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**Te Whatu Ora**  
Health New Zealand

**OCCUPATIONAL THERAPY**

**COLLECTIVE AGREEMENT**

**1 July 2022- to 1 October 2023**

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## 1.0 THE PARTIES TO THIS COLLECTIVE AGREEMENT

- (a) Te Whatu Ora Health New Zealand Te Tai Tokerau District (hereinafter referred to as the employer)
- (b) The Association of Professionals and Executive Employees (hereinafter referred to as "APEX" or the "Union").

This agreement is binding on the parties to it.

## 1.1 NEW EMPLOYEES

New employees who are members of the APEX and whose position is covered by this collective agreement shall be bound by this Agreement.

The parties agree that any employee, whose work is covered by this agreement and who is engaged by the employer between the dates this collective agreement comes into effect and the expiry date shall be offered in writing the opportunity for this collective to apply to them. The new employee shall from the date of becoming a union member, be entitled to all the benefits, and be bound by all the obligations, under this collective agreement.

## 1.2 EXISTING EMPLOYEES

Subject to the Employment Relations Act 2000 (the Act) and s56, 57 & 58 of the Act existing employees who are covered by the application Clause of this Agreement (Clause 1.3) may become union members at any time. Employees shall, from the date of becoming a union member, be bound by all benefits and obligations relating to employees under this Agreement.

## 1.3 COVERAGE

This agreement shall apply to all those employees defined below.

All employees employed as an Occupational Therapist or Occupational Therapy Assistant.

## 2.0 INTERPRETATIONS

In this Agreement, unless the context otherwise requires:

**"Casual employee"** means an employee who has no set hours or days of work and who is normally asked to work as and when required/available.

**"District Health Board"** (DHB) means an organisation established as a District Health Board under Section 15 of the NZ Public Health and Disability Act 2000.

**"Duty"** means a single, continuous period of work required to be given by an employee. A duty shall be defined by a starting and finishing time.

**“Emergency circumstance”** means a natural disaster or civil emergency.

**"Full time employee"** means an employee who works not less than the "ordinary" hours set out under "hours of work" in this agreement.

**"Part-time employee"** means an employee, other than a casual employee, who works on a regular basis but less than the ordinary hours of work for full time employees. All provisions are pro rata for part time staff unless otherwise specified.

**“Professional Advisor: Occupational Therapy” (or a like title)** means an employee who satisfies the scope of practice requirements for appointment to a leadership role.

**“Roster”** means a list of employees and their duties over a period of time.

**“Service”** means the current continuous service with the employer and its predecessors (Hospital and Health Services, Crown Health Enterprises, Regional Health Authorities, Health Funding Authority, Area Health Boards and Hospital Boards), except where otherwise defined in the applicable clause. As of the 1 November 2007 service will transfer between DHBs. As of the 1 November 2007, service shall not be deemed to be broken by an absence of less than three months. However, where the employee remains actively engaged on related work to their profession or study whilst absent, the period of three months shall extend to twelve months. This period of absence does not count as service for the purpose of attaining a service related entitlement.

**“Shift work”** is defined as the same work performed by two or more employees or two or more successive sets or groups of employees working successive periods. A qualifying shift has a corresponding meaning.

**“T1 (Time One)”** means the ordinary hourly rate of pay.

**“T 1.5 (Time and one half)”** means one and one half the ordinary hourly rate of pay.

**“T 2 (Time Two)”** means double the ordinary hourly rate of pay.

### **3.0 HOURS OF WORK**

3.1 Unless otherwise specified in the letter of employment the ordinary hours of work for a full time employee shall be forty (40) hours in each week worked as not more than five (5) duties between 0600 and 2000 hours, Monday to Friday.

3.2 The ordinary hours of work for a single duty shall be up to a maximum of ten (10) hours.

3.3 A duty shall be continuous except for the meal periods and rest breaks provided for in this Agreement.

3.4 Except for overtime each employee shall have a minimum of four (4) days off during each two (2) week period (14 days). Days off shall be additional to a nine (9) hour break on completion of the previous duty.

3.5 Except for overtime, no employee shall work more than five (5) consecutive duties before a day(s) off, provided that an alternative arrangement may be implemented by agreement between the employer and a majority (measured in full-time equivalents) of the directly affected employees.

3.5.1.1 Employees have the right to seek the advice of the union or have the union act on their behalf. Employees agreeing to any alternative arrangement shall be required to record their agreement in writing.

#### Changing Time

3.5.1.2 Where an employee is required by the employer to wear a particular uniform or set of clothing on duty and is not permitted by the employer to wear that uniform/clothing other than within the precincts of the workplace, the employee shall be allowed a period of six minutes, both at the start and end of each duty, as changing time.

### **4.0 MEAL PERIODS AND REST BREAKS**

4.1 Except when required for urgent or emergency work and except as provided in 4.2 no employee shall be required to work for more than five hours continuously without being allowed a meal break of not less than half an hour.

4.2 An employee unable to be relieved from work for a meal break shall be allowed to have a meal on duty and this period shall be regarded as working time.

4.3 Except where provided for in 4.2 an employee unable to take a meal after five hours' duty shall be paid at overtime rates from the expiry of five hours until the time when a meal can be taken.

4.4 Rest breaks of 10 minutes each for morning tea, afternoon tea or supper, where these occur during duty, shall be allowed as time worked.

4.5 During the meal break or rest breaks prescribed above, free tea, coffee, milk and sugar shall be supplied by the employer.

### **5.0 SALARIES AND WAGES**

5.1 Application of Salary Scale

5.1.1 Full Time Salary Rates

The following salaries are expressed in full time forty hour per week rates. Where an employee's normal hours of work is less than forty per week the appropriate salary for those hours shall be calculated as a proportion of the forty hour rate.

5.1.2 Designated Positions

The salary scale provides for the appointment of staff to Designated Positions. These are positions that have been formally established as Designated Positions by the employer. Designated Positions are positions commonly involving both advanced clinical practise /leadership and/or management responsibilities. Holders of Designated Positions usually have job titles, for example, Team Leader, Section Head, or Professional Advisor and appointment normally occurs

after advertising of the position. The employer will determine the appropriate salary for appointment to a Designated Position having regard to the duties, responsibilities and scope of the position relative to other positions with the employer with similar duties, responsibilities and scope. Movement on the scale will be by way of the appropriate merit provisions.

#### 5.1.3 Placement of New Employees on the Salary Scale

When determining the appropriate placement of new employees on the automatic steps of the scale the employer will take into account the employee's years of experience in the occupation.

With effect from 15 July 2019, the minimum entry level shall be:

Step 1 where the minimum professional requirements is a three or four-year Bachelor's degree

Step 2 where the minimum professional qualification for practice is a Bachelor's degree plus a one year internship or up to 2 years of graduate qualification

Step 3 where the minimum professional qualification for practice is a Bachelor's Degree and a 2 year graduate or Master's Degree qualification

The minimum professional requirements are those specified by the relevant registration body. There is no provision for a higher commencing salary for individuals holding a higher qualification than the minimum professional requirement.

This clause shall have no retrospective effect.

#### 5.1.4 Additional Progression Step

5.1.4.1 Progression from the top automatic salary step to the additional progression step is dependent on the achievement of mutually agreed objectives, which are set prospectively when the employee reaches the top automatic salary step.

5.1.4.2 The employee will write to the team leader/ manager requesting a meeting to set objectives. The discussion and setting of objectives for additional progression would normally occur in conjunction with the employee's annual performance review. In the event that the manager and the employee cannot agree on the objectives the employee may consult with APEX. If there is still no agreement the manager will set the objectives. This objective setting process is to be completed in three months of the employee requesting the meeting.

5.1.4.3 The assessment against these objectives shall commence 12 months after the objectives have been set. Any movement arising from this assessment shall be effective from 12 months after the date the employee wrote to his/her team leader/ manager under clause 5.1.4.2 above.

5.1.4.4 Progression shall not occur earlier than the anniversary date of the employee's movement to the top automatic step.

5.1.4.5 Progression will not be denied where the employer has failed to engage in the objective setting process and/or the assessment of whether or not the objectives have been achieved.

5.1.4.6 Progression to the additional progression step is not available to employees who are below the top automatic salary step.

5.1.5 Merit Progression

5.1.5.1 The salary scale provides movement to salary steps above the automatic steps that provide employees with an opportunity for career development within their professional role. Employees on these steps will be required to function at an advanced level. The process providing for movement through these steps is set out in the progression criteria for Occupational Therapists agreed between the parties.

5.1.5.2 Management of Expectations. The parties agree that there are limits to the extent to which employees may progress using the merit processes and criteria agreed in 5.1.5.1. The employer will determine the extent of merit progression available to each position. Progression is dependent on the scope, responsibilities, service needs and opportunities available with the employer or service in which the employee works. These limitations should become apparent during the discussion required for objective setting under the merit processes.

5.2 Salary Scale

Band/ Position	Step	01-Nov-20	04-Jul-22	
Advanced Clinician / Advanced Practitioner / Designated Positions	17	\$113,282	\$118,982	M
	16	\$109,570	\$115,270	M
	15	\$107,107	\$112,807	M
	14	\$102,757	\$108,457	M
	13	\$99,608	\$104,108	M
	12	\$94,920	\$99,420	M
	11	\$89,766	\$94,266	M
	10	\$86,034	\$90,534	M
Additional Progression Step	9	\$83,499	\$87,999	M
	8	\$81,492	\$85,992	APS
Graduate to Experienced Clinicians	7	\$78,530	\$83,030	A
	6	\$76,278	\$80,778	A
	5	\$73,205	\$77,705	A
	4	\$68,537	\$73,037	A
	3	\$63,871	\$68,371	A
	2	\$59,202	\$63,702	A
	1	\$54,535	\$59,035	A

5.3.1 Progression - Graduate to Experienced Clinician



5.3.1.1 Progression through the scale from step 1 to step 7 shall be by way of automatic annual increment.

5.3.1.2 Progression from step 7 to step 8 is as per the Additional Progression Step process outlined in clause 5.1.4.

5.3.1.3 Further Progression

Progression from step 8 of the Graduate to Experienced Clinicians' scale to step 9 of the Advanced Clinician/Advanced Practitioner/ Designated Positions' scale shall be through operation of the salary progression process detailed in the appendix. Progression to the Advanced Clinician/Advanced Practitioner scale shall denote an extension in the requirements of the position and will require comparable duties and skills to other positions on that scale as well as with other comparable positions. This progression is personal to employee and may not necessarily apply to any replacement.

5.3.2 Progression - Advanced Clinician/ Advanced Practitioner/ Designated Positions

There shall be no automatic progression for Advanced Clinician/ Advanced Practitioner/ Designated Positions. Progression to a higher step shall be through operation of the salary progression process detailed in the Progression Criteria for Occupational Therapists.

**Occupational Therapy Assistants**

Step	01-Apr-21		Step	04-Jul-22	
7	\$57,654	->	5	\$62,154	A
6	\$56,010	->	4	\$60,510	A
5	\$54,414	->	3	\$58,914	A
4	\$51,104	->	2	\$55,604	A
3	\$47,320	->	1	\$51,820	A
2	\$43,769	->			
1	\$41,720	->			

Those who were paid on step 1 (\$41720) or step 2 (\$43769) at 4/7/22 shall translate to the new step 1 (\$51820). This translation shall reset their anniversary date for future salary progression purposes and they shall be required to complete a further 12 months' service on this step before being eligible to progress in accordance with the progression provisions below).

**5.4 PART-TIME EMPLOYEE RATES**

A part-time employee shall be paid a rate of salary representing the proportion of the salary payable in respect of full-time employment in the appointment occupied by the employee that the number of hours during the week bears to 40.

**5.5 SALARY INCREMENTS WHILE ON STUDY LEAVE**

Employees on full-time study leave with or without pay shall continue to receive annual increments.

## **5.6 MISCELLANEOUS CONDITIONS RELATING TO SALARIES**

No deduction other than such as may be agreed upon between the Employer and the Employee shall be made from the wages of any Employee except for time lost by the Employee through sickness, accident or default.

Except by mutual agreement, salaries, including overtime, shall be paid at not longer than fortnightly intervals and by direct credit.

## **6.0 OVERTIME, PENAL RATES AND DUTY ALLOWANCES**

### **6.1 DEFINITIONS**

6.1.1 For calculation purposes, the normal hourly rate shall be one two thousand and eighty-sixth (2,086) part, correct to three decimal places of a dollar, of the yearly rate of salary payable.

### **6.2 OVERTIME**

6.2.1 Ordinary hourly rate of pay – The ordinary hourly rate shall be one, two thousand and eighty-sixth part (1/2086), correct to three decimal places of a dollar, of the yearly rate of salary payable.

6.2.2 Overtime is time worked in excess of:

- (i) eight hours per day or the daily duty as defined in clause 3, whichever is greater or
- (ii) 40 hours per week

and has been duly authorised.

6.2.3 Overtime worked on any day (other than a public holiday) from midnight Sunday/Monday to midnight on the following Friday shall be paid at one and one half times the ordinary hourly rate of pay (T1.5) for the first three hours and at double the ordinary hourly rate of pay (T2) thereafter.

6.2.4 Overtime worked from 2200 until the completion of a rostered night duty Sunday to Friday, or from midnight Friday to midnight Sunday/Monday, or on a public holiday shall be calculated at double the ordinary rate (T2).

6.2.5 In lieu of payment for overtime, the employer and employee may jointly agree for the employee to take equivalent (i.e. one hour overtime worked for one hour ordinary time off) paid time off work at a mutually convenient time.

### **6.3 PENAL RATES**

Penal time is time (other than overtime) worked within ordinary weekly hours if worked on a Saturday or Sunday or public holiday. Subject to clause 6.3.3, penal time shall be paid at the following rates in addition to normal salary:

6.3.1 Weekend rate - applies to ordinary time (other than overtime) worked after midnight Friday/Saturday until midnight Sunday/Monday shall be paid at time one half (T0.5) in addition to the ordinary hourly rate of pay.

6.3.2 Public Holiday rate – applies to those hours which are worked on the public holiday. This shall be paid at time one (T1) in addition to the ordinary hourly rate of pay.

6.3.3 Overtime and penal time shall not be paid in respect of the same hours.

#### **6.4 NIGHT ALLOWANCE**

6.4.1 The Night rate (night allowance) will apply to ordinary hours of duty (other than overtime) that fall between 2000hrs and until the completion of a rostered night duty from midnight Sunday/Monday to midnight Friday/Saturday and shall be paid at quarter time (T0.25) in addition to the ordinary hourly rate of pay.

6.4.2 Night rate is not to be paid when overtime is being worked or a penal rate is payable.

#### **6.5 MINIMUM BREAK BETWEEN SPELLS OF DUTY**

6.5.1 A break of at least nine continuous hours must be provided wherever possible between any two periods of duty of a full shift or more.

6.5.2 Periods of a full shift or more include:

- (i) Periods of normal rostered work; or
- (ii) Periods of overtime that are continuous with a period of normal rostered work; or
- (iii) Full shifts of overtime/call-back duty.

6.5.3 This requirement to provide a break wherever possible applies whether or not any additional payment will apply under the provisions of this clause.

6.5.4 If a break of at least nine continuous hours cannot be provided between periods of qualifying duty, the duty is to be regarded as continuous until a break of at least nine continuous hours is taken and it shall be paid at overtime rates, with proper regard to the time at which it occurs and the amount of overtime which precedes it.

6.5.5 The additional payment provisions of this clause will not apply in any case where the result would be to give an employee a lesser payment than would otherwise have been received.

6.5.6 Time spent off duty during ordinary hours solely to obtain a nine-hour break shall be paid at ordinary time rates. Any absence after the ninth continuous hour of such a break, if it occurs in ordinary time, shall be treated as a normal absence from duty.

**NOTE:** If a call-back of less than a full shift is worked between two periods of duty of a full shift or more a break of nine continuous hours must be provided either before or after the call-back. If such a break has been provided before the call-back it

does not have to be provided afterwards as well. However, should employees spend time working as a result of a call-back between the hours of 2400 and 0500 hours, and if the employee has reasonable concerns regarding their ability to provide safe practice they shall be able, after notification to the employer, to have a 9 hour break after the call back is completed.

6.6 Authorised absences, either with or without pay, are as provided for in this agreement and shall be counted as actual hours worked for the purposes of calculating overtime.

## **7.0 ON CALL/ ON CALL ALLOWANCE**

### **7.1 ON CALL ALLOWANCE**

7.1.1 Effective 1 April 2019, where an employee is instructed to be on call during normal off duty hours s/he shall be paid an on call allowance of \$8.00 per hour or part thereof except on Public Holidays where the rate shall be \$10.00 per hour or part thereof.

7.1.2 Where the employer requires the employee to participate in an on call roster, at the discretion of the employer:

(i) A cell phone shall be made available by the employer to the employee for the period of on call duty, at no expense to the employee,

*Or*

(ii) Half the cost of a single telephone rental shall be reimbursed to the employee by the employer and a long-range locator (or similar electronic device) shall be made available to the employee for the period of on call duty at no expense to the employee.

### **7.2 CALL-BACK**

7.2.1 An employee shall be paid for a minimum of three hours, or for actual working and travelling time, whichever is the greater, when the employee:

(a) Is called back to work after completing the day's work or shift, and having left the place of employment; or

(b) Is called back before the normal time of starting work, and does not continue working until such normal starting time, except that:

(i) Call backs commencing and finishing within the minimum period covered by an earlier call back shall not be paid for;

(ii) Where a call back commences before and continues beyond the end of a minimum period for a previous call back, payment shall be made as if the employee had worked continuously from the beginning of the previous call back to the end of the later call back.

(c) Call back shall be paid at the appropriate overtime rate.

7.2.2 Where part-time employees are part of an official on call roster and are called out from their place of residence in emergency circumstances, then they shall be paid on the basis of a minimum of three hours at appropriate rates. The length of the call would be measured in respect of actual time worked only, except that outside of the normal hours of duty (i.e. 0800 hours to 1700 hours Monday to Friday) the length of the call would be measured in respect of actual time worked and reasonable travelling time from the place of call to the place of duty and return to the place of call or residence. The minimum payment prescribed shall apply to each recall, except that:

- (i) Call-outs commencing and finishing within the minimum period covered by an earlier call-out shall not attract any additional payment.
- (ii) Where a call-out commences before and continues beyond the end of a minimum period for a previous call-out payment shall be made as if the employee had worked continuously from the beginning of the previous call-out to the end of the latter call-out.

7.2.3 Where an employee is called back to duty outside his/her normal hours of work, the employee shall either be provided with transport or they shall be reimbursed with accordance with clause 36.

7.3 Employees who are on call shall accrue 1 additional days annual leave for every 230 qualifying hours on call up to a maximum of 3 days leave per annum.

## **8.0 ALLOWANCES**

### **8.1 Higher Duties Allowance**

8.1.1 A higher duties allowance shall be paid to an employee who, at the request of the employer is substantially performing the duties and carrying the responsibilities of a position or grade higher than the employee's own

8.1.2 Except as provided for under clause 8.1.3 the higher duties allowance payable shall be \$3.00 per hour provided a minimum of 8 consecutive hours of qualifying service is worked per day or shift.

8.1.3 Where an employee performs the duties of the higher position for more than five consecutive days, the allowance payable shall be the difference between the current salary of the employee acting in the higher position, and the minimum salary the employee would receive if appointed to that position.

## **9.0 ANNUAL LEAVE**

9.1 Employees , shall be entitled to 4 weeks annual leave, taken and paid in accordance with the Holidays Act 2003 and subject to the other provisions of this clause, except that on completion of five years recognised service the employee shall be entitled to 5 weeks annual leave. For the purposes of this clause, "service" shall be as defined in clause 2.0.

9.2 Notwithstanding the above, casual employees shall be paid 8% of gross taxable earnings in lieu of annual leave to be added to the salary paid for each engagement, where they meet the requirements of s.28 of the Holidays Act..

### 9.3 Shift Employees

Employees who work rotating shift patterns or those who work qualifying shifts shall be entitled, on completion of 12 months employment on shift work, to up to an additional 5 days annual leave, based on the number of qualifying shifts worked. The entitlement will be calculated on the annual leave anniversary date.

Qualifying shifts are defined as a shift which involves at least 2 hours work performed outside the hours of 8.00am to 5.00pm, excluding overtime.

Number of qualifying shifts per annum	Number of days additional leave per annum
121 or more	5 days
96 – 120	4 days
71 – 95	3 days
46 – 70	2 days
21 – 45	1 day

9.4 Employees who do not work shift work as defined in clause 2.0 and who are required to participate on on-call rosters, shall be granted 2 hours leave for each weekend day or part there-of where the on-call period is 8 or more hours, they are required to be on-call during normal off duty hours, up to a maximum of 3 days additional leave per annum. Such leave shall be paid at annual leave averages and is accumulative. Employees who work qualifying shifts under sub-clause 7.3 and 9.3 are entitled to a maximum of 5 days' leave between the two provisions.

### 9.5 Conditions

Employees shall be entitled to annual leave on a pro-rata basis. Annual leave is to be taken within 12 months of entitlement becoming due. Where the annual leave is not taken within twenty-four (24) months of being accrued and there is no agreement on when the leave is to be taken, the employer may direct the employee to take annual leave with a minimum of four (4) weeks notice.

- a) Annual leave may be granted in one or more periods.
- b) In accordance with the Holidays Act 2003, the employee shall be given the opportunity to take two weeks leave at one time.
- c) Annual leave is able to be accrued to a maximum of two years entitlement.
- d) Annual leave shall be taken to fit in with service/work requirements and the employee's need for rest and recreation.
- e) When an employee ceases employment, wages shall be paid for accrued annual leave and the last day of employment shall be the last day worked.
- f) Part time employees shall be entitled to annual leave on a pro rata basis.
- g) An employee may anticipate up to one year's annual leave entitlement at the discretion of the employer.

## 10. PUBLIC HOLIDAYS

10.1 The following days shall be observed as public holidays:

New Year's Day  
2 January  
Waitangi Day  
Good Friday  
Easter Monday

ANZAC Day  
Sovereign's Birthday  
Labour Day  
Christmas Day  
Boxing Day  
Northland Anniversary Day  
Matariki

- 10.2 The following shall apply to the observance of Christmas Day, Boxing Day, New Year's Day or 2 January, Waitangi Day and ANZAC Day, where such a day falls on either a Saturday or a Sunday:
- 10.2.1 Where an employee is required to work that Saturday or Sunday the holiday shall, for that employee, be observed on that Saturday or Sunday and transfer of the observance will not occur. For the purposes of this clause an employee is deemed to have been required to work if they were rostered on, or on-call and actually called in to work. They are not deemed to have been required to work if they were on-call but not called back to work.
- 10.2.2 Where an employee is not required to work that Saturday or Sunday, observance of the holiday shall be transferred to the following Monday and/or Tuesday in accordance with the provisions of Sections 45 (1) (b) and (d) of the Holidays Act 2003.
- 10.2.3 Should a public holiday fall on a weekend, and an employee is required to work on both the public holiday and the weekday to which the observance is transferred, the employee will be paid at weekend rates for the time worked on the weekday/transferred holiday. Only one alternative holiday will be granted in respect of each public holiday.
- 10.3 In order to maintain essential services, the employer may require an employee to work on a public holiday when the public holiday falls on a day which, but for it being a public holiday, would otherwise be a working day for the employee.
- 10.4 When employees work on a public holiday as provided in sub clause 10.3 above, they will be paid at T 1 for the hours worked in addition to their normal pay for that day and they shall be granted an alternative holiday. Such alternative holiday shall be taken and paid as specified in the Holidays Act 2003.
- 10.5 An employee who is on call on a public holiday as provided above, but is not called in to work, shall be granted an alternative holiday, except where the public holiday falls on a Saturday or Sunday and its observance is transferred to a Monday or Tuesday which the employee also works. Such alternative holiday shall be taken and paid as specified in the Holidays Act 2003.
- 10.6 Those employees who work a night shift which straddles a public holiday, shall be paid at public holiday rates for those hours which occur on the public holiday and

the applicable rates for the remainder of the shift. One alternative holiday shall apply in respect of each public holiday or part thereof worked.

10.7 Off duty day upon which the employee does not work:

10.7.1 Fulltime employees –

10.7.2 For fulltime employees, where a public holiday falls on either a Saturday or Sunday, and falls on the employee's rostered off duty day, the employee shall be granted an alternative holiday at a later date.

10.7.3 In the event of Christmas Day, Boxing Day, New Year's Day or 2 January falling on either a Saturday or Sunday and a full time employee is rostered off duty on both that day and the weekday to which the observance is transferred, the employee shall only receive one alternative holiday in respect of each public holiday.

10.7.4 Part-time employees –

Where a part-time employee's days of work are fixed, the employee shall only be entitled to public holiday provisions if the day would otherwise be a working day for that employee.

10.7.5 Where a part-time employee's days are not fixed, the employee shall be entitled to public holiday provisions if they worked on the day of the week that the public holiday falls more than 40 % of the time over the last three months. Payment will be relevant daily pay.

10.7.6 Public holidays falling during leave:

10.7.7 Leave on pay

When a public holiday falls during a period of annual leave, sick leave on pay or special leave on pay, an employee is entitled to that holiday which is not debited against such leave.

10.7.8 Leave without pay

An employee shall not be entitled to payment for a public holiday falling during a period of leave without pay (including sick or military leave without pay) unless the employee has worked during the fortnight ending on the day on which the holiday is observed.

10.7.9 Leave on reduced pay

An employee, during a period on reduced pay, shall be paid at the relevant daily pay for public holidays falling during the period of such leave.

## 11.0 BEREAVEMENT/ TANGIHANGA LEAVE

11.1 The employer shall approve special bereavement leave on pay for an employee to discharge any obligation and/or to pay respects to a Tupapaku/deceased person with whom the employee has had a close association. Such obligations may exist because of blood or family ties or because of particular cultural requirements such as attendance at all or part of a Tangihanga (or its equivalent). The length of time off shall be at the discretion of the employer and



should not be unreasonably withheld and will be exercised in accordance with the Holidays Act 2003.

11.2 If the bereavement occurs while an employee is absent on annual leave, sick leave on pay or any other special leave on pay, such leave may be interrupted and bereavement leave granted in terms of clause

11.3 This provision will not apply if the employee is on leave without pay.

11.4 In granting time off the employer must administer these provisions in a culturally appropriate manner, especially in the case of Tangihanga.

11.5 The employer agrees that on application, it may be appropriate, to grant leave without pay in order to accommodate various special bereavement needs not recognised in clause 11.1 above.

## **12.0 SICK LEAVE**

12.1 In applying the provisions of this clause the parties note:

- their agreed intent to have healthy staff and a healthy workplace
- that staff attending work unwell is to be discouraged and the focus is on patient and staff safety
- that they wish to facilitate a proper recovery and a timely return to work
- that staff can have sick leave calculated on an hourly basis.

12.2 On appointment to with the employer, a full time employee shall be entitled to ten (10) working days leave for sick purposes during the first twelve months of employment, and up to an additional ten (10) working days for each subsequent twelve month period. The entitlement shall be pro-rated for part time employees except that a part-time employee shall receive no fewer than five (5) working days paid sick leave for the first twelve months of employment and a minimum of five (5) additional working days for each subsequent twelve month period. The employee shall be paid at relevant daily pay as prescribed in the Holidays Act 2003, for the first five days in each twelve month period. Thereafter they shall be paid at the normal rates of pay (T1 rate only). A medical certificate may be required to support the employee's claim.

12.3 The employee can accumulate their entitlement up to a maximum of 260 days. Any unused portion of the first five days entitlement, up to a maximum of 15 days, can be carried over from year to year and will be paid at relevant daily pay, in accordance with the Holidays Act 2003.

### **12.4 Additional Discretionary Leave**

In the event an employee has no entitlement left, are entitled to apply for up to ten 10 days' discretionary leave per annum. The employer recognises that discretionary sick and domestic leave is to ensure the provision of reasonable support to staff having to be absent from work where their entitlement is exhausted. The first five (5) days of discretionary leave shall be approved on the same basis as leave under clause 9.

In considering the grant of leave under this clause the employer shall take into account the following:

- The employee's length of service
- The employee's attendance record
- The consequences of not providing the leave
- Any unusual and/or extenuating circumstances

Requests should be considered at the closest possible level of delegation to the employee and in the quickest time possible. Reasons for a refusal shall, when requested by the employee, be given in writing and before refusing a request, the decision maker is expected to seek appropriate guidance.

Leave granted under this provision may be debited as an advance on the next years' entitlement up to a maximum of 5 days.

- 12.5 Where an employee is suffering from a minor illness which could have a detrimental effect on the patients or other staff in the employer's care, the employer may, at its discretion, either: place the employee on suitable alternative duties, including working from home (where appropriate); or direct the employee to take leave on full pay. Such leave shall not be a charge against the employees sick and domestic leave entitlement
- 12.9 The provisions of this clause are inclusive of the special leave provisions of the Holidays Act 2003.
- 12.10 Sick leave may be used when the employee must attend a dependent of the employee. This person would, in most cases, be the employee's child, partner or other dependent family member.
- 12.10.1 It does not include absences during or in connection with the birth of an employee's child. Annual leave or parental leave should cover such a situation.
- 12.10.2 At the employer's discretion, an employee may be granted leave without pay, where the employee requires additional time away from work to look after a seriously ill member of the employee's family.
- 12.10.3 The production of a medical certificate or other evidence of illness may be required.
- 12.11 Sickness during paid leave: When sickness occurs during paid leave, such as annual or long service leave, the leave may be debited against the sick leave entitlement, (except where the sickness occurs during leave following the relinquishment of office) provided that:
- 12.11.1 The period of sick leave is more than three days and a medical certificate is produced.
- 12.11.2 In cases where the period of sickness extends beyond the approved period of annual or long service leave, approval will also be given to debiting the portion, which occurred within the annual leave or long service leave period, against sick leave entitlement, provided the conditions in 12.8 and 12.8.1 above apply.
- 12.11.3 Annual leave or long service leave may not be split to allow periods of illness of three days or less to be taken.

- 12.12 During periods of leave without pay, sick leave entitlements will not continue to accrue.
- 12.13 Where an employee has a consistent pattern of short term Sick Leave, or where those absences are more than 10 working days/shifts or more in a year, then the employee's situation may be reviewed in line with the employer's policy and Sick Leave practices. The focus of the review will be to assist the employee in establishing practical arrangements to recover from sickness or injury.
- 12.14 Where an employee is incapacitated as a result of a work accident, and that employee is on earnings related compensation, then the employer agrees to supplement the employee's compensation by 20% of base salary during the period of incapacitation. This payment shall be taken as a charge against Sick Leave up to the extent of the employee's paid sick leave entitlement. The employer may agree to reimburse employees for treatment and other expenses or for financial disadvantage incurred as a result of a work related accident. This agreement will be on a case by case basis.
- 12.15 For non work-related accidents, where the employee requests, the employer shall supplement the employee's compensation by 20% of base salary and this shall be debited against the employee's sick leave up to the extent of the employee's paid sick leave entitlement.

### **13.0 PARENTAL LEAVE**

- 13.1 Statement of principle - The parties acknowledge the following provisions are to protect the rights of employees during pregnancy and on their return to employment following parental leave and is to be read in conjunction with the Parental Leave and Employment Protection Act 1987 (referred to as the Act in this clause 13), provided that where this clause 13 is more favourable to the employee, the provisions of this clause 13 shall prevail.
- 13.2 Entitlement and eligibility - Provided that the employee assumes or intends to assume the primary care of the child born to or adopted by them or their partner, including permanent Whāngai arrangements, the entitlement to parental leave is:
- (a) in respect of every child born to them or their partner;
  - (b) in respect of every child up to and including six years of age, where the employee becomes a primary carer for the child; adopted by them or their partner;
  - (c) where two or more children are born at the same time or adopted within a one month period, for the purposes of these provisions the employee's entitlement shall be the same as if only one child had been born or adopted.
- 13.3 Length of Parental Leave
- (a) Parental leave of up to 12 months is to be granted to employees with at least one year's service at the time of commencing leave.
  - (b) Parental leave of up to six months is to be granted to employees with less than one year's service at the time of commencing leave.

Provided that the length of service for the purpose of this clause means the aggregate period of service, whether continuous or intermittent, in the employment of the employer.

- (c) The maximum period of parental leave may be taken by either the employee exclusively or it may be shared between the employee and their partner either concurrently or consecutively. This applies whether or not one or both partners are employed by the employer.

13.4 In cases of adoption of children of less than six years of age, parental leave shall be granted in terms of clauses 13.2 and 13.3 above, providing the intention to adopt is notified to the employer immediately following advice from Oranga Tamariki, Ministry for Vulnerable Children to the adoptive applicants that they are considered suitable adoptive parents. Subsequent evidence of an approved adoption placement shall be provided to the employer's satisfaction.

13.5 Employees intending to take parental leave are required to give at least one month's notice in writing and the application is to be accompanied by a certificate signed by a registered medical practitioner or midwife certifying the expected date of delivery. The provision may be waived in the case of adoption.

13.6 The commencement of leave shall be in accordance with the provisions of the Paid Parental Leave and Employment Protection Act 1987.

13.7 An employee absent on parental leave is required to give at least one month's notice to the employer of their intention to return to duty. When returning to work the employee must report to duty not later than the expiry date of such leave.

**NOTE:** It is important that employees are advised when they commence parental leave that, if they fail to notify the employer of their intention to return to work or resign, they shall be considered to have abandoned their employment.

13.8 Parental leave is not to be granted as sick leave on pay.

13.9 Job protection –

13.9.1 Subject to clause 13.10 below, an employee returning from parental leave is entitled to resume work in the same position or a similar position to the one they occupied at the time of commencing parental leave. A similar position means a position:

- a) at the equivalent salary, grading;
- b) at the equivalent weekly hours of duty;
- c) in the same location or other location within reasonable commuting distance; and
- d) involving responsibilities broadly comparable to those experienced in the previous position.

13.9.2 Where applicable, employees shall continue to be awarded increments when their incremental date falls during absence on parental leave.

13.9.3 Parental leave shall be recognised towards service-based entitlements, i.e.: annual leave and sick leave. However, parental leave will not contribute to Retiring Gratuities allowance calculations.

13.10 Ability to Hold Position Open

13.10.1 Where possible, the employer must, hold the employee's position open or fill it temporarily until the employee's return from parental leave. However in the event that the employee's position is a "key position" (as contemplated in Act), the employer may fill the position on a permanent basis.

13.10.2 Where the employer is not able to hold a position open, or to fill it temporarily until an employee returns from parental leave, or fills it permanently on the basis of it being a key position, and, at the time the employee returns to work, a similar position (as defined in 13.9.1 a) above) is not available, the employer may approve one of the following options:

- (a) an extension of parental leave for up to a further 12 months until the employee's previous position or a similar position becomes available; or
- (b) an offer to the employee of a similar position in another location (if one is available) with normal transfer expenses applying; if the offer is refused, the employee continues on extended parental leave as in 13.10.2 (a) above for up to 12 months; or
- (c) the appointment of the employee to a different position in the same location, but if this is not acceptable to the employee the employee shall continue on extended parental leave in terms of 13.10.2 (a) above for up to 12 months:

provided that, if a different position is accepted and within the period of extended parental leave in terms of 13.10.2 (a), the employee's previous position or a similar position becomes available, then the employee shall be entitled to be appointed to that position; or

- (d) where extended parental leave in terms of 10.10.2 (a) above expires, and no similar position is available for the employee, the employee shall be declared surplus under clause 30 of this Agreement.

13.11 If the employee declines the offer of appointment to the same or similar position in terms of sub clause 13.9.1 above, parental leave shall cease.

13.12 Where, for reasons pertaining to the pregnancy, an employee on medical advice and with the consent of the employer, elects to work reduced hours at any time prior to confinement, then the guaranteed proportion of full-time employment after parental leave shall be the same as that immediately prior to such enforced reduction in hours.

13.13 Parental leave absence filled by temporary appointee - If a position held open for an employee on parental leave is filled on a temporary basis, the employer must inform the temporary appointee that their employment will terminate on the return of the employee from parental leave.

13.14 Employees on parental leave may from time to time and by agreement work occasional duties during the period of parental leave and this shall not affect the rights and obligations of either the employee or the employer under this clause.

13.15 Paid Parental Leave – Where an employee takes parental leave under this clause 13, the employee shall be paid by the employer for a period of (14) weeks from the commencement of parental leave.

13.15.1 The payment shall be made at the commencement of the parental leave and shall be calculated at the base rate (pro rata if applicable) applicable to the employee for the six weeks immediately prior to commencement of parental leave and shall be less any parental leave payment received by or payable to the employee from public money under the Act.

13.16 Reappointment After Absence Due To Childcare

- (a) Employees who resign to care for a dependent pre-school child or children may apply to their former employer for preferential appointment to a position which is substantially the same in character and at the same or lower grading as the position previously held.
- (b) Parental leave is a distinct and separate entity from absence due to childcare.
- (c) The total period of childcare absence allowed is four years plus any increases in lieu of parental leave. Longer absence renders a person ineligible for preferential appointment.
- (d) Persons seeking reappointment under childcare provisions must apply to the former employer at least three months before the date on which they wish to resume duties.
- (e) This application for reappointment must be accompanied by:
  - (i) The birth certificate of the pre-school child or children; and
  - (ii) A statutory declaration to the effect that the absence has been due to the care of a dependent pre-school child or children, that the four year maximum has not been exceeded, and that paid employment has not been entered into for more than 15 hours per week. Where paid employment has exceeded 15 hours per week the reappointment is at the CEO's discretion.
- (f) The employer shall make every effort to find a suitable vacancy for eligible applicants as soon as their eligibility for preferential re-entry is established. Appointment to a position may be made at any time after the original notification of intention to return to work, provided the appointee agrees.
- (g) Where:
  - (i) The applicant meets the criteria for eligibility; and
  - (ii) There exists at the time of notification or becomes available within the period up to two weeks before the intended date of resumption of duties a position which is substantially the same in character and at the same or lower grading as the position previously held; and
  - (iii) The applicant has the necessary skills to competently fill the vacancy; then the applicant under these provisions shall be appointed in preference to any other applicant for the position.
- (h) Absence for childcare reasons will interrupt service but not break it.

- (i) The period of absence will not count as service for the purpose of sick leave, annual leave, retiring leave or gratuities, long service leave or any other leave entitlement.

#### **14.0 JURY SERVICE/WITNESS LEAVE**

- 14.1 Employees called on for jury service are required to serve. Where the need is urgent, the Employer may apply for postponement because of particular work needs, but this may be done only in exceptional circumstances.
- 14.2 An employee called on for jury service may elect to take annual leave, leave on pay, or leave without pay. Where annual leave or leave without pay is granted or where the service is performed during an employee's off duty hours, the employee may retain the juror's fees (and expenses paid).
- 14.3 Where leave on pay is granted, a certificate is to be given to the employee by the Employer to the effect that the employee has been granted leave on pay and requesting the Court to complete details of juror's fees and expenses paid. The employee is to pay the fees received to the employer but may retain expenses.
- 14.4 Where leave on pay is granted, it is only in respect of time spent on jury service, including reasonable travelling time. Any time during normal working hours when the employee is not required by the Court, the employee is to report back to work where this is reasonable and practicable.
- 14.5 Where an employee is required to be a witness in a matter arising out of his/her employment, he/she shall be granted paid leave at the salary rate consistent with their normal rostered duties. The employee is to pay any fee received to the Employer but may retain expenses.

#### **15.0 LEAVE TO ATTEND MEETINGS**

- 15.1 The Employer shall grant paid leave (at ordinary rates) to employees required to attend formal meetings of registration body (except where the matter arises out of employment with another employer).
- 15.2 Paid leave shall also be granted where an employee is required to attend meetings of Boards or Statutory Committees provided that the appointment to the Board or Committee is by ministerial appointment.
- 15.3 Any remuneration received by the Employee for the period that paid leave was granted shall be paid to the Employer.

#### **16.0 LONG SERVICE LEAVE**

- 16.1 An employee shall be entitled to long service leave of one week upon completion of a five year period of recognised service as defined in clause 2.0. Such entitlement may be accrued. However any service period for which a period of long service leave has already been taken or paid out shall not count towards this entitlement.

16.2 Long Service Leave will be paid for each week of leave on the same basis as annual leave (Clause 9) in accordance with the Holidays Act 2003. This will be based on the employees FTE status at the time of taking the leave. Wherever practicable long service leave is to be taken in periods of not less than a week.

16.3 For the purposes of clause 16.1 recognised service shall be from 1 October 2008 unless the employee has an ongoing or grand-parented provision.

For employees with an ongoing or grand-parented provision, the following shall apply. The employee shall accrue the entitlement in accordance with clause 16.1 above, with their service being deemed to commence, for the purpose of this calculation, on the date service was previously deemed to commence under the scheme. Any long service leave actually taken, shall be deducted from that entitlement and the residue shall become the remaining entitlement. That shall be added to any further accrual, with the leave being taken in accordance with clause 16.1 above.

16.4 Leave without pay in excess of three months taken on any one occasion will not be included in the 5 year qualifying period, with the exception of Parental Leave.

16.5 The employer shall pay out any long service leave to which the employee has become entitled but has not taken upon cessation of employment.

16.6 In the event of the death of an employee who was eligible for long service leave but has not taken the leave, any monies due will be paid to the deceased estate.

## **17.0 UNION REPRESENTATIVE'S EDUCATION LEAVE**

17.1 Employers shall grant union members leave on pay to undertake trade union education or training, in accordance with the Employment Relations Act 2000. The provisions of this Act, or any amendment or Act passed in substitution for this Act, shall apply.

## **18.0 EMPLOYEE RELEASE**

18.1 Employees with 5 years continuous service with the current employer may apply for a one-off continuous period of unpaid Employee Release for a period of three months up to a maximum of twelve months. Such application shall be considered on a case-by-case basis and granted at the discretion of the employer. There will be no right of review. All service related provisions/ benefits will be put on hold until resumption of normal duties.

18.2 The notification of the employee's intent to return to normal duties will be the same as Clause 13.7 (Parental Leave).

18.3 Job protection provisions will be the same as in Clause 13.9.1.

18.4 The provisions of this clause are separate from and in addition to normal unpaid leave provisions and it is acknowledged that employees may apply for unpaid leave at any time during their employment.



## **19.0 ACCIDENTS – TRANSPORT OF INJURED EMPLOYEES**

19.1 Transport of injured employees – Where the accident is work-related and the injury sustained by the employee necessitates immediate removal to a hospital, or to a medical practitioner for medical attention and then to their residence or a hospital, or to their residence (medical attention away from the residence not being required), the employer is to provide or arrange for the necessary transport, pay all reasonable expenses for meals and lodging incurred by or on behalf of the employee during the period she/he is transported, and claim reimbursement from ACC.

## **20.0 PROTECTIVE CLOTHING AND EQUIPMENT**

20.1 In accordance with the Health and Safety at Work Act 2015 and associated Regulations, the Employer shall ensure that employees are provided with any protective equipment required to ensure the safety of employees while at work. The maintenance and replacement of this equipment is the responsibility of the Employer.

20.2 Suitable clean protective clothing shall be made available by the Employer where the nature of a particular duty or duties would either continuously or intermittently render an employee's personal clothing or uniform to excessive soiling or damage or expose the employee's person to injury or excessive discomfort through biological, chemical or physical hazards. Such protective clothing shall remain the property of the Employer and, as such, shall be laundered or otherwise cleaned free of charge.

20.3 Where the employer requires an employee to wear a specified uniform, or where the nature of the work requires the wearing of protective or work clothing, sufficient sets of the specified uniforms, protective or work clothing will be supplied to each employee and will subsequently be laundered and maintained by the employer. When such items are on personal issue to the employees, they are replaced by the employer subject to fair wear and tear in the service of the employer.

20.4 An employee may at the Employer's discretion be compensated for damage to personal clothing worn on duty, or reimbursed dry cleaning charges for excessive soiling to personal clothing worn on duty, provided the damage or soiling did not occur as a result of the employee's negligence or failure to wear the protective clothing provided.

20.5 Where in the interests of patient care or specific rehabilitation/client groups the employer requires an employee to wear civilian clothing instead of issue uniform or work clothing, the employee may claim by way of a timesheet entry a daily allowance of \$3.50 for each day civilian clothing is worn.

## **21.0 REFUND OF ANNUAL PRACTISING CERTIFICATE AND PROFESSIONAL ASSOCIATION FEES**

Where an employee is required by law to hold an annual practising certificate, the cost of the certificate shall be met by the employer provided that:

- (a) It must be a statutory requirement that a current certificate be held for the performance of duties.
- (b) The employee must be engaged in duties for which the holding of a certificate is a requirement.
- (c) Any payment will be offset to the extent that the employee has received reimbursement from another employer.
- (d) The Employer will only pay one APC unless there are operational requirements for an employee to maintain multiple APCs.

Where the employer requires employees to hold a competency certificate issued by a professional association, the employer will reimburse the associated fees incurred.

21.1 Employees will be reimbursed (on presentation of official receipts) the membership fee of the Occupational Therapy New Zealand up to the maximum level \$572 per annum if:

- (a) the membership is directly relevant to the employee's duties; and
- (b) the professional association does not act as the acting union for its members.

21.2 Provided that, if the employee also works for another organisation or in private practice, the employer will only be required to pay the amount on a pro-rata basis

## **22.0 PROFESSIONAL DEVELOPMENT, EDUCATION & TRAINING LEAVE**

22.1 Professional development is a way of valuing staff and is essential to the maintenance and development of a quality and efficient service. Staff maintaining and developing their roles is critical to the delivery of effective client care.

22.2 The allocation of professional development funds/ study leave will be agreed prospectively wherever practicable and will be based on the principles of transparency, fairness and consistency.

22.3 Participation in an annually agreed professional development plan is mutually beneficial. The plan should:

- (a) Link to the employee's current position; and/or
- (b) Align with the employee's career goals;
- (c) Align with the strategic direction and/or service plans of the employer;
- (d) Where applicable, assist the employee to meet the regulatory requirements to maintain professional competence;

22.4 The organisation's training and professional development processes shall

- (a) Be clear to employees; and

- (b) Provide information and advice to employees regarding sources of and access to professional development funds/entitlements; and
- (c) Require that the employee's professional development plan and activities are recorded; and
- (d) Require that employees will share the knowledge and expertise gained from professional development as appropriate.

22.5 The parties acknowledge that monitoring of the application of these provisions is of mutual interest and arrangements shall be in place locally to ensure that these principles are consistently applied and that the needs of each party are met.

Employees seeking CPD shall apply in writing to their service manager using the approved form. Wherever practicable the service manager will respond to the employee within one week whether the application has been approved, and that an approval process shall apply that ensures timeliness of decision-making. In the event of the application being declined the employee may appeal the decision to the professional advisor.

22.6 Time for preparation for an employee who is required to present at meetings or in-service training shall be provided within the employee's ordinary hours of work by prior agreement.

22.7 On occasions where the employee is required by the employer to attend CPD on a day that would not otherwise be a normal working day a study day may be taken on an alternative day that would otherwise have been a normal working day.

### **23.0 DOMESTIC VIOLENCE LEAVE**

The employer will apply the provisions specified in the Domestic Violence Victims Protection Act 2018 including applications for leave and changes to working arrangements in accordance with the Act and relevant employer policies.

### **24.0 EMPLOYEE PARTICIPATION**

24.1 The parties to this Agreement accept that change in the Health Service is necessary in order to ensure the efficient and effective delivery of health services.

24.2 The parties recognise that they have a mutual interest in ensuring that health services are provided efficiently and effectively, and that each has a contribution to make in this regard.

The involvement of employees should contribute to:

- (a) Improved decision-making.
- (b) Greater co-operation between the parties to this Agreement.
- (c) More harmonious, effective, efficient, safe and productive workplace.

Therefore the employer agrees to the following provisions for consultation, recognition of staff participation and access to facilities.

24.2.1 Paid time off shall be allowed for recognised staff representatives to attend meetings with management, consult with employees, to consult and discuss those issues addressed in this clause, clause 24 and Clause 25.0 specifically: staff surplus, and options for resolving staff surplus.

24.2.2 Prior approval for such meetings shall be obtained from management. Such approval shall not be unreasonably withheld.

24.2.3 The amount of time off and facilities provided shall be sufficient to enable full consideration of the issues.

24.3 For the purposes of Clauses 25.0, 26.0 and 27.0, the recognised representative shall be the union advocate unless otherwise agreed

## **25.0 RESTRUCTURING**

25.1 In the event that all or part of the work undertaken by the employee will be affected by the employer entering into an arrangement whereby a new employer will undertake the work currently undertaken by the employee, the employer will meet with the employee, providing information about the proposed arrangement and an opportunity for the employee to comment on the proposal, and will consider and respond to their comments. The employee has the right to seek the advice of their union or to have the union act on their behalf.

25.2 The employer will negotiate with the new employer, including whether the affected employees will transfer to the new employer on the same terms and conditions, and will include in the agreement reached with the new employer a requirement that the employee be offered a position with the new employer at the same or similar terms of employment.

25.3 Where the employee either chooses not to transfer to the new employer, or is not offered employment by the new employer, the employer will activate the staff surplus provisions of this agreement.

## **26.0 STAFF SURPLUS**

When as a result of the substantial restructuring of the whole, or any parts, of the employer's operations; either due to the reorganisation, review of work method, change in plant (or like cause), the employer requires a reduction in the number of employees, or, employees can no longer be employed in their current position, at their current grade or work location (i.e. the terms of appointment to their present position), then the options in sub clause 25.3 below shall be invoked and decided on a case by case basis by the employer having due regard to the circumstances of the affected employee.

### **26.1 NOTIFICATION**

The employer will advise the employee organisation at least one month prior to the date that notice is required to be given to the employee whose position is

required to be discharged. Notification of a staffing surplus shall be advised to the affected employee. This date may be varied by agreement between the parties. During this period, the employer and the employee will meet to discuss the option most appropriate to the circumstances. Where employees are to be relocated, at least one month's notice shall be given to employees, provided that in any situation, a lesser period of notice may be mutually agreed between the employee and the employer where the circumstances warrant it (and agreement shall not be unreasonably withheld).

26.2 The following information shall be made available to the employee representative

- (a) The location/s of proposed surplus
- (b) The total number of proposed surplus employees
- (c) The date by which the surplus needs to be discharged
- (d) The positions, grading, names and ages of the affected employees
- (e) Availability of alternative positions with the employer.

On request the employee representative will be supplied with relevant additional information where available.

26.3 **OPTIONS**

The following are the options in order of preference to be applied by the Employer in staff surplus situations:

- (a) Reconfirmed in position
- (b) Attrition
- (c) Redeployment
- (d) Leave without pay
- (e) Retraining
- (f) Severance.

Option (a) will preclude employees from access to the other options. The aim will be to minimise the use of severance. When severance is included, the provisions in sub clause 25.9 will be applied as a package.

**27.0 RECONFIRMED IN POSITION**

Where a position is to be transferred into a new structure in the same location and grade, where there is one clear candidate for the position, the employee is to be confirmed in it. Where there is more than one clear candidate the position will be advertised internally with appointment made as per normal appointment procedures.

**28.0 ATTRITION**

Attrition means that as people leave their jobs because they retire, resign,

transfer, die or are promoted then they may not be replaced. In addition or alternatively, there may be a partial or complete freeze on recruiting new employees or on promotions.

## **29.0 RE-DEPLOYMENT**

Employees may be redeployed to a new job at the same or lower salary in the same or new location.

29.1. Where the new job is at a lower salary, an equalisation allowance will be paid to preserve the salary of the employee at the rate paid in the old job at the time of redeployment. The employer can preserve the salary in the following ways:

- a) A lump sum to make up for the loss of basic pay for the next **two** years (this is not abated by any subsequent salary increases); or
- b) An ongoing allowance for **two** years equivalent to the difference between the present salary and the new salary (this is abated by any subsequent salary increases).

29.2 Where the new job is within the same local area and extra travelling costs are involved, actual additional travelling expenses by public transport shall be reimbursed for up to 12 months.

29.3 The redeployment may involve employees undertaking some on-the-job training.

## **30.0 LEAVE WITHOUT PAY**

Special leave without pay may be granted within a defined period without automatic right of re-engagement. This provision does not include parental or sick leave.

## **31.0 RETRAINING**

31.1 Where a skill shortage is identified, the Employer may offer a surplus employee retraining to meet that skill shortage with financial assistance up to the maintenance of full salary plus appropriate training expenses. It may not be practical to offer retraining to some employees identified as surplus. The Employer needs to make decisions on the basis of cost, the availability of appropriate training schemes and the suitability of individuals for retraining.

31.2 If an employee is redeployed to a position that is similar to his or her previous one, any retraining may be minimal, taking the form of "on the job" training such as induction or in-service education.

## **32.0 SEVERANCE**

Payment will be made in accordance with the following:

- (a) "Service" for the purposes of this sub clause means total aggregated service with the Te Whatu Ora, or any of its predecessors, but excludes any predecessor which has been taken into account for the purposes of calculating any entitlement to a redundancy/severance/early retirement or similar payment from any other predecessor. Employees who commenced employment with the employer prior to 1 October 2008 will retain pre-existing severance provisions, which are more favourable than those in this clause.
- (b) 8.33 per cent of base salary (T1 rate only) for the preceding 12 months, in lieu of notice. This payment shall only be made where the requisite notice cannot be given. Notice that is of a lesser period than required by this document shall require the employer to pay an amount proportionate to the ungiven period of notice. This payment is regardless of length of service; and
- (c) 12 per cent of base salary (T1 rate only) for the preceding 12 months, or part thereof for employees with less than 12 months' service; and
- (d) 4 per cent of base salary (T1 rate only) for the preceding 12 months multiplied by the number of years of service minus one, up to a maximum of 19; and
- (e) Where the period of total aggregated service is less than 20 years, 0.333 per cent of basic salary (T1 rate only) for the preceding 12 months multiplied by the number of completed months in addition to completed years of service.
- (f) A retiring gratuity or service payment if applicable (the retiring gratuity provision in Clause 29.0 shall apply).
- (g) Outstanding annual leave and long service leave may be separately cashed up.
- (h) Where there is an offer of redeployment to reduced hours, an employee may elect to take a pro-rata compensatory payment based on the above severance calculation.

### **33.0 JOB SEARCH**

The Employer should assist surplus staff to find alternative employment by allowing them a reasonable amount of time off work to attend job interviews without loss of pay. This is subject to the Employer being notified of the time and location of the interview before the employee is released to attend it.

### **34.0 COUNSELLING**

Counselling for affected employees and family will be made available as necessary.

### **35.0 TECHNICAL REDUNDANCY**

Where an employee's employment is being terminated by the employer by reason of the sale or transfer of the whole or part of the employer's business, nothing in this Agreement shall require the employer to pay compensation for redundancy to the employee if:

- 35.1 The person acquiring the business or the part being sold or transferred
- a) Has offered the employee employment in the business or the part being sold or transferred; and
  - b) Has agreed to treat service with the employer as if it were service with that person and as if it were continuous; and

the conditions of employment offered to the employee by the person acquiring the business or the part of the business being sold or transferred are the same as, or are no less favourable than, the employee's conditions of employment, including:

- (a) Any service related conditions; and
- (b) Any conditions relating to redundancy; and
- (c) Any conditions relating to superannuation

Under the employment being terminated; and

The offer of employment by the person acquiring the business or the part of the business being sold or transferred is an offer to employ the employee in that business or part of the business either:

- (a) In the same capacity as that in which the employee was employed by the Employer; or
- (b) In any capacity that the employee is willing to accept.

## **36.0 NOTICE**

- 36.1 Unless otherwise stipulated, the employment shall be deemed to be a monthly one and a month's notice shall be given by either side; but this shall not prevent the Employer from summarily dismissing any employee for serious or wilful misconduct or other just cause. Unless otherwise agreed where the required notice is not given the person terminating the service shall pay or forfeit wages to the value of the unexpired period of notice as the case may require.

## **37.0 ABANDONMENT OF EMPLOYMENT**

Where an employee absents him/herself from work for a continuous period exceeding three working days without the consent of the employer and without notification to the employer, and without good cause, he/she shall be deemed to have terminated his/her employment without notice.

## **38.0 RETIRING GRATUITIES**



- (a) Employees who have no less than 10 years service with the employer may be paid a Retirement Gratuity within the scale given in table below.
- (b) The provisions of this clause will also apply where early retirement is taken by an employee as an alternative to redundancy.

<b>SCALE OF MAXIMUM GRATUITIES</b>	
<b>Period of Total Service</b>	<b>Maximum Gratuity</b>
Not less than 10 years and less than 11 years	31 days' pay
Not less than 11 years and less than 12 years	35 days' pay
Not less than 12 years and less than 13 years	39 days' pay
Not less than 13 years and less than 14 years	43 days' pay
Not less than 14 years and less than 15 years	47 days' pay
Not less than 15 years and less than 16 years	51 days' pay
Not less than 16 years and less than 17 years	55 days' pay
Not less than 17 years and less than 18 years	59 days' pay
Not less than 18 years and less than 19 years	63 days' pay
Not less than 19 years and less than 20 years	67 days' pay
Not less than 20 years and less than 21 years	71 days' pay
Not less than 21 years and less than 22 years	75 days' pay
Not less than 22 years and less than 23 years	79 days' pay
Not less than 23 years and less than 24 years	83 days' pay
Not less than 24 years and less than 25 years	87 days' pay
Not less than 25 years and less than 26 years	92 days' pay
Not less than 26 years and less than 27 years	98 days' pay
Not less than 27 years and less than 28 years	104 days' pay
Not less than 28 years and less than 29 years	110 days' pay
Not less than 29 years and less than 30 years	116 days' pay
Not less than 30 years and less than 31 years	123 days' pay
Not less than 31 years and less than 32 years	129 days' pay
Not less than 32 years and less than 33 years	135 days' pay
Not less than 33 years and less than 34 years	141 days' pay
Not less than 34 years and less than 35 years	147 days' pay
Not less than 35 years and less than 36 years	153 days' pay
Not less than 36 years and less than 37 years	159 days' pay
Not less than 37 years and less than 38 years	165 days' pay
Not less than 38 years and less than 39 years	171 days' pay
Not less than 39 years and less than 40 years	177 days' pay
Not less than 40 years	183 days' pay

**NOTE: These are consecutive rather than working days.**

**39.0 DEDUCTION OF UNION FEES**

39.1 The Employer shall deduct union fees from the wages and salaries of members of the union when authorised in writing by members. The Employer will forward the monies with the names and the individual amounts deducted to the union.

**40.0 STOPWORK MEETINGS**

40.1 Subject to subsections 31.2 to 31.5, the Employer shall allow every employee covered by this Agreement to attend, on ordinary pay, at least two meetings (each of a maximum of two hours' duration) in each year (being the period beginning on the 1st day of January and ending on the following 31st day of December) with their representatives.

40.2 The representative shall give the employer at least 14 days' notice of the date and time of any meeting to which subsection 31.1 is to apply.

40.3 The representative shall make such arrangements with the employer as may be necessary to ensure that the employer's business is maintained during any meeting, including, where appropriate, an arrangement for sufficient employees members to remain available during the meeting to enable the employer's operation to continue.

40.4 Work shall resume as soon as practicable after the meeting, but the employer shall not be obliged to pay any employee for a period greater than two hours in respect of any meeting.

40.5 Only employees who actually attend a meeting shall be entitled to pay in respect of that meeting and to that end the representative shall supply the employer with a list of employees who attended and shall advise the employer of the time the meeting finished.

**41.0 PERSONAL GRIEVANCE, DISPUTES & EMPLOYMENT RELATIONSHIP PROBLEMS**

41.1 An "employment relationship problem" includes:

- i) A personal grievance
- ii) A dispute
- iii) Any other problem relating to or arising out of the employment relationship.

41.2 Where an Employment Relationship Problem arises the parties will in the first instance seek to resolve it between the immediately affected parties. Further to this:

- (a) The employee will be provided the opportunity to be represented by their union or other such support person of their choosing at any time during the resolution process.
- (b) If the matter is unresolved either party is entitled to seek mediation from the Labour Department or refer the matter to the Employment Relations Authority. (Both mediation and investigation by the Authority are services available for the resolution of employment relationship problems.)

41.3 A “personal grievance” means a claim that you:

- a) Have been unjustifiably dismissed; or
- b) Have had your employment, or your conditions of employment, affected to your disadvantage by some unjustifiable action by the Employer; or
- c) Have been discriminated against in your employment; or
- d) Have been sexually harassed in your employment; or
- e) Have been racially harassed in your employment; or
- f) Have been subjected to duress in relation to union membership.

41.4 If the employment relationship problem is a personal grievance, you must raise the grievance with the Employer within a period of 90 days, beginning with the date on which the action alleged to amount to a personal grievance, occurred or came to your notice, whichever is the latter. There is also additional time available for raising a personal grievance under the Act, under particular circumstances (ERA Section 115).

41.5 Where any matter comes before the Authority for determination, the Authority must direct the matter to mediation in the first instance. Where mediation has failed or been deemed inappropriate in the circumstances, the Authority will then have the power to investigate the matter.

41.6 If the employment relationship problem relates to discrimination or sexual harassment, services available for the resolution of the problem include either application to the Authority for the resolution of this grievance or a complaint under the Human Rights Act 1993, but not both.

## **42.0 HEALTH AND SAFETY**

The Employer shall comply with the provisions of the Health and Safety at Work Act 2015 (the Act) and associated Regulations, concerning safety, health and welfare matters. The parties agree that Employees should be adequately protected from any safety and health hazard arising in the workplace.

42.1 It shall be the responsibility of the Employer to ensure that the workplace meets the required standards and that effective and maintained safety equipment is provided.

- 42.2 Where safety equipment is required, it is the responsibility of Employees to ensure it is appropriately utilised.
- 42.3 It is the responsibility of every employee to report any hazards, accidents or injuries as soon as practicable using the Employers hazard management system.
- 42.4 It is the responsibility of the Employer to systematically identify and address any workplace hazards, which may affect the safety of employees.
- 42.5 Where there is a concern regarding the safety of employees, Employees have the right to contact APEX for advice on their rights under the Act.

#### **43.0 INDEMNITY**

- 43.1 The employer agrees to indemnify employees for legal liability for costs and expenses, including legal representation where required, in respect of claims, actions or proceedings brought against the employer and/or employees arising in respect of any:
- Negligent act, or
  - Error, or
  - Omission
- Whilst acting in the course of employment.
- 43.2 Employees will not be covered where such claim, action or proceeding:
- arises from any wilful or deliberate act, or
  - is restricted solely to any disciplinary proceedings being taken by the governing registration body and/or professional association, or
  - relates to activities undertaken by the employee that are outside the scope of the employment agreement with the employer, or
  - relates to activities undertaken by the employee that are outside the scope of practice or the employees position and/or profession.
- 43.3 Provided that any such reasonable costs or expenses are first discussed with the employer before they are incurred. If the employee or the employer identifies a conflict of interest, the employer will provide and pay for independent legal representation for both parties.

#### **44.0 TEMPORARY OR FIXED TERM AGREEMENTS**

- 44.1 Temporary or Fixed Term Employment Agreements should only be used to cover specific situations of a temporary nature or fixed term, e.g. to fill a position where the incumbent is on study or parental leave; or where there is a task of a finite duration to be performed.
- 44.2 Temporary or Fixed Term Employment Agreements while justified in some cases to cover situations of a finite nature, must not be used to deny staff security of employment in traditional career fields.

#### **45.0 USE OF PRIVATE VEHICLE ON EMPLOYER BUSINESS**

45.1 Employees who are instructed by the employer to use their private motor vehicle on the employer's business shall be paid a motor vehicle allowance as promulgated by the Inland Revenue Department and adjusted from time to time.

#### **46.0 TRAVELLING ALLOWANCE**

46.1 Where an employee is required to attend or conduct a clinic away from their base hospital, or attend to employer business away from their base hospital, the employer shall, wherever possible, pay all accommodation, meals and travel costs (i.e. the employee shall not be required to pay for such expenses and get reimbursed at a later date). Employees shall be entitled, with prior approval, to claim any actual and reasonable expenses incurred.

#### **47.0 SAVINGS CLAUSE**

Except as specifically varied by this Agreement, and except as further varied by way of the variations clause as specifically identified and agreed between the parties, nothing in this Agreement shall operate so as to reduce the wages and conditions of employment applying to any employee at the date of this Agreement coming into force.

#### **48.0 VARIATIONS**

This Agreement may be varied by agreement between the parties, subject to the Union's normal ratification procedures. Such agreement shall be in writing and signed by the parties.

#### **49.0 PUBLIC HEALTH EMERGENCY (AND CIVIL DEFENCE RESPONSE)**

49.1 The following provisions apply where there is a Public Health Emergency (PHE) declared by the Director-General of Health under the relevant legislation. These provisions shall also apply as applicable to civil defence emergencies declared under the relevant legislation.

49.2 The parties acknowledge that the public health system will likely be a critical part of the national/regional responses to a PHE.

49.3 If required as part of a response, the parties recognise the urgency of any response and the need for flexibility in how services are delivered, and accordingly temporary changes may be made to how work is organised without the need for a formal change management processes specified in the SECA. The employer will engage in good faith with the union prior to progressing any PHE response.

49.4 The principles around any such changes are:

- a. Where possible, Services will work with their staff including union delegates, to develop the most clinically appropriate staffing arrangements to keep patients and staff safe during a PHE
- b. These arrangements could include ways of working that are outside of the standard provisions of the MECA hours of work clauses provided that:

- i. The rostered ordinary weekly or fortnightly hours of work do not exceed the current maximums without the agreement of the affected employee(s)
- ii. No employee shall have their pay reduced while they are working such arrangements
- iii. Additional hours of work beyond those reflected in the salary category shall be remunerated in accordance with the relevant provisions of the MECA, and MECA penalties for minimum breaks, overtime, penal time etc will continue to operate
- iv. The alternate arrangements shall only continue in force for the period necessary and required by the employers's PHE response, following which the pre PHE status quo will be reinstated
- v. The union shall be informed of any arrangements operating under this provision.

49.5 The parties recognise the potentially heightened focus on ensuring staff do not attend work when they themselves (or their dependents) may be unwell, or at a higher risk (e.g. underlying medical condition or pregnancy) during a PHE. To support this, the employer will take a permissive approach to access paid special leave.

49.6 Where staff are required to stay home when they are well, but required to isolate or quarantine, then they shall receive special leave pay which will not be recorded as sickness.

49.7 The parties commit to national oversight and engagement on the operation of this clause and other operational matters related to PHE responses, which may include provision of agreed national guide.

## 50.0 **Flexible Working Arrangements**

Employees are entitled to apply for flexible working arrangements at any time, this may include requests to work from home. Such a request must be in writing and state the nature of the variation requested and whether the variation is permanent or for a finite period of time. Any and all requests for flexible working must be reasonably considered by the employer and responded to as soon as possible, but no later than one month after the request was received. If a request for flexible working cannot be accommodated, sufficient reasoning must be given to the employee for their refusal.

When an application is made the employer will apply the provisions specified in the Employment Relations Act 2000; Part 6AA Flexible Working, which relates to requests for flexible working and changes to working arrangements in accordance with the Act and relevant employer policies.

## 51.0 **TERM OF AGREEMENT**

This Agreement shall be deemed to have come into force on 1 July 2022 and shall continue in force until 1 October 2023.

Dated this      day of                      2022.

Signed:

AUTHORISED Representative of the  
EMPLOYEE PARTY

AUTHORISED Representative of the  
EMPLOYER PARTY

.....

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**Dr Deborah Powell**  
National Secretary, APEX

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