

**REGISTER OF  
ENTERPRISE AGREEMENTS**

**ENTERPRISE AGREEMENT NO:** EA03/138

**TITLE:** Blue Mountains Community Legal Centre Enterprise Agreement

**I.R.C. NO:** IRC3/2114

**DATE APPROVED/COMMENCEMENT:** 12 May 2003

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VARIATION:** New

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**DATE TERMINATED:**

**NUMBER OF PAGES:** 39

**COVERAGE/DESCRIPTION OF**

**EMPLOYEES:** Applies to all employees of the Blue Mountains Community Legal Centre who fall within the coverage of the Social and Community Services Employees (State) Award

**PARTIES:** Blue Mountains Community Legal Centre -&- the Australian Services Union of N.S.W.



**BLUE MOUNTAINS  
COMMUNITY LEGAL  
CENTRE**

**ENTERPRISE  
AGREEMENT**

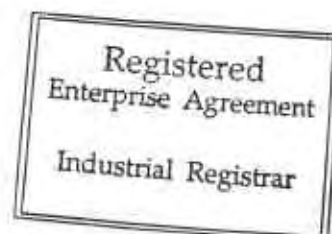


**BLUE MOUNTAINS COMMUNITY LEGAL CENTRE**

**ENTERPRISE AGREEMENT**

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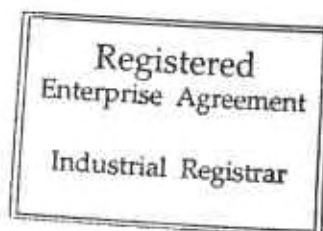
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## **PART I - OPERATION OF THE AGREEMENT**

### **1 Title**

- (a) This Agreement is to be known as the Blue Mountains Community Legal Centre Enterprise Agreement.

### **2 Parties bound and coverage**

- (a) This Agreement binds:
- (i) the Australian Services Union of NSW of "the Union"; and
  - (ii) Blue Mountains Community Legal Centre and its Committee of Management
- (b) This Agreement governs the terms and conditions of employment of all employees of the Blue Mountains Community Legal Centre. This Agreement shall be read in conjunction with the Social and Community Services Employees (State) Award, provided that where there is any inconsistency between the Award and this Agreement, this Agreement shall prevail to the extent of the inconsistency. Should any changes occur to the award during the life of this agreement which result in conditions above those contained within this agreement, the parties shall confer and where agreed vary this Agreement to reflect such changes.

The employer is committed during the life of this Agreement and in its renegotiation to negotiate collectively with the Union in respect of all its employees who are eligible to be members of the Union. Therefore, the employer agrees that individual employee arrangements will not be promoted or offered to any employee while this Enterprise Agreement remains in force.

### **3 Variation and Life of Agreement**

This Agreement will operate on from the date of approval and remain in force for a period of two years.

This Agreement may be changed by agreement between the parties and upon application to the Commission.

### **4 Access to this Agreement**

A copy of this Agreement will be provided to all existing and new workers and a copy will be kept in a place accessible to all workers.

### **5 Purpose, interpretation and definitions**

- (a) Blue Mountains Community Legal Centre is committed to providing free, independent legal assistance to the public, and works towards reform of the law and the legal system.



- (b) This Agreement applies to a Community Legal Centre which encourages co-operative work practices between workers and between workers and the Management Committee.
- (c) The purpose of this Agreement is to set out the conditions under which workers are employed. Within the spirit of co-operative work practices, the aim of these employment conditions is to facilitate and support workers in carrying out the functions of the Centre.
- (d) As a result, this Agreement should not be interpreted restrictively. It has been written in plain English. If the meaning of a clause or condition is unclear the interpretation to be used is the one which best gives effect to the spirit of the clause and to the Agreement.
- (e) There are several references in this Agreement to workers also being entitled to the provisions of Acts of Parliament or government schemes. Wherever there is a conflict between this Agreement and any legislation, enterprise agreement or award or government scheme, whether or not there is specific reference to the latter, the provision most favourable to the Centre's workers will apply.
- (f) In this enterprise agreement the following definitions apply:

"Agreement" means the Blue Mountains Community Legal Centre Enterprise Agreement;

"Award" means the Social and Community Services Employees (State) Award;

"Centre" means Blue Mountains Community Legal Centre and its Management Committee;

"Commission" means the NSW Industrial Relations Commission;

"Executive" means the group comprised of the Chair, Secretary and Treasurer of the Management Committee and which has powers and authority delegated to it by the Management Committee.

"Management Committee" means (as per Memorandum or Rules of Association)

"Worker" means an employee of Blue Mountains Community Legal Centre;

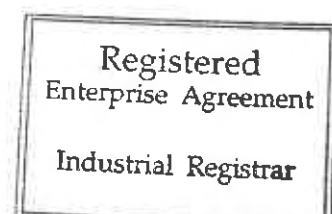
"Union" means the Australian Services Union of NSW.

## **PART II - ENGAGEMENT OF WORKERS**

### **6 Conditions of employment**

Prior to commencing employment the Centre will give each new worker a letter of appointment setting out:

- (a) the worker's job description and position title;
- (b) the worker's regular or set hours of work, including whether night work is expected;



- (c) the worker's pay rate under this Agreement;
  - (d) the worker's employment status (ie permanent, casual, fixed term or under a subsidised employment scheme);
  - (e) the worker's entitlement to, and possible liability to reimburse, the payment of a practicing certificate or other professional fee or accreditation under clause 32;
- and attaching a copy of this Agreement.

**7 Full-time employment**

A worker not specifically engaged on a part-time or casual basis is defined as a full time worker and entitled to full-time benefits.

**8 Part-time employment**

- (a) A part-time worker is a person employed:
  - (i) other than as a casual; and
  - (ii) to work a specified number of days and hours that are less than the hours worked by a full-time worker in a fortnight.
- (b) The minimum hours of duty for a part-time worker on any one day is three hours.
- (c) A part time worker may, with the agreement of the Centre, temporarily change their days or hours in a day or total hours of work in a fortnight.
- (d) Unless specifically stated, a part time worker has full entitlements under this Agreement proportionate to their total hours compared to that of a full-time worker.
- (e) Upon returning from parenting leave a worker is entitled to work part time in the same position they held prior to taking parenting leave or, if this is not reasonably practical, in a position of similar duties and status at hours and days agreed with the Centre and for an agreed period (see also clause 44).
- (f) A full time worker may negotiate with the Centre to convert their position to part time, either permanently or for an agreed temporary period.

**9 Permanent Employment**

A permanent worker is a full-time or part-time worker engaged other than specifically on a casual or fixed term basis or under a subsidised employment scheme.

**10 Casual employment**

- (a) A casual worker is specifically engaged as such, is employed on a daily basis for a minimum shift of three hours and for a total of no more than 455 hours at a time (ie 13 weeks x 35 hours full time employment).
- (b) A casual worker will be informed in writing upon engagement that:
  - (i) they are hired by the hour;



- (ii) subject to being paid a minimum shift of 3 hours, they will be paid for actual time worked;
  - (iii) they are not entitled to payment for public holidays not worked nor payment for paid leave of any type other than Long Service Leave.
- (c) A casual worker will be paid the appropriate hourly rate under this Agreement plus a loading of 25% for ordinary working hours. This loading is inclusive of any statutory entitlement the worker has to annual holiday payments.
- (d) Where a casual worker is subsequently employed by the Centre on a permanent basis the worker's previous periods of employment in the last 6 months will be counted as service for all purposes (such as incremental advancement under subclause 21(f)) except for the calculation of leave under this Agreement, but the Long Service Leave Act will continue to apply.

## **11 Fixed term employment**

- (a) Subject to subclause (g), a fixed term worker is specifically engaged to work for no more than 52 weeks, either full-time or part-time:
- (i) in a position which is temporary in nature for a specified period of time; or
  - (ii) for the completion of a specified task[s] or project; or
  - (iii) to relieve in a vacant position arising from a worker taking leave in accordance with this Agreement.
- (b) Unless otherwise stated, fixed term workers are entitled to the full benefits of this Agreement on a proportionate basis.
- (c) When offering employment on a fixed term basis to a job applicant, the Centre will advise them in writing of the temporary nature of the employment and the duration of employment.

Where the fixed term employment is as a replacement of another worker who is on leave, the Centre will advise the fixed term worker of the nature of leave taken by the worker they are replacing.

- (d) If within 3 months of ending fixed term employment with the Centre a worker is subsequently re-employed as a permanent worker, the fixed term employment will count as service under this Agreement for all purposes (except for specific leave entitlements if any periods of that leave were taken or paid out under the fixed term employment).
- (e) The employment of a fixed term worker may be extended once only, and only up to a total employment of 18 months. Any additional extension will only be with the written agreement of the Union.
- (f) A worker whose fixed term employment extends beyond 18 months without the agreement of the Union will be deemed to be a permanent worker. This

subclause applies only to workers whose employment commenced within the 12 months before this Agreement or afterwards.

- (g) The Centre may under subclause (a), with the prior written agreement of the Union, appoint a fixed term worker for a period greater than 52 weeks.
- (h) For the purposes of the (model) recruitment guidelines, a "temporary worker" as defined in that policy will be appointed under this clause as a fixed term worker.

## **12 Recruitment guidelines**

This Agreement is to be read in association with the guidelines set out at Attachment A called "Recruitment Policy".

## **13 Subsidised Employment Schemes**

Workers employed by the Centre under a government-sponsored employment scheme, such as Jobskills or Jobstart, will be employed in accordance with the requirements of the particular scheme.

## **14 Job Descriptions**

- (a) A worker's job description, as provided to them by the Centre under clause 6, will not be altered except by agreement between the Centre and the worker, subject to the Centre's powers under clause 56 relating to "Redundancy and the Introduction of Change".
- (b) Individual job descriptions will be reviewed annually through the Staff Support and Development System which is set out in clause 25.

## **15 Confidentiality**

The Centre will maintain the confidentiality of all matters relating to or affecting the employment of a worker, subject to any provision within this Agreement or under legislation which allows otherwise.

## **PART III - HOURS OF WORK**

### **16 Hours of work**

- (a) For the purposes of this Agreement the ordinary full time working hours is 70 hours per fortnight based on a 35 hour week, Monday to Friday.
- (b) The standard hours for start and finish of work will be set out in a worker's letter of appointment.

The nature of an individual worker's job may demand attendance at specific hours, such as to coincide with public opening hours, and this will be reflected in their letter of appointment.

However, in general workers' starting and finishing times are flexible and workers are expected to work an average of 7 hours per day between the hours of 8am and 6pm with one hour off for lunch without pay. Selection of starting and finishing times should be made with a view to maximising staff during the operating hours of the Centre of 9.00am to 5.00pm.

- (c) Core hours will be 10am to 4pm and the worker will normally work these hours.
- (d) When a worker travels from home to a different work location, any time additional to the time a worker normally travels to reach work will be considered work time.
- (e) No worker will be required to work in excess of 4 hours without a meal break.
- (f) Meal breaks are unpaid, from 30 minutes up to 2 hours, generally between 12 noon and 2pm at times convenient to the needs of the worker and the Centre.
- (g) Workers may take morning and afternoon tea breaks of 10 minutes on paid time.
- (h) Workers are required to maintain time sheets of their hours of attendance in the format approved by the Centre.

#### **17 Call back**

- (a) Where due to exceptional circumstances, either at the direction of the Centre or in an emergency, a worker is "called back" to work (for example, in an evening or on a weekend) having left the place of employment, they will be entitled to a minimum payment of 3 hours work, without necessarily having to work that full period.
- (b) Where the work performed on a call back falls on a day of time-in-lieu, the worker will be allowed to be absent on another day as time in lieu.
- (c) "These hours will be treated as overtime and be added to the worker's time-in-lieu credits under clause 18."

#### **18 Flex time, overtime and absences on time-in-lieu**

- (a) Any hours worked overtime or above a worker's fortnightly hours under the Centre's flex time system, will be recompensed through the time in lieu system (see below) except casuals who will receive additional payment at the rate of single time plus loading.

This clause applies to full time and part time workers.

- (b) Overtime means work performed at the direction of the Centre or with the Centre's prior approval

- (i) outside the hours of 8am to 6pm Monday to Friday;
- (ii) on days on which the worker is not scheduled to work;

and workers are entitled to take time off duty in lieu of payment of those hours worked overtime at the rate of

- one and a half hours off for each hour worked on a weekday
- two hours off for each hour worked on a weekend or public holiday, with a minimum of 3 hours off.

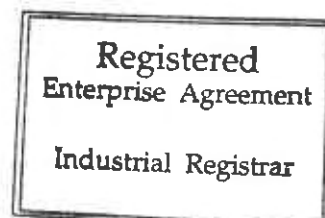
If overtime arises purely as the result of travel this will be compensated on an hour-for-hour basis on weekdays even if it occurs outside hours 8am-6pm.

- (c) Where through the Centre's flexible starting and finishing times a worker performs, in addition to work performed overtime under subclause (a), work in excess of the worker's ordinary fortnightly hours in a pay period, they will be entitled to time off in lieu of payment of that excess on the basis of one hour for each hour worked.
- (d) Workers will be entitled to accumulate time in lieu credits under subclauses (b) and (c) from one pay period to the next, provided that by the end of six months the credits do not exceed the worker's set weekly hours of work.

Any credits accumulated in excess of the maximum, without prior approval of the Centre, will be forfeited.

The Centre may direct a worker to be absent on time in lieu, up to the maximum of their total current credits, where the Centre believes there has been a pattern of forfeiting time in lieu credits or working excessive hours.

- (e) Workers may anticipate the accumulation of credits by being absent on time in lieu, provided that by the end of a pay fortnight the worker does not have a debit of more than 7 hours time in lieu.
- (f) Absences on time-in-lieu may be for a full or part day and will normally be arranged through staff meetings. Absences will be at times consistent with the needs of a worker's position and of the Centre, and at times suitable to the personal needs of the worker.
- (g) No worker will be entitled to take off more than one working week time in lieu in one block, and only twice in a year.
- (h) A worker is expected to reduce their accumulated time in lieu to zero by the end of their employment, and to assist in this the Centre may, in some cases, direct a worker to be absent on time in lieu. However, any debit at the end of employment will be deducted from salary.



Where exceptional or unforeseen circumstances have not made it possible for a worker to reduce their time in lieu to zero the credits will be paid out upon ending employment, but otherwise credits will not be paid out.

- (i) Workers will be required by the Centre to perform overtime only after being given reasonable notice or in emergency situations.
- (j) A worker performing overtime is entitled to childcare costs in accordance with the provisions of subclause 28 (i).

#### **19 Home based work**

- (a) With the prior agreement of the Centre a worker may for an agreed period perform part of their duties at home.
- (b) An agreement for a worker to perform duties at home must set out:
  - the days and hours of work, and the range of duties, to be performed at the Centre's premises and at the home based work site, provided that duties are performed at the Centre's premises at least one day a week;
  - the equipment, materials and facilities to be provided by the Centre and any agreement as to ownership of these;
  - the equipment, materials and facilities to be provided by the worker and any agreement as to the Centre's contribution to the cost of providing or maintaining these;
  - an initial trial period of no more than 3 months;
  - the duration of the arrangement and the date of renewal and further review;
  
  - the Centre's statutory obligations for ensuring the health and safety of the worker while undertaking home based work and the employer's obligation to maintain appropriate and relevant levels of insurance;
  - the worker's ability to terminate the arrangement with suitable notice, to be judged in all the circumstances;
  - the right of the Centre, Workcover and other nominated persons or organisations to inspect the worker's home based work site, and limits to that right;
  - the methods of communicating to the worker all decisions or developments within the Centre or other information which is relevant to the worker; and
  - any other relevant matter.
- (c) Nothing in subclause (b) prevents ad hoc or one-off occasions of a worker performing duties at home, provided prior approval is given under subclause (a).



## **PART IV - CLASSIFICATIONS, TRAINING, WAGES AND SUPERANNUATION**

### **20 Rates of pay**

- (a) The minimum rates of pay for workers will be the appropriate rate in the Social and Community Services Employees (State) Award. Incremental steps from the Award rates scale will be paid for each year of service.

In consultation with the Union, salaries will be reviewed annually by the employer taking into account funding allocations and any increases in the Consumer Price Index.

Salary rates may be increased but not decreased. Any increase in salary rates will be deemed to be the applicable salary rate of this Agreement.

- (b) The starting salary for a new worker is dependent on qualifications for the job and relevant voluntary and paid work experience.
- (c) Movement to the next salary point within the salary range is by automatic increment, based on 12 months service with the Centre.

### **21 Higher duties**

A worker who is required by the Centre to perform, for at least half a day, the duties of another worker in a higher classification under this Agreement will be paid, for the period worked, the salary prescribed for that higher position.

### **22 Payment of wages**

- (a) Wages will be paid once per week by electronic transfer.
- (b) The Centre will deduct from salary income tax required to be paid to the Australian Taxation Office and such other amounts as are authorised in writing by the worker.
- (e) Each worker's wages will be set out in a Pay Advice, setting out the gross and net salary, allowances paid, tax and other amounts deducted, superannuation payments and the net amount to be paid. Each worker will have access to the record of their wages.
- (f) Upon ending employment, wages due to a worker will be paid on the last day of work or, by arrangement with the worker, either forwarded by post or deposited into the worker's bank account on the next working day.

### **23 Wage package**

- (a) The Centre offers its workers the option of a "wage package". This means sacrificing a specified amount of gross salary in return for the payment by the Centre of an equal amount of money to a nominated utility, loan or recurrent liability of the worker.

- (b) The wage package increases the overall financial benefit the worker receives from the Centre by reducing annual gross income, and thus tax liability, and redirecting the deducted gross income, paid monthly and without attracting a tax liability, towards reducing a debt or liability the worker has.
- (c) Without being limiting, examples of payments the Centre can make under this arrangement include the repayment of a personal or home loan, electricity or other utility bills or rent. The payment must not be made to the worker personally or to a dependent, nor to a bank or other account which the worker may access and draw upon.
- (d) A worker choosing to take up the option of a wage package may choose after 12 months whether or not to continue it.
- (e) The wage package is available to all permanent workers, and to fixed term workers appointed for an initial period of at least 6 months.
- (f) Under the wage package arrangement ...
 

a monthly electronic transfer will be made to a nominated recipient or the worker will be given monthly cheques made out to a nominated recipient and it will be the worker's responsibility to forward the cheque to that recipient.
- (g) The calculation and payment of all annual leave, leave loading, Christmas shutdown leave and employer superannuation contributions will reflect the annual gross salary the worker would receive but for the wage package.
- (h) The taxable annual salary of the worker will represent the sum of the above payments for annual leave and Christmas shutdown plus all other weekly payments at the reduced, wage package gross salary.
- (i) In responding to third parties that the worker has authorised to confirm the worker's salary, for example, loan creditors in advance of finalising a loan, the Centre will refer to the annual gross salary the worker would receive but for the wage package.
- (j) The amount of gross salary to be subject to the wage package arrangements will be set by the Centre in consultation with workers and specified in the Centre Wage Package Policy.
- (k) This clause is subject to the capacity of the Centre to offer a wage package consistent with Australian tax laws and where these laws are amended, after the date of this Agreement, this clause may be correspondingly amended by the Centre.

## **24 Staff Support and Development System**



- (a) As part of Planning for Planning Day each year, a worker will undergo an appraisal of their needs for staff development and support .
- (b) The Staff Support and Development System is not in any way associated with probation or the counselling or disciplinary process. It is aimed at giving the worker a forum to assess their work performance and skills, receive feedback, identify staff development and training needs, and to set achievable goals for themselves.
- (c) Staff support and development will occur in accordance with the guidelines "The Staff Support and Development System" at Attachment B.

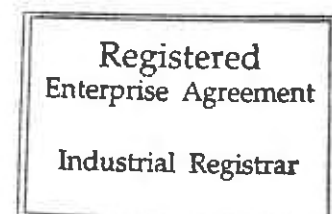
**25 Staff training and development;**

- (a) The Centre is committed to ensuring that workers maintain and develop their skills and knowledge, particularly through access to training. The Centre regards training and staff development as being inherent in a worker's employment. (See Staff Training policy at Attachment C)
- (b) The Centre will encourage workers to undertake training, and the staff support and development system will be one method of identifying training needs. Training may be to enhance a worker's skills or knowledge in relation to their current position but may also be to assist them in their career development.
- (c) In general, and subject to prior approval, attendance at training courses, workshops and conferences will be on paid time. Attendance at tertiary education courses is addressed by clauses 48.
- (d) A worker may temporarily transfer to other duties to gain experience or undertake on-the-job training as part of an agreed staff development strategy.

**26 Staff Support**

- (a) As part of Planning for Planning Day each year, a worker will undergo an appraisal of their needs for staff development and support .
- (b) The Staff Support and Development System is not in any way associated with probation or the counselling or disciplinary process. It is aimed at giving the worker a forum to assess their work performance and skills, receive feedback, identify staff development and training needs, and to set achievable goals for themselves.
- (c) Staff support and development will occur in accordance with the guidelines "The Staff Support and Development System" at Attachment B.

**27 Staff Training**





- (a) The Centre is committed to ensuring that workers maintain and develop their skills and knowledge, particularly through access to training. The Centre regards training and staff development as being inherent in a worker's employment. (See Staff Training policy at Attachment C)
- (b) The Centre will encourage workers to undertake training, and the staff support and development system will be one method of identifying training needs. Training may be to enhance a worker's skills or knowledge in relation to their current position but may also be to assist them in their career development.
- (c) In general, and subject to prior approval, attendance at training courses, workshops and conferences will be on paid time. Attendance at tertiary education courses is addressed by clauses 48.
- (d) A worker may temporarily transfer to other duties to gain experience or undertake on-the-job training as part of an agreed staff development strategy.

**28 Superannuation**

- (a) Calculated from the date of appointment the Centre will contribute in respect of a worker the equivalent of 9% of gross salary to the Health Employees Superannuation Trust of Australia, unless the worker nominates another qualifying fund.
- (b) The Centre will increase contributions in line with any changes in the Commonwealth Superannuation Guarantee Scheme.

**PART V - ALLOWANCES AND AMENITIES**

**29 Travelling, meal, motor vehicle and other allowances**

- a) The Centre may require a worker to use his/her own vehicle for work PROVIDED such motor vehicle is covered by a current comprehensive insurance policy. In such cases the worker shall be entitled to a vehicle allowance at the rate set out in the Award of 46 cents per kilometre.
- b) If a worker is required by the Centre to use his/her own motor vehicle for work and has an accident, the Centre will reimburse the worker for any insurance excess paid by the worker up to an amount of \$300.00 per claim.
- (c) The Centre will reimburse all reasonable expenses, including telephone calls and travel expenses, incurred by a worker in the course of carrying out their work, provided that proof of expenses is provided.
- (d) The Centre will meet the cost of a taxi or other secure transport from work to home where a worker is required to finish work at a time, such as after dark or after 8.30pm, where the worker's usual means of transport is not a safe or viable alternative.

- (e) A worker required to stay away from home overnight due to work commitments will be entitled to meal and accommodation allowances at the rates set out at table 1 (except where accommodation and/or food has been paid by the Centre, eg as part of conference registration costs).
- (g) A worker required by the Centre to work overtime beyond 7pm or for more than 4 hours on a weekend will be entitled to a meal allowance at the rate set in Table 1 (except where meal is provided at a seminar or conference).
- (h) The value of the allowances set out in Table 1 will be reviewed by the Centre annually as part of the salary review under clause 21.
- (i) The Centre will meet the reasonable cost of childcare incurred by a worker as a result of working overtime at the direction of the Centre or being absent from home overnight due to work commitments.
- (j) The Centre will not be responsible for payment of any parking or traffic infringement fines incurred by a worker.

### 30 Amenities

The Centre will provide workers with:

- (a) reasonable toilet and washing facilities;
- (b) adequate and appropriate facilities for tea and meal breaks, including a microwave and fresh coffee maker;
- (c) reasonable heating and cooling appliances to ensure the working environment is healthy and safe; and
- (d) adequate and appropriate accommodation to enable workers to perform their duties.

### 31 Access to the workplace for childcare

Where the employee is responsible for the care of a child or children the employee shall be entitled (in special circumstances) to bring the child or children to the employee's place of work on an infrequent basis. This is provided that the employer may in its absolute discretion set conditions as to the care of the child or children whilst in the employee's place of work or may prohibit in whole or in part the attendance at work of the employee's child or children. The employer accepts no liability for the child at the place of work.

### 32 Occupational Health and Safety

- (a) The Centre will take all reasonable action to ensure the health and safety of workers and implement appropriate health and safety policies and practices.
- (b) The Centre will maintain a first aid kit to the standard recommended by the St John's Ambulance Society.

- (c) The Centre will not permit smoking on its premises.
- (d) When the Centre's workers are unable to work because a hazard within the working environment presents a real, or reasonably perceived, immediate risk of injury or detriment to their health, and no alternative work arrangement can be made, the resulting absence from work will be on paid time.
- (e) The preceding clause does not apply to a worker who is involved in a rehabilitation program, whether or not it's the subject of a workers compensation claim, nor to a worker whose work environment has been modified to accommodate a physical or intellectual limitation; in each of these cases the relevant workers compensation or anti-discrimination legislation will continue to apply.
- (f) Workers will not use a keyboard for a continuous period longer than 60 minutes without taking a 10 minute break, nor for more than 4 hours in total in a day.

**33 Practising Certificates and Professional Accreditation**

- (a) The Centre will meet the cost of any practicing certificate or other professional fees or accreditation a worker requires to fulfil the duties of their position.
- (b) Should a worker terminate their employment within 6 months of the Centre paying the cost of their certificate, fees or other accreditation then the Centre and the worker will negotiate about the possibility of the Centre being reimbursed for these expenses.
- (c) Where it is relevant to the worker's position, the entitlement to payment under this clause, including possible liability to reimbursement, will be set out in the worker's letter of appointment.

**34 Vicarious liability**

The Centre will be responsible in accordance with the Employees Liability Act 1991 to indemnify workers against liability for any civil liability arising out of the course of workers' employment.

**PART VI - LEAVE**

**35 Miscellaneous matters**

- (a) Unless it is stated to the contrary, all leave counts as service and does not break continuity of service.
- (b) Unless it is stated to the contrary, in exceptional circumstances and where it is fair and equitable to do so, the Centre may grant a worker additional periods of any leave under this Agreement.

- (c) Unless specifically stated, a part time worker has full leave entitlements under this Agreement proportionate to their total hours compared to that of a full-time worker.

### **36 Sick leave**

- (a) A worker is entitled to 15 days (105 hours equivalent) paid sick leave in each year of service, with any unused credit being carried over to accumulate with following years' credits up to a limit of 60 days (420 hours). Any unused credit at the end of employment will not be paid out, subject to clause 55 dealing with invalidity.
- (b) Not more than 3 consecutive days in any one period of sick leave may be taken without producing a medical certificate for the worker. This requirement may be waived at the discretion of the Co-ordinator or, in the case of sick leave by the Co-ordinator, the Management Committee. Waiver to be notified at the next Management Committee meeting.
- (c) A worker should make all reasonable efforts to give the Centre early notice of their absence from work.
- (d) Where a worker would have been entitled to sick leave but for being absent on time in lieu, sick leave will be paid for the relevant period and the equivalent period of time in lieu will be re-credited.
- (e) Where a worker is receiving workers compensation payments for an injury not related to the employment with the Centre, and the payments are less than the worker's ordinary weekly earnings, the worker may elect to be paid the difference from their sick leave credits.  
*[See also clause 38 as to make-up pay for work related injuries]*

### **37 Carers leave**

- (a) A worker is entitled to 5 days (35 hours) paid carers leave in each year of service, with any unused credit accumulating to a maximum of 20 days (140 hours).
- (b) Carers leave may be used when a worker needs to attend to or care for a person with whom the worker has a bona fide domestic or familial relationship or other significant bond.
- (c) Not more than 3 days in any one period of carers leave may be taken without producing a medical certificate for the person in their care.
- (d) A worker should make all reasonable efforts to give the Centre early notice of their absence from work.
- (e) Where a worker has exhausted their carers leave credits the Centre has the discretion to advance the worker's carers leave credits from the coming year,

and/or the worker may have access to their sick leave credits for the purposes of caring for someone in accordance with subclause 36(b).

- (f) Where a worker would have been entitled to carers leave but for being absent on time in lieu, carers leave will be paid for the relevant period and the equivalent period of time in lieu will be re-credited.

**38 Additional leave relating to chronic or serious illnesses**

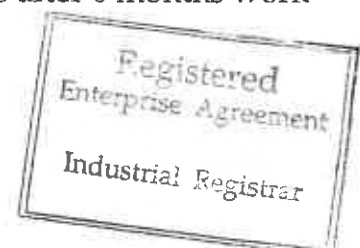
- (a) A worker who has a serious or chronic illness or condition, or a worker caring for someone with a serious or chronic illness or condition, is entitled to a further 5 days (thirty-five hours) paid leave each year if all sick leave and carers leave has been used.
- (b) This leave is not cumulative from year to year and to be eligible for this leave the worker must have produced, at the time of the leave or previously, a doctors certificate relating to the chronic or serious illness or condition.

**39 Workers compensation make-up pay**

- (a) Where a worker is receiving workers compensation payments for an incapacity arising out their employment with the Centre, and the payments are less than the worker's ordinary weekly earnings, the Centre will pay the difference between the worker's ordinary weekly earnings and the compensation payments.
- (b) Payments under subclause (a) will continue for a total number of weeks, over one or more separate periods in respect of the one injury,
- for a maximum of 13 weeks
- (c) The workers may elect to use their sick leave credit to make up the short fall in worker's compensation payments if and when payments by the centre under sub clause (b) have ceased
- (d) The Centre's liability under subclause (a) & (b) arises at the date of injury and the Centre remains liable for these payments even where the worker's employment has been terminated for any reason.
- (e) The liability of the Centre to make payments under this clause is limited to a period of incapacity which occurs after this agreement and where that incapacity relates to an injury received within 6 months prior to the date of this Agreement.

**40 Recreation leave**

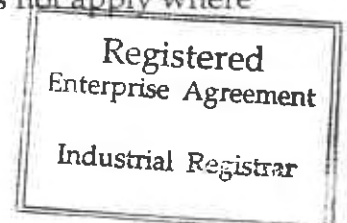
- (a) A worker is entitled to 4 weeks recreation leave in each year of service, with any unused credit being carried over to accumulate with following years' credits. Leave will accumulate at the rate of one third of a week per month.
- (b) A worker may take recreation leave on a pro-rata basis after 6 months work unless otherwise agreed (ie to take leave earlier)



- (c) A worker planning recreation leave will consult other workers through staff meetings about a period of leave that is consistent with the needs of the worker's position and of the Centre, and that is suitable to the personal needs of the worker. The worker must formally seek approval from the Centre for leave.
- (d) Any public holiday during a worker's recreation leave will be counted and paid as such, and not as recreation leave, if the worker would otherwise have been entitled to that public holiday.
- (e) Recreation leave should not be accumulated beyond a maximum of 8 weeks, and the Centre will consult a worker about a suitable time to take leave in advance of the worker exceeding the maximum. A worker will not forfeit any leave above 8 weeks, but the Centre may direct a worker to take leave so as to keep it below the maximum.
- (f) Except at the end of a worker's employment, recreation leave will not be paid unless the worker takes the corresponding period of absence from work.
- (g) When a worker finishes employment they will be paid all accrued recreation leave plus leave loading.
- (h) The rate of pay for recreation leave is the ordinary rate of salary plus a leave loading bonus of 17.5% of the gross salary for the period of leave. However, where the Centre has allowed a worker to anticipate future leave credits, leave loading will not be paid on that portion of recreation leave until the date the leave credit would otherwise have accrued.
- (i) Where a worker would have been entitled to sick leave or carers leave but for being on recreation leave, sick leave or carers leave will be paid for the relevant period and the equivalent period of recreation leave will be re-credited.
- (j) The Centre may in appropriate circumstances allow a worker to anticipate future leave credits.
- (k) The provisions of the Annual Holidays Act 1944 also apply.

**41 Public holidays**

- (a) Workers will be entitled to paid leave for a day duly proclaimed by the NSW Government as being a public holiday, provided the worker is otherwise due to work on that day.
- (b) A part-time employee shall be entitled to accrue time-in-lieu pro-rata in respect of public holidays that fall on a day other than those on which he or she would normally be required to work. This clause does not apply where



the worker would normally be working in another position (elsewhere) on that day and would therefore be receiving paid leave.

- (c) By agreement between the Centre and a worker another day may be substituted for any public holiday, particularly where the holiday has a religious or cultural significance which is not relevant to that worker's own beliefs.
- (d) Indigenous Australian workers are entitled to NADOC Day as an additional public holiday.
- (e) Overtime will not be performed on a public holiday except with the agreement of the worker and not at the direction of the Centre.

#### **42 Leave during Christmas closure**

- (a) Centre to close from 12:30 p.m. on 24 December and reopen on the first working day in the New Year. Staff will be paid during this period as per normal. This period is not to be treated as recreational leave and therefore no holiday loading will apply.
- (b) This leave is not recreation leave and cannot be deferred to another date nor have the period increased for individual workers under clause 28.
- (c) A fixed term worker employed at the time of the Christmas closure will receive their ordinary weekly pay for this time.  
However, when a fixed term worker ends employment prior to the Christmas closure they will be entitled to a pro rata payment of the 10 days Christmas closure based on:
  - (i) if they were employed solely in that calendar year for a total of at least 3 months, pro rata on full period of service;
  - (ii) if they were employed for more than 12 months, pro rata for the period of service in excess of 12 months;
  - (iii) if they were employed for 12 months or less and received payment for the previous year's Christmas closure, no payment will be made.

#### **43 Leave without pay**

- (a) The Centre may grant a worker leave without pay for any purpose.
- (b) Leave without pay in a block of more than 5 days does not break continuity of service but does not count as service for the purposes of calculating increments or any entitlements to leave under this Agreement.
- (c) An employee may take up to 52 weeks unpaid leave after having completed 52 weeks of continuous service (by the date of the anticipated leave) provided that:
  - i) notice of request to take leave is given to the employer in writing at least 6 weeks prior to the anticipated leave date; and

- ii) the notice includes the date of anticipated return to work
  - iii) the approval of the committee is obtained, such approval not to be unreasonably withheld after consideration of the impact on the Centre.
- (d) Where an employee takes more than 3 months unpaid leave:
- i) the employee shall confirm by notice in writing that she or he intends to return to work; and
  - ii) such notice must be given before the return date as follows:
  - iii) for up to 6 months leave, 6 weeks notice
  - iv) for 6 to 12 months leave, 10 weeks notice
- (e) The employee acknowledges that if they do not give the required notice of return or do not return to work as anticipated without reason then the employee's position shall be deemed to be vacant and the Committee may take steps to fill the position.

#### **44 Long service leave**

- (a) Workers are entitled to and accrue paid long service leave in accordance with the Long Service Leave Act 1955 (NSW), except workers may take paid leave after 5 years continuous service on the basis of:
- (i) 5 weeks leave at 5 years service;
  - (ii) pro rata up to 3 months for between 5 and 10 years service; and
  - (iii) pro rata for years of service over 10 years service.
- Accrued long service leave credits will be paid out on termination of employment, including resignation or retirement, after 5 years service, except where termination was by summary dismissal under clause 54.

However, where any time after 12 months service a worker resigns due to ill-health, supported by appropriate medical evidence, or terminated on the grounds of invalidity under clause 55, accrued long service leave credits will be paid out.

#### **45 Parenting leave**

- (a) After 12 months service a worker is entitled to 52 weeks parenting leave, in one or two unbroken periods, provided the worker presents documentary evidence of the expected date of the birth or adoption of their child.
- (b) Parenting leave may be taken, in the case of a pregnant worker, from within 6 weeks of the expected date of birth of the child or, in the case of adoption, from one week prior to taking custody of the child in anticipation of adoption, and in any other case from the date of birth or adoption.





### *Maternity leave*

- (c) A female worker taking leave for the birth of her child will be entitled to 12 weeks paid leave and the balance unpaid, including 6 weeks compulsory leave immediately following birth, with all periods of leave to be completed within 2 years of the child's birth.

These paid leave credits may also be used for any absences due to illness related to pregnancy, miscarriage, still birth or termination.

At least 10 weeks prior to the presumed date of confinement the worker will give the centre written notice of that date of confinement. The worker will also give the Centre at least 4 weeks written notice of the proposed start of her parenting leave and of the intended duration of the leave.

### *Adoption leave*

- (d) A worker taking leave to adopt a child is entitled to 12 weeks paid leave and the balance unpaid, if they are to be the primary carer of the child, with all periods of leave to be taken within two years after adoption.

In this clause a child refers to a person under the age of 16 years who has not previously lived continuously with the worker for at least 6 months or who is not a step-child of the worker or their partner.

As promptly as possible following the worker receiving the relevant government approval to adopt, the worker will advise the Centre of this approval. Either at the same time or as soon as is reasonable having regard to the circumstances of the adoption, the worker will advise the Centre of the intended period of parenting leave to be taken.

Workers wishing to attend interviews, workshops, court attendances, medical examinations or other necessary matters for the purpose of adopting a child are entitled to up to 2 days unpaid special adoption leave or to paid special leave under clause 46.

### *Leave for partners*

- (e) A worker whose partner has either adopted or given birth to a child is entitled to 9 weeks paid leave and the balance unpaid, if they are to become the primary carer of the child, provided that their partner:
- (i) is employed and entitled to 3 weeks or less paid parenting/maternity leave; and
  - (ii) is returning to work within 6 weeks of the child being born.

### *Miscellaneous provisions*

- (f) In all other cases not covered by subclauses (c) to (e) workers are entitled to 6 weeks paid parenting leave and the balance unpaid.
- (g) A worker with less than 12 months service is entitled to paid and unpaid parental leave on a pro rata basis.

- (h) A worker may elect to convert a period of paid leave to half pay over double the period.
- (i) A female worker will not be directed by the Centre to carry out work which may endanger her pregnancy.
- (j) Where a pregnancy for which parental leave is planned, including leave to adopt the child, terminates other than in the birth of a living child, or where an adoption does not proceed, the associated leave will be cancelled.

A worker on parental leave may, by giving 4 weeks written notice, return to work before the scheduled end of their parental leave.

- (k) Workers are also entitled to the maternity, paternity and adoption leave provisions of the NSW Industrial Relations Act, as amended.
- (l) Upon returning from parenting leave a worker is entitled to:
  - (i) work part time in the same position they held prior to taking parenting leave or, if this is not reasonably practical, in another position of similar duties and status, at hours and days agreed with the Centre and for an agreed period; or
  - (ii) return to their previous position at the pre-leave hours and conditions of employment.
- (m) Absence on unpaid parental leave does not break continuity of service but does not count as service for the purposes of calculating increments or any entitlements to leave under this Agreement. The conversion of full pay leave to half pay over double the period under subclause (h) is to be regarded, for the purpose of calculating periods service, as being the period of full pay leave.

#### **46 Bereavement leave**

- (a) A worker may take five days paid leave a year (non-cumulative) in the event of the death or serious illness of a person with whom the worker has a bona fide domestic or familial relationship, or other significant bond.

This clause extends to the obligation of a worker under Aboriginal or Torres Strait Islander custom or traditional law to participate in ceremonial activities related to bereavement.

- (b) The Centre may require the worker to provide reasonable evidence of the death or serious illness, and may extend the period of leave on compassionate grounds.

#### **47 Special leave**

- (a) A worker may take in each year 5 days paid and 5 days unpaid leave (both non-cumulative) for special or pressing occasions, including ceremonial or

traditional law obligations, or religious or culturally significant days, as well one moving day, subject to prior approval by the Centre.

- (b) If a worker has exhausted their bereavement leave entitlements the Centre may allow the worker to take special leave instead.
- (c) In general special leave should be approved in advance, however the Centre recognises that in some cases this won't be practical.
- (d) Particularly in respect of a worker obliged under Aboriginal or Torres Strait Islander custom or tradition to participate in ceremonial activities related to bereavement, the centre will give special consideration to any request, under subclause 34(b), to extend the paid or unpaid leave available under this clause.

#### **48 Jury service leave**

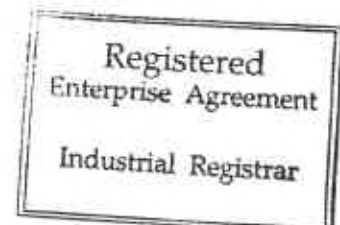
- (a) Provided a worker gives the Centre adequate notice, evidence of the duration of their attendance and the amount of fees received from the court, the Centre will pay to a worker who was called for jury service the difference between salary and court fees.

#### **49 Study leave**

- (a) A worker is entitled to three hours paid leave per week to attend courses approved by the Centre, or three hours unpaid leave per week to attend courses which are not approved by the Centre.
- (b) Study leave may be accrued throughout the year to be taken prior to exams or other forms of assessment, as a block of no more than 5 days.
- (c) A worker is entitled to paid leave to attend exams in courses approved by the Centre, or to unpaid leave to attend exams in courses which are not approved by the Centre.
- (d) Where a worker wishes to take more than one day of study leave consecutively, then approval is to be sought from the Management Committee.
- (e) These provisions are to be read in association with Attachment D "Study Leave Guidelines".

#### **50 Sabbatical leave**

- (a) After 3 years of service the Centre may allow a worker to take up to 3 weeks paid sabbatical leave and accumulate a further week's sabbatical leave for every year of service after the third year.
- (b) Sabbatical leave is available to undertake activities which enhance the worker's skills, knowledge or experience relevant to their work, such as to



do research, field visits, work placements or courses of study, amongst other things.

- (c) Sabbatical leave is not to be used for activities which are part of the worker's normal staff training and development and which should ordinarily happen as part of the worker's employment (see clause 26) or for which study leave should be available (cl 48).
- (d) Paid leave is available to undertake other activities such as work placements, for example, only where no payment is received by the worker for the performance of those activities, apart from payment under this clause.

If payment is received by a worker for those other activities, but that payment is less than their normal salary from the Centre, the Centre will make-up the difference through payments under this clause. Such make-up pay does not extend the period of leave available under this clause.

**51 Trade union training leave**

- (a) A worker is entitled to take 5 days paid leave (non-cumulative) a year to attend courses run by the Union or the Trade Union Training Authority.

**PART VII - GRIEVANCE, COUNSELLING & DISCIPLINARY PROCEDURES, TERMINATION, INTRODUCTION OF CHANGE, AND REDUNDANCY**

**52 Grievance and dispute settling procedures**

- (a) The Centre and its workers recognise that individual and group problems arise from time to time and it's necessary to resolve these problems quickly. The Management Committee and the workers are committed to resolving grievances through open communication and in a manner consistent with cooperative work practices.
- (b) In the interests of a harmonious and productive workplace the Centre requires that all workers attend conflict resolution training within the first 12 months of their employment. All existing workers will attend conflict resolution training within 12 months of this Agreement (unless they have already attended such training).
- (c) Subject to subclause (d), a grievance includes a complaint or dispute and may relate to:
- any condition of employment, or any provision of this Agreement, and the way its been applied by the Centre;
  - a decision of the Centre/ Management Committee which affects a worker or group of workers;
  - the behaviour or conduct of another worker or of a member of the Management Committee;
  - any decision or action taken under the Counselling & Disciplinary Procedure of this Agreement ; or
  - any other matter that affects a worker in their employment.

- (d) At all stages of the grievance process the Centre will ensure that the principles of natural justice are observed and employed.
- (e) At all stages of the grievance process the Centre will ensure that the privacy of all affected workers are respected and confidentiality observed.
- (f) The Centre recognises that some "disputes" between workers are more properly dealt with under the counselling and disciplinary procedure in respect of the conduct of one or more workers. An example would be harassment of one worker by another.
- (g) *Informal process*  
Where a worker has a grievance which involves the conduct of another worker or workers, or a non-staff member of the Management Committee, it is generally to be expected the worker will discuss the matter with that person, or through staff meetings, before pursuing the formal steps of this grievance procedure.

However, the Centre also recognises it is difficult in sensitive cases to expect a worker to confront a co-worker or Management Committee member over their behaviour or conduct. Similarly, having regard to the rights of individuals to privacy, disputes between workers should normally be raised at staff meetings on a consensus basis only.

Where it is appropriate, and agreeable to the people involved, the Co-ordinator, another staff member, a non-staff member of the Management Committee or an outsider may play a mediatory role.

- (h) *Formal process*  
Where a worker (or workers) has a grievance they should pursue the following steps and may have a representative of the Union, a co-worker or another person of their choice assisting them:

*Step 1*

The worker(s) should raise the grievance with the Chair of the Management Committee, and the Chair or another (non-staff) Executive member will make every attempt to resolve the matter promptly, but at least within 7 days.

*Step 2*

If the matter remains unresolved, the worker(s) should request the Chair to refer the grievance to the Management Committee, and the worker(s) should provide details of their grievance in writing, if they haven't already done this.

The Chair will convene a meeting of the non-staff members of the Management Committee within 14 days. The Management Committee will



attempt to resolve the matter as promptly as possible, in a manner consistent with natural justice principles and which allows all viewpoints to be considered. The committee should attempt to resolve the matter at that meeting, but in any case to give the worker a response to the grievance within a week of that meeting.

If the grievance involves the conduct or behaviour of a non-staff member of the Management Committee, that member will be excluded from the meeting but should be consulted over the matter.

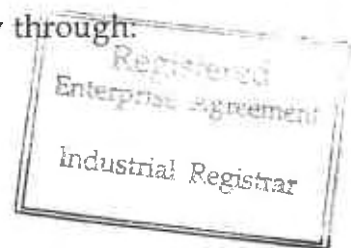
### *Step 3*

If the matter remains unresolved the Union in consultation with the worker(s) may lodge a dispute to the NSW Industrial Relations Commission.

- (i) Where a grievance relates to a change to the existing custom and practice of the Centre, work will continue at the Centre in accordance with existing custom and practice until the grievance process has been exhausted.
- (j) At any stage of the grievance process the parties may agree to asking an independent person from outside the Centre to play a mediatory role.
- (k) Nothing in this grievance procedure prevents a worker or workers pursuing a complaint under any relevant state or commonwealth legislation, eg the Anti-Discrimination Act.

### **53 Termination of employment**

- (a) Termination of employment will not be harsh, unfair or unreasonable having regard to all the circumstances, including the personal circumstances of the worker.
- (b) Without limiting the above, except where a distinction, exclusion or preference is based on the inherent requirements of a position, it is deemed harsh, unjust and unreasonable to terminate employment on the grounds of race, colour, sex, marital status, sexual preference, age, family responsibilities, pregnancy, religion, political opinion, national extraction and social origin.
- (c) A worker's employment may be terminated by the Centre only through:
  - summary dismissal;
  - the counselling and disciplinary procedure;
  - invalidity; or
  - redundancy.
- (d) Subclauses (b) & (c) will not apply in the case of a casual or fixed term worker whose employment ceases when the period they were employed for has ended.
- (e) A worker will give 2 weeks notice of resignation or retirement.



- (f) Upon termination of employment for any reason the Centre will give the worker a certificate of employment containing the following:
- worker's name
  - period of employment
  - title of position
  - salary scale
  - nature of work, including numbers of staff supervised, if applicable
  - name of employer organisation
  - signature of the Chair or Secretary and dated

**54 Counselling and disciplinary procedures**

- (a) Counselling and disciplinary action is aimed at improving the performance of a worker or correcting their behaviour, with a view to maintaining an appropriate standard of service by the Centre. A problem solving approach should be adopted, rather than a punitive one.
- (b) Prior to using these counselling and disciplinary procedures the non-staff members of the Executive must satisfy themselves that there is a problem with a worker's performance or behaviour.
- (c) The Centre will ensure that the principles of natural justice are observed and employed at all stages of the counselling and disciplinary process.
- (d) Where the non-staff members of the Executive are satisfied that the worker's performance or behaviour is unsatisfactory the process set out in this section will be followed and the worker may have a Union representative, a legal adviser, a co-worker or another person of their choice assist them at all stages.
- (e) The worker may lodge a grievance (under the Grievance & Dispute Settling Process) about any action or decision taken under this section.
- (f) The Counselling and Disciplinary Process

*Step 1 Informal counselling*

A non-staff member of the Executive will meet with the worker and identify the area of unsatisfactory performance or behaviour. The worker must have outlined to them the standard of performance or behaviour that is expected of them and be given guidance as to how to meet that standard.

It may be appropriate to canvass any training needs or support the worker may need. Follow up sessions may be appropriate and a review period could be set. The worker should have explained to them the implications of failing to meet the required standard of performance or behaviour.



Although the Executive may record that the worker was counselled, no record is to be kept of the discussion during the counselling session.

Step 1 may be missed if the issue of a worker's performance or behaviour is serious and demands formal action to be taken.

### *Step 2 Formal Counselling*

If the worker's performance or behaviour has failed to improve after step 1, or if the Executive believes Step 1 is inappropriate, the worker will be formally counselled. The worker will be given two days advance written notice of the counselling session, which will be conducted by a non-staff member of the Executive. The worker will be provided with a copy of this clause and any other policy or document the centre has adopted relating to counselling or disciplinary action.

Formal counselling will follow similar principles to informal counselling, but a record will be made. A copy of the counselling record will be given to the worker and another copy, witnessed and signed by the worker, placed on their personnel file. A time period will be set (preferably one the worker agrees to) during which the worker's performance or behaviour should improve and a review conducted at the end of that time. If the worker's performance or behaviour has improved, but not to the required standard, the Executive may decide to a further review period.

The record kept on the worker's personnel file will be destroyed after 6 months if there has been no recurrence of the problem in that time.

If following formal counselling, either through a single session or several, the Executive is satisfied the worker's performance has not reached the required standard of performance or behaviour, the Executive should set a final review period and issue the worker with a written warning. The written warning should explain to the worker:

- the problem identified with the worker's performance or behaviour and the standard expected of the worker;
- the review period set;
- the remaining steps of the counselling and disciplinary procedures under this Agreement;
- should the worker's performance or behaviour not reach the standard expected of the worker the Executive will instigate action under Step 3 of this clause; and
- the potential that Steps 4 & 5 of this clause may be instigated, leading possibly to dismissal, salary reduction or change in job responsibilities.

### *Step 3 Written warning*

If there is insufficient or no improvement within the review period the Executive will issue the worker with a written notice which:



- (a) sets out the remainder of the counselling and disciplinary procedure;
- (b) sets out a further review period;
- (c) identifies the problem with the worker's performance or behaviour and the standard expected of them; and
- (d) warns the worker that if the problem persists they may be dismissed, transferred, or transferred and demoted.

A copy of the warning will also be placed on the worker's personnel file and it and any related documents will be destroyed if there is no recurrence of the problem within 6 months.

The worker will be again counselled as to strategies to improve their behaviour or performance.

*Step 4 Final written warning*

If by the end of the review period the worker's performance or behaviour has not met the required standard, the worker will meet with the Chair of the Management Committee or their nominee from the Executive, and be given a written notice stating that:

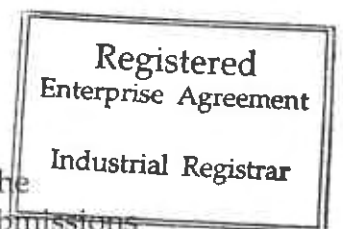
- (a) their performance or behaviour has failed to reach the required standard;
- (b) the Executive is satisfied that good reasons exist to either:
  - (i) dismiss the worker; or
  - (ii) transfer them to another position at the same or lower salary; or,
  - (iii) reduce their salary and/or current job responsibility, specifying which one of the options the Executive intends to take and why; and
- (c) the worker has fourteen (14) days in which to give written cause why the non-staff members of the Management Committee should not take the action specified at (b), above.

The Executive may decide, given the circumstances of the worker's conduct or the implications for the Centre's operations, to suspend the worker with pay, pending the outcome of Step 5.

The grievance procedure does not apply to a decision to suspend under this subclause.

*Step 5 Dismissal, transfer or salary reduction*

At the end of the fourteen (14) days the non-staff members of the Management Committee will consider any oral and written submissions from the worker and decide whether to proceed with the dismissal, transfer or change in responsibilities and/or salary reduction specified in the final written warning and, subject to subclause 54(g), below, will give at least 14 days notice of any decision taking effect, or pay the worker in lieu of notice.



After considering any submission by the worker, the non-staff members of the Management Committee may elect to

- (a) transfer or reduce job responsibilities, and/or reduce salary, rather than dismiss; or
- (b) reduce job responsibilities rather than transfer the worker; and/or
- (c) impose a lesser salary reduction.

Any decision taken by the non-staff members of the Management Committee in the previous two paragraphs must be by a majority of two-thirds of those present and eligible to vote at the meeting.

The affected worker is entitled to address the meeting and will be given written notice of the time, location and date of the meeting.

(g) Notice periods

A worker is entitled to the following notice periods for any decision under this process to dismiss or to reduce salary:

<i>Period of Service</i>	<i>Under 45 years of age</i>	<i>Over 45 years of age</i>
Less than 1 year	2 weeks	2 weeks
1 year and up to 3 years	3 weeks	3 weeks
3 years and up to 5 years	3 weeks	4 weeks
5 years and over	4 weeks	5 weeks

**55 Summary dismissal**

- (a) Nothing in this Agreement limits the power of the Centre to summarily dismiss a worker for serious misconduct.

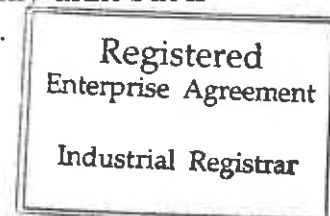
Such a decision to summarily dismiss must be taken by a two-thirds majority of non-staff members of the Management Committee.

- (b) The Executive may decide, given the circumstances of the worker's conduct or the implications for the Centre's operations, to suspend the worker with pay, pending a decision by the non-staff members of the Management Committee.

The grievance procedure does not apply to any decision under this clause.

**56 Invalidity**

- (a) The Centre may decide to terminate a worker's employment where the worker is permanently unfit for work in their current position or, if given appropriate training, would not be fit to perform alternative, available work within the Centre.
- (b) Subclause (a) applies equally to a worker who is not permanently unfit but is expected to be temporarily unfit for a period of at least 2 years.

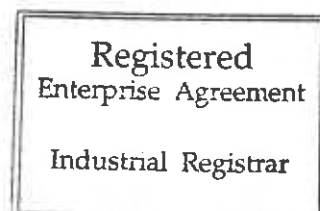


- (c) The Centre will employ the principles of reasonable adjustment in considering the availability of alternative work for the worker. The Centre must also consider its obligations under the Disability Discrimination Act, the Anti-Discrimination Act and the Workers Compensation Act.
- (d) Where the non-staff members of the Management Committee believe it may be appropriate to terminate a worker's employment under this section it will:
- write to the worker advising them of the possibility of their employment being terminated and their associated rights, severance payments and other entitlements;
  - invite within 14 days written or oral submissions by them or a representative of their choice;
  - refer the matter to the non-staff members of the Executive for a decision; and
  - advise the worker that they may lodge a grievance to the Management Committee (as set out in this Agreement) about the final decision or any other matter leading up to it.
- (e) In deciding whether or not to terminate a worker's employment under this section the non-staff members of the Executive or Management Committee must rely on medical evidence and all other relevant circumstances. Any decision by the worker's superannuation fund to make or not make a payment for disability is relevant but not conclusive.
- (f) If a decision is made to terminate employment on the grounds of invalidity the worker will be given 14 days notice of the decision taking affect, advised of the grievance process, and will be entitled to all unused sick leave and carers leave, as well as unused leave under subclause 37(a), plus the severance payments set out at table 2.
- (g) Nothing in this section should be taken to make it compulsory for the Centre to terminate on the grounds of invalidity.

**57 Redundancy and the introduction of change**

- (a) The Centre will notify and fully consult its workers and the Union in advance of any change, for example, in funding, budget allocation, technology, work practices, policy or work structure, that has the potential for significant affects on the employment status, classification, job responsibilities, re-training needs, job opportunities, tenure, hours of work or location of work of any worker. The Centre will make all efforts to avert or minimise disadvantage to individual workers.

In accordance with the principles at subclause 51(j), the Centre will not take any preemptive action until consultation with staff and/or the Union have been exhausted.



- (b) Where the Centre, following consultation in accordance with sub-clause 50.1, decides that a specific worker's:
- employment must be terminated through redundancy; or
  - hours of work must be reduced; or
  - classification and/or salary must be reduced
- the Centre will immediately notify in writing the Union and the worker affected. The Centre will enter into consultations with the Union and/or worker and demonstrate that there is no reasonable alternative to the proposed action and that other options have been canvassed. The Centre will make all attempts to secure employment for the affected worker at another community legal centre.
- (c) Prior to giving notice to a specific worker of termination or reduction of hours under subclause (b), the Centre will invite expressions of interest from other workers to reduce their hours or to take voluntary redundancy in substitution to the specified worker.

The Centre must seriously consider any such expression of interest from another worker and will not unreasonably refuse the offer where the substitution will not materially affect the Centre's operations, having regard to the skills, experience and re-training opportunities of both workers.

A worker who volunteers under this subclause is entitled to all the periods of notice, payments under Table 2 and other conditions under this Agreement as if the worker was the subject of the decision under subclause (b).

- (d) A worker is entitled to at least 4 weeks written notice before the Centre implements a decision referred to at Subclause (b), or implements a decision to significantly alter a worker's job responsibilities (where that change does not also involve a reduction in salary).
- (e) A worker who is subject to a decision at subclause (b) is entitled to severance pay or salary maintenance, whichever is appropriate, for the periods set out in table 2, in addition to the 4 week notice period under subclause (d).
- (f) Fixed term workers who have been employed for at least 12 months at the time of the decision to terminate employment are entitled to the full severance pay and notice period. Fixed term workers of less than 12 months employment are entitled to pro rata notice and severance pay.

However, the combined period of notice and severance pay to a fixed term worker is to be reduced by the period it exceeds the end of the fixed term worker's contracted employment.

- (g) A worker who was made redundant within the last 12 months will be given preference in employment to any advertised vacancy where they and another applicant are otherwise of equal merit.



Within 12 months of the redundancy occurring the centre will make every effort to notify that worker of any available position within the Centre which is the same or of similar work.

- (h) A worker may terminate their employment before the end of the 4 week notice period under subclause (d). The worker will still receive the severance pay or salary maintenance payments, but will not be paid out the remainder of the notice period.
- (i) During the 4 week notice period under subclause (d) a worker is entitled to one day per week on paid time to seek alternative employment.
- (j) When a decision is made under subclause (b) to terminate a worker's employment, the Centre will notify the local office of the CES (or its statutory successor) as soon as possible, giving relevant information including the number of workers affected, the timeframe involved and the nature of the work performed by the workers affected.
- (k) The Centre may, in respect of a specific termination under this clause, apply to the NSW Industrial Relations Commission to reduce the severance payments at Table 2 on the basis of financial incapacity to pay. The Centre may not make such an application in respect of a worker who elects to take voluntary redundancy under subclause (c).

#### 58 Anti-discrimination

- (a) It is the intention of the parties to this agreement to seek to achieve the object in sec 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age.
- (b) It follows that in fulfilling their obligations under the dispute resolution procedure set out in this agreement the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this agreement are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfillment of these obligations for the parties to make application to vary any provision of the agreement which, by its terms or operation, has a direct or indirect discriminatory effect.
- (c) Under the *Anti - Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (d) Nothing in this clause is to be taken to affect:
  - (i) any conduct or act which is specifically exempted from anti-discrimination legislation;



- (ii) offering or providing junior rates of pay to persons under 21 years of age;
  - (iii) any act or practice of a body established to propagate religion which is exempted under sec 56(d) of the *Anti-Discrimination Act 1977*;
  - (iv) a party to this agreement from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (e) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### 59 Union membership

- (a) The Centre supports the role of the Union in representing workers and will encourage all existing and new workers to be members of the Union, and will provide all new workers with a Union membership application.
- (b) On being notified in writing by the Union that a worker has been appointed as a workplace delegate, the Centre will recognise the worker as an accredited representative of the Union and allow them:
  - (i) reasonable time in working hours without loss of pay to perform the task required to effectively represent the union members in the workplace;
  - (ii) reasonable private access to union members to discuss union business and to non-union members for recruitment purposes; and
  - (iii) reasonable access to the representatives of the employer for the purpose of resolving issues of concern to union members.
- (c) The Centre will not obstruct legitimate union activity by workers or a Union official, will allow a reasonable time for union activities on paid time, including Union conferences or representative committees, and will not disadvantage or victimise workers involved in legitimate industrial action.
- (d) The Centre will not refuse to a worker access to payroll deductions to the Union.
- (e) The Centre will not discriminate against or disadvantage a worker, nor reduce or deny them their full employment rights and entitlements, in response to that worker participating in legitimate industrial action or union activity.

#### 60 General Savings

- (a) Nothing in this Agreement is to detrimentally affect or reduce the contingent rights to any form of leave which a worker may have accrued prior to the introduction of this Agreement.
- (b) Nothing in this Agreement is to detrimentally affect or reduce the entitlements or rights a worker may have under any other award.



legislation, agreement or contract of employment, whether it accrued before or after the date of this Agreement.

**Table 1** Miscellaneous allowances and payments

Motor Vehicle Allowance	46 c per kilometre
Maximum motor vehicle accident indemnity	\$300.00
Meal allowances	
(a) Breakfast	\$10
(b) Lunch	\$15
(c) Dinner	\$25
Accommodation	
Capital city	\$100 per day
Elsewhere	\$60 per day

**Table 2** Redundancy, invalidity and salary maintenance payments

Period of Employment	Under 45 years of age	Over 45 years of age
<i>Less than 3 years</i>	5 weeks	6 weeks
<i>3 years and up to 4 years</i>	6 weeks	7.5 weeks
<i>4 years and over</i>	7 weeks	8.5 weeks



Signed for and on behalf of the  
Blue Mountains Community Legal Centre

*Anna Coal Taylor*  
.....  
Witness

*[Signature]*  
..... 14/4/03  
CHAIRPERSON  
Date:

Signed for and on behalf of the  
Australian Services Union of NSW

*J. The*  
.....  
Witness

*[Signature]*  
.....  
Secretary

Date:  
14/4/03

