



**Professional Childcare Standard 2010:  
An Agreement for Staff in Victorian Early Childhood Education  
and Care.**

Clause	<b>PART ONE: HOW THIS AGREEMENT WORKS</b>	Pg.
1	Title and Parties	4
2	Term of the Agreement	5
	<b>PART TWO: STARTING OR FINISHING WORK IN A VICTORIAN CHILDREN'S CENTRE</b>	
3	Types of Employees	6
4	Starting Work	6
5	Individual Flexibility Arrangement	7
6	Finishing Work	8
7	Notice of Termination	9
8	Redundancy	13
	<b>PART THREE: EMPLOYEE ENTITLEMENTS AT VICTORIAN CHILDREN'S CENTRES</b>	
9	Summary of Entitlements	19
10	Minimum Rate of Pay	19
11	Ordinary Hours of Work and the Roster	21
12	Breaks and Preparation Time	23
13	Shift Work	24
14	Overtime	25
15	Public Holidays	27
16	Allowances	29
17	Annual Leave	31
18	Personal Leave	34
19	Compassionate Leave	37
20	Infectious Diseases Leave	37
21	Leave to Attend Placements	38
22	Union Training Leave	38
23	Parental Leave	40
24	Long Service Leave	49
25	Jury Service Leave	49
26	Leave to Attend Examinations	50
27	Professional Development	50
28	Superannuation	51

29	Accident Pay	53
	<b>PART FOUR: COMMUNICATION AND RELATIONSHIPS</b>	
30	Procedure to Resolve Grievances and Disputes	55
31	Disciplinary Procedures	56
32	The Role of Employee Representatives	59
33	Introduction of Change	59
34	Stand Down	60
35	Union Meetings	60
36	Union Dues	61
	<b>PART FIVE: SAVINGS PROVISIONS</b>	
37	No Disadvantage	61
38	Savings Provision	61
	<b>SCHEDULE ONE: PAY RATES AND CLASSIFICATION STRUCTURE</b>	
	<b>SCHEDULE TWO: SALARY PACKAGING</b>	
	Signature Pages	
	<b>SCHEDULE THREE: RESPONDENTS</b>	

## **PART ONE: HOW THIS AGREEMENT WORKS**

### **1. TITLE AND PARTIES**

1.1. This agreement is called the Professional Childcare Standard 2010.

1.2. This agreement is between:

1.2.1. the Liquor, Hospitality and Miscellaneous Union (“the Union”); and

1.2.2. the Victorian Childrens Services Association Inc; and

1.2.3. the children’s centres that are listed in Schedule Three; and

1.2.4. the employees of the children’s centres that are listed in Schedule Three, who work in a job that is described in this agreement.

1.3. In this agreement, the children’s centres that are listed in Schedule Three are referred to collectively as “the children’s centres”, or singly as “the children’s centre” or “the centre” or “the employer”.

#### Where this agreement applies and does not apply

1.4. This agreement applies to the employees of the children’s centres that are listed in Schedule Three of this Agreement, who work in a job as described in the classification structure in Schedule One of this Agreement.

1.5. This agreement does not apply to an employee who works in a job that is not described in the classification structure in Schedule One, or who has skills and experience beyond that which is described in the classification structure.

1.6. This agreement does not apply to an employee who is already covered by another collective agreement at the date this agreement commences operation

## **2. TERM OF THE AGREEMENT**

2.1. This agreement comes into operation from the date of approval of Fair Work Australia and expires on 30 June 2012.

## **PART TWO: STARTING OR FINISHING EMPLOYMENT IN A VICTORIAN CHILDREN'S CENTRE**

### **3. TYPES OF EMPLOYEES**

3.1. Children's services workers can work in Victorian community children's centres in either a full time, part time or casual capacity:

3.1.1. A "**full time**" employee works 38 hours a week or an average of 38 hours a week;

3.1.2. A "**part time**" employee works less than 38 hours a week, which are reasonably predictable hours, and is paid equivalent pay and conditions to full time employees, on a pro-rata basis;

3.1.3. A "**casual**" employee is not a full-time or regular part-time employee and shall be paid per hour 1/38th of the weekly wage prescribed for his or her classification plus 25% for all work done. Work performed on weekends or public holidays shall be paid at ordinary time plus 75% (except where a public holiday is substituted for another day in accordance with clause 15.6 of this agreement). Casuals shall be excluded from the provisions of clause 14 - Overtime, clause 18 - Personal/carer's leave (save for the entitlement to leave to care for members of their immediate family, or upon the death of an immediate family member, in accordance with clause 18.4 of this agreement), clause 19 – Infectious disease leave and clause 17 - Annual leave.

### **4. STARTING WORK**

4.1. When an employee starts work, the Children's Centre will provide the employee with a letter setting out employment status, classification and rate of pay. For permanent employees, the letter should specify the hours to be worked each day, the days of the week on which the employee shall work, and the actual starting and finishing times each day. If these hours are changed, it should occur by mutual agreement and be recorded in writing.

4.2. Probationary period.

4.2.1. "Probationary period" is a period of employment whereby a new employee, other than a relief, emergency or replacement employee is employed subject to the provisions of this clause.

4.2.2. Where an employer elects to implement a probationary period, such probationary period shall:

4.2.2.1. be notified to the employee in writing by the employer prior to the commencement of his/her employment; and

4.2.2.2. be of 12 weeks or three months duration.

## **5. INDIVIDUAL FLEXIBILITY ARRANGEMENT**

5.1. An employer and an employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

5.1.1. the agreement deals with 1 or more of the following matters:

5.1.1.1. arrangements about when work is performed;

5.1.1.2. overtime rates;

5.1.1.3. penalty rates;

5.1.1.4. allowances;

5.1.1.5. leave loading; and

5.1.2. the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (5.1.1); and

5.1.3. the arrangement is genuinely agreed to by the employer and employee.

5.2. The employer must ensure that the terms of the individual flexibility arrangement:

5.2.1. are about permitted matters under section 172 of the *Fair Work Act 2009*; and

5.2.2. are not unlawful terms under section 194 of the *Fair Work Act 2009*; and

5.2.3. result in the employee being better off overall than the employee would be if no arrangement was made.

5.3. The employer must ensure that the individual flexibility arrangement:

5.3.1. is in writing; and

5.3.2. includes the name of the employer and employee; and

5.3.3. is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and

5.3.4. includes details of:

5.3.4.1. the terms of the enterprise agreement that will be varied by the arrangement; and

5.3.4.2. how the arrangement will vary the effect of the terms; and

5.3.4.3. how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and

5.3.4.4. States the day on which the arrangement commences.

5.4. The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

5.5. The employer or employee may terminate the individual flexibility arrangement:

5.5.1. by giving no more than 28 days written notice to the other party to the arrangement;  
or

5.5.2. if the employer and employee agree in writing — at any time.

## **6. FINISHING WORK**

6.1. When an employee ceases his/her employment, the Children's Centre will provide the employee with:

6.1.1. a statement of service;

6.1.2. any unpaid wages;

6.1.3. notice or pay in lieu of notice (if applicable);

6.1.4. redundancy pay (only in cases of redundancy);

6.1.5. accumulated annual leave (if applicable);

6.1.6. long service leave (if applicable).

## 7. NOTICE OF TERMINATION

### 7.1. Notice of termination by the employer

7.1.1. In order to terminate the employment of an employee the Children’s Centre must give the employee at least the amount of notice specified in the table below:

<b>Period of continuous service</b>	<b>Period of notice</b>
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

7.1.2. In addition to the notice in 7.1.1, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week’s notice.

7.1.3. Payment in lieu of the prescribed notice in 7.1.1 and 7.1.2 must be made if the appropriate notice period is not required to be worked. Provided that employment may be terminated by the employee working part of the required period of notice and by the Children’s Centre making payment for the remainder of the period of notice.

7.1.4. The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the Children's Centre would have become liable to pay to the employee because of the employment continuing during that period. That total must be calculated on the basis of:

7.1.4.1. the employee's ordinary hours of work (even if not standard hours); and

7.1.4.2. the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and

7.1.4.3. any other amounts payable under the employee's contract of employment.

7.1.5. The period of notice in this clause does not apply:

7.1.5.1. in the case of dismissal for serious misconduct;

7.1.5.2. to apprentices;

7.1.5.3. to employees engaged for a specific period of time or for a specific task or tasks;

7.1.5.4. to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement; or

7.1.5.5. to casual employees.

## 7.2. Continuous service.

7.2.1. For the purpose of this clause, service shall be deemed to be continuous notwithstanding:

7.2.1.1. any interruption or termination of the employment by an employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence; or

7.2.1.2. any absence from work on account of personal sickness or accident or on account of leave lawfully granted by an employer, or

7.2.1.3. any absence with reasonable cause proof whereof shall lie upon the employee.

7.2.2. In cases of personal sickness or accident or absence with reasonable cause, an employee to become entitled to the benefit of this subclause shall inform his/her employer, in writing if practicable, within 24 hours of the commencement of such absence of his or her inability for duty as far as practicable the nature of the illness, injury or cause and the estimated duration of his/her absence. A notification given by an employee pursuant to clause 18– Personal/carer’s leave, shall be accepted as notification under this subclause.

7.2.3. Any absence from work by reason of any cause not being a cause specified in this subclause shall not be deemed to break the continuity of service for purposes of this clause unless an employer during the absence or within fourteen days of the termination of the absence notifies the employee in writing that such absence will be regarded as having broken the continuity of service.

7.2.4. A notice to an individual employee may be given by delivering it to him/her personally or by posting it to his/her last recorded address in which case it shall be deemed to have reached him/her in due course of post.

7.2.5. In calculating the period of twelve months’ continuous service any such absence as aforesaid shall not, except to the extent of not more than fourteen days in a twelve monthly period in the case of sickness or accident, be taken into account in calculating the period of twelve months’ continuous service.

### 7.3. Notice of termination by an employee

7.3.1. The notice of termination required to be given by an employee is the same as that required of the Children's Centre, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.

7.3.2. If an employee fails to give the notice specified in 7.1.1 the Children's Centre has the right to withhold monies due to the employee to a maximum amount equal to the amount the employee would have received under 7.1.4.

### 7.4. Job search entitlement

7.4.1. Where the Children's Centre has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee after consultation with the Centre.

### 7.5. Transmission of business

7.5.1. Where a business is transmitted from one community Children's Centre to another, as set out in clause 8 - Redundancy, the period of continuous service that the employee had with the transmittor or any prior transmittor is deemed to be service with the transmittee and taken into account when calculating notice of termination. However, an employee shall not be entitled to notice of termination or payment in lieu of notice for any period of continuous service in respect of which notice has already been given or paid for.

## 8. REDUNDANCY

### 8.1. Definitions

8.1.1. “**Business**” means the business of the employer (including externally funded programs) or occupation as conducted by the employer who is a party to this Agreement and includes part of any such business.

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

8.1.3. “**Small employer**” means an employer who employs fewer than 15 employees.

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

8.1.5. “**Week’s pay**” means the ordinary time rate of pay for the employee concerned provided that such rate shall exclude:

- 8.1.5.1. overtime;
- 8.1.5.2. penalty rates;
- 8.1.5.3. disability allowances;
- 8.1.5.4. shift allowances;
- 8.1.5.5. special rates;
- 8.1.5.6. fares and travelling time allowances;
- 8.1.5.7. bonuses; and
- 8.1.5.8. any other ancillary payments of a like nature.

### 8.2. Transfer to lower paid duties.

8.2.1. Where an employee is transferred to lower paid duties by reason of redundancy the same period of notice must be given as the employee would have been entitled to if the employment had been terminated. The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

8.3. Severance pay where the children's centre employs more than 15 employees.

8.3.1. An employee, other than an employee of a small employer whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 week's pay*
2 years and less than 3 years	6 week's pay
3 years and less than 4 years	7 week's pay
4 years and less than 5 years	8 week's pay
5 years and less than 6 years	10 week's pay
6 years and less than 7 years	11 week's pay
7 years and less than 8 years	13 week's pay
8 years and less than 9 years	14 week's pay
9 years and less than 10 years	16 week's pay
10 years and over	12 week's pay

**Week's pay** is defined in 8.1.5.

8.4. Severance pay where the children's centre employs less than 15 employees.

8.4.1. An employee of a small employer whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service.

<b>Period of continuous service</b>	<b>Severance pay</b>
Less than 1 year	Nil
1 year and less than 2 years	4 week's pay*
2 years and less than 3 years	6 week's pay
3 years and less than 4 years	7 week's pay
4 years and over	8 week's pay

**Week's pay** is defined in 8.1.5.

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

8.4.3. Continuity of service shall be calculated in the manner prescribed by clause 7.2.

#### 8.5. Employee leaving during notice period

8.5.1. An employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in clause 7 - Notice of Termination. In this circumstance the employee will be entitled to receive the benefits and payments he/she would have received under this clause had he/she remained with the community children's centre until the expiry of the notice, but will not be entitled to payment in lieu of notice.

#### 8.6. Alternative employment

8.6.1. The provisions of this clause are not applicable where:

8.6.1.1. an employee's position becomes redundant, but the employee accepts alternative employment with the community children's centre which recognises his or her service is continuous;

8.6.1.2. an employee's position becomes redundant, and the employee rejects an offer of alternative employment with community children's centre where:

8.6.1.2.1. the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmitter; and

8.6.1.2.2. the terms and conditions include recognition of continuous the employees' entire period of service with community children's centre.

8.6.2. This provision does not apply in circumstances involving transmission of business as set out in 7.5.

## 8.7. Job search entitlement

8.7.1. During the period of notice of termination given by the community children's centre in accordance with clause 7.1, an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

8.7.2. If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the children's centre, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

8.7.3. The job search entitlements under this subclause apply in lieu of the provisions of 7.2.7.

## 8.8. Transmission of business

8.8.1. The provisions of this clause are not applicable where the business transmits from one children's centre (in this subclause called the **transmittor**) to another children's centre (in this subclause called the **transmittee**), in any of the following circumstances:

8.8.1.1. Where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee; or

8.8.1.2. Where the employee rejects an offer of employment with the transmittee:

8.8.1.2.1. in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and

8.8.1.2.2. which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.

## 8.9. Employees exempted

8.9.1. This clause does not apply to:

8.9.2. employees terminated as a consequence of serious misconduct that justifies dismissal without notice;

8.9.2.1. probationary employees;

8.9.2.2. apprentices;

8.9.2.3. trainees;

8.9.2.4. employees engaged for a specific period of time or for a specified task or tasks; or

8.9.2.5. casual employees

8.10. Incapacity to pay

8.10.1. Fair Work Australia (or its successors) may vary the severance pay prescription on the basis of a centre's incapacity to pay. An application for variation may be made by centre or a group of centres.

## **PART THREE – EMPLOYEE ENTITLEMENTS AT VICTORIAN CHILDREN’S CENTRES**

### **9. SUMMARY OF ENTITLEMENTS**

9.1. All employees of Victorian community children’s centres are entitled to the following rights at work:

- 9.1.1. a minimum rate of pay;
- 9.1.2. set hours of work, in accordance with a roster (except casual employees);
- 9.1.3. appropriate breaks and preparation time;
- 9.1.4. appropriate compensation for working shift work (if applicable);
- 9.1.5. appropriate compensation for working overtime, including on weekends (if applicable) (except casuals);
- 9.1.6. public holidays, or appropriate compensation for working on public holidays (if applicable);
- 9.1.7. allowances (where applicable);
- 9.1.8. annual leave (except casuals);
- 9.1.9. personal and carers leave (except casuals);
- 9.1.10. compassionate leave;
- 9.1.11. infectious diseases leave (except casuals);
- 9.1.12. leave to attend training related placements;
- 9.1.13. parental leave;
- 9.1.14. long service leave;
- 9.1.15. jury service leave;
- 9.1.16. appropriate time for professional development;
- 9.1.17. leave to attend examinations;
- 9.1.18. superannuation;
- 9.1.19. accident make-up pay.

### **10. MINIMUM RATE OF PAY**

10.1. Employees of Victorian children’s centres are entitled to a minimum rate of pay, based on one of the levels contained in the classification structure in Schedule One of this

agreement, in accordance with the employee's skills, responsibilities, qualifications and duties. Where an employee believes he/she has been wrongly classified the matter shall be dealt with in accordance with the dispute settling procedure set out in clause 30.

10.2. Higher Duties.

10.2.1. An employee engaged in duties carrying a higher rate than his or her ordinary classification for two or more consecutive hours within any shift or day shall be paid for the time so worked at the higher rate provided that:

10.2.1.1. the greater part of the time so worked is spent in performing duties carrying the higher rate.

10.2.2. An employee engaged as a Children's Services Employee Level 5 (Assistant Director) who is required to undertake the duties of a Director by reason of the Director's absence shall not be entitled to payment under this clause unless the Director's absence exceeds two complete consecutive working days.

10.2.3. For the purposes of this clause, the duties of any employee shall be determined by reference to this agreement and his or her job description

10.3. Payment of Wages.

10.3.1. All wages shall be paid weekly or fortnightly.

10.3.2. Payment of wages shall be made not later than Thursday in any week, and during the ordinary hours of work. Provided that if such day is a holiday prescribed by this agreement, wages shall be paid on the previous day.

10.3.3. Each employee shall be supplied on or before pay day with a statement in writing showing, or from which may be calculated the amount of ordinary pay, overtime, penalty rates and allowances.

10.3.4. All payments shall be made by cheque or in a manner otherwise agreed upon between the employer and employee and authorised in writing by the employee, including electronic funds transfer, EFT.

10.3.5. All employees shall receive a payslip in accordance with the Fair Work Act 2009.

## **11. ORDINARY HOURS OF WORK AND THE ROSTER.**

11.1. The employer shall prepare a roster setting out employees' weekly and daily working hours, time of commencing duty, meal intervals, time off duty and time of ceasing duty which shall be kept posted or affixed in some conspicuous part of the premises in which persons subject to this agreement are employed, where it may be readily seen by such employees. The employer shall give at least three days notice before any alteration is made to such roster.

11.2. The hours for an ordinary week's work shall be an average of 38 for full-time employees, to be worked between the hours of 6.30 a.m. and 6.30 p.m., to be worked as follows:

11.3. Full-time employees may be rostered to work the ordinary hours of work by utilising one of the following methods:

11.3.1. by employees working a 38 hour week; or

11.3.2. by employees working a 40 hour week (8 hour day) and having a rostered day off once a month; or

11.3.3. by employees working 8.5 hours per day and having a rostered day off once a fortnight (a 9 day fortnight).

11.3.4. By agreement between the employer and the employee, rostered days off may accrue to a maximum of 12 and may be taken at a mutually agreed time.

11.4. Notice of rostered days off

11.4.1. Except as provided in 11.3.4, employees entitled to a rostered day off during their roster cycle must be advised by the employer at least four weeks in advance of the week day he/she is to take off.

11.5. Substitute days.

11.5.1. An employer with the agreement of the majority of employees concerned may substitute the rostered day an employee is to take off to meet the requirements of the business.

11.5.2. An individual employee with the agreement of his/her employer may substitute the rostered day he/she is to take off for another day.

11.5.3. An employee would therefore work on what would normally have been his or her rostered day off and accrue an entitlement to bank a rostered day off to be taken at a mutually convenient time for both the employee and the employer. Provided that no less than seven days notice is given before taking the banked rostered day(s) off.

11.5.4. No payments or penalty payment shall be made to employees working under this substitute banked rostered day off. However the employer will maintain a record of the number of rostered days banked and will apply the Average Pay System during the weeks when an employee elects to take a banked rostered day(s) off. Employees terminating prior to taking any banked rostered day(s) off shall receive the following:

Average weekly pay	X	Number of banked substitute days
5		

11.6. Rostered day off falling on public holiday

11.7. An employee whose rostered day off falls on a public holiday prescribed by clause 15 – Public holidays shall be granted an alternative day off.

## 12. BREAKS AND PREPARATION TIME

### 12.1. Breaks

12.1.1. An unpaid break of not less than 30 minutes shall be allowed to each employee and shall be taken no later than five hours after commencing work.

12.2. At a time suitable to the community children's centre two rest intervals of ten minutes each shall be given to all employees during each day, and shall be counted as time Preparation worked.

12.2.1. A qualified full-time employee at Level 4 or above who is appointed by the employer to be responsible for the planning, implementation and/or evaluation of the planned programme for the children in the Centre shall be entitled to four hours per week preparation time or other such amount as may be prescribed by the *Children's Services Centres Regulations 2009 (Vic)* as amended from time to time.

12.2.2. A Diploma qualified employee at level 3.4 or above who is responsible for the planning, implementation and/or evaluation of the planned programme for the children in the Centre shall be entitled to two hours per week preparation time or other such amount as prescribed by the *Children's Services Centres Regulations 2009 (Vic)* as amended from time to time.

12.2.3. An Early Childhood Education and Care Assistant employed at level 3.4 or below who is responsible for the planning, implementation and/or evaluation of the planned programme for the children in the Centre shall be entitled to one hour per week preparation time or other such amount as may be prescribed by the *Children's Services Centres Regulations 2009 (Vic)* as amended from time to time.

12.2.4. The entitlement to preparation time provided for in clauses 12.2.1, 12.2.2 and 12.2.3 is pro rata based on an employee's ordinary hours of work and shall be taken at

a time agreed by the employer and shall be free from other duties.

12.2.5. The employer and the majority of affected employees may agree to alternative arrangements for the allocation of preparation time to suit the needs of the Centre. The agreed allocation of hours shall not be less than the total hours that the group of employees would have been entitled to under clauses 12.2.1, 12.2.2 and 12.2.3.

### 13. SHIFT WORK

13.1. Employees who perform work outside the hours of 6:30am and 6:30pm may be employed as shiftworkers.

13.2. The ordinary hours inclusive of meal breaks for shift workers will not, without payment of overtime, exceed an average of 38 hours per week to be worked over a one, two or four week cycle.

13.3. The following allowances will be paid for shiftwork:

Shift	% loading
Early morning	10
Afternoon	15
Night shift, rotating with day or afternoon	17.5
Night shift, non-rotating	30

#### Definitions

**Early morning shift** means any shift commencing at or after 5.00 am and before 6.30 am.

**Afternoon shift** means any shift finishing after 6.30 pm and at or before midnight.

**Night shift** means any shift finishing after midnight and at or before 8.00 am or any shift commencing at or before midnight and finishing before 5.00 am.

**Night shift, non-rotating** means any night shift system in which night shifts do not rotate or alternate with another shift so as to give the employee at least one third of their working time off night shift in each roster cycle

13.4. Provided where in the absence of agreement an employee who is changed from working one shift to working another shift of which the commencement time differs by four hours or more shall be paid an additional amount of 4% of their classification for that occasion.

13.5. Where it is mutually agreed, in writing, to change shift the aforementioned 4% shall not apply.

#### **14. OVERTIME**

14.1. Subject to clause 14.3, all work performed in excess of or outside the ordinary working hours prescribed by this agreement shall be paid for at the rate of time and a half for the first two hours on any day and at the rate of double time thereafter, such double time to continue until the completion of the overtime work.

14.2. Rest period before recommencing work

14.2.1. When overtime work including work on a weekend or holiday is necessary, it shall wherever practicable be so arranged that an employee works not more than sixteen hours in any period of 24 consecutive hours.

14.2.2. Subject to the exception referred to in 14.4.2 as to call-backs of less than three hours, when an employee finishes a period of work he/she shall, subject to this sub-clause be released until he/she has had eight consecutive hours off duty without loss of pay for his/her ordinary working time occurring during such absence.

14.2.3. If on the instructions of the children's centre, such an employee resumes or continues work without having had such eight consecutive hours off duty he/she shall be paid at the rate of double time until he/she shall then be entitled to be absent until he/she has had eight consecutive hours off duty without loss of pay for his/her ordinary working time occurring during such absence.

14.3. Overtime on Saturday

14.3.1. An employee required to work overtime on a Saturday shall be afforded at least three hours' work or paid for three hours at time and a half except where such overtime is continuous with overtime or work commenced on the previous day or completed the following day. Provided that where work continues over two days the minimum payment shall be for three hours at the appropriate rate.

14.4. Compulsory overtime

14.4.1. A children's centre may require an employee to work reasonable overtime and such employee shall work overtime in accordance with such requirements.

14.4.2. Where an employee, following the completion of ordinary hours of duty, is called back to duty for the purpose of attending management committee meetings, staff/parent meetings or similar, or where the employee is requested in writing by the community children's centre to attend in-service training outside normal hours, in lieu of receiving overtime payments, such employee may take paid time off, subject to the following:

14.4.2.1. In lieu of receiving payment for overtime worked in accordance with this clause, employees may choose, with the consent of the community children's centre, to take time off, for a period of time equivalent to the period worked in excess of ordinary rostered hours of duty, plus a period of time equivalent to the overtime penalty incurred. Such time in lieu shall be taken as mutually agreed

between the community children's centre and employee, provided that accrual of such leave shall not extend beyond a 28 day period.

14.4.2.2. Where such accrued time has not been taken within the 28 day period, such time shall be paid in accordance with this clause at the rate of pay which applied on the day the overtime was worked.

14.4.3. For the purpose of this clause, in accruing or calculating payment of overtime, each period of overtime shall stand alone.

#### 14.5. Time off in lieu of payment

14.5.1. Despite provisions elsewhere in the agreement (excepting 14.4), the community children's centre and the majority of employees, or an individual employee where there is mutual agreement, may agree to establish a system of time off in lieu of overtime provided that:

14.5.2. an employee may elect, with the consent of the community children's centre, to take time off in lieu of payment for overtime at a time or times agreed with the community children's centre.

14.5.3. Overtime taken as time off during ordinary time hours shall be taken at this ordinary time rate, that is an hour for each hour worked.

14.5.4. The community children's centre shall, if requested by an employee, provide payment of overtime as prescribed in clause 14 - Overtime, for any overtime worked under this clause where such time has not been taken within four weeks of accrual.

### 15. PUBLIC HOLIDAYS

15.1. An employee shall be entitled to holidays on the following days:

- New Years Day
- Good Friday

- Easter Saturday
- Easter Monday
- Christmas Day
- Boxing Day
- Australia Day
- Anzac Day
- Queen's Birthday
- Eight Hours Day (or Labour Day)
- Melbourne Cup Day, or some other day as determined for a particular locality.

15.2. When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.

15.3. When Boxing Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on 28 December.

15.4. When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.

15.5. Where in Victoria or in a locality, public holidays are declared or prescribed on days other than those set out in 15.1.2 above, those days shall constitute additional holidays for the purpose of this agreement.

15.6. An employer and his or her employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement unless, as at the date of this agreement, a Centre has an existing custom or practice to substitute another day for a public holiday. If this is the case, the Centre may continue to substitute another day for a public holiday (as they have done in the past) whether a majority of employees agree or not.

15.7. An agreement pursuant to 15.6 shall be recorded in writing and be available to every affected employee. Should employees so desire, a union representative, or other nominated representative, may be called to represent employees throughout the process.

15.8. The above holidays shall be paid for if such holiday falls during the annual leave period and the employee would normally have been rostered to work on that day.

15.9. Where a full-time or part-time employee who usually works on a day of the week on which a public holiday falls in the relevant area is not required to work on that day such employee shall be paid at the ordinary hourly rate for the hours he or she would have normally worked on that day.

## 16. ALLOWANCES

### 16.1. Vehicle allowance

16.1.1. Where the community children's centre requires an employee to use his/her own motor vehicle in the performance of his/her duties during normal working hours, such employee shall be paid an allowance as follows:

Motor Cars	per kilometre	per mile
	(cents)	(dollars)
35 p.m.u. and over	78	1.29
under 35 p.m.u.	66	1.01
Motorcycles	(cents)	(cents)
250cc and over	39	62
under 250cc	29	47

### 16.2. Protective clothing

16.2.1. Where work practices are such that protective clothing is necessary the employer will provide such clothing at no cost to the employee.

16.3. Cost of training and other expenses

16.3.1. Where legislation requires employees to gain or maintain any of the following qualifications, undergo training in conjunction with any of the following, or produce any of the following records, the employer shall pay for any associated costs of such qualification, training or record:

16.3.1.1. first aid certificate;

16.3.1.2. food handling qualification;

16.4. Broken shift allowance

16.4.1. Where an employee works two separate shifts in a day, they will be paid an allowance of \$12.18 for each day on which a broken shift is worked.

16.5. Qualifications allowance

16.5.1. A Director or Assistant Director who holds a qualification in Childcare Management or equivalent will be paid an all-purpose allowance, calculated at 5% of the weekly rate for an Assistant Director (Children's Services Employee Level 5.4).

16.6. Excess fares allowance

16.6.1. Where an employee is directed to work away from their normal place of work on any day the employee will be paid an allowance of \$12.67 per day to compensate for excess fares. This provision does not apply if the employer provides or offers to provide suitable transport free of charge to the employee.

## **17. ANNUAL LEAVE.**

### **17.1. Period of leave.**

17.1.1. Employees (other than casual employees) shall be entitled to annual leave on full pay for a period equal to four working weeks for each continuous twelve months' service with an employer. Annual leave will accrue on a pro rata basis for each completed four week period of continuous service

17.1.2. "Continuous service" is defined in clause 7.2 of this agreement.

### **17.1.3. Annual leave exclusive of public holidays.**

17.1.4. The annual leave prescribed in 17.1 shall be exclusive of any of the holidays prescribed in clause 15 - Public holidays and if any such holiday falls within an employee's period of annual leave and is observed on a day on which in the case of an employee would have been an ordinary working day there shall be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

### **17.2. Leave to be taken.**

17.2.1. The annual leave provided for in this clause shall be allowed and shall be taken and except as provided by 17.5, payment shall not be made or accepted in lieu of annual leave.

17.2.2. Except on application the payment of wages during annual leave for a period of less than one week shall be paid at the completion of the pay cycle rather than the commencement of the leave.

### **17.3. Time of taking leave.**

17.3.1. Annual leave shall be given at a time determined by mutual agreement between the employer and the employee. Provided that a fixed term employee may be required to take annual leave during the term of their fixed term appointment.

17.3.2. Notwithstanding provisions elsewhere in the Agreement the employer and the majority of employees, or an individual employee where there is mutual agreement, and following consultation with all employees, at a Centre may agree to establish a system of single day annual leave absences, provided that an employee may elect with the consent of the employer to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.

17.3.3. An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

17.4. Proportionate leave.

17.4.1. Where the employment of any employee is terminated at the end of a period of employment of less than twelve months the employer shall pay to the employee in addition to all other amounts due to an employee, an amount equal to 1/12th of his/her ordinary pay for that period of employment.

17.5. Sickness during annual leave.

17.5.1. Where an employee becomes sick whilst on annual leave for a period of not less than five days on which he/she would otherwise have worked, and immediately forwards to the employer a certificate of a legally qualified medical practitioner or other relevant practitioner, then the number of days not less than five specified in the certificate shall be deducted from any sick leave entitlement standing to the employee's credit, and shall be re-credited to his/her annual leave entitlement. If annual leave loading as provided for in 17.8 has been paid in respect of sick days referred to in this subclause, such leave loading shall not be re-credited.

17.6. Annual Close Down

17.6.1. The Centre may close for up to 3 weeks per year around the Christmas holiday period.

17.6.2. Staff will be required to take annual leave during any annual closedown.

17.6.3. Staff may use up to 2 days time off in lieu, accrued during the year, during the annual closedown.

17.6.4. Where the Centre determines to offer a reduced service over the Christmas holiday period, staff will have the opportunity to nominate their preference for working over the holiday period or taking annual leave, "time off in lieu" or leave without pay. The Centre will determine the staffing requirements for a reduced service.

17.6.5. Where an employee who has insufficient leave to cover a period of annual close down the employee will be entitled to leave without pay for the period.

17.7. Payment for period of leave.

17.7.1. Each employee before going on leave shall be paid the amount of wage he/she would have received in respect of the ordinary time which he/she would have worked had he/she not been on leave during the relevant periods. For the purpose of this clause and 16.1 wages shall be at the rate prescribed by Schedule One for the classification in which the employee was ordinarily employed immediately prior to the commencement of his/her leave.

17.8. Annual Leave Loading.

17.8.1. In addition to the amount prescribed by 17. 1, an annual leave loading of 17.5% shall be paid to an employee when proceeding on annual leave. Provided that, by agreement between the employer and a majority of employees, the annual leave

loading may be paid once annually on a date fixed by agreement. Where leave loading is paid once annually, the remuneration for the purposes of calculating this loading is deemed to be the salary of the employee as at that agreed date.

17.9. Proportionate leave on termination.

17.9.1. An employee shall be paid their accumulated annual leave credit upon termination of employment and shall be paid leave loading on this amount in accordance with clause 17.8.

## **18. PERSONAL LEAVE**

18.1. Sick Leave

18.1.1. In the event of an employee (other than a casual employee) becoming sick and unfit for duty he/she shall be entitled to 15 days sick leave on full pay each year.:

18.1.2. To be entitled to sick leave on full pay an employee shall produce a certificate from a legally qualified medical or other relevant practitioner immediately on return to work, provided that single days up to a maximum of three in any one calendar year may be taken without the production of a medical certificate or statutory declaration

18.1.3. If the full period of sick leave as described above is not taken in any year, such portion as is not taken shall be cumulative from year to year.

18.2. Carers Leave.

18.2.1. An employee, other than a casual employee, with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this sub-clause, up to 76 hours per year of their sick leave entitlement for absences to provide care and support for such persons when they are ill or require care due to an unexpected emergency.

The entitlements of casual employees in relation to Carer's Leave are set out in clause 18.4.

18.2.2. The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.

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

18.2.4. The entitlement to use sick leave in accordance with this subclause is subject to:

18.2.4.1. the employee being responsible for the care of the person concerned; and

18.2.4.2. the person concerned being either:

18.2.4.2.1. a member of the employee's immediate family; or

18.2.4.2.2. a member of the employee's household.

18.2.5. The term immediate family includes:

18.2.5.1. a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person who lives with the employee on a bona fide domestic basis, regardless of gender; and

18.2.5.2. a child or an adult child (including an adopted child, a stepchild or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

18.2.6. The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

### 18.3. Unpaid leave for family purposes

18.3.1. An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill. The employer and employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements in 18.2.3 and 18.2.4 are met.

### 18.4. Caring responsibilities for casual employees

18.4.1. Subject to the evidentiary and notice requirements in clauses 18.2.2 and 18.2.6 casual employees are entitled to not be available to attend work, or to leave work:

18.4.1.1. if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or

18.4.1.2. upon the death in Australia of an immediately family or household member.

18.4.2. The Centre and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

18.4.3. A Centre must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of a Centre to engage or not to engage a casual employee are otherwise not affected.

## **19. COMPASSIONATE LEAVE**

19.1.1. An employee shall, on the death of a member of his/her immediate family, or where a member of his/her immediate family has a personal illness or injury that poses a serious threat to his or her life be entitled on notice to leave up to and including the day of the funeral of such relation/s, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in three (3) ordinary days' work.

19.1.2. If required by the employer, proof of such death shall be furnished by the employee to the satisfaction of his/her employer.

19.1.3. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

## **20. INFECTIOUS DISEASE LEAVE**

20.1.1. Employees who contract, or believe they have contracted, one of the infectious diseases listed in this clause must as soon as possible notify their employer.

20.1.2. Employees (other than a casual employee) who contract an infectious disease through a contact in the area of employment shall be entitled to infectious diseases leave in accordance with the following scale:

<b>Disease</b>	<b>Leave with pay</b>
Chicken pox (Varicella)	5 working days
German measles (Rubella)	5 working days
Hepatitis	As decided by medical practitioner
Influenza	5 working days
Measles (Morbelli)	10 working days
Mumps	10 working days
Rheumatic fever	As decided by medical practitioner
Scarlet fever	10 working days
Whooping cough	10 working days

20.1.3. A duly signed certificate by a qualified medical practitioner must accompany any application for leave with pay under the provisions of this subclause. In cases where employees contract influenza, the medical certificate must state the word “influenza” in full, and that the pathology result is present.

## **21. LEAVE TO ATTEND TRAINING PLACEMENTS**

21.1. In order to assist employees undertaking studies to obtain a relevant qualification in children’s services (eg: Certificate III and Diploma), employees will be granted unpaid leave to attend a period of work experience placement associated with training. Where possible the period of leave will be taken at a time convenient to the operations of the centre, leave may not be unreasonably refused.

## **22. UNION TRAINING LEAVE**

22.1. An eligible union representative is entitled to, and the employer must grant, up to five days training leave with pay to attend courses which are directed at the enhancement of the operation of this agreement, dispute resolution and occupational health and safety provided by the Union at the Union office or at delegate’s convention.

- 22.2. An eligible Union representative must give the employer six weeks' notice of the employee representative's intention to attend such courses and the leave to be taken, or such shorter period of notice as the employer may agree to accept.
- 22.3. The notice to the employer must include details of the type, content and duration of the course to be attended.
- 22.4. The taking of such leave must be arranged having regard to the operational requirements of the employer so as to minimise any adverse effect on those requirements.
- 22.5. An eligible employee representative taking such leave must be paid the wages the employee would have received in respect of the ordinary time the employee would have worked had they not been on leave during the relevant period.
- 22.6. Leave of absence granted counts as service for all purposes of this award.
- 22.7. For the purpose of determining the entitlement of employee representatives to Union training leave, an eligible union representative is an employee:
- 22.7.1. who is an union representative nominated by the employees in an enterprise or workplace generally or the Union, for the purpose of representing those employees covered by this agreement; and
- 22.7.2. who is within the class and number of employee representatives entitled from year to year to take paid dispute resolution training leave according to the following quota table:

Number of employees of the employer	Number of employees eligible for leave per year
5-30	1
31-50	2
51-100	3
101-200	4
200+	5

### 23. PARENTAL LEAVE

23.1. Subject to the terms of this clause and the National Employment Standards (NES) employees are entitled to maternity, paternity and adoption leave and a full-time employee may elect to work part-time in connection with the birth or adoption of a child.

23.2. The provisions of this clause apply to full time, part time and eligible casual employees, but do not apply to other casual employees.

23.2.1. An **eligible casual employee** means a casual employee:

23.2.1.1. employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and

23.2.1.2. who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.

23.2.2. For the purposes of this clause, **continuous service** is work for an employer on a regular and systematic basis (including any period of authorised leave or absence).

23.2.3. An employer must not fail to re-engage a casual employee because:

23.2.3.1. the employee or employee's spouse is pregnant; or

23.2.3.2. the employee is or has been immediately absent on parental leave.

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

23.2.5. An eligible casual employee employed by their current employer, on or prior to 1 January 1998, shall be entitled to parental leave from 4 July 2001 onwards.

23.2.6. An eligible casual employee employed on or after 4 July 2001 shall be entitled to parental leave from 4 July 2002 onwards.

### 23.3. Definitions

23.3.1. For the purpose of this clause **child** means a child of the employee under school age or a child under school age who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

23.3.2. Subject to 23.3.3, in this clause, **spouse** includes a de facto or former spouse.

23.3.3. In relation to 23.12, spouse includes a de facto spouse but does not include a former spouse.

### 23.4. Basic entitlement

23.4.1. After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.

23.4.2. Subject to 23.10, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

23.4.2.1. for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;

23.4.2.2. for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

23.5. Variation of period of parental leave

23.5.1. Where an employee takes leave under 23.4.1 or 23.6.1.2 unless otherwise agreed between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified as soon as possible but no less than four weeks prior to the commencement of the changed arrangements. Nothing in this clause detracts from the basic entitlement in 23.4.1 or 23.6.1.2.

23.6. Right to request

23.6.1. An employee entitled to parental leave pursuant to the provisions of 23.4 may request the employer to allow the employee:

23.6.1.1. to extend the period of simultaneous unpaid parental leave provided for in 23.4.2 up to a maximum of eight weeks;

23.6.1.2. to extend the period of unpaid parental leave provided for in 23.4.1 by a further continuous period of leave not exceeding 12 months;

23.6.1.3. to return from a period of parental leave on a part-time basis until the child reaches school age;

23.6.2. to assist the employee in reconciling work and parental responsibilities.

23.6.3. The employer shall consider the request having regard to the employee's personal circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. An employer may refuse a request where to accede to it would involve additional cost, lack of adequate replacement staff, loss of efficiency or adverse impact on: customer service, the ability to comply with government regulations regarding mandatory staffing numbers, or inadequate continuity of care for children.

23.7. Employee's request and the employer's decision to be in writing

23.7.1. The employee's request and the employer's decision made under 23.6.1.2 and 23.6.1.3 must be recorded in writing.

23.8. Request to return to work part-time

23.8.1. Where an employee wishes to make a request under 23.6.1.3, such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

23.9. Maternity leave

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

23.9.1.1. of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least 10 weeks;

23.9.1.2. of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least 4 weeks.

23.9.2. When the employee gives notice under 23.9.1.1 the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

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

23.9.4. Subject to clause 23.4.1 and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

#### 23.10. Special maternity leave

23.10.1. Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.

23.10.2. Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.

23.10.3. Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.

23.10.4. Where leave is granted under 23.9.4, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

#### 23.11. Partner leave

23.11.1. An employee will provide to the employer at least ten weeks prior to each proposed period of partner leave, with:

23.11.1.1. a certificate from a registered medical practitioner which names his or her partner, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and

23.11.1.2. written notification of the dates on which he/she proposes to start and finish the period of partner leave; and

23.11.2. except in relation to leave taken simultaneously with the child's mother under 23.4.2 and 23.6.1.1 a statutory declaration stating:

23.11.2.1. he/she will take that period of partner leave to become the primary caregiver of a child;

23.11.2.2. particulars of any period of maternity leave sought or taken by his/her partner; and

23.11.2.3. that for the period of partner leave he/she will not engage in any conduct inconsistent with his/her contract of employment.

23.11.3. The employee will not be in breach of 20.15.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

## 23.12. Adoption leave

23.12.1. The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

23.12.2. Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:

23.12.2.1. the employee is seeking adoption leave to become the primary care-giver of the child;

23.12.2.2. particulars of any period of adoption leave sought or taken by the employee's spouse; and

23.12.2.3. that for the period of adoption leave the employee will not engage in any conduct inconsistent with his/her contract of employment.

23.12.3. An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

23.12.4. Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

23.12.5. An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

23.12.6. An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

23.13. Parental leave and other entitlements

23.13.1. An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks or longer as agreed under 23.6.

23.14. Transfer to a safe job

23.14.1. Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

23.14.2. If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

23.15. Returning to work after a period of parental leave

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

23.15.2. Subject to 23.15.4, an employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to 23.14, the employee will be entitled to return to the position they held immediately before such transfer.

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

23.15.4. An eligible casual employee who is employed by a labour hire company who performs work for a client of the labour hire company will be entitled to the position which they held immediately before proceeding on parental leave.

23.15.5. Where such a position is no longer available, but there are other positions available that the employee is qualified for and is capable of performing, the employer shall make all reasonable attempts to return the employee to a position comparable in status and pay to that of the employee's former position.

23.16. Replacement employees

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

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

23.17. Communication during parental leave

23.17.1. Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

23.17.1.1. make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

23.17.1.2. provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

23.17.2. The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

23.17.3. The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with 23.17.

## 24. LONG SERVICE LEAVE

24.1. Employees in Victorian Community Children's Centres are entitled to long service leave. For further details see the *Long Service Leave Act 1992 (Vic)*.

24.2. Registered Mothercraft Nurses employed at 22 February 1995 shall be entitled to Long Service Leave in accordance with clause 31 of the *Children's Services (Victoria) Award 2005* which is incorporated as a term of this agreement by reference.

## **25. JURY SERVICE LEAVE**

25.1. An employee required to appear and serve as a juror in any court shall be granted leave with pay for the period during which attendance at court is required, less any amount received from the court by way of fee for attendance.

## **26. LEAVE TO ATTEND EXAMINATIONS**

26.1. Employees shall be granted leave with full pay in order to travel to and attend child care examinations relevant to this clause and approved by the education institution. Provided that when an afternoon examination is scheduled an employee shall be allowed the morning for the examination study if so required by the employee.

## **27. PROFESSIONAL DEVELOPMENT.**

27.1. Centres will arrange at least two professional development days per year. A professional development day is a day on which a seminar or in-service style training shall be held, and on which the normal activity of the centre, including the attendance of children, shall be suspended. At least one of the two professional development days may be accessed by individual employees for the purpose of attending professional development courses off site. The timing of the professional development days shall be in accordance with operational requirements, and at the discretion of community children's centre.

## 28. SUPERANNUATION

### 28.1. Definitions.

28.1.1. The fund for the purpose of this clause means the Health Employees'

Superannuation Trust Australia (HESTA) established and governed by a Trust Deed as may be amended from time to time, and includes any superannuation scheme which may be made in succession thereto or such other industry superannuation fund as may be nominated by an employee.

28.1.2. "Ordinary time earnings" for the purpose of this clause, shall mean and include the remuneration for the employee's normal weekly number of hours of work calculated at the ordinary time rate of pay including over-agreement payments, weekend penalties, shift allowances, and other allowances paid for all purposes of the agreement for working ordinary hours;

28.1.3. "SG Act" shall mean the *Superannuation Guarantee (Administration) Act 1992* as amended from time to time.

### 28.2. The community children's centre to become a party to the fund

28.2.1. The community children's centre shall make application to the fund to become a participating community children's centre in the fund and shall become a participating community children's centre upon acceptance by the Trustee of the fund.

28.2.2. Where the community children's centre has not made application to become a participating community children's centre in the fund but an employee of the community children's centre has completed an application form and that form has been received by the fund, the community children's centre shall become a participating community children's centre in the fund upon the Trustee of the fund deeming the community children's centre to be a participating community children's centre. In such a case, the community children's centre shall assume and be required

to comply with all the obligations and duties of a participating community children's centre in the fund.

28.2.3. The community children's centre shall provide each employee who is not a member of the fund with a membership application form upon commencement of employment. Each employee may complete the application and the completed application shall be forwarded to the fund by the community children's centre on or before the last day of the calendar month subsequent to the employee commencing employment.

28.2.4. Notwithstanding the date upon which an employee signs a membership application form and even if no such form is completed, contributions shall be made to HESTA by the community children's centre in respect of the employee from the commencement of service.

28.3. The community children's centre contribution on behalf of each employee

28.3.1. The community children's centre shall contribute to the fund in respect of each eligible employee such contributions as are required to comply with the *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Guarantee Charge Act 1992* ("the legislation") as amended from time to time.

28.4. Employee contributions

28.4.1. An employee may make contributions to the fund in addition to those made by the community children's centre under this clause.

28.4.2. An employee who wishes to make additional contributions must authorise the community children's centre in writing to pay into the fund, from the employee's wages, amounts specified by the employee in accordance with the fund Trust Deed and Rules.

28.4.3. The community children's centre who receives written authorisation from an employee, must commence making deductions from the employee's wages within

fourteen days of receiving the authorisation. Contributions so deducted shall be paid to the fund by the end of the calendar month subsequent to the month in which the deduction from the employee's wages was made.

28.4.4. An employee may vary the additional contributions by a written authorisation and the community children's centre must alter the additional contributions within fourteen days of receiving the authorisation.

28.4.5. An employee shall have the right to adjust the level of contribution made on the employee's own behalf on the first of July each year provided that by agreement with the community children's centre or in extenuating circumstances the employee may vary the additional contribution at other times.

## **29. ACCIDENT PAY**

29.1. Where an employee becomes entitled to weekly compensation payments pursuant to the *Accident Compensation Act 1985* (the Act), the community children's centre will pay to the employee an amount equivalent to the difference between;

29.1.1. the level of weekly compensation and any weekly wages earned or able to be earned if partially incapacitated; and

29.1.2. the amount that would have been payable under this agreement for the classification of work if the employee had been performing their normal duties, provided that such rate shall exclude additional remuneration by way of shift premiums overtime payments special rates or other similar payments.

29.2. Accident pay shall not apply in respect of any injury during the first five normal working days of incapacity.

29.3. Accident pay shall not apply to any incapacity occurring during the first two weeks of employment unless such incapacity continues beyond the first two weeks.

- 29.4. Industrial diseases contracted by a gradual process or injuries subject to recurrence, aggravation or acceleration shall not be subject to the accident pay unless the employee has been employed with the community children's centre at the time of the incapacity for a minimum period of one month.
- 29.5. The maximum period or aggregate of periods of accident pay to be made by the community children's centre shall be a total of 39 weeks for any one injury.
- 29.6. Where an employee receives a weekly payment under this Section and subsequently such payment is reduced pursuant to the Act, such reduction will not increase the liability of the community children's centre to increase the amount of accident pay in respect of that injury.

## **PART FOUR: COMMUNICATION AND RELATIONSHIPS**

### **30. PROCEDURE TO RESOLVE GRIEVANCES AND DISPUTES**

- 30.1. In the event of a dispute in relation to a matter arising under this agreement or the NES, in the first instance there will be an attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 30.2. A party to the dispute may appoint another person, organization or association to accompany or represent them in relation to the dispute.
- 30.3. If a dispute in relation to a matter arising under the agreement is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to Fair Work Australia (FWA) for resolution by mediation and/or conciliation and, where the matter in dispute remains unresolved, arbitration. If arbitration is necessary, FWA may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective.
- 30.4. It is a term of this agreement that while the dispute settlement procedure is being conducted work shall continue normally unless an employee has a reasonable concern about an imminent risk to his or her health or safety. Subject to the concern re OHS, the employee must not unreasonably fail to comply with a direction by the centre to perform other available work that is safe and appropriate for the employee to perform.
- 30.5. Any dispute referred to FWA under this clause should be dealt with by a member agreed by the parties at the time or, in default of agreement, a member nominated by either the head of the relevant panel or the President.
- 30.6. The decision of FWA will bind the parties, subject to either party exercising a right of appeal against the decision to a Full Bench.

### **31. DISCIPLINARY PROCEDURES.**

31.1. Where the employer has concerns about the work performance or conduct of an employee, the following procedure will apply.

31.1.1. The employee shall be advised of the alleged poor work performance or misconduct, that those concerns will be dealt with in accordance with these procedures, and that a possible outcome could be a disciplinary sanction such as termination of employment. The employee shall be provided with the opportunity to respond to any such allegations at a disciplinary meeting with the relevant supervisor. An employee subject to disciplinary proceedings may be assisted or represented in any disciplinary meeting by a support person of the employee's choice from the workplace, such as a colleague, employee representative or other nominated representative.

31.1.2. The employee shall be treated at all times in accordance with the principles of natural justice. These principles include:

31.1.2.1. the right to a fair hearing including adequate notice of what is alleged and a reasonable opportunity to respond to allegations, and

31.1.2.2. the right to an unbiased process of judgement.

31.1.3. Nothing in this procedure shall restrict the employer's right to summarily dismiss an employee in circumstances that warrant summary dismissal.

31.1.4. If the concerns are not adequately addressed at the initial disciplinary meeting, a warning may be issued. The employer shall notify the employee of the reason for the warning and detail the standards of performance and/or conduct expected. In the case of unsatisfactory performance the employer will also set a timeframe for a review of performance, and will consider reasonable measures to assist the employee to meet the required performance standards, such as mentoring or training as appropriate. The warning shall also state the consequences of not meeting the required standards

of performance and/or conduct, such as further disciplinary action which could include termination of employment.

31.1.5. If the problem continues the matter will be discussed with the employee at a second disciplinary meeting.

31.1.6. In the case of unsatisfactory performance, if the concerns are not resolved at the second meeting, a second warning in writing will be given to the employee. Termination of employment for unsatisfactory performance at this stage may only occur in cases where the unsatisfactory performance has particularly serious consequences, such as placing the viability of the employer at risk or posing a serious safety risk.

31.1.7. In the case of misconduct, if the allegations of a recurrence of misconduct are not satisfactorily resolved at the second meeting, a second written warning may be given to the employee, or employment may be terminated, depending on the level of seriousness of the misconduct and any mitigating factors.

31.1.8. If the problem continues the matter will be discussed with the employee at a further disciplinary meeting. If the concerns are not resolved, the outcome may be a further warning or termination of employment. Nothing in this procedure shall prevent the employer from conducting further disciplinary meetings where the particular circumstances require it.

31.1.9. If after any warning a period of twelve months elapses without any further warning or action being required, all adverse reports relating to the warning must be removed from the employee's personnel file.

## 31.2. Disciplinary Action

31.2.1. The outcome of a disciplinary procedure may include one of the following actions:

31.2.1.1. that the complaint may be dismissed and a letter to that effect be placed on the employee's personal file;

31.2.1.2. that no action be taken;

31.2.1.3. that the employee be issued with a warning;

31.2.1.4. that the employee's salary increment be withheld for up to one year;

31.2.1.5. that the employee be dismissed.

31.2.1.6. Occupational Welfare.

31.2.2. Notwithstanding the provisions of clauses 31.1.1 to 31.1.9 inclusively, where, in the opinion of the employer and/or the employee:-

31.2.2.1. stress, including personal or relationship problems:

31.2.2.2. health concerns

31.2.2.3. alcohol and/or other substance abuse

31.2.2.4. compulsive gambling

is adversely affecting the employee's work performance, either party may request, that the employee make application for leave with pay, or without pay, to undertake an approved rehabilitation program.

31.2.3. In determining whether leave is to be granted, the employer may take into account the amount of accrued leave available to the employee.

31.2.4. Where leave has been granted, failure to undertake such an approved rehabilitation or counselling program may result in the employer seeking recourse to the provisions of clause 31 as an alternative remedy to the situation.

## **32. THE ROLE OF EMPLOYEE REPRESENTATIVES.**

32.1. Employees may elect an appropriate number of workers from amongst the workforce to act as their representatives in employment matters. Employees will be allowed reasonable time to meet with these representatives during their working time to discuss employment matters under this agreement. Upon request an employee representative may be permitted by the Centre, consistent with the law, to attend an appropriate course to develop the skills necessary to their representative role. The Centre shall provide the nominated employee representative with access to a fixed line telephone to assist their duties

## **33. INTRODUCTION OF CHANGE**

### **33.1. Community children's centre's duty to notify**

33.1.1. Where the community children's centre has made a definite decision to introduce major change in production, program, organization, structure or technology that is likely to have significant effects on employees, the community children's centre shall notify the employees who may be affected by the proposed changes.

33.1.2. "Significant effects" includes termination of employment, major changes in the composition, operation or size of the community children's centre's work force or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the Agreement makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

### 33.2. Community children's centre's duty to discuss change

33.2.1. The community children's centre shall discuss with the employees affected, inter alia, the introduction of the changes referred to in sub-clause 33.1, hereof, the effects the changes are likely to have on employees, and measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees in relation to the changes.

33.2.2. The discussions shall commence as early as practicable after a definite decision has been made by the community children's centre to make the changes referred to in sub-clause 33.1.2 hereof.

33.2.3. For the purpose of such discussion, the community children's centre shall provide in writing to the employees concerned all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that the community children's centre shall not be required to disclose confidential information the disclosure of which would be inimical to the community children's centre's interests

### 34. **STAND DOWN**

34.1. In the event of any circumstance over which the employer has no control such as flood, fire, strike, breakdown of machinery essential to the care and well-being of the children and staff, the children's centre may deduct payment for any part of a day during which an employee cannot usefully be employed.

### 35. **UNION MEETINGS**

35.1. The Employer will allow Union delegates and officers of the Union to utilise areas reasonably designated by the Employer to give presentations to employees once per annum. The Employer will only pay an employee who attends the meeting up to 30 minutes, based on the employee's ordinary pay. The representative of the Employer will not attend these meetings, unless the Union, or their delegates, invites them to do so.

## **36. UNION DUES**

- 36.1. Where authorised by an employee, the Employer agrees to release the bank account details of the employee to the Union to facilitate direct debit of union dues. The Employer will provide these details within a reasonable timeframe.

## **PART FIVE: SAVINGS PROVISIONS**

### **37. NO DISADVANTAGE**

- 37.1. No employee will suffer a reduction in their existing entitlements as a consequence of being covered by this Agreement.

### **38. SAVINGS PROVISION**

- 38.1. Where custom and practice at an individual centre provided for an entitlement or workplace practice greater than those contained in this Agreement as at the date of approval, that entitlement or workplace practice shall continue to apply to those employees as if contained in this Agreement.
- 38.2. No employee shall receive a rate of pay less than those contained in schedule one of this Agreement. Where, at the date of approval of this Agreement an employee would be entitled to a rate of pay greater than those contained in schedule one of this Agreement, the existing rate of pay shall be preserved. Employees shall be entitled to an increase of 4% on the preserved rates effective from 1 March 2010, a further 4.25% increase effective from 1 January 2011 and a further 2.25% effective from 1 January 2012.