

AGREEMENT

BETWEEN

COMMONWEALTH OF AUSTRALIA

AND

TASMANIAN WORKING WOMEN'S CENTRE INC

**in relation to the provision of Advisory Services about rights and obligations under the
Workplace Relations Act 1996 and other employment matters to workers in a
disadvantaged bargaining position**

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THIS AGREEMENT is made on **SEPTEMBER 2004**

PARTIES

COMMONWEALTH OF AUSTRALIA ('the Commonwealth') for the purposes of this Agreement represented by and acting through the Office of the Employment Advocate ('the Commonwealth')

AND

TASMANIAN WORKING WOMEN'S CENTRE INC ('the Organization')

PURPOSE

- A The Commonwealth agrees to provide funding to the Organization for the purposes of the provision of a Workplace Relations Act 1996 ('WRA') advisory service to employees in a disadvantaged bargaining position ('the Community Partners Program' or 'Services'), particulars of which appear in Schedule 2 to this Agreement. The Commonwealth administers the Community Partners Program (**CPP**).

- B The Organization agrees to accept the funding subject to the terms and conditions of this Agreement. The Commonwealth recognizes that the Organization may receive funding from a variety of other sources and acknowledges that the Organization provides a distinctive and effective form of legal service delivery including law reform and is an important contributor to the legal aid and community assistance network.

- C The Commonwealth recognizes that in marketing the Services available to the disadvantaged under the CPP the Organization will not be required to promote Australian workplace agreements (AWAs) for the Commonwealth.

- D In managing this Agreement the Commonwealth acknowledges the right of the Organization to provide impartial, professional advice to employees about their rights and obligations under the Act without prejudice.
- E This Agreement provides a framework to:
- (i) deliver high quality advice to people in disadvantaged bargaining positions in relation to their rights and obligations under the WRA and provide advice on all employment law matters with priority given to AWAs;
 - (ii) ensure the Organization has certainty about the provision of funds covered by the Agreement and the timing of payments;
 - (iii) ensure that the Organization fosters cost-effective service delivery methods and meets any agreed standards for delivering the Services funded by the Agreement;
 - (iv) develop and apply performance measures and appropriate evaluation activity for the Organization in delivering the Services funded by this Agreement; and
 - (v) ensure accountability on the part of the Organization for the expenditure of funding covered by the Agreement.

OPERATIVE PART

1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

the Act	means the <i>Workplace Relations Act 1996</i>
Agreement	means this Agreement including the Schedules and any annexures to the Schedules
AWA	means Australian workplace agreement as defined in Part VID of the <i>Workplace Relations Act 1996</i>
Agreement Material	means any Material: <ul style="list-style-type: none"> (a) created for the purposes of this Agreement or for the performance of this Agreement; or (b) incorporated in, provided or required to be provided to the Commonwealth along with the Material referred to

in paragraph (a) as part of the Organizations; or

- (c) copied or derived at any time from the Material referred to in paragraphs (a) or (b);

Budget	means the budget for the Services specified in Schedule 2;
Chairperson	means the person(s) enabled by the Organization under the relevant incorporating legislation to enter into legally binding agreements on behalf of the Organization;
Community Partners Program (CPP)	means the Commonwealth program for the provision of community based advice about entitlements rights and obligations under the <i>Workplace Relations Act 1996</i> , in particular in relation to AWAs, to workers in a disadvantaged bargaining position
Commonwealth	means the Commonwealth of Australia and includes any department or agency of the Commonwealth which is from time to time responsible for the administration of this Agreement;
Commonwealth Material	means all Material belonging to the Commonwealth, whether Agreement Material or otherwise
Confidential Information	means information that: <ul style="list-style-type: none"> (a) is by its nature confidential; or (b) is designated by the Commonwealth as confidential; <p style="text-align: center;">or</p> <ul style="list-style-type: none"> (c) the Organization knows or ought to know is confidential; or (d) will identify or is reasonably likely to identify a person as being or having been a party to an AWA
Copies	has the meaning defined in clause 34
Employment Advocate	means the person from time to time holding or occupying the position or performing the duties of the Employment Advocate under the Act
Financial Records	means the Organization's financial accounts and related source data, including but not limited to bank records, receipts, invoices, cheque books, wages records and petty cash;
Funding and Funds	means the amounts payable by the Commonwealth specified in Schedule 1

Guidelines	means the Program Guidelines for Organizations receiving funding under CPP
Intellectual Property	includes all copyright and neighbouring rights (including rights in relation to phonograms and broadcasts), Confidential Information and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
Material	includes information, documents, equipment, software, data and the subject matter of any category of Intellectual Property rights;
OEA	means the Office of the Employment Advocate
People in a disadvantaged bargaining position	includes but is not limited to workers who are women from a non-English speaking background, young people, apprentices, trainees and outworkers, pursuant to s83BB(2)(a) of the <i>Workplace Relations Act 1996</i> ;
Personal Information	means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
Regional Manager	means the person for the time being holding, occupying or performing the duties of the Regional Manager, Client Services Network at the OEA for the State or Territory in which the Organization is located , and who is authorized to perform any function or to exercise any power on behalf of the Commonwealth under this Agreement or any substitute notified in writing to the Organization;
Services	means the Services described in Schedules 3 and 4 and includes the provision to the Commonwealth of any reports required under this Agreement;
WRA	means the <i>Workplace Relations Act 1996</i>
writing	means any representation of words, figures or symbols capable of being rendered in a visible form.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing persons include a partnership and a body whether corporate or otherwise;
- (e) all references to dollars are to Australian dollars;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time;
- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (h) the Schedule and any attachments form part of this Agreement;
- (i) where any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail;

(j) where any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails; and

(k) reference to the Schedule (or an attachment) is a reference to the Schedule (or an attachment) to this Agreement, including as amended or replaced from time to time by agreement in writing between the parties.

1.3 This Agreement records the entire agreement between the parties in relation to its subject matter and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.

1.4 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.

1.5 No variation or extension of this Agreement is binding unless it is agreed in writing between the parties

2. TERM OF AGREEMENT

2.1 This Agreement comes into force on 1 September 2004 and expires on 31 August 2006 unless earlier terminated in accordance with this Agreement.

3. ASSIGNMENT AND SUBCONTRACTING

3.1 The Organization will not assign, subcontract or transfer any of its rights or obligations under this Agreement without the prior written consent of the Commonwealth.

3.2 The Commonwealth may impose any terms and conditions it considers appropriate when giving its consent with respect to Clause 3.1.

4 FUNDING ORGANIZATIONS

4.1 The Commonwealth will pay to the Organization the funding specified in Schedule 1 for the purpose of carrying out the Services specified in Schedule 2.

4.2 The payment of funding is subject to compliance with this Agreement.

4.3 In accordance with clause 1 of Schedule 1 the Commonwealth will pay to the Organization the amounts specified by nine separate instalments. Each payment will be made within 30 days of receipt of a tax invoice (in accordance with Clause 13 and the GST Act) or provision of the Services by the Organization (whichever is the later) and subject to the satisfactory submission by the Organization of each Quarterly Statistical Report and bi-annual written report.

5. WARRANTY OF AUTHORITY

5.1 The Organization warrants that its rules of association are not, and will not be, inconsistent with this Agreement.

6. FINANCIAL MANAGEMENT

6.1 The Organization agrees to have and maintain financial management and accounting systems for budgeting and reporting that meet applicable Australian Accounting Standards. The Organization agrees to auditing of these systems in accordance with Clauses 9 and 10.

7. USE OF FUNDING

7.1 The Funding is made to the Organization specifically for the purpose of carrying out the Services and expenditure described or referred to in Schedule 2 in respect of the period 1 September 2004 to 31 August 2006.

7.2 The Organization will not make a loan, gift or donation from the Funding other than in accordance with this Agreement.

7.3 The Organization will not disburse, expend, apply or use the Funding or any part thereof for any purpose other than those set out in Clause 7.1 above.

8. SERVICES

8.1 If for any reason the Regional Manager forms the opinion that progress of the delivery of Services under this Agreement will be significantly retarded, it will notify the Organization in writing and consult with it about terminating the Agreement or otherwise dealing with the matter.

8.2 If one of the parties foresees the likelihood of a breach of this Agreement occurring, it will, as soon as practicable, notify the other party in writing, setting out the nature of and background to the potential breach of this Agreement.

9. REPORTING AND EVALUATION

9.1 The Organization will provide the Regional Manager with its audited financial statement by 31 October each year. The audit must be conducted by a qualified accountant who is not an office holder or employee of the Organization. That person

must be a qualified auditor who is a member of the Australian Society of Accountants or the Institute of Chartered Accountants.

- 9.2 The Organization will, if the auditor qualifies the accounts or reports any irregularity or disclaimer, provide the Regional Manager with a copy of the full audit report within 5 working days of the report being provided to the Organization.
- 9.3 The Organization will, by 31 October each year forward a Certificate of Compliance as specified in Schedule 4.
- 9.4 As and when reasonably required by the Commonwealth the Organization will participate as appropriate in an evaluation of the Services organized or supported by the Commonwealth. The Organization will be provided with reasonable written notice of the nature of and reasons for the evaluation prior to its commencement.
- 9.5 The Organization will provide the Regional Manager with two copies of its Annual Report, such report is to be provided within one month of its approval or publishing by the Organization, whichever event is earlier. The Annual Report should include a summary of the achievements of the Organization with respect to the provision of the Services provided and activities engaged in, including, but not limited to:
- (a) hours of operation;
 - (b) AWA advice undertaken and number of files opened and closed;
 - (c) advisory services and number of files open and closed;
 - (d) access and equity;
 - (e) extent of volunteer and pro-bono work;

- (f) training provided to and by staff;
- (g) extent and source of other funding;
- (h) the names of the members of the Committee of Management of the Organization and the names and brief description of the roles of the staff involved in the provision of the Services;
- (i) any other activities relevant to the work of the Organization;

9.6 The Organization will provide the Regional Manager with quarterly performance management reports in accordance with Schedule 3. The reports will summarize progress to date in meeting the objectives and in providing the Services. They are to be received by the Regional Manager within one month of the completion of each quarter.

10. ACCESS TO THE ORGANIZATION'S PREMISES

10.1 The Organization must at all reasonable times give to the Employment Advocate or to any persons authorized in writing by the Employment Advocate, including staff of the Employment Advocate, access to premises occupied by the Organization where the Community Partners Program is being undertaken and must permit those persons to inspect the performance of that Organization and any Commonwealth Material, project Material or other Material relevant to the Community Partner Program. The Employment Advocate, or any person authorized in writing by the Employment Advocate, will not be permitted to inspect client files unless requested to, or authorized by that client.

10.2 The Organization agrees to promptly give the Australian National Audit Office (ANAO) or other auditors appointed by the OEA the assistance they reasonably require in conducting any audits, including full access at all reasonable times and on reasonable notice, to all premises, equipment or any Commonwealth Material, Agreement Material or product including but not limited to Confidential Information used in connection with the provision of the Services. The Employment Advocate will use his best endeavors to ensure that the ANAO exercises its functions in accordance with the terms of this Clause 10.2.

11. INCOME

11.1 The Organization will ensure that any monies not needed for the immediate provision of the Services will be invested in interest bearing accounts.

11.2 All Services-related income which is generated through the application of the funding (e.g. bank interest, fees for services provided under the funding, revenue from the sale of Service material, conference fees received and legal costs), will be applied to the Services or, after being approved by the Regional Manager, in any other manner which is in accordance with the program Guidelines, and in either event is to be fully disclosed in the required financial statements.

12. COMPLIANCE WITH SPECIFIC LAWS AND COMMONWEALTH POLICIES

12.1 The Organization must comply with its obligations, if any, under the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* (“AAEEOWA”) and must not enter into a subcontract under this Agreement with a subcontractor named by the Director of Affirmative Action as an employer not currently complying with the AAEEOWA.

12.2 The Organization must comply with any applicable award or employment agreement and relevant statutes in relation to its employees, and must fulfill its legal obligations, both to its employees and any volunteer workers undertaking the Community Partners Program on behalf of the Organization.

12.3 The Organization agrees, in carrying out this Agreement, to comply with:

All relevant legislation of the Commonwealth (particularly the *Crimes Act 1914*, *Racial Discrimination Act 1975*, *Sexual Discrimination Act 1984* and *Disability Discrimination Act 1992*) or of any State Territory or local authority.

13. GOVERNMENT TAXES DUTIES AND CHARGES

13.1 Except as provided by this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement shall be borne by the Organization.

13.2 The amounts payable to the Organization (the Original Amounts Payable) do not include an amount to cover any liability of the Organization for Goods and Services Tax (GST) on any supplies made under this agreement which are taxable supplies within the meaning of a *New Tax System (Goods and Services Tax) Act 1999* (‘the GST Act’).

- 13.3 If applicable the Organization agrees to reduce the Original Amount Payable to ensure that the benefit of any reduction in or removal of taxes, duties or charges which impacts upon the costs to the Organization in performing this Agreement is passed onto the Commonwealth. If a reduction to the Original Amount Payable is made under this clause, the reduced amount will become the Original Amount Payable for the purposes of this Agreement.
- 13.4 If a supply made by the Organization under this Agreement is taxable supply under the GST Act, the Organization may, by notice in writing to the Commonwealth, increase the Original Amount Payable by the Commonwealth by the amount of GST that is payable by the Organization on that part of the Original Amount Payable which relates to the taxable supply as if that part of the Original Amount Payable is the value of the supply for the purposes of the GST Act.
- 13.5 If required by the Commonwealth, the Organization shall substantiate to the Commonwealth's reasonable satisfaction how any reduction or increase in the amounts payable by the Commonwealth determined under this clause have been calculated before such changes will take effect.
- 13.6 In relation to taxable supplies made under this Agreement, the Organization agrees to issue the Commonwealth with either:
- (a) a tax invoice in accordance with the GST Act; or

- (b) a document satisfying the minimum information requirements set out in GSTB 1999/1 to entitle a recipient of a taxable supply to claim an input tax credit without holding a tax invoice.

13.7 If the Parties to this Agreement are unable to agree on the nature or amount of any adjustment to Prices then the matter shall be dealt with as a dispute in accordance with clause 31.

14. NOTIFICATION OF VACANCIES AND STAFF CHANGES

14.1 The Organization will notify the Regional Manager within fourteen (14) days when a staff vacancy affects the capacity of the Organization to provide the Services specified in Schedule 2 to this Agreement.

14.2 The Organization will notify the Regional Manager of changes to the person holding the office of the Chairperson of the Organization within fourteen (14) days of the vacancy occurring.

14.3 For the avoidance of doubt a breach of this Clause is a breach of this Agreement under clause 33.1.

15. ACKNOWLEDGMENTS

15.1 The Organization will ensure that publications and products produced with the Funds, display due acknowledgment of the Commonwealth and will display the name of the OEA. The Organization will not publish nor cause to be published any publications or products produced with the Funds without the prior written approval of the Regional Manager. The Organization is permitted to publish such publications or products

where the written approval of the Regional Manager is not provided to the Organization within seven working days after such a request is received by the Regional Manager.

16. CONFLICT OF INTEREST

- 16.1 The Organization warrants that, to the best of its knowledge, at the date of signing this Contract no actual or perceived conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself or by any of its officers, employees, agents or sub-contractors.
- 16.2 The Organization must, prior to signing this Agreement, advise the Commonwealth of the enquiries it has made to satisfy itself that the warranty in sub clause 16.1 is based on sound knowledge.
- 16.3 If, during the term of this Agreement an actual or perceived conflict of interest arises, or appears likely to arise, the Organization undertakes to notify the Commonwealth in writing within 3 working days and to take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the conflict. If the Organization fails to notify the Commonwealth or is unable or unwilling to resolve or deal with the conflict as required, the Commonwealth may terminate this Agreement in accordance with the provisions of clause 36.
- 16.4 The Organization must not engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Organization in providing the Community Partners Program to the Commonwealth fairly and independently, or give the impression of so doing; and in particular the Organization

must not accept appointment or act as a bargaining agent pursuant to s170VK of the Act where such appointment or action is proposed to be or is in fact funded by money paid to the Organization by the Commonwealth in relation to the provision of the Community Partners Program.

17. INSURANCE

- 17.1 The Organization will maintain proper and adequate insurance at all times while it is providing the Services, and shall, upon request, provide proof of insurance acceptable to the Commonwealth. Insurance shall include but not be limited to workers' compensation, public liability for an amount of not less than \$5,000,000 (five million dollars), buildings and contents as required by any lease entered into by the Organization, and contents insurance for burglary, fire, storm damage or other accidental loss.
- 17.2 The Organization will ensure appropriate professional indemnity and fidelity insurance at all times while it is providing the Services and shall, upon request, provide proof of insurance acceptable to the Commonwealth.. The professional indemnity insurance will be for an amount of not less than \$1,000,000 (one million dollars) covering legal advice and representation and other community services provided by the Organization.

18. INDEMNITY

- 18.1 Subject to the provisions of this Agreement, the Organization must at all times indemnify the Commonwealth, its officers, employees and agents (in this clause referred to as ‘those indemnified’) from and against any loss (including legal costs and expenses on a solicitor/client basis), or liability, incurred or suffered by any of those indemnified, arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any act or omission of the Organization in connection with this Agreement irrespective of whether there was on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.
- 18.2 Any such indemnity is to be limited to \$1,000,000 for each and any claim, suit, demand, action or proceeding referred to in this Clause 18.1.
- 18.3 The Organization’s liability to indemnify the Commonwealth under clause 18.1 will be reduced proportionately to the extent that any negligent act or omission of the Commonwealth contributed to the relevant liability, loss or damage, or loss or expense.
- 18.4 The right of the Commonwealth to be indemnified under this clause 18 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.
- 18.5 In this clause, “Commonwealth” includes officers, employees and agents of the Commonwealth.

18.6 The indemnity referred to in clause 18.1 survives the expiration or termination of this Agreement.

19. CONDUCT OF LITIGATION

19.1 The Organization must not, without the written approval of the Employment Advocate conduct legal proceedings in relation to a breach of the Act, if the action is proposed to be funded by monies paid to the Organization by the Commonwealth in relation to the provision of the Community Partners Program. The Employment Advocate agrees to consider expeditiously, any written request by the Organization to conduct legal proceedings.

20. ETHICS

20.1 The Organization must always act in the best interests of the client in all matters in relation to the provision of the Community Partners Program by the Organization to the client, and the Organization warrants that it and its officers, employees, agents and subcontractors are aware of the provisions of s83BB(2) of the Act.

21. PRINT ADVERTISING

21.1 The Organization must not undertake any print advertising of the Community Partners Program other than in accordance with this Clause.

21.2 All OEA publications to be used for the purposes of print advertising of the Community Partners Program are to be obtained from the Regional Manager, or directly from the OEA website – www.oea.gov.au.

21.3 The use of any Material, other than OEA publications, for the purposes of print advertising of the Community Partners Program is to be approved by the Regional Manager prior to its publishing. The Organization is permitted to publish such print advertising where the approval of the Regional Manager is not provided to the Organization within seven working days after such a request is received by the Regional Manager.

22. APPLICABLE LAW

22.1 This Agreement will be governed by the laws of Tasmania.

23. NEGATION OF EMPLOYMENT, PARTNERSHIP AND COMMONWEALTH AGENCY

23.1 The Organization and its employees are not by virtue of this Agreement employees, partners or agents of the Commonwealth.

24. REPRESENTATION

24.1 The Organization agrees not to represent itself (and to use its best endeavors to ensure that its officers, employees agents and subcontractors do not represent themselves) as being an officer, employee, partner or agent of the Commonwealth in connection with the carrying out of the Services or as otherwise empowered to act on behalf of or bind or represent the Commonwealth in any respect.

25. LIABILITY

25.1 Except insofar as provided in clause 33.4, neither the Commonwealth nor the Regional Manager accepts liability for any debts incurred by the Organization whether directly or indirectly arising from the provision of the Services.

26. COMPLIANCE WITH LAWS

26.1 In carrying out the Services the parties will comply with all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State or Territory, or local authority.

27. PROTECTION OF PERSONAL INFORMATION

27.1 In this Clause, 'personal information' means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

27.2 This Organization agrees with respect to the performance of the Services under this Agreement:

- a) to use personal information held in connection with the Agreement, only for the purposes of fulfilling its obligations under the Agreement;
- b) to take all reasonable measures to ensure that personal information in its possession or control in connection with this Agreement is protected against loss or unauthorized access, use, modifications and disclosure;

- c) to comply with those Information Privacy Principles contained in the *Privacy Act 1988* (as amended by the *Privacy Amendment (Private Sector) Act 2000*) to the extent that the content of those principles apply to the types of activities the Organization is undertaking under this Agreement, as if the Organization were an agency as defined in the *Privacy Act 1988*;
- d) co-operate with any reasonable demands or enquiries made by the Regional Manager on the basis of the exercise of the functions of the Privacy Commissioner under the *Privacy Act 1988* including, but not limited to, a request from the Regional Manager to comply with a guideline concerning the handling of Personal information;
- e) to ensure that any person who has an access level that would enable that person to obtain access to any personal information is made aware of, and undertakes in writing to observe the Information Privacy Principles and other obligations referred to in this Clause 27;
- f) to comply as far as is practicable with any policy guidelines laid down by the Commonwealth, or issued by the Privacy Commissioner from time to time relating to the handling of personal information;
- g) to comply as far as is practicable with any reasonable direction of the Regional Manager to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Organization that the Privacy Commissioner considers breach the obligations in this Clause 27;
- h) not to enter into any subcontract for the purpose of directly or indirectly fulfilling its obligations under this Agreement unless such a subcontract

obliges the subcontractor to comply with equivalent provisions to those contained in this clause;

- i) to immediately notify the Commonwealth if the Organization becomes aware of a breach or possible breach of any of the obligations contained in, or referred to, in this clause whether by the Organization or any subcontractor;
- j) to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth arising out of or in connection with a breach of the obligations of the Organization under this Clause 27 or any misuse of personal information by the Organization or any disclosure by the Organization in breach of an obligation of confidence whether arising under the *Privacy Act 1988*, or otherwise.

27.3 The provisions of this Clause survive termination or expiration of this Agreement.

28. DISCLOSURE OF INFORMATION

28.1 The Organization must not, without the prior written approval of the Commonwealth disclose to any person other than the Commonwealth, any Confidential Information contained in Commonwealth Material or Contract Material. In giving written approval, the Commonwealth may impose such terms and conditions as it thinks fit.

28.2 The Organization must obtain the express written permission of a party to the AWA before revealing to any person outside the Organization the identity of any of the parties to that AWA, or information that will identify those parties, or the Organization has reasonable grounds to believe will identify a party to that AWA.

- 28.3 The Commonwealth must not, without the prior written approval of the Organization disclose to any person other than the Organization, any information which is Confidential to the Organization.
- 28.4 The Commonwealth may at any time require the Organization to give, and to arrange for its officers, employees, agents and subcontractors to give, written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of Confidential Information in Commonwealth Material or Agreement Material. The Organization must promptly arrange for all such undertakings to be given. It is a fundamental breach of this Agreement not to provide such undertakings as requested by the Commonwealth.
- 28.5 The obligation on the Organization under this clause is not taken to have been breached where the information referred to is legally required to be disclosed.
- 28.6 Notwithstanding anything in this agreement, the Commonwealth reserves the right, in its absolute discretion and without any liability to the Organization, to disclose and or allow the disclosure of, at any time, any Agreement material, Commonwealth Material or product, including but not limited to Confidential Information contained in or relating to this Agreement, to any Commonwealth Department, Agency, Authority, House of Parliament, Committee of a House of Parliament, Minister or as otherwise required by law. Nothing in this clause permits the disclosure of 'personal information' as defined in clause 27.1 of this Agreement.
- 28.7 The Organization also warrants that it is aware that the OEA is subject to the operation of the Freedom of Information Act 1982 (FOI Act) which allows public

access to Government documents and which may include documents and information contained in or relating to this agreement.

28.8 This clause 28 survives the expiration or termination of this Agreement.

29. COMMONWEALTH MATERIAL

29.1 Ownership of all Commonwealth Material remains vested at all times in the Commonwealth.

29.2 Upon the expiration or earlier termination of the Agreement, the Commonwealth may require the Organization to return to the OEA all Commonwealth Material remaining in its possession.

29.3 The Organization must ensure that the Commonwealth Material is used, copied, supplied or reproduced only for the purposes of providing the Community Partners Program for the benefit of people in a disadvantaged bargaining position.

29.4 Notwithstanding sub clause 29.3 the Commonwealth retains the right to approve or otherwise the intended use of any Commonwealth Materials by the Organization.

29.5 The Commonwealth must inform the Organization of any Commonwealth Material produced for and on behalf of the Commonwealth in which third parties hold the copyright and of any conditions attaching to the use of the Material because of the copyright. The Organization must use the Material only in accordance with these conditions.

29.6 The Organization is responsible for the safe keeping and maintenance of Commonwealth Material in its possession for the purposes of this Agreement.

30. INTELLECTUAL PROPERTY

- 30.1 Subject to this clause, Intellectual Property in all Agreement Material vests in the Commonwealth.
- 30.2 The Organization grants to the Commonwealth permanent, irrevocable, royalty-free, non exclusive licence (including a right of sub-licence) to use, reproduce, adapt and exploit such Agreement Material anywhere in the world. Publication of the Agreement Material in accordance with this licence does not affect such ownership.
- 30.3 If requested by the Commonwealth to do so, the Organization must bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause.
- 30.4 The Organization warrants that it is entitled or will be entitled, or will procure entitlement at the relevant time, to deal with the Intellectual Property in any Agreement Material in the manner provided for in this clause.
- 30.5 The Organization must not use, amend, or reproduce Agreement Material other than for providing the Community Partners Program to people in a disadvantaged bargaining position and the Organization must not allow others to use amend or reproduce Agreement Material without the consent of the Commonwealth.
- 30.6 The Organization must at all times indemnify the Commonwealth, its officers, employees and agents (in this clause referred to as “those indemnified”) from and against any loss (including legal costs and expenses on a solicitor/client basis), or liability, incurred or suffered by any of those indemnified, arising from any claim,

suit, demand, action or proceedings by any person in respect of any infringement of Intellectual Property by the Organization in connection with the performance of Services or reasonable use by the Commonwealth of the Agreement Material.

30.7 The indemnity referred to in sub clause 30.6 survives the expiration or termination of this Agreement.

31. DISPUTE RESOLUTION PROCEDURES

31.1 Subject to Clause 31.5, before resorting to external dispute resolution mechanisms, the parties must attempt to settle by negotiation any dispute in relation to this Agreement

31.2 If a dispute is not settled by the parties within 10 working days of one party first sending to the other party written notice that they are in dispute, the parties may attempt to mediate the dispute with the assistance of an agreed mediator. The reasonable costs and charges of the agreed mediator for providing mediation services will be met by the Commonwealth.

31.3 If the dispute is unable to be resolved by mediation within 21 days of referral of the dispute to the agreed mediator, either party may commence proceedings in a court of competent jurisdiction, or submit the dispute to some alternative dispute resolution mechanism, as may be agreed in writing between the parties.

31.4 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.

31.5 A party may commence court proceedings relating to any dispute arising from this Agreement at any time where that party seeks urgent interlocutory relief, or otherwise pursuant to Clause 33.

31.6 This Clause shall survive the expiration or termination of this Agreement.

32. TERMINATION AND REDUCTION FOR CONVENIENCE

32.1 The Commonwealth may, at any time by notice, terminate this Agreement or reduce the scope of the Services immediately.

32.2 Upon receipt of a notice of termination or reduction the Organization agrees to:

- (a) stop work as specified in the notice;
- (b) take all available steps to minimize loss resulting from that termination and to protect Commonwealth Material and Agreement Material; and
- (c) continue work on any part of the Services not affected by the notice.

32.3 Where there has been a termination under clause 32.1, the Commonwealth will be liable only for:

- (a) payments and assistance for Services rendered before the effective date of termination; and
- (b) reasonable costs incurred by the Organization and directly attributable to the termination.

32.4 Where there has been a reduction in the scope of the Services, the Commonwealth's liability to pay fees or allowances, meet costs or provide facilities and assistance will, unless there is agreement in writing to the contrary, abate in accordance with the reduction in the Services.

32.5 The Commonwealth will not be liable to pay compensation under clause 32.3(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Organization under this Agreement, together exceed the amounts set out in Schedule 1.

32.6 The Organization will not be entitled to compensation for loss of prospective profits.

33. TERMINATION FOR DEFAULT

33.1 This Agreement may be terminated:

- a) immediately, by the Commonwealth where the Organization goes into liquidation, or comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Law*, or a receiver or receiver and manager or mortgagee's or chargee's agent is appointed; or
- b) immediately by either party if a breach of this Agreement occurs which cannot be remedied. Where the breach is capable of being remedied, a party must not exercise its right of termination under this clause, unless it has first given to the other party notice in writing specifying breach and requiring the other party to remedy it within the time specified in the notice (not being less than 5 days) and the default is not remedied in the time allowed; or
- c) at any time by agreement between the parties; or
- d) by either party, after one month's notice to the other party.

33.2 Termination of this Agreement shall be without prejudice to the rights and obligations of the parties to this Agreement which may have arisen before that date and which

may be enforced as if the Agreement continued in respect of them. However the Organization will not be entitled to compensation for loss of prospective profits.

33.3 If the Organization ceases to provide the Services or this Agreement is terminated, the Organization shall within 10 working days of the date of termination or any such other period as may be agreed by the parties, return to the Regional Manager any unspent Funds or grant monies and, where applicable, any monies which have been expended for unauthorized purposes after first ensuring that all workers engaged for the provision of the Services have been paid their entitlements and all debts of the Organization related to the provision of the Services have been settled.

33.4 Where the Organization has not had at least six months' notice of the Termination the Commonwealth may in its absolute discretion pay out the reasonable obligations for the provision of the Services incurred by the Organization prior to receiving notice of the Termination, where such reasonable obligations exceed the Funds paid to the Organization.

34. DEALINGS WITH COPIES

34.1 Subject to Clause 29, this clause 34 applies to any document, device, article or medium ('copies') in which Commonwealth Material, Agreement Material or Confidential Information is embodied.

34.2 Property in all copies vests or will vest in the Commonwealth.

34.3 The Organization agrees to establish and maintain procedures to secure the copies against loss and unauthorized access, use, modification or disclosure.

34.4 Upon the expiration or termination of this Agreement the Organization agrees to deliver to the Commonwealth or otherwise deal with all copies as directed by the Commonwealth.

35. WAIVER

35.1 If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

35.2 A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.

35.3 In this clause , 'rights' means rights or remedies provided by this Agreement or at law.

36. ASSIGNMENT AND NOVATION

36.1 The Organization cannot assign its obligations, and agrees not to assign its rights, under this Agreement without, in either case, prior approval in writing from the Commonwealth.

36.2 The Organization agrees not to consult with any other person for the purposes of entering into an arrangement that will require novation of the Agreement without first consulting the Commonwealth.

37. NOTICES

37.1 Any notice, document or other communication to be given or served pursuant to this Agreement by any party to another will be:

- a) in writing to the address of the intended recipient shown in this clause or to such other address as has been most recently notified;
- b) signed by the party or a person duly authorized by the party; and
- c) deemed to have been given and served:
 - i) where delivered by hand, at the time of delivery;
 - ii) where dispatched by facsimile transmission, 24 hours after the time recorded on a transmission result report; and
- d) where dispatched by prepaid post at the time when in due course of the post, it would have been delivered at the address to which it was sent.

The address of the Commonwealth is:

The Regional Manager
Office of the Employment Advocate
GPO Box 9842
Hobart TASMANIA 7001
Telephone: (03) 6222 9816
Facsimile: (03) 6222 9879

The address of the Organization is:

Tasmanian Working Women's Centre Inc
210 New Town Road
New Town, TASMANIA 7008
Tel: 03 6278 7711
Fax: 03 6278 7744

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA

by PETER LESLIE MCILWAIN

in the presence of

SIGNED for and on behalf of
TASMANIAN WORKING WOMEN'S CENTRE INC

by

in the presence of

{ Where Organization is a Company use the following }

THE COMMON SEAL OF

.....)

{*Company Name }

.....

was hereunto affixed in accordance

Chairperson

with its Articles of Association

in the presence of

.....

Witness

{Where Organization is an incorporated association}

THE COMMON SEAL OF

.....

{Name of association Inc.}

was hereunto affixed in accordance with
its rules

.....

in the presence of

.....

Chairperson

.....

Witness

SCHEDULE 1

PAYMENT OF FUNDING

1. The Commonwealth will pay to the Organization a total of \$50,430.00 in these amounts:

a one-off payment of \$2101.25 in September 2004; followed by

seven equal quarterly installments of \$6303.75 for the period 1 October 2004 to 30 June 2006 ; followed by

and a final payment of \$4202.50 covering the period 1 July 2006 to 31 August 2006.
2. The Organization accepts the amounts referred to for the provision by it of the Services, in accordance with the terms and conditions in this Agreement.
3. The Organization agrees that the Commonwealth has no liability whatsoever for any additional expenditure beyond the total amount stated

SCHEDULE 2

SERVICES TO BE PROVIDED BY ORGANIZATION

ORGANIZATION DETAILS

- 1 The Organization agrees to fund a specialist Employment and Industrial Relations Advice service, meeting the salary and associated on-costs of an industrial liaison officer, whom the Organization warrants is experienced and competent in the fields of Employment and Industrial Relations, in conjunction with other community service providers and to engage in activities as detailed in the Strategic Business Plan and summarized below. Services and activities must be consistent with the overall goals of the Organization.
- 1.1 The Organization will ensure that the Services provided do not unnecessarily duplicate other legal aid or industrial advice services already available within the defined community or area as outlined in this Schedule. The Organization will cooperate with other legal aid services and community service providers in their area.
- 2 The Organization agrees to provide telephone, face-to-face and email advice and assistance on workplace relations matters and specifically Australian Workplace Agreements. The Organization further agrees to provide such advice and assistance with particular attention to people in a disadvantaged bargaining position.
- 2.1 In providing its services the Organization agrees to give priority to AWA related matters and to matters referred to the Organization by the Commonwealth.

SCHEDULE 3

PERFORMANCE MANAGEMENT REPORTING

A Business Plan for the financial year covered under the Agreement must be provided which indicates the outputs to be achieved and Performance Indicators to indicate measurement. This Business Plan should be incorporated into the Organization's existing plan.

The specific outputs relate to two issues:

- ♦ The provision of advice and assistance to clients, and;
- ♦ The promotion of this Organization in the community by way of brochures, web site (where applicable), community and interagency meetings.

Each Organization must have either a general purpose brochure which incorporates the Employment Advice and Assistance Program or a stand alone brochure advertising the provision of this service. Each Organization is required to display OEA promotional brochures

The Community Partners Program should also be listed on the website of the Organization with links to the OEA website www.oea.gov.au.

Organizations which were audited by DEWR in 2001-2002 must also ensure that each of those issues itemized in the Auditor's Letter to the Management Committee are incorporated into the Business Plan and that there is a Performance Indicator for each item and a completion date.

Aim – Written and Statistical Reports

The reports are to provide clear and relevant information about the Organization's performance. Reports will be self-explanatory and provide a clear statement about the level and type of activity undertaken during the reporting period.

Reports are not intended to be resource intensive and will be used by the Commonwealth to assess the performance of the Organization against the Agreement and will be required to activate further payments under Schedule 1.

Two types of reports will be produced:

- ♦ One type of report will be written, and
 - ♦ The other will contain statistical data
1. The written report will be provided bi-annually. This means a total of four Written Reports are to be provided during the Agreement period.
 2. The statistical report will be provided each quarter. Each six months both the statistical report and written report are to be submitted.

Under the Agreement – this means a total of eight statistical reports and four bi-annual written reports.

The Written Report

The written report will be provided bi-annually:

The first written report will cover the period 1 September 2004 to 31 December 2004 and will be received by the Commonwealth no later than 31 January 2005.

The second written report will cover the period 1 January 2005 to 30 June 2005 and will be received by the Commonwealth no later than 31 July 2005.

The third written report will cover the period 1 July 2005 to 31 December 2005 and will be received by the Commonwealth no later than 31 January 2006.

The fourth written report will cover the period 1 January 2006 to 31 August 2006 and will be received by the Commonwealth no later than 30 September 2006.

The written report will:

1. Provide a brief report, no more than two pages, that outlines highlights of the period as they relate to workplace relations [and in particular the *Workplace Relations Act 1996*] and employment issues.

2. Not duplicate information contained in the statistical report. Comment on significant increase/decrease and trend analysis is considered relevant and should be reported.
3. Provide information on the differences between the current and previous reporting period.
4. Provide a summary of client feedback on a six-monthly basis. Client feedback should be documented and obtained formally, by using a client survey or interviews.
5. Be complemented by the statistical report
 - a) The Commonwealth does not require the Organization to duplicate information in the written reports that is contained in the statistical reports.

The Statistical Report

The statistical report will be completed quarterly.

The Organization will keep records in the standard pro forma format provided through the OEA. (After the commencement of this Agreement the pro forma format will be provided by the Commonwealth through the OEA website at www.oea.gov.au, accessible through your individual username and password identifier.)

The Organization will keep records of the number of client enquiries and clients that use the Organization's services.

Residence

Capital City

Regional/Rural/Remote

Unknown

Age

Under 25

26 to 44

Over 45

Unknown

Employment Status

Permanent – full time

Permanent – part time

Casual – full time

Casual – part time

Self employed

Unknown

Industry

A Agriculture, Forestry and Fishing

B Mining

C Manufacturing

D Electricity, Gas and Water Supply

E Construction

F Wholesale Trade

G Retail Trade

H Accommodation, Cafes and Restaurants

I Transport and Storage

J Communication Services

- K Finance and Insurance
- L Property and Business Services
- M Government Administration and Defence
- N Education
- O Health and Community Services
- P Cultural and Recreational Services
- Q Personal and other services

Occupational Group

Managers/Administrators

Professionals

Para Professionals

Tradespersons

Clerks

Salesperson/Personal Services

Plant/Machine Operators

Labourers and Related Workers

Not in Labour Force

Unknown

Union

Union

Non-union

Unknown

Background

ATSI

ESB

NESB

Unknown

Sex

Male

Female

Not known

All reports are to include numerical totals and percentages for each category in the sub groups above, namely Residence, Age, Employment Status, Industry, Occupational Group, Union, Background and Sex.

Enquiry Type	Total	%	ESB	NESB	UN	ATSI	
				Total	Total	Total	Total
AWA							
Duress/coercion							
Money claims							
Other breaches							
Unfair Dismissal							
Freedom of Association							
Union Membership							
Award Breaches							
Harassment in the Workplace							
Work and Family							

SCHEDULE 4

CERTIFICATE OF COMPLIANCE

Organization:

Contact Officer: Telephone:

Financial Year: Period Ending:

- (i) The funding has been used for the purpose for which it was provided; and
- (ii) The terms and conditions of this Agreement have been met.
- (iii) An audited statement of receipts and payments and a balance sheet is attached, in respect of the funding certified by a person qualified to be a member of a recognized accounting body in Australia and who is not an employee or public officer of the Organization; and
- (iv) Salaries and allowances paid to people employed using the funding are in accordance with award salary rates or the general rates in force at the Organization.

{ Where Organization is a Company use the following }

THE COMMON SEAL OF

.....

{*Company Name}

.....

was hereunto affixed in accordance

Director

with its Articles of Association

.....

Secretary

In the presence of

{ Where Organization is an incorporated association }

THE COMMON SEAL OF

.....

{ Name of association Inc. }

was hereunto affixed in accordance with

its rules

In the presence of

.....

President

.....

Secretary