 - 3) If one of the Employees takes a period (the *first Employee's period of leave*) of unpaid parental leave in accordance with sub-clause 38 (e) 1) a. or (e) 2) a., the other Employee may take a period of unpaid parental leave (the *concurrent leave*) during the first Employee's period of leave, if the concurrent leave complies with the following requirements:

- a. the concurrent leave must not be longer than 8 weeks in total;
 - b. the concurrent leave may be taken in separate periods, but unless the Employer agrees, each period must not be shorter than 2 weeks
 - c. unless the Employer agrees, the concurrent leave must not start before:
 - o if the leave is birth-related leave- the date of birth; or
 - o if the leave is adoption related leave-the day of placement of the child
 - 4) Concurrent leave taken by an Employee:
 - a. is an exception to the rule that the Employee must take their leave in a single continuous period; and
 - b. is an exception to the rules about when the Employee's period of unpaid parental leave must start (see sub-clause 38 (e) 1) or (e) 2).
- (f) Pregnant Employee may be required to take unpaid parental leave within 6 weeks before the birth
- 1) If a pregnant Employee who is entitled to unpaid parental leave (whether or not they have complied with sub-clause 38 (e) continues to work during the 6 week period before the expected date of birth of the child, the Employer may ask the Employee to give the Employer a medical certificate containing the following statements (as applicable):
 - a. a statement of whether the Employee is fit for work;
 - b. if the Employee is fit for work—a statement of whether it is inadvisable for the Employee to continue in their present position during a stated period because of:
 - (i) illness, or risks, arising out of the Employee's pregnancy; or
 - (ii) hazards connected with the position.
 - 2) The Employer may require the Employee to take a period of unpaid parental leave (*the period of leave*) as soon as practicable if:
 - a. the Employee does not give the Employer the requested certificate within 7 days after the request; or
 - b. within 7 days after the request, the Employee gives the Employer a medical certificate stating that the Employee is not fit for work; or
 - c. the following sub-clauses are satisfied:
 - (i) within 7 days after the request, the Employee gives the Employer a medical certificate stating that the Employee is fit for work, but that it is inadvisable for the Employee to continue in their present position for a stated period for a reason referred to in sub-clause 38 (f) 1) b.(i) or(ii); and
 - (ii) the Employee has not complied with the notice and evidence requirements of clause 38(g) for taking unpaid parental leave.
 - 3) The period of leave must not end later than the earlier of the following:
 - a. the end of the pregnancy;
 - b. if the Employee has given the Employer notice of the taking of a period of leave connected with the birth of the child (whether it is unpaid parental leave or some other kind of leave)—the start date of that leave.
 - 4) The period of leave:
 - a. is an exception to the rule that the Employee must take their unpaid parental leave in a single continuous period; and
 - b. is an exception to the rules about when the Employee's period of unpaid parental leave must start.
 - 5) The Employee is not required to comply with sub-clause 38(e) in relation to the period of leave.
- (g) Notice and evidence requirements
- 1) An Employee must give the Employer written notice of the taking of unpaid parental leave under sub-clause 38(c) or (e) by the Employee.
 - 2) The Employee must give the notice to the Employer:

- a. at least;
 - a. 10 weeks before starting the leave unless sub-clause 38(g) 2) b. applies; or
 - (ii) If the leave is to be taken in separate periods of concurrent leave (see sub-clause 38(e) 4) b.) and the leave is not the first of those periods of concurrent leave- 4 weeks before starting the period of concurrent leave; or
 - b. if that is not practicable-as soon as practicable (which may be a time after the leave has started).
 - 3) The notice must specify the intended start and end dates of the leave.
 - 4) At least 4 weeks before the intended start date specified in the notice given under sub-clause 38(g) 2), the Employee must:
 - a. confirm the intended start and end dates of the leave; or
 - b. advise the Employer of any changes to the intended start and end dates of the leave; unless it is not practicable to do so.
 - o sub-clause 38(g) 4) does not apply to a notice for a period of concurrent leave referred to in sub-clause 38(g) 2) a. (ii).
 - 5) An Employee who has given the Employer notice of the taking of unpaid parental leave must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person:
 - a. if the leave is birth-related leave—of the date of birth, or the expected date of birth, of the child; or
 - b. if the leave is adoption-related leave:
 - o of the day of placement, or the expected day of placement, of the child; and
 - o that the child is, or will be, under 16 as at the day of placement, or the expected day of placement, of the child.
 - 6) Without limiting sub-clause 38(g) 5), an Employer may require the evidence referred to in sub-clause 38(g) 5) a. to be a medical certificate.
 - 7) An Employee is not entitled to take unpaid parental leave under sub-clause 38(c) or (e) unless the Employee complies with this sub-clause 38(g).
- (h) Extending period of unpaid parental leave — extending for up to 12 months beyond available parental leave period
- 1) An Employee who takes unpaid parental leave for their available parental leave period may request the Employer to agree to an extension of unpaid parental leave for the Employee for a further period of up to 12 months immediately following the end of the available parental leave period.
 - 2) The request must be in writing, and must be given to the Employer at least 4 weeks before the end of the available parental leave period.
 - 3) The Employer must give the Employee a written response to the request stating whether the Employer grants or refuses the request. The response must be given as soon as practicable, but not later than 21 days, after the request is made.
 - 4) The Employer may refuse the request only on reasonable business grounds.
 - 5) If the Employer refuses the request, the written response under sub-clause 38(h) 3) must include details of the reasons for the refusal, and the Employer must not refuse the request unless the Employer has given the Employee a reasonable opportunity to discuss the request.
 - 6) The following sub-clauses apply in relation to a member of an Employee couple extending a period of unpaid parental leave in relation to a child under this sub-clause 38(h):
 - a. the request must specify any amount of unpaid parental leave that the other member of the Employee couple has taken, or will have taken, in relation to the child before the extension starts;
 - b. the period of the extension cannot exceed 12 months, less any period of unpaid parental leave that the other member of the Employee couple has taken, or will have taken, in relation to the child before the extension starts;
 - c. the amount of unpaid parental leave to which the other member of the Employee couple is entitled under sub-clause 38(a) in relation to the child is reduced by the period of the extension.

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

(i) Employee may request change in working arrangements

- 1) Where the Employee is returning to work after taking leave in relation to the birth or adoption of the child, the Employee may request a change in working arrangements to assist the Employee to care for the child. This includes requests for changes in hours of work (including part time employment) and changes in the pattern of work.
- 2) The request must:
 - a. be in writing; and
 - b. set out details of the change sought and of the reasons for the change.
- 3) The Employer must give the Employee a written response to the request within 21 days, stating whether the Employer grants or refuses the request.
- 4) The Employer may refuse the request only on reasonable business grounds.
- 5) If the Employer refuses the request, the written response under sub-clause 38(i) 3) must include details of the reasons for the refusal.

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

Note: At the time of making the Agreement, there is legislation before the Parliament of Australia that may amend the NES in relation to this sub-clause. In the event that the NES is amended and the provisions are more favourable to an Employee than those provided by this sub-clause, then the NES will prevail to the extent of such inconsistency.

- 1) This sub-clause 38(j) applies to unpaid parental leave, if:
 - a. the leave is birth-related leave; and
 - b. either:
 - o the pregnancy ends other than by the child being born alive; or
 - o the child dies after being born.
- 2) Before the leave starts the Employee may give the Employer written notice cancelling the leave.
- 3) If the Employee does so, the Employee is not entitled to unpaid parental leave in relation to the child.
- 4) The Employee may give the Employer written notice that the Employee wishes to return to work on a specified day after the start of the period of leave, but before its end.
- 5) The specified day must be at least 4 weeks after the Employer receives the notice from the Employee.
- 6) The Employee's entitlement to unpaid parental leave in relation to the child ends immediately before the specified day.

(k) Unpaid special maternity leave

Note: At the time of making the Agreement, there is legislation before the Parliament of Australia that may amend the NES in relation to this sub-clause. In the event that the NES is amended and the provisions are more favourable to an Employee than those provided by this sub-clause, then the NES will prevail to the extent of such inconsistency.

- 1) A pregnant Employee is entitled to a period of unpaid special maternity leave if they are not fit for work during that period because:
 - a. they have a pregnancy-related illness; or
 - b. they have been pregnant, the pregnancy ends after a period of gestation of at least 12 weeks otherwise than by the birth of a living child, and the child is not stillborn.

Note: if the child is stillborn, the Employee may be entitled to unpaid and/or paid parental leave.
- 2) An Employee must give the Employer notice of the taking of unpaid special maternity leave by the Employee.

- 3) The notice:
 - a. must be given to the Employer as soon as practicable (which may be a time after the leave has started); and
 - b. must advise the Employer of the period, or expected period, of the leave
 - 4) An Employee who has given the Employer notice of the taking of unpaid special maternity leave must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person that the leave is taken for a reason specified in sub-clause 38(k) 1).
 - 5) Without limiting sub-clause 38(k) 4), an Employer may require the evidence referred to in that sub-clause to be a medical certificate.
 - 6) An Employee is not entitled to take unpaid special maternity leave unless the Employee complies with sub-clauses 38(k) 2) – 4).
- (l) An Employee who delivers a stillborn child (at or after 20 weeks' gestation) or who gives birth to a live baby who subsequently dies, during or before the period of intended leave, will be entitled to the full amount of paid parental leave. In either of these circumstances, paid primary carer and secondary carer leave will also apply.
- The Employee must as soon as practicable give notice to the Employer of the taking of leave advising the Employer of the period, or expected period, of the leave in accordance with the following:
- 1) where the pregnancy terminates during the first 20 weeks, during the notified period/s the Employee is entitled to access any paid and/or unpaid personal illness leave entitlements in accordance with the relevant personal leave provisions;
 - 2) where the pregnancy terminates after the completion of 20 weeks' gestation, during the notified period/s the Employee is entitled to paid special maternity leave not exceeding the amount of paid primary carer leave available under sub-clause 38(b), and thereafter, to unpaid special maternity leave.
 - 3) An Employee who returns to work prior to the full utilisation of any paid or unpaid period in this sub-clause 38(l) is entitled to access the remainder of the leave within 6 months of returning to work should the Employee require further leave for the purpose of recovery.
 - 4) If an Employee takes leave for a reason outlined in sub-clauses 38(l) 1) – 3), the Employer may require the Employee to provide evidence that would satisfy a reasonable person or a certificate from a registered medical practitioner.
- (m) At the request, in writing, of the Employee, and then by agreement with the Employer, parental leave entitlements may be taken as double the quantum of leave at half pay.
- (n) Transfer of employment situations in which Employee is entitled to continue on leave
- 1) If:
 - a. there is a transfer of employment in relation to an Employee; and
 - b. the Employee has already started a period of leave under this clause 38 when their employment with the first Employer ends; the Employee is entitled to continue on that leave for the rest of that period.
 - 2) If:
 - a. there is a transfer of employment in relation to an Employee; and
 - b. the Employee has, in relation to the first Employer, already taken a step that is required or permitted by a provision of this clause 38 in relation to taking a period of leave; the Employee is taken to have taken the step in relation to the second Employer.
- (o) Transfer to a safe job
- 1) This sub-clause 38(o) applies to a pregnant Employee if:
 - a. they are entitled to unpaid parental leave; and

- b. they have already complied with the notice and evidence requirements of sub-clause 38(k) for taking unpaid parental leave; and
 - c. they give the Employer evidence that would satisfy a reasonable person that they are fit for work, but that it is inadvisable for them to continue in their present position during a stated period (the risk period) because of:
 - (i) illness, or risks, arising out of their pregnancy; or
 - (ii) hazards connected with that position.
- 2) Without limiting sub-clause 38(o) 1) c., the Employer may require the evidence referred to in that paragraph to be a medical certificate.
 - 3) If this sub-clause 38(o) applies to an Employee:
 - a. if there is an appropriate safe job available—the Employer must transfer the Employee to that job for the risk period, with no other change to the Employee’s terms and conditions of employment; or
 - b. if there is no appropriate safe job available—the Employee is entitled to take paid no safe job leave for the risk period.
 - 4) An appropriate safe job is a safe job that has:
 - a. the same ordinary hours of work as the Employee’s present position; or
 - b. a different number of ordinary hours agreed to by the Employee.
 - 5) Without limiting sub-clause 38(o) 3) a., if the Employee is transferred to an appropriate safe job for the risk period, the Employer must pay the Employee for the safe job at the Employee’s full rate of pay (for the position they were in before the transfer) for the hours that they work in the risk period.
 - 6) If the Employee takes paid no safe job leave for the risk period, the Employer must pay the Employee at the Employee’s base rate of pay for the Employee’s ordinary hours of work in the risk period.
 - 7) If the Employee’s pregnancy ends before the end of the risk period, the risk period ends when the pregnancy ends.
- (p) Consultation with Employee on unpaid parental leave
- 1) If:
 - a. an Employee is on unpaid parental leave; and
 - b. the Employer makes a decision that will have a significant effect on the status, pay or location of the Employee’s pre-parental leave position;
 the Employer must take all reasonable steps to give the Employee information about, and an opportunity to discuss, the effect of the decision on that position.
 - 2) The Employee’s pre-parental leave position is:
 - a. unless sub-clause 38(p) 2) b. applies, the position the Employee held before starting the unpaid parental leave; or
 - b. if, before starting the unpaid parental leave, the Employee:
 - was transferred to a safe job because of their pregnancy; or
 - reduced their working hours due to their pregnancy;
 the position the Employee held immediately before that transfer or reduction.
- (q) Unpaid pre-adoption leave
- 1) An Employee is entitled to up to 2 days of unpaid pre-adoption leave to attend any interviews or examinations required in order to obtain approval for the Employee’s adoption of a child and placement of a child with an Employee under a permanent care order.
 - 2) However, an Employee is not entitled to take a period of unpaid pre-adoption leave if:
 - a. the Employee could instead take some other form of leave; and
 - b. the Employer directs the Employee to take that other form of leave.
 - 3) An Employee who is entitled to a period of unpaid pre-adoption leave is entitled to take the leave as:
 - a. a single continuous period of up to 2 days; or
 - b. any separate periods to which the Employee and the Employer agree.

- 4) Notice and evidence:
An Employee must give the Employer notice of the taking of unpaid pre-adoption leave by the Employee.
- 5) The notice:
 - a. must be given to the Employer as soon as practicable (which may be a time after the leave has started); and
 - b. must advise the Employer of the period, or expected period, of the leave.
- 6) An Employee who has given the Employer notice of the taking of unpaid pre-adoption leave must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person that the leave is taken to attend an interview or examination as referred to in sub-clause 38(q)1).
- 7) An Employee is not entitled to take unpaid pre-adoption leave unless the Employee complies with sub-clauses 38(q) 4) – 6).

39. PROFESSIONAL DEVELOPMENT, STUDY LEAVE & ASSOCIATED ENTITLEMENTS

- (a) Professional Development is the means by which members of the profession maintain knowledge in their current area of practice, improve and broaden their knowledge, expertise and competence, and develop the personal and professional qualities required through their professional lives. The Continuing Professional Development cycle involves:
 - 1) reviewing practice;
 - 2) identifying learning needs;
 - 3) planning and participating in relevant learning activities; and
 - 4) reflecting on the value of those activities.
- (b) All Employees are entitled to five days' paid leave for professional development (as defined in sub-clause 39(a) and which includes conference/seminar leave) per year (in addition to other leave entitlements). Part-time Employees will be paid on a pro rata basis.
- (c) Professional development leave may also be utilised for activities including research or home study.
- (d) An Employee wishing to take professional development leave must apply in writing to the Employer at least six weeks prior to the proposed leave date. If the Employee wishes to take professional development leave to undertake home study the Employee's request will include details of the relevance of the study to the Employee's employment.
- (e) In the event a part-time Employee undertakes professional development that falls on a day they are not normally rostered to work, they may take the period of time for which they undertook professional development as paid time off in lieu on a subsequent ordinary working day, in order that the Employee receives the equivalent amount of paid professional development leave to which they are entitled pursuant to sub-clause 39(b).
- (f) Time off in lieu accrued pursuant to sub-clause 39(e) is to be taken following a request made by the Employee to their manager. Such request must not be unreasonably refused, and time off in lieu should be taken within four weeks of its accrual.
- (g) The application for professional development leave shall be approved by the Employer unless there are exceptional circumstances that justify non-approval.
- (h) Except for the conditions in sub-clauses 39(a)-(g) no other conditions attach to the granting of professional development leave and the Employer will not unreasonably withhold approval of the leave.
- (i) The Employer must, within seven days, notify the Employee in writing that the leave request is being considered. If the leave is not granted, the reasons will be included in the notification to the applicant.

- (j) If a valid application is made for the five days or any portion thereof but no leave is granted during the calendar year, one day's leave shall be added to the Employee's accrued annual leave, or taken in another manner as mutually agreed between the Employer and the Employee.
- (k) Otherwise than in accordance with sub-clause 39(j), accrued professional development leave will not accumulate from year to year.

40. STUDY LEAVE

- (a) 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.
- (b) Paid study leave may 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.
- (c) A part-time Employee will be entitled to paid study leave on a pro-rata basis.
- (d) An Employee wishing to take study leave in accordance with sub-clause 40(a) must apply in writing to the Employer as early as possible prior to the proposed leave date. The Employee's request should include:
 - 1) details of the course and institution in which the Employee is enrolled or proposes to enrol; and
 - 2) details of the relevance of the course to the Employee's employment.
- (e) The Employer must, within seven days of the application being made, notify the Employee of whether their request for study leave has been approved.
- (f) Leave pursuant to this clause 38 does not accumulate from year to year.

41. PURCHASED LEAVE

- (a) Employees shall have the option of applying for up to an additional four weeks' paid annual leave with a proportionate reduction in the hourly rate of pay to take into account the increase in annual leave.
- (b) When reviewing an application, the Employer will take into consideration the role and responsibilities of the applicant's position and will not unreasonably withhold approval of the application.
- (c) Where Employees are successful in applying for additional annual leave as specified in sub-clauses 41(a) and (b), existing annual leave entitlements will be increased in proportion to the reduction in the hourly rate of pay.
- (d) Employees may not alter such election as specified in clause 41 during the year except with the agreement of the Employer. Where the Employee ceases to receive additional annual leave, the Employee will revert back to the normal rate of pay and annual leave entitlement.
- (e) Any additional annual leave accrued under this clause 41 shall not be subject to annual leave loading.

42. LONG SERVICE LEAVE

- (a) For Music Therapy and Occupational Therapist Employees, the long service leave entitlement is in accordance with the NES; that is, in accordance with the long service provisions within the *Health Services Union of Australia (Health Professional Services – Private Sector Victoria) Award 2004*. For clarity, on the completion by the Employee of fifteen years' continuous service, the Employee is entitled to six months' long service leave and thereafter an additional two months' long service leave on the completion of each additional five years' service.
- (b) For Family Support Worker/Consultant, Volunteer Services and Massage Therapist Employees, long service leave will be in accordance with the *Long Service Leave Act 2018 (Vic)*, as amended from time to time. For clarity, at any time after completing seven years of continuous employment, the Employee is entitled to an amount of long service leave on ordinary pay equal to 1/60th of the Employee's total period of continuous employment less any period of long service leave taken during that period.

- (c) The Employer will grant long service leave to an Employee before the entitlement to that leave, subject to the time of taking the leave being agreed between the Employee and the Employer. The Employer will not unreasonably refuse to agree to a request by an Employee to take this long service leave at a particular time. Notwithstanding the above, such leave shall not be granted before the Employee has completed 10 years' service for Music Therapy and Occupational Therapy Employees.

43. PANDEMIC LEAVE

Any terms within the *Health Professionals and Support Services Award 2020* ('the Award') relating to paid or unpaid pandemic leave that would apply to Employees, were the Award to have application to Employees, will apply in the same manner as terms of the Agreement.

44. FLEXIBILITY ARRANGEMENTS

- (a) An Employer and Employee covered by the Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
- 1) the agreement deals with 1 or more of the following matters:
 - a. arrangements about when work is performed;
 - b. overtime rates;
 - c. penalty rates;
 - d. allowances;
 - e. annual leave loading; and
 - 2) the arrangement meets the genuine needs of the Employer and Employee in relation to 1 or more of the matters mentioned in sub-clause 44(a) 1); and
 - 3) The Employer and the individual Employee must have genuinely made the agreement without coercion or duress.
- (b) The Employer must ensure that the terms of the individual flexibility arrangement:
- 1) are about permitted matters under section 172 of the Act; and
 - 2) are not unlawful terms under section 194 of the Act; and
 - 3) result in the Employee being better off overall than the Employee would be if no arrangement was made.
- (c) The Employer must ensure that the individual flexibility arrangement:
- 1) is in writing; and
 - 2) includes the name of the Employer and Employee; and
 - 3) 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
 - 4) includes details of:
 - a. the terms of the Agreement that will be varied by the arrangement; and
 - b. how the arrangement will vary the effect of the terms; and
 - c. how the Employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and
 - 5) states the day on which the arrangement commences.
- (d) The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (e) The Employer or Employee may terminate the individual flexibility arrangement:
- 1) by giving no more than 28 days written notice to the other party to the arrangement; or
 - 2) if the Employer and Employee agree in writing — at any time.

45. DISCIPLINARY PROCEDURE

- (a) Where disciplinary action may be necessary, the management representative of the Employer shall notify the Employee of the issues in writing and the Employee will be given an opportunity to respond to these issues. In the event that the Employee's response is unsatisfactory, if appropriate, based on the evidence before the Employer, a first warning in writing may be issued. This warning will be recorded on the Employee's personnel file.
- (b) If there are further performance or conduct issues, the Employee will again be notified in writing of the matter and a response requested from the Employee. If appropriate, based on the evidence before the Employer, a second warning in writing will be given to the Employee and recorded on the Employee's personnel file.
- (c) In the event that there are further performance or conduct issues, the Employee will again be notified in writing of the matter and a response requested. If appropriate, based on the evidence before the Employer, a final written warning will be issued to the Employee and recorded on the Employee's personnel file.
- (d) In the event of further performance or conduct issues, then the Employee may be terminated, if appropriate, based on the evidence before the Employer, after the matters have been investigated and reasons sought from the Employee.
- (e) Notwithstanding the above process, for serious matters pertaining to conduct or performance the Employer may also issue a "final warning" in the first instance, if appropriate, based on the evidence before the Employer. A "final warning" shall be such that the Employee is notified that in the event that there are further performance or conduct issues the Employee may be terminated. Further, termination or summary dismissal of an Employee may still occur for acts of serious misconduct.
- (f) During all steps in the Disciplinary Procedure, the Employee has the right to representation of their choice. The Employer may be represented by the representative of its choice.
- (g) Records relating to disciplinary procedures will be disregarded where a continuous period of 12 months elapses without further warning/s.
- (h) This clause 45 shall not apply until the Employee has completed a period of employment with the Employer of at least the minimum employment period as prescribed in the Act.

46. TERMINATION OF EMPLOYMENT

- (a) Notice of termination by Employer
 - 1) In order to terminate the employment of an Employee, four weeks' written notice shall be given by the Employer.
 - 2) In addition to the notice in sub-clause 46(a) 1), Employees over 45 years of age at the time of the giving of the notice with not less than two years' continuous service, are entitled to an additional week's notice.
 - 3) Payment in lieu of the prescribed notice in sub-clauses 46(a) 1) and 2) must be made if the appropriate notice period is not required to be worked. Provided that employment may be terminated by the Employee working part of the required period of notice and by the Employer making payment for the remainder of the period of notice.
 - 4) The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the Employee's employment had continued until the end of the required period of notice, the Employer would have become liable to pay to the Employee because of the employment continuing during that period. That total must be calculated on the basis of:
 - a. the Employee's ordinary hours of work (even if not standard hours); and
 - b. the amounts ordinarily payable to the Employee in respect of those hours, including (for example) allowances, loading and penalties; and
 - c. any other amounts payable under the Employee's contract of employment.

- 5) The period of notice in this clause 46 does not apply:
 - a. in the case of dismissal for serious misconduct;
 - b. to Employees engaged for a specific period of time or for a specific task or tasks;
 - c. to casual Employees.

(b) Notice of termination by an Employee

- 1) The notice of termination required to be given by an Employee is the same as that required of an Employer, save and except that there is no requirement on the Employee to give additional notice based on the age of the Employee concerned.
- 2) If an Employee fails to give the notice specified in sub-clause 46(a) 1) the Employer has the right to withhold monies due to the Employee to an amount not exceeding the amount the Employee would have been paid under this Agreement that is no more than one week's wages.

(c) Job search entitlement

Where an Employer has given notice of termination to an Employee, an Employee 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 Employee after consultation with the Employer.

47. REDUNDANCY

- (a) Where the Employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and the change is likely to have a significant effect on Employees of the Employer, the Employer shall consult with affected Employees in accordance with the consultation regarding change provision of this Agreement.

(b) Transfer to lower paid duties

Where an Employee is offered and accepts transfer to lower paid duties by reason of redundancy, the same period of notice must be given as the Employee would have been entitled to if the employment had been terminated and the Employer may, at the Employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

(c) Severance pay

In addition to the period of notice prescribed for termination, an Employee whose employment is terminated as a result of redundancy shall be paid the following amount of severance pay in respect of a period of continuous service.

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and over	16 weeks' pay

(d) Definitions

"Week's pay" means the ordinary time rate of pay for the Employee concerned.

(e) Employee Leaving During Notice Period

An Employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The Employee is entitled to receive the benefits and payments they would have received under this clause 47 had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

An Employee whose role has been made redundant is to remain employed until the end of a period of parental leave if they so elect.

(f) Alternative Employment

1) Where the Employer offers the Employee acceptable alternative employment and the Employee refuses such an offer, no severance payment is payable, subject to an order of the FWC.

2) If an Employee on parental leave whose role has been made redundant accepts a comparable alternative role with the Employer, the Employee will not be required to alter the period of parental leave.

3) If there is no suitable alternative employment available for an Employee on parental leave, the Employee will remain on unpaid leave until the cessation of the original agreed parental leave period and if at that time, no suitable employment is available, the Employee's redundancy will come into effect.

(g) Time off Period of Notice

1) An Employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

2) If the Employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the Employee must, at the request of the Employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.

(h) Employees with Less than One Year's Continuous Service

This clause does not apply to Employees with less than one year's continuous service.

(i) Employees Exempted

This clause 47 shall not apply where employment has been terminated because the conduct of an Employee justifies instant dismissal or in the case of casual Employees, or Employees engaged for a specific period of time or for a specified task or tasks, or in accordance with any exemption provisions of the Act.

48. TRANSITION TO RETIREMENT

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

(b) Transition to retirement arrangements may be proposed and, where agreed, implemented as:

1) a flexible working arrangement (see clause 44. Flexibility Arrangements);

2) an agreement in writing between the parties; or

3) a combination of the above.

(c) A transition to retirement arrangement may include but is not limited to:

1) a reduction in an Employee's full-time equivalent hours;

2) a job share arrangement; and/or

3) working in a position at a lower classification or rate of pay.

(d) The Employer will consider, and not unreasonably refuse, a request by an Employee who wishes to transition to retirement:

- 1) 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
 - 2) be appointed to a role that has a lower hourly rate of pay or hours (post transition role), in which case:
 - a. the Employer will preserve the accrual of LSL at the time of reduction in salary or hours; and
 - b. 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.
- (e) The request to enter into a Transition to Retirement will be by choice of the Employee and only on initiation of the Employee.
- (f) An Employee who has altered their working arrangements via Transition to Retirement may subsequently request the Transition to Retirement arrangement be revoked and return to their prior working arrangements. Such request shall not be unreasonably refused.

SCHEDULE A – CLASSIFICATION DEFINITIONS

Family Support Worker

The Eastern Palliative Care Family Support Worker provides psychosocial and spiritual support to clients, their families and carers within the interdisciplinary framework. Family Support Workers report to the Family Support Consultant

Level 1

Positions at this level hold a relevant qualification for this role, have no and/or minimal experience in community palliative care.

Positions at this level will:

- Participate in professional supervision with a Family Support Consultant.
- Show a commitment to professional development.
- Report to the Family Support Consultant.
- This level will be reviewed at 12 months.

Level 2

Positions at this level:

- Work independently and are required to exercise independent judgement on work in an area that requires high levels of specialist knowledge and skill.
- Participate in professional supervision with the Family Support Consultant.
- Show a demonstrated commitment to professional development.
- Are actively involved in quality improvement activities and contribute to evaluation as required.
- Supervise and train students and/or Volunteers.
- Report to the Family Support Consultant.

Family Support Consultant

The Eastern Palliative Care Family Support Consultant provides day-to-day management, leadership and clinical supervision and expertise to a team of Family Support Workers and Allied Health Therapists. This role also contributes to the strategic direction of the organisation. Family Support Consultants carry a small caseload. Family Support Consultants report to the Manager of Allied Health and Volunteers.

Level 2

Positions at this level:

- Have minimal experience in a leadership role.
- Are able to apply professional knowledge and judgement to complex and critical tasks specific to their role/discipline.
- Actively contribute to the development of professional knowledge and skills in their discipline.
- Are accountable for the allocation of resources, setting priorities and ensuring operational targets are met.
- Provide a psychosocial triage service across the organisation and to external agencies.
- Are responsible for the management and development of Employees across a range of disciplines.
- Are actively involved in quality improvement activities and contribute to evaluation as required.
- Provide supervision to Family Support Workers, Music Therapists, Occupational Therapists and Massage Therapists.
- Supervise and train students and/or Volunteers.
- Report to the Manager of Allied Health and Volunteers.
- This level will be reviewed at 12 months.

Level 3

Positions at this level:

- Have experience in a leadership role.
- Are able to apply professional knowledge and judgement to complex and critical tasks specific to their role/discipline.
- Actively contribute to the development of professional knowledge and skills in their discipline.
- Are accountable for the allocation of resources, setting priorities and ensuring operational targets are met.
- Provide a psychosocial triage service across the organisation and to external agencies.
- Are responsible for the management and development of Employees across a range of disciplines.
- Are actively involved in quality improvement activities and contribute to evaluation as required.
- Provide supervision to Family Support Workers, Music Therapists, Occupational Therapists and Massage Therapists.
- Supervise and train students and/or Volunteers.
- Report to the Manager of Allied Health and Volunteers.

Volunteer Services Consultant

The Eastern Palliative Care Volunteer Services Consultant is responsible for providing day-to-day management, leadership, supervision and expertise to the Coordinators of Volunteers. This role also oversees and has responsibility of a group of Volunteer programs providing services to the organisation. This role also contributes to the strategic direction of the organisation. The Volunteer Services Consultant reports to the Manager of Allied Health and Volunteers.

Coordinator of Volunteers

The Eastern Palliative Care Coordinator of Volunteers provides day-to-day management, leadership and support to Volunteers and a volunteering program and/or staff in a community based project. Coordinators report to the Volunteer Services Consultant.

Music Therapist, Massage Therapist and Occupational Therapist (Therapists) and Bereavement Family Support Workers (BFSWs) - Level 2

The Eastern Palliative Care Therapists and BFSWs provide Allied Health Therapy support to clients and carers from their specialist discipline base within the interdisciplinary team framework. Therapists and BFSWs report to the Family Support Consultant/Clinical Leader for day-to-day support. BFSWs report to the Family Support Consultant for clinical supervision. Therapists report to the senior therapist of their discipline for clinical and discipline specific supervision.

Positions at this level:

- Work independently and are required to exercise independent judgement on work in an area that requires specialist knowledge and skill.
- Participate in day to day support and clinical supervision with the Family Support Consultant/Clinical Leader.
- Participate in discipline specific supervision with the senior therapist.
- Show a demonstrated commitment to professional development.
- Are actively involved in quality improvement activities and contribute to evaluation as required.
- Supervise and train students as deemed appropriate and/or Volunteers.
- Report to the Family Support Consultant/Clinical Leader.

Specialist Clinical Support (Music Therapist, Massage Therapist, Occupational Therapist; and Aged Care Disability Care (ACDC), Priority Assessment Team (PAT) and Bereavement Family Support Workers) – Level 3

In addition to providing Allied Health Therapy support to clients and carers from their specialist discipline base within the interdisciplinary team framework, Eastern Palliative Care Specialist Clinical Support Employees provide specialist advice and support, including clinical skill development and education, information and resources across the organisation and in the community. Specialist Clinical Support Employees carry a caseload. The Family Support Consultant/Clinical Leader provides day-to-day supervision only of Therapists; and both day-to-day and clinical supervision to other Employees at this classification. The Manager of Allied Health and Volunteers provides program development, evaluation and leadership. Positions at this level:

- Have extensive clinical experience in their discipline.
- Are able to apply professional knowledge and judgement to complex and critical tasks specific to their role/discipline.
- Actively contribute to the development of professional knowledge and skills in their discipline.
- Provide education, information and resources across the organisation and in the community.
- Are actively involved in quality improvement activities and contribute to evaluation as required.
- Provide discipline specific supervision to therapists.
- Supervise and train students and/or Volunteers.
- Report to the Family Support Consultant/Clinical Leader.
- Report to the Manager of Allied Health and Volunteers for program development.

SIGNATORIES

I am authorised to sign this Agreement on behalf of EASTERN PALLIATIVE CARE ASSOCIATION INCORPORATED



SIGNATURE

Jeannette Moody

PRINT NAME AND TITLE

Address: Building 2 level 1 630 Melton Road Melton

Date

22/12/2020

I am authorised to sign this Agreement on behalf of the **Victorian Allied Health Professionals Association** as a nominated bargaining representative

SIGNATURE

PRINT NAME AND TITLE

Address:

Date:

SIGNATORIES

I am authorised to sign this Agreement on behalf of EASTERN PALLIATIVE CARE ASSOCIATION INCORPORATED

SIGNATURE

PRINT NAME AND TITLE

Address:

Date

I am authorised to sign this Agreement on behalf of the **Victorian Allied Health Professionals Association** as a nominated bargaining representative



SIGNATURE

Craig McGregor

Secretary of the Health Services Union Victoria No. 3 Branch
(trading as the Victorian Allied Health Professionals Association)

PRINT NAME AND TITLE

Address: 351 William Street
West Melbourne Vic 3003

Date: 23 December 2020

APPENDIX 1 – WAGE RATES

Classification	Level	Year Level	Current Hourly Rate	New Hourly Rate 1.10.20	New Hourly Rate 1.10.21	New Hourly Rate 1.10.22	New Hourly Rate 1.10.2023
Family Support Worker (FSW incl BFSW & MND)							
Family Support Worker	Level 1 New - Graduate	Year 1	\$43.69	\$44.69	\$45.53	\$46.39	\$47.28
Family Support Worker	Level 2 - Experienced	Year 1	\$44.66	\$45.69	\$46.54	\$47.42	\$48.33
		Year 2		N/A	\$47.06	\$47.94	\$48.84
		Year 3		N/A	N/A	\$48.47	\$49.37
		Year 4		N/A	N/A	N/A	\$49.92
SNR BFSW/ PAT/ Specialist	Level 3 - Specialist	Year 1	\$47.04	\$48.12	\$49.05	\$50.01	\$50.99
		Year 2		N/A	\$49.57	\$50.52	\$51.51
		Year 3		N/A	N/A	\$51.05	\$52.04
		Year 4		N/A	N/A	N/A	\$52.59
Family Support Consultant	Level 2	Year 1	\$48.04	\$49.14	\$50.10	\$51.09	\$52.11
		Year 2		N/A	\$50.62	\$51.61	\$52.62
		Year 3		N/A	N/A	\$52.14	\$53.15
		Year 4		N/A	N/A	N/A	\$53.70
Family Support Consultant	Level 3	Year 1	\$52.00	\$53.20	\$54.28	\$55.39	\$56.54
		Year 2		N/A	\$54.79	\$55.90	\$57.05
		Year 3		N/A	N/A	\$56.44	\$57.58
		Year 4		N/A	N/A	N/A	\$58.13
Music Therapy							
Music Therapist	Level 2 - Experienced	Year 1	\$39.22	\$45.69	\$46.54	\$47.42	\$48.33
		Year 2		N/A	\$47.06	\$47.94	\$48.84
		Year 3		N/A	N/A	\$48.47	\$49.37
		Year 4		N/A	N/A	N/A	\$49.92
Music Therapist - Senior	Level 3 - Specialist	Year 1	\$45.82	\$48.12	\$49.05	\$50.01	\$50.99
		Year 2		N/A	\$49.57	\$50.52	\$51.51
		Year 3		N/A	N/A	\$51.05	\$52.04
		Year 4		N/A	N/A	N/A	\$52.59
Occupational Therapy							
Occupational Therapist	Level 2 - Experience	Year 1	\$41.60	\$45.69	\$46.54	\$47.42	\$48.33
		Year 2		N/A	\$47.06	\$47.94	\$48.84
		Year 3		N/A	N/A	\$48.47	\$49.37
		Year 4		N/A	N/A	N/A	\$49.92
Occupational Therapist - Senior	Level 3 - Specialist	Year 1	\$43.60	\$48.12	\$49.05	\$50.01	\$50.99
		Year 2		N/A	\$49.57	\$50.52	\$51.51
		Year 3		N/A	N/A	\$51.05	\$52.04
		Year 4		N/A	N/A	N/A	\$52.59
Massage Therapy							
Massage Therapist	Level 2 Experienced	Year 1	\$38.82	\$42.94	\$43.71	\$44.51	\$45.33
		Year 2		N/A	\$44.23	\$45.02	\$45.84
		Year 3		N/A	N/A	\$45.55	\$46.38
		Year 4		N/A	N/A	N/A	\$46.92
Massage Therapist - Senior	Level 3 - Specialist	Year 1	\$44.14	\$45.16	\$46.00	\$46.86	\$47.75
		Year 2		N/A	\$46.51	\$47.38	\$48.27
		Year 3		N/A	N/A	\$47.91	\$48.80
		Year 4		N/A	N/A	N/A	\$49.34
Volunteer Services							
Coordinator of Volunteers	Level 1 New	Year 1	\$38.91	\$40.08	\$40.77	\$41.48	\$42.21
		Year 2		N/A	\$41.28	\$41.99	\$42.72
		Year 3		N/A	N/A	\$42.52	\$43.25
		Year 4		N/A	N/A	N/A	\$43.79
Coordinator of Volunteers	Level 2 - Experienced	Year 1	\$41.69	\$42.94	\$43.71	\$44.51	\$45.33
		Year 2		N/A	\$44.23	\$45.02	\$45.84
		Year 3		N/A	N/A	\$45.55	\$46.38
		Year 4		N/A	N/A	N/A	\$46.92
Volunteer Consultant	Leadership Role	Year 1	\$47.10	\$48.51	\$49.45	\$50.42	\$51.42
		Year 2		N/A	\$49.97	\$50.94	\$51.94
		Year 3		N/A	N/A	\$51.47	\$52.47
		Year 4		N/A	N/A	N/A	\$53.02
Allowances							
Motor Vehicle -paid per km	Under 35PMU		\$ 0.97	\$ 1.00	\$ 1.03	\$ 1.06	\$ 1.09
	35 PMU and over		\$ 1.26	\$ 1.30	\$ 1.34	\$ 1.38	\$ 1.42
On-Call - per 24 hour period	Monday-Friday		\$ 32.13	\$ 40.00	\$ 41.20	\$ 42.44	\$ 43.71
	Sat, Sun & Pub Hol		\$ 39.60	\$ 47.47	\$ 48.89	\$ 50.36	\$ 51.87
Qualification Allowance	QASAC1		\$ 1.07	\$ 1.10	\$ 1.14	\$ 1.17	\$ 1.21
	QASAC2		\$ 1.74	\$ 1.79	\$ 1.85	\$ 1.90	\$ 1.96
	QASAC3		\$ 2.01	\$ 2.07	\$ 2.13	\$ 2.20	\$ 2.26