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# Agreements Database And Monitor REPORT

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## wage trends

### wage increases in December 2003 quarter certified agreements

The average annual wage increase for certified agreements registered in the December 2003 quarter was 4.1% (per agreement), down by 0.4 percentage points from 4.5% in the September 2003 quarter.

A widening gap between average annual wage increases in union and non-union agreements was reported in both the June and September 2003 quarters (*ADAM Report Nos 37 & 38*) with union agreements 0.9 percentage points higher than non-union agreements in the June quarter and 1.4 percentage points higher in the September quarter. Figure 1.1 below shows that in the December 2003 quarter, this gap has closed somewhat, delivering average annual wage increases of 4.4% to union agreements and 3.4% to non-union agreements. Private sector agreements certified in the December 2003 quarter have shown a decline in average annual wage increases from the previous quarter by 0.3 percentage points to 4.2%. Perhaps most interestingly in the December quarter the average annual wage increase in public sector agreements has declined to 3.6% from 4.6% in the September quarter. This change reflects a higher number than usual of enterprise agreements with lower wage outcomes covering non-profit organisations undertaking welfare and community development work.

**figure 1.1: December 2003 quarter average annual percentage wage increase**



Source: ADAM Database, 2004, ACIRRT, University of Sydney.

## high wage outcomes in December 2003 quarter agreements

As in previous ADAM reports flexibility has remained a dominant theme in higher wage outcome agreements. In order to achieve these higher levels of flexibility various workplace practices were instituted such as increasing the span of hours worked, allowing employees to utilise flexible start and finishing times, and the introduction of additional leave entitlements such as RDOs. Other working arrangements relating to the removal of demarcation barriers were also included in agreements. The main objective of such practices relates to the more effective utilization of skills, thereby creating a more efficient workplace.

Various agreements also suggested that a performance linked wage structure remained a dominant feature of agreements. In order to receive the 'at risk' component of their wage increase employees were required to meet a number of performance measures. These included measures relating to sales targets, customer service levels and a reduction in lost time.

There was also evidence the December quarter that employers are embracing new workplace practices, most notably quality assurance. In recognition of employee commitment to these workplace changes, employers provided higher wage increases throughout the life of the agreement.

A final observation from this quarter concerns the importance placed on training undertaken by employees. In an effort to gain a competitive advantage by maintaining a highly trained workforce, employers have included financial incentives for training modules completed by employees.

**table 1.1: key features of higher than average wage increases in December 2003 quarter enterprise agreements**

Industry (AAWI)	Key Provisions
<p><i>Education Sector</i> (AAWI 6.75%)</p>	<ul style="list-style-type: none"> <li>• The enterprise has consolidated its salary structure into a “flat rate” of pay which incorporates penalty and overtime payments. This loaded base rate is to be used as the basis for calculating all entitlements to annual leave and annual leave loading, sick leave and long service leave.</li> <li>• The high wage increases compensate for the introduction of the ‘flat rate’. In the first year of this agreement the employees will receive a 6.75% increase. This increase comprises two instalments: 4.25% on certification, and 2.5% six months later. In the second year of the agreement the employees will receive a further 5%, which is paid in two instalments.</li> <li>• The agreement also provides the employees with the opportunity to offset their taxation by salary sacrificing up to 40% of their annual income.</li> </ul>
<p><i>Food Manufacturing Industry</i> (AAWI 8.57%)</p>	<ul style="list-style-type: none"> <li>• This 24 month agreement provides for a guaranteed wage increase of 7.4% and an additional 9.38% if certain KPIs are met. The KPIs include: productivity measures (sales, output, reduction in lost time, inventory levels, customer service) and individual performance indicators (training).</li> <li>• The agreement demonstrates a firm commitment to maintaining skills via nationally accredited training programs. Employees who undertake training modules are compensated with an allowance of \$5.70 per week for every module completed.</li> <li>• Employees also receive an additional annual bonus, which is based on the enterprise's net profit.</li> </ul>
<p><i>Business Services Sector</i> (AAWI 6.62%)</p>	<ul style="list-style-type: none"> <li>• This 29 month agreement provides for a 16% guaranteed wage increase to be paid in six instalments.</li> <li>• Additional rostered days off are provided throughout the life of the agreement; 2 days in 2004 and 4 days in 2005. The trade-off for these benefits is increased flexibility to meet the needs of the enterprise. In recognition of the specific demands of the industry, employees are required to be multi-skilled; have flexible starting and finishing times; undertake extra shifts at short notice.</li> </ul>

<p><i>Building Contracting Industry</i> (AAWI 6.5%)</p>	<ul style="list-style-type: none"> <li>• Due to the competitive nature of this industry this employer has instituted a Quality Assurance program at the workplace. To encourage employee commitment to this program, the employer has provided for a 13% increase to be paid in three instalments over 24 months.</li> </ul>
<p><i>Metal Manufacturing Sector</i> (AAWI 6.3%)</p>	<ul style="list-style-type: none"> <li>• This 30 month agreement provides for 15.75% wage increase to be paid in four instalments.</li> <li>• These increases are in recognition for the employees' commitment to reducing unnecessary sick leave absences, increased flexibility in hours and removal of demarcation barriers.</li> </ul>

Source: ADAM Database, 2004, ACIRRT, December 2003 Quarter, University of Sydney.

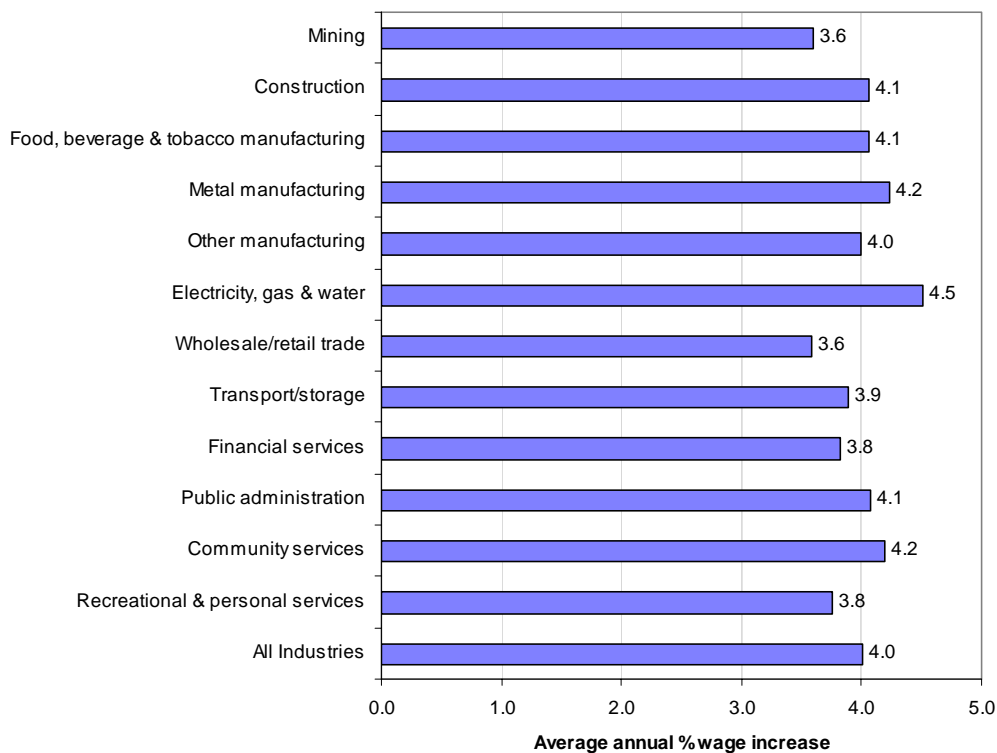
Note: High wage agreements are defined as those delivering an AAWI of 5% or above.

## wage outcomes in current collective agreements

The average annual percentage wage increase for all currently operating agreements (as at the end of December 2003) was 4% (per agreement), up by 0.1 percentage points from the previous quarter.

There has been little change in average annual wage increase by industry since the previous *ADAM Report No 39*. Figure 1.2 shows that the electricity, gas and water industries continue to lead wage increase outcomes, climbing to 4.5%, compared to 4.4% in the September quarter. Metal manufacturing is also up 0.2 percentage points from the September quarter to 4.2%. The mining and the wholesale and retail trade industries provided the lowest annual wage increase of 3.6%.

**figure 1.2: wage increases in currently operating agreements, by industry**



Source: ADAM Database, 2004, ACIRRT, University of Sydney, (n=1711).

Note: \* Current agreements include all enterprise agreements which have not reached their stated nominal expiry date as at end December, 2003.

## special issue

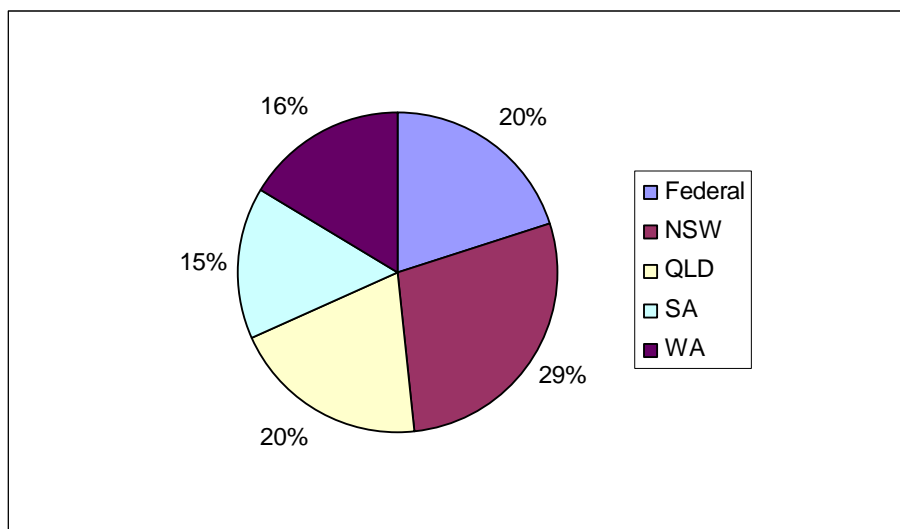
### disciplinary procedures

Disciplinary procedures are actions that are taken against an individual who fails to conform to the rules of an organisation of which he/she is a member. Such procedures are almost universal in Australian workplaces. The last national workplace survey (AWIRS) in 1995 found that 99% of workplaces with 200 or more employees had disciplinary procedures in place. In contrast, small businesses with less than 20 employees overwhelmingly handled disciplinary matters informally, with only 13% having formal rules or procedures.

This issue of the *ADAM Report* will look at the trends concerning the inclusion of disciplinary provisions in workplace agreements. While widespread in practice, only 18% of current agreements provided formal disciplinary procedures.

Figure 1.3 shows that between them, the federal and New South Wales jurisdictions account for 50% of certified agreements containing disciplinary clauses. By contrast, only 13% of Western Australian agreements include such provisions. It should be noted that although Western Australia has the lowest number of such agreements the majority of them are in the education industry.

**figure 1.3: incidence of disciplinary procedure provisions by jurisdiction**

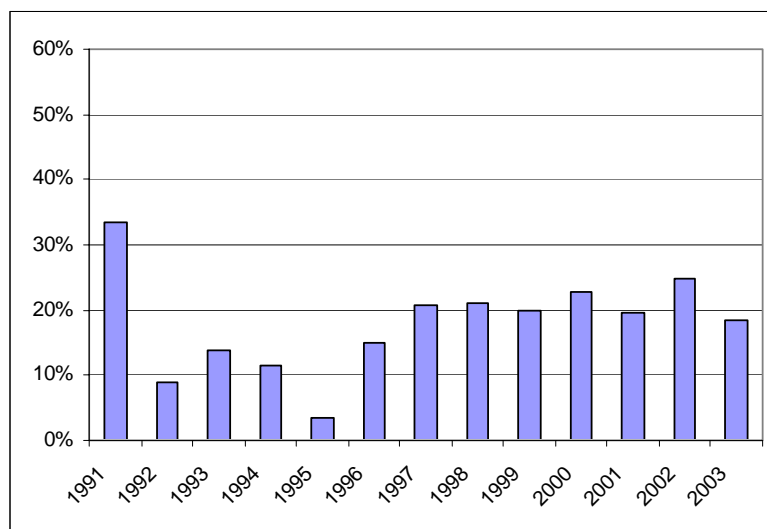


Source: ADAM Database, 2004, ACIRRT University of Sydney

Interestingly there is very little difference in the incidence of disciplinary provisions between union (18%) and non-union certified agreements (16%). Industry variations were also found to be very slight.

Figure 1.4 shows that there was a noticeable decline in the number of agreements which included disciplinary provisions from 1991.

**figure 1.4: incidence of disciplinary procedure provisions over time**



Source: ADAM Database, 2004, ACIRRT University of Sydney

The decline continued until 1995 at which point only 4% of newly registered agreements had disciplinary provisions. From 1995 these inclusions rose and then levelled off since 1997. The highest incidence of the inclusion of disciplinary procedures (33%) was recorded in the first years of enterprise bargaining.

### ***legal issues in disciplinary procedures***

The legal issues pertaining to disciplinary action were discussed by Therese McDermott from Cutler Hughes at an acirrt / briefing in 2002. Excerpts from the paper appear below. In her paper she set out the complexities of pursuing disciplinary action.

Where an employee engages in some form of inappropriate conduct in the workplace, or is under performing in some way, an employer may wish to take some form of disciplinary action. This can present a number of difficulties. There are a vast number of potential disciplinary measures that could be implemented. In practice however, the main issue is usually trying to determine whether the circumstances justify a termination of employment. This is usually determined by whether there is a

reason relating to conduct or capacity that satisfies the requirements of the statutory unfair dismissal regimes. In particular, the alleged misconduct must be of sufficient seriousness to warrant termination of employment. An employer must also be mindful of the manner in which the termination is undertaken to satisfy the procedural fairness requirements as outlined above.

#### *DISCIPLINARY ACTION - DEMOTION*

The publicity, some years ago, surrounding the case of a postal worker who was disciplined for disobeying order to remove personal items from her desk illustrates the difficulties in this area. The failure to remove the personal items was said to constitute a breach of the company's policy. The media reports suggest that she was subject to disciplinary action in the form of the loss of two previous pay rises amount to \$3000, which was a form of demotion. There is an issue of whether she had disobeyed a lawful and reasonable direction, and then the appropriateness of the disciplinary consequences.

Some organisations have specific disciplinary procedures that specify degrees of misconduct and the consequences. These can cause difficulties if they are rigidly applied, or the "*crime does not fit the punishment*". In any event, a policy cannot be applied without regard to the particular circumstances of the case and must be done in accordance with procedural fairness.

Where the disciplinary action takes the form of a demotion particular issues arise. Demotion may be specified as an available disciplinary measure, for example in public sector employment. However, in certain circumstances a demotion may be considered to constitute a termination of employment, and therefore come with in unfair dismissal regimes. Changes last year to the federal unfair termination provisions attempt to exclude certain demotions from the regime. A demotion that does not significantly reduce remuneration or duties is not a termination for the purposes of the Act. However, if for disciplinary purposes the reduction in salary or duties is "*significant*" then the termination provisions apply. This exclusion does not operate at the state level. Deductions from wages are also not permissible, except in very specific circumstances.

#### *DISCIPLINARY ACTION - SUSPENSION*

In some cases an individual may be suspended on full pay while an investigation is being conducted. There may be a specific power to suspend, particularly in public sector employment. Some cases have emphasised that this option may create difficulties where there is a long passage of time before the investigation is completed.

*DISCIPLINARY ACTION – CONSISTENT AND FAIR APPROACH*

As was seen in the *Burrows case*, any disciplinary measures should be implemented “once and for all”, to avoid a suggestion that the person has been punished twice for the same “offence”. However, if the person has in fact engaged in a further breach or some form of misconduct, then it is possible to implement further disciplinary measures. The *Burrows case* also highlighted the need for consistency in approach, so that employees are treated in a like manner for similar misconduct. For example, in a recent case where an employee was dismissed for failing to conduct a required safety test, the Tribunal took into account both the unconscionably long hours the employee had been working, and the fact that his partner was only demoted.

The manner in which discipline is undertaken, apart from raising unfair dismissal issues, may also give rise to contractual claims that the employer has conducted itself in a manner likely to destroy the trust and confidence in the relationship. A good example of this is an English case where an employer repeatedly insisted that an employee undertake psychiatric tests, which were unwarranted in the circumstances.<sup>1</sup> It has been argued that this implied term could be breached “*when supervisors or manager have made unjustified accusations against workers, engaged in harassment, refused to investigate reasonable grievances or failed to treat employees with a appropriate degree of dignity.*”<sup>2</sup>

In a novel case argued before the NSW Court of Appeal recently, a former employee sought to recover damages for the alleged negligence of the employer in undertaking its disciplinary procedures. However the Court held that an employer does not owe an employee a duty of care to conduct its disciplinary proceedings in such a manner as to avoid psychiatric harm to an employee. In the case of *State of NSW v Paige*<sup>3</sup> a principal of Sydney High School received complaints from students regarding sexual misconduct of a teacher. The principal notified the NSW Department of Education of some complaints, but dealt with the complaints by a direct approach to the teacher and arranged to have him transferred from the school.

In 1995, the Director General of the Department issued a statement requesting a re-notification of sexual misconduct cases that had not been adequately investigated. The Respondent re-notified the complaints and notified other complaints for the first time. The Respondent’s conduct was then investigated and he was charged with the breach of his duty for non-compliance with the departmental procedures in the way he had handled the complaints. In October 1997, the Respondent submitted, and subsequently withdrew, a notice of retirement. The Respondent was then found guilty

<sup>1</sup> *Bliss v South East Thames Regional Health Authority* [1987] ICR 700.

<sup>2</sup> Creighton & Stewart *Labour Law : An Introduction* (3<sup>rd</sup> Ed.) p 256.

<sup>3</sup> [2002] NSW CA 235 (19 July 2002)

of various charges and the Director-General purported to accept the original notice of retirement.

The Respondent claimed psychiatric harm and loss of income. The issue arose whether there had been a breach of duty of care to the Respondent and also a question of whether there had been an effective termination of the Respondent's contract of employment. The NSW Super Court found that the Appellant did not owe a duty of care to conduct its disciplinary proceedings so as to avoid psychiatric harm to the Respondent. The court found that the imposition of such a duty would have an inhibiting affect on expeditious investigations. The Court found that there are arrangements in place for the handling of unfair dismissal claims that address procedural issues. This statutory scheme would be thwarted by the creation of a parallel remedy of unlimited scope that could be sought at any time. Therefore the court thought it would be inappropriate to expand the duty of care and negligence to provide an alternative course of action for unfair dismissals. The Court found that matters concerning the creation and termination of a contract of employment should properly be left to the law of contract and the specific statutory schemes. The fact that the conduct may have occurred outside of hours and may not be directly related to work, does not mean it can be ignored and not subject to some form of investigation.

#### *DISCIPLINARY ACTION – OUT-OF-HOURS CONDUCT*

A question that often arises with respect to vicarious liability, is what are the outer limits of an employer's vicarious liability, particularly where some form of social activity that may have an indirect relationship to the workplace takes place? Where such social activities such as Christmas parties,<sup>4</sup> work related conferences, and travel for work related purposes takes place, it is fairly clear that vicarious liability may be established. The question remains of what about conduct that might be more remotely connected to the workplace?

The issue of conduct that might occur outside the workplace, but has a consequence in the workplace, was considered by Justice Finn in the case of *McManus v Scott-Charlton*<sup>5</sup>. In that case Justice Finn observed

*"I am mindful of the caution that should be exercised when any extension is made to the supervision allowed an employer over the private activities of an employee. It needs to be carefully contained and fully justified."*<sup>6</sup>

His Honour concluded that it was lawful for an employer to give an employee directions to prevent a repetition of privately engaged sexual harassment of a co-employee where:

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<sup>4</sup> *Thomas v Westpac Banking Corporation* (1995) EOC 92-742

<sup>5</sup> (1996) 140 ALR 625 at 636.

<sup>6</sup> (1996) 140 ALR 625 at 636

- “(1) *The harassment can reasonably be said to be a consequence of the relationship of the parties as co-employees (i.e. it is employment related); and*
- (2) *The harassment has had and continues to have substantial and adverse effects on workplace relations, workplace performance and/or the efficient, equitable and proper conduct of the employer’s business because of the proximity of the harasser and the harassed person in the workplace.*”

In that case, the lawfulness of the direction by the employer not to engage in harassment outside work hours was dependent on the fact that the employee’s out-of-work conduct had demonstrated a substantial and adverse affect on the employer’s business.

The general approach to out-of-hours conduct was outlined in *Rose v Telstra* in which Vice President Ross considered the issue of when “out-of-hours” conduct justifies a termination of employment, and limited it to the following circumstances:

- The conduct must be such that, viewed objectively, it is likely to cause serious damage to the relationship between the employer and employee or;
- The conduct damages the employers interest, or;
- The conduct is incompatible with the employees duty as an employee.

The case involved two Telstra employees who were involved in fighting after hours in a hotel room. The dismissal of one of the employees for fighting was found to be harsh, unjust and unreasonable because of the limited impact on his employment, and a lack of a requisite connection to his employment. Neither of the employees were in their uniform at the time, nor were they “on-call”. The incident also took place outside of working hours and therefore did not involve a public place. His Honour concluded that the conduct complained of must be of such a gravity or importance as to indicate a rejection or repudiation of the employment contract by the employee. Absent these concerns, an employer had no right to control or regulate an employee’s out of hours conduct. Vice President Ross found that there was no evidence to indicate that Telstra’s reputation had been tarnished by the incidents although there had been Local Court proceedings. Ross VP stated

*“I do not doubt that the Applicant’s behaviour on 14 November 1997 was foolish and an error of judgment. He made a mistake. But employers do not have an unfettered right to sit in judgment on the out of hours behaviour of their employees. An employee is entitled to a private life. The circumstances in which an employee may be validly terminated because of their conduct outside work are limited. The facts of this case do not fall within those limited circumstances.”*

## sample clauses

Below is a selection of some recent disciplinary procedure provisions in agreements from the ADAM Database. Provisions range from simple clauses which outline the principles of the procedures to be adopted, to the complex depiction of step-by-step processes and outcomes.

### *FOOD BEVERAGE AND TOBACCO MANUFACTURING*

#### **“25. Disciplinary procedures**

- 25.1 Counselling and discipline should be corrective by nature. The purpose of discipline is to obtain compliance with the established rules of conduct. To support this approach, except in cases of misconduct the following warning procedures shall apply before a driver is dismissed:
  - i. Firstly a recorded warning shall be recorded on the driver’s file.
  - ii. On a second disciplinary occurrence a first written warning shall be given.
  - iii. On a further disciplinary occurrence a final written warning shall be given.
  - iv. Further instances of unsatisfactory behaviour or performance shall leave the driver liable to dismissal.
- 25.2 The Company may bypass one of the steps above should the seriousness of the situation warrant it.
- 25.3 Warnings shall be issued in formal surroundings with the driver having the opportunity to have a delegate present.
- 25.4 Each written warning shall outline the nature of the unsatisfactory behaviour or performance.
- 25.5 Warnings issued consecutively under this disciplinary procedure need not be for a repetition of the same offence, but may be for offences of a dissimilar nature. Each warning shall have a life of 12 months from the date it is given.
- 25.6 The Company disciplinary procedure shall not apply in a case of misconduct. Misconduct may result in dismissal without notice. “

*WHOLESALE TRADE***“13. COUNSELLING AND DISCIPLINARY PROCEDURES:**

This procedure is designed to encourage and improve good work practices, performance and individual conduct. The procedure also provides steps for giving guidance, and in appropriate cases, taking disciplinary action.

**Step 1 – Counselling:**

Employees who exhibit unsatisfactory performance or behaviour shall be counselled so that they understand the standards expected of them and will be offered assistance and guidance in achieving those standards.

...

**Step 2 – Severe Reprimand and final Warning:**

If the offence or misconduct is repeated or continues, a severe reprimand and final warning will be necessary. Once again the offence (and/or new offence), or unsatisfactory conduct should be restated and the employee warned that failure to improve within a given period, normally around six (6) months, will result in dismissal.

Present at this interview will be the supervisor, manager, the delegate, if the employee so chooses, and employee. A record of the warning will be made and a copy retained by the employee and/or union delegate and a copy placed in the employee's file.

**Step 3 – Dismissal:**

...

If dismissal becomes necessary, the action should, when possible, involve the State Manager, Department Manager, Supervisor and Union Delegate and the following procedures shall be observed:

- (i) Prior to actually dismissing any employee in these circumstances, the procedures are reviewed between the supervisor and department manager and union delegate. ...
- (ii) Having decided on dismissal, the employee should be invited into the privacy of an office and if a member of an union, the attendance of the union delegate must be arranged or a duly appointed union representative.
- (iii) Restate the offence or problem giving rise to the dismissal and restate the corrective action which was previously agreed upon.
- (iv) Advise the employee that he/she has failed to comply with previously agreed collective action(s), dismissal has resulted as a consequence.

...”



ELECTRICITY, GAS AND WATER

**“Attachment 3 – Process to ensure effective personal behaviour**

**3. Action**

The PEEPB consists of three consecutive steps: Formal counselling, First warning, and Final warning, each of which involves an interview between the employee, his/her tram and team leader. After the Final Warning is issued, the employee is asked to “Show Cause” before being dismissed.”

EDUCATION

**“26. Misconduct/Serious Misconduct**

- 26.1 Under these provisions termination of employment may only occur with proven serious misconduct.
- 26.4 *Misconduct* is behaviour that is not serious misconduct but which nevertheless warrants corrective action, e.g. unexplained absenteeism and/or repeated tardiness.
- 26.5 Misconduct procedures:
- (a) The employee will be provided with detailed allegations in writing and will be asked to provide a response to the allegations within five (5) working days. This could be extended by a further five (5) working days by mutual consent.
  - (b) The Senior Manager or HRSM will then implement one of the following options:
    - If the allegations are unsubstantiated, take no further action and, if appropriate, advise the employee that they may have this information publicised in an appropriate forum.
    - If the matter is considered to be minor misconduct, issue a letter of reprimand outlining correction action and an appropriate review period.
    - Refer the matter to the Serious Misconduct procedures.
- 26.6 *Serious Misconduct* is behaviour that seriously damages or interferes with:
- An employee undertaking their duties
  - Other employees in the conduct of their duties
  - The proper functioning of the organisation
- 26.7 Serious Misconduct Procedures:
- (a) If the initial investigation leads to allegations of serious misconduct, the employee will immediately be informed, in writing, of the

details of the allegations against them and be provided with the opportunity to respond in writing within five (5) working days. This could be extended by a further five (5) working days by mutual consent.

- (b) The employee may be suspended on full pay.
- (c) A panel of review will be established comprising of one nominee of the relevant trade union, one nominee of management and an agreed Chairperson.
- (d) The employee may be represented by a trade union representative and/or another staff member.
- (e) The panel will consider all the relevant facts including any relevant documentation, interview people, and otherwise gather information and evidence to assist in determining the facts and merits of the case and to make recommendations about disciplinary action.
- (f) Termination of employment may occur, with payment in lieu of notice.”

## innovative provisions

### health and lifestyle balance

This quarter has seen some innovative agreements that encourage employees to build and maintain a healthy lifestyle. There is an increasing awareness that fostering employees' health and wellbeing can lead to significant economic reward, stemming from decreased absenteeism and increased employee morale. In particular a trend has emerged towards employer funding of benefits which have previously been employees responsibility.

The move towards building health and morale is evident in the first clause, from the health and community services sector. After twelve months' service, employees are eligible to be reimbursed up to \$100 for expenditure on activities which are widely accepted as promoting health and wellbeing, such as gym membership and influenza vaccinations. Significantly, employees are encouraged to use this benefit to form employer-representative sports teams, building organisation morale as well as employee wellbeing.

The second clause, from the research and technology sector, initiates an employer-funded influenza vaccination programme. Employees are encouraged to receive a vaccination free of charge, or alternately to be reimbursed for the cost of influenza vaccine. The agreement states explicitly that the ultimate aim of the new health measures is to create favourable conditions for productivity.

The third agreement, from the agricultural industry, provides an employer-funded, confidential counselling service to employees whose personal problems are affecting their work abilities. This employee assistance programme provides an increased level of support to valuable employees during times of private turmoil.

The final agreement, from the education sector, recognises workplace stress as a significant contributor to decreased productivity and increased staff turnover. It introduces a commitment to preventing and managing workplace stress levels through employee consultation and participation. In addition, the agreement provides employees who have accrued over forty days' sick leave with the entitlement to use one days' sick leave per annum for preventative medical treatment or advice. This entitlement simultaneously rewards good attendance and aims to prevent illness among experienced employees, providing a healthy basis for organisational stability.

*HEALTH AND COMMUNITY SERVICES SECTOR***“102. Healthy Lifestyle Payment**

102.1 To encourage and promote healthy lifestyles, the Organisation will reimburse ongoing employees and non-ongoing employees with at least 12 months service for expenditure on healthy lifestyle activities up to a maximum of \$100 each calendar year. The activities that will be accepted as a healthy lifestyle activity under this clause are:

- (a) quit smoking courses;
- (b) gym membership fees;
- (c) weight loss programs;
- (d) programs to overcome excessive gambling;
- (e) drug and alcohol abuse programs;
- (f) inoculations such as flu vaccinations;
- (g) ambulance cover;
- (h) purchase of exercise equipment; and
- (i) dancesport programs, including traditional dance.

102.2 A group of employees may elect to pool their healthy lifestyle payments for use in registration of sporting teams, outfits or equipment. Where this is the case, the sporting team should represent the Organisation and be comprised predominantly of Company employees.”

*RESEARCH AND TECHNOLOGY SECTOR***“B16 Staff Health**

61. To be more productive at work, we organise a health awareness program, for all interested staff, that is designed to promote and maintain long-term good health practices. The health program is likely to include events that promote healthy lifestyles.

62. Between 1 March and 31 May each year the organisation will make arrangements for employees who wish to receive an influenza vaccination to do so at the company’s expense. Employees wishing to obtain a free injection should use the company’s arranged service. If the vaccination is arranged privately, and providing the vaccination was received between 1 March and 31 May of that year, a reimbursement will be provided and will be limited to the actual cost of the influenza vaccine and not include any other fees.”

*AGRICULTURAL INDUSTRY***“Employee Assistance Program**

A confidential service is available for all employees who require counselling for any personal issue that is affecting their work performance. This counselling will be provided by an expert, independent service and expenses will be met by the company.

If an employee requires this service they can approach their Supervisor or Manager who will refer the request to the Staff Relations Manager or they may contact the Staff Relations Manager directly.

The Company will pay for the service and all discussions between the employee and the counsellor/s will be strictly confidential to the employee.”

*EDUCATION SECTOR***“6.12 Workplace stress****Preamble**

The prevention and management of workplace stress helps secure a safer and healthier and more effective workplace for employees.

The term 'workplace stress' refers to those negative reactions people have to aspects of their environment due to pressures within the work environment.

The employing authority recognises its legal requirement to assess the working environment for systems and practices that may lead to negative stress response and to put into place preventative measures.

It is also recognised that policies which benefit employee health can improve productivity. Low levels of negative stress response are associated with low levels of staff turnover, absenteeism and low rates of injury. Workplaces that are perceived as healthy are characterised by clear policies and active methods of dealing with people which encourage:

- a) respect for the dignity of each employee;
- b) regular feedback and recognition of performance;
- c) clear goals for employees in line with organisational goals;
- d) employee input into decision-making and career progression; and
- e) consistent and fair management actions.

**Implementation**

The employing authority agrees to the implementation of strategies to prevent and address workplace stress.

**Managing Workplace Stress**

Stress management interventions shall be based on prevention, management and minimisation strategies and are aimed at identifying and eliminating causes of workplace stress.

**Structured Approach**

A structured step-by-step problem solving approach involving participation and consultation shall be adopted to identify and focus on the real issues causing workplace stress.

**Control Strategies**

Control strategies shall be adopted to reduce the incidence of workplace stress.

**Health check leave**

The parties recognise the importance of employees maintaining healthy lifestyles and regular health check-ups. The employing authority agrees that employees with forty (40) or more days of accumulated sick leave shall be entitled to use one (1) day per annum of their sick leave to obtain medical advice and/or treatment of a preventative nature. The employee shall, where practicable, give the employer two (2) weeks' notice prior to taking health check leave.”

## education and training

This quarter also finds some Education and training provisions with agreements emphasising structured commitment to employee skill development. In addition, some organisations are producing plans to reward employee commitment to skills acquisition.

The first agreement, from the food and beverage manufacturing industry, contains a concrete commitment to employee skills development, setting out guidelines and strategic targets for skills attainment. Clear commitments are given as to the timeframe, methods, and content of training provision; employees are entitled to the opportunity to improve certain skills, and to gain additional remunerative components as a result. Over-award skills payments are paid for the possession of additional competencies.

The other agreement, from the research and technology sector, entitles employees to up to eight hours paid study leave per week, in addition to paid examination leave and unpaid study leave. Employees are also to receive partial or full reimbursement for the cost of study and textbooks, up to the value of \$1200.

### *FOOD AND BEVERAGE MANUFACTURING INDUSTRY*

“The parties to this Agreement recognise the mutual benefits to be derived through continuous skills and competency acquisition.

To this end, employees are committed to the skills and competency acquisition measures implemented by the employer and having regard in particular to recognition of the relevant courses developed through the Australian National Training Authority (1996) viz Certificates in Food Processing (Confectionery) I, II, III and IV and other relevant accredited training advised by the Company.

Employees Skills Allowance immediately prior to the approval of this Agreement will remain unchanged as at that date.

The parties commit to meet the following targets regarding skills development:

- All permanent full-time employees employed before 1/01/04 will be provided with the opportunity to attain an additional eight (8) units by 31/12/05.

To facilitate the objective and processes regarding skills development the employer will engage the services of a suitable trainer/assessor who will be available over this period (on a regular basis) to assist employees achieve the above targets. The

assistance will be available to employees during normal working hours (up to one hour per week) during the period mid-May to September each year inclusive to a maximum of 18 paid hours per calendar year. By the end of 2005 parties to the agreement shall meet and decide the training needs for the next agreement.

By agreement between the employer and an employee, advanced specialist modules may be undertaken before completion of the Certificate. If the employer deems it essential then it will be paid time either in normal hours of roster or if out of hours then pay will be at ordinary time only.

Employees who are in receipt of any of the Skills Allowances prescribed in Clause 6, after having obtained increased skills and competency acquisitions, will be required to continue to perform to the level of such competency where required. Failure of an employee to meet this requirement may lead to performance management and a review of the continuation of such an Allowance. These Skills Allowances override higher skill payments in the Award.

#### CLAUSE 9 OVER AWARD PAYMENTS

(i) The employer shall maintain an overaward payment system for the duration of this Agreement, which is based on individual employees acquiring additional skills and competencies, based on the Certificate I, II III and IV in Food Processing (Confectionery). The current units available are listed in Schedule 2.

(ii) Additional payments will apply to the extent of \$5.70 per 38 hour week (\$0.15 per hour) for each unit achieved through skills and competency acquisition of modules of the Food Processing Certificate (Confectionery) and other relevant accredited training advised by the Company, excluding the first six (6) units (refer Schedule 1).

(iii) The employer shall ensure that a skills / competency assessor shall be available at two (2) monthly intervals (at the normal place of business) in order to continuously provide the opportunity for employees to be assessed between mid May and September.

(iv) The additional overaward payments achieved as a result of competency assessment will be applied from the first full pay period commencing after the assessment date.v) Apprentices, Trainees and Junior employees shall be entitled to receive the full amount for overaward payments (skills / competency assessment) as for other employees. Award percentages for these categories of employees shall be based on the Confectionery Worker rate prescribed under this Agreement on the age or apprentice scale whichever is the greater until the rate equals the base rate of this Agreement, which then takes over (Schedule 6).

(vi) A higher duties allowance of 50 cents per hour (for hours worked, but not calculated on annual leave) will be paid to Team Leaders or a designated employee responsible for the operations of a team/production area when:

- (a) The Team Leader is absent on programmed Annual Leave or Sick Leave, or
- (b) Two (2) or more employees are working continuously in the production area under that employees' direct supervision, or
- (c) The employee is the most senior person in that area for at least six (6) hours whilst the Team Leader is absent.

(vii) If an employee is requested to return to work after completion of their shift, a payment of two(2) hours at time and a half will occur if the employee is on the premises for more than 30 minutes.”

#### *RESEARCH AND TECHNOLOGY SECTOR*

##### **“B13 Study Assistance**

48. Where a course of study is in an employee's Individual Development Plan, a Deputy Director may approve paid leave consistent with our Study Assistance Guidelines for the purposes of attending classes or other approved study related activities.

49. The amount of approved leave must not exceed eight hours per week, averaged over the period of study. The amount of study leave may vary from week to week depending on study load. Any time approved for attendance at formal examinations is additional time.

50. At the end of each semester, a reimbursement of half of the actual cost incurred in that semester or \$1200, whichever is the lesser, will be paid upon successful completion of the approved study. 'Actual cost' for this purpose may include course fees and/or the cost of compulsory textbooks or of any other compulsory material or activity.

51. Where the, actual cost per semester is less than \$500 or there is a substantial benefit, to the Organisation, full course reimbursement may be made, on approval from the Delegate.”

## other innovations

Other innovations this quarter have included innovative leave schemes, and redundancy entitlements for casual workers.

The first agreement, from the business services sector, provides long term casual workers with redundancy entitlements. This entitlement is a significant recognition of long term casual employees as ongoing employees; as such it extends the company's responsibilities towards their casual workers' welfare.

The second agreement, from the cultural and recreation sector, outlines a flexible purchased leave scheme. Employees may modify the more common 48/52 scheme to accrue anywhere between one and eight weeks additional leave; importantly, entitlements such as long service leave, sick leave and annual leave remain unchanged under this flexibility scheme.

Finally, an agreement from the metal manufacturing industry allows for significant additional leave for employees with illness or injury unrelated to the workplace. Employees are entitled to up to twelve months fully paid leave from the organisation in the event that their other leave entitlements have exhausted. This degree of financial support for employees indicates a broader organisational focus on employee welfare.

### *BUSINESS SERVICES SECTOR*

#### **“31. REDUNDANCY - CASUALS**


For long term casuals, that is casuals working 30 hours minimum per week for nine (9) continuous months, two (2) weeks pay at ordinary casual rates will be paid in the event of redundancy.”

### *CULTURAL AND RECREATION SERVICES SECTOR*

#### **“2.2.13 Flexible Employment Arrangements**

Staff members may request to work between 44 and 51 weeks per year to gain access to additional leave. Access to this entitlement may only be granted on application from a staff member and cannot be required as a precondition for employment.

The staff member will receive additional annual leave as follows:



Leave Type	Equates to
44/52	Additional 8 weeks leave (12 weeks in total)
45/52	Additional 7 weeks leave (11 weeks in total)
46/52	Additional 6 weeks leave (10 weeks in total)
47/52	Additional 5 weeks leave (9 weeks in total)
48/52	Additional 4 weeks leave (8 weeks in total)
49/52	Additional 3 weeks leave (7 weeks in total)
50/52	Additional 2 weeks leave (6 weeks in total)
51-52	Additional 1 weeks leave (5 weeks in total)

The staff member will receive a salary equal to the period worked (eg 46 weeks, 49 weeks etc) which will be spread over a 52 week period. Sick leave, recreation leave and long service leave accrued by the staff member will remain unchanged.

The organisation will endeavour to accommodate staff member requests for arrangements under this clause and where such requests are granted will make proper arrangements to ensure that the workloads of other staff members are not unduly affected and that excessive overtime is not required to be performed by other staff as a result of these arrangements.

A staff member may revert to ordinary 52 week employment by providing no less than four week's written notice. Where a staff member does revert to ordinary 52 week employment, appropriate pro-rata salary adjustments will be made. This leave cannot be taken on half pay."

*METALS MANUFACTURING INDUSTRY***“18. Wage Support for Extended Periods of Illness or Injury**

## 18.1 Purpose

These arrangements are designed to provide employees of The Company with added financial security in the event of their being off work for an extended period due to non-works illness or injury.

## 18.2 Underpinning principles

- i) Employees may reasonably expect continued financial support in the event of extended illness or injury
- ii) Employees are expected to provide for their own security by accessing reasonable levels of existing leave entitlements
- iii) The extension of financial support places obligations on the employee to cooperate with the reasonable requests of their employer
- iv) Fair & equal treatment of all employees
- v) These arrangements are not intended to support "casual" absences or benefit employees with chronic poor attendance

## 18.3 Extended wage support - non-works injury or illness

- i) Subject to the provisions of this clause, employees will receive financial support at the ordinary time rate of pay for the period of their incapacity, up to a maximum of twelve (12) months, in the event of their being unable to attend work continuously for greater than one (1) month due to personal illness or injury.
- ii) Employees will be required to exhaust all available sick leave accruals before accessing the support available under this clause.
- iii) Additionally, employees will be required to utilise:
  - i) any annual leave (including pro-rata accruals) in excess of 4 weeks;  
and,
  - ii) any long service leave (including pro-rata accruals) in excess of 13 weeks for a combined period of not more than 6 weeks before accessing the support available under this clause.

iv) The period of extended wage support referred in a) above is in addition to existing sick leave entitlements and such annual leave or long service leave as may be taken under paragraph b) above.

v) Where the employee is entitled to benefits arising from personal injury insurance (eg motor vehicle CTP insurance, sporting injury insurance, etc), other than workers compensation, the wage support otherwise extended under this clause will be reduced by the amount of insurance benefit paid. Where such monies are paid by an insurer substantially after the absence, the employee is required to repay such monies to the employer. The employer may require the employee to authorise the employer to claim such monies direct from the insurer prior to receiving extended wage support.

vi) Should circumstances arise where the employer believes that the conduct of the employee is such that the continued extension of wage support would be at odds with the principles outlined in 18.2 above, the employer may initiate a formal review in which the employee, and their union should they wish, are given the opportunity to respond to any allegations prior to the employer making a decision as to continuance or cessation of wage support. Any disputes that arise from the exercise of this facility will be progressed in accordance with the dispute settlement procedure.

vii) Consideration may be given to further wage support beyond the 12 months referred to under paragraph a) above in circumstances where the agreed rehabilitation plan for the employee and medical opinion indicate that an imminent return to normal duties by the employee.

#### 18.4 Obligations of employees

i) Employees are required to provide all reasonable evidence requested by the employer as to the nature of their illness or injury including making themselves available for examination by medical practitioners/specialists nominated by the employer

ii) Employees are required to actively participate in any reasonable rehabilitation or return to work plan required by the employer

#### 18.5 Exclusions - The above arrangements will not extend to the following:

i) Employees engaged on a casual or fixed term basis

ii) Employees with less than 3 months continuous service

- iii) Absences covered by workers compensation or arising from works related injury or illness
- iv) Casual absences or absences of short duration
- v) Injury or illness arising from the unlawful actions of the employee
- vi) Absences which would otherwise be covered by carers leave
- vii) Multiple periods of extended absences beyond those totalling 12 months in any 3 year period.
- viii) Employees enjoying similar support under discretionary sick leave arrangements
- ix) Absences resulting from alcohol, drug or substance abuse
- x) Absences resulting from high risk sporting or recreational activities generally precluded from personal accident insurance arrangements (such as competitive motor sport, sky diving, etc)."

## technical notes

### *method for calculating average annual percentage wage increases (AAWI) per agreement*

The total wage increase granted over the life of the agreement is divided by the number of months for which the enterprise agreement operates. This figure is then multiplied by twelve to generate an estimate of what the increase would be over a twelve month (annual) period. Estimates of average wage increases are calculated for those agreements that provide for a quantifiable wage increase. Not all agreements provide sufficient information to calculate annual wage increases embodied in them. The majority, however, report either what the rate of increase is or provide sufficient information to calculate it. Flat dollar increases are converted to a percentage by either: a) using the weekly rate of pay that applied prior to the new rates under the new agreement to calculate the equivalent percentage amount, or b) contacting the employer party to the agreement (AWAs excepted). Other non-quantifiable wage increases within an agreement, such as those that rely on award increases, inflationary (CPI) movements, or individual staff appraisals to determine quantum wage increases, are not included in these calculations. Where different quantum wage increases are given for different groups of workers within the same agreement, an average quantum wage increase is calculated and used. acirrt also uses a simple rather than compound percentage wage increase.

The wage increases are those that affect ordinary weekly earnings (base rates of pay). AAWI figures do not include payments in addition to base rates (such as overtime, bonus payments, one-off annualisation of salaries, performance pay, profit-sharing, allowances etc). Wage agreements whose average percentage increase could not be quantified (eg, those introducing a new salary structure) are also excluded from these estimates.

Due to delays in the registration process, some agreements will only run officially for a couple of months. Where it is apparent that the official duration of the agreement is unduly short (ie. less than 9 months), such agreements are excluded from the calculations so as not to artificially raise the estimate of average annual increases contained in all agreements.

### **Sample**

As at December 2003, the ADAM Database has information on 11,390 registered enterprise (collective) agreements from the Federal and State jurisdictions as follows:

Federal (5514), NSW (1912), SA (833), Queensland (2030), WA (1096).

The ADAM Database also holds information on federal Australian Workplace Agreements covering 1,282 employers (of the current total of 3,964 employers with approved AWAs).

## report written by

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## about the ADAM Database

Since 1993, ACIRRT has maintained the Agreements Database and Monitor (ADAM), Australia's most comprehensive and authoritative database of enterprise agreements. With detailed up-to-date information on over 11,300 federal and state enterprise agreements and over 1,200 federal AWAs, ADAM is an invaluable resource that is frequently used by IR/HR practitioners, economic analysts, researchers, policy makers, and academics. Information from the ADAM Database is available in two ways:

1. the quarterly acirrt *ADAM Report* (via purchase of single issues)
2. customised 'ADAM Special Reports' which are fee for service reports tailored to your information needs

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## about acirrt, University of Sydney

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