

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: Application to include provisions, based on a certified agreement, in the Nurses and Midwives (Queensland Health) Award - State 2015 [2022] QIRC 010*

PARTIES: **State of Queensland (Queensland Health)**
(Applicant)

v

Queensland Nurses and Midwives' Union of Employees
(First Respondent)

and

The Australian Workers' Union of Employees, Queensland
(Second Respondent)

CASE NO.: MA/2020/20

PROCEEDING: Application to include provisions based on a certified agreement in an award

DELIVERED ON: 21 January 2022

MENTION DATES: 21 October 2020, 1 July 2021, 19 November 2021 and 21 January 2022

DATES OF WRITTEN SUBMISSIONS: Applicant's submissions filed on 22 December 2020, First Respondent's submissions filed on 29 January 2021, Applicant's submissions in reply filed on 4 February 2021 and First Respondent's further submissions filed on 6 September 2021

MEMBER: Merrell DP

ORDERS: 1. **Variations are made to the *Nurses and Midwives (Queensland Health) Award - State 2015* being those contained in Schedule 1 to these reasons for decision.**

2. The variations referred to in paragraph 1 will operate on and from 21 January 2022.

CATCHWORDS:

INDUSTRIAL LAW - QUEENSLAND - AWARDS - APPLICATION TO INCLUDE IN AWARD PROVISIONS BASED ON A CERTIFIED AGREEMENT - applicant applied, pursuant to s 145(2) of the *Industrial Relations Act 2016*, to include in the *Nurses and Midwives (Queensland Health) Award - State 2015* certain wage and non-wage provisions contained in the *Nurses and Midwives (Queensland Health and Department of Education and Training) Agreement (EB9) 2016* - application to amend original application - application to further amend application to reduce the scope of provisions in the *Nurses and Midwives (Queensland Health and Department of Education and Training) Agreement (EB9) 2016* to be included in the *Nurses and Midwives (Queensland Health) Award - State 2015* - consideration of the power of the Queensland Industrial Relations Commission to include in a modern award provisions that are based on a certified agreement - consideration of whether further amended application must be granted to include in the *Nurses and Midwives (Queensland Health) Award - State 2015* provisions based on the *Nurses and Midwives (Queensland Health and Department of Education and Training) Agreement (EB9) 2016* - further amended application granted

LEGISLATION:

Acts Interpretation Act 1954, s 14A and s 32CA

Community Services Industry (Portable Long Service Leave) Act 2020, s 136

Hospital and Health Boards (Changes to Prescribed Services) Amendment Regulation 2019, s 5

Hospital and Health Boards Regulation 2012, pt 9, div 3

Industrial Relations (Fair Work Act Harmonisation No.2) and Other Legislation Amendment Act 2013, s 14

Industrial Relations Act 1999, s 3, s 125, s 126, s 129 and s 140CE

Industrial Relations Act 2016, s 3, s 4, s 141, s 142, s 143, s 145, s 147, s 164, s 168, s 221, s 993 and s 998

Industrial Relations and Other Acts Amendment Act 2005, s 15

CASES:

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers [2001] QIRC 179; (2001)168 QGIG 233

Award for Employees in Direct Client Services - Disability Services Queensland 2003 [2011] QIRComm 225

Certain Lloyd's Underwriters v Cross [2012] HCA 56; (2012) 248 CLR 378

CIC Insurance Ltd v Bankstown Football Club Ltd [1997] HCA 2; (1997) 187 CLR 384

Department of Corrective Services Correctional Employees' Award - State 2005 [2011] QIRComm 166

Federal Commissioner of Taxation v Consolidated Media Holdings Ltd [2012] HCA 55; (2012) 250 CLR 503

Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees v The Australian Dental Association (Queensland Branch) Union of Employers [2005] QIRC 124; (2005) 180 QGIG 187

Project Blue Sky Inc. v Australian Broadcasting Authority [1998] HCA 28; (1998) 194 CLR 355

Queensland Council of Unions v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Ors [1999] QIRComm 189; (1999) 162 QGIG 356

Re: Making of a modern award - Nurses and Midwives (Queensland Health) Award - State 2015 [2016] QIRC 9

State of Queensland v Heraud [2011] QCA 297; [2012] 2 Qd R 598

APPEARANCES:

Ms J. Gardner and later Mr R. Musgrave and Ms E. Bristow for the State of Queensland (Queensland Health)

Ms V. Semple for the Queensland Nurses and Midwives' Union of Employees

Ms S. Young and later Mr B. Watson and then Mr D. Marr for The Australian Workers' Union of Employees, Queensland

Mr R. Patterson and Ms J. Maher for the State of Queensland (Department of Education)

Reasons for Decision

Introduction

- [1] By order dated 30 November 2015, a Full Bench of the Queensland Industrial Relations Commission, pursuant to s 140CE of the *Industrial Relations Act 1999* ('the 1999 Act'), made the *Nurses and Midwives (Queensland Health) Award - State 2015* ('the Award').¹
- [2] Clause 4 of the Award provides that it applies to:
- all nurses and midwives employed by an employer covered by the Award who are engaged in a classification listed in Schedule 2 to the Award;
 - the Chief Executive of Queensland Health ('the Department') and each Hospital and Health Service in their capacity as the employer of employees covered by the Award;² and
 - the Queensland Nurses and Midwives' Union of Employees ('the QNMU') and The Australian Workers' Union of Employees, Queensland ('the AWU') with respect to callings contained in the Award which those unions have eligibility to represent.

¹ *Re: Making of a modern award - Nurses and Midwives (Queensland Health) Award - State 2015* [2016] QIRC 9.

² However, by virtue of s 5 of the *Hospital and Health Boards (Changes to Prescribed Services) Amendment Regulation 2019*, which inserted pt 9, div 3 into the *Hospital and Health Boards Regulation 2012*, as from 15 June 2020, all health service employees, other than health executives or senior health executives, were employed by the chief executive of Queensland Health, or in other words, by the State of Queensland.

- [3] On 14 October 2016, the Commission certified the *Nurses and Midwives (Queensland Health and Department of Education and Training) Certified Agreement (EB9) 2016* ('the 2016 certified agreement'). Clause 4.1 of the 2016 certified agreement provided that the parties to that agreement were the Department, the Department of Education and Training, the QNMU and the AWU.³
- [4] By application filed on 3 September 2020, the State of Queensland, through Queensland Health, applied to the Commission, pursuant to s 147(2)(b) of the *Industrial Relations Act 2016* ('the Act'), to include in the Award certain wage and non-wage provisions contained in the 2016 certified agreement ('the Department's original application'). The Department's original application was accompanied by an affidavit of Dr John Wakefield, the Director-General of the Department ('Dr Wakefield').
- [5] On 26 November 2020, an amended application was filed by the Department ('the Department's amended application') with a further affidavit of Dr Wakefield ('Dr Wakefield's further affidavit'). By the Department's amended application, the Department applied for a decision that, pursuant to s 145(2) of the Act, the Award be varied by virtue of the parties' agreement to vary the Award as contained in cl 28 of the *Nurses and Midwives (Queensland Health and Department of Education) Agreement (EB10) 2018* ('the 2018 certified agreement').
- [6] By oral application made on 19 November 2021, the Department applied to further amend the Department's original application to reduce the scope of provisions in the 2016 certified agreement to be included in the Award. There was no opposition to the further application to amend. There being no opposition, I allowed the Department to further amend the Department's original application ('the Department's further amended application'). The other parties to the 2016 certified agreement agreed to the Department's further amended application.⁴
- [7] At a further mention today, I allowed an application by the Department to amend its further amended application. All the other parties to the 2016 certified agreement agreed to that amendment.
- [8] The question for my determination is whether I must include, in the Award, the provisions contained in the 2016 certified agreement the subject of the Department's further amended application and which have been agreed between the parties to the 2016 certified agreement.

Background

- [9] Pursuant to s 993(1) of the Act, the Award was taken to be a modern award under ch 3 of the Act.

³ Despite the Department of Education and Training being named a party to the 2016 certified agreement, it is the State of Queensland that is the employer of the employees covered by that agreement: *State of Queensland v Herald* [2011] QCA 297; [2012] 2 Qd R 598, [28]-[31] (Chesterman JA, with Muir JA at [1] and White JA [25] agreeing). The State of Queensland therefore is the employer party to the 2016 certified agreement: s 168, s 221 and s 998 of the Act.

⁴ T 1-5, 1 21 to 1-10, 1 16 (19 November 2021).

[10] On 25 September 2018, the Commission certified the 2018 certified agreement. In 2020, by virtue of ch 15A⁵ of the Act, the 2018 certified agreement was varied in accordance with the provisions of that chapter. The variations are not material to the present matter.

[11] Clause 28 of the 2018 certified agreement provides:

28. Variations to Award

28.1 The parties agree to vary the Award to include the following within six months of certification of the Agreement:

- (a) Schedule 3 – Midwifery Group Practice
- (b) Amend Schedule 2 of the Award with respect to:
 - (i) Nurse Grade 9;
 - (ii) Nurse Grade 10;
 - (i) Nurse Grade 13.1; and
 - (ii) Nurse Grade 13.2.
- (c) EB9 wage and allowance rates.

[12] The reference to 'EB9' is to the 2016 certified agreement.

[13] By the Department's original application, the Department applied for a decision that, pursuant to s 147(2)(b) of the Act, the Award be varied by virtue of the parties' agreement to vary the Award as contained in cl 28 of the 2018 certified agreement. Dr Wakefield deposed that the QNMU jointly made the application with the Department and that the AWU had been consulted and supported the amendments to the Award as proposed in the Department's original application.

[14] At a mention of the Department's original application on 21 October 2020, amongst other matters, I queried with the parties as to whether the Department's original application was asking the Commission to vary the Award pursuant to s 145 or s 147 of the Act. Subsequently, the Department's amended application was filed.

[15] By order dated 14 December 2020, the Department and the QNMU were directed to file and serve written submissions in respect of the Department's amended application. Both parties filed and served written submissions as directed.

[16] In summary, the Department submitted that:

- section 145 of the Act deals with the content of modern awards and, more specifically, the flow on provisions from certified agreements;
- having regard to the terms of s 145(2) of the Act, the Commission must, on the application of a party to a modern award, include in the award provisions that are based on a certified agreement if:
 - the parties to the certified agreement agree; and

⁵ Which was introduced and had operation for a limited period of time: *Community Services Industry (Portable Long Service Leave) Act 2020* s 136.

- the award applies, or will apply, to the parties to the certified agreement;
- by cl 28 of the 2018 certified agreement, the parties agreed to vary the Award to include the amendments referred to in cl 28;
- the Award applies to the parties to the 2018 certified agreement;
- by cl 4 of the 2018 certified agreement, the parties to that agreement are the Department, the Department of Education, the QNMU and the AWU;
- the variations to the Award have been jointly drafted and agreed by the Department and the QNMU; and the AWU has been consulted in relation to the proposed variations and agreed that the variations sought by the Department reflect the agreement outlined in cl 28 of the 2018 certified agreement; and
- none of the variations apply to nurses employed in the Department of Education.

[17] The QNMU did not consent to the proposed amendments to the wages referred to in Dr Wakefield's further affidavit because it contained wage rates payable from 1 April 2016, the rates for most classifications were less than the current Award rates operative from 2 September 2020 and most of the current Award rates were between 1.1% and 1.3% greater than the 2016 rates from the 2016 certified agreement.

[18] The QNMU submitted that:

- whilst it had previously agreed with the Department that the rates from the 2016 certified agreement were the appropriate rates to insert into the Award to satisfy cl 28.1(c) of the 2018 certified agreement, because of the delay in progressing the matter, there have been two State Wage cases which increased the Award wage and allowance rates by 3% in 2019 and by 1.75% in 2020, resulting in the current Award rates being greater than most of those wage rates from the first year of the 2016 certified agreement as at 1 April 2016; and
- the wage rates and allowances from the second year of the 2016 certified agreement, as at 1 April 2017, should be substituted, being the rates set out in paragraph 1 of its attachment to its submissions.

[19] In particular, the QNMU submitted:

7. The insertion of these rates would satisfy clause 28.1(c) of EB10, which says that the parties agreed to vary the Award rates to include EB9 wage rates and allowances, but does not specify which year of the agreement.
8. The application is made pursuant to section 145 of the *Industrial Relations Act 2016* (the Act). QH submits that the application meets the requirements of s145(2). However, the QNMU submits that this aspect of the application must now be dealt with pursuant to s145(1) as the QNMU does not agree to the terms of the amendment.
- ...
9. The QNMU submits the amendment to the wages and allowances proposed by the QNMU meet the requirements of s145(1) and the commission should amend the Award accordingly.

[20] The basis for the QNMU's submission that the wages and allowances it proposed met the requirements of s 145(1) of the Act was because those wages and allowances:

- were consistent with the principles established by the Full Bench in *Declaration of General Ruling (State Wage Case 2017)*⁶, namely, the matters referred to in s 3, s 4(d), (g) and (h), s 141 and s 142 of the Act;
- were fair and just, provide for fair standards in relation to the living standards prevailing in the community and reflected the prevailing employment conditions of employees of the State of Queensland;
- would promote collective bargaining as they were well below the current paid rates in the 2018 certified agreement; and
- were not contrary to the public interest in that:
 - they were very modest increases;
 - they would not actually increase the rates currently being paid to nurses and midwives covered by the Award; and
 - it would therefore have no material effect on the budget of the State of Queensland.

[21] The QNMU consented to the other variations proposed in Dr Wakefield's further affidavit.

[22] By email to the Industrial Registrar sent on 4 February 2021, the Department advised that it consented to the QNMU's proposal to include the year 2 rates from the 2016 certified agreement, submitting that such variation would be consistent with the commitment made by the parties at cl 28 of the 2018 certified agreement.

[23] Following a further mention of the matter on 2 July 2021, on 10 August 2021, Dr Wakefield filed a second further affidavit ('Dr Wakefield's second further affidavit') which complied with all formalities required by the Commission to ensure that the variations to the Award, sought by the Department's amended application, were precisely and correctly identified.

[24] Having regard to Dr Wakefield's second further affidavit, there are 25 specific variations sought to be made to the Award.

[25] By email dated 6 September 2021, the QNMU indicated that it consented to the Department's amended application. Given Dr Wakefield's second further affidavit, I took this consent to mean that the QNMU consented to the variations to the Award, sought by the Department, as identified in Dr Wakefield's second further affidavit.

⁶ [2017] QIRC 81, [42].

[26] Following the further mentions on 19 November 2021 and today, there are now only 16 agreed variations sought to be made to the Award. The 16 variations sought relate to:

- sub-clause 13.2(a) of the Award, which deals with an annual isolation allowance for particular employees;
- clause 13.7 of the Award, which deals with laundry allowance;
- sub-clause 13.15(a)(i) of the Award, which deals with a professional development allowance for particular employees;
- clause 15.1 of the Award, which deals with hours of duty for particular employees;
- clause 15.2 of the Award, which deals with hours of duty for particular employees;
- sub-clause 15.12(a)(i) of the Award, which deals with afternoon shift allowance;
- sub-clause 15.12(b)(i) of the Award, which deals with night shift allowance;
- sub-clause 18.1(a)(i) of the Award, which specifies the categories of employees to whom the overtime clause do not apply;
- sub-clause 18.1(c) of the Award, which specifies the overtime entitlements for particular employees;
- sub-clause 18.2(a) of the Award, which specifies the categories of employees to whom the on-call and recall clause do not apply;
- sub-clause 18.3(a) of the Award, which specifies the categories of employees to whom the recall to duty, other than from on call, clause do not apply;
- schedule 2.14 of the Award, which provides for the generic level statement of Nurse Grade 9;
- schedule 2.15 of the Award, which provides for the generic level statement of Nurse Grade 10;
- schedule 2.18 of the Award, which provides for the generic level statement of Nurse Grade 13, Band 1;
- schedule 2.19 of the Award, which provides for the generic level statement of Nurse Grade 13, Band 2; and
- schedule 3 of the Award, which provides for Midwifery Models of Care.

[27] Some of the variations the parties seek are beyond those referred to by the parties in cl 28 of the 2018 certified agreement, namely, the variations to cls 15 and 18 of the Award referred to above.

[28] Despite this, the variations sought to cls 15 and 18 are now agreed to between the parties to the 2016 certified agreement.

The relevant provisions of the Act

[29] Chapter 3 of the Act deals with modern awards. Chapter 3, pt 1 of the Act contains s 141 and s 142.

[30] Section 141 of the Act provides:

141 General requirements for commission exercising powers

- (1) In exercising its powers under this chapter, the commission must ensure a modern award-
 - (a) provides for fair and just wages and employment conditions that are at least as favourable as the Queensland Employment Standards; and
 - (b) generally reflects the prevailing employment conditions of employees covered, or to be covered, by the award.
- (2) For subsection (1), the commission must have regard to the following-
 - (a) relative living standards and the needs of low-paid employees;
 - (b) the need to promote social inclusion through increased workforce participation;
 - (c) the need to promote flexible modern work practices and the efficient and productive performance of work;
 - (d) the need to ensure equal remuneration for work of equal or comparable value;
 - (e) the need to provide penalty rates for employees who-
 - (i) work overtime; or
 - (ii) work unsocial, irregular or unpredictable hours; or
 - (iii) work on weekends or public holidays; or
 - (iv) perform shift work;
 - (f) the efficiency and effectiveness of the economy, including productivity, inflation and the desirability of achieving a high level of employment.

[31] Section 142 of the Act provides:

142 General requirement about minimum wages

- (1) To the extent the commission's powers under this chapter relate to setting, varying or revoking minimum wages in a modern award, the commission must establish and maintain minimum wages that are fair and just.
- (2) For subsection (1), the commission must have regard to the following-
 - (a) the prevailing employment conditions of employees covered by the modern award;
 - (b) the matters mentioned in section 141(2)(a) to (d) and (f);
 - (c) providing a comprehensive range of fair minimum wages to-
 - (i) young employees; and
 - (ii) employees engaged as apprentices and trainees; and
 - (iii) employees with a disability.

[32] Chapter 3, pt 2 of the Act contains s 143 to s 146.

[33] Section 143 of the Act relevantly provides:

143 Content of modern awards

- (1) The commission must ensure a modern award-
 - (a) does not include a provision that discriminates against an employee; and
Note-
 See, however, subsection (2).
 - (b) does not include a provision that displaces, or is otherwise inconsistent with, the Queensland Employment Standards, unless the provision is at least as favourable for an employee as the Queensland Employment Standards; and
 - (c) provides for equal remuneration for work of equal or comparable value; and
Note-
 In relation to the making of a modern award, see the further requirements under chapter 5, part 2, division 1.
 - (d) does not include an objectionable term within the meaning of section 301; and
 - (e) is stated in plain English and its structure and content is easy to understand; and
 - (f) does not include provisions that are obsolete; and
 - (g) includes a provision requiring an employer to consult employees before making a decision likely to be of particular significance to employees; and
Note-
 See also subsection (3) for further requirements relating to the consultation provision mentioned in paragraph (g).
 - (h) includes provisions stating the employers, employees and organisations the award applies to; and
 - (i) provides fair standards for employees in the context of living standards generally prevailing in the community; and
 - (j) is suited to the efficient performance of work according to the needs of particular enterprises, industries or workplaces; and
 - (k) whenever possible-
 - (i) contains facilitative provisions about how the provisions of the award are to apply; and
 - (ii) contains provisions enabling the employment of regular part-time employees; and
 - (iii) provides support for training arrangements; and
 - (iv) contains facilitative provisions about work and family responsibilities; and
 - (l) takes into account employees' family responsibilities.
- (2) A modern award does not discriminate against an employee only because it provides for minimum wages for any of the following-
 - (a) all young employees;
 - (b) all employees with a disability;
 - (c) all employees engaged as apprentices or trainees;
 - (d) a class of employees mentioned in paragraph (a), (b) or (c).
- (3) For subsection (1)(g), the provision must state a consultation process to be followed that enables the employer to properly consider the views of employees and relevant employee organisations before making or implementing a final decision.
- (4) In this section-
facilitative provisions, about a matter, means provisions allowing agreement to be reached at the workplace or enterprise level, between employers and employees (including individual employees), for the matter.
relevant employee organisation means an employee organisation that-
 - (a) is covered, or will be covered, by the modern award; or
 - (b) is entitled to represent the industrial interests of employees who are, or will be, covered by the modern award.

[34] Section 145 of the Act, which commenced operation on 1 March 2017, provides:

145 Flow-on of provisions from certified agreements

- (1) The commission may, on the application of a party to a modern award, include in the award provisions that are based on a certified agreement only if satisfied the provisions-
 - (a) are consistent with principles established by the full bench that apply for deciding wages and employment conditions; and
 - (b) are not contrary to the public interest.
- (2) However, the commission must, on the application of a party to a modern award, include in the award provisions that are based on a certified agreement if-
 - (a) the parties to the certified agreement agree; and
 - (b) the award applies, or will apply, to the parties to the certified agreement.
- (3) The provisions included under subsection (2) must apply only to the parties to the certified agreement.

[35] Chapter 3, pt 3 of the Act contains s 147 to s 150.

[36] Section 147 of the Act provides:

147 Commission's power to make or vary modern awards

- (1) The commission may do either of the following to provide for fair and just employment conditions-
 - (a) make a modern award;
 - (b) make an order varying a modern award.
- (2) The commission may exercise a power under this section-
 - (a) on its own initiative; or
 - (b) on the application of any of the following persons-
 - (i) the Minister;
 - (ii) an organisation;
 - (iii) an employer;
 - (iv) an employee; or
 - (c) on a review of a modern award under part 5.

[37] The question for my determination, as set out above, requires a consideration of the construction of s 145(2) of the Act in the context of ch 3, pts 1, 2 and 3.

[38] The meaning of the provision in a statute must be determined by reference to the language of the instrument viewed as a whole⁷ and the legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals.⁸ In addition, the purpose of the legislation must be derived from what the legislation says, and not from any assumption about the desired or desirable reach or operation of the relevant provisions.⁹

[39] Further, s 14A(1) of the *Acts Interpretation Act 1954* provides that in the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act

⁷ *Project Blue Sky Inc. v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355, [69] (McHugh, Gummow, Kirby and Hayne JJ).

⁸ *Ibid* [70].

⁹ *Certain Lloyd's Underwriters v Cross* [2012] HCA 56; (2012) 248 CLR 378, [26] (French CJ and Hayne J).

is to be preferred to any other interpretation. The noun 'purpose', for an Act, is defined in the *Acts Interpretation Act 1954* to include its policy objective.

- [40] A consideration of the context of statutory text includes the legislative history and extrinsic materials.¹⁰ The context should be considered at the first instance not at some later stage and context includes things such as the existing state of the law and the mischief the statute intended to remedy.¹¹

The predecessor provision to s 145 of the Act

- [41] In 1998, a review of industrial relations legislation in Queensland was undertaken by what was known as the Industrial Relations Taskforce. Chapter 5 of the report of the Taskforce, dated December 1998, dealt with regulation and flexibility and s 5.8 dealt with award review and variation. One of the matters reported on by the Taskforce dealt with the question of whether conditions agreed to in enterprise bargaining agreements should be able to be incorporated into awards. In this regard, the Taskforce reported:

The Taskforce believes that allowing for application to vary awards will ensure that they remain relevant for those who are solely reliant on them for setting wages and conditions of employment. Two members of the taskforce argued that awards and agreements should be on an equal footing and that enterprise bargaining increases should be able to be rolled into the relevant award. The majority believed that retaining restrictions on automatic flow-on will prevent difficulties that might arise from allowing agreements in certain enterprises to act as a "whipsaw" for conditions across a common rule award. However, it should be noted that the Commission has discretion in relation to flow-on of conditions, subject to its Full Bench principles. It would not be expected that agreement conditions would be easily incorporated in awards in most circumstances. However, it is worth noting that in the public sector there are special cases where such incorporation might not cause inappropriate enterprise-related outcomes to be imposed across a larger sector. Thus the relationship of conditions in agreements and in awards remains a matter for Commission decision.¹²

- [42] The recommendation made by the Taskforce was:

125. *That there be no automatic flow-on of terms in an agreement to an award except where this is consistent with Full Bench principles for deciding wages and conditions and is not otherwise contrary to the public interest.*¹³

- [43] When the 1999 Act was enacted,¹⁴ it relevantly provided:

Flow-on of certified agreements

- 129.** The commission may include in an award provisions that are based on a certified agreement only if satisfied the provisions-
- (a) are consistent with principles established by the full bench that apply for deciding wages and employment conditions; and
 - (b) are not contrary to the public interest.

¹⁰ *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* [2012] HCA 55; (2012) 250 CLR 503, [39] (French CJ, Hayne, Crennan, Bell and Gageler JJ).

¹¹ *CIC Insurance Ltd v Bankstown Football Club Ltd* [1997] HCA 2; (1997) 187 CLR 384, 408 (Brennan CJ, Dawson, Toohey and Gummow JJ).

¹² Industrial Relations Taskforce, *Review of Industrial Relations Legislation in Queensland* (report, December 1998), 123. Of the 166 recommendations made by the Taskforce, 150 were adopted in the Industrial Relations Bill 1999 (Qld), Explanatory Notes, Industrial Relations Bill 2016 (Qld), 4.

¹³ Industrial Relations Taskforce, *Review of Industrial Relations Legislation in Queensland* (report, December 1998), 124.

¹⁴ Act No. 33 of 1999.

[44] Section 129 of the 1999 Act, as it was originally enacted, was considered in a number of cases.

[45] From those cases, the following propositions emerged:

- section 129 of the 1999 Act was not the head of power to amend an award, but rather, that section assumed that in the discharge of the duty imposed on the Commission by s 126 of that Act (the required content of awards) or in exercising power in s 125(1) of the 1999 Act (the power of the Commission to make, amend or repeal awards) against the background of the objects of s 3 of the 1999 Act, the Commission may decide to include in an award provisions based on the provisions of a certified agreement;¹⁵
- provisions that are based on a certified agreement do not mean provisions the same as a certified agreement;¹⁶
- section 129 of the 1999 Act then fetters the Commission's power by permitting inclusion of the provision only if the Commission is satisfied the provisions to be included are consistent with the principles established by the Full Bench that apply for deciding wages and employment conditions and are not contrary to the public interest;¹⁷
- it is not automatic that provisions in certified agreements would flow on into awards;¹⁸
- there is to be a testing against the Full Bench principles and the public interest;¹⁹
- the fact that a provision appears in a certified agreement or a large number of certified agreements within an industry may be material to the question as to whether the provision or derivative should be included in an award, but that is not determinative of whether it is contrary to the public interest to include the term;²⁰ and
- the presence of a provision in a certified agreement goes to the merit of an application to include the provision in an award.²¹

¹⁵ *Queensland Council of Unions v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Ors* [1999] QIRCComm 189; (1999) 162 QGIG 356, 362 (President Hall, Commissioner Edwards and Commissioner Bechly).

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers* [2001] QIRC 179; (2001) 168 QGIG 233 (*'the Margarine Manufacturing Award case'*), 235 (President Hall, Commissioner Edwards and Commissioner Thompson).

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

- [46] By virtue of s 15 of the *Industrial Relations and Other Acts Amendment Act 2005*,²² s 129 of the 1999 Act was amended by adding sub-sections (2) and (3). As from 1 April 2005, s 129 of the 1999 Act provided:

129 Flow-on of certified agreements

- (1) The commission may include in an award provisions that are based on a certified agreement only if satisfied the provisions-
 - (a) are consistent with principles established by the full bench that apply for deciding wages and employment conditions; and
 - (b) are not contrary to the public interest.
- (2) However, the commission must include in an award provisions that are based on a certified agreement if-
 - (a) the parties to the certified agreement agree; and
 - (b) the parties to the certified agreement are bound by the award.
- (3) The provisions included under subsection (2) must apply only to the parties to the certified agreement.

- [47] The Explanatory Notes to the Industrial Relations and Other Acts Amendment Bill 2005 (Qld) relevantly provided:

Amendment of s 129 (Flow-on of certified agreements)

Clause 15 amends section 129 by inserting subsections (2) and (3) to facilitate the incorporation of provisions from certified agreements into awards where the parties agree.

Section 129 currently allows provisions from certified agreements to be incorporated into awards but only if the QIRC is satisfied that the provisions are consistent with wage fixing principles and are not contrary to the public interest. The new subsection (2) provides that the QIRC must flow on provisions of a certified agreement into the award if the parties to the agreement agree and the parties to the agreement are bound by the award.

Subsection (3) provides that the provisions included in an award under subsection (2) must apply only to the parties to the certified agreement.²³

- [48] In the Second Reading Speech for the Industrial Relations and Other Acts Amendment Bill 2005, the Minister for Employment, Training and Industrial Relations relevantly stated:

The bill also addresses problems with the flow-on of agreement terms into awards. The existing provision has proven too limited on some occasions. For example, in one instance it prevented a consent application to amend an outdated, single-employer award to reflect pay rates from a certified agreement. The pay rates in the relevant award had not been updated for several years and were unlikely to provide a realistic no-disadvantage test to compare with an agreement. The current restrictions on flowing agreement terms into awards are generally justified, but a mechanism is needed to enable awards, in limited circumstances, to be amended by consent to keep them relevant and up to date. The bill achieves this by requiring the commission to permit agreement terms to be rolled into awards where-

- (a) the parties to the agreement consent, and
- (b) the parties to the agreement are also parties to the award.

²² Act No. 11 of 2005.

²³ Explanatory Notes, Industrial Relations and Other Acts Amendment Bill 2005 (Qld), 17.

The amended terms of the award must only apply to the parties to the agreement. This measure will facilitate the approval of consent applications and, in contested applications, the public interest test and wage principles that must be applied will provide safeguards against inappropriate flow-on.²⁴

- [49] Section 129 of the 1999 Act, as amended in 2005 by s 15 of the *Industrial Relations and Other Acts Amendment Act 2005*, was considered by a Full Bench of the Commission in *Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees v The Australian Dental Association (Queensland Branch) Union of Employers*.²⁵ In that case, the Full Bench²⁶ relevantly stated:

[175] Although s. 129 of the Act has been amended since this pronouncement, we consider that the above meaning continues to be applicable, that is, that s. 129 acts only as a fetter to the discharge of the duty imposed on the Commission under s. 126 or in exercising the power at s. 125 of the Act. Section 125(1) gives the Commission power to make, amend or repeal an award to provide, amongst other things, fair and just employment conditions. Section 126 of the Act deals with the content of awards and provides that the Commission must ensure that an award, amongst other things, provides for secure, relevant and consistent wages and employment conditions and provides for equal remuneration for men and women employees for work of equal or comparable value. This last requirement was inserted as a consequence of Recommendation 3 of the Queensland Pay Equity Inquiry.

[176] The Full Bench in the *Margarine Case* described the situation thus:

"... it seems to us that s. 129 confirms that in making, amending or repealing an award to provide fair and just employment conditions and to ensure that the award meets the benchmarks at s. 126, the Commission may not only have regard to the terms of the certified agreements but may base the provisions of an award on a certified agreement (which in consequence of s. 32C of the *Acts Interpretation Act 1954* – singular includes the plural – presumably extends to basing the provision on more than one certified agreement). However, having confirmed the scope of s. 125, s. 129 also imposes each of two limitations on the exercise of the power. The first limitation is that the Commission must be satisfied that the provisions are consistent with principles established by the Full Bench that apply for deciding wages and employment conditions. The second limitation is that the Commission must be satisfied that the provisions are not contrary to the public interest." (p. 234).

[177] We accept, as the Full Bench in the *Margarine Case* did, that the inclusion of a provision in an award based on a certified agreement, is not to be automatic, unless, now, the conditions of s. 129(2) apply. The provisions can only be included if the Commission is satisfied that the two conditions set out in s. 129(1)(a) and (b) are met. The first of these is in relation to full bench principles for deciding wages and conditions. In relation to this condition we also point out as the Full Bench in the *Margarine Case* did that:

"There are no principles to guide a Full Bench in deciding wages and employment conditions. It arguably follows that s. 129(a) has no application where an issue about inclusion in an award of a provision based on a certified agreement arises before a Full Bench." (p. 235).

[178] In our view then in deciding whether to incorporate a provision from a certified agreement in this Award the Commission, in exercising its power pursuant to s. 125(i) of the Act and discharging its duty pursuant to s. 126, may only do so if it is not contrary to the public interest.²⁷

²⁴ Queensland, *Parliamentary Debates*, Legislative Assembly, 8 March 2005, 338 (Tom Barton, Minister for Employment, Training and Industrial Relations).

²⁵ [2005] QIRC 124; (2005) 180 QGIG 187.

²⁶ Vice President Linnane, Commissioner Fisher and Commissioner Bechly.

²⁷ Emphasis added.

[50] Following the 2005 amendment to s 129 of the 1999 Act, some awards were amended by agreement where the applicant referred to s 129 of the 1999 Act in the application to vary an award.²⁸

[51] As from 27 November 2013, by virtue of s 14 of the *Industrial Relations (Fair Work Act Harmonisation No.2) and Other Legislation Amendment Act 2013*,²⁹ s 129 was removed from the 1999 Act.

Section 145 of the Act

[52] As referred to earlier, s 145 of the Act commenced operation on 1 March 2017.

[53] The Explanatory Notes to the Industrial Relations Bill 2016 relevantly provided:

Clause 145 is based on the historical provision at section 129 of the IR Act (pre-2012) and provides that in certain circumstances, the commission may include in a modern award provisions that are based on a certified agreement. This clause also provides for when the commission must, upon application and agreement of the parties to a certified agreement, vary a modern award to include provisions based on a certified agreement.³⁰

[54] I have been unable to find a case where, since 1 March 2017, the parties to a certified agreement have relied upon s 145 of the Act to, by agreement, amend an award by including in the award provisions based on a certified agreement.

[55] Having regard to the principles of statutory construction I referred to earlier, including having regard to the predecessor provision to s 145 of the Act, my view is that s 145(2) of the Act should be construed in the following way.

[56] First, I am of the view that s 145(2) of the Act is a head of power for the Commission, separate to that as contained in s 147(1) of the Act, to vary a modern award by including it in the modern award provisions that are based on a certified agreement. The Commission may, pursuant to s 147(1), make or vary a modern award on its own initiative. The persons that may apply under s 147(1) of the Act to make or vary a modern award include the Minister, an organisation, an employer or an employee.

[57] However, s 145(2) of the Act is quite specific in that it contains very clear words used, namely, that the Commission must '... on the application of a party to a modern award' include in the award provisions that are based on a certified agreement. Because of the specific identity of a person who can apply to include award provisions that are based on a certified agreement, it seems to me that s 145(2) is the head of power the Commission is required to exercise upon such a person making application and the other requirements of the section being met.

[58] In addition, such a construction is consistent with the Explanatory Note to the Industrial Relations Bill 2016.

²⁸ Examples include *Award for Employees in Direct Client Services - Disability Services Queensland 2003* [2011] QIRComm 225 (Commissioner Thompson) and *Department of Corrective Services Correctional Employees' Award - State 2005* [2011] QIRComm 166 (Deputy President Swan, Deputy President Bloomfield and Commissioner Thompson).

²⁹ Act No. 61 of 2013.

³⁰ Explanatory Notes, Industrial Relations Bill 2016 (Qld), 35.

- [59] Secondly, it seems to me that on the application of a party to a modern award, to include in a modern award provisions that are based on a certified agreement where the elements in s 145(2)(a) and (b) are met, there is no discretion to be exercised. In such a case, the Commission must³¹ include in the modern award such provisions.
- [60] Again, having regard to the history of the predecessor provision to s 145 of the Act, namely, s 129 of the 1999 Act, the clear purpose of s 145 of the Act is to ensure that, either by exercise of discretion of the Commission by s 145(1) of the Act, or where the Commission is required by agreement of the kind contained in s 145(2) of the Act, the Commission is complying with its obligation as to the content of modern awards. That is:
- as referred to in s 142(1) of the Act, establishing and maintaining minimum wages that are fair and just; and
 - as referred to in s 143(1)(i) of the Act, ensuring that a modern award '... provides fair standards for employees in the context of living standards generally prevailing in the community'.
- [61] Thirdly, consistently with the decision of the Full Bench in the *1999 State Wage Case* about the construction of s 129(1) of the 1999 Act, the phrase '... provisions that are based on a certified agreement' does not mean provisions that are the same as a certified agreement. However, there is nothing in the terms used in s 145 of the Act that prevents an exact provision of a certified agreement, or derivative of such a provision, being included in a modern award.³²
- [62] Fourthly, on the clear words used in s 145(2) of the Act, the elements that must be made out such that the Commission must include, in a modern award, provisions that are based on a certified agreement are:
- the application to include in the award provisions that are based on a certified agreement must be made by a party to a modern award; and
 - the parties to the certified agreement, being the certified agreement from which the provisions or their derivatives, to be included in the modern award are taken, must agree to those provisions, or their derivatives, being included in the modern award; and
 - the modern award must apply or will apply to the parties to the certified agreement from which the provisions, or their derivatives, to be included in the modern award are taken.
- [63] Fifthly, the phrase 'certified agreement' contained in s 145 should take its meaning from the way that phrase is defined in sch 5 to the Act, namely, by referring to s 164 of the Act. Section 164 of the Act provides that a certified agreement is a written agreement

³¹ *Acts Interpretation Act 1954* s 32CA(2).

³² Consistently with the decision in the *Margarine Manufacturing Award case* (n 18), 235 about the meaning of s 129(1) of the 1999 Act.

about industrial matters relating to an employer, a group of employees of the employer, and the employee organisations covered by the agreement, that has been certified under ch 4, pt 5 of the Act.

- [64] That is to say, even if, at the time of the application to include provisions based on a certified agreement into a modern award, the certified agreement has been terminated, the provisions of such a certified agreement may nevertheless be the subject of an application of a party to a modern award pursuant to s 145(2). This is because, in such a case, such an agreement would still meet the description of a 'certified agreement' contained in s 164 of the Act. There is nothing in s 145(2) of the Act to indicate a construction of the phrase 'certified agreement' to the contrary. Indeed, having regard to the purpose of s 145(2) of the Act, to construe the phrase 'certified agreement' in any other way may defeat the purpose of that provision.
- [65] Finally, pursuant to s 145(3), the provisions based on a certified agreement so included in the modern award must apply only to the parties to the certified agreement.

Conclusion

- [66] Having regard to the elements of ss 145(2) and (3) of the Act and the facts of the present case:
- a party to the Award has made the application in that the State of Queensland, through Queensland Health, is the applicant;
 - the 16 provisions sought to be included in the Award, summarised earlier in these reasons, are based on the 2016 certified agreement;
 - the parties to the 2016 certified agreement, being the State of Queensland, the QNMU and the AWU agree to the 16 provisions from the certified agreement being included in the Award;
 - the Award applies to the parties to the 2016 certified agreement; and
 - the provisions included in the Award only apply to the parties to the certified agreement.
- [67] For these reasons, my view is that all the elements of ss 145(2) and (3) of the Act have been made out.
- [68] In these circumstances, I must include, in the Award, the 16 provisions based on the 2016 certified agreement that are the subject of the Department's further amended application and that I have summarised earlier in these reasons.

Orders

[69] I make the following orders:

- 1. Variations are made to the *Nurses and Midwives (Queensland Health) Award - State 2015* being those contained in Schedule 1 to these reasons for decision.**
- 2. The variations referred to in paragraph 1 will operate on and from 21 January 2022.**

SCHEDULE 1

1. By deleting clause 13.2(a) and inserting the following in lieu thereof:

- (a) A RANIP employee is entitled, on a *pro rata* basis, to an annual isolation allowance calculated on the basis of years of service in remote areas, as follows:

| Period of service | Allowance (full-time) \$ |
|---|-----------------------------|
| At the conclusion of one year of service | 3500 |
| At the conclusion of two years of service | 10500 |
| At the conclusion of three or more years of service | 7000 |

2. By deleting clause 13.7 and inserting the following in lieu thereof:

13.7 Laundry allowance

The employer will launder the employee's uniforms or an allowance of \$4.36 per fortnight shall be paid.

3. By deleting subclause 13.15(a)(i) and inserting the following in lieu thereof:

- (i) Subject to clause 13.15(b), a permanent Nurse Grade 3 and above working 16 hours or more a fortnight is entitled to be paid the following professional development allowance on a *pro rata* basis in accordance with the categories of Hospital and Health Service facilities recorded in Schedule 4:

| Category | Last pay period in March \$ | Last pay period in September \$ | Annual total \$ |
|----------|--------------------------------|------------------------------------|-----------------|
| A | 1,148.50 | 1,177.00 | 2,325.50 |
| B | 1,435.00 | 1,471.00 | 2,906.00 |
| C | 861.00 | 882.50 | 1,743.50 |

4. By deleting subclause 15.1 and inserting the following in lieu thereof:

15.1 Nursing Grade 1 to Nurse Grade 9 employees

- (a) Subject to clauses 15.2 and 15.3, the ordinary hours of duty of employees will be an average of 38 hours per week, but no greater than 80 in any one fortnight, to be worked according to a roster as follows:

- (i) 19 days (or shifts) of 8 hours' duration worked and one day (also of 8 hours) to be taken as an ADO (with pay) in any four weekly cycle; or
- (ii) In shifts as required, not exceeding 10 hours and not less than 4 hours in duration, with the hours worked in excess of an average of 38 per week over a four weekly cycle being credited towards an ADO; or
- (iii) Where circumstances exist in a hospital, facility, ward, or some discrete section of a hospital or facility that warrant a different method of working the 38 hour week other than that provided above, the employer, in consultation with the relevant Union and the employees directly affected, may agree to vary the methods of working the 38 hour week for that particular hospital, facility, ward or discrete section of a hospital or facility.

- (b) The ordinary working hours of a Nursing Grade 1 to Nurse Grade 9 employee covered by this Award will be worked in shifts the length of which must be agreed between the employer and the Union in consultation with the affected employees.
- (c) ADOs may be accumulated up to a maximum of five days, or 12 days in exceptional circumstances, and taken at a mutually acceptable time.
- (d) ADOS will be arranged so that they do not occur on a public holiday. An ADO will be taken on another day as agreed by the employee and employer within the same four weekly cycle where possible.
- (e) Notwithstanding that an employee may not be required to work on a public holiday it will still be regarded as a day worked for the purposes of the accrual of an ADO.

5. By deleting subclause 15.2 and inserting the following in lieu thereof:

15.2 Nurse Grade 10 and above

- (a) The usual hours of work for a Nurse Grade 10 and above employee is an average of 38 hours per week, 76 hours per fortnight or 152 hours in a four week period. However, to perform the job effectively, a Nurse Grade 10 and above employee may be required to work additional hours as appropriate.
- (b) A Nurse Grade 10 and above employee may work flexibly. This flexibility includes the option of available times off during the week (for example an afternoon off) or as a more formal accumulated day off arrangement.

6. By deleting subclause 15.12(a)(i) and inserting the following in lieu thereof:

- (i) An employee (excluding a Nursing Grade 1 employee referred to in clause 15.12(a)(ii), and a midwife participating in a caseload model of care) working an afternoon shift is to be paid an allowance of 12.5% for all ordinary hours worked, except for work performed on a Saturday, a Sunday or a public holiday, which is to be paid in accordance with clauses 15.12(e) and 23(a) and (b).

7. By deleting subclause 15.12(b)(i) and inserting the following in lieu thereof:

- (i) An employee (excluding a Nursing Grade 1 employee referred to in clause 15.12(b)(ii), and a midwife participating in a caseload model of care) working night shift is to be paid an allowance of 20% for all ordinary hours worked, except for work performed on a Saturday, a Sunday or a public holiday, which is to be paid in accordance with clauses 15.12(e) and 23(a) and (b).

8. By deleting subclause 18.1(a)(i) and inserting the following in lieu thereof:

- (i) Nurse Grade 10 and above employees; and

9. By deleting subclause 18.1(c) and inserting the following in lieu thereof:

(c) Nursing Grade 2 to Nurse Grade 9, inclusive

- (i) All authorised overtime worked in excess of an employee's rostered ordinary hours of work Monday to Saturday, inclusive, is to be paid at the rate of time and one-half for the first three hours and double time thereafter.
- (ii) All authorised overtime worked on Sunday is to be paid at the rate of double time.
- (iii) All authorised overtime worked on a public holiday is to be paid at the rate of double time and one-half.
- (iv) A Correctional Health Services employee:
 - (A) May be required to work reasonable time in excess of ordinary hours.
 - (B) Shall not perform more than 16 hours of consecutive duty inclusive of overtime. Overtime in combination with a 12 hour ordinary shift should be worked in exceptional circumstances only.
 - (C) In receipt of the aggregated shift allowance or who is a shift worker whose hours of work are regularly rotated in accordance with a shift roster covering two or more shifts per day will be paid for all overtime at the rate of double time. Overtime will be paid on the employee's base rate.
 - (D) Engaged as a casual employee, an ordinary shift is to be no more than 12 hours.

10. By deleting subclause 18.2(a) and inserting the following in lieu thereof:

- (a) This clause does not apply to registered midwives participating in a caseload model receiving an annualised salary

11. By deleting subclause 18.3(a) and inserting the following in lieu thereof:

- (a) This clause does not apply to registered midwives participating in a caseload model receiving an annualised salary.

12. By deleting Schedule 2.14 and inserting the following in lieu thereof:

S2.14 Nurse Grade 9

An employee who is a registered nurse/registered midwife who demonstrates:

- (a) competence in the provision of nursing/midwifery care as specified by registration requirements, NMBA standards and codes, educational preparation, relevant legislation and context of care; and
- (b) clinical expertise and proven operational management for remote area facility.

Classification may include

- (a) Operational management/coordination of a remote facility within a health service.
- (b) Management of staff including – nursing, midwifery, operational, administrative, health professionals, medical, technical and other support services.
- (c) Overseeing the delivery of health services to geographically diverse environment/s and population groups.
- (d) Provision of expert clinical care.

Autonomy:

- (a) Advanced level of autonomous decision making for clinical, operational and administrative interventions based on policy and regulatory frameworks.
- (b) Community engagement, partnership and leadership representation with key stakeholders.
- (c) Responsible for operational management of multi professional groups and others.
- (d) Works collectively to apply the principles of clinical governance.
- (e) Responsible for the majority of after-hours clinical on call and recall duties because the nursing employee numbers and skill mix do not allow on call to be done predominantly by other employees.

Indicative title/s

- (a) Director of Nursing – Remote

| Domain 1: | Domain 2: | Domain 3: | Domain 4: | Domain 5: |
|--|--|--|--|--|
| Director comprehensive care or provision of direct care | Support of Systems | Education | Research | Professional Leadership |
| Accountability/Responsibility <ul style="list-style-type: none"> • Accountable for NMBA and own standards, actions and the outcomes of own nursing/midwifery practice. • May have multi-service responsibilities. | Policies, protocols, guidelines and standards <ul style="list-style-type: none"> • Develop, guide and contribute to the application of information systems. • Monitor and evaluate information systems relevant | <ul style="list-style-type: none"> • Support education specific to the requirements of a remote facility. • Sponsor education, scholarly activities and translation of evidence into practice within the | <ul style="list-style-type: none"> • Promote and/or engage in ongoing nursing and/or midwifery research within the facility. • Sponsor research, scholarly activities and translation of evidence into | <ul style="list-style-type: none"> • Act as leader in the health service community. • Responsible for the senior leadership and management of nursing/midwifery. |

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| <ul style="list-style-type: none"> • Responsible for the leadership and management of all staff in the remote facility. • Responsible for the overall coordination of policies relating to the provision of healthcare in the remote facility. • Responsible for own standards and actions of nursing/midwifery care and for activities delegated to others. • Responsible for provision of and outcomes relating to nursing/midwifery management practices. • Responsible for financial and human resource management. • Consult with nursing/midwifery and other key stakeholders in planning health services, workforce and resource requirements. • Responsible for application and operational management of the BPF. <p>Skills and Knowledge</p> <ul style="list-style-type: none"> • Demonstrate advanced specialist knowledge, experience and clinical skills in a particular area of expertise. • Demonstrate critical thinking and reasoning, advanced | <p>to services/facilities/community.</p> <ul style="list-style-type: none"> • Collaborate in the implementation and evaluation of a nursing/midwifery professional practice framework. • Advise and participate in planning, coordination, and development of policies, procedures, protocols and standards for provision of safe and effective clinical care in remote services/facilities/community. • Review existing systems and processes to support infrastructure changes. <p>Quality/Safety/Risk management</p> <ul style="list-style-type: none"> • Identify and implement opportunities for innovation. • Promote and support a culture of continuous improvement in line with relevant standards, operational/strategic direction. • Monitor and address emerging trends with potential to influence nursing/midwifery and/or facility/service portfolios. • Monitor and report compliance with legal requirements governing | <p>strategic direction of the health service.</p> <ul style="list-style-type: none"> • Develop and encourage a learning environment by mentoring and promoting team development and individual capacity building. • Responsible for capacity building/up-skilling of staff within facility/service to enable the provision of safe quality care. • Work cooperatively with stakeholders to create a culture of learning and professional development that results in a capable and educated workforce. • Promote engagement by self and others in professional development and maintain own professional development portfolio. • Role model the application of education principles. | <p>practice within remote settings.</p> | <ul style="list-style-type: none"> • Contribute to strategic policy advice in relation to remote health services. • Provide expertise on nursing/midwifery professional issues in relation to remote health services. |
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| <p>problem solving skills and expert clinical judgement.</p> <ul style="list-style-type: none"> • Demonstrate advanced knowledge and application of contemporary nursing/midwifery practice and theory. • Lead the application and evaluation of contemporary human, material and financial resource management for the multidisciplinary environment. <p>Role in clinical care</p> <ul style="list-style-type: none"> • Provide leadership in professional decision-making through the application of advanced clinical knowledge and skills. • Coordinate clinical practice delivery in a clinical speciality or area of expertise. • Participate directly or indirectly in the delivery of clinical care to individuals/groups in a specialty area of clinical practice. • Use evidence-based clinical practice to facilitate positive outcomes for recipients of healthcare services. • Integrate and translate the principles of contemporary nurse/midwife education into practice. | <p>healthcare and professional standards.</p> <p>Mentorship</p> <ul style="list-style-type: none"> • Provide professional advice and leadership to others. • Apply the principles of succession management and mentoring to engage staff in ongoing career development, growth and lifelong learning. <p>Management</p> <ul style="list-style-type: none"> • Accountable for budget integrity and fiscal management according to financial and HR delegations. • Implement and report on key performance indicators of the nursing/midwifery strategic and related plans. • Demonstrate effective management of a facility/service. • Implement and evaluate systems and processes to foster the development of a positive facility/service culture and promote values which support optimum standards of practice and performance. • Promote professionalism, and a positive practice environment. Action workforce priorities that contribute to effective recruitment and retention of staff. | | | |
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| <ul style="list-style-type: none"> • Provide the majority of after-hours clinical on call and recall duties. | <ul style="list-style-type: none"> • Demonstrate expertise in the management of assets and equipment. • Develop and report on key performance indicators and targets in accordance with the hospital and health service, service agreement. <p>Change management</p> <ul style="list-style-type: none"> • Effectively apply change management expertise. • Participate in innovation, and monitor and report on the impact of change on practice and service needs. | | | |
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13. By deleting Schedule 2.15 and inserting the following in lieu thereof:

S2.15 Nurse Grade 10

An employee who is a registered nurse/registered midwife who demonstrates:

- (a) competence in the provision of nursing/midwifery care as specified by registration requirements, NMBA standards and codes, educational preparation, relevant legislation and context of care; and
- (b) advanced clinical management and/or a specified portfolio expertise.

Classification may include but is not limited to:

- (a) Working within an expansive and/or complex health service environment.
- (b) Working within a large facility/service/area.
- (c) Responsible for all staff working in a rural facility.
- (d) Responsible for a cohort of staff directly reporting.
- (e) Working in geographically diverse environment/s and complex population demographics.
- (f) Consultation and provision of advice on health policy and strategy impacting on the profession.
- (g) Development, coordination of operational management of a designated service improvement and/or service portfolio.

Autonomy

- (a) Autonomous decision making based on nursing, policy and regulatory frameworks.
- (b) Works collaboratively with leadership groups and healthcare team members.

- (c) Partners with nursing/midwifery executives members to operationalise clinical and corporate governance.
- (d) Works collectively to apply the principles of clinical governance.
- (e) Employs professional and clinical expertise in collaboration with nursing/midwifery executive and multidisciplinary stakeholders.

Indicative title/s

- (a) Assistant Director of Nursing
- (b) Director of Nursing – Rural

| Domain 1: | Domain 2: | Domain 3: | Domain 4: | Domain 5: |
|---|--|---|---|--|
| Director comprehensive care or provision of direct care | Support of Systems | Education | Research | Professional Leadership |
| Accountability/Responsibility <ul style="list-style-type: none"> • Accountable for NMBA and own standards, actions and the outcomes of own nursing/midwifery practice. • May have multi-site/service responsibilities. • May be responsible for the provision of human and material resources for a clinical service and/or an assigned number of clinical units/services within a hospital and health service or facility. • Responsible for nursing/midwifery activities in a facility/service/specified portfolio and contribute to strategic and operational policy development to achieve best practice outcomes. | Policies, protocols, guidelines and standards <ul style="list-style-type: none"> • May develop, guide or contribute to the application of information systems to inform decision making. Contribute to the development, implementation and evaluation of a nursing/midwifery professional practice framework. • Monitor and evaluate information systems relevant to rural facilities/communities. • Contribute to the planning, coordination, and development of policies, procedures, protocols and standards relating to the provision of safe and effective clinical care. • Advise and participate in planning, coordination and | <ul style="list-style-type: none"> • Experience in education, scholarly activities and translation of evidence into practice within the health service direction. • Collaborate in the development of a vision and strategy for a work based culture that promotes education initiatives, and lifelong learning. • Support education specific to the requirements of a rural facility. • Implement education and workforce development framework to support capability and capacity building. • Participate in internal and external stakeholder engagement. • Develop and encourage a learning environment by mentoring and promoting team development and | <ul style="list-style-type: none"> • Multi-site/multi-disciplinary hospital and health service responsibilities. • Demonstrate expertise in research. • Use contemporary information and research evidence and personal knowledge and experience to support decision making. • Promote and/or engage in ongoing nursing/midwifery research within the facility/service or delegated portfolio. • Engage in projects/research. • Action and evaluate policy and evidence-based research for application. • Sponsor research, scholarly activities and translation of evidence into practice within a rural setting. | <ul style="list-style-type: none"> • Contribute to professional strategic direction, imperatives and actions. • Collaborate with others in the provision of policy advice on issues relating to professional and clinical practice, workforce, legislation, education and/or research. • Act as professional leader in health service community. • Participate in scholarly activities. • Lead cross-disciplinary team/portfolios. • Contribute to strategic policy advice in relation to rural health services. • Provide expertise on nursing/midwifery professional issues in relation to rural health services. |

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| <ul style="list-style-type: none"> • Responsible for the leadership and management of all staff in a rural facility. • Responsible for the overall coordination of policies relating to the provision of healthcare in a rural facility. • Work collaboratively with others to contribute to resource and health strategy development. • Responsible for application and operational management of the BPF. • Accountable for the outcomes, management practices and achievement of performance targets. • Contribute to application of services and standards, and operationalise corporate and clinical governance frameworks. • Collaborate in the development and evaluation of the effectiveness of systems supporting continuous improvement in nursing/midwifery and/or healthcare team practice and healthy work environments. • Accountable for professional leadership and operational management in the planning and delivery of safe quality care. <p>Skills and Knowledge</p> | <p>development of policies, procedures, protocols and standards for provision of safe and effective clinical care in rural facility/community.</p> <ul style="list-style-type: none"> • Collaborate in and/or coordinate the evaluation of nursing/midwifery practice, systems, process and policies. • Participate in the implementation, application and evaluation of established guidelines, protocols, procedures, standards and systems as established by the hospital and health service, the service program and the profession. <p>Quality/Safety/Risk management</p> <ul style="list-style-type: none"> • Identify and implement opportunities for innovation. • Promote and support a culture of continuous quality improvement in line with nursing/midwifery professional strategic direction. • Monitor and address emerging trends with potential to influence | <p>individual capacity building.</p> <ul style="list-style-type: none"> • Support education specific to healthcare trends to promote the nursing/midwifery profession. • Promote engagement by self and others in professional development and maintain own professional development portfolio. • Role model application of education principles. | | |
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| <ul style="list-style-type: none"> • Demonstrate comprehensive knowledge of contemporary nursing/midwifery theory and practice. • Demonstrate advanced capability in leadership, human financial and resource management including professional standards and policy. • Collaborate and consult with nursing/midwifery and other key stakeholders in planning health services, workforce and resource requirements. <p>Role in Clinical Care</p> <ul style="list-style-type: none"> • Contribute to planning, coordination and formulation of healthcare policies that support professional decision making in alignment with professional standards and frameworks. • Integrate and evaluate models of care in the achievement of a cost effective service. • Contribute to strategic and operational governance and direction. • Collaborate with external and internal stakeholders to realise targets/outcomes. | <p>nursing/midwifery and/or facility/service portfolios.</p> <ul style="list-style-type: none"> • Monitor and report compliance with legal requirements governing healthcare and professional standards relevant to a facility/service/portfolios. <p>Mentorship</p> <ul style="list-style-type: none"> • Provide professional nursing/midwifery advice and leadership in a support capacity. • Apply the principles of succession management and mentoring to engage staff in ongoing career development, growth and lifelong learning. <p>Management</p> <ul style="list-style-type: none"> • Contribute to budget integrity and fiscal management according to financial and HR delegations. • Implement and report on key performance indicators of the nursing/midwifery strategic and related plans. • Demonstrate effective management of services and/or specified portfolios. • Implement and evaluate systems and processes to foster the development of a positive facility/service culture and promote values | | | |
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| <ul style="list-style-type: none"> • Accountable for clinical and professional standards of self and others. | <p>which support optimum standards of practice and performance.</p> <ul style="list-style-type: none"> • Promote professionalism and a positive practice environment. • Action workforce priorities that contribute to enhanced recruitment and retention of nurses and midwives. • May contribute clinical or portfolio expertise for the management of assets and equipment. • Implement, evaluate and report on health services, policies practice outcomes and performance targets. <p>Change management</p> <ul style="list-style-type: none"> • Effectively apply change management expertise. • Participate in innovation, and monitor and report on the impact of change on practice and service needs. | | | |
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14. By deleting Schedule 2.18 and inserting the following in lieu thereof

S2.18 Nurse Grade 13, Band 1

An employee who is a registered nurse/midwife who:

- (a) is responsible for ensuring a professional reporting/supervision framework is in place for all nursing and midwifery employees across the Hospital and Health Service.
- (b) (i) in a Health Service where there are no tertiary or quaternary services or hospitals, is an equal and collaborative partner on the Hospital and Health Service Executive in the planning and delivery of health services with the associated budgetary accountabilities and is accountable for the governance of the nursing and midwifery professional practice framework; or

- (ii) provides expert advice to Hospital and Health Service key stakeholders, including the Nurse Grade 13, Band 2, the Chief Executive and Board on all matters in relation to nursing and midwifery.

Autonomy

- (a) Autonomous decision making based on nursing/midwifery and broader health policy and regulatory frameworks from a strategic perspective.
- (b) May collaborate as an equal member of the strategic executive hospital and health service leadership team.
- (c) Responsible for the governance of nursing/midwifery across the hospital and health service, facility or program.
- (d) Engages as an Executive team member in aspects of clinical and corporate governance.
- (e) Exercises professional and clinical expertise in partnership with multi-disciplinary members of the hospital and health service executive.

Indicative title/s

- (a) Health Service Director of Nursing
- (b) Executive Director of Nursing and Midwifery

| Domain 1: | Domain 2: | Domain 3: | Domain 4: | Domain 5: |
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| Director comprehensive care or provision of direct care | Support of Systems | Education | Research | Professional Leadership |
| Accountability/Responsibility <ul style="list-style-type: none"> Accountable for NMBA and own standards, actions and the outcomes of own nursing/midwifery practice. Must have multi-site/multi-disciplinary tertiary/quaternary facility or hospital and health service designated portfolio responsibility. Accountable for strategic development of the nursing/midwifery workforce to optimise outcomes for a tertiary hospital, service/facility. Responsible for the strategic implementation and compliance with the BPF. | Information systems, Policies, Protocols, Guidelines and Standards <ul style="list-style-type: none"> Responsible for the strategic governance of planning, coordination, formulation and direction of policies, procedures, protocols and standards relating to the provision of safe and effective clinical care. Appraise and guide development and evaluation in the use of information systems. Sponsor the development, implementation and evaluation of nursing/midwifery | <ul style="list-style-type: none"> Sponsor education, scholarly activities and translation of evidence into practice consistent with the health service strategic direction. Sponsor a HHS wide vision and strategy for a work based culture that promotes and supports engagement in education, learning, research and workforce. Lead and report on key performance indicators of the nursing/midwifery education and workforce development plans. Inform, appraise and integrate contemporary education and workforce development policies and | <ul style="list-style-type: none"> Demonstrate research expertise and provide strategic advice and leadership. Sponsor HHS wide vision and strategy for a work-based culture that promotes and supports engagement in research. Lead and report on key performance indicators of the nursing/midwifery research. Advocate for and lead a strategic approach to the development of research projects for a tertiary hospital, service or program. Analyse and report the impact of high level policy | <ul style="list-style-type: none"> Lead professional strategic direction, imperatives and actions to foster professional principles, governance and growth. Sponsor the strategic direction of nursing/midwifery through collaboration to shape the professional image of the healthcare system. Sponsor robust nursing/midwifery governance and leadership to inform professional direction at state and national levels. Provide strategic and operational leadership, governance and direction to inform the |

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| <ul style="list-style-type: none"> • Accountable for corporate and clinical governance and practice standards of nurses/midwives. • Responsible for strategic direction in developing and implementing contemporary human resource management policies and practices to optimise performance. • Lead integration and translation of nursing/midwifery performance indicators. • Accountable for informing and supporting nursing/midwifery leadership in relation to governance, strategic direction and achievement of Key Performance Indicators. • Responsible for evaluating and consistently improving nursing/midwifery practice that fosters engagement, a positive work environment and culture. • Collaborate in evaluating and incorporating emerging trends within facility/service/portfolio. • Accountable for strategic leadership management, planning and service delivery of safe, quality care | <p>professional practice framework.</p> <ul style="list-style-type: none"> • Role model, lead and apply established guidelines, protocols, procedures, standards and systems of work as established by the hospital and health service, the service program and the profession. • Translate and evaluate information systems relevant to nursing/midwifery. <p>Quality/Safety/Risk management</p> <ul style="list-style-type: none"> • Identify, sponsor and lead opportunities for strategic innovation. • Appraise, lead and support a culture of continuous quality improvement in alignment with nursing/midwifery professional strategic direction. • Collaborate with multidisciplinary hospital and health service executive members to develop, implement and evaluate quality governance and risk management frameworks. • Analyse and address emerging trends with the potential to influence | <p>strategies to optimise health service outcomes and performance targets.</p> <ul style="list-style-type: none"> • Lead the application of an education and workforce development framework to support capability and capacity building. • Analyse emerging trends relating to contemporary education initiatives and health service priorities. • Initiate and lead consultation with internal and external stakeholders to foster a culture of learning and professional development. • Initiate and lead opportunities for strategic progress and growth through mentoring, team development and individual capacity building through commitment to nursing/midwifery workforce learning and development. • Demonstrate commitment to supporting contemporary education and workforce development initiatives specific to healthcare trends to promote the nursing/midwifery profession. | <p>and evidence-based research decisions on nursing/midwifery.</p> <ul style="list-style-type: none"> • Provide sponsorship and foster ongoing nursing/midwifery research within the facility/service or delegated portfolio. • Oversee research and quality projects that impact on nursing practice and outcomes in relation to nursing/midwifery governance. • Inform HHS executive decision making through application of professional knowledge and experience, data, contemporary literature and research. | <p>nursing/midwifery profession and others, and service/portfolio outcomes.</p> <ul style="list-style-type: none"> • Advocate for robust nursing/midwifery governance and leadership to inform professional direction at state and national levels. • Lead and participate in scholarly activities. • Lead cross-disciplinary teams/portfolios. |
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| <p>and coordination of nursing/midwifery services.</p> <ul style="list-style-type: none"> • Work collaboratively with HHS executive, finance and Directors of Nursing in the planning of health services and associated budgetary accountabilities to achieve budget integrity and strategic outcomes. <p>Skills and knowledge</p> <ul style="list-style-type: none"> • Demonstrate expert contemporary knowledge of all aspects of the profession from an international, national and state perspective. • Demonstrate expertise in human, financial and resource management including professional standards, policy and guidelines development, design and implementation to optimise outcomes in the context of a multidisciplinary workforce. • Lead, collaborate and consult with key stakeholders in the planning of health services and associated budgetary accountabilities. <p>Role in clinical care</p> <ul style="list-style-type: none"> • Accountable for clinical and professional standards for | <p>nursing/midwifery practice and outcomes.</p> <ul style="list-style-type: none"> • Be responsible for or promote quality governance and risk mitigation strategies to improve facility/service/portfolio outcomes. • Accountable for compliance with legal requirements governing healthcare and professional standards for a tertiary/quaternary hospital, facility/service and/or program across the HHS. • May be responsible for compliance with legislative, regulatory, professional requirements relevant to nursing/midwifery across the HHS. • Influence and sponsor national and state strategies in relation to safe, quality care. • Provide strategic leadership in clinical governance and performance of the nursing/midwifery workforce across the hospital and health service. <p>Mentorship/Reporting lines</p> | <ul style="list-style-type: none"> • Role model professional development principles and maintain own portfolio. | | |
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| <p>nursing/midwifery services across the HHS.</p> <ul style="list-style-type: none"> • May be responsible for other clinical services and initiatives within a multi-disciplinary framework. • Partner with internal and external stakeholders to optimise the reputation of and regard for nursing/midwifery in the achievement of best practice outcomes. | <ul style="list-style-type: none"> • Provide professional leadership to the nursing/midwifery profession. • Provide authoritative advice and support to nursing/midwifery colleagues and other stakeholders. • Sponsor succession management and mentorship to build workforce capability and a culture of lifelong learning. <p>Management</p> <ul style="list-style-type: none"> • Accountable for budget integrity and fiscal management according to financial and HR delegations for tertiary/quaternary hospital facility/service and/or program across the HHS or as part of the executive team. • Collaborate in development of the strategic plan. • Enact the HHS strategic direction for nursing/midwifery to achieve service targets. • May have single point of accountability for the nursing/midwifery workforce facility/service | | | |
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| | <p>and/or program/hospital and health service.</p> <ul style="list-style-type: none"> • Demonstrate strategic leadership expertise that engages staff. • Responsible for the nursing/midwifery strategic plan including and not limited to <ul style="list-style-type: none"> ➤ Workforce; ➤ Quality; ➤ Education; ➤ Research to inform and support an organisational culture of continuous improvement and innovation. • Sponsor professionalism and a positive practice environment and culture. • Implement and report on key performance indicators of the nursing/midwifery strategic and related plans. • Inform, appraise and integrate contemporary policies and practices to optimise health service outcomes and performance targets. • Provide executive professional nursing/midwifery governance across the healthcare system. • Apply strategic direction and priorities for quality | | | |
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| | <p>improvement including the establishment of a quality framework which supports nursing/midwifery professional standards.</p> <ul style="list-style-type: none"> • Analyse emerging trends within the broader service and business and evaluate the impact on nursing/midwifery and/or health services. • Provide strategic input into capital works and major asset and equipment management. • Oversee and guide the implementation of workforce priorities that enhance recruitment and retention of nurses and midwives to develop and build workforce capacity and capability. • Determine strategic priorities, work standards and allocation of resources to support nursing/midwifery professional standards. <p>Change management</p> <ul style="list-style-type: none"> • Initiate and/or oversee innovations, systemic change processes and co-ordination of responses to nursing/midwifery practice and health service needs for a tertiary hospital, | | | |
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| | facility/service and/or program across the HHS. <ul style="list-style-type: none"> • Lead and sustain strategic change in a dynamic multidisciplinary healthcare environment and evaluate effectiveness to achieve outcomes that promote the professional standards and practice of nurses and midwives. | | | |
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15. By deleting Schedule S2.19 and inserting the following in lieu thereof:

S2.19 Nurse Grade 13, Band 2

An employee who is a registered nurse/midwife who:

- (a) in a Health Service with a tertiary or quaternary service or hospital, is an equal and collaborative partner on the Hospital and Health Service Executive in the planning and delivery of health services with the associated budgetary accountabilities;
- (b) provides the highest level of advice to the Chief Executive and Board on all matters in relation to nursing and midwifery and is accountable for the governance of the nursing/midwifery professional practice framework; and
- (c) is responsible for ensuring a professional reporting/supervision framework is in place for all nursing and midwifery employees across the Hospital and Health Service.

Autonomy:

- (a) Autonomous decision making based on nursing/midwifery and broader health policy regulatory frameworks from a strategic perspective.
- (b) Responsible for the governance of nursing/midwifery across the hospital and health service.
- (c) Engages as an Executive team members in aspects of clinical and corporate governance.
- (d) Exercises professional and clinical expertise in partnership with multidisciplinary members of the hospital and health service executive.

Title

- (a) Executive Director of Nursing and Midwifery

| Domain 1: | Domain 2: | Domain 3: | Domain 4: | Domain 5: |
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| Director comprehensive care or provision of direct care | Support of Systems | Education | Research | Professional Leadership |
| Accountability/Responsibility: | Information Systems, Policies, Protocols, Guidelines and Standards | • Sponsor Hospital and Health Service wide vision | • Sponsor hospital and health service wide vision and | • Sponsor the strategic direction of |

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| <ul style="list-style-type: none"> • Accountable for NMBA and own standards, actions and the outcomes of own nursing/midwifery practice. • Must have multi-site/multi-disciplinary hospital and health service responsibilities. • Responsible for strategic direction in developing and implementing contemporary human resource management policies and practices to optimise performance. • Responsible for the strategic development of the nursing/midwifery workforce. • Responsible for the strategic implementation and compliance with the BPF. • Work collaboratively with hospital and health service executive, finance and Directors of Nursing in the planning of health services and associated budgetary accountabilities to achieve budget integrity and strategic outcomes. • Lead evaluation and consistent improvement of nursing/midwifery practice that fosters engagement, a positive work environment and culture. | <ul style="list-style-type: none"> • Responsible for the strategic governance of planning, coordination, formulation and direction of policies, procedures, protocols and standards relating to the provision of safe and effective nursing/midwifery practice. • Role model, lead and apply established guidelines, protocols, procedures, standards and systems of work as established by the hospital and health service, the service program and the profession. • Sponsor and appraise the strategic planning, development and evaluation of the use of information systems relevant to nursing/midwifery. • Sponsor the development, implementation and evaluation of a nursing/midwifery professional practice framework. <p>Quality/Safety/Risk Management</p> <ul style="list-style-type: none"> • Identify sponsors and lead opportunities for strategic innovation. • Collaborate with multidisciplinary hospital | <p>and strategy for a work-based culture that promotes and supports engagement in education, learning, research and workforce management.</p> <ul style="list-style-type: none"> • Lead and report on key performance indicators of the nursing/midwifery education and workforce development plans. • Inform, appraise and integrate contemporary education and workforce development policies and strategies to optimise health service outcomes and performance targets. • Lead the application of an education and workforce development framework to support capability and capacity building. • Analyse emerging trends relating to contemporary education initiatives and health service priorities. • Collaborate with internal and external stakeholders to lead a culture of learning and professional development to build a capable and educated nursing/midwifery workforce. • Lead the strategic direction to promote a positive | <p>strategy for a work-based culture that promotes and supports engagement in research.</p> <ul style="list-style-type: none"> • Lead and report on key performance indicators of the nursing/midwifery research. • Analyse and report the impact of high level policy and evidence-based research decisions on nursing/midwifery. • Provide sponsorship and foster ongoing nursing/midwifery research within the facility/service or delegated portfolio. • Collaborate with internal and external stakeholders to promote and embed a research culture. • Lead the strategic direction to promote a positive commitment to nursing/midwifery research. • Sponsor systems and processes to facilitate research that supports and promotes a sustainable, capable and educated nursing/midwifery workforce. • Inform hospital and health service executive decision- | <p>nursing/midwifery through collaboration to shape the professional image in the healthcare system.</p> <ul style="list-style-type: none"> • Lead health policy and strategy on behalf of the nursing/midwifery profession. • Sponsor robust nursing/midwifery governance and leadership to inform professional direction at state and national levels. • Lead and participate in scholarly activities to inform strategic direction for nursing/midwifery. • Lead executive cross-disciplinary portfolios across the healthcare system. • Accountable for professional practice standards for nursing/midwifery. |
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| <ul style="list-style-type: none"> • Accountable for strategic leadership, management, planning and service delivery of safe, quality care and co-ordination of nursing/midwifery services. • Lead integration and translation of nursing/midwifery performance indicators. <p>Skills and knowledge</p> <ul style="list-style-type: none"> • Demonstrate expert contemporary knowledge of all aspects of the profession from an international, national and state perspective. • Demonstrate expertise in material, financial and resource management including the strategic approach to developing and integrating contemporary resource management policies, practices, guidelines and standards for nursing and midwifery. • Lead, collaborate and consult with key stakeholders in planning health services and associated budgetary accountabilities. <p>Role in clinical care</p> <ul style="list-style-type: none"> • Accountable for the clinical and professional standards for nursing/midwifery | <p>and health service executive members to develop, implement and evaluate quality governance and risk management frameworks.</p> <ul style="list-style-type: none"> • Responsible for quality governance and risk mitigation strategies in nursing/midwifery. • Provide strategic leadership in clinical governance and performance of the nursing/midwifery workforce across the hospital and health service. • Responsible for compliance with legislative, regulatory and professional requirements relevant to nursing/midwifery. • Influence and sponsor national and state strategies in relation to safe, quality health care. <p>Mentorship/reporting lines</p> <ul style="list-style-type: none"> • Provide professional leadership to nursing/midwifery executive members and others. • Influence and guide nursing/midwifery colleagues and other stakeholders. • Sponsor succession management and | <p>commitment to nursing/midwifery workforce learning and development.</p> <ul style="list-style-type: none"> • Sponsor education, scholarly activities and translation of evidence into practice consistent with the health service strategic direction. • Demonstrate commitment to supporting contemporary education and workforce development initiatives specific to healthcare trends to promote the nursing/midwifery profession. • Act as a role model for professional development principles and maintain own portfolio. | <p>making through application of professional knowledge and experience, data, contemporary literature and research.</p> | |
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| <p>services across the Hospital and Health Service.</p> <ul style="list-style-type: none"> • May be responsible for other clinical services and initiatives within a multidisciplinary framework. • Partner with internal and external stakeholders to optimise the reputation of and regard for nursing/midwifery in the achievement of best practice outcomes. | <p>mentorship to build workforce capability and a culture of lifelong learning.</p> <p>Management</p> <ul style="list-style-type: none"> • Accountable for budget integrity and fiscal management according to financial and HR delegations, as part of the executive team. • Enact the Hospital and Health Service strategic direction for nursing/midwifery to achieve service targets. • Single point of accountability for the nursing/midwifery workforce. • Demonstrate strategic leadership expertise that engaged staff. • Provide executive, professional, nursing/midwifery governance across the healthcare system. • Sponsor professionalism, and a positive practice environment and culture. • Responsible for the nursing/midwifery strategic plan including but not limited to: <ul style="list-style-type: none"> ➢ Workforce; ➢ Quality; ➢ Education; | | | |
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| | <p>➤ Research; to inform and support an organisational culture of continuous improvement and innovation.</p> <ul style="list-style-type: none"> • Determine strategic priorities, work standards and allocation of resources to support nursing/midwifery professional standards. • Analyse emerging trends within the broader service and business and evaluate the impact on nursing/midwifery and/or health services. • Provide strategic input into capital works and major asset and equipment management. • Oversee and guide the implementation of workforce priorities that enhance recruitment and retention of nurses and midwives to develop and build workforce capacity and capability. <p>Change management</p> <ul style="list-style-type: none"> • Governance of innovations, systemic change processes, and co-ordination of responses to nursing/midwifery practice and health service needs. | | | |
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| | <ul style="list-style-type: none">• Lead and sustain strategic change in a dynamic multidisciplinary healthcare environment and evaluate effectiveness to achieve outcomes that promote the professional standards and practice of nurses and midwives. | | | |
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16. By deleting Schedule 3 and inserting the following in lieu thereof:

Schedule 3 – Midwifery Models of Care

S3.1 Models of care definitions

- (a) **caseload care** is a model of maternity care where women have a primary midwife assigned to them through pregnancy, labour and birth and the postnatal period. Each midwife has an agreed number (caseload) of women per year and acts as a second or “back up” midwife for women who have another midwife as their primary carer. Caseload midwives usually work on a 24-hour on call basis (this may be organised within a group).
- (b) **caseload** means the number of women carried by each midwife in a caseload model.
- (c) **core midwives** work rostered shifts to provide midwifery care within a facility and may be rostered on call in accordance with clause 18.2.
- (d) **midwifery group practice (MGP)** is the organisational unit in which caseload midwives usually work. The purpose of the MGP is to support the practice of the caseload midwives within it and to facilitate communication with the MGP and with management. A MGP is one or more groups of two or three caseload midwives working together. Each pair of group of three may work with other pairs or groups of three to support matters such as emergent leave and periods of fatigue but this does not extend to routine on call.
- (e) **primary midwife** is the midwife who provides the majority of midwifery care and is the woman’s maternity care coordinator. Each woman receiving the caseload midwifery care will have a primary midwife. ‘Known midwife’ and ‘named midwife’ have the same meaning as ‘primary midwife’.
- (f) **team midwifery** is a model of maternity care where a team of up to eight midwives provide care to a group of women. Team midwives work in shifts, and rotate across the antenatal, intrapartum and postnatal stages of care. On call periods are rostered across the whole team. Team midwives are not eligible for annualised salary in accordance with this schedule.

S3.2 Local arrangements for caseload midwifery

- (a) Before a midwifery model of care is developed in a facility, a working group should be established.
- (b) The working group should include representative midwives, the employer, the Queensland Nurses and Midwives’ Union (QNMU) and other key stakeholders formed under the governance of the Nursing and Midwifery Consultative Forum (NaMCF).
- (c) The working group should take into consideration consumers’ and community needs.
- (d) Each Hospital and Health Service will develop local agreements to support the midwifery caseload model of care.
- (e) Each Hospital and Health Service will review and analyse the service provided on an ongoing basis. The review process should be built into the local agreements.

- (f) Local agreements must be sent to the QNMU for final review before it is signed by the relevant Hospital and Health Service and the QNMU.

S3.3 Industrial arrangements

(a) Participation

- (i) Participation in a caseload midwifery model of care will be voluntary, except as provided at S3.3(a)(ii).
- (ii) If a midwife is appointed to a position as part of a midwifery caseload model under this agreement and there is no core midwifery service in the hospital, the midwife will be a permanent employee of the midwifery caseload model.

(b) Reversion

- (i) Midwives who participate in a caseload midwifery model may revert to a core or team midwifery position if there is a suitable vacant position.
- (ii) In such cases the midwife should provide 4 weeks' notice of their intention to return to the core midwifery service, unless otherwise agreed.

(c) Caseload

- (i) The caseload for a full-time midwife working an average of 38 hours per week will be up to 40 clients in a 12 month period.
- (ii) The caseload of a midwife may vary depending upon the nature of the midwifery service, geography, the skill mix of the midwives within the midwifery service and the risk profile of the women (for example: indigenous women, women of psycho-social disadvantage or women with other complexities). Accordingly, the determination of specific caseloads will be determined during the consultation for the local agreement.

(d) Annualised salary

- (i) Midwives working in a midwifery model are to be paid an annualised salary to provide appropriate remuneration for the flexible patterns of work.
- (ii) The annualised salary is the ordinary rate of pay as set out in clause 12.2 and an all purpose loading of 35%, which is in compensation for ordinary hours worked and for the following:
 - A. public holiday penalty rates;
 - B. Saturday shift penalty rates;
 - C. Sunday shift penalty rates;
 - D. afternoon shift penalty rates;
 - E. night shift penalty rates;
 - F. meal allowances relating to overtime;
 - G. overtime payments, except as provided for in clause S3.3(f), (excess hours), including recall payments;
 - H. on call allowances; and
 - I. annual leave loading on 5 weeks' annual leave.
- (iii) The adequacy of the annualised salary loading may be reviewed in accordance with criteria between the parties.
- (iv) Midwives working in a team or core midwifery model are not eligible for an annualised salary.

(e) Patterns of work

- (i) Caseload midwives will organise their own hours of work in consultation with their line manager to ensure that the needs of the women and the organisation are met.
- (ii) Midwives will schedule and hold clinics at a time that suits their workload.
- (iii) Midwives will not be required to work for periods longer than 8 hours and can choose to hand over care of the woman at that time. The midwife will have the discretion to work up to, but not longer than, 12 hours to meet the needs of the woman.
- (iv) Each midwife will have a period of at least 8 hours, within any 24 hour period, continuously free of duty other than on call and recall.
- (v) Each midwife will have an average of 4 days off duty per fortnight, free of planned work and on call or recall. At least two of these days must be consecutive.
- (vi) Midwives will not be permitted to work for more than 7 days in succession other than where the midwife is recalled to work.

(f) On call arrangements

- (i) On call/recall applies to the day/night cover by a caseload midwife for their allocated women, or to assist/relieve for another caseload midwife.
- (ii) Caseload midwives will generally be on call for their own women except for days off as provided at S3.3(e)(v). However, a midwife may enter into a reciprocal arrangement with another midwife in the MGP with the same or similar caseload to manage their caseloads in a way that is mutually agreed.
- (iii) A caseload midwife will not be rostered to work or be on call in the core maternity service except in specific circumstances described in the Local Agreement, such as to cover emergency maternity presentations or theatre in rural facilities or other roles.

(g) Excess hours

- (i) The hours of work will be averaged over an 8 week cycle. The first 30 hours worked in excess of 304 hours in an 8 week cycle will be taken as time off in lieu (TOIL). Hours worked in excess of 334 will be paid at the overtime rate of time and a-half for the first 3 hours and double time thereafter. The midwife may elect to take TOIL instead of overtime payments.
- (ii) A maximum of 30 hours TOIL may be carried from one 8 week cycle to the next. The line manager of midwifery may approve TOIL above 30 hours in exceptional circumstances, provided the hours in excess of 30 are taken in the next work cycle.

(h) Debit carryover

A maximum TOIL debit of 16 hours is allowed at any one time and may be carried over from one 8 week cycle to the next.

(i) Time records

Midwives will be required to keep accurate records of all time worked including travel time, administrative work, staff development and other non-clinical activity.

(j) Review of workloads

Where a midwife works above or below the accepted range of hours (288 hours to 334 hours) the line manager of midwifery is to review the midwife's hours of work and ensure that future hours do not fall above or below the accepted range of hours which underpin the annualised salary.

(k) Annual leave

Annual leave is 6 weeks per year and the all purpose loading provided in S3.3(d) is paid for the entire period of leave.

- (l) Part-time case load midwives
 - (i) Part-time caseload midwives will be designated a caseload on a pro rata basis.
 - (ii) Clause S3.3(g), (h) and (i) apply to part-time midwives on a pro rata basis.