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PUBLIC SECTOR MANAGEMENT ACT 1994

**PUBLIC SECTOR MANAGEMENT  
(REDEPLOYMENT AND REDUNDANCY)  
REGULATIONS 1994**



WESTERN AUSTRALIA

**PUBLIC SECTOR MANAGEMENT  
(REDEPLOYMENT AND REDUNDANCY)  
REGULATIONS 1994**

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PUBLIC SECTOR MANAGEMENT ACT 1994  
**PUBLIC SECTOR MANAGEMENT (REDEPLOYMENT AND  
REDUNDANCY) REGULATIONS 1994**

Made by His Excellency the Governor in Executive Council under section 108  
as read with section 94.

**PART 1 — PRELIMINARY**

**Citation**

1. These regulations may be cited as the *Public Sector Management (Redeployment and Redundancy) Regulations 1994*.

**Commencement**

2. These regulations come into operation on the day on which Part 6 of the Act comes into operation.

**Interpretation**

3. (1) In these regulations, unless the contrary intention appears —

“**accrued long service leave**” means —

- (a) long service leave entitlements that have actually become due; and
- (b) *pro rata* long service leave for any period during which rights to long service leave have been accruing as if a *pro rata* entitlement had actually become due in respect of that period;

“**award**” means —

- (a) a contract of employment;
- (b) an award, industrial agreement or order under the *Industrial Relations Act 1979*;
- (c) a workplace agreement under the *Workplace Agreements Act 1993*; or
- (d) a Commonwealth award;

“**Commonwealth award**” means an award, certified agreement or enterprise flexibility agreement under the *Industrial Relations Act 1988* of the Commonwealth;

“**enterprise bargaining allowance**” means a payment that —

- (a) does not come within paragraph (a) of the definition of “pay” in this subregulation;

- (b) is paid on a regular basis; and
- (c) is paid under —
  - (i) an enterprise flexibility agreement the implementation of which has been approved under the *Industrial Relations Act 1988* of the Commonwealth;
  - (ii) an agreement that is a certified agreement under that Act;
  - (iii) an agreement registered as an industrial agreement under the *Industrial Relations Act 1979*; or
  - (iv) a workplace agreement that is in force under the *Workplace Agreements Act 1993*;

**“pay”** means —

- (a) the award rate of pay, excluding allowances, applicable to the substantive classification of the recipient of the pay or, where the recipient does not have a substantive classification, the rate of pay, excluding allowances, under his or her contract of employment;
- (b) an enterprise bargaining allowance;
- (c) an allowance for an employee being in charge of other employees; and
- (d) a tally or piece rate,

but does not include an allowance of any other kind;

**“registered employee”** means an employee who is registered under regulation 11;

**“suitable office, post or position”** or **“suitable employment”** has the meaning given by section 94 (6) of the Act as read with subregulations (2) and (3).

(2) For the purposes of paragraph (c) of the definition of “suitable office, post or position” or “suitable employment” in section 94 (6) of the Act, the prescribed criteria to be satisfied by an office, post or position or employment, as the case requires, are that —

- (a) it is the most suitable actually available; and
- (b) the maximum pay applicable to the office, post or position or employment is —
  - (i) as close to that applicable to the former office, post, position, or employment as is reasonably practicable; and

- (ii) in any case, subject to subregulation (3), is not less than 80%, nor more than 110%, of the maximum pay applicable to the range of classification within which the office, post or position or employment occupied or formerly occupied by the employee in question is or was situated.

(3) For the purposes of subregulation (2) the maximum pay of a part-time employee is to be the same proportion of the maximum full-time pay as the number of hours worked each week bears to the number of hours provided for in the award as constituting a week's work.

(4) For the purposes of these regulations, the periodic rate of pay of an employee who was, immediately before accepting an offer of voluntary severance, a tally or piece rate worker is to be calculated by reference to the average periodic rate of pay received by that employee for each period worked during the 12 months ending on the day of that acceptance.

#### **Application**

4. (1) Subject to subregulation (2), these regulations apply to and in relation to all employees in departments or organizations and to all employing authorities of departments or organizations.

(2) An employee —

- (a) who retires or is retired from his or her employment on the grounds of ill health, whether under section 39 of the Act or otherwise;
- (b) whose employment in the Public Sector is terminated because of misconduct or substandard or unsatisfactory performance;
- (c) who is dismissed under Division 3 of Part 5 of the Act;
- (d) whose employment ceases on the expiry of the term of his or her contract of employment; or
- (e) who is a casual employee or a seasonal employee,

is not eligible for redeployment or voluntary severance under these regulations.

(3) In subregulation (2) (e) “**seasonal employee**” means an employee who is employed to work for limited periods during a season of the year.





## PART 2 — TRANSFER AND VOLUNTARY SEVERANCE

### Certain employees may be transferred

5. (1) The employing authority of an employee whose office, post or position in a department or organization is abolished may transfer that employee from the abolished office, post or position to another office, post or position in the department or organization (“**the new office, post or position**”) at the same or equivalent level of classification.

(2) An employee who is transferred under subregulation (1) is to receive pay at the rate applicable to the new office, post or position on and from the date of that transfer.

### Voluntary severance for certain employees

6. (1) The employing authority of an employee —
- (a) whose office, post or position is, or is to be, abolished; and
  - (b) who is, or will become, surplus to the requirements of his or her department or organization,

may, with the prior approval of the Minister, offer the employee voluntary severance.

(2) An approval under subregulation (1) may be specific or may be expressed to apply to a class or description of employees.

- (3) The offer shall provide for —
- (a) the employee to accept the offer by resigning from his or her employment with effect on and from a specified day; and
  - (b) the making of a severance payment under Part 5 to the offeree forthwith after the resignation takes effect.
- (4) An acceptance of an offer is to be in writing signed by the employee.

(5) An employing authority which makes a severance payment to an employee under this regulation shall give the Minister such information concerning the severance payment as the Minister requires.

### Substituted voluntary severance for surplus employees

7. (1) If —
- (a) the office, post or position of an employee is abolished and the employee is surplus to the requirements of his or her department or organization (“**the surplus employee**”);
  - (b) the surplus employee is willing to be transferred to the office, position or post of another employee in another department or organization who wishes to resign his or her office, post or position (“**the other employee**”); and

- (c) the Minister has approved the making of a severance payment under Part 5 to the other employee,

the other employee may, with the prior approval of the employing authority of his or her department or organization, resign his or her office, post or position.

(2) On the resignation by the other employee of his or her office, post or position under subregulation (1), the employing authority of the department or organization of the surplus employee shall forthwith —

- (a) transfer the surplus employee to that office, post or position; and
- (b) make a severance payment to the other employee.

(3) An employing authority which makes a severance payment under subregulation (2) is to give the Minister such information concerning the severance payment as the Minister requires.

### PART 3 — PRIVATIZATION AND CONTRACTING OUT

#### Private sector offers of offices, posts or positions on privatization or contracting out

8. (1) If the whole or any part of —
- (a) the undertaking of a department or organization is, or is to be, sold or otherwise disposed of to; or
  - (b) the production or provision of goods or services or both by a department or organization is, or is to be, replaced by the production or provision of goods or services or both by,

a person outside the Public Sector, the employing authority of the department or organization shall notify in writing each employee in that department or organization who is or will be affected by that sale or other disposal, or replacement, of —

- (c) that sale or other disposal, or replacement; and
- (d) the manner in which he or she is or will be so affected.

(2) Any offer of an office, post or position made by a person referred to in subregulation (1) to an employee who is notified under that subregulation shall —

- (a) be in writing; and
- (b) set out the terms and conditions (including pay) subject to which that offer is made.

(3) Subject to subregulation (4), the employing authority of an employee to whom an offer referred to in subregulation (2) is made may, if that offer is an offer of a suitable office, post or position, direct that employee to accept that offer.

(4) An employing authority shall not make a direction under subregulation (3) unless —

- (a) the employing authority is satisfied that the employee to whom the direction is to be given has been offered suitable employment; and
- (b) the direction is made —
  - (i) in writing; or
  - (ii) verbally, with written confirmation given to the recipient of that direction within 2 days after that direction was given.

(5) If an employee in the department or organization referred to in subregulation (1) hinders or obstructs the process by which he or she, or any other employee, is selected for the making of an offer referred to in subregulation (2), the employing authority of the first-mentioned employee may direct that employee —

- (a) in writing; or
- (b) verbally, with written confirmation given to that employee within 2 days after that direction was given,

to refrain from that hindrance or obstruction.

**Benefits to which employees accepting offers of employment are entitled**

9. (1) The employing authority of an employee who voluntarily accepts an offer referred to in regulation 8 (2), or accepts an offer in compliance with a direction made under regulation 8 (3), by resigning his or her office, post or position shall, in addition to paying any amount payable to that employee under any relevant award, forthwith pay to that employee —

- (a) cash in lieu of all accrued long service leave of that employee (calculated for each completed year of service) to the extent, if any, not provided for by that award; and
- (b) a transition payment of an amount —
  - (i) determined by the Minister; and
  - (ii) not less than the amount of 4 weeks' pay and not more than the amount of 12 weeks' pay.

(2) For the purposes of subregulation (1) (b), the weekly pay of an employee who during the 12 months ending on the day of acceptance of the offer worked a different number of hours in different weeks is to be calculated by reference to the average weekly rate of pay received by that employee for each week worked during the period of 12 months ending on the day of that acceptance.

(3) In subregulation (1) (b) “pay” means pay, as defined in regulation 3 (1), at the time of acceptance of the offer, except that it also includes —

- (a) any allowance of the following kinds that has been paid continuously for the preceding 12 months —
  - (i) an allowance for temporarily undertaking duties other than those of the substantive office, post or position of the relevant employee; and
  - (ii) a higher duties allowance;
 and
- (b) a shift allowance which is paid on a regular basis including during periods of annual leave.

(4) Notwithstanding the provisions of this regulation, an employee in respect of whom all or some of the conditions of service are determined pursuant to a Commonwealth award is not entitled to the payments provided for by this regulation.

(5) An employee mentioned in subregulation (4) is entitled to such payments as are determined by the Minister being an amount not greater than the amount that would be payable under this regulation to the employee if none of his or her conditions of employment were covered by a Commonwealth award.

**Employees dismissed under certain sections of Act not entitled to certain payments**

**10.** An employee who is dismissed under section 86 (3) (a) or (9) (b) (i), 88 (1) (b) (i) or 89 (1) of the Act is not entitled to any payment under regulation 9 or to a severance payment.



## **PART 4 — REGISTERED EMPLOYEES**

### **Registration of employees**

11. (1) The employing authority of an employee —
- (a) whose office, post or position has been abolished; and
  - (b) who cannot be transferred within, his or her department or organization,

may apply to the Minister to register that employee.

- (2) An application made under subregulation (1) shall be —
- (a) in writing; and
  - (b) on such form as the Minister approves.

(3) If, on an application made under subregulation (1), the Minister is satisfied that the employee is an employee of the kind described in that subregulation, the Minister shall register the employee.

### **Special leave for registered employees**

12. (1) The employing authority of a registered employee shall grant the registered employee reasonable leave without loss of pay to attend —

- (a) employment interviews with other employing authorities and with employers outside the Public Sector; and
- (b) career counselling of a kind approved by the employing authority.

(2) If an employing authority or employer referred to in subregulation (1) (a) does not meet the costs incurred by a registered employee in attending an employment interview with that employing authority or employer, the employing authority of the registered employee shall meet those costs.

(3) The costs referred to in subregulation (2) are such costs of travel to and from the employment interview concerned and of meals consumed, accommodation occupied and incidental expenses incurred during the course of that travel or at the place of that interview as the employing authority of the relevant registered employee approves.

### **Redeployment of registered employees**

13. (1) If a registered employee is offered employment, whether in his or her own department or organization or in another department or organization, that offer shall —

- (a) be in writing; and
- (b) set out the terms and conditions (including pay) subject to which that offer is made.

(2) If the Minister is satisfied that, a registered employee having been offered suitable employment in a department or organization, the registered employee has —

- (a) refused that offer; or
- (b) hindered or obstructed his or her redeployment to that suitable employment,

the Minister may in writing direct the registered employee forthwith to accept that offer.

(3) If the Minister is satisfied that —

- (a) a suitable office, post or position in a department or organization has been identified for a registered employee; and
- (b) the employing authority of that department or organization has refused to offer the registered employee employment in that office, post or position,

the Minister may direct that employing authority forthwith to offer the registered employee employment in that office, post or position.

(4) An employing authority to which a direction is given under this regulation shall comply with the direction.

### **Retraining of registered employees**

14. (1) An employing authority may arrange for a registered employee to be employed for retraining purposes inside or outside the Public Sector in an office, post or position other than his or her present or former office, post or position under that employing authority.

(2) Subject to this regulation the arrangements for the retraining of a registered employee, and the terms and conditions that apply to the retraining, are to be as agreed between —

- (a) the employee;
- (b) the employing authority of the employee;
- (c) the employer or employing authority that employs the employee for retraining purposes; and
- (d) the Minister.

(3) A registered employee shall not be employed for retraining purposes for a period of more than —

- (a) 6 months; or
- (b) such longer period as the Minister allows in writing for that employee.



(4) An employing authority which arranges for a registered employee to be employed for retraining purposes shall bear the whole cost of that arrangement, unless it is otherwise agreed between that employing authority and the employing authority or employer which employs the registered employee for retraining purposes.

(5) A period of employment of a registered employee for retraining purposes is, if regulation 18 (4) applies to the registered employee, to be disregarded for the purposes of calculating the period of 6 months referred to in that regulation.

#### **Voluntary severance for certain registered employees**

**15.** (1) The employing authority of a registered employee may, with the prior approval of the Minister, offer the registered employee voluntary severance.

(2) The offer shall provide for —

- (a) the employee to accept the offer by resigning from his or her employment with effect on and from a specified day; and
- (b) for the making of a severance payment under Part 5 to the offeree forthwith after the resignation takes effect.

(3) An acceptance of an offer is to be in writing signed by the employee.

(4) An employing authority which makes a severance payment to a registered employee under this regulation shall give the Minister such information concerning the severance payment as the Minister requires.

#### **Voluntary severance initiated by registered employees**

**16.** (1) A registered employee who wishes to receive an offer of voluntary severance may apply in writing to his or her employing authority for such an offer.

(2) An employing authority which has received an application made under subregulation (1) may, with the prior approval of the Minister, make an offer of voluntary severance to the applicant.

(3) The offer shall provide for —

- (a) the employee to accept the offer by resigning from his or her employment with effect on and from a specified day; and
- (b) for the making of a severance payment under Part 5 to the offeree forthwith after the resignation takes effect.

(4) An acceptance of an offer is to be in writing signed by the employee.

(5) An employing authority which makes a severance payment to an applicant under this regulation shall give the Minister such information concerning the severance payment as the Minister requires.

**Substituted voluntary severance for surplus registered employees**

17. (1) If —

- (a) a registered employee is willing to be transferred to the office, position or post of an employee who wishes to resign his or her office, post or position (“**the other employee**”); and
- (b) the Minister has approved the making of a severance payment to the other employee,

the other employee may, with the prior approval of the employing authority of his or her department or organization, resign his or her office, post or position.

(2) On the resignation by the other employee of his or her office, post or position under subregulation (1), the employing authority of the department or organization of the registered employee concerned shall forthwith —

- (a) transfer that registered employee to that office, post or position; and
- (b) make a severance payment to the other employee under Part 5.

(3) An employing authority which makes a severance payment under subregulation (2) is to give the Minister such information concerning the severance payment as the Minister requires.

**Benefits to which registered employees accepting offers of offices, posts or positions are entitled**

18. (1) An employing authority whose offer of an office, post or position is accepted by a registered employee shall credit the registered employee with all accrued and accruing rights to annual leave, long service leave and sick leave, as calculated in accordance with the relevant award, up to the time of that acceptance, and, subject to the provisions of the award, allow the registered employee to take accrued leave at any reasonable time or, in the case of sick leave, during any period of sickness.

(2) A registered employee to whom annual leave, long service leave or sick leave is credited under subregulation (1) is not entitled to cash or any other benefit in respect of that leave under any relevant award because of the break in employment caused by the acceptance by that registered employee of the office, post or position referred to in that subregulation.

(3) If a person who was a registered employee referred to in subregulation (1) is required by the location of the suitable office, post or position which he or she has accepted to change his or her place of residence, his or her new employing authority shall reimburse that person —

- (a) all reasonable expenses incurred by that person in moving his or her household belongings to his or her new place of residence; or
- (b) if an award or another written law which applies to that person provides for the payment of relocation expenses, relocation expenses in accordance with that award or written law.

(4) An employing authority whose offer of a suitable office, post or position —

- (a) is accepted by a registered employee; and
- (b) as so accepted, entitles the registered employee to a rate of pay less than that the registered employee was entitled to in respect of the office, post or position occupied by the registered employee immediately before he or she became a registered employee (“**the previous office, post or position**”),

shall during the period of 6 months beginning on the day of that acceptance pay to the registered employee the rate of pay the registered employee received in respect of the previous office, post or position.

(5) After the expiry of the period of 6 months referred to in subregulation (4), the employee concerned is to receive pay at the rate applicable to the new office, post or position.

(6) Notwithstanding the provisions of this regulation, an employee in respect of whom all or some of the conditions of service are determined pursuant to a Commonwealth award is not entitled to the benefits and payments provided for by this regulation.

(7) An employee mentioned in subregulation (6) is entitled to such benefits and payments as are determined by the Minister being not greater than the entitlements the employee would have under this regulation if none of his or her conditions of employment were covered by a Commonwealth award.

**Benefits to which registered employees accepting private sector employment are entitled**

19. (1) If the Minister arranges for an offer of a suitable office, post or position outside the Public Sector to be made to a registered employee and the registered employee accepts that offer by resigning his or her employment, the employing authority of the registered employee shall, in addition to paying any amount payable to the registered employee under any relevant award, forthwith pay to the registered employee —

- (a) cash in lieu of all accrued long service leave of the registered employee (calculated for each completed year of service) to the extent, if any, not provided for by that award; and
- (b) a transition payment of an amount —
  - (i) determined by the Minister; and
  - (ii) not less than the amount of 4 weeks' pay and not more than the amount of 12 weeks' pay.

(2) For the purposes of subregulation (1) (b), the weekly pay of an employee who during the 12 months ending on the day of acceptance of the offer worked a different number of hours in different weeks is to be calculated by reference to the average weekly rate of pay received by that employee for each week worked during the period of 12 months ending on the day of that acceptance.

(3) In subregulation (1) (b) “pay” means pay, as defined in regulation 3 (1), at the time of acceptance of the offer, except that it also includes —

(a) any allowance of the following kinds that has been paid continuously for the preceding 12 months —

(i) an allowance for temporarily undertaking duties other than those of the substantive office, post or position of the relevant employee; and

(ii) a higher duties allowance;

and

(b) a shift allowance which is paid on a regular basis including during periods of annual leave.

(4) Notwithstanding the provisions of this regulation, an employee in respect of whom all or some of the conditions of service are determined pursuant to a Commonwealth award is not entitled to the payments provided for by this regulation.

(5) An employee mentioned in subregulation (4) is entitled to such payments as are determined by the Minister being an amount not greater than the amount that would be payable under this regulation to the employee if none of his or her conditions of employment were covered by a Commonwealth award.

**PART 5 — VOLUNTARY SEVERANCE PAYMENTS AND OTHER  
BENEFITS**

**Severance payments**

20. (1) Subject to subregulations (2) and (3), a severance payment made to an employee under regulation 6, 7, 15, 16 or 17 is the payment of an amount equal to 2 weeks' pay for each complete year of continuous service served by the employee in the Public Sector (including a ministerial office).

(2) The amount of a severance payment is not to exceed the amount of 46 weeks' pay.

(3) For the purposes of subregulations (1) and (2), the weekly pay of an employee who during the 12 months ending on the day of acceptance of an offer of voluntary severance worked a different number of hours in different weeks is to be calculated by reference to the average weekly rate of pay received by that employee for each week worked during the period of 12 months ending on the day of that acceptance.

(4) Notwithstanding the provisions of this regulation, an employee in respect of whom all or some of the conditions of service are determined pursuant to a Commonwealth award is not entitled to any payment provided for by this regulation.

(5) An employee mentioned in subregulation (4) is entitled to such payment as is determined by the Minister being an amount not greater than the amount that would be payable under this regulation to the employee if none of his or her conditions of employment were covered by a Commonwealth award.

(6) If the Minister is satisfied that before the commencement of these regulations an employing authority, with the approval of the government, gave notice to any class of employees that a severance payment higher than that provided for by this regulation would apply to that class of employees, the Minister may approve of that higher severance payment being made to an employee who comes within that class.

(7) In this regulation —

“**continuous service**” has the same meaning as it has in the *Wages Employees Long Service Leave General Order* of the Western Australia Industrial Relations Commission;

“**pay**” means pay, as defined in regulation 3 (1), at the time of acceptance of the offer of voluntary severance, except that it also includes —

- (a) any allowance of the following kinds that has been paid continuously for the preceding 12 months —
  - (i) an allowance for temporarily undertaking duties other than those of the substantive office, post or position of the relevant employee; and
  - (ii) a higher duties allowance;

and

- (b) a shift allowance which is paid on a regular basis including during periods of annual leave.

**Other benefits payable on voluntary severance**

**21.** The employing authority of an employee who accepts an offer of voluntary severance by resigning his or her office, post or position or employment shall, in addition to paying any amount payable to that employee under any relevant award, forthwith pay to that employee cash in lieu of all accrued long service leave of that employee (calculated for each completed year of service) to the extent, if any, not provided for by that award.

**Restriction on employment in Public Sector**

**22.** (1) Subject to subregulation (2), a person to whom a severance payment is made under regulation 6, 7, 15, 16 or 17 shall not subsequently be employed in the Public Sector before the expiry of the number of weeks ("**the period of restriction**") after the day on which the severance payment is made that is equal to the total of —

- (a) the number of weeks in respect of which the person received a severance payment under this Part ("**the severance pay period**"); and
- (b) the number of weeks in respect of which the person received cash payment in lieu of accrued annual leave or long service leave.

(2) The Minister may in writing, as from a specified day, exempt from subregulation (1) a person to whose employment that subregulation would otherwise apply.

(3) If the person's severance pay period exceeds the portion of the period of restriction up to the specified day, the exemption is subject to the person repaying to the employing authority an amount that bears to the severance payment the same proportion as the excess bears to the severance pay period.

**PART 6 — GENERAL**

**Rate of pay of surplus employees**

**23.** The rate of pay of an employee, whether a registered employee or not —

- (a) whose office, post or position has been abolished; but
- (b) who is for the time being entitled to payment until his or her resignation, redeployment or other arrangement has effect under these regulations,

is the rate of pay to which the employee was entitled in respect of the office, post or position that has been abolished.

**Employing authorities to notify Minister of vacancies**

**24.** (1) Subject to subregulation (2), whenever a vacancy occurs in an office, post or position in a department or organization, the employing authority of the department or organization shall in writing notify the Minister of the vacancy and the vacancy shall not be filled without the approval of the Minister.

(2) The Minister may, by notice in writing served on the employing authority of a department or organization —

- (a) exempt that employing authority from compliance with subregulation (1) in respect of such vacancies, or vacancies of such class, as are or is specified in that notice; or
- (b) amend or revoke an exemption made under this subregulation.

**Prescribed period for certain references**

**25.** For the purposes of section 95 (3) of the Act, the prescribed period is 7 days.

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By His Excellency's Command,

M. C. WAUCHOPE, Clerk of the Council.



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