

**ADVOCARE ENTERPRISE AGREEMENT 2007**

**AG 60 of 2007**

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**PREAMBLE**

**Mission Statement:**

Advocare’s primary purpose is to enable individuals and the community to promote and uphold the rights of older people, who are either in receipt or potential recipients of aged care services.

**Vision:**

Advocare is committed to upholding and promoting principles of social justice and equity.

The intention of this Enterprise Agreement is to:

- (i) facilitate a workplace environment that is congruent with this mission statement and the underlying values contained herein;
- (ii) provide a working culture to achieve excellence in service delivery; and
- (iii) attract, retain and develop appropriately skilled staff

This will be achieved through consideration of the following:

- promoting the rights of clients
- having a workplace culture that:
  - (i) recognises and values individual strengths and encourages and promotes the development of these.
  - (ii) recognises the individual circumstances of staff members and be flexible to accommodate these.

As such, this Agreement is entered into in the spirit of goodwill, trust, openness and co-operation between parties.

**1. APPLICATION**

**1.1 Title**

This Agreement shall be known as the Advocare Enterprise Agreement 2007.

**1.2 Parties Bound**

This is an agreement between Advocare Incorporated and the Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch (ASU) and extends to and binds all employees who are eligible to members of the respondent union.

This agreement shall apply to approximately 15 employees.

### 1.3 Definitions

*Full time employee* means an employee who works an average of 37.5 ordinary hours a week.

*Part time employee* means an employee who works on a regular and ongoing basis for an average of less than 37.5 ordinary hours a week.

*Carer and Carer's Leave* has the meaning given to it pursuant to an employee's entitlement to such leave under Clause 7.5 of this Agreement and the Workplace Relations Act 1996

*Casual employee* means an employee who is engaged at an hourly rate to work on an intermittent, unexpected or irregular basis or to relieve full time or part time staff.

*Overtime* means time worked in excess of an average of 37.5 ordinary hours a week or outside the spread of ordinary hours.

*Immediate family* means the spouse; de facto spouse or other recognised partner; child; parent; grandparent; grandchild or sibling of the employee.

*SACS Award* means the *Social and Community Services – Western Australian Award 2002* (AW 815 319).

*ASU* means the Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch

### 1.4 Objectives

- To facilitate the achievement of Advocare's vision, mission and values.
- To provide a fair and affordable level of salaries, benefits and work conditions for staff.
- To promote flexible, innovative and productive management systems and work practices.
- To maintain good working relationships within Advocare.
- To foster equity, diversity and safety in the workplace.
- To enhance the quality of service delivery to clients.

### 1.5 Date and Term

This Agreement shall operate from the date of registration and remain in force until 30<sup>th</sup> June 2010

The parties undertake to commence negotiations to renew the terms of the Agreement at least three months prior to the expiration of the Agreement.

The Agreement will however continue to operate until it is terminated by mutual agreement or replaced by a new Agreement.

**1.6 Relationship to Award**

This Agreement shall be read and interpreted in conjunction with the Social and Community Services - Western Australia Award 2002 provided that where there is an inconsistency between this Agreement and the Award; the Agreement shall take precedence to the extent of any inconsistency.

This Agreement cancels and replaces the *Avocare Enterprise Agreement 2003*

**1.7 Workplace Agreements**

It is the intention and understanding of the parties that Advocare will not offer Australian Workplace Agreements or any other form of statutory agreements as provided for, or may be provided for, in industrial legislation during the operation of this Agreement.

**2. WORKPLACE RELATIONS POLICIES**

**2.1** It is anticipated that the agency may grow and expand and may need to use positive discrimination when considering people for specialized positions such as Aboriginal workers for the Aboriginal Access Project (or person with a disability for such an area).

**2.2 Dispute resolution procedures**

In relation to any matter that may be in dispute between the parties to this agreement the parties agree to apply the dispute resolution procedures in Schedule 1. Disputes should be dealt with in a timely manner, with the process taking no longer than 6 weeks where possible.

**2.3 Discipline and dismissal procedures**

In a case of alleged poor performance or misconduct by an employee, Advocare will act in accordance with the discipline and dismissal procedures in Schedule 2.

**2.4 Workplace change**

When a definite decision has been made to introduce major changes in program, organisation, structure or technology that is likely to have significant effect on employees, Advocare will:

- actively consult with the employees affected by the proposed changes;
- discuss with employees the likely effect of the changes and any measures to avoid or mitigate any possible adverse effects on the employees; and
- give prompt consideration to matters raised by the employees.

An employee may appoint another person to act on their behalf in any discussions relating to workplace change. At any stage employees may request the involvement of the ASU in these discussions.

## **2.5 Family Friendly Work Practices**

Advocare recognises the importance to employees of maintaining a healthy work/life balance. Staff members are encouraged to approach the Chief Executive Officer to explore alternative work practices, within the spirit of the agreement, which balances the service focus of the organisation and their own work/life goals. Advocare offers an Employee Assistance Program for employees, including family members.

## **3. EMPLOYMENT RELATIONSHIP**

### **3.1 Employment Status**

An employee will be engaged on either a full time, part time or casual basis. A full time employee is engaged to work an average of 37.5 ordinary hours a week.

A full time employee may apply to Advocare to convert their employment status from full time to part time on an ongoing or temporary basis (e.g. when returning from parental leave). A part time employee may apply to Advocare to increase or decrease their regular hours of employment. In considering an application from an employee to change employment status Advocare will take into account the impact on service delivery and cost implications.

### **3.2 Appointment and Induction**

A new employee will be given a letter of appointment stating: the title and duties of the position; the type of contract; period of appointment; regular hours of work (where appropriate); classification level; commencing salary or rate of pay and length of probationary period. A new employee will be given a job and agency induction in accordance with Advocare procedures.

### **3.3 Probation**

A new employee will be subject to a 3 month probationary period. A performance review will be conducted at the end of the probationary period. If a performance review is not conducted within 2 weeks of the end of the probationary period the employee will be considered to have successfully completed the probationary period.

If a probationary employee's performance is deemed to be not satisfactory, then Advocare may:

- Terminate the contract within the probationary period, in accordance with the Discipline and Dismissal Procedures (Schedule 2);
- Extend the probationary period, one or more times, up to a total of a further 3 months for full-time staff or part-time equivalent;
- Terminate the employment contract at the end of the probationary period or the end of the extended probationary period.

### **3.4 Limited Term / Fixed Term Contracts**

Advocare may engage a full time or part time employee for a fixed or limited period of employment as agreed between the parties.

Where an employee is engaged for a fixed period, employment will cease at the conclusion of that period, unless the period is extended by agreement between the employee and Advocare. Where a fixed contract ends as a result of expiration of time sub clause 3.8 and 3.9 shall not apply.

### **3.5 Part Time Employees**

A part time employee is engaged to work on a regular basis for an average of less than 37.5 ordinary hours a week.

An employee who works on a standard part time basis is entitled to leave entitlements on a pro rata basis. Payment to a part time employee proceeding on annual leave or long service leave is based on the average number of ordinary hours worked per fortnight over the qualifying period.

### **3.6 Casual Employees**

A casual employee is engaged at an hourly rate to work:

- on an intermittent, unexpected or irregular basis; or
- to relieve full time or part time staff for periods generally not exceeding 6 weeks, provided that by agreement between the employee and Advocare the period of casual employment may be extended.

A casual employee is paid a 20% loading on the ordinary rate of pay in lieu of annual leave, sick leave, and paid public holidays, (the casual loading does not cover other entitlements)

The minimum hours of duty for a casual employee will be two hours for each period of engagement. A casual employee who is required to attend supervision sessions or staff meetings will be paid for their attendance. The minimum engagement period of 2 hours does not apply in this instance.

A casual employee may resign by giving one hour's notice. Advocare may terminate the contract of employment by giving one hour's notice or payment in lieu of notice.

In the event that a casual employee works on a regular and ongoing basis for Advocare for a continuous period exceeding 12 months, then the termination provisions (clause 3.8) and redundancy provisions (clause 3.9) will apply.

### **3.7 Trainees**

The terms of the National Training Wage Award 2000, as varied, will apply to the employment of trainees engaged under a registered traineeship.

### **3.8 Resignation and Termination**

There are three ways that an employment contract may be terminated. The employee may (1) resign; (2) be dismissed; or (3) be made redundant.

An employee who wishes to resign must give 4 weeks notice in writing, or a lesser period if agreed between Advocare and the employee.

To terminate the contract of employment, Advocare will give the employee 4 weeks written notice or payment in lieu of notice. An employee over 45 years of age with 2 or more years' service with Advocare will be entitled to an additional week's notice if Advocare terminates the contract.

To terminate a contract of employment Advocare must follow the Advocare discipline and dismissal procedures or workplace change procedures.

An employee whose contract is terminated for serious misconduct may be dismissed without notice.

### 3.9 Redundancy

#### 3.9.1 Definitions

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

*Redundancy* occurs where there are insufficient funds available to continue the position or if the position is no longer required to be done by anyone and this is not due to the ordinary or customary turnover of labour.

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

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

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



### 3.9.2 Severance pay

If as a result of a position becoming redundant an employee's contract is terminated, then the employee will be entitled to the standard period of notice plus redundancy pay. Redundancy pay is calculated on an employee's period of continuous service, in accordance with the table below:

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

Continuity of service shall be calculated in the manner prescribed by 7.1, provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

### 3.9.3 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice set out in clause 3.8 – Resignation and Termination. In this circumstance the employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the employer until the expiry of the notice, but will not be entitled to payment in lieu of notice.

### 3.9.4 Alternative employment

The severance pay provisions shall not apply if the employer obtains acceptable alternative employment for an employee.

This provision does not apply in circumstances involving transmission of business as set in 3.9.1.

### 3.9.5 Job search entitlement

During the period of notice of termination given by the employer in accordance with 3.8, 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.

If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an

interview or they shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

### 3.9.6 Employees exempted

This clause does not apply to:

- employees terminated as a consequence of serious misconduct that justifies dismissal without notice;
- probationary employees;
- trainees;
- employees engaged for a specific period of time or for a specified task or tasks; or
- casual employees.

### 3.9.7 Redundancy disputes

- (a) Paragraphs 3.9.7(b) and 3.9.7(c) impose additional obligations on an employer where an employer contemplates termination of employment due to redundancy and a dispute arises (a **redundancy dispute**).
- (b) Where a redundancy dispute arises, and if it has not already done so, an employer must provide affected employees in good time, with relevant information including:
  - the reasons for any proposed redundancy;
  - the number and categories of workers likely to be affected; and
  - the period over which any proposed redundancies are intended to be carried out.
- (c) Where a redundancy dispute arises and discussions occur in accordance with this clause the employer will, as early as possible, consult on measures taken to avert or to minimise any proposed redundancies and measures to mitigate the adverse affects of any proposed redundancies on the employees concerned.

## 4. WORK ARRANGEMENTS

### 4.1 Hours of Work

The spread of ordinary hours for Advocare employees is 7.00am to 7.00pm Monday to Friday. A full time employee works an average of 37.5 ordinary hours over the pay period.

### 4.2 Meal Breaks

An employee who works more than 5 hours in a day is expected to take an unpaid meal break of between 30 and 60 minutes at a convenient time. A part time employee shall not be required to work more than 5 hours without an unpaid meal break of between 30 and 60 minutes. An employee may elect to take an unpaid meal break after the normal meal period.

An employee who is asked by their relevant supervisor to work through a meal break and is not able to take a meal break later that day, may elect to finish the day early (by deducting the time normally taken for a meal break), or take time off in lieu on another day. Advocare will ensure that such situations are avoided wherever possible by organising a relief roster for positions required to provide continuous client service.

### 4.3 Overtime

Overtime is defined as work in excess of ordinary hours (i.e. more than an average of 37.5 ordinary hours a week) or outside the spread of ordinary hours. Overtime must be authorised in writing by the employees' relevant supervisor prior to it being worked. Advocare operates a time off in lieu system and in most cases overtime is taken as time off in lieu calculated at one and a half hours for each hour of overtime. The relevant supervisor may authorise payment of overtime at the rate of time and a half on the ordinary rate of pay.

### 4.4 Time off in Lieu / Alternative Working Arrangements

An employee may, with approval from their relevant supervisor, elect to:

- Vary their usual starting and finishing times;
- Take time off during ordinary hours and make up those hours at a later time during ordinary hours;
- Take a full day or part day off as time off in lieu during ordinary hours for additional hours worked.
- Work a 9 day fortnight

An employee who elects to work flexible hours must maintain a record of hours worked, which is to be authorised by the relevant supervisor.

An employee may not accrue more than 3 days (22.5 hours) time off in lieu in a calendar month, unless specific prior written approval is given by the Chief Executive Officer to exceed this limit.

Accrued hours must be taken as time off in lieu within 6 (six) months of the date of accrual. An employee may seek approval from their supervisor to extend the timeframe for taking

time off in lieu, if it is for a special purpose such as an extended holiday. Accrued hours not taken within agreed timeframes are not cumulative and will not be paid out.

Where, as a result of an employee electing to vary their start and finish times or to make up hours for time taken off, an employee performs work outside of the ordinary hours of work, the provision of sub clause 4.3 shall not apply for such time worked.

## **5. SALARY**

### **5.1 Salary / Rate of Pay**

An employee's salary levels or rate of pay are determined in accordance with Advocare's classification procedures and paid at the rates set out in Schedule 3.

The following pay increases will apply during the life of this agreement

In the first pay period of July 07 – 5% or March quarter CPI in Western Australia, whichever is the greater

In the first pay period of July 08 – 4% or March quarter CPI in Western Australia, whichever is the greater

In the first pay period of July 09 – 4% or March quarter CPI in Western Australia, whichever is the greater

Payment of salary/wages will be made fortnightly in arrears by transfer to a financial institution nominated by the employee. Advocare will make payment by cheque if electronic funds transfer is not practical. Pay slips will be provided to employees each payday.

### **5.2 Salary Packaging**

Advocare will offer employees the option to participate in salary packaging in accordance with Fringe Benefits Tax legislation. The terms of the salary package will not, when viewed as a whole, be less favourable than the entitlements otherwise available under this agreement. Advocare will only offer salary packaging while classified as a Public Benevolent Institution under the relevant legislation.

### **5.3 Superannuation**

Advocare will pay superannuation contributions for each eligible employee into an approved superannuation fund nominated by the employee, in accordance with Superannuation Guarantee (Administration) Act 1992.

Advocare will pay superannuation contributions of 9% of an employees base salary in to the employees chosen superannuation fund.

Subject to the trust deed of the fund of which the employee is a member, contributions shall continue whilst an employee is absent on paid leave but shall not be made when an employee is absent from work without pay. If an employee is on workers' compensation, contributions shall continue for up to a maximum of 52 weeks for each workers' compensation claim.

A full time or part time employee may elect to make voluntary contributions from their salary to the superannuation fund, in accordance with fund guidelines.

#### **5.4 Salary Increments**

At the conclusion of each 12 months service an employee, other than a casual employee, will be eligible for a salary increment (up to the maximum point in the specified salary range) subject to:

- satisfactory performance of work; and
- the employee acquiring and applying new and/or enhanced skills required for the position.

The effective date for salary increments is an employee's anniversary date of appointment to, or promotion to, a position.

To move to a higher salary level, an employee must be promoted to a position classified at a higher level or have their position reclassified to a higher level (refer to Schedule 3).

If an employee's salary increment is withheld, they may appeal against the decision by lodging a dispute under the dispute resolution procedures.

## **6. ALLOWANCES**

### **6.1 Higher Duties Allowance**

An employee who is required to perform all of the duties of another employee in a higher classification for 5 consecutive working days or more will be paid at the minimum rate prescribed for the higher classification.

Employees will be recognised as a result of acting in these higher duties, and their relevant supervisor will ensure a written record is made that they have undertaken these duties.

### **6.2 Motor Vehicle Arrangements**

An employee, who is provided with a fleet vehicle by Advocare, may use the vehicle for private purposes in accordance with agency policy. In such cases the employee contribution for private use of a motor vehicle will be calculated using the Fringe Benefits Tax method that gives the lowest figure to the employee.

An employee who is required to use their own vehicle for authorised work purposes will be reimbursed on a cents per kilometre basis, in accordance with current ATO recommendations.

A motor vehicle allowance is not payable for travel between an employee's home and the normal place of work. If authorised work travel is conducted on the way to or from the normal place of work, then an employee may claim a motor vehicle allowance for any additional distance travelled.

If an employee is required to work at times and/or places where the use of public transport could reasonably be deemed to place them in a position of possible personal risk, and the

employee does not have access to a motor vehicle, then Advocare will pay for the employee to travel by taxi.

### **6.3 Travel Expenses**

An employee required to stay away from home overnight will be reimbursed the standard rate applicable to State Public Service employees. Advocare acknowledges that at times, to ensure adequate and reasonable accommodation, there may be a requirement to exceed the State Public Service allowance for accommodation

### **6.4 Remote Localities Allowance**

An employee who lives and works in a remote locality is paid a loading on the ordinary rate of pay, or an equivalent benefit, in accordance with the award rate as set out in the SACS Award.

### **6.5 Telephone Allowance**

Advocare shall reimburse the employee for the cost of telephone calls necessarily incurred as a result of their employment. An employee directed by Advocare to have a telephone or fax at their home for business purposes will be reimbursed the cost of installation (if applicable) and all rental costs.

### **6.6 First Aid Allowance**

An employee who holds a current first aid certificate and who is required by Advocare to perform first aid duty at the workplace, shall be paid an allowance in accordance with the SACS Award.

## **7. LEAVE**

### **7.1 Continuous Service**

Subject to the provisions of the Workplace relations Act 1996, for the purposes of calculating continuous service for leave entitlements:

- absences from work on paid leave will be counted as time worked;
- absences from work which are not paid will not be counted as time worked;
- periods of overtime or extra shifts beyond 37.5 hours in a week will not be counted as time worked.

Where Advocare assumes responsibility as the employer of an existing service and the employees of the service, the employees continuous service with the previous employer will be recognised. The employees continuity of employment shall not be broken by the transmission from the previous employer to Advocare.

An employee who moves from a limited term contract to a continuing contract with Advocare without a break in service, will have their service as a limited term contract employee recognised for the purpose of calculating leave entitlements.

## 7.2 Annual Leave

A full time employee is entitled to 4 weeks annual leave in respect of a period of 12 months continuous service. Part time employees are entitled to annual leave on a pro-rata basis. Casual employees do not receive annual leave entitlements.

**7.2.1** An employee proceeding on annual leave will receive a loading of 17.5% on annual leave pay. Leave loading is not payable on any other type of leave taken in conjunction with annual leave (i.e. time in lieu).

**7.2.2** An employee may be granted annual leave on a pro-rata basis. An employee may negotiate, at the time of their appointment, to take paid or unpaid leave prior to the completion of three months service.

If at the time of termination an employee (with at least 1 month's service) has not completed any period of 12 month's service they shall be entitled to pro rata annual leave payment for each completed week of service. Leave loading does not apply to pro rata leave on termination.

**7.2.3** Where an employee is sick or injured for 5 or more consecutive working days during a period of annual leave or long service leave and provides a medical certificate to Advocare, Advocare shall grant sick leave for the period of sickness or injury, if the employee has adequate leave credits, and reinstate the equivalent amount of annual leave or long service leave.

**7.2.4** Advocare may require an employee who has accumulated excessive annual leave to take some of that leave. If the employee has more than 8 weeks accumulated Advocare can require the employee to take at least a quarter of that leave from the date of accrual

**7.2.5** If leave is not cleared within 2 years, the employee will be required to submit a plan to clear the leave within an agreed timeframe.

**7.2.6** An employee may request that unused annual leave be paid out provided that:

- the employee is given an equivalent benefit;
- they have taken at least 2 weeks leave in the previous 12 months;
- at least 4 weeks accrued leave remains available; and
- the agreement is in writing.
- a maximum of 2 weeks leave accrued under this agreement is paid out in any 12 month period

**7.2.7** While an employee will generally have discretion in nominating when they take annual leave, Advocare may request that an employee take annual leave at a time more convenient to the operations of the agency, except that Advocare is not to refuse the employee taking, at any time suitable to the employee, any period of annual leave accrued for more than 12 months.

**7.2.8** When a public holiday falls within an employee's period of annual leave, on a day that the employee would normally have worked, it will be counted as a public holiday and not as a day of annual leave.

**7.2.9** Annual leave is cumulative and any unused annual leave at the time that the employment contract is terminated will be paid to the employee. Leave loading on fully accrued but untaken annual leave is payable on termination.

### **7.3 Public Holidays**

A full time or part time employee will be entitled to paid holidays on the following days, or days observed in lieu, provided that they fall on a day that the employee would normally have worked - New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Sovereign's Birthday, Christmas Day, Boxing Day.

An employee who works on a Public Holiday is entitled to take time off in lieu on a time for time basis. An employee may, for religious or cultural reasons, apply to Advocare to substitute another day for any prescribed public holiday.

Advocare closes each year for the period from Christmas Day to New Year's Day inclusive. Employees are granted 3 days paid leave during the Christmas close down in addition to public holidays observed during this period. An employee who is required to work for part or the entire Christmas close down period shall be entitled to take the additional leave at a mutually convenient time within the next 12 months.

### **7.4 Personal Leave**

**7.4.1** A full time employee shall accrue 75 hours paid personal / carer's leave per annum.

**7.4.2** The entitlement shall accrue pro rata on a weekly basis.

**7.4.3** An employee who is unable to attend or remain at work on the grounds of personal ill health or injury is entitled to be paid at ordinary rates for the period of the absence up to and including the number of hours which the employee was rostered to work on that day.

**7.4.5** Unused portions of personal / carer's leave entitlement shall accumulate from year to year and may be taken in any subsequent year.

**7.4.6** An employee shall advise the employer as soon as reasonably practicable and if possible prior to the commencement of the shift of, the inability to attend work, the nature of illness or injury and the estimated duration of absence.

**7.4.7** An employee must provide, where reasonably practicable, a medical certificate or, if not reasonably practicable, a statutory declaration for any absence of three consecutive days or more.

**7.4.8** An employee may also be required to satisfy the proof in 7.4.7 above after using five days leave without a medical certificate in any one accruing year.

**7.4.9** An employee who suffers personal ill health or injury whilst on annual leave may be paid personal / carer's leave in lieu of annual leave subject to:



- (i) A statutory declaration providing, where reasonably practicable, a medical certificate or, if not reasonably practicable, a declaration stating the illness or injury necessitated confinement to home or hospital for seven consecutive days or more;
- (ii) The portion of annual leave coinciding with the paid personal / carer's leave shall be taken at a time agreed by employer and employee or added to the next period of annual leave.
- (iii) Payment for replaced annual leave shall be at the rate of salary applicable at the time the leave is subsequently taken provided that any annual leave loading prescribed in 7.2.1 shall be deemed to have been paid with respect to the replaced annual leave.

**7.4.10** Where an employee receives payment under this clause and subsequently receives payments in respect of the same period under the *Workers Compensation and Injury Management Act 1981*, the employee shall reimburse to the Employer the payments made under this clause and the employer shall reinstate the employee's personal / carer's leave or other entitlements accordingly.

## **7.5 Carer's Leave**

### **7.5.1 Use of Personal / carer's Leave**

- (a) An 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 subclause, up to 10 days per annum of their personal / carer's leave entitlement for absences to provide care and support for such persons when they are ill or in cases of an unexpected emergency in relation to such persons
- (b) The employee shall, if required, where reasonably practicable establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use leave in accordance with this subclause is subject to:
  - (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being either:
    - (A) a member of the employee's immediate family; or
    - (B) a member of the employee's household.
  - (iii) the term "immediate family" includes:
    - (A) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee; and

- (B) a child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of an employee or spouse of the employee.
- (d) 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 to 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.

### **7.5.2 Unpaid Leave for Family Purpose**

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.

## **7.6 Compassionate Leave**

- 7.6.1** On the death of a spouse or de facto spouse, child or step-child, parent or parent in law, brother, sister, or any other person who immediately before that person's death lived with the employee as a member of the employee's family, the employee is entitled to bereavement leave, without loss of ordinary time earnings, of up to three (3) days.
- 7.6.2** Bereavement leave shall at the discretion of the employee be taken at any time up to and including the three days following the day of the funeral.
- 7.6.3** Payment for such leave may be subject to the employee providing proof of the death, satisfactory to the employer.
- 7.6.4** Bereavement leave is not to be taken where the employee is absent on another form of leave or would not otherwise have been on duty unless the absence has been taken to enable the employee to be with a dying relative.
- 7.6.5** An employee is entitled to 3 days paid compassionate leave per occasion for spending time with a member of their immediate family or household who contracts or develops a personal illness, or sustains a personal injury, that poses a serious threat to thier life. The leave can be taken at any time during or while the injury or illness persists

## **7.7 Long Service Leave**

An employee who has completed 10 years continuous service with Advocare will be entitled to 13 weeks long service leave on full pay, with pro rata entitlements after 7 years continuous service. An employee may apply to take 26 weeks long service leave on half pay or 6.5 weeks on double pay. An employee, who leaves Advocare after 7 or more years continuous service, will be entitled to a termination payment for accrued long service leave.

Accrued long service leave must be cleared within 3 years from the date that it is credited. If it is not cleared within 3 years, the employee will be required to submit a plan to clear the leave within an agreed timeframe. An employee may request that unused leave be paid out.

An employee taking long service leave is not entitled to public holidays that fall during the period of long service leave.

### **7.8 Leave Without Pay**

Advocare may grant a full time or part time employee leave of absence without pay for a period of up to 12 months provided that:

- the work of the agency is not inconvenienced; and
- all other leave credits are exhausted.

An employee may apply for leave without pay for study or professional development purposes (sabbatical leave). Any period that an employee is on leave without pay will not be regarded as a period of, or count towards, continuous service.

### **7.9 Parental Leave**

An employee who has been with the Advocare for at least 12 months is entitled up to 52 weeks unpaid parental leave on the birth or adoption of a child, to be taken in accordance with Clause 27 – Parental Leave of the SACS Award and the Workplace Relations Act 1996

### **7.10 Ceremonial Leave**

A full time or part time employee who is legitimately required by their cultural tradition to be absent from work for ceremonial purposes may apply to take up to 10 days unpaid leave in any one year.

### **7.11 Study Leave**

An employee, with 12 months or more continuous service, may apply for up to 5 hours paid study leave a week (or up to 200 hours per year) to study for a Diploma, Degree or Post Graduate qualification conducted by a university, TAFE college, professional association or other recognised training provider. Study leave may be approved for courses studied on an external basis. Part time employees are entitled to study leave on a pro rata basis. Casual employees are not entitled to study leave.

Approval of study leave will be subject to:

- The employee undertaking an equivalent formal study load in their own time;
- The employee making satisfactory academic progress; and
- The course being relevant to their own work or career with Advocare.

Generally, a request for study leave will not be approved if:

- It incurs additional agency staffing costs; or
- It conflicts with agency staff meetings or other activities.

### **7.12 Leave for Union Training**

Advocare may, subject to operational requirements, grant paid leave of absence to employees who are nominated by the ASU to attend relevant short courses or seminars from time to time agreed between the ASU and Advocare.

Leave of absence will be granted at the ordinary rate of pay and shall not include shift allowances, penalty rates or overtime.

A day off in lieu will not be granted where a public holiday or rostered day off falls during the duration of a course.

All applications for leave shall be accompanied by a written course nomination from the ASU. The application shall provide details as to the subject, commencement date, length of course, venue and the provider conducting the course.

Unless otherwise agreed, a qualifying period of 12 months service shall be served before an employee is eligible to attend courses or seminars of more than a half day duration.

Leave granted under this clause shall include any necessary traveling time within normal working hours immediately before or after the course.

Advocare shall not be liable for any expenses associated with an employee's attendance at ASU training courses.

### **7.13 Jury Service**

A full time or part time employee who is required to serve on a jury during their ordinary working hours shall, on presentation to Advocare of the summons to serve, be granted leave of absence on full pay for the period of jury duty. Any payment received by an employee for jury duty shall be paid to Advocare or deducted from the employee's salary.

An employee must notify their relevant supervisor as soon as possible of the date that they are required to attend for jury service. The employee must provide written notice to their relevant supervisor to verify their attendance at jury service, the duration of attendance and the amount of jury allowance received.

### **7.14 Purchased Leave**

The employer and an employee may agree to enter into an arrangement whereby the employee can purchase up to 8 weeks additional leave.

The employer will assess each application for a 44/52 salary arrangement on its merits and give consideration to the personal circumstances of the employee seeking the arrangement.

Where an employee is applying for purchased leave of between 5 and 8 weeks the employer will give priority access to those employees with Family / carer responsibilities.

The employee can agree to take a reduced salary spread over the 52 weeks of the year and receive the following amounts of purchased leave:

<b>Number of Weeks' Salary Spread Over 52 Weeks</b>	<b>Number of Weeks' Purchased Leave</b>
44 weeks	8 weeks
45 weeks	7 weeks
46 weeks	6 weeks
47 weeks	5 weeks
48 weeks	4 weeks
49 weeks	3 weeks
50 weeks	2 weeks
51 weeks	1 week

The purchased leave will not be able to be accrued. The employee is to be entitled to pay in lieu of the purchased leave not taken. In the event that the employee is unable to take such purchased leave, their salary will be adjusted on the last pay period in January to take account of the fact that time worked during the year was not included in the salary.

Where an employee is in receipt of an allowance provided for in Higher Duties Allowance of the Award proceeds on any period of purchased leave the employee shall not be entitled to receive payment of the allowance for any period of purchased leave.

In the event that a part time employee's ordinary working hours are varied during the year, the salary paid for such leave taken will be adjusted on the last pay in January to take into account any variations to the employee's ordinary working hours during the previous year.

**8. OTHER MATTERS**

**8.1 Performance Review**

An employee's performance will be reviewed annually on the anniversary of their appointment or promotion, or at any other time requested by Advocare or the employee, in accordance with Advocare policy.

**8.2 Training, Conferences and Seminars**

An employee may, with approval from the Chief Executive Officer, attend relevant conferences, seminars and training workshops during ordinary working hours, in accordance with the Advocare staff training policy.



## SCHEDULE 1 – DISPUTE RESOLUTION PROCEDURES

This schedule sets out the provisions for dealing with any question or dispute that arises between the parties about the meaning or effect of this agreement or any other matter in dispute that is to be dealt with in accordance with the provisions of this agreement.

In relation to any matter that may be in dispute between the parties to this agreement, the parties agree to attempt to resolve the matter through workplace discussions. If a dispute is not settled in this way then either party may refer the matter for mediation or arbitration.

Any dispute that may arise needs to be dealt with efficiently and fairly and the process is to be undertaken as soon as reasonably possible.

Advocare acknowledges that the ASU has the right to initiate a dispute on behalf of employees in accordance with provisions of the Advocare Workplace Agreement 2007.

Advocare acknowledges that the ASU has the right to represent employees throughout the dispute settlement process outlined in the Advocare Workplace Agreement 2007

The parties acknowledge the right of either party to appoint, in writing, another person to act on their behalf at any stage of the dispute resolution process.

### **Step 1 - Informal Discussions**

Employee raises concern or complaint with the person concerned at the earliest opportunity. The parties involved will discuss the issue to try to resolve the dispute.

### **Step 2 - Further Discussions and Investigation**

If the matter is not resolved at Step 1, either party may refer the matter in writing to the Chief Executive Officer (for staff issues) or the Chairperson of the Board (for a matter relating to the Chief Executive Officer or a Board member). At this stage the Chief Executive Officer/Chairperson may require a written statement from both parties and may decide to investigate the matter before recommending a course of action to the parties involved. The Chief Executive Officer/Chairperson must provide a written response to seek to resolve the matter, within 10 (ten) working days of being notified of a dispute.

### **Step 3 - Mediation**

If Step 2 does not resolve the matter, the Board of Management may appoint a mediator. The mediator may be a member of the Board or an independent person outside the organisation. The parties will:

Agree to the appointment of the mediator;

Participate in the mediation process in good faith;

Cooperate to ensure that the dispute is resolved as quickly as is reasonably possible;

Continue to work in accordance with the contract of employment;

Agree not to refer the matter to arbitration while the mediation process is in progress.



**Step 4 - Arbitration**

If Step 3 does not resolve the matter, the matter will be referred to the Western Australian Industrial Relations Commission for conciliation and if the matter remains unresolved, arbitration.

The Arbitrator is empowered under this Agreement to take all necessary action to assist the parties resolve the dispute by mediation, conciliation or arbitration

## **SCHEDULE 2 – DISCIPLINE AND DISMISSAL PROCEDURES**

This schedule sets out the steps Advocare will follow if not satisfied with the performance or conduct of an employee.

### **Definitions**

Poor performance - An employee is not performing to the required standard.

Misconduct - An employee who knowingly breaches a policy or procedure, or is accused of inappropriate work behaviour that does not justify dismissal unless repeated.

Serious misconduct - An employee is accused of unacceptable or unlawful behaviour that justifies immediate dismissal.

The parties acknowledge the right of either party to appoint, in writing, another person to act on their behalf at any stage of the discipline and dismissal procedures.

### **Procedure relating to Poor Performance or Misconduct**

In the event of poor performance or misconduct, the following procedure will be followed:

#### **Step 1**

Advocare will notify the employee in writing of the allegation of poor performance or misconduct and advise the employee of arrangements for a meeting to discuss the matter. At the meeting the employee will be given an opportunity to respond to the allegations. Advocare and the employee will discuss the issues and draw up a written plan to resolve the matter. A date will be set to review the situation.

#### **Step 2**

If there is a further allegation of poor performance or misconduct, or the original allegation is not resolved by the review date, then Advocare and the employee will meet again to discuss the matter. The same process will be followed as in Step 1. Advocare may call further meetings with the employee during this stage to try and resolve the concerns. At this stage Advocare may issue a notice in writing stating that the employment contract will be terminated if the employee's performance or conduct does not improve to the required standard within a specified period of time.

#### **Step 3**

If, after being issued with at least one written warning, the employee's performance or conduct does not improve to the required standard within the specified period of time, Advocare may terminate the employee's contract or take other appropriate discipline action.

### **Procedure Relating to Serious Misconduct**

Advocare is entitled to dismiss an employee without notice for serious misconduct. This may include, but is not limited to:

- Theft of Advocare's property or funds;
- Wilful damage of Advocare's property;
- Intoxication through alcohol or other drugs during working hours;
- Physical violence to another person in the course of the employee's duties;
- Verbal or physical harassment of a client, another employee or Advocare;

- Falsification of any of Advocare's records for personal gain;
- A breach of Advocare's confidentiality provisions.

Where an employee is dismissed for serious misconduct the employee will be given the opportunity to respond to any allegations. In the case of summary dismissal, salary will be paid up to the time of dismissal only.

**SCHEDULE 3 – ADVOCARE SALARY SCALE**

To calculate salary payments, divide the annual amount by 26.0833 fortnights and then by 75 hours.

Level	Current Annual Rate	Hourly Rate	July 2007 5%	Hourly Rate	Casual Rate
9.1	\$57,111.06	\$29.19	\$59,966.61	\$30.65	\$36.78
8.3	\$54,950.32	\$28.09	\$57,697.84	\$29.49	\$35.39
8.2	\$53,860.03	\$27.53	\$56,553.03	\$28.91	\$34.69
8.1	\$52,769.75	\$26.97	\$55,408.24	\$28.32	\$33.98
7.3	\$50,589.18	\$25.86	\$53,118.64	\$27.15	\$32.58
7.2	\$49,498.89	\$25.30	\$51,973.83	\$26.56	\$31.87
7.1	\$48,408.61	\$24.74	\$50,829.04	\$25.98	\$31.18
6.3	\$47,318.33	\$24.19	\$49,684.25	\$25.40	\$30.48
6.2	\$46,228.04	\$23.63	\$48,539.44	\$24.81	\$29.77
6.1	\$45,157.58	\$23.08	\$47,415.46	\$24.24	\$29.09
5.3	\$44,067.30	\$22.52	\$46,270.67	\$23.65	\$28.38
5.2	\$43,076.13	\$22.01	\$45,229.94	\$23.12	\$27.74
5.1	\$41,985.85	\$21.46	\$44,085.14	\$22.54	\$27.05
4.4	\$40,994.68	\$20.96	\$43,044.41	\$22.00	\$26.40
4.3	\$38,833.93	\$19.85	\$40,775.63	\$20.84	\$25.01
4.2	\$37,743.65	\$19.29	\$39,630.83	\$20.26	\$24.31
4.1	\$36,930.89	\$18.87	\$38,777.43	\$19.82	\$23.78
3.3	\$36,930.89	\$18.87	\$38,777.43	\$19.82	\$23.78
3.2	\$35,840.61	\$18.32	\$37,632.64	\$19.23	\$23.08
3.1	\$34,750.33	\$17.76	\$36,487.85	\$18.65	\$22.38
2.3	\$33,759.16	\$17.25	\$35,447.12	\$18.11	\$21.73
2.2	\$32,688.70	\$16.71	\$34,323.14	\$17.55	\$21.06
2.1	\$31,598.41	\$16.15	\$33,178.33	\$16.96	\$20.35
1.2	\$30,389.19	\$15.53	\$31,908.65	\$16.31	\$19.57
1.1	\$29,318.73	\$14.99	\$30,784.67	\$15.73	\$18.88

The classification of employees bound by this agreement shall be determined in accordance with the classification definitions contained in Clause 14 of the SACS award.

## WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

<b>PARTIES</b>	AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES, W.A. CLERICAL AND ADMINISTRATIVE BRANCH	<b>APPLICANT</b>
	-v-	
	ADVOCARE INCORPORATED	<b>RESPONDENT</b>
<b>CORAM</b>	COMMISSIONER S M MAYMAN	
<b>DATE</b>	THURSDAY, 15 NOVEMBER 2007	
<b>FILE NO/S</b>	AG 60 OF 2007	
<b>CITATION NO.</b>	2007 WAIRC 01235	

**Result** Agreement registered

**Representation**

**Applicant** Mr G Upham

**Respondent** Mr G Mahney

*Order*

Having heard Mr G Upham on behalf of the applicant and Mr G Mahney on behalf of the respondent the Commission pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (the Act) hereby orders:

THAT the Advocare Enterprise Agreement 2007 in the terms of the agreement filed on 10 October 2007 and amended on 15 November 2007 be registered under section 41 of the Act effective on and from 15 November 2007.

COMMISSIONER S M MAYMAN