



Our Ref: 58353-06

5 September 2014

Ms Toni Walkington
Branch Secretary
The Civil Service Association of Western Australia Incorporated
Level 5, 445 Hay Street
Perth WA 6000

Dear Ms Walkington

REDEPLOYMENT AND REDUNDANCY FRAMEWORK

As you are aware, the Workforce Reform Act 2014 is now in effect and provides the legislative capacity to introduce involuntary severance through appropriate amendments to the *Public Sector Management Act 1994* (PSM Act).

As is currently the case with arrangements for redeployment and redundancy, the details of the scheme will be contained in regulations made under the PSM Act and be supported by Commissioner's instructions and policy.

The framework will apply to all public sector organisations as defined by the PSM Act.

As a mechanism for managing surplus employees, the new framework seeks to strike an appropriate balance between on the one hand, looking after the interests of all employees concerned and treating their situation with fairness and due process, and on the other, meeting the Government's responsibility to the broader community to manage its workforce in the most efficient and cost effect manner.

The attached document has been prepared to capture at an operational level the arrangements for the new framework.

It is intended that many of the other provisions of the current Regulations will remain unchanged.

The Public Sector Commission has been undertaking an extensive consultation process with key stakeholders which has so far has included the active involvement of public sector agency practitioners and CEOs.

Accordingly, I invite you to participate in our consultation process by providing your views on the outlined framework. It would be appreciated if these could be provided in writing to Mr Lindsay Warner, Director Policy and Reform (Lindsay.Warner@psc.wa.gov.au), telephone number 6552 8670, by Monday, 22 September 2014. If you wish to discuss your submission further, the opportunity to meet with our team can be arranged.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M C Wauchope', written in a cursive style.

M C Wauchope
PUBLIC SECTOR COMMISSIONER

REDEPLOYMENT AND REDUNDANCY FRAMEWORK – OVERVIEW

INTRODUCTION OF INVOLUNTARY SEVERANCE

Workforce Reform Act 2014

The *Workforce Reform Act 2014* (the Act) was proclaimed and came into effect on 1 July 2014. The Act amends the *Public Sector Management Act 1994* (PSM Act) to provide the capacity to implement enhanced and more flexible redeployment arrangements that may ultimately end with the involuntary severance of employees that are surplus to an agency's requirements or whose post, office or position has been abolished and cannot be redeployed.

As a mechanism for managing surplus public sector employees, involuntary severance is part of a scheme that seeks to achieve an appropriate balance between on the one hand, looking after the interests of all affected employees and treating their situation with fairness and due process, and on the other, meeting the Government's responsibility to the broader community to manage its workforce in the most efficient and cost effective manner.

Redeployment will continue to be the preferred option and involuntary severance will be used as a last resort.

Arrangements for the management of surplus employees will continue to prioritise training and redeployment initiatives. The case management of these employees will continue to be undertaken directly by agencies.

Proposed redeployment and redundancy framework

As is currently the case with arrangements for redeployment and redundancy, the details of the scheme will be contained in regulations made under the PSM Act, supported by Commissioner's instructions and policy.

The framework will apply to all public sector organisations as defined by the PSM Act. Attachment A provides a diagrammatical illustration of the model.

Three stage process

The proposed model consists of three distinct stages (discussed in further detail below):

1. Identification and notification of a registrable employee.
2. Registration for redeployment.
3. Employee redundancy and termination of employment.

Appeal rights established under the Act

Access to grievance processes and to the Western Australian Industrial Relations Commission (WAIRC) will continue.

The Act establishes rights of appeal to the WAIRC (but not to its constituent authorities, such as the Public Service Arbitrator or the Railways Classification Board). This will ensure all appeals are placed on a common footing.

As is the case now, any decision made under the regulations (up to the point of a decision to involuntarily sever a public sector employee) will be subject to review by the WAIRC to the extent of determining whether or not the regulations have been fairly and properly applied.

All affected employees (and relevant unions) will have access to the general jurisdiction in the WAIRC to challenge any decisions made under the regulations, as these occur, up to the point of a decision to terminate due to redundancy.

The appeal provisions provide for a full review of all matters relevant to determining that a person is redundant, to be dealt with currently rather than after the event of termination. Importantly, the Act does not require employment to cease before these matters are addressed. In this way, the Act respects the interests of all employees concerned and treats their situation with fairness and due process.

For an employee who has been the subject of an involuntary severance decision, a right of review to the WAIRC will also exist within a specified period of time. However, the WAIRC will then be confined to determining whether the employee has been allowed the benefits to which they are entitled under the regulations. The WAIRC will not have the jurisdiction to reinstate or otherwise compensate the employee.

REDEPLOYMENT AND REDUNDANCY FRAMEWORK – PROPOSED OPERATION OF MODEL

STAGE 1: NOTIFICATION OF REGISTRABLE EMPLOYEE

The Act introduces a new term, 'registrable employee' for the purposes of potential registration for redeployment.

A 'registrable employee' is an employee who is surplus to the requirements of the department or organisation or an employee whose post, office or position has been abolished. The introduction of this new term ensures that regulations can be made which afford an employee protections and benefits prior to them becoming a registered employee.

The process elements below are to be prescribed by regulation:

- 1.1 Where an employing authority determines that an employee is surplus to requirements or that their post, office or position is to be abolished, the employing authority must consult with and notify the employee in writing that they have or will become a registrable employee, the date at which this has occurred or will occur and the reasons for such in line with the current requirements of Regulation 4AA(2).
- 1.4 Once notified, an employing authority must take reasonable measures to assess opportunities for ongoing employment in their agency and the broader public sector for the registrable employee and support the registrable employee in pursuing these.
- 1.5 An employing authority may offer the registrable employee a voluntary severance package.
- 1.6 Where an offer of a voluntary severance package is applicable, it is proposed the offer is to be based on the current formula, being 3 weeks' pay for every full year of completed continuous service up to a maximum of 52 weeks (with a minimum of 4 weeks where continuous service is at least 1 year but less than 2 years). In addition a separate incentive payment of up to 12 weeks' pay (or such other incentive payment as may be approved under an enhanced scheme from time to time by the Minister) would apply. This replaces the current payment in lieu of notice. Accrued leave entitlements will also be paid out.
- 1.7 The registrable employee to be afforded a specified period (proposed at being 4 weeks) to accept or refuse any voluntary severance offer.
- 1.8 A registrable employee who accepts the offer is to cease employment within a specified period (proposed 4 weeks). The restrictions currently applicable [under Regulation 22] will continue to apply to all voluntary severance payment arrangements.

There will be no time limit on the period an employee can be registrable.

STAGE 2: REGISTRATION FOR REDEPLOYMENT

It is proposed that the arrangements for redeployment (and other associated arrangements) listed below should be prescribed by regulation:

- 2.1 An employing authority may register a registrable employee for redeployment.
- 2.2 Registration will require the completion of an online registration template on RAMS by the employing authority. A decision to register an employee is one for which the employing authority is solely responsible. A Commissioner's instruction will expand on the considerations that an employing authority would need to consider prior to registering a person for redeployment.
- 2.3 The redeployment period will be a specified period of time to allow registered employees the opportunity to continue to pursue employment options elsewhere in the Public Sector. The proposed duration of the redeployment period is six months.
- 2.4 Current provisions relating to the Public Sector Commissioner's powers to direct registered employees and employing authorities are to remain.
- 2.5 Provisions will be established to enable the period of redeployment to be revoked or suspended by the employing authority to deal with in certain circumstances Commissioner's instructions would provide guidance on appropriate circumstances for suspension or revocation.
- 2.6 As is currently the case, responsibility for case management of individual registered employees will rest with the relevant employing authority. It is intended that the existing arrangements provided to a registered employee with respect to special leave, redeployment, retraining and other benefits that apply when accepting offers of employment will be retained. Importantly it is intended that,
 - 2.6.1 Registered employees will receive first access to public sector vacancies
 - 2.6.2 Registered employees will be entitled to reasonable paid leave to attend:
 - interviews, in and outside the Public Sector
 - career counselling in line with current Regulation 12
 - registered employees may be eligible to be employed for training by another employing authority or employer either inside or outside the public sector in line with current Regulation 14.
- 2.7 Registered employees successfully redeployed in the Public Sector will be entitled to benefits in line with current Regulation 18.
- 2.8 Registered employees successfully redeployed in the private sector will be entitled to benefits in line with current Regulation 19.

It is intended that the respective practical procedural obligations of the relevant employing authority and the registered employee during the period of redeployment will as necessary be further detailed in a Commissioner's instruction.

STAGE 3: EMPLOYEE REDUNDANCY AND TERMINATION OF EMPLOYMENT

It is proposed that the arrangements for redundancy listed below will be prescribed by regulation:

- 3.1 A registered employee who has not been successfully redeployed by the end of the redeployment period will by virtue of that fact automatically be deemed to be redundant and an employing authority will be required to terminate the employment of the registered employee.
- 3.2 A registered employee may, with the employing authority's consent, cease employment prior to the expiry of the redeployment period. Where such an application is accepted by the employing authority, to the extent that that redundancy falls short of redeployment as prescribed, the registered employee shall be entitled to payment to the extent of the period foregone.
- 3.3 Where the employment of a registered employee is terminated, the individual will be entitled to receive a redundancy payment calculated at an amount consistent with an amount prescribed. It is intended to use the General Order on Termination, Change and Redundancy and the National Employment Standards (NES) as the base. The amount of the redundancy payment will equal the total amount payable to the employee for the redundancy pay period calculated based on the employee's period of continuous service on termination and at the employee's base rate of pay for his or her ordinary hours of work.

The regulations would set out the applicable scale:

	Employee's period of continuous service with the employer on termination	Redundancy pay period
1	Less than 1 year	Nil
2	At least 1 year but less than 2 years	4 weeks
3	At least 2 year but less than 3 years	6 weeks
4	At least 3 year but less than 4 years	7 weeks
5	At least 4 year but less than 5 years	8 weeks
6	At least 5 year but less than 6 years	10 weeks
7	At least 6 year but less than 7 years	11 weeks
8	At least 7 year but less than 8 years	13 weeks
9	At least 8 year but less than 9 years	14 weeks
10	At least 9 year but less than 10 years	16 weeks
11	At least 10 years	16 weeks

- 3.4 The restrictions on future employment in the Public Sector currently applicable under Regulation 22 will continue to apply.