

How to Employ a Personal Care Worker

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How to Employ a Personal Care Worker Information Package

Living independently in your own home is the wish of most people. Some people may reach a point in their lives where they need some help to do this. This can either be through an accident, an illness, a disability or increasing age. The assistance a person requires to live independently can take many forms. Help can include assistance with meal preparation, personal hygiene, dressing, going to appointments, companionship, gardening, housework, visiting family or friends, or just supervision in completing tasks.

This assistance can be provided by many of the private care agencies in WA. Alternatively, you can choose to employ someone yourself. This method has some advantages, but it also comes with added responsibility on your part. Advantages include the opportunity to interview and select the best person for the job, to show them exactly what you would like them to do, to develop a relationship and to manage your own money.

This package has been developed to assist you to employ a Care Worker, and also manage the Care Worker you employ.

This package has been designed as a **guide only**, and we encourage you to clarify any issues you have with a legal representative.

This package is not, and is not intended to be relied on as legal advice. The package summarises what the writers understand to be the position at the date of writing on August, 2007. The law on these issues is subject to frequent change.

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Where do I start?

You have just made one of the hardest decisions you will have to make. You have realised that you need someone to help you. This realisation could have come from noticing that you are having trouble cooking meals, it may be getting difficult to shower properly, that you are missing scheduled appointments, that jobs around the house are not being done at all or you are becoming more reliant on the help of family and friends. In other circumstances (i.e. Dementia), it will be your carer that has to make this difficult decision. The reasons for making this decision remain the same and can also include the fact that your carer may no longer be able to manage your changing needs.

This section provides a general list of steps that need to be followed to ensure you get the right person for the job. The person must be qualified to complete the tasks, friendly and someone you feel comfortable with in your home looking after you.

1. Determine what is needed

The first and most important step is to determine what you need. Briefly, jot down what duties/tasks you would like a Care Worker to do and how often you would like them done.

An easy way to do this is to think of the tasks you do each day, starting with Monday and going through each day separately.

List what needs to be done each day and also include outings that occur regularly (social activities). Remember to include those activities that do not occur on a regular basis (doctors' appointments, hairdressers/barbers).

For example:

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Shower Visit sister Evening meal	Shower Take to work Pick up from work Evening meal	Shower	Shower Take to work Pick up from work Evening meal	Shower	Shower Take to work Pick up from work evening meal	Shower Shopping

2. Write a Job Description of the duties required

Having decided on the duties you are looking for you can design these as a job description.

A job description has much more detail and describes each task/duty. Write down exactly what is required and try not to feel embarrassed about stating some tasks that are essential. A job description will save unsuitable people from applying, and save you time as well.

For example:

Showering	Adjusting water temperature, shampooing hair, shave, wash body, dry, get me dressed.
Take to work	Drop at work by 9am, return the car to house

3. Determine how much you will pay the Care Worker

It is up to you to decide on how much you are able to pay the Care Worker. You must take into account your other expenses such as added insurance, when deciding on an hourly rate. You will also need to determine the number of hours you require them to work. Payment can be through funding you may have received, by a Care Worker being eligible for the Carers Payment or out of your own funds.

If the care worker you engaged may be characterised as an employee, there will be basic legislative and statutory obligations that will need to be met. These will include minimum payment obligations. For employees, minimum payment entitlements are prescribed pursuant to the Minimum Conditions of Employment Act 1993 (WA). Certain employees may be entitled to benefits under Awards. It will also be necessary to take into account the expectations of potential Care Workers, and rates of pay that are ordinarily paid for Care Workers.

An easy equation to work this out is:

(Total amount of money – expenses) divided by # hours required = hourly rate of pay

Expenses include tax, superannuation, insurances, etc. If you are expecting the Care Worker to use their own car for outings you will need to include an amount per week for their personal expenses and deduct this as well.

You will probably need to readjust some of the figures if the hourly rate of pay is too low to attract someone interested. To get the most of your money, try grouping similar activities together to save time. For example, include setting up the bedroom for the evening routine when having your morning shower. Or, have your worker make extra of the evening meal to put aside for lunch the next day.

4. Developing a written contract

Have a contract written and ready for when you decide on the person to employ. Samples are included in this pack. The contract should include:

- ◆ Name and address of the employer (this can be a family member or the person requiring care)
- ◆ Name and address of the Care Worker being employed
- ◆ Duties to be performed, attach the job description
- ◆ Payment/salary and any other benefits (e.g. accommodation, meals, mileage etc)
- ◆ Determine the length of an initial probationary period, where the person's suitability for the position will be assessed
- ◆ When and how payment will be made
- ◆ Hours of work
- ◆ Acceptable behaviour conditions (e.g. no smoking, abusive language etc)
- ◆ Process for disputes, should they arise
- ◆ Termination (how much notice, reasons for termination without notice etc)
- ◆ Dated signatures of employer and person being employed to provide the service

Advertising

5. Finding the Right Person

The next step is to find the most appropriate person to fit what you are looking for. It is very helpful to have a very clear idea of the person you are looking for. Write down what must be essential in the person you need and also what would be nice to have.

For example,

Person MUST have, or be:	Would be nice to have:
First Aid Certificate	Previous use of hoists
Non-smoker	Female
Current drivers license	Speak 2 nd language
Like animals	
Morning person	
Working with children Check (if the client is a child)	

This will help you identify which of the applicants' best meet the care recipients' needs. Remember, that you must choose the best person for the job and avoid discriminatory practices.

When setting out what is required or preferred of candidates, it is important to remember the issue of discrimination. State and federal anti-discrimination legislation makes it unlawful to engage in discriminatory conduct against employees and contractors.

Discrimination may be on the basis of:

- ♦ Race or ethnic origin;
- ♦ Religion or religious beliefs;
- ♦ Gender, marital status, family responsibilities or sexual preference;
- ♦ Pregnancy or potential pregnancy;
- ♦ Physical, intellectual or psychiatric disability or disfigurement
- ♦ Trade union activity or political opinion; or
- ♦ Age

It is important to take discrimination issues into consideration when drafting your advertisement for a carer, and when conducting interviews with potential candidates. Where you require the worker to help with dressing or personal hygiene issues, it may be acceptable to specify the gender of the worker. Further information for your situation can be obtained from the Equal Opportunity Commission on (08) 9216-3900 or 1800 198 149.

Having decided to find a Care Worker, you now need to decide on the options to find the right person. Each option will have some advantages and disadvantages. You will need to find the one that suits you best.

Privacy

Prior to starting your advertising, it is important to think about how you will protect your privacy and safety. You can do this by using a mobile telephone, answering machines, 'live' paging services, post office boxes or using an agency to receive your mail. If you choose to use an agency to receive your mail, it is important that you get their permission first.

As well as your own privacy, it is important to take into consideration the privacy requirements of your employees. Privacy legislation may apply and we recommend that private information obtained from prospective or hired care workers should be passed on to third parties only where consent has been obtained from the care worker or prospective care worker.

Your choices

The following is a list of options you can use to find the right Care Worker:

- ◆ Advertise in the paper under “Positions Vacant” or “Share Accommodation” (if live in). By using your local paper, you will reach people who live in your area.
- ◆ Ask family, friends and neighbours if they know anyone they could recommend.
- ◆ Place notices in church bulletins, other clubs and organisations’ publications.
- ◆ Ask for assistance through TAFE or other learning institutions, especially where the students are studying disability or aged care courses.
- ◆ Place signs on community notice boards
- ◆ Special interest groups, such as childcare or play groups
- ◆ Other places where you know volunteers are involved.

Newspaper Advertisements

When determining what to place in the newspaper, it is best to keep it short and simple. The advertisement should contain a brief description of the duties, hours required and contact details such as a telephone number or PO Box address.

Sample Advertisement 1

Care Worker needed for (gentleman/lady) with (frail aged or state type of disability). Must have own transport and live in the (location) area. Write to (PO Box or address).

Sample Advertisement 2

Care Worker needed for (age) (gentleman/lady) with (frail aged or state type of disability) Monday to Friday 2.30pm –6.30pm. Must have own transport and live in the (location) area. Telephone (number) after 11.00am Tuesday.

Sample Advertisement 3 (live in)

Care Worker needed to live in with (gentleman/lady) with (frail aged/disability). Free rent. Hours negotiable. Ring (phone number) for more details. Or send resume to (PO Box number).

Sample Advertisement 4 (live in)

Live in Care Worker needed to look after frail aged (gentleman/lady) in (location). Wages and hours to be negotiated. Ring (phone number) for more details. Or write to (PO Box) for details.

Applications by Mail

Receiving applications by mail gives you the opportunity to read through each application carefully and consider the ones for interview. It can be time consuming as you will need to read each one and then contact all applicants and advise them of whether they get an interview or not. You will also need to take into consideration the time it takes for the applicants to write their letter and then the postal delivery time. Unfortunately, if no one is suitable, you will need to re-advertise and usually quite a lengthy period of time has elapsed.

If using an answering service you can ask applicants to leave their name and address and mail out the job description and ask for them to apply in writing. This method can be costly for you, it can take time waiting for the applications and sometimes people are not clear on answering machines so you may not get their correct details.

Telephone screening

You can also have prospective applicants telephone first. You can use this to screen applicants and offer an interview to those suitable on the spot. This method will take more energy, but may be worth it in the longer term.

Telephone screening is where you get applicants to telephone to express their interest in the position. It is important to have worked out beforehand what questions you will ask and whether you are going to have the person come for a few hours a week, or live in to share costs of rent, etc. You should be friendly, describe the job in detail, state specific expectations, state the number of hours needed and amount you can pay. Do not under-state your expectations or the requirements of the job. If applicants are not told upfront of the requirements, they may not stay if successful. It is very important to ask about past experience, training and their name and address. If you feel you would like to interview them, offer them an interview date and ask them to bring their resume, the contact telephone numbers of 2 work-related referees, 1 personal referee and a current police clearance. If the person is not suitable during the telephone screening, thank them for calling.

Flyers or Posters

You can be much more creative when using flyers or posters when advertising. You can have pictures, colours etc and be a bit more 'wordy'.

It is still important to follow the guidelines of assuring your privacy and safety. Have interested Care Workers send their resume to a PO Box or address, or leave their contact details on an answering machine.

Remember to remove the flyers/posters you have put up once you find a Care Worker.

Interviewing

6. Interviewing

Interviewing is the best way to determine if a person is suitable for the position. It allows you to meet the person and ask them specific questions to determine their suitability. In a face-to-face interview you are able to see their reactions to the questions you ask and also ask for greater information or clarification if their answers are insufficient.

You do not need to personally interview every person who applies for the position. You may wish to screen applicants prior to inviting them to attend for an interview. Remember, you may get 40 calls of interest, but will only want to interview 4-5 and employ 1. A way to screen applicants is to ask them to either mail their resume to you or you may wish to ask them some initial questions over the phone. See Telephone Screening on page 6.

From this screening, you can decide on the most suitable applicants and interview them further. Keep this to 4 or 5 to interview, as interviews are very time consuming. If you did not offer interview times during the telephone screening, contact each of the applicants that you would like to interview and offer them a time for the interview. You will need to set aside approximately one hour for each one, and this includes interviewing and discussing the applicants' interview.

PREPARING FOR THE INTERVIEW

Safety

To ensure the safety and privacy of yourself and the person requiring care, it is strongly recommended that you do not interview the applicants in your home or in the care recipients' home. It is best to find a neutral place, like a coffee shop, to hold the initial interview. The people you interview will be complete strangers and you can never be too careful.

Support

Ask someone you trust to help you write out the questions you will ask each applicant, and to assist you during the interview. This person can help taking notes during the interview, providing feedback and comment on the applicants, and by asking any questions you may have missed. They are also great for emotional support as interviews are nerve-racking for the person being interviewed and the one doing the interviewing.

THE INTERVIEW

As the applicant arrives introduce yourself and thank them for attending the interview. It is natural for both yourself and the applicant to be nervous at this stage. Become acquainted with the applicant by asking them to tell you a little about themselves, this shows you are interested in them and allows for the 'ice' to be broken. Be friendly and give them the job description or your list of needs to read. If they have brought a resume, you should keep it to refer to after the interview. Ask if the applicant would mind if you took notes during the interview, and jot down their answers to your questions and anything you wish to check out later. These notes will help you make your final decision. Have your list of questions ready and ask further questions if you are in doubt about an answer.

It is very important to ask each applicant the same questions so you can compare their answers and choose the best person. Pay attention to how comfortable the person is answering the questions and also pay attention to their body language in relation to questions asked.

Questions to ask can include:

- Why are you interested in this position?
(You want to establish his or her motives in caring for someone)

- Have you had any experience caring for a person who is frail aged/with a disability/with a chronic illness/with a mental illness before? Please explain e.g.:
 - Where have you worked before?
 - What were your duties?
 - Why did you leave?
 - How do you feel about caring for a person who is elderly/has disability/memory problems?
 - Have you had any training?
- How do you handle people who are angry, stubborn, fearful?
- Please give us an example of a problem you have had and how you worked it out.
- Do you have a car? Would you be able to transfer someone from a wheelchair into a car or into bed?
- Friends or relatives may visit (name of person being cared for) on a regular basis, but will not be taking on the caring role while they are there. How do you feel about this?
- What time commitments are you willing to make? Can you think of any circumstances that may stop you from committing to this position for at least six months? Are you willing to commit to giving three weeks notice?
- Are you willing to work weekends? How often?
- Is there anything in this job description that you are not willing to do or that makes you feel uncomfortable? List some of these, for example, nudity, bodily functions, cleaning, domestic duties, cooking, etc.
- Will you be working other jobs while helping me? If so, what is the schedule?
- How would you handle a medical emergency?
- What would you do if you are ill and cannot come to work?
- Can you give me two work related and one personal reference?
- Do you have any questions for (me AND/OR name of person being cared for)?

7. After the Interview

Immediately after the interview, discuss the notes you took with the person who is assisting you. Consider the person most qualified for the job and the one you feel most comfortable with. Check the references they provided to you.

8. Reference Checks

Always check the referees. The reference check is useful to verify what was said at the interview and gain additional information on an applicant's performance and behaviour at work. Call each referee and start by identifying yourself and the reason for the call. It is important that each referee is asked the same set of questions. Professional or work related referees are preferable to personal referees. Personal references will be from family and friends and will usually tell you only good things about the person. These can be helpful if the applicant has not worked previously. Questions you may like to ask can include:

- ☐ Describe the position they have applied for and ask whether they feel the applicant will be suitable?
- ☐ How long did the applicant work for you?
- ☐ What were the applicants' position/job/actual duties?
- ☐ Ask what the applicant's strengths are. And their weaknesses.
- ☐ Ask if the applicant is reliable? Dependable? Trustworthy? Courteous?
- ☐ Why is he/she no longer working for you?
- ☐ Would you re-employ this person?

Remember, to thank them for their time.

9. Police Clearances

The Care Worker can obtain a National Police Clearance from any Police Station at a cost of \$42.00. The National Police Clearance will show any outstanding warrants or criminal convictions. To get a National Police Clearance the worker will need to go into a Police Station with photo identification (Drivers License or Passport) and the correct fee (\$42.00).

10. Working With Children Check

From 1 January, 2006, new employees providing direct care to children or working in child related work are required to undergo a Working with Children Check. Existing employees do not have to satisfy this requirement until 2009.

To find out when and where to apply visit the Working with Children Check Website at www.checkwwc.wa.gov.au

11. Making the Job Offer

Don't wait too long to make the offer as a good applicant may find another position. Once you are satisfied, make the offer.

It is recommended that the offer be made in writing, and that the key terms of the engagement be set out in the offer. This will minimise the potential for confusion and disputes at a later stage.

When accepted, set a date to sign the contract. Both employer and the person to provide the care should have a copy of the contract and a copy of any police clearance. (See sample contracts commencing on page 27).

It is important that production of the police clearance, working with children checks, references, evidence of qualifications if this is a factor and clarification of any health issues, are resolved prior to the contract being formally entered into.

Models of Employment

There are degrees of formality in the ways in which Carer Workers can be engaged by the parents/family/guardians with funds provided to the family for the purpose of caring for their family member with a disability.

1. Informal Private / Domestic arrangement

The family could obtain a family member, friend or relative to take care of the person with a disability under any arrangement which suits both parties including payment of money for out of pocket expenses. The parties do not have any legal relationship or intend it to be a formal employment relationship. The family would have no power to formally control the Care Worker and the Care Worker could come and go as she / he pleases – subject to the right of the family to end the arrangement at any time.

The quality of care and the benefits to be derived by the parties including the care recipient and the person doing the caring are not assured.

If funding is received, the value of the funding to the family and any accountability for the money to the funding body may be questioned. The Disability Services Commission does not permit family members to be employed except under special circumstances.

2. Employment Relationship – Private / Domestic

This is where the family chooses to find a suitable person to provide formal care in the private/domestic residential setting for the person with a disability.

This could be a family member or a stranger. The important difference from 1. above is their intention to enter into a formal employment relationship where the hours of work, duties and remuneration are to be agreed under a contract of employment.

In this model the family member has a right to direct the Care Worker as to how the work is to be done, to ensure that the Care Worker is trained and understands the role, and has a right to expect performance and behaviour from the Care Worker commensurate with employment and the remuneration paid.

Persons employed in this situation can be formally employed as casual, full-time or part-time.

As a casual, the hours are usually variable and the contract might be on an as needed basis. (see the section below).

In these arrangements no paid leave, i.e. annual or sick leave is applicable but the hourly rate is generally 20% higher in lieu of the leave entitlements and in recognition of the irregular nature of the employment.

As full-time or part-time, the hours are set by agreement and also varied the same way.

The intention is to require the work to be done at fixed times on an hourly basis and annual leave and payment whilst sick, up to a limit each year, is standard for full time/part time contracts.

If employment is of a domestic nature in a private home with the owner or occupier of the private home, the provisions of the State Industrial Relations Act and State Awards do not apply because the arrangement falls outside the definition of “employee” under that Act.

Similarly, for the same reason, such employment is not subject to the Minimum Conditions of Employment Act.

However, it is advisable to obtain information regarding fair rates of pay and conditions, and to negotiate a mutually agreed contract in writing, within the constraints of the funding provided and /or your budget. The Association can assist you in sourcing information regarding these matters and suggested formats for contracts commence on page 27.

NOTE:

In cases where a Care Worker is to be employed but the client **is not** living at home or the “employer” family member **is not the owner or occupier of the premises where the client is cared for**, we suggest you obtain advice before proceeding with the engagement. It is likely, that in such situations, the relationship would fall under the Industrial Relations Act and the Minimum Conditions of Employment Act and therefore statutory minimum conditions of employment would apply.

3. Contracting out (Independent Contractor)

With reference to the “Note” above, where the employment may come under industrial relations laws, there may be the option of “contracting out” the work to an “independent contractor”. This may be an individual operating as a sole trader, a company and /or under a business name.

The benefits of engaging a care worker as an independent contractor include:

- ◆ A ‘price is fixed per hour or day and there are no other obligations
- ◆ There is no obligation to provide leave benefits and, in some cases, superannuation contributions to the worker;
- ◆ The worker is responsible for his or her own taxation obligations, and some cases personal insurance obligations.

However, care must be taken when choosing to engage a home care worker as an independent contractor. Even if there is a written contract identifying the worker as an independent contractor, it may be the case that the “worker” is still, in law, an employee for the purposes of taxation, superannuation and industrial legislation.

The “independent contractor” however may be operating as a business and doing the work for a number of clients. The agreement may also include the requirement that “the business” must arrange a substitute in the event that the proprietor cannot provide the service personally.

Factors that are relevant to determining whether a worker is a contractor include:

- ◆ The degree of actual or potential control the engaging party has over the working relationship;
- ◆ Whether the relevant worker may delegate his or her services to another person
- ◆ The contractual terms and payment arrangements that apply;
- ◆ Whether the arrangement is an exclusive working relationship;
- ◆ Whether the engagement is for a specified time or task; and
- ◆ Whether the worker is providing services through a service company;

No one factor will be finally determinative of the issue. For home care workers, a key indicator will be whether the worker provides similar services for parties other than yourself.

Where a worker is engaged as an independent contractor, you will continue to be obliged to provide a safe working environment, and will continue to be obliged to carry the appropriate public liability insurances.

We strongly suggest that you seek advice if you are considering hiring a home care worker as an independent contractor. Engaging a home care worker as an independent contractor that later proves to be, in law, an employment relationship, may lead to significant industrial, taxation and other liabilities.

The “note” to point 2 is also relevant here.
See example Contract – Independent contractor Appendix II

4. External Employment

Another option is to engage a home care worker through an agency or third party. Where engaged through a third party, the worker is the employee or contractor of that third party. The third party is contracted to you to provide the home care services, and the worker provides the services on behalf of the third party.

The major benefit of this arrangement is that the third party is responsible for paying the worker, and is also responsible for meeting the majority of the relevant statutory obligations. The major drawback to this option is expense. It is usually the case that this option will cost more money, as:

- (a) the third party would be obliged to meet minimum Award and legislative provisions and generally this would be reflected in higher rates to the worker that will be passed on to the family; and
- (b) a proportion of the amount you are paying will be for the profit of the third party.

If you choose external employment, you will still be required to ensure there is a safe working environment. If not dealt with, there is also the potential for workers' compensation liability. You would need to discuss the issue of workers' compensation with the third party, to ensure that the employee is adequately covered.

Is your worker employed Part-time or Casual?

Extracted from the DOCEP Fact Sheet “Casual or Part-time Employment”

You may be considering whether to engage a Carer on a “casual” or “part time” basis. The following will assist you to decide what is more appropriate to your situation.

Casual or Part-time Employment

A major area of confusion for many employers is whether an employee is, or should be, part-time or casual, and what these terms mean.

Whether an employee is casual or part-time will depend upon a number of elements such as the regularity of work and the expectation of ongoing employment.

There are a number of basic factors that can be used to clarify whether an employee is part-time or casual which are outlined below.

Casual employee

Generally casual employees are employed on an irregular basis with no set design or routine as to when they work and with no expectation by either side that there will be regular ongoing employment. They are employed on an “as needs” basis, often to meet changing circumstances. However, this may develop to be fairly regular work with set hours and days, although the clear understanding remains that either party is free to reject the work or, in the case of the employer, cancel a shift or not provide the work, as the demands of the client dictate.

Once the arrangement is for a number of regular hours for specific days on an ongoing basis and that is the contract requirement, then the engagement ceases to be casual.

The following points highlight the distinguishing features of workers in casual employment:

- Are recognised as casuals from the beginning of their employment;
- May work for short periods of time on an irregular basis with their actual hours varying from week to week;
- Are employed and paid by the hour and do not receive annual leave, sick leave or paid public holidays;
- May not have consistent starting or finishing times, or regular hours of work;
- Have no entitlement to ongoing work; and
- Are free to refuse to work, with reasonable notice to the employer, at any time, due to other commitments.
- The employer is free to cancel shifts or not provide further work as the needs of the client dictate.

Part-time employee

Part-time employees have an on-going relationship with their employer that is regular and systematic. They are engaged for a fixed number of hours each week or fortnight and, except for short or temporary appointments that are clearly specified, have an expectation of ongoing employment.

The following points highlight the distinguishing features of workers in part-time employment:

- Usually work on a regular basis with a set roster;
- Are employed on an on-going basis; and
- Receive benefits such as annual and sick leave on a basis proportionate to the number of hours they work relative to a full time employee as defined under an award or by legislation.

Why is it important to classify employees correctly?

Incorrectly classifying an employee can be costly for the employer. An employee perceived to be a casual may actually be deemed part-time or fulltime by a court or the Industrial Relations Commission if it is found that the “employment” falls under that jurisdiction.

Recent cases involving such claims have shown that any casual loading paid to an employee by the employer cannot be used to offset leave payments due an employee who is subsequently found to have been part-time or full-time. In other words an employer may be ordered to pay for leave and other entitlements, in addition to the casual loading already paid.

Further Information

If you are unsure of your obligations in any particular case, or require more information on employment arrangements and obligations, contact your legal /industrial Adviser or Wageline on 1300 655 266 or visit the DOCEP website at www.docep.wa.gov.au

Your Legal Responsibilities

Duty of Care

You have a duty to ensure you are providing a safe work environment. This includes no cords or mats that may be tripped over, no holes in the yard or broken steps that can cause an accident and other known hazards that may cause harm to your Care Worker.

It is very important that you look at your home from the perspective of a worker or a stranger, to identify any hazards that you may take for granted.

As well as identifying hazards around the house, it is important to identify any hazards associated with the person the care worker will be caring for. This should include ensuring that any necessary equipment is made available (for example, lifting equipment). You will need to obtain appropriate insurance in order to protect yourself against these risks. (see below.)

Workers Compensation and Public Liability Insurance

The insurance broker for Carers WA, Zenith Insurance Services, advise that there are two important insurance considerations for you as the employer when looking to employ a care worker.

The first is **Workers Compensation**. This policy will protect you from financial loss and claims if a worker sustains a work related injury or disease. The law states that employers must have Workers Compensation coverage for any person who is defined in the Workers Compensation and Injury Management Act, 1981 (Act) as a Worker. A general definition of Worker as it applies to your employment of a care worker is:

- a part time, casual or seasonal worker who you direct to work for you as required, works for salary or wages and may be hired or fired by you

To read about the definition of a Worker in full, we suggest you view the following web page:

<http://www.workcover.wa.gov.au/Employers/Workers+compensation+insurance/Who+do+I+need+to+cover+on+my+workers+compensation+policy.htm>

If you are uninsured for Workers Compensation and a Worker sustains an injury while working for you, you will likely be liable to pay the injured person statutory benefits under the Workers Compensation Act, which could cost in excess of \$600,000. There are also fines applicable for the period that you have been uninsured.

For further information about the Workers Compensation Act, we suggest you view the following web page:

<http://www.workcover.wa.gov.au/Employers/Workers+compensation+insurance.htm>

Alternatively, you can contact Workcover on 9388 5555.

The second and equally important policy to consider is **Public Liability Insurance**. Although you may already have Public Liability insurance under your private Home & Contents policy, this almost always excludes claims that arise from your employees. A separate policy should be obtained that covers you against claims from any member of the public, who is not your employee, who may be injured during the course of providing the service. A Public Liability policy would also protect you against the cost of any property damage which occurs while your care worker is working for you.

You can speak to your own insurance company or broker to obtain a quote for this cover. Zenith Insurance Services advise that Workers Compensation premiums are based on estimated wages and in most cases, premiums should be less than \$275 per year. A Public Liability insurance policy for \$5,000,000 (minimum available) cover shouldn't cost more than \$175 including all fees & charges.

Superannuation

Federal superannuation legislation requires employers to make superannuation contributions on behalf of employees to a complying superannuation fund. The current minimum contribution rate is 9% of an employee's ordinary time earnings. Superannuation contributions **are not payable** if your worker fits into any ONE of the following categories:

- The Care Worker is paid less than \$450.00 in a calendar month, or
- The Care Worker is paid to do work of a private and domestic nature for not more than 30 hours per week, or
- The Care Worker is under 18 years of age working 30 hours per week, or less (over 7 days).

The above exemptions are most relevant for people who employ Care Workers. There are additional exemption categories that your Care Worker may fit into.

For more information please contact the Superannuation Info Line on 13 10 20 or www.ato.gov.au

Taxation

The liability to deduct “pay as you go” tax deductions from the employee's wages may depend on the income that they earn and other factors. You should discuss this with your tax accountant. Details on the amount of tax payable is available from the Australian Taxation Office's “General Tax Line” on 13 28 61, or www.ato.gov.au

Managing the Care Worker

Making the Situation Work

The relationship between the employer, the person with care/support needs and the Care Worker are very important and are the key to success. It is essential that you have regular meetings with the Care Worker and allow them to air any concerns they have. You must be approachable and willing to listen to suggestions and concerns. On the same note, the Care Worker must also be approachable and willing to listen to concerns and suggestions.

Here are some suggestions for making it work:

- Have a written description of the position and the duties they are required to do.
- Introduce the Care Worker to their position by giving clear instructions on the duties to be performed
- Have a clear 'Care Plan' available, that is up to date
- If you are trained and they are not, show the Care Worker how to do certain tasks, and then supervise them, or arrange the appropriate training.
- Allow and encourage the Care Worker to ask lots of questions
- Have regular meetings to discuss issues, concerns or progress
- Ask if the job is meeting the expectations of the Care Worker
- Ask if there are any issues or problems they have encountered
- See if there is any additional training (if applicable) which could be beneficial for them and you
- Try to be alive to their needs as well as your own
- Have a process in place for disputes; this may be a third party you have both agreed to talk to and call on if, as and when the need arises.

Ensure the Care Worker is informed of any changes regarding the person being cared for, such as medication, treatments, techniques used and training is provided if required.

Care Worker Receiving the Carer Payment Through Centrelink

Important facts to begin:

1. Centrelink will determine whether a person chosen by you is eligible for Carer Payment.
2. Carer Payment is income and assets tested.
3. Carer Payment is not a wage. It is a payment and so it does not attract the same kinds of conditions that come with wages paid for a job, e.g. workers compensation, superannuation etc.
4. It is very important that both the person with care/support needs and the proposed Care Worker inquire about appropriate insurance (see phone numbers below).
5. To be eligible for Carer Payment, a person cannot be receiving any other social security pension or income support payment, or a Veterans' Affairs Service Pension or Income Support Supplement. They can change over from one to another, but cannot receive two.
6. To be eligible for the Carer Payment, you must be an Australian citizen, or allowed to live here permanently (a two year waiting period may apply for recently arrived migrants. Please check with Centrelink if you have resided within Australia for less than two years.)
7. Depending on the level of care required by the care receiver it may be possible for two people to qualify for Carer Payment for the one care receiver.

Important Contact Numbers

◆ Centrelink Disability, Sickness and Carers	13 2717
◆ WorkCover WA	(08) 9388 5555 1800 670 055
◆ Insurance Council of Australia	1300 728 228

The Carer Payment is not a wage

Carer Payment is not considered to be a wage by Centrelink.

This needs to be explained clearly to a potential Care Worker before entering into a care agreement.

The potential Care Worker needs to know that they are **not entitled** to work benefits such as sick leave, annual leave, or workers compensation should they be injured whilst on the job.

For protection, the person being cared for is advised to take out Workers Compensation Insurance, available by contacting your insurance company. This insurance is only a small amount per year.

The person needing care must obtain forms from Centrelink to be filled out by the person's doctor and the Care Worker. The information is used to determine whether the person requires full time care and/or supervision. The forms will ask questions about meal preparation, eating, hygiene and mobility.

For a Care Worker to be eligible to be paid Carer Payment the person needing care must:

- ♦ Be an Australian citizen or allowed to live here permanently.
- ♦ Be living in Australia at the time the care is given.
- ♦ Need full time help with personal care because of a severe physical, intellectual or psychiatric disability, or need constant supervision because their disability causes them to be a danger to themselves or others.
- ♦ Need care permanently or for an extended period of at least 6 months (less if they have a terminal illness), and
- ♦ Be on a pension OR meet a special income and assets test. Those not eligible for a pension but still needing care should speak to Centrelink regarding conditions.

It is very important to check regularly with Centrelink regarding all of the information about Centrelink benefits or payments as they may change.

It is very important to check with Centrelink before going ahead.

Does a Care Worker have to be an Australian citizen?

The Care Worker must be an Australian citizen or permanent resident. A 2 year waiting period may apply for recently arrived migrants. The Care Worker must be living in Australia at the time the care is given.

What if the Care Worker is already receiving another benefit or pension?

The Care Worker cannot be getting any other Centrelink income support payment, Veterans Affairs Service Pension, or Income Support Supplement. They can however change over if they wish. The Care Worker may still receive other payments such as Family Tax Benefit and some may be eligible for Carer Allowance.

How much care does the Care Worker need to provide to be eligible?

The Care Worker must be providing full time care to a person for tasks such as bathing, dressing, hygiene, feeding or mobility; OR constant supervision of a person because they are a danger to themselves or others.

Does a Care Worker have to live with the person they are caring for?

It is not necessary for the Care Worker and the care receiver to be living in the same home. However, if the Care Worker does not share the same accommodation as the care receiver, the constant care criteria must be closely considered. The following factors in particular should be taken into account:

- ♦ The nature of the care receiver's disability,
- ♦ The type of care or supervision needed,
- ♦ The method of communication between the two homes and
- ♦ The speed with which the Care Worker can respond to an emergency.

Situations where the Care Worker and care receiver reside separately may be more likely to involve shared care, and require thorough assessment to ensure that the customer is eligible.

How much income and assets can the Care Worker have over and above the Carer Payment?

It is important to ask Centrelink for the current figures on the income and asset test. The combined income of the Care Worker and their spouse/partner where applicable, will be taken into account when determining the level of payment the Care Worker is eligible for.

Can I work part time and still be eligible to receive a Carer Payment?

The Care Worker can be absent from the care situation for up to 25 hours per week (including travel time). Check with Centrelink about how much you can earn before your payment is affected.

How much money is the Carer Payment?

- ◆ The amount of Carer Payment you receive will depend on how much income and assets you have. Check these details with Centrelink.
- ◆ The Care Worker may also get Pharmaceutical Allowance and a Pensioner Concession Card and Rent Assistance.
- ◆ The Carer Payment is not taxable (if you and the person with care/support needs are under the Age Pension age).
- ◆ Centrelink does not require the person receiving the Carer Payment to be 'actively seeking employment' so the Care Worker will not be required to fill out forms with Centrelink apart from review forms for Carer Payment.

What are the benefits for someone changing from another pension to the Carer Payment?

- ◆ Carer Payment is not taxable (if you and the person with care/support needs are under the Age Pension age), whereas the Sole Parent Benefit is taxable.
- ◆ Once on Carer Payment, the person no longer has to fill out forms with Centrelink except for review forms.
- ◆ For some people, there may be no benefit in changing over to the Carer Payment. Check with Centrelink about your individual situation.

What is the Carer Allowance?

- ◆ Carer Allowance is different from Carer Payment.
- ◆ The Care Worker and the person with care/support no longer need to live in the same house, this came into effect on Sept 1, 2004.
- ◆ Where the person being cared for has high personal care needs, the Care Worker may be entitled to the Carer Allowance. (This used to be called the Domiciliary Nursing Care Benefit or Child Disability Allowance).
- ◆ Carer Allowance is not income and asset tested and is not taxable.
- ◆ There are combined claim forms for the Carer Payment and the Carer Allowance
- ◆ Call Centrelink on 13 27 17 for more information about Carer Allowance.

For further general information or fact sheets on Centrelink payments, please see their website at <http://www.centrelink.gov.au>

For more detailed information on the Social Security Act and the legislation that assists Centrelink employees in their decision making, please go to: <http://www.facs.gov.au/sspal/index.htm>

(Originally written by Centrelink, June 2002, reviewed and amended September, 2007)

Deed of Agreement – **Sample** Only

Please note the Carer Payment is for a minimum of 6 months. Centrelink do not recognise the Payment as a job. The Carer Payment is through Centrelink at a base rate of \$ _____ per fortnight. The Care Worker also gets Pharmaceutical Allowance and a Pensioner Concession Card. It is income and assets tested (including partner). The Care Worker may be entitled to the Carer Allowance, which is an additional \$..... per fortnight. This is not income or assets tested. The Care Worker may also be entitled to Rent Assistance.

Regular respite breaks will be negotiated with the Care Worker and care organized through services in the community.

AGREEMENT of CARE WORKER:

- Assist (name of person with care/support needs) to get in/out of bed as required.
- Assist in personal care needs as required.
- Meal preparation x 3 daily.
- Shopping as required.
- Accompany (name of person with care/support needs) to doctor's appointments as required.
- Be available to (name of person with care/support needs) for any emergencies.
- Housekeeping duties.
- Constant care and attention.

FINANCIAL ARRANGEMENT

(Name of person with care/support needs) and Care Worker to share costs of following:

Food/household items
Rent
Electricity
Phone rental

Care Worker to pay the cost of personal calls.

(Name of person with care/support needs) to pay any Work Cover insurance, house/contents insurance, or Public Liability insurance (as appropriate to the particular case).

SERVICES BEING RECEIVED (person with care/support needs)

Examples:

- (e.g. Silver Chain) visit times a week for showering assistance
- (person with care/support needs) attends respite centre once a week on Wednesdays
- Other

DISPUTES

The Care Worker and (name of person with care/support needs) agree to have a weekly session, where any issues, or disagreements can be sorted out.

Should either the Care Worker or (person with care/support needs) feel an outside person would be beneficial to the discussion, (name of outside person – e.g. family member/friend) agrees to be available for these times

(Written by Centrelink, June 2002)

Checklist

Please use the following checklist to assist you in finding the right Care Worker.

- ☐ Write a brief list of the jobs you require a Care Worker to do
- ☐ Write more detail about each job and develop a job description
- ☐ Decide upon the appropriate mode of engagement for your care worker:
 - informal arrangement (family member),
 - casual employee,
 - full-time or part-time employee,
 - contractor,
 - employee or contractor (through agency or third party)
- ☐ Draft or procure an appropriate contract for your care worker or agency.
- ☐ Ensure that you (and if applicable, your care worker) have made appropriate insurance arrangements.
- ☐ Find a trusted friend or relative to help you with the questions and interviewing
- ☐ Decide how you are going to advertise & write the advertisement
- ☐ Work out how much you can pay the Care Worker per hour
- ☐ Lodge your advert
- ☐ Write your list of questions for telephone screening
- ☐ Screen applicants and make a list of 4-5 to interview
- ☐ Interview with a trusted friend/family member
- ☐ Discuss each applicant interviewed
- ☐ Make an offer of the position
- ☐ Set a date to sign the contract_____.
- ☐ Set a date to start work _____.
- ☐ Introduce Care Worker to the job and tasks required (induction)
- ☐ Continue to orient the Care Worker to the role until they (and you and the client) are comfortable
- ☐ Set the date for the first of regular meetings with the Care Worker

Further Information

The information contained within this Hiring a Care Worker Information Package is *a sample and guide only*. Carers WA carries no responsibility for any information provided.

Before signing any agreement, it is recommended that advice be sought from a legal representative.

Some contacts for insurance, taxation and legal advice include:

- ◆ Citizens Advice Bureau (08) 9221 5711
- ◆ Work Cover WA (08) 9388 5555
1800 670 055
- ◆ Legal Aid 1300 650 579
- ◆ Sussex Street Community Law Service (08) 9470-2676
- ◆ Australian Taxation Office 13 28 61
Business PAYE collection 13 28 66
Superannuation Helpline 13 10 20

For information on Carer Payment and Carer Allowance, call:

- ◆ Centrelink 13 27 17

For information on equal opportunity employment, call:

- ◆ Equal Opportunity Commission (08) 9216-3900
1800 198 149

For information and/or assistance with respite call:

- ◆ Commonwealth Carer Respite Centres 1800 059 059

For further information, call:

Carers WA
Ph: 1300 227 377
Fax: (08) 9228 7488
Email: carers@carerswa.asn.au

Important disclaimer

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References:

Carers WA would like to acknowledge the following organisations for information obtained (in person or on-line) within this Package:

- Hiring a Carer Information Package dated September 2000, Carers Association of WA
- Chamber of Commerce and Industry WA
- Department of Consumer and Employment Protection (DOCEP)
- Chamber of Commerce and Industry WA
www.cciwa.com
- www.caregiver.org
- Central Coast Commission for Senior Citizens (California)
www.slonet.org
- ElderCare Online, Inc (USA)
www.ec-online.net
- Superannuation Helpline 13 10 20
- Los Angeles Caregiver Resource Center
www.usc.edu/dept/gero/lacrc/help.htm
- Australian Taxation Office 13 28 61 or
www.ato.gov.au
- National Centre for Independent Living
www.ncil.org.uk
- Managing Personal Assistants: A Consumer Guide,
www.pva.org

Appendices

- I. Sample Contract: Casual Care Worker/
Employee -(Private/Domestic)
- II. Sample Contract: Full-time/Part-time Care
Worker- (Private/Domestic)
- III. Sample Contract – Independent contractor
- IV. Dismissing the Care Worker

APPENDIX I:

Proforma Employment Contract Casual Care Worker / Employee – (Private/Domestic)

An agreement made this day of200____

BETWEEN:.....the "Employer"

of.....

andthe "Employee"

of

WHEREAS

The Employee is willing to accept the appointment for the period and benefits set out, subject to the terms and conditions of this contract.

IT IS AGREED AS FOLLOWS:

1. TERM

The engagement of the Employee shall commence on _____.

2. REMUNERATION

The Employee's casual hourly wage shall be:

rate of \$ per hour

3. PAYMENT OF SALARY/ WAGES

All salaries will be paid fortnightly by cheque, or by electronic funds transfer into the Employee's nominated account, at the Employer's discretion.

4. HOURS OF WORK

The ordinary hours of work for this position shall be..... hours per (week/fortnight/month) or as negotiated from time to time.

The Employer will provide the Employee with reasonable prior notice of the shifts /days to be worked in the next weekly/fortnight /month. Changes to these arrangements may be agreed to between the Employer and the Employee. The employer may cancel a particular day's work or the employee may make themselves unavailable for work with prior notice to the other party. In each case the notice must be sufficient for the other party to make alternative arrangements.

5. ADDITIONAL HOURS

In an emergency, an Employee may be required by the Employer to work in excess of the usual hours of work, and shall be paid for each additional hour at the rate prescribed in Clause 2 of this Agreement.

6. PUBLIC HOLIDAYS

There is no entitlement to paid public holidays. In the event that the employee works on a public holiday the ordinary casual rate of pay shall apply.

7. ANNUAL LEAVE

There is no entitlement to annual leave under this Agreement.

8. SICK LEAVE

There is no entitlement to paid sick leave under this Agreement.

9. BEREAVEMENT LEAVE

9.1 On the death of the spouse, child, parent 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 two (2) days.

9.2 Payment for such leave shall be subject to the employee providing reasonable proof of the death and the relationship of the deceased to the employee.

9.3 This clause shall only apply to a person rostered to work specific hours, who but for the bereavement, would have worked those hours.

10. TRAVELLING AND MOTOR VEHICLE ALLOWANCE

Should the Employee be required to use her own vehicle on the Employers business, the Employee will receive a vehicle allowance of.....per kilometre.

11. SUPERANNUATION

The Employer will make superannuation contributions for the Employee where required by Superannuation Guarantee legislation. Unless otherwise agreed between the parties, the Employer will make superannuation contributions to *[insert name of fund]* _____. Contributions will be made at the minimum statutory contribution rate applicable to the Employee from time to time.

12. CONTRACT OF SERVICE

12.1 The employee shall be engaged in accordance with the terms and conditions set out in this Agreement including any Statement of Duties that may be appended to this Agreement.

12.2 The Employer may direct the employee to carry out such duties as may from time to time be set out in the Statement of Duties and such other general duties as are within the limits of the employee's skill, competence and training.

12.3 On initial engagement, the Employee may be placed on probation for work done during a period of 3 months. At the end of the 3 months period the Employer shall advise the employee that no further casual work will be offered, or alternatively shall advise the employee that he / she is considered suitable for future offers of casual work.

12.4 The employee may be required to work in different locations within a radius of In the event that the client relocates outside this area the contract of employment shall cease unless the employee agrees to relocate to that area.

13. TERMINATION OF EMPLOYMENT

Either party is entitled to terminate the engagement for any reason on provision of 1 days' notice. If the Employer terminates the engagement, and does not require the Employee to work any shift that may be scheduled in the 24 hours following the engagement, the Employee will be paid in lieu of that shift, with the exception of where the Employee is dismissed for serious misconduct.

13.1 Termination Process

The employment may also be terminated by the Employer if funding for the Employee's position is discontinued by the funding body.

When the employment is terminated by the Employer or the Employee, the Employee will immediately return any property belonging to the Employer that is in the Employee's possession.

14. CONFIDENTIALITY

The Employee shall not discuss at any time, either during the term of employment or thereafter, any of the affairs of confidential matters pertaining to the employer or the client.

15. TIME KEEPING

The Employer shall maintain records of hours worked, time in lieu, periods of absence from duty and superannuation payments, where applicable.

16. ENTIRE AGREEMENT

This contract forms the entire agreement between the parties in relation the employment of the employee, subject to the relevant laws of the State and the Commonwealth.

17. VARIATION

This contract can only be varied by written agreement of the parties.

18. DEFINITIONS

"Client" shall mean the person in respect of whom the employer has engaged the employee to provide care. The Client may also be the employer.

Signed for and on behalf of _____ (Employer)

Signature

in the presence of

Witness _____

(Witness' Signature) _____

Date _____

Signed by the Employee

(Employee's Signature) _____

in the presence of

Witness _____

(Witness' Signature) _____

Date _____

Important disclaimer

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APPENDIX II:

<p style="text-align: center;">Proforma Employment Contract Full time & Part time Care worker / Employee – (Private/Domestic)</p>
--

An agreement made thisday of 200_____

BETWEEN:.....the "Employer"

of.....

and the "Employee"

of.....

WHEREAS

The Employee is willing to accept the appointment for the period and benefits set out, subject to the terms and conditions of this contract.

IT IS AGREED AS FOLLOWS:

1. TERM

The Employment shall commence on _____.

2. REMUNERATION

The Employee's salary / weekly / hourly wage shall be:

Annually

or

Weekly

or

rate of \$ per hour.

3. PAYMENT OF SALARY/ WAGES

All salaries will be paid fortnightly by cheque, or by electronic funds transfer into the Employee's nominated account, at the Employer's discretion.

4. HOURS OF WORK

The ordinary hours of work for the full-time /part time Employee shall be.....

5. ADDITIONAL HOURS

In an emergency, an Employee may be required by the Employer to work a reasonable number of hours in excess of the prescribed hours of work. In such **case** the employee shall be paid for those hours at the rate prescribed in Clause 2. or by agreement, shall accrue time off in lieu of payment for those additional hours worked, on a time for time basis, to be taken at a mutually agreed time.

6. PUBLIC HOLIDAYS

- 6.1 The Employee shall be entitled, without loss of pay, to the following public holidays:- New Year's Day, Australia Day, Good Friday, Easter Monday, ANZAC Day, Queen's Birthday, Labour Day, Foundation Day, Christmas Day, Boxing Day.
- 6.2 If an employee is required to work on a public holiday, the employee shall be paid for the day at the normal rate and be entitled to a paid day off in lieu at some other mutually agreed time.

7. ANNUAL LEAVE

- 7.1 The Employee is entitled to 4 weeks annual leave on full pay for each continuous twelve months of service with the Employer. Such leave shall accrue pro rata on a weekly basis.
- 7.2 Annual leave shall be exclusive of all public holidays.
- 7.3 Part time employees shall be entitled to payment for annual leave on the same basis as full time employees with payment based on their hours of work in proportion to that of a full time employee.
- 7.4 The Employer may approve an employee's request to take a proportion of accrued leave subject to the Employer's convenience.
- 7.5 As to the taking of annual leave:
 - (a) subject to exceptional circumstances, the Employee will provide the Employer with a request to take annual leave at least 2 weeks prior to when the annual leave is proposed to be taken. The Employer will not unreasonably refuse a request to take annual leave.
 - (b) the Employer may direct the Employer to take annual leave, subject to providing the Employee with at least 1 week's notice.

8. SICK LEAVE

- 8.1 The Employee shall be entitled up to 10 days sick leave on full pay per year of service. This leave accrues pro rata on a weekly basis.
- 8.2 The Employee's entitlements to paid sick leave will not accrue from year to year. The Employee's maximum entitlement to paid sick leave at any one time will be 10 days' paid sick leave.
- 8.3 The Employee will not be entitled to the payment of accrued pro rata sick leave entitlements upon the termination of the Employee's employment.
- 8.4 The employer is entitled to evidence of the employee's illness, by way of medical certificate or other satisfactory evidence.
- 8.4 The employee is entitled to use up to 5 days per year of their sick leave entitlement to care for their spouse, child, parent or any other person who lives with the employee as a member of the employee's family, under their care. Evidence of the illness as per 8.4 also applies to this provision.

9. BEREAVEMENT LEAVE

- 9.1 On the death of the spouse, child, parent 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 two (2) days.
- 9.2 This provision shall not apply if the employee was not rostered to work on the relevant days or was otherwise on other leave.
- 9.3 Payment for such leave shall be subject to the employee providing reasonable proof of the death and the relationship of the deceased to the employee.

10. TRAVELLING AND MOTOR VEHICLE ALLOWANCE

Should the Employee be required to use her own vehicle on the Employers business, the Employee will receive a vehicle allowance of.....per kilometre.

11. SUPERANNUATION

The Employer will make superannuation contributions for the Employee where required by Superannuation Guarantee legislation. Unless otherwise agreed between the parties, the Employer will make superannuation contributions to [insert name of fund]..... Contributions will be made at the minimum statutory contribution rate applicable to the Employee from time to time.

12. CONTRACT OF SERVICE

- 12.1 The employee shall be engaged in accordance with the terms and conditions set out in this Agreement including any Statement of Duties that may be appended to this Agreement.
- 12.2 The Employer may direct the employee to carry out such duties as may from time to time be set out in the Statement of Duties and such other general duties as are within the limits of the employee's skill, competence and training.
- 12.3 On initial engagement the Employee shall be placed on probation for a period of 3 months. At the end of the 3 months period the Employer may confirm the appointment, terminate the engagement or extend the probationary period for a further period of up to 3 months by agreement with the Employee.
- 12.4 Notwithstanding the provisions of Clause 16. Termination of Employment, the notice period to apply in the case of a probationary employee shall be one week.
- 12.5 The employee may be required to work in different locations within a radius of In the event that the client relocates outside this area the contract of employment shall cease unless the employee agrees to relocate to that area.

13. CONFIDENTIALITY

The Employee shall not discuss at any time, either during the term of employment or thereafter, any of the affairs of confidential matters pertaining to the employer or the client.

14. TIME KEEPING

The Employer shall maintain records of hours worked, time in lieu, superannuation, where applicable, sick leave and other leave entitlements.

15. TERMINATION OF EMPLOYMENT

15.1 Termination Process

Either party may terminate the employment for any reason, in accordance with the terms of this clause. The Employer may also validly terminate the employment if funding for the Employee's position is discontinued by the funding body.

15.2 Notice of Termination by the Employer

15.2.1

Unless otherwise provided in this clause, the Employer is required to provide the Employee with notice of the termination of the Employee's employment as follows:

Less than 1 year of service:	1 week's notice
1-3 years' service:	2 weeks' notice
3-5 years' service:	3 weeks' notice
more than 5 years service	4 weeks' notice

The Employee is entitled to an additional 1 weeks' notice if the Employee is over 45 at the date of the Employee's termination of employment, and has been employed continuously by the Employer for in excess of 2 years.

15.2.2

The Employer may choose not to require the Employee to work out the notice period, and instead provide the Employee with payment in lieu of the appropriate notice. Payment in lieu of notice will be paid at the ordinary rate of pay the Employee would have received for working ordinary hours during the relevant notice period.

15.2.3

The period of notice in this clause shall not apply in the case of conduct which justifies summary dismissal as outlined in subclause 15.4

15.3 Notice of Termination by Employee

The Employee must give one weeks notice in writing of resignation. If the Employee fails to give this period of time in notice, the Employer shall have the right to withhold moneys due to the Employee with the maximum amount equal to the ordinary time rate of pay for the period of notice.

15.4 Summary Dismissal

The Employer shall have the right to dismiss the Employee without notice for conduct which justifies instant dismissal, in such cases salary shall be paid up to the time of dismissal only.

16. VARIATION

This contract can only be varied by written agreement of the parties.

17. ENTIRE AGREEMENT

This contract forms the entire agreement between the parties in relation the employment of the employee, subject to the relevant laws of the State and the Commonwealth.

18. DEFINITIONS

"Client" shall mean the person in respect of whom the employer has engaged the employee to provide care. The Client may also be the employer.

Signed for and on behalf of _____ (Employer)

Signature

in the presence of

Witness _____

(Witness' Signature) _____

Date _____

Signed by the Employee

(Employee's Signature) _____

in the presence of

Witness _____

(Witness' Signature) _____

Date _____

Important disclaimer

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Appendix III

SAMPLE CONTRACT FOR SERVICES / INDEPENDENT CONTRACTOR

example

Between:

..... (Parent /Householder)

And

..... (Care Provider / Contractor)

ABN.....

CONTRACT TO PROVIDE CARE SERVICES

(Parent /householder) agrees to engage the services of the contractor to provide care services, as agreed and outlined in the attached, to..... (Client), in accordance with the following terms and conditions:--

1. The Contractor agrees to provide services that meet the standards required by the e.g. Disability Services Commission and to ensure that its care staff are adequately trained to provide the service.
2. The Contractor agrees to provide its ABN number and the business name under which the services are to be provided.
3. The Contractor agrees to provide a current National Police Clearance / working with children check (as appropriate) is to be made available prior to commencement of the contract in respect of any person providing the care. Any charges or convictions which might affect the status of the clearance incurred during the period of the contract must be advised to the (Parent/Householder).
4. The Contractor agrees to obtain approval from the Parent / Householder if it wishes to use any new employees to provide the care service.
5. The Contractor agrees to supply and maintain all relevant equipment and materials as may be required, to Australian Standards.
6. The Contractor agrees to maintain its own public liability and accident insurance, workers compensation insurance and superannuation entitlements for its employees, as applicable, for the duration of the contract.
7. The Parent /Householder agrees to maintain its own public liability insurance for the duration of the contract.
8. The Parent /Householder agrees to pay the contract rate of \$..... an hour inclusive of GST for each hour of care provided.
9. The Parent /Contractor agrees to make payment on a fortnightly basis upon receipt of the Contractor's invoice.

10. The Contractor and its employees agree to maintain confidentiality with regard to all matters pertaining to this contract or the client.
11. The parties agree that either may terminate this contract by giving one month's written notice to the other of the intention to do so. This period may be varied or waived by mutual agreement between them.
12. Either party may immediately terminate this contract in the event of a fundamental breach, including serious misconduct in performing the service or failing to meet any of the conditions contained herein.
13. The parties agree that this contract is one to provide specific services on behalf of Parent/ Householder. It is not intended to be a contract of service (employment contract), and no rights, entitlements or obligations relating to an employment relationship arise out of this contract.

This contract is for a period of..... after which it shall be reviewed.

or

This Contract, subject to the above conditions, shall be on a continuing basis whilst Parent/ Householder is in receipt of funding to provide care services toclient.

Signed: _____
Parent /Householder

Date:-----

Signed: _____
Contractor

Date:-----

ATTACHMENT

Services to be provided

.....
.....
.....
.....

Days and Hours during which service is to be provided.

.....
.....
.....
.....

Dismissing the Care Worker

Termination of Employment

Where the arrangement with a Care Worker is an informal, private and domestic arrangement and no employment relationship is entered into, the arrangement can be concluded at the option of either party.

Where a care worker is engaged as an employee, it is possible that state and /or federal laws with regard to unfair dismissal will apply when the employee is aggrieved by the action of an employer to terminate the contract.

Note: The laws relating to unlawful dismissal, discrimination and common law breach of contract still apply to employers of small workforces. Employers of carers should, therefore endeavour to ensure that terminations of employment are legal and in accordance with current laws.

Probationary Period

Ordinarily, it will not take a long time to determine whether the Care Worker you have hired is suitable for the job. A basic way to protect yourself against potential liability is to initially engage the employee on a **probationary period**. The ordinary term for a probationary period is up to 3 months. When applying a probationary period, we suggest that:

- ♦ the probationary period be discussed with the worker prior to hiring, and recorded in his or her letter of appointment or contract of employment;
- ♦ at the halfway point of the probationary period, you meet with the worker and review his or her progress. If the worker's progress is unsatisfactory, you should identify where the worker needs to improve, and should tell the worker what he or she needs to do to meet your expectations. If this is required, you should tell the worker that if improvement does not occur, there is the chance that he or she will not have his or her employment confirmed at the end of the probationary period; and
- ♦ prior to the end of the probationary period, you should determine whether you will continue to employ the worker. If you decide to continue with the worker, you should confirm this with a short letter in writing. If you decide not to continue with the worker, you should confirm this with a short letter in writing, *preferably 1 week prior to the end of the probationary period*.

By following this process, you will significantly reduce the potential for complications arising where you need to terminate the services of your Care Worker.

Notice of Termination of Employees

Where you have engaged an employee in a full-time or part-time capacity, you will ordinarily be required to provide the employee with notice of the termination of his or her employment.

Minimum notice entitlements are prescribed at section 170CM of the Workplace Relations Act 1996 (Cth), and are as follows:

Less than 1 year of service:	1 week's notice
1-3 years' service:	2 weeks' notice
3-5 years' service:	3 weeks' notice
More than 5 years service:	4 weeks' notice

An additional weeks' notice should be provided where the employee is over 45, and has been employed for more than 2 years.

You have the option of having the employee work out his or her notice, or paying the employee in lieu of his or her notice. Where paying in lieu, the payment should be the amount the employee would have expected to receive if he or she had actually worked for the relevant period.

You are not required to provide notice of termination if the employee is a casual employee, or if you are terminating an employee's employment at the end of a fixed term of employment.

Unlawful Termination – For a Prohibited Purpose

The Workplace Relations Act 1996 prescribes prohibited reasons for a termination of employment, these reasons being:

- ◆ temporary absence from work due to illness or injury;
- ◆ trade union membership or absences, non-membership of a trade union, or otherwise engaging in employee representative activities;
- ◆ filing a complaint, or participating in proceedings against (his or her) employer;
- ◆ the employee's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- ◆ refusing to negotiate or terminate an Australian Workplace Agreement
- ◆ absence from work during maternity leave or other parental leave
- ◆ temporary absence from work because of the carrying out of voluntary emergency management activity, where the absence is reasonable having regard to all the circumstances

A termination proceeding on any of these grounds would be unlawful, unless it is based on the inherent requirements of the position. An employee succeeding in a claim under the Act may be entitled to reinstatement or compensation.

Categories of Termination

There are 3 basic reasons why employers terminate employees' employment:

- A. unsatisfactory performance
- B. misconduct; and
- C. operational requirements (redundancy)

There is no one process for terminating an employee's employment for any or all of these reasons. However, there are basic rules that you should adhere to in order to reduce your risks of litigation in the event that the employee is aggrieved by the decision.

A. Performance

Where an employee is being terminated for performance reasons, there is a basic principle that employees should be made aware of why their performance is unsatisfactory that they should be given the opportunity to meet required standards, with further training if necessary, before any remedial or disciplinary action is taken.

The following steps should be taken:

- ◆ Ensure that the care worker is aware of his or her responsibilities, and your expectations. It is best to provide these details to the care worker in writing;
- ◆ Ensure that any necessary equipment, resources or training is provided to the care worker;
- ◆ If there are performance issues, counsel the employee in a formal meeting, identifying the performance deficiencies, and what steps the employee should take to improve his or her performance. Create a written record of the discussion;
- ◆ If performance does not improve within an agreed timeframe, provide the employee with a final opportunity to improve his or her performance. Preferably, the employee should be provided with a letter to this effect; and
- ◆ Refer to the prior counselling when you make your decision to terminate the employee.

When termination occurs due to performance issues, and the employee is full-time or part-time, we advise that the employee should be provided with notice of his or her termination, or payment in lieu of notice.

B. Misconduct

Whether it is lawful to terminate an employee for misconduct will depend on the nature of the misconduct.

An employer has a common law right to dismiss an employee for serious misconduct without notice. What is “serious” will depend on the circumstances of the case. Examples of serious misconduct would include theft, assault, and serious dereliction of duty.

It is first necessary to establish that the employee had committed the misconduct. For a termination on grounds of misconduct to be lawful, it is necessary that the employer has sufficient grounds to establish that the employee has committed misconduct justifying summary dismissal.

The level of investigation required depends on the circumstances. Obviously, if an employee is “caught in the act”, or admits the conduct, it would not be necessary to take steps to determine that the misconduct occurs.

Where an investigation is required, you should:

- ◆ investigate the matter;
- ◆ put the allegations to the employee
- ◆ provide the employee with the opportunity to respond; and
- ◆ make a decision on the facts before you.

Again, it is useful to make a written note of all relevant events and discussions.

Once misconduct is proven, you need to determine whether you believe that the conduct is sufficiently serious to warrant termination of your employment. If you decide that the conduct warrants termination, you will need to decide whether you will summarily terminate the employee, or terminate the employee with notice. Unless there is gross misconduct (such as theft or assault), we suggest termination with notice or payment in lieu.

If you decide that the conduct does not warrant termination, you should provide the employee with a warning, advising that a repeat of the conduct may lead to dismissal. An accumulation of incidents which would not individually warrant dismissal may, together, provided they occur within a reasonable period of proximity, be justification for termination of employment.

C. Redundancy

An employee may be terminated for reasons of redundancy where you no longer require an employee to perform the work being performed by the relevant employee.

A carer should be advised as soon as possible after a decision is taken not to keep the position, or funding for a position has been withdrawn, or you intend to shift to another location, for example.

Because carers employed by the householder are excluded from the definition of “employee” under the Industrial Relations Act and the Minimum Conditions of Employment Act 1993 (WA), there is no obligation to apply the redundancy requirements of the legislation or the State General Order on Termination Change and Redundancy.

However, in order to make the termination lawful, it is necessary to give the appropriate notice under the employment contract.

Procedures – Performance Management and Serious Misconduct

We have already provided a broad outline of steps that should be taken to reduce risks in terminating the services of care workers.

Below is an expanded outline of the steps that should be taken in relation to performance management, performance counselling, and investigating and dealing with serious misconduct.

In all instances it is essential that documentation of all issues/problems and actions taken are recorded. This can be in a notebook or your diary.

Note: This is a guide only and you should seek further legal advice if in this situation.

Performance management

Some performance issues will simply be a matter of common sense. However, managing performance issues can be assisted by ensuring that you provide the care worker with a written outline of their responsibilities at the start of their employment.

Poor performance relates when an employee fails to maintain the performance standards of their job, or the behaviour involves a breach of standards of conduct (i.e., unauthorized absences/poor time-keeping).

There are three ways poor performance can be dealt with; this is determined by the seriousness of the issue.

1. An informal comment can be sufficient to put the Care Worker back on track. Be sure to avoid put downs or disguised threats.
2. Performance counselling can be used. This is where the employer and Care Worker discuss and try to solve the problem together in a one-on-one meeting.
3. Discipline is an extension of the performance counselling process, but also gives the Care Worker formal written notice of the deficiencies in performance with the clear understanding that failing to meet the standards may lead to termination.

The Performance Counselling Procedure

The Performance Counselling Procedure involves confronting and correcting the Care Worker whose performance is not acceptable. It is a process in which you work *together* to try and solve the problem. It involves three steps:

Step 1 – Defining the Problem: This may seem very obvious, but it is essential that the problem is defined and the Care Worker agrees that there is a problem with their performance. You must be very clear with what the required standard is and what the Care Workers level of performance is. This must be in written form. (The required standard refers back to the Job Description and Managing your Care Worker)

Step 2 – Determine what is causing the problem. In this step your role is to ask the care Worker questions to determine what the problem is. Ensure the questions are open ended (require more than a yes/no answer), and do not prejudge the problem as being the Care Workers fault. At the end of this step, both the employee and Care Worker must agree on what issues they will work on.

Step 3 – Involves considering what can be done most effectively and efficiently to Solve the Problem. This is a brainstorming session with both parties coming up with suggestions on how to solve the problem. Possible solutions can include: Skill and Knowledge Training, Clarifying standards and requirements, providing more regular feedback on work performance, reviewing and changing the work practices or reviewing and changing the hours of work.

If the Performance Counselling procedures have not solved the problem, the following steps must be followed prior to dismissal. This is the ***Discipline Procedure***. This procedure involves formal written notice of deficiencies in the Care Workers performance with the clear understanding that failure to meet the standards may lead to dismissal. The Care Worker **MUST** know what is expected of them, when and how they are not meeting the expectations, be given reasonable opportunity and assistance to meet the expectations and the consequences should their performance not improve.

The Disciplinary Procedure involves the following steps;

1. Set up an appointment with the Care Worker and let them know it concerns a serious issue regarding their continued employment.
2. Let the Care Worker know they are entitled to have a support person present. You may have a witness present as well. The role of your witness is to document the interview and not take part in the interview.
3. Prior to the interview, prepare a clear, objective statement of what the problem is with specific examples.
4. At the interview:

- a. State that the Care Workers performance is not satisfactory
 - b. State clearly and objectively what you are not satisfied with
5. The Care Worker is to respond to the allegation(s). If a satisfactory answer is given to the allegation, the discussion ends. If the answer is not satisfactory, inform the Care Worker that their response does not justify their conduct/performance, re-state the standard, re-state failure to improve may lead to dismissal, decide on measure to take to improve performance (e.g. training), and set a time to review their performance. Provide the Care Worker with a written letter confirming what was discussed in the interview and the action to be taken.

As the employer, it is up to you to determine how many warnings to give. The number of warnings can directly relate to the seriousness of the issue.

Serious Misconduct is defined as acts that result in serious breach of contract. The employer must decide which acts or behaviour are a serious breach of contract and could lead to dismissal without notice. It is best to list some examples in the contract, and ensure there is a clause stating that the list is not complete. Examples can include;

Serious Misconduct includes, but is not limited to,

- Theft
- Damage to employers property
- Coming to work under the influence of drugs or alcohol
- Serious breach of confidentiality
- Deliberately or knowingly endangering the care recipients' safety
- Verbal, physical, emotional or financial abuse of the care recipient

To avoid such situations, ensure the Care Worker is aware of the conduct and behaviour that are acceptable and those that are not. Ensure the Care Worker fully understands the job description and what is required of them in the position.

Should there be an allegation of serious misconduct, it is essential that the allegation is investigated thoroughly and immediately and impartially. Investigate by speaking to other people present and collecting documentation of what happened (reports, witness statements, etc). Allow the Care Worker to respond to the evidence collected during an interview. Unsatisfactory responses can lead to dismissal.