



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Diverge Consulting
(AG2013/1276)

DIVERGE CONSULTING INC. AND HEALTH SERVICES UNION PSYCHOLOGISTS ENTERPRISE AGREEMENT 2012 - 2016

Health and welfare services

DEPUTY PRESIDENT HAMILTON

MELBOURNE, 18 JUNE 2013

*Application for approval of the Diverge Consulting Inc. and Health Services Union
Psychologists Enterprise Agreement 2012-2016.*

[1] An application has been made for approval of an enterprise agreement known as the Diverge Consulting Inc. and Health Services Union Psychologists Enterprise Agreement 2012-2016 (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Diverge Consulting. The agreement is a single enterprise agreement.

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

[3] The Agreement is approved and, in accordance with s.54, will operate from 25 June 2013. The nominal expiry date of the Agreement is 18 June 2017.

[4] The Health Services Union Victoria No 4 Branch being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2), I note that the Agreement covers the organisation.



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DIVERGE CONSULTING INC

AND

THE HEALTH SERVICES UNION

ENTERPRISE AGREEMENT

2012 - 2016

HEALTH SERVICES UNION
VICTORIA #4 BRANCH

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PART 1 - OPERATION OF AGREEMENT

1. TITLE

- 1.1 This Agreement shall be known as the Diverge Consulting Inc. and Health Services Union Psychologists Enterprise Agreement 2012 - 2016.

2. ANTI-DISCRIMINATION

- 2.1 It is the intention of the parties to this agreement to achieve equality in employment through respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 2.2 Accordingly, in fulfilling their obligations under the disputes avoidance clause, the parties must make every endeavour to ensure that neither the agreement provisions nor their operation are directly or indirectly discriminatory in their effects.
- 2.3 In all matters relating to employment, appointment, promotion and training, the parties to this Agreement will adhere to and foster the principles of Affirmative Action and Equal Employment Opportunity.
- 2.4 Diverge Consulting will ensure all employees are allowed to work in an environment free of sexual harassment.
- 2.5 Nothing in this clause is taken to effect:
- (a) any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;
 - (b) an employee, employer or registered organisation, pursuing matters of discrimination in any State or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission.

3. DEFINITIONS

Commission shall mean The Fair Work Commission.

Diverge shall mean Diverge Consulting Inc.

Employee Representative shall mean a personal or collective representative of an employee or employees. This may include but is not limited to a Union, industrial advocate, lawyer, friend or other person who acts on the instructions of an employee or group of employees for the purposes of assisting with resolution of disputes, or seeking enforcement of this agreement and any other associated employment rights.

Higher qualification shall mean:

Master of Science, Master of Applied Science, Master of Psychology, Master of Arts, Master of Business Administration, Graduate Diploma of Health Administration, Doctor of Philosophy, Doctor of Psychology or Doctor of Science of a Victorian University or Tertiary Institution or a similar degree recognised by a Victorian University or Tertiary Institution.

Union shall mean the Health Services Union.

Working Week - a working week commences after midnight on a Sunday evening and ends at midnight on the following Sunday evening.

4. OPERATION OF AGREEMENT

- 4.1 This agreement shall come into operation 7 days after approval by The Fair Work Commission and shall continue in force for a period of four years.
- 4.2 This Agreement shall decide all the terms and conditions of employment for Psychologists at Diverge Consulting.

5. VARIATION OF AGREEMENT

- 5.1 Either party may apply to vary the terms of this agreement provided such variation shall be in accordance with the Fair Work Act 2009.

6. POSTING OF AGREEMENT

- 6.1 A true copy of this Agreement shall be exhibited in a conspicuous and convenient place on the premises so as to be easily read by employees. A full copy of the document will be on Diverge's computer system for ease of access to its terms. Each employee covered by this Agreement will have access to a copy of this Agreement.

7. INCIDENCE OF AGREEMENT

- 7.1 This Agreement shall apply to and be binding on Diverge and the Health Services Union in respect of its officers and each and every person employed who is a member or is eligible to be a member of Victoria No. 4 Branch of the Union; and
- 7.2 This Agreement applies to the occupation of a person who: is a Psychologist with general registration or who is lawfully engaged in acquiring post graduate experience as a Provisional Psychologist and who in both cases is employed as a Psychologist but excluding medically qualified Psychologists.

8. NO EXTRA CLAIMS

- 8.1 This Agreement is reached in full and final settlement of all matters subject to claims by Diverge and HSU 4 and for the life of the Agreement. No further claims will be made or supported by Diverge or HSU 4.

9. DISPUTES AVOIDANCE / SETTLEMENT PROCEDURE

- 9.1 It is the objective of this procedure to resolve grievances by negotiation and discussion between the parties. The parties to this agreement recognise that from time to time individual employees may have grievances that need to be resolved in the interest of

good relationships. An employee will have the right for grievances to be heard through all levels of management.

- 9.2 The employee shall first attempt to resolve the grievance with his/her immediate supervisor or colleague.
- 9.3 If the grievance is unresolved or about the colleague or supervisor, the matter shall be referred to management committee.
- 9.4 The above steps shall take place within fourteen days. (This does not apply to health and safety matters).
- 9.5 If the grievance still exists the matter shall be referred to The Fair Work Commission for conciliation, and if necessary, arbitration.
- 9.6 If arbitration is necessary, The Fair Work Commission may exercise the procedural powers in relation to hearings, witness' evidence and submissions that are necessary to make arbitration effective.
- 9.7 Its decision shall be accepted by the parties as ending the matter subject to a right of appeal to a Full bench of The Fair Work Commission.
- 9.8 Alternatively, by agreement either party may seek to have the matter dealt with by an independent arbitrator. The party who initiates independent arbitration will bear the costs of arbitration.
- 9.9 Until the grievance is determined, work shall continue normally according to the custom or practice existing before the grievance arose, while discussions take place. No party shall be prejudiced on final settlement by the continuance of work.
- 9.10 The employee or employer's chosen representative/s, may be involved in the matter at any time if requested by either party.

10. COUNSELLING / DISCIPLINARY PROCEDURE

- 10.1 In the event of an issue developing that requires resolution, all efforts will be directed to provide appropriate counselling to resolve the issue to both parties satisfaction as soon as possible.
- 10.2 Procedural fairness and natural justice will be afforded to employees in any investigation that may lead to disciplinary action.
- 10.3 Where counselling has not been able to resolve the problem, disciplinary action may be necessary and the management representative shall notify the employee of the reason. The first warning shall be verbal and will be recorded on the employee's personnel file.
- 10.4 If the problem continues the matter will be discussed with the employee. A second warning in writing will be given to the employee and recorded on the employee's personnel file.
- 10.5 If the problem continues the employee will be seen again by management. A final warning in writing may be given.

- 10.6 If the matter recurs, the employee may be terminated. No dismissals will occur without the authority of senior management.
- 10.7 Summary dismissal of an employee may occur for acts of “serious and wilful misconduct”.
- 10.8 If a dispute should arise over the disciplinary action, the matter shall be referred to The Fair Work Commission for resolution in accordance with the disputes resolution procedure. Such resolution shall be accepted by the parties as final.
- 10.9 If after any warning, a period of twelve months elapses without any further warnings or action being required, all adverse reports related to the warning will be removed from the employee’s personnel file.
- 10.10 A representative of the employee or employer may be involved in the matter at any time if requested by either party.

11. CONFIDENTIALITY

- 11.1 The employee shall not at any time during the period of contract of employment or after its termination, except by the direction of Diverge and except insofar as may be necessary in the course of his/her employment, divulge either directly or indirectly to any persons, company or companies for any purpose, any confidential information or knowledge which he/she may acquire during the course or incidental to his/her employment and shall at all times keep confidential all secrets of Diverge and its clients.
- 11.2 Any information of any type acquired by the employee in the course of, or incidental to his/her employment regarding client care, the business, transactions, affairs, property, policy, processes or activities of Diverge, including without limiting the generality of the foregoing; the medical condition of clients, the reason for their referral to Diverge, the treatment they are receiving, designs or technical drawings, proofs and prints, computer software and programs, research data, training materials, diagrams, tables, marketing and professional information not in the public domain shall be treated by him/her confidential information.

12. POLICE CHECKS AND WORKING WITH CHILDREN CHECKS

- 12.1 The cost of an employee obtaining a mandatory police check and Working with Children checks will be met by Diverge where required for employment.

13. FAMILY FRIENDLY POLICIES

- 13.1 Diverge is committed to ensuring that its policies and procedures assist staff in balancing their work and family / life commitments.

14. TYPES OF EMPLOYMENT

Full time

- 14.1 A full time employee is one employed and ready, willing and available to work thirty-eight hours per week. This will be at the times and during the hours mutually agreed upon or

otherwise as prescribed by Diverge. Such employee shall be paid a weekly salary appropriate to the employee's classification; irrespective of the number of hours worked not exceeding the average of thirty-eight hours per week.

Part time

14.2 Employees employed on a part-time basis shall be paid for hours worked, at an hourly rate equal to one thirty-eighth of the weekly rate appropriate to the employees classification. Employees employed under this sub-clause shall receive leave entitlements on a pro rata basis. Such entitlements shall be calculated on the basis of actual hours worked.

For clarification such entitlements include the following:

- Wages
- Severance pay
- Higher qualifications Allowance
- Superannuation
- Annual Leave
- Personal Leave
- Parental Leave
- Long Service Leave

14.3 The conditions of part time work shall be agreed upon between Diverge and the employee and shall be confirmed in writing between the two parties. When a part time employee has worked on average over a six month period longer hours than was fixed, the employee may elect to increase their fixed hours of employment.

Casual

14.4 A casual employee is one who is engaged in relieving work or work of a casual nature but does not include an employee who could be classified as part-time under clause 14.2

14.5 A casual employee's work is terminable by either party without notice and is defined as irregular in frequency and duration.

14.6 Casual employees shall be paid per hour at the rate of 1/38 of the weekly salary that applies to their classification with a loading of 25% on weekdays or a loading of 75% for weekends and public holidays.

14.7 Casual employees do not have access to the benefit of clauses relating to paid personal leave however they may access provisions of the agreement in respect of unpaid personal leave for personal illness or injury as outlined for full and part time workers at clause 41 and access to personal leave for the purposes of caring responsibilities is outlined below.

- 14.8 Diverge may use casual labour generally for the first year of the agreement however Diverge undertakes to review the staffing levels required for its operations after 3 months and where casual employees are being used in a non-casual manner (i.e., on a regular and systematic basis) those employees may request that Diverge convert their employment to Permanent part –time. Conversion from casual to part time will not be denied unreasonably.

Casual employees – Caring responsibilities

- 14.9 Casual employees are entitled to be unavailable to attend work or to leave work:
- (a) If they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or
 - (b) upon the death in Australia of an immediate family or household member.
- 14.10 The organisation and the employee will agree on the period for which the employee will be entitled to be unavailable to attend work. In the absence of agreement, the employee is entitled to not be unavailable to attend work for up to two (2) days per occasion. The casual Employee is not entitled to any payment for the period of non-attendance.
- 14.11 The organisation will require the casual employee to provide satisfactory evidence to support the taking of this leave.

Fixed term

- 14.12 Fixed term contracts will only be used for true fixed term arrangements, including special time limited projects, post graduate training, graduate year positions, maternity leave and long service leave.

15. ADEQUATE STAFFING LEVELS

- 15.1 Diverge will ensure that staffing levels are sufficient to cover training and leave entitlements where staff are able to be recruited and depending on the work required.

16. NOTICE OF TERMINATION

- 16.1 To end the employment relationship Diverge or the employee shall give 4 weeks notice and/or payment instead of notice.
- 16.2 Diverge will give an additional week of notice to employees over forty-five years of age who have had two or more years of continuous services.
- 16.3 If an employee fails to give proper notice, Diverge shall have the right to withhold monies due to such employee. The maximum amount that can be withheld is the ordinary time rate of pay for the period of notice. The period of notice in this clause shall not apply where the conduct of an employee justifies instant dismissal or employees engaged for a specific period or for a specified task or tasks.

- 16.4 Where Diverge has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay to seek other employment. The time off shall be taken at times convenient to the employee after consultation with Diverge Consulting.
- 16.5 Diverge shall on request from an employee whose employment ends, provide a Statement of Service.

17. REDUNDANCY

17.1 Definitions

Business includes trade, process, business or occupation and includes part of any such business.

Redundancy occurs where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.

Small employer means an employer who employs fewer than 15 employees.

Transmission includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and **transmitted** has a corresponding meaning.

Week's pay means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:

- overtime;
- penalty rates;
- disability allowances;
- shift allowances;
- special rates;
- fares and travelling time allowances;
- bonuses; and
- any other ancillary payments of a like nature.

17.2 Transfer to lower paid duties

Where an employee is transferred 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 in lieu thereof of an amount equal to the difference between the former ordinary rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

17.3 Severance pay

17.3.1 Severance pay – other than employees of a small employer

An employee, other than an employee of a small employer as defined in 17.1, whose employment is terminated by reason of redundancy is entitled to 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 less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

* **Week's pay** is defined in 17.1.

17.3.2 Severance pay – employees of a small employer

An employee of a small employer as defined in 17.1 whose employment is terminated by reason of redundancy is entitled to 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 over	8 weeks' pay

• **Week's pay** is defined in 17.1.

17.3.3 Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

17.4 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in clause 16 - Notice of Termination. In this circumstance the employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the employer until the expiry of the notice, but will not be entitled to payment in lieu of notice.

17.5 Alternative employment

17.5.1 An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

17.5.2 This provision does not apply in circumstances involving transmission of business as set in Clause 19.

17.6 Job search entitlement

17.6.1 During the period of notice of termination given by the employer in accordance with 16.1, an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

17.6.2 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 shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

17.6.3 The job search entitlements under this subclause apply in lieu of the provisions of 16.4.

18. REDUNDANCY DISPUTES PROCEDURES

18.1 This clause imposes additional obligations on Diverge where Diverge contemplates termination of employment due to redundancy and a dispute arises (a redundancy dispute).

18.2 Where a redundancy dispute arises, and if it has not already done so, Diverge must provide affected employees and their chosen representatives (if requested by any affected employee) in good time, with relevant information including:

- (a) the reasons for any proposed redundancy;
- (b) the number and categories of workers likely to be affected; and

- (c) the period over which any proposed redundancies are intended to be carried out.
- 18.3 Where a redundancy dispute arises and discussions occur in accordance with this clause Diverge will, as early as possible, consult on measures taken to avert or to minimise any proposed redundancies and measures to mitigate the adverse affects of any proposed redundancies on the employees concerned.
- 18.4 The disputes procedure in Clause 9 may be followed.

19. TRANSMISSION OF BUSINESS

- 19.1 Where a business is before or after the date of this agreement, transmitted from an employer (in this clause called the transmittor) to another employer (in this clause called the transmittee) and an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee:
 - (a) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (b) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- 19.2 In this clause business includes trade, process, business or occupation and includes any part of any such business and transmission includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding meaning.

20. CONSULTATION REGARDING CHANGE

- 20.1 Where Diverge proposes to implement any change that is likely to have a significant impact on employees, Diverge shall, as early as practicable, consult with affected employees, and upon request, their representatives, prior to the introduction of the proposed change.
- 20.2 Diverge shall discuss with the affected employees and upon request, their chosen representatives, amongst other material things:
 - (a) the introduction of changes that are likely to have significant impact on employees;
 - (b) the effects such changes are likely to have on employees; and
 - (c) the reasons for any changes and measures to avert or mitigate adverse effects of such changes on employees.
- 20.3 A change that is likely to have a 'significant impact' on an employee includes without limitation:

- (a) major changes on the composition;
- (b) a re-structure;
- (c) a change in work location or redeployment;
- (d) removal of an existing amenity or entitlement

“Consultation” means full and meaningful discussion of issues / proposals and the consideration of each party’s views, prior to confirming any decision.

- 20.4 For the purposes of such discussion, Diverge shall provide in writing to the affected employees and upon request their chosen representatives, an Impact Statement detailing:
- (a) all relevant information about the proposed changes, including the nature of the changes proposed;
 - (b) reasons for any proposed redundancies and the number of employees and categories of employee likely to be affected; and
 - (c) the expected effects of the changes on employees and other matters that may impact on them, provided that Diverge is not required to disclose confidential information, the disclosure of which would be contrary to Diverge’s interests or in breach of the Fair Work Act 2009.
- 20.5 Any dispute about a matter arising from this clause shall be dealt with in accordance with the Dispute Resolution Procedure set out in clause 11 of this Agreement. For the avoidance of doubt, this does not limit the matters that may be dealt with under the Dispute Resolution Procedure.

21. NOTIFICATION OF CLASSIFICATION

- 21.1 Diverge shall notify each employee in writing on commencement of their classification and terms of employment.
- 21.2 Diverge shall notify each employee of any alteration to his or her classification in writing no later than the operative date of such alteration.

22. RATES OF PAY & CLASSIFICATIONS

- 22.1 Rates of Pay are set out in Schedule A attached to this agreement.

23. CLASSIFICATIONS PSYCHOLOGISTS

Psychologist – Grade 1

- 23.1 A person undertaking a Masters or Doctorate in Psychology and is registered as a provisional psychologist with the Psychology Board of Australia, in line with the Australian Health Practitioner Regulation Agency (AHPRA) guidelines.
- 23.2 Employed as a provisional psychologist, requiring direct and regular supervision by a registered psychologist in accordance with the Supervision Guidelines for Provisional

Psychologists of the Psychology Board of Australia. Complies with the code of ethics and legal requirements of the psychology profession.

Psychologist – Grade 2

- 23.3 A person who has general registration as a psychologist with the Psychology Board of Australia not supervising other psychologists, complying with the code of ethics and legal requirements of the psychology profession.
- 23.4 Is engaged in work of psychological nature, under regular professional supervision by a registered psychologist at Grade 3 or above.
- 23.5 A Grade 2 psychologist has no supervisory responsibility.

Psychologist – Grade 3

- 23.6 A psychologist who has general registration with the Psychology Board of Australia who is engaged in work with clients with complex needs requiring specialist knowledge and skill, and who is involved in significant aspects of the administration, such as policy and/or planning; service development, clinical co-ordination, training co-ordination, or research projects complying with the code of ethics and legal requirements of the psychology profession.

Mandatory

- Minimum 5 years clinical experience.

Desirable

- Experience with professional supervision. Responsibilities may include providing secondary consultation to, supervision of and debriefing of other health professionals; professional supervision of students, Grade 1 and Grade 2 psychologists.
- Eligibility for Membership of one of the Colleges of the Australian Psychological Society

Psychologist - Grade 4

- 23.7 Head of psychology unit. A psychologist who has general registration with the Psychology Board of Australia and who is engaged in work with clients with complex needs requiring specialist knowledge and skill.
- 23.8 A senior psychologist who is responsible for the professional leadership and administration of Diverge Consulting, and ensuring the compliance of psychologists with the code of ethics and legal requirements of the psychology profession.

Mandatory

- Minimum 5 years clinical experience

Desirable

- Experience with professional supervision. Responsibilities may include providing

secondary consultation to, supervision of and debriefing of other health professionals; professional supervision of students, Grade 1 and Grade 2 psychologists.

- Eligibility for Membership of one of the Colleges of the Australian Psychological Society.
- Has at least 10 years or more postgraduate, professional experience.

Psychologist - Grade 5

- 23.9 Head of psychology service across multiple sites. A psychologist who has general registration with the Psychology Board of Australia and who is engaged in work with clients with complex needs requiring specialist knowledge and skill.
- 23.10 A senior psychologist who is responsible for the professional leadership and administration of Diverge Consulting across multiple sites, and ensuring the compliance of psychologists with the code of ethics and legal requirements of the psychology profession.

Mandatory

- Minimum 5 years clinical experience

Desirable

- Experience with professional supervision. Responsibilities may include providing secondary consultation to, supervision of and debriefing of other health professionals; professional supervision of students, Grade 1 and Grade 2 psychologists.
- Eligibility for Membership of one of the Colleges of the Australian Psychological Society.
- Has at least 10 years or more postgraduate, professional experience

24. PSYCHOLOGISTS CLASSIFICATION SAVINGS / ENTRY LEVEL

- 24.1 Any employee who is:
- (a) generally registered as a Psychologist with the Psychology Board of Australia under the Health Practitioner Regulation National Law (2009) (or its successor); or
 - (b) a provisional psychologist under the Health Practitioner Regulation National Law (2009)

shall be classified and paid as a psychologist and is entitled to all the benefits (of this agreement or otherwise) that apply to a psychologist. This applies however the employee's position is designated and whatever work the employee is directed to do. Without limiting this, it applies to an employee in a position designated as a case manager, counsellor, psycho therapist, team leader, drug and alcohol clinician or any other similar designation.

- 24.2 Where, however, an employee covered by the clauses above is otherwise:
- (a) employed in a classification higher than that of psychologist; and / or
 - (b) is paid more than a psychologist; and / or
 - (c) is entitled to more or higher benefits than those that apply to a psychologist this clause will not reduce that employee's position. That is, this clause operates to provide a minimum standard of conditions and does not prevent them from having better conditions where they are otherwise entitled to them.
- 24.3 Recognition of entry point Grade 1 year 7.
- 24.4 The employer recognises that the appropriate entry point for psychologists who are currently studying or have recently been awarded a Doctorate in psychology and who do not have general registration with the Psychology Board of Australia, is Grade 1 Year 7

SUPERVISION

- 24.5 Continuing professional development, including professional supervision of registered psychologists, is a quality assurance and risk management mechanism that enables the psychologist to establish and maintain clinical skills, professional documentation and ethical practice in the work situation, and an opportunity to debrief. It is recognised that professional development and skill maintenance is a responsibility shared by both the employer and the employee.
- 24.6 Professional supervision is distinguishable from managerial supervision, and is confidential and non-judgmental.
- 24.7 The employer is committed to provision of sufficient professional meeting times to enable individual psychologists to complete the minimum annual hours of 'peer consultation' prescribed by the Psychology Board of Australia (Australian Health Practitioner Regulatory Agency).
- 24.8 The supervision shall form part of a professional development and learning plan negotiated with and mutually agreed between the employee and employer. Supervision and professional development activities should be documented in writing as part of the professional development plan and approved with sign off by the manager. Supervision and professional development activities that present a cost to Diverge, either in paid staff hours, registration fees or other associated costs, need prior approval by management.
- 24.9 The individual staff member is responsible for preparing their professional development plan for discussion with management.
- 24.10 The individual staff member is responsible for monitoring hours of supervision and compliance with the Psychology Board of Australia's requirements.

25. HIGHER DUTIES

- 25.1 An employee who is authorised by the line manager to assume a significant amount of the duties and responsibilities of another employee on a higher classification under this agreement for a period of two or more consecutive working days shall be paid for the period for which he/she assumed such duties, at not less than the minimum rate prescribed for the classification applying to the employee so relieved.
- 25.2 Where an employee has not been authorised by the Manager to assume a significant amount of the duties and responsibilities of another employee they shall not be required to perform such duties.

26. PAYMENT OF WAGES

- 26.1 Wages shall be paid by direct bank transfer not later than Thursday following the end of the fortnightly pay period provided that when a public holiday occurs between the end of the pay period and the usual pay day, payment may be postponed by one day for each public holiday so occurring during that period, but payment must still be made on a week day.
- 26.2 At the time of making payment, Diverge shall provide a statement to each employee detailing the following information: name and classification of the employee, the period the pay relates to and the date of payment; the hourly rate of pay; the amount of pay including allowance; the amount of pay deductions and the amount of occupational superannuation being paid.

27. INSPECTION OF TIME AND WAGES RECORDS

- 27.1 A time book or record shall be completed correctly and in ink fortnightly by each employee. Such record shall set out the employee's actual times of duty. Salaries shall be calculated by Diverge on the basis of such records.
- 27.2 Employees may request access to their time and wages records. Such requests will not be unreasonably denied.
- 27.3 An employee may request that a chosen representative access to such records on their behalf in order to ensure compliance with this Agreement.

28. DEDUCTIONS AND ALLOWANCES

Meal allowance

- 28.1 An employee shall be paid a meal allowance when required to work after the usual finishing hour of work beyond one hour (Monday to Friday inclusive) such that the employee shall be reimbursed for all reasonable out of pocket expenses for meals.
- 28.2 An employee whose duties require her/him to be recalled to duty outside of usual working hours for a period in excess of two hours shall be reimbursed for all reasonable out of pocket expenses for meals.

- 28.3 The above meal allowance provisions shall not apply where a meal is supplied at the employer's expense.

Higher qualification allowances

- 28.4 A psychologist with a higher qualification who performs the class of work relating to the said qualification shall receive a higher qualification allowance in accordance with the wages table in Schedule A. Only one higher qualification allowance is paid, that being the highest. Higher qualifications allowance is payable for all purposes of the agreement (i.e., payable during periods of paid leave) and forms part of an employees wages where a higher qualification is held.

- 28.5 Higher qualifications shall be calculated as a percentage of the weekly Grade 1 year 8 rate and paid on an hourly basis

Graduate Certificate allowance - 3.04%

Graduate Diploma - 4.95%

Masters – 5.72%

PHD / Doctorate – 7.62%

Vehicle allowance

- 28.6 An employee whose duties require him/her to travel and use his/her own vehicle for work related purposes will be entitled to receive a payment for vehicle allowance for each kilometre travelled. Diverge will apply the per kilometre rates recommended by the Australian Taxation Office.

- 28.7 Any employee finishing a period of work in excess of normal daily hours or recall with approval, when reasonable means of transport are not available for the employee to return to her/his home, will be provided with adequate transport free of cost to the employee upon approval by a person authorised by Diverge.

Travelling allowance

- 28.8 An employee whose duties require her/him to travel shall be reimbursed for all reasonable out of pocket expenses.

- 28.9 An employee whose approved duties require them to be away from home overnight shall receive an additional allowance set out in the wages schedule and indexed on a yearly basis.

29. SUPERANNUATION

Superannuation Legislation

29.1 The subject of superannuation is dealt with extensively by legislation including the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993, the Superannuation (Resolution of Complaints) Act 1993 and the Tax and Superannuation Laws Amendment (2012 Measures No. 1) Act 2012. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

Definitions

29.2 **The Fund** for the purpose of this clause shall mean the:

- (a) Health Employees Superannuation Trust of Australia (HESTA) established and governed by a trust deed 23 July 1987, as may be amended from time to time, and includes any superannuation scheme which may be made in succession thereto;
- (b) Diverge shall participate in accordance with the trust funds deeds.

29.3 Upon commencement of employment, Diverge shall provide each worker with membership forms and shall forward the completed membership forms for the workers choice of fund within twenty-eight days. In the event that the employee has not completed an application form within twenty-eight days, Diverge shall forward contributions and employee details to HESTA.

29.4 An employee may make additional contributions to the fund from their salary and on receiving written authorisation from the employee, Diverge must commence making contributions to fund in accordance with the Superannuation Guarantee Charge Act 1992.

30. SALARY PACKAGING

30.1 Diverge is committed to provision of salary packaging and will implement packaging arrangements if during the life of the agreement it is determined that such arrangements are viable. Salary packaging will be offered within statutory limits and will be subject to change in the legislation. Diverge is not responsible for any shortfall that may arise.

31. HOURS

31.1 The hours for an ordinary week's work for full time employees, (excluding meal times) will not exceed an average of thirty-eight hours per week over a four week period. The hours of an ordinary day's work for such employees shall be either seven hours thirty-six minutes (7 hours 36 minutes) or nine and a half hours (9 hours 30 minutes).

31.2 In order to recognise and better accommodate the need for staff to manage a variable clinical load, employees may accumulate time worked over and above the standard 7.6 hour day and subsequently take that accumulated time as time in lieu (see Clause 31). This does not affect the employees' entitlement to overtime payment for working required additional hours.

32. FLEXIBLE WORKING HOURS ARRANGEMENTS

Hours of Work- Time in Lieu

- 32.1 It is acknowledged that staff may sometimes elect to work variable hours, either because of outside work commitments or fluctuations in workload.
- 32.2 In order to accommodate these variations in shift length, staff are entitled to accrue time worked over and above their usual shift. This accrued time may then be taken as time in lieu, providing time is accrued at the normal rate; that is one hour accrued for each extra hour worked.
- (a) Employees will attempt to reconcile their hours within 4 weeks;
 - (b) Employees communicate time in lieu arrangements with the Manager.
- 32.3 The Manager is responsible for the coordination of staff taking time in lieu.

33. ROSTERS

- 33.1 Employees may work shifts from four to ten hours' duration by mutual agreement.
- 33.2 The ordinary hours for duty of full-time and part-time employees shall be worked according to roster(s) exhibited where it is easily accessible to employees. The roster will show the employee's daily ordinary working hours, commencing and finishing times and times on call. It shall be posted at least seven days before it comes into operation and shall not be altered unless for sickness or emergency without seven days notice.
- 33.3 Rosters will be drawn up to allow at least 10 hours off duty between successive ordinary shifts.
- 33.4 Significant changes to rosters must be communicated to the Manager
- 33.5 An employee, by request in writing, may have her/his roster fixed by mutual agreement.

34. MEAL BREAKS AND REST INTERVALS

- 34.1 Meal breaks shall be for not less than 30 minutes for each meal. Except for meal breaks, the work of each period of duty shall be continuous. An employee not relieved from duty during the rostered meal interval shall be paid for the meal interval at the ordinary time rate of pay. By mutual agreement, the employee may take time off in lieu.
- 34.2 Employees will receive a 10-minute rest interval for each four hours worked or part of it being greater than two hours. The rest intervals shall be at a time suitable to Diverge and shall be counted as time worked. Where Diverge and the employee agree, rest intervals can be taken together or taken immediately before the period of duty ends.

35. OVERTIME

- 35.1 Diverge may require an employee to work reasonable overtime and such employee shall work in accordance with such requirements. Subject to authorisation, work performed by a full time employee in excess of the ordinary hours' work on any one day pursuant to Clause 33 – Hours shall be paid at the rate of time and a half for the first two hours and double time thereafter. Work performed outside a spread of twelve hours from the commencement of the rostered period of duty shall be paid at double time.
- 35.2 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:
- (a) any risk to employee health and safety;
 - (b) the employee's personal circumstances including any family responsibilities;
 - (c) the needs of the workplace or enterprise;
 - (d) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - (e) any other relevant matter.
- 35.3 Only authorised overtime shall be paid for and the rates of overtime shall apply as outlined above.
- 35.4 In relation to part-timers, if work is undertaken over and above the appropriate equivalent of the full-time working week (38 hours), Diverge will pay the part-time employee overtime.
- 35.5 Instead of receiving payment for overtime worked according to this clause, employees may elect in lieu to take time off. This will be for a period equivalent to the period worked at the appropriate penalty rate at a time mutually agreed between Diverge and the employee. The employee may elect in lieu of payment of overtime to take time off equivalent to the time worked at ordinary time in conjunction with her/his annual leave. Such time shall not be subject to the annual leave loading.
- 35.6 If an employee is required to work unscheduled overtime, and as a result incurs out of pocket expenses, they will be reimbursed those expenses by prior agreement with the Manager.

36. ON-CALL/RE-CALL

On-call

- 36.1 An "on-call" allowance of two and a half percent of the base rate (Grade 1, Year 2) shall be paid to an employee in respect to any 12 hour period or part thereof during which the employee is on call during the period commencing from the time of finishing ordinary duty on Monday and the termination of ordinary duty on Friday.

- 36.2 The allowance shall be five percent in respect to any other 24-hour period or part thereof or any public holiday or part thereof.
- 36.3 An employee may be required to be on call for more than one site, but not at the same time.

Recall

- 36.4 In the event of an employee being recalled to duty for any period during an off duty period such employee shall be paid from the time of receiving the recall until the time of finishing such recall duty with a minimum of three hours' payment for each such recall, at the following rates:
- (a) Within a spread of twelve hours from the commencement of the last previous period of ordinary duty - time and a half.
 - (b) Outside a spread of twelve hours from the commencement of the last previous period of ordinary duty - double time.
- 36.5 No employee shall be permitted to be on call in the twenty-four hour period prior to any change of shift.
- 36.6 An employee rostered on call and recalled to duty, shall be paid a minimum of 3 hours pay, inclusive of travelling time, for each occasion of recall.
- 36.7 Where recall to duty can be managed by telephone, the employee shall be paid a minimum of one hour at penalty rates.
- 36.8 Wherever practicable, Diverge will endeavour to provide employees with four clear days per fortnight free of on-call duty.

37. BREAKS AFTER ONCALL/RECALL AND OVERTIME

- 37.1 When work beyond the daily rostered hours (including recall to duty) is necessary, employees shall have 10 hours continuously off duty between the work of successive periods of duty. Otherwise an employee will be released until they have had 10 hours continuously off duty. This will be without loss of pay for any rostered ordinary hours occurring during such an absence.
- 37.2 If on the instructions of Diverge such an employee resumes or continues work without having had such hours continuously off duty, the employee shall be paid double time until released from duty for such rest period. The employee also shall be entitled to be absent until they have had ten hours continuously off duty. This is without loss of pay for any rostered ordinary hours occurring during such an absence.

38. SHIFT WORK

Morning / Afternoon Shift

- 38.1 An employee whose rostered hours of ordinary duty finish between 6.00 pm and 8.00 am or commence between 6.00 pm and 6.30 am shall be paid a shift allowance as set out in Schedule A of this agreement.

Night Shift

- 38.2 An employee whose rostered hours of ordinary duty finish on the day after commencing duty or commence after midnight and before 5.00 am shall be paid a shift allowance as set out in Schedule A of this agreement for any such period of duty.

Permanent Night Shift

- 38.3 An employee permanently working on any such rostered hours of ordinary duty shall be paid a shift allowance as set out in Schedule A of this agreement for any such period of duty. "Permanently working" shall mean working for more than four consecutive weeks.

Change of Shift

- 38.4 Provided further that in the case of an employee who changes from working on one shift to working on another shift the time of commencement of which differs by four hours or more from that of the first he or she shall be paid an amount equal to 4% of the rate applicable to the first year of experience Psychologist Grade 1 on the occasion of each such change in addition to any amount payable under the preceding provisions of this clause.

39. SATURDAY AND SUNDAY WORK

- 39.1 Payment for approved ordinary work performed between midnight Friday and midnight Sunday (inclusive) shall be at the rate of time and one half. If the Saturday and Sunday work is in excess of the prescribed ordinary rostered hours, such work shall be paid for at the rate of double time.

40. ANNUAL LEAVE

Period of leave

- 40.1 An employee who has been in the service of the same employer for a period of not less than twelve months shall be granted 152 hours leave on ordinary pay. Annual leave is pro-rata for part-time employees.

Annual leave exclusive of public holidays

- 40.2 The annual leave prescribed in 40.1 shall be exclusive of any Public holidays, and if any such holiday falls within an employee's period of annual leave and is observed on a day which in the case of that 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.

Leave to be taken

- 40.3 The annual leave provided for by this clause shall be allowed and shall be taken and except as provided by 40.17, payment shall not be made or accepted in lieu of annual leave.

Time of taking leave

- 40.4 Annual leave shall be given at a time determined by mutual agreement between the employer and the employee within a period not exceeding six months from the date when the right to annual leave accrued and after not less than two weeks' notice to the employee.

Leave allowed before due date

- 40.5 An employer may allow annual leave to an employee before the right thereto has accrued due, but where leave is taken in such case a further period of annual leave shall not commence to accrue until after the expiration of the twelve months in respect of which annual leave had been taken before it accrued. Where leave has been granted to an employee pursuant to this clause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the twelve months' continuous service in respect of which the leave was granted and the sum paid by the employer to the employee as ordinary pay for the annual leave or part so taken in advance exceeds the sum which the employer is required to pay under 40.1 the employer shall not be liable to make any payment to the employee under 40.6, and shall be entitled to deduct the amount of such excess from any remuneration payable to the employee upon termination of the employment.

Payment for period of annual leave

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

Proportionate leave

- 40.7 Where the employment of any employee is terminated at the end of the period of employment of less than twelve months, the employer shall forthwith pay to the employee, in addition to all other amounts due to him or her, an amount equal to 1/12th of his or her ordinary pay for that period.
- 40.8 Where the employment of an employee who has become entitled to one or more periods of annual leave provided by this Agreement is terminated, the employer shall be deemed to have given all of such leave (except so much, if any, as has already been taken) to the employee as from the date of the termination of the employment, and shall forthwith pay to the employee, in addition to all other amounts due to the employee, the employee's ordinary pay for the period of that leave.
- 40.9 Clause 40.8 applies to and in respect of any annual leave (except so much, if any, as has already been taken) whether or not the employee concerned continues to be entitled (apart from this clause) to take it, and so applies as if the employee's right to take it had accrued immediately before the date of the termination of the employee's employment.

40.10 Nothing in 40.8 or 40.9 affects the obligation of an employer to give or an employee to take annual leave in accordance with this Agreement.

Weekend worker

40.11 Additional leave (full-time)

- (a) For all purposes of this clause in addition to the leave herein prescribed a full-time employee as defined required to work and who worked ordinary hours as prescribed under the Hours clause, on weekdays and on weekends throughout the qualifying twelve-month period of service shall be allowed 38 working hours leave.
- (b) A full-time employee with twelve months' continuous service so engaged for part of the qualifying twelve-month period shall have the leave prescribed in 44.1 increased by three hours 48 minutes for each month during which engaged as aforesaid.
- (c) A full-time employee so engaged for part of the qualifying twelve-month period whose employment is terminated shall receive in addition to other amounts due in lieu of annual leave a pro rata payment based on the amount payable under this clause for the full qualifying twelve-month period and the period so engaged.
- (d) This clause shall not apply to any weekend on which the employee works four hours or less.

40.12 Part-time employees only - weekend workers

- (a) For the purposes of this Agreement weekend workers shall mean any employee who in any one year of employment works portion of his or her ordinary hours on a Saturday or Sunday.
- (b) A weekend worker who works on ten or more Saturdays or Sundays during the yearly period of which his or her leave accrues shall be allowed 38 working hours leave additional to the leave herein before prescribed.
- (c) This clause shall not apply to any Saturday or Sunday on which the employee works four hours or less.

40.13 Annual leave loading

- (a) An employee entitled to annual leave shall be paid an annual leave loading of 17.5% of the ordinary weekly rate of pay for the classification at which the employee is employed at the commencement of their annual leave, provided that the maximum annual allowance payable shall be calculated on the salary of a Psychologist Grade 3 Year 4.
- (b) Provided that where an employee would have received shift penalties or Saturday and/or Sunday penalties prescribed in this Agreement had they not been on annual leave and such shift loadings would have entitled the employee to a greater amount than under paragraph 40.13(a) of this clause, then the shift loadings shall be paid to the employee in lieu of the 17.5 % loading.

40.14 Termination

- (a) The loading calculated according to 40.13 shall be payable on proportionate leave calculated according to 40.7.

40.15 Sickness during annual leave

- (a) Where an employee becomes sick, whilst on annual leave for a period of not less than five days on which s/he would otherwise have worked, and immediately forwards to the employer a certificate of a legally qualified medical practitioner, then the number of days not less than five specified in the certificate shall be deducted from any sick leave entitlement standing to the employee's credit, and shall be re-credited to his or her annual leave entitlement.
- (b) The amount of annual leave loading received for any period of annual leave converted to sick leave in accordance with 40.15(a), shall be deducted from any future entitlement to annual leave loading, or if the employee resigns, from termination pay.

40.16 Single day leave

- (a) An employee may elect, with the consent of the employer, to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.
- (b) 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.

40.17 Pay in lieu of an amount of annual leave

- (a) where an employee has in excess of 8 weeks accumulated annual leave standing to his/her credit and 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, including annual leave loading.
 - (i) The Employee will receive pay in lieu of annual leave that is not less than the Employee's basic rate of pay at the time the request is made.
 - (ii) During each 12 month period, the Employee is not entitled to forgo an amount of annual leave credited to the Employee by the Employer that is equal to more than 1/26 of the nominal hours worked by the employee for the Employer during the period.
 - (iii) Where an Employee forgoes an entitlement to take an amount of annual leave, the Employer will give the Employee the amount of pay that the Employee is entitled to receive in lieu of the amount of annual leave within two weeks of the request being made.
 - (iv) The employer superannuation contribution shall be paid in relation to the amount of annual leave cashed out.

40.18 Purchased Leave – 50/52

- (a) Purchased leave is where employees have planned absences of two weeks of leave which is funded by salary deductions spread evenly over the year. This allows employees to continue to receive pay during such leave.
- (b) From the commencement of this Agreement, employees may apply for two weeks purchased leave in each calendar year. Purchased leave can only be taken in whole week blocks.
- (c) Purchased leave must be utilised within the twelve months in which it is purchased.
- (d) Purchased leave counts as service for all purposes.
- (e) Applications for purchased leave must be made by a date nominated by the Employer.
- (f) The Manager's approval of purchased leave will be based on the operational requirements of the Employer, having regard to the personal needs and family responsibilities of staff.
- (g) Once a period of purchased leave has been approved, it may only be revoked by the Employer where exceptional circumstances exist. In the event of revocation, any accumulated leave may be paid out to the employee, or the leave deferred to a date mutually agreed by the Employer and employee.
- (h) Where an employee leaves the Employer during a year in which purchased leave has been approved, final payment will be adjusted to take account of deductions not yet made and leave not taken.

41. PERSONAL LEAVE

41.1 The provisions of this clause apply to full-time and regular part-time employees. See Clause 14 for casual employees' entitlements.

Amount of paid personal/carer's leave

41.2 Paid personal/carer's leave will be available to an employee when they are absent because of:

- (a) personal illness or injury; or
- (b) personal illness or injury of an immediate family or household member who requires the employee's care and support; or
- (c) an unexpected emergency affecting an immediate family or household member; or
- (d) the requirement to provide ongoing care and attention to another person who is wholly or substantially dependent on the employee, provided that the care and attention is not wholly or substantially on a commercial basis.

41.3 Personal leave of:

- (a) Up to 88 hours and 32 minutes cumulative on a pro rata basis in the first year of service.
- (b) Up to 106 hours and 24 minutes each year in the second, third and fourth year of service.
- (c) Thereafter, 159 hours and 36 minutes in each year.
- (d) An employee shall include a part-time employee but shall not include an employee engaged in casual work.

41.4 An employee's entitlement accrues progressively during a year of service according to the employee's ordinary hours of work, and unused personal/carer's leave accumulates from year to year.

Unexpected Emergency

An unexpected emergency includes but is not limited to an unforeseen accident injury, illness or unexpected unavailability of carer (such as teacher strike or day care unavailability)

Immediate family or household

41.5 The term **immediate family** includes:

- (a) spouse (including a former spouse, a de facto partner and a former de facto partner) of the employee. A defacto partner means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
- (b) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee (*or insert agency's definition*).

Use of accumulated personal/carer's leave

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

Personal illness or injury notice and consultation

- 41.7 Personal Leave for the purpose of personal illness or injury must certified by statutory declaration or a medical certificate by a registered health practitioner.
- 41.8 An employee may be absent for one day on personal leave due to personal illness or injury without furnishing evidence of such sickness on not more than three occasions in any one year.
- 41.9 An employee shall be entitled to the benefits in this clause, subject to the following conditions and limitations:

- (a) The employee shall, inform Diverge of his/her inability to attend for duty and, as far as practicable, state the estimated duration of the absence; or
- (b) The employee shall prove to the satisfaction of Diverge that he/she was unable, on account of the injury or illness, to notify Diverge as required under this clause.

Carer's leave – Notice and consultation

- 41.10 An employee with responsibilities in relation to either members of their family or household who need their care and support is entitled to use personal leave entitlements to provide care and support for such persons when they are ill, injured or in the case of unexpected emergencies. Leave may be taken for part of a single day.
- 41.11 The entitlement to use personal/carer's leave is subject to the employee being responsible for the care of the person concerned.
- 41.12 Where the taking of leave is to care for a family or household member on the grounds of illness or injury or unexpected emergency the employee must, if required by Diverge Consulting, establish by production of a certificate from a registered medical practitioner or statutory declaration, noting the illness of the person concerned and that the illness or the nature of the emergency is such as to require care by another person, the employee.
- 41.13 Additional documentation provided by the employee will be added to the employee's personnel file and taken into consideration by Diverge (e.g., Notice from school or day care).
- 41.14 If it is not practicable for the employee to give prior notice of absence, the employee must notify Diverge by telephone of such absence at the first opportunity on the day of absence.

Absence on public holidays

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

42. UNPAID PERSONAL LEAVE

- 42.1 Where an employee has exhausted all paid personal/carer's leave entitlements, he/she is entitled to take unpaid carer's leave to provide care and support in the circumstances outlined in 41.10, 41.11, 41.12 or 41.13. The organisation and the Employee will agree on the period. In the absence of agreement, the employee is entitled to take up to two (2) days' unpaid carer's leave per occasion.

43. COMPASSIONATE LEAVE

Amount of compassionate leave

- 43.1 Employees are entitled to four days compassionate leave on each occasion, when a member of the employee's immediate family or a member of the employee's household:

- (a) contracts or develops a personal illness that poses a serious threat to his or her life;
 - (b) sustains a personal injury that poses a serious threat to his/her life; or
 - (c) dies.
- 43.2 Any unused portion of compassionate leave will not accrue from year to year and will not be paid out on termination.
- 43.3 Such leave does not have to be taken consecutively.
- 43.4 An employee may take unpaid compassionate leave by agreement with the employer.
- 43.5 The organisation will require the employee to provide satisfactory evidence to support the taking of compassionate leave.

Grievance Process

- 43.6 The dispute settlement clause of the Agreement applies to a dispute about the effect of operation of this clause.

44. CAREER BREAK LEAVE

- 44.1 In accordance with Diverge policy, an employee may take a period of up to 12 months unpaid leave for the purpose of Sabbatical/Career Break Leave. Such absence will not break the continuity of service, but will not count towards accrual of any leave or other entitlements under this Agreement. The employee must work for 12 months before leave will be considered. Absence on such leave will not be counted as service towards reclassification of grade. Provided further that any annual leave entitlements in excess of four weeks shall be taken prior to Career Break Leave.

45. JURY SERVICE

- 45.1 An employee required to attend jury service during ordinary working hours shall be reimbursed by Diverge. The amount reimbursed shall equal the difference between the amount paid for attending jury service and the amount of ordinary salary he or she would have received by working. An employee shall notify Diverge as soon as possible of the date on which he or she is required to attend for jury service. Further the employee shall provide Diverge proof of his or her attendance at the court, the duration of attendance and the amount received for jury service.

46. LONG SERVICE LEAVE

Entitlement

- 46.1 An employee shall be entitled to long service leave with pay, in respect of continuous service with Diverge in accordance with the provisions of this clause.
- 46.2 The amount of such entitlement shall be:

- (a) On the completion by the employee of seven years continuous service- 12.13 weeks long service leave.
- (b) Thereafter an additional 1.73 weeks long service leave on the completion of each additional year of service.

Service Entitling to Leave

46.3 Subject to this sub-clause service shall also include all periods during which an employee was serving in the Australian Armed Forces.

46.4 For the purposes of this clause service shall be deemed to be continuous notwithstanding:

- (a) the taking of any annual/general leave or long service leave;
- (b) any absence from work of not more than fourteen days in any year on account of illness or injury or if applicable such longer period as provided in Clause 40 (Annual Leave) of the Agreement;
- (c) any interruption or ending of the employment by Diverge if such interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;
- (d) any absence on account of injury arising out of or in the course of the employment of the employee for a period during which payment is made under Clause 55 (Accident Pay) to this Agreement;
- (e) any leave of absence of the employee where the absence is authorised in advance in writing by Diverge to be counted as service;
- (f) any interruption arising directly or indirectly from an industrial dispute;
- (g) the dismissal of an employee if the employee is re-employed within a period not exceeding two months from the date of such dismissal;
- (h) any absence from work of a female employee for a period not exceeding twenty four months in respect of any pregnancy;
- (i) any other absence of an employee by leave of Diverge Consulting, or on account of injury arising out of or in the course of his employment not covered by paragraph (d) of this sub-clause.

46.5 In calculating the period of continuous service of any employee, any interruption or absence of a kind mentioned in paragraphs (a) to (e) of the last preceding sub-clause shall be counted as part of the period of her/his service, but any interruption or absence of a kind mentioned in paragraphs (f) to (i) of the said sub-clause shall not be counted as part of the period of service unless it is so authorised in writing by Diverge Consulting.

46.6 Diverge shall keep or cause to be kept a long service leave record for each employee, containing particulars of service, leave taken and payments made.

Payments in lieu of Long Service Leave on the Death of an Employee

46.7 Where an employee who has completed the requisite period of service set out in clause dies while still in the employment of Diverge, Diverge shall pay to such employee's personal representative a sum equal to the pay of such an employee for one-thirtieth of the period of the employee's continuous service in respect of which leave has not been allowed or payment made immediately prior to the death of the employee. Such payment shall be consistent with the entitlement outlined in 46.2 of this agreement.

Payment for period of leave

46.8 Payment to an employee in respect of long service leave shall be made in one of the following ways:

- (a) in full in advance when the employee commences her/his leave; or
- (b) at the same time as payment would have been made if the employee had remained on duty; In which case payment shall, if the employee in writing so requires, be made by cheque posted to a specified address; or
- (c) in any other way agreed between the employer and the employee.

46.9 The calculation of Long Service Leave will be based on the hours of work averaged over the period of service entitling the person to leave multiplied by the employee's current hourly rate.

46.10 Where the employment of an employee is for any reason terminated before she/he takes any long service leave to which she/he is entitled or where any long service leave accrues to an employee pursuant to sub-clause Service Entitling to Leave (ii) hereof the employee shall subject to the provisions of sub-clause Payment for period of Leave (iii) be entitled to pay in respect of such leave as at the date of termination of employment.

46.11 Where an increase occurs in the ordinary time rate of pay during any period of long service leave taken by the employee, the employee shall be entitled to receive payment of the amount of any increase in pay at the completion of such leave.

46.12 If an employee incurs a period of 5 continuous working days or more of sick leave whilst on long service leave, then such leave will be re-credited, provided a certificate from a registered health practitioner is supplied to cover the period of illness. The period of such leave shall then be deducted from the employee's credit of personal leave.

Taking of Leave

46.13 When an employee becomes entitled to long service leave such leave shall be granted by the Diverge within six months from the date of the entitlement, but the taking of such leave may be postponed to such date as is mutually agreed, or in default of agreement as is determined by the Fair Work Commission provided that no such determination shall require such leave to commence before the expiry of six (6) months from the date of such determination.

46.14 Any long service leave shall be inclusive of any public holiday occurring during the period when the leave is taken.

- 46.15 The employee has the choice of taking long service leave normally or at half pay for a period equal to twice the period to which he/ she would otherwise be entitled.

Definitions

- 46.16 For the purpose of this clause the following definitions apply:

“**Pay**” means remuneration for an employees average normal weekly hours of work (over the total service period) calculated at the employee’s ordinary time rate of pay at the time the leave is taken or (if she/he dies before the completion of leave so taken) as at the time of his/her death, and shall include the amount of any increase to the employee’s ordinary time rate of pay which occurred during the period of leave as from the date such increase operates.

“**Month**” shall mean a Calendar Month.

“**Transmission**” includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding interpretation.

47. PRE-NATAL LEAVE

- 47.1 Where an employee is required to attend prenatal appointments or parenting classes that are available only during ordinary rostered hours, that employee may access personal leave for that purpose.

48. PARENTAL LEAVE

- 48.1 Subject to the terms of this clause employees are entitled to paid and unpaid maternity, paternity/partner and adoption leave and to work part-time in connection with the birth or adoption of a child.
- 48.2 The provisions of this clause apply to full-time, part-time and eligible casual employees, but do not apply to other casual employees.
- 48.3 An eligible casual employee means a casual employee:
- (a) employed by an employer on a regular and systematic basis for a sequence of periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and
 - (b) who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.
- 48.4 For the purposes of this clause, continuous service is work for an employer on a regular and systematic basis (including any period of authorised leave or absence)
- 48.5 An employer must not fail to re-engage a casual employee because:
- (a) the employee or employee’s spouse is pregnant; or
 - (b) the employee is or has been immediately absent on parental leave.

48.6 The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

Definitions

48.7 For the purpose of this clause child means a child of the employee under school age except for adoption of an eligible child where 'eligible child' means a person under the age of 5 years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

48.8 For the purposes of this clause, spouse includes a de facto spouse, former spouse or former de facto spouse. The employee's "de facto spouse" means a person who lives with the employee as husband, wife or same sex partner on a bona fide domestic basis, although not legally married to the employee.

Basic entitlement

48.9 Employees who have, or will have, completed at least twelve months continuous service, are entitled to a combined total of 52 weeks paid and unpaid parental leave on a shared basis in relation to the birth or adoption of their child. An employee who does not satisfy the qualifying service requirement for the paid components of leave, or an employee who is an eligible casual employee, shall be entitled to leave without pay for a period not exceeding 52 weeks.

48.10 Leave available is summarised in the following table:

Type of leave	Paid leave	Unpaid leave	Total combined paid and unpaid leave
Maternity leave	9 weeks	43 weeks if primary care giver	52 weeks
Paternity/partner	3 weeks	49 weeks if primary care giver	52 weeks
Adoption leave – primary care giver	9 weeks	43 weeks	52 weeks
Adoption leave – secondary care giver	3 weeks	49 weeks	52 weeks

48.11 Upon commencement of the Commonwealth Maternity Leave scheme, the amount paid will not be reduced, and the terms of timing and frequency will be agreed between employer and employee. If there is no such agreement, maternity leave will be paid as 9 weeks.

Employee Couple – Concurrent Leave

48.12 Parental leave is to be available to only one parent at a time, in a single unbroken period. However, both parents may simultaneously take:

- (a) in the case of paternity/partner leave an employee shall be entitled to a total of 15 days paid leave (which need not be taken consecutively) and up to 49 weeks unpaid leave in connection with the birth of a child for whom he or she has accepted

responsibility which may be commenced 1 week prior to the expected date of birth;
and

- (b) in the case of short adoption leave for the secondary care giver, 3 week's paid leave and up to 49 weeks' unpaid leave which may be commenced at the time of placement.

48.13 Subject to 48.34(a), the total concurrent leave must be for a period of 3 weeks or less. Where the employer agrees, the employee may start concurrent leave earlier or end concurrent leave later than provided for in 48.12.

Maternity leave

48.14 An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

- (a) of the expected date of confinement (the employer may require the employee to provide evidence that would satisfy a reasonable person or a certificate from a registered medical practitioner stating that the employee is pregnant) - at least ten weeks;
- (b) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least four weeks.

48.15 When the employee gives notice under 48.14(a) hereof the employee must also provide a statutory declaration stating particulars of any period of paternity/partner leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

48.16 An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.

48.17 Subject to 48.9 hereof and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

48.18 Where an employee continues to work within the six week period immediately prior to the expected date of birth of the child or is on paid leave under 48.41, an employer may require the employee to provide a certificate from a registered medical practitioner stating that she is fit for work in her present position. The employer may require the employee to start maternity leave if the employee:

- (a) does not give the employer the requested certificate within 7 days after the request; or,
- (b) within 7 days after the request for the certificate, gives the employer the medical certificate stating that the employee is unfit to work.

48.19 Where leave is granted under 48.17 hereof, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

Personal Illness Leave and special maternity leave

- 48.20 Where the pregnancy of an employee not then on maternity leave terminates other than by the birth of a living child, 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 (the employer may require the employee to provide evidence that would satisfy a reasonable person that the leave is taken for a reason below or a certificate from a registered medical practitioner) in accordance with the following:
- (a) 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;
 - (b) Where the pregnancy terminates after the completion of 20 weeks, during the notified period/s the employee is entitled to paid special maternity leave not exceeding the amount of paid maternity leave available under 48.10, and thereafter, to unpaid special maternity leave.
- 48.21 Where an employee not then on maternity leave is suffering from an illness whether related or not to pregnancy an employee may take any paid personal illness leave to which she is entitled and/or unpaid personal illness leave in accordance with the relevant personal illness leave provisions.

Paternity/Partner leave

- 48.22 An employee will provide to the employer at least ten weeks prior to each proposed period of paternity/partner leave, with:
- (a) evidence (the employer may require the employee to provide evidence that would satisfy a reasonable person or a certificate from a registered medical practitioner) which names his or her spouse, states that she is pregnant and the expected dated of confinement, or states the date on which the birth took place; and
 - (b) written notification of the dates on which he or she proposes to start and finish the period of paternity leave; and
- 48.23 a statutory declaration stating:
- (a) except in relation to leave taken simultaneously with the child's mother under clause 48.12 or clause 48.34(a), that he or she will take the period of paternity/partner leave to become the primary care-giver of a child;
 - (b) particulars of any period of maternity leave sought or taken by his or her spouse; and
 - (c) that for the period of paternity/partner leave he or she will not engage in any conduct inconsistent with his or her contract of employment.
- 48.24 The employee will not be in breach of 48.22 hereof if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

Adoption leave

- 48.25 The employee shall be required to provide the employer with written notice of their intention to apply for adoption leave as soon as is reasonably practicable after receiving a placement approval notice from an adoption agency or other appropriate body.
- 48.26 The employee must give written notice of the day when the placement with the employee is expected to start as soon as possible after receiving a placement notice indicating the expected placement day.
- 48.27 The employee must give the following written notice of the first and last days of any period of adoption leave they intend to apply for because of the placement:
- (a) Where a placement notice is received within the period of 8 weeks after receiving the placement approval notice – before the end of that 8 week period; or
 - (b) Where a placement notice is received after the end of the period of 8 weeks after receiving the placement approval notice – as soon as reasonably practicable after receiving the placement notice.
- 48.28 As a general rule, the employee must make application for leave to the employer at least ten weeks in advance of the date of commencement of long adoption leave and the period of leave to be taken, or 14 days in advance for short adoption leave. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- 48.29 Before commencing adoption leave, an employee will provide the employer with a statement from an adoption agency of the day when the placement is expected to start and a statutory declaration stating:
- (a) that the child is an eligible child, whether the employee is taking short or long adoption leave or both and the particulars of any other authorised leave to be taken because of the placement.
 - (b) except in relation to leave taken simultaneously with the child's other adoptive parent under clause 48.12 or clause 48.34(a), that the employee is seeking adoption leave to become the primary care-giver of the child;
 - (c) particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - (d) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- 48.30 An employee must provide the employer with confirmation from the adoption agency of the start of the placement.
- 48.31 Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

- 48.32 An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.
- 48.33 An employee seeking to adopt a child is, on the production of satisfactory evidence if required, entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days' unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

Right to request

- 48.34 An employee entitled to parental leave pursuant to the provisions of clause 48.9 may request the employer to allow the employee:
- (a) to extend the period of simultaneous unpaid parental leave provided for in clause 48.12 up to a maximum of eight weeks;
 - (b) to extend the period of unpaid parental leave provided for in clause 48.9 by a further continuous period of leave not exceeding 12 months;
 - (c) to return from a period of parental leave on a part-time basis until the child reaches school age;
 - (d) to assist the employee in reconciling work and parental responsibilities.
- 48.35 The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

Employee's request and employer's decision to be in writing

- 48.36 The employee's request and the employer's decision made under clauses 48.34(b) and 48.34(c) must be recorded in writing. The employer's response, including details of the reasons for any refusal, must be given as soon as practicable, and no later than 21 days after the request is made.

Request to return to work part-time

- 48.37 Where an employee wishes to make a request under clause 48.34(c), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

Variation of period of parental leave

- 48.38 Unless agreed otherwise between the employer and employee, where an employee takes leave under clause 48.9 and 48.34(b) an employee may apply to their employer to change

the period of parental leave on one occasion. Any such change must be notified in writing at least two weeks prior to the commencement of the changed arrangements.

Parental leave and other entitlements

48.39 An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks or a longer period as agreed under 48.34.

Transfer to a safe job

48.40 Where an employee is pregnant and provides evidence that would satisfy a reasonable person that she is fit for work but it is inadvisable for her to continue in her present position during a stated period because of illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee, the employee will, if the employer deems it practicable, be transferred to a safe job with no other change to the employee's terms and conditions of employment until the commencement of maternity leave. The employer may require the evidence referred to above to be a medical certificate.

48.41 If the employer does not think it to be reasonably practicable to transfer the employee to a safe job, the employee may take paid no safe job leave, or the employer may require the employee to take paid no safe job leave immediately for a period which ends at the earliest of either:

- (a) when the employee is certified unfit to work during the six week period before the expected date of birth by a registered medical practitioner; or
- (b) when the employee's pregnancy results in the birth of a living child or when the employee's pregnancy ends otherwise than with the birth of a living child.

48.42 The entitlement to no safe job leave is in addition to any other leave entitlement the employee has.

Returning to work after a period of parental leave

48.43 An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

48.44 Subject to clause 48.45, an employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to 48.40 hereof, the employee will be entitled to return to the position they held immediately before such transfer.

48.45 Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

Replacement employees

48.46 A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

- 48.47 Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Consultation and Communication during Parental leave

- 48.48 Where an employee is on parental leave and a definite decision has been made that will have a significant effect on the status, pay or location of the employee's pre-parental leave position, the employer shall take reasonable steps to:
- (a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
 - (b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- 48.49 The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- 48.50 The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with 48.48.

49. STUDY / CONFERENCE LEAVE

- 49.1 Diverge is committed to professional development and the provision of a supportive work place environment. Employees are entitled to five days leave to attend conferences/seminars relevant to their work. Approval of such leave is at the Manager's discretion. Diverge will also pay up to \$500 in costs associated with attending professional development activities for each employee per annum.
- 49.2 Where an employee is required by the employer to undertake a course of study or professional development, the employee shall be entitled to attend classes, seminars etc on full pay, and all costs will be met by the employer.

EXAMINATION LEAVE

- 49.3 Employees shall be entitled to 38 hours paid leave each year or pro-rata for part time employees to undertake or prepare for examinations in a course of study relevant to their work in the health care field. Examination leave entitlements shall not accumulate from year to year. Entitlement to leave shall be available to full-time employees and part-time employees (who work an average of 48 hours per fortnight).
- 49.4 Entitlement shall be subject to an employee having 12 months service before taking of examination leave and providing 4 weeks notice on the appropriate form. Entitlement to examination leave shall be granted for studies relevant to employment at Diverge and would normally be undertaken in a Tertiary Institution. Entitlement shall be taken at a mutually agreed time.

50. VOLUNTEER SERVICE LEAVE

- 50.1 Employees who are members of the CFA, SES or similar organisations may be released from duty to attend emergency situations requiring the services of the organisation and its members. Such release from duty will be unpaid. Provided that Diverge may refuse time release where an employee's absence will adversely impact on the capacity of Diverge to maintain patient/client services.

51. PUBLIC HOLIDAYS

- 51.1 Employees other than casuals shall be entitled to the following holidays or their substitutes without deduction of pay: - New Years Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Labour Day, Anzac Day, Queen's Birthday, Melbourne Cup Day, Christmas Day and Boxing Day or any other day which may be substituted for such days by an Act of Parliament or Proclamation.
- 51.2 An employee may substitute a religious holiday for any of the above holidays provided that the number of days do not exceed that of gazetted public holidays. Where a religious holiday is substituted and the employee works on the gazetted holiday, s/he will be paid at ordinary time.

Penalties

- 51.3 If an employee works (excepting on recall) on any day specified in sub clause (56) hereof he/she shall-
- (a) be paid for all time so worked with a minimum of four hours' wages at the rate of time and a half in addition to the weekly wage prescribed herein; or
 - (b) be entitled to time off amounting to one and a half times the hours worked with a minimum of six hours time off without loss of pay; such time off shall be taken at a time mutually convenient to Diverge 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 may be, added to the employees annual leave by mutual consent.
- 51.4 An employee who is recalled to duty and works on any day specified in sub clause (a) hereof shall be paid from the time of receiving the recall until the time of finishing such recall duty with a minimum of three hours' payment for each such recall at the rate of time and a half in addition to the weekly wage prescribed herein.
- 51.5 Where such holiday occurs on his/her rostered day off, the employee shall be entitled to receive one and a half day's pay in addition to the weekly wage or one and a half days off at a time convenient to Diverge without loss of pay in lieu thereof.
- 51.6 Where an employee is rostered to work on a public holiday and fails to do so, such employee shall not be entitled to holiday pay for that holiday.
- 51.7 Where an employee, who is rostered to work on a public holiday, requests and is granted the day off such employee shall not be entitled to holiday pay for the holiday unless the request was made by the employee at least three clear working days prior to the date of such holiday.

- 51.8 In respect of Easter Saturday an employee who ordinarily works Monday to Friday and who does not work on Easter Saturday, shall be entitled to one day's pay in respect of Easter Saturday or, where there is mutual consent, within four weeks following the date on which such holiday occurred the employee may take one day off in lieu or have one day added to his/her annual leave.
- 51.9 A part-time employee who is not rostered to work on the day of the week on which a particular holiday is observed shall be entitled to the public holiday only if required to work on the public holiday, or as outlined below. Where any public holiday occurs during a period of annual leave an employee entitled to the public holiday shall receive an additional days leave for such day.
- 51.10 A part-time employee shall be entitled to the public holiday penalties or payment if he/she:
- (a) is required to work on the public holiday, or;
 - (b) has worked a minimum of 50 per cent of the appropriate day of the week over the previous 6 months. (Records are to be maintained and indicated appropriately on Time Sheets) or;
 - (c) is ordinarily rostered on the appropriate day of the week and not required to work by Diverge.

52. OCCUPATIONAL HEALTH AND SAFETY

- 52.1 Diverge is committed to best practice in Occupational Health and Safety. Diverge acknowledges its responsibility to actively comply with all legislation and associated codes of practice relevant to Occupational Health and Safety Diverge will encourage consultation with employees to, as far as practicable, identify any workplace hazards and assist in their elimination.
- 52.2 The provisions of this part of the Agreement shall be read and interpreted in conjunction with the Occupational Health & Safety Act 2004 (as amended).

53. REHABILITATION

- 53.1 The provisions of this part of the Agreement shall be read and interpreted in conjunction with the Accident Compensation Act 1985 (as amended).
- 53.2 Diverge will retain an injured Psychologist's position for 2 years from date of injury. Where return to pre-injury position and duties is not possible because of the employee's injury or incapacity, the injured employee's position/duties should be modified by agreement to accommodate the employee's return to work in line with the treating doctors and/or rehabilitation providers recommendations.
- 53.3 Where return to modified position/duties is not possible because the employee's injury or incapacity, an injured employee may return to other suitable meaningful employment, with appropriate training, if necessary. Such a position should as far as possible be a position of the same classification as the employee's pre-injury position.

- 53.4 Diverge shall offer suitable employment in line with its rehabilitation policy to a partially incapacitated employee within 6 weeks of the employee's treating doctor determining that an injured employee is no longer totally incapacitated for work.
- 53.5 Where an employee cannot be returned to work, the injured employee will be entitled to transfer to a suitable position as soon as such a position becomes available providing the employee is certified fit and is qualified to undertake that position. If there is a dispute between Diverge and an employee over occupational rehabilitation programs, the dispute will be referred to the Dispute Resolution Procedure as set out in Clause 9 of this Agreement.

54. SAFETY EQUIPMENT AND PROTECTIVE CLOTHING

- 54.1 Diverge encourages the use of universal precautions by all staff in the delivery of client care and will provide education, training and equipment to ensure that staff are available to work free from hazards.
- 54.2 Failure to act in accordance with this clause will result in the application of Clause 10 'Counselling Procedure'.

55. ACCIDENT PAY

- 55.1 Diverge shall pay and an employee shall be entitled to receive accident pay in accordance with this agreement:

Definitions

- 55.2 For the purposes of this clause, the following definitions shall apply:

"Act" means the Workers Compensation Act (Victoria) 1958 as amended from time to time, or in respect of an injury occurring on or after 4.00pm on the 1st September 1985, the Accident Compensation Act (Victoria) 1985 as amended from time to time.

"Injury" means any physical or mental injury within the meaning of the Act and no injury shall give rise to an entitlement to accident pay under this Appendix unless an entitlement exists under the Act.

Total Incapacity

- 55.3 Where an employee is or is determined to be totally incapacitated within the meaning of the Act, the term "accident pay" means a weekly payment of an amount representing the difference between:
- (a) the total amount of compensation, including allowances, paid to the employee during the period of incapacity under the Act for the week, and
 - (b) the total weekly rate, as varied in accordance with this Agreement, and any over award payment being paid to the employee at the date of the injury and which would have been payable for the employee's classification for the week in question if they had been performing their normal duties, provided that –

in making such calculation any payment for overtime earnings, shift premiums, penalty rates and any ancillary payment payable by Diverge shall not be taken into account.

Partial Incapacity

55.4 Where an employee is partially incapacitated within the meaning of the Act, the term “accident pay” means a weekly payment of amount representing the difference between:

- (a) the total amount of compensation paid to the employee during the period of incapacity under the Act for the week together with the average weekly amount they are earning;
- (b) the total weekly rate, as varied in accordance with this Agreement, and any weekly over award payment being paid to the employee at the date of the injury and which would have been payable for the employee’s classification for the week in question if they had been performing their normal duties, provided that –

in making such calculation any payment for overtime earnings, shift premiums, penalty rates and any other ancillary payment payable by Diverge shall not be taken into account.

“Payment for Part of a Week”

55.5 Where an employee is incapacitated, either totally or partially, for part of a week, such an employee shall receive pro rata accident pay for that part of the week.

Qualification for Payment

55.6 Subject to the terms of this clause, an employee covered by this Agreement shall, upon receiving payment of weekly compensation and continuing to receive such payment for incapacity under the Act, be paid accident pay by Diverge which is liable to pay compensation under the Act, which liability may be discharged by another person on behalf of Diverge Consulting, provided that:

- (a) Accident pay shall not apply to any incapacity occurring during the first two weeks of employment unless such incapacity continues beyond the first two weeks and then, subject to clause (i) below and to the maximum period of payment prescribed elsewhere herein, accident pay shall apply only to the period of incapacity after the first two weeks.
- (b) Accident pay shall only be payable to an employee whilst that employee remains in the employment of Diverge by whom they were employed at the time of the incapacity and then only for such period as they received a weekly payment under the Act. Provided that if an employee who is partially incapacitated cannot obtain suitable employment from Diverge but such alternative employment is available with another employer then the relevant amount of accident pay shall still be payable.
- (c) Provided further that in the case of the termination by Diverge of an employee who is incapacitated and receiving accident pay, accident pay shall continue to apply subject to the provisions of this clause except in those cases where the termination is due to serious and/or wilful misconduct on the part of the employee.

- 55.7 In order to qualify for the continuance of accident pay on termination an employee shall if required provide evidence to Diverge of the continuing payment of weekly payments of compensation.
- (a) Subject to this clause, accident pay shall not apply in respect of any injury during the first 5 normal working days of incapacity.
 - (b) In relation to industrial diseases contracted by a gradual process or injury subject to recurrence, aggravation, or acceleration, such injuries or diseases shall not be subject to accident pay unless the employee has been employed with Diverge at the time of the incapacity for a minimum period of one month.
 - (c) On engagement, an employee may be required to declare all workers compensation and/or accident claims made under the Act in the previous 5 years and in the event of defaults or inaccurate information being deliberately and knowingly declared Diverge may require the employee to forfeit their entitlement to accident pay under this Agreement.

Maximum period of payment

- 55.8 The maximum period or aggregate period of accident pay to be made by Diverge shall be a total of 26 weeks for any one injury as defined in sub-clause definitions hereof, provided that in respect of an employee receiving or entitled to receive accident pay on or after 1 January 1981, the maximum period or aggregate of periods shall be a total of 39 weeks for any one injury as defined.

Absences on other paid leave

- 55.9 An employee shall not be entitled to the payment of accident pay in respect of any period of paid annual leave, or long service leave or for any paid public holiday in accordance with the appropriate provisions of this Agreement.

Notice of injury

- 55.10 Following an injury for which they claim to be entitled to receive accident pay, an employee shall give notice in writing of the injury to Diverge as soon as reasonably practicable after the occurrence thereof, provided that such notice may be given by a representative of employee.

Medical examination

- 55.11 In order to receive an entitlement to accident pay, an employee shall meet the requirements of the Act for attending medical examinations.
- 55.12 Where, in accordance with the Act, a medical practitioner gives a certificate as to the condition of the employee and their fitness for work or specifies work for which the employee is fit and such work is made available by Diverge Consulting, and is refused by the employee or the employee fails to commence the work, accident pay shall cease from the date of such refusal or failure to commence the work.

Cessation or Redemption of Weekly Payments

- 55.13 Where there is a cessation or redemption of weekly compensation payments under the Act, Diverge's liability to pay accident pay shall cease as from the date of such cessation or redemption.

Civil Damages

- 55.14 An employee receiving or who has received accident pay shall advise her/his employer of any action she/he may institute or any claim she/he may make for damages. Further the employee shall, if requested, provide an authority to Diverge entitling it to a charge upon any money payable pursuant to any judgement or settlement on that injury.
- 55.15 Where an employee obtains a judgement or settlement for damages in respect of an injury for which they have received accident pay, Diverge's liability to pay accident pay shall cease from the date of such judgement or settlement, provided that if the judgement or settlement for damages is not reduced either in whole or part by the amount of accident pay made by Diverge Consulting, the employee shall pay to the employer any amount of accident pay already received in respect of that injury by which the judgement or settlement has not been so reduced.
- 55.16 Where an employee obtains a judgement or settlement for damages against a person other than Diverge in respect of an injury for which he or she has received accident pay, Diverge's liability to pay accident pay shall cease from the date of such judgement or settlement, provided that if the judgement or settlement for damages is not reduced either in whole or part by the amount of accident pay made by Diverge Consulting, the employee shall pay to Diverge any amount of accident pay already received in respect of that injury by which the judgement or settlement has not been so reduced.

Insurance Against Liability

- 55.17 Nothing in this Agreement shall require Diverge to insure against liability for accident Variations in Compensation Rates.
- 55.18 Any changes in compensation rates under the Act shall not increase the amount of accident pay above the amount that would have been payable had the rates of compensation remained unchanged.

Death of an Employee

- 55.19 All rights to accident pay shall cease on the death of an employee.

Commencement

- 55.20 This clause shall only apply in respect of incapacity arising from any injury occurring or recurring on or after 3 March 1975.

56. INDIVIDUAL FLEXIBILITY ARRANGEMENTS

- 56.1 Diverge and an employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

- (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
- (b) the arrangement meets the genuine needs of Diverge and the employee in relation to 1 or more of the matters mentioned in paragraph (a); and
- (c) the arrangement is genuinely agreed to by Diverge and the employee.

56.2 Diverge must ensure that the terms of the individual flexibility arrangement:

- (a) are about permitted matters under section 172 of the Fair Work Act 2009 ; and
- (b) are not unlawful terms under section 194 of the Fair Work Act 2009 ; and
- (c) result in the employee being better off overall than the employee would be if no arrangement was made.

56.3 Diverge must ensure that the individual flexibility arrangement:

- (a) is in writing; and
- (b) includes the name of Diverge and the employee; and
- (c) is signed by Diverge and the employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
- (d) includes details of:
 - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.

56.4 Diverge must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

56.5 Diverge or the employee may terminate the individual flexibility arrangement:

- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
- (b) if Diverge and the employee agree in writing - at any time.

Diverge Consulting Inc
60 Lothian Street, North Melbourne, VIC 3051

I, Suzanne Brown, as Manager of Diverge Consulting,
am authorised to act in this matter.

Signature: _____

Date:/...../2013

Witness Name : _____

Signature: _____

Date:/...../2013

Health Services Union No. 4 Branch
54 Victoria Street, Carlton, VIC 3054

I, Rosemary Kelly, as Branch Secretary of the Health
Services Union, Victoria No. 4 Branch am authorised
to act in this matter.

Signature: _____

Date:/...../2013

Witness Name : _____

Signature: _____

Date:/...../2013

SCHEDULE A – SALARY TABLE

PCR Description	21 March 2013	1 October 2013	1 October 2014	1 October 2015
PSYCHOLOGIST GR1 YR1	\$907.70	\$930.40	\$953.70	\$977.50
PSYCHOLOGIST GR1 YR2	\$952.60	\$976.40	\$1,000.80	\$1,025.80
PSYCHOLOGIST GR1 YR3	\$1,007.00	\$1,032.20	\$1,058.00	\$1,084.50
PSYCHOLOGIST GR1 YR4	\$1,084.20	\$1,111.30	\$1,139.10	\$1,167.60
PSYCHOLOGIST GR1 YR5	\$1,140.80	\$1,169.30	\$1,198.50	\$1,228.50
PSYCHOLOGIST GR1 YR6	\$1,193.30	\$1,223.10	\$1,253.70	\$1,285.00
PSYCHOLOGIST GR1 YR7	\$1,256.70	\$1,288.10	\$1,320.30	\$1,353.30
PSYCHOLOGIST GR1 YR8	\$1,319.90	\$1,352.90	\$1,386.70	\$1,421.40
PSYCHOLOGIST GR2 YR1	\$1,347.00	\$1,380.70	\$1,415.20	\$1,450.60
PSYCHOLOGIST GR2 YR2	\$1,386.70	\$1,421.40	\$1,456.90	\$1,493.30
PSYCHOLOGIST GR2 YR3	\$1,426.90	\$1,462.60	\$1,499.20	\$1,536.70
PSYCHOLOGIST GR2 YR4	\$1,542.60	\$1,581.20	\$1,620.70	\$1,661.20
PSYCHOLOGIST GR3 YR1	\$1,571.90	\$1,611.20	\$1,651.50	\$1,692.80
PSYCHOLOGIST GR3 YR2	\$1,633.40	\$1,674.20	\$1,716.10	\$1,759.00
PSYCHOLOGIST GR3 YR3	\$1,692.00	\$1,734.30	\$1,777.70	\$1,822.10
PSYCHOLOGIST GR3 YR4	\$1,789.90	\$1,834.60	\$1,880.50	\$1,927.50
PSYCHOLOGIST GR4 YR1	\$1,789.90	\$1,834.60	\$1,880.50	\$1,927.50
PSYCHOLOGIST GR4 YR2	\$1,840.80	\$1,886.80	\$1,934.00	\$1,982.40
PSYCHOLOGIST GR4 YR3	\$1,925.90	\$1,974.00	\$2,023.40	\$2,074.00
PSYCHOLOGIST GR4 YR4	\$2,005.10	\$2,055.20	\$2,106.60	\$2,159.30
PSYCHOLOGIST GR4 YR5	\$2,142.40	\$2,196.00	\$2,250.90	\$2,307.20
PSYCHOLOGIST GRADE 5	2422.30	2,482.90	2,545.00	\$2,608.60

	21 March 2013	1 Oct 2013	1 Oct 2014	1 Oct 2015
ALLOWANCES				
PSYCHOLOGISTS				
Change of Roster	\$22.70	\$23.25	\$23.85	\$24.45
HIGHER QUALIFICATIONS				
Graduate Certificate	\$40.30	\$41.30	\$42.30	\$43.40
Graduate Diploma	\$65.45	\$67.10	\$68.75	\$70.50
MA, M Sc, M Psych	\$75.50	\$77.40	\$79.35	\$81.35
Ph.D, D Sc	\$100.70	\$103.20	\$105.80	\$108.45
SHIFT ALLOWANCE				
Morning shift	\$22.70	\$23.25	\$23.85	\$24.45
Afternoon shift	\$22.70	\$23.25	\$23.85	\$24.45
Night shift	\$69.15	\$70.90	\$72.65	\$74.50
Permanent Night shift	\$76.50	\$78.45	\$80.40	\$82.40
Change of shift	\$36.30	\$37.20	\$38.15	\$39.10