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PUBLIC SECTOR MANAGEMENT ACT 1994

**PUBLIC SECTOR MANAGEMENT
(REDEPLOYMENT AND
REDUNDANCY)
REGULATIONS 2014**

Western Australia

Public Sector Management (Redeployment and Redundancy) Regulations 2014

Contents

Part 1 — Preliminary

1. Citation
2. Commencement
3. Terms used
4. Application
5. Limits on application of regulations
6. Calculation of rate of pay of tally or piece rate worker
7. Criteria for suitable office, post or position or suitable employment

Part 2 — Registrable employees

8. Consultation with employees who may become registrable
9. Employee must be notified if registrable or to become registrable
10. Transfer of registrable employees

Part 3 — Voluntary severance

11. Registrable employees may be offered voluntary severance
12. Substituted voluntary severance for registrable employees
13. Amount of severance payment
14. Other benefits payable on voluntary severance
15. Incentive payment for early resignation
16. Targeted separation scheme
17. Restriction on employment in Public Sector

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Contents

Part 4 — Registered employees

- 18. Registration of registrable employee
- 19. Special leave for registered employees
- 20. Retraining of registered employees
- 21. Management of registered employees

Part 5 — Redeployment

- 22. Form of offer of employment
- 23. Registered employee may be directed to accept offer of employment
- 24. Employing authority may be directed to offer employment
- 25. Benefits to which registered employee accepting Public Sector employment is entitled
- 26. Benefits to which registered employee accepting private sector employment is entitled
- 27. Registration ceases on redeployment

Part 6 — Termination of employment

- 28. Terms used
- 29. Employing authority may suspend redeployment period or revoke registration
- 30. Employment terminates at end of redundancy period
- 31. Notice of impending termination
- 32. Earlier termination of employment at request of employee
- 33. Redundancy pay at end of redundancy period
- 34. Minimum amount of redundancy pay
- 35. Other benefits payable on termination
- 36. Restriction on employment in Public Sector

**Part 7 — Privatisation and
contracting out**

- 37. Notification to employee of privatisation or contracting out
- 38. Private sector offers of offices, posts or positions on privatisation or contracting out

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Contents

- 39. Employee may be directed not to hinder selection process
- 40. Benefits to which employees accepting offers of employment are entitled

Part 8 — Miscellaneous

- 41. Information to be given to Commissioner
- 42. Rate of pay of employee whose office, post or position is abolished
- 43. Employees dismissed under certain sections of Act not entitled to certain payments
- 44. Prescribed period for certain references

Part 9 — Repeal and transitional

- 45. *Public Sector Management (Redeployment and Redundancy) Regulations 1994* repealed
- 46. Transitional provisions

Defined terms

Public Sector Management Act 1994

Public Sector Management (Redeployment and Redundancy) Regulations 2014

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 May 2015.

3. Terms used

- (1) In these regulations —

accrued long service leave means each of the following —

- (a) long service leave entitlements that have actually become due;
- (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;

average weekly hours, in relation to an employee, means the average number of hours (not including overtime) that the

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 1 Preliminary

r. 3

employee worked each week during the employee's period of continuous service;

award means —

- (a) an award, industrial agreement or order under the *Industrial Relations Act 1979*; or
- (b) a Commonwealth award;

Commonwealth award means —

- (a) a modern award, enterprise agreement or workplace determination made under the *Fair Work Act 2009* (Commonwealth); or
- (b) a transitional instrument as defined in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Commonwealth) Schedule 2 item 2;

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

employment instrument means —

- (a) a contract of employment; or
- (b) an award;

enterprise bargaining allowance means a payment that —

- (a) does not come within paragraph (a) of the definition of **pay** in this subregulation; and
- (b) is paid on a regular basis; and
- (c) is paid under —
 - (i) an enterprise agreement made under the *Fair Work Act 2009* (Commonwealth); or
 - (ii) an agreement-based transitional instrument as defined in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Commonwealth) Schedule 2 item 2; or

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Preliminary

Part 1

r. 3

- (iii) an agreement registered as an industrial agreement under the *Industrial Relations Act 1979*;

full-time weekly pay, in relation to an employee, means —

- (a) if the employee is employed on a full-time basis, the employee's weekly pay; or
- (b) if the employee is employed on a part-time basis, the amount that would be the employee's weekly pay if the employee were employed on a full-time basis;

pay means the sum of the following —

- (a) the award rate of pay, excluding allowances, applicable to the substantive classification of the recipient of the pay or, if the recipient does not have a substantive classification, the rate of pay, excluding allowances, under his or her contract of employment;
- (b) an allowance listed in subregulation (2);
- (c) a tally or piece rate;

period of continuous service, in relation to an employee, means the period of continuous service in the Public Sector (including a ministerial office) served by the employee —

- (a) in any period greater than 10 years for which, in the opinion of the employing authority of the employee, there are reliable records of the hours worked each week by the employee; and
- (b) if paragraph (a) does not apply, in the period of 10 years, ending on the day of acceptance by the employee of —

- (c) an offer referred to in regulation 26(1) or 40(1); or
- (d) an offer of severance payment referred to in regulation 13(2);

potential full-time weekly hours, in relation to an employee, means the number of hours (not including overtime) that the

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 1 Preliminary

r. 4

employee would have worked each week during the employee's period of continuous service if the employee had been employed on a full-time basis during that period;

registered employee has the meaning given in section 94(1A) of the Act;

registrable employee has the meaning given in section 94(1A) of the Act;

suitable office, post or position or **suitable employment** has the meaning given in section 94(6) of the Act as read with regulation 7.

- (2) The following allowances are listed for the purposes of paragraph (b) of the definition of **pay** in subregulation (1) —
- (a) an allowance —
 - (i) that is always paid with the award rate of pay applicable to the substantive classification of the recipient of the pay or, where the recipient does not have a substantive classification, with the rate of pay under his or her contract of employment; and
 - (ii) the payment of which is not subject to any condition relating to the time, place or circumstances at or in which the recipient of the pay is employed or to any other condition;
 - (b) an enterprise bargaining allowance;
 - (c) an allowance for an employee being in charge of other employees;
 - (d) any other allowance that the Commissioner has approved for the purposes of this subregulation.

4. Application

- (1) Except as provided in regulation 5, these regulations apply to all employees in departments and organisations.

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Preliminary

Part 1

r. 5

- (2) Despite regulation 5, these regulations apply to all employing authorities of departments and organisations in their capacity as employing authorities.

5. Limits on application of regulations

- (1) In this regulation —
seasonal employee means an employee who is employed to work for limited periods during a season of the year.
- (2) Parts 2 to 6 do not apply to the following employees —
- (a) an executive officer;
 - (b) an employee to whom section 59 of the Act applies;
 - (c) a ministerial officer;
 - (d) an employee who is a casual employee or a seasonal employee;
 - (e) an employee who is to retire or is called on to retire from employment on the grounds of ill health, whether under section 39 of the Act or otherwise;
 - (f) an employee whose employment in the Public Sector is to be terminated because of substandard performance;
 - (g) an employee who is to be dismissed under Part 5 Division 3 of the Act.
- (3) Subregulation (2)(a) does not limit the operation of section 58(5) of the Act.

6. Calculation of rate of pay of tally or piece rate worker

For the purposes of these regulations, the rate of pay of an employee who was, immediately before accepting an offer of voluntary severance, a tally or piece rate worker must 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.

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 1 Preliminary

r. 7

7. Criteria for suitable office, post or position or suitable employment

- (1) 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, 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, 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 (2), 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.
- (2) For the purposes of subregulation (1) the maximum pay of a part-time employee must 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 employment instrument as constituting a week's work.

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Registrable employees

Part 2

r. 8

Part 2 — Registrable employees

8. Consultation with employees who may become registrable

- (1) An employing authority may, in accordance with the Commissioner's instructions, make a determination that an employee may become a registrable employee.
- (2) As soon as practicable after making the determination, the employing authority must give the employee written notice of all relevant information relating to the determination.
- (3) Without limiting subregulation (2), the notice must include the following —
 - (a) the reasons why the employee may become a registrable employee;
 - (b) any measures the employing authority considers could be taken that would avoid the employee becoming a registrable employee;
 - (c) the likely period within which the employee may become a registrable employee;
 - (d) if other employees in the same department or organisation are the subject of a determination of the kind referred to in subregulation (1) that was made at the same time as the determination in respect of the employee, the number of those employees.
- (4) The employing authority of an employee given a notice under subregulation (2) must consult the employee in relation to the matters set out in the notice.
- (5) Nothing in this regulation requires an employing authority to disclose confidential information that the employing authority considers would be contrary to the interests of its department or organisation to disclose.
- (6) Notice given to an employee under subregulation (2) does not constitute notice for the purposes of regulation 9(1).

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 2 Registrable employees

r. 9

- (7) The determination may be revoked at any time.
- (8) If the determination is revoked, the employing authority must give the employee written notice of the revocation.

9. Employee must be notified if registrable or to become registrable

- (1) An employing authority must give an employee written notice that —
 - (a) the employee's office, post or position is or is to be abolished and the employee may be —
 - (i) transferred under regulation 10; or
 - (ii) registered under regulation 18;
 - or
 - (b) the employee is, or will become, surplus to the requirements of the employee's department or organisation and the employee may be —
 - (i) transferred under regulation 10; or
 - (ii) registered under regulation 18.
- (2) The notice may be revoked at any time.
- (3) If the notice is revoked, the employing authority must give the employee written notice of the revocation.

10. Transfer of registrable employees

- (1) The employing authority of an employee who —
 - (a) has been given a notice under regulation 9(1); and
 - (b) is a registrable employee,may transfer the employee to another office, post or position in the department or organisation (the ***new office, post or position***) at the same or equivalent level of classification.

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Registrable employees

Part 2

r. 10

- (2) An employee who is transferred under subregulation (1) must receive pay at the rate applicable to the new office, post or position on and from the date of that transfer.
- (3) An employee who is on a fixed term contract —
 - (a) may be transferred under subregulation (1) to another office, post or position in the department or organisation under a new fixed term contract on the same or equivalent terms; and
 - (b) cannot be transferred under subregulation (1) to another office, post or position under a new fixed term contract on terms that are not the same or equivalent.
- (4) The duration of the new fixed term contract of an employee to whom subregulation (3) applies must not extend beyond the duration of the fixed term contract under which the employee was previously employed.

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 3 Voluntary severance

r. 11

Part 3 — Voluntary severance

11. Registrable employees may be offered voluntary severance

- (1) In this regulation —
notified employee means an employee who has been given notice under regulation 9(1).
- (2) The employing authority of a notified employee may offer voluntary severance to the employee if the employing authority is satisfied that the employee cannot be transferred within his or her department or organisation.
- (3) The offer must —
 - (a) specify a period of not less than 8 weeks after the offer is made within which the employee may accept or refuse the offer; and
 - (b) provide for the employee to accept the offer and resign from his or her employment with effect on and from a day that is not later than 4 weeks after the day on which the offer is accepted; and
 - (c) provide for the making of a severance payment under regulation 13 to the employee.
- (4) The offer must include a notification that refusal to accept the offer may result in the employing authority registering the employee under regulation 18 and that, if the employee is registered and not offered suitable employment, the employee's employment may be terminated under Part 6.
- (5) An acceptance of an offer must be in writing signed by the employee.

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Voluntary severance

Part 3

r. 12

12. Substituted voluntary severance for registrable employees

(1) If —

- (a) a registrable employee is willing to be transferred to the office, post or position of another employee in the same or another department or organisation who wishes to resign his or her office, post or position (the *other employee*); and
- (b) the making of a severance payment under this Part to the other employee has been approved by the employing authority of that employee,

the other employee may, with the prior approval of the employing authority of his or her department or organisation, 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 organisation of the registrable employee must —

- (a) transfer the registrable employee to that office, post or position; and
- (b) make payments to the other employee under regulations 13, 14 and 15.

13. Amount of severance payment

(1) In this regulation —

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 the following —

- (a) an allowance for temporarily undertaking duties other than those of the substantive office, post or position of the relevant employee that has been paid continuously to the employee for the preceding 12 months;

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 3 Voluntary severance

r. 13

- (b) a higher duties allowance that has been paid continuously to the employee for the preceding 12 months;
 - (c) a shift allowance that is paid on a regular basis including during periods of annual leave.
- (2) Subject to subregulations (3), (4) and (5), a severance payment made to an employee is the payment of an amount equal to 3 weeks' pay for each complete year of continuous service served by the employee in the Public Sector (including a ministerial office).
- (3) A severance payment made to an employee who has completed more than one year of continuous service but less than 2 years of continuous service is the payment of an amount equal to 4 weeks' pay.
- (4) The amount of a severance payment must not exceed the amount of 52 weeks' pay.
- (5) For the purposes of subregulations (2), (3) and (4), the weekly pay of an employee who, during the employee's period of continuous service, worked a different number of hours in different weeks must be calculated as follows —
$$A = B \times C$$

where —

 - A is the employee's weekly pay;
 - B is the employee's full-time weekly pay;
 - C is the employee's average weekly hours expressed as a percentage of the employee's potential full-time weekly hours.
- (6) Despite subregulations (2) to (5), an employee in respect of whom all or some of the conditions of employment are

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Voluntary severance

Part 3

r. 14

determined under a Commonwealth award is not entitled to any payment provided for by those subregulations.

- (7) An employee mentioned in subregulation (6) is entitled to such payment as is determined by the employee's employing authority, 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.

14. Other benefits payable on voluntary severance

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

15. Incentive payment for early resignation

An employee who accepts an offer of voluntary severance under regulation 11 and resigns with effect on and from a day (**resignation day**) that is earlier than 4 weeks after the day on which the offer is accepted (**acceptance day**) is entitled to the following payment in addition to the payments under regulations 13 and 14 —

- (a) if the resignation day is less than one week after acceptance day — 12 weeks' pay;
- (b) if the resignation day is more than one week and less than 2 weeks after acceptance day — 8 weeks' pay;
- (c) if the resignation day is more than 2 weeks and less than 3 weeks after acceptance day — 4 weeks' pay.

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 3 Voluntary severance

r. 16

16. Targeted separation scheme

- (1) The Minister may approve a scheme under which employees are invited to apply to be offered voluntary severance.
- (2) The approval must specify —
 - (a) the employees, or class or description of employees, to whom the scheme applies; and
 - (b) the period within which an application under the scheme may be made.
- (3) Notice of an approval under subregulation (1) must be published in the *Gazette*.
- (4) Failure to comply with subregulation (3) does not invalidate the approval.
- (5) The amount of severance pay payable under the scheme may exceed the amount of 52 weeks' pay, according to the terms of the scheme.

17. Restriction on employment in Public Sector

- (1) Subject to subregulation (2), a person to whom a severance payment is made under regulation 13 or under a scheme approved under regulation 16 must 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 number of weeks in respect of which the person received a severance payment (the ***severance pay period***).
- (2) The Commissioner 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

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Voluntary severance

Part 3

r. 17

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.

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Part 4 Registered employees

r. 18

Part 4 — Registered employees

18. Registration of registrable employee

- (1) The employing authority of an employee may register the employee in accordance with the Commissioner's instructions if —
 - (a) the employee —
 - (i) has been given a notice under regulation 9(1); and
 - (ii) is a registrable employee; and
 - (iii) cannot be transferred within his or her department or organisation;
 - and
 - (b) at least 14 days before the day of registration, the employing authority has given the employee written notice of the employing authority's intention to register the employee.
- (2) The notice referred to in subregulation (1)(b) must not be given to the employee before the employee is given notice under regulation 9(1).

19. Special leave for registered employees

- (1) The employing authority of a registered employee must grant the registered employee reasonable leave without loss of pay to attend the following —
 - (a) employment interviews with other employing authorities and with employers outside the Public Sector;
 - (b) career counselling of a kind approved by the employing authority;
 - (c) financial counselling of a kind approved by the employing authority.

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Registered employees

Part 4

r. 20

- (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 must 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 registered employee approves.

20. Retraining of registered employees

- (1) The employing authority of a registered employee may arrange for the registered employee to be employed for retraining purposes inside or outside the Public Sector in an office, post or position other than the employee's present or former office, post or position under that employing authority.
- (2) Subject to subregulations (3) and (4), 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; and
 - (b) the employing authority of the employee; and
 - (c) the employer or employing authority that employs the employee for retraining purposes.
- (3) A registered employee must not be employed for retraining purposes for a period that is greater than the employee's redeployment period, as defined in regulation 28.
- (4) An employing authority who arranges for a registered employee to be employed for retraining purposes must bear the whole cost of that arrangement, unless it is otherwise agreed between that

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Part 4 Registered employees

r. 21

employing authority and the employing authority or employer which employs the registered employee for training purposes.

- (5) A period of employment of a registered employee for retraining purposes is, if regulation 25(4) applies to the registered employee, to be disregarded for the purposes of calculating the period of 6 months referred to in that provision.

21. Management of registered employees

The employing authority of a registered employee must manage the employee in accordance with the Commissioner's instructions during the period of registration.

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Redeployment

Part 5

r. 22

Part 5 — Redeployment

22. Form of offer of employment

An offer of employment given to a registered employee, whether in his or her own department or organisation or in another department or organisation, must —

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

23. Registered employee may be directed to accept offer of employment

The Commissioner may in writing direct a registered employee to accept an offer of employment within a time specified in the direction if the Commissioner is satisfied that —

- (a) the offer is for suitable employment in a department or organisation; and
- (b) the registered employee has —
 - (i) refused that offer; or
 - (ii) hindered or obstructed his or her redeployment to that suitable employment.

24. Employing authority may be directed to offer employment

- (1) If the Commissioner is satisfied that —

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

the Commissioner may direct that employing authority to offer the registered employee employment in that office, post or position as soon as is practicable.

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 5 Redeployment

r. 25

- (2) An employing authority to which a direction is given under subregulation (1) must comply with the direction.

25. Benefits to which registered employee accepting Public Sector employment is entitled

- (1) An employing authority whose offer of an office, post or position is accepted by a registered employee must credit the registered employee with all accrued and accruing rights to annual leave, long service leave and personal leave, as calculated in accordance with the relevant employment instrument, up to the time of that acceptance, and, subject to the provisions of the instrument, allow the registered employee to take accrued leave at any reasonable time or, in the case of personal leave, during any period for which the leave is approved.
- (2) A registered employee to whom annual leave, long service leave or personal leave is credited under subregulation (1) is not entitled to cash or any other benefit in respect of that leave under any relevant employment instrument 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 that the person has accepted to change his or her place of residence, the new employing authority must reimburse the person —
 - (a) all reasonable expenses incurred by the person in moving the person's household belongings to the new place of residence; or
 - (b) if an employment instrument or another written law that applies to the person provides for the payment of

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Redeployment

Part 5

r. 25

relocation expenses, relocation expenses in accordance with the employment instrument 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*),

must during the period of 6 months after the day on which the registered employee begins employment in the new office, post or position 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) Despite this regulation, an employee in respect of whom all or some of the conditions of employment are determined under 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 employing authority being not greater than the entitlements the employee would have under this regulation if none of the employee's conditions of employment were covered by a Commonwealth award.

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 5 Redeployment

r. 26

**26. Benefits to which registered employee accepting private
sector employment is entitled**

- (1) If an employing authority 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 must, in addition to paying any amount payable to the registered employee under any relevant employment instrument, 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 instrument; and
 - (b) a transition payment of an amount —
 - (i) determined by the employing authority; 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 employee's period of continuous service, worked a different number of hours in different weeks is to be calculated as follows —

$$A = B \times C$$

where —

- A is the employee's weekly pay;
- B is the employee's full-time weekly pay;
- C is the employee's average weekly hours expressed as a percentage of the employee's potential full-time weekly hours.

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Redeployment

Part 5

r. 27

- (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;

- (ii) a higher duties allowance;

and

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

- (4) Where an organisation is abolished and its functions or some of its functions become vested in a body that is established by a written law and is owned by the State but is not within the Public Sector, any office, post or position in that body is not an office, post or position outside the Public Sector for the purposes of subregulation (1).

- (5) Despite this regulation, an employee in respect of whom all or some of the conditions of service are determined under a Commonwealth award is not entitled to the payments provided for by this regulation.

- (6) An employee mentioned in subregulation (5) is entitled to such payments as are determined by the employee's employing authority, 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.

27. Registration ceases on redeployment

A registered employee who accepts an offer of employment in a suitable office, post or position ceases to be registered on the day on which the employment commences.

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 6 Termination of employment

r. 28

Part 6 — Termination of employment

28. Terms used

In this Part —

pay, in relation to an employee, means the employee's pay as at the day immediately before the day on which the employment of the employee is terminated under regulation 30 or 32;

redeployment period means —

- (a) in relation to an employee other than a term employee — the period of 6 months commencing on the day on which the employee becomes a registered employee and not including any period of suspension under regulation 29; and
- (b) in relation to a term employee —
 - (i) if the employee's term of appointment will end before the end of the period referred to in subparagraph (ii), the period ending on the last day of the term of appointment; or
 - (ii) if subparagraph (i) does not apply, the period of 6 months commencing on the day on which the employee becomes a registered employee and not including any period of suspension under regulation 29.

29. Employing authority may suspend redeployment period or revoke registration

The employing authority of a registered employee may, in writing —

- (a) suspend the continuance of the employee's redeployment period; or
- (b) revoke the registration of the employee.

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Termination of employment

Part 6

r. 30

30. Employment terminates at end of redundancy period

The employment of a registered employee terminates by operation of this regulation on the day after the last day of the employee's redeployment period.

31. Notice of impending termination

- (1) At least 4 weeks before the last day of a registered employee's redeployment period, the employing authority of the employee must give written notice to the employee advising —
 - (a) the date of the last day of the employee's redeployment period; and
 - (b) the effect of regulation 30; and
 - (c) the redundancy pay to which the employee will be entitled if the employee's employment terminates under regulation 30.
- (2) The failure of an employing authority to give notice under subregulation (1) does not prevent the termination of the employee's employment under regulation 30.

32. Earlier termination of employment at request of employee

- (1) A registered employee may, before the end of the employee's redeployment period, request in writing the employing authority of the employee to terminate the employee's employment.
- (2) An employing authority may by written notice accept the request of a registered employee made under subregulation (1) and terminate the employee's employment.
- (3) The notice must set out —
 - (a) the date on which the termination takes effect; and
 - (b) the redundancy pay to which the employee is entitled.

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 6 Termination of employment

r. 33

- (4) The amount of redundancy pay for an employee whose employment is terminated under this regulation is —
- (a) an amount equal to 3 weeks' pay for each complete year of continuous service served by the employee in the Public Sector (including a ministerial office) but not exceeding the amount of 52 weeks' pay, less an amount equal to the employee's pay for the number of weeks in the period commencing on the day on which the employee became a registered employee and ending on the day on which the employee's employment is terminated; or
 - (b) if the amount specified in paragraph (a) is less than the minimum amount specified in regulation 34, that minimum amount.

33. Redundancy pay at end of redundancy period

- (1) An employee whose employment is terminated under regulation 30 is entitled to be paid redundancy pay.
- (2) The amount of redundancy pay for an employee is —
 - (a) an amount equal to 3 weeks' pay for each complete year of continuous service served by the employee in the Public Sector (including a ministerial office) but not exceeding the amount of 52 weeks' pay, less an amount equal to 26 weeks' pay; or
 - (b) if the amount specified in paragraph (a) is less than the minimum amount specified in regulation 34, that minimum amount.

34. Minimum amount of redundancy pay

The amount of redundancy pay must not be less than an amount equal to the employee's pay for the number of weeks set out in column 2 of the Table that corresponds to the period of the

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Termination of employment

Part 6

r. 35

employee's continuous service calculated up to the end of the day on which the employee's employment is terminated.

Table

Period of continuous service with the employer at termination of employment	Redundancy pay period
At least one year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years	16 weeks

35. Other benefits payable on termination

The employing authority of an employee whose employment is terminated must, in addition to paying any amount payable to

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 6 Termination of employment

r. 36

the employee under any relevant employment instrument, pay to that employee cash in lieu of all accrued long service leave of the employee (calculated for each completed year of service) to the extent, if any, not provided for by that instrument.

36. Restriction on employment in Public Sector

- (1) Subject to subregulation (2), a person to whom a redundancy payment is made under regulation 32 or 33 must 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 redundancy payment is made that is equal to the number of weeks of pay the person received as a redundancy payment (the *redundancy pay period*).
- (2) The Commissioner 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 redundancy 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 redundancy payment the same proportion as the excess bears to the redundancy pay period.

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Privatisation and contracting out

Part 7

r. 37

Part 7 — Privatisation and contracting out

37. Notification to employee of privatisation or contracting out

- (1) If the whole or any part of —
- (a) the undertaking of a department or organisation is, or is to be, sold or otherwise disposed of to a person outside the Public Sector; or
 - (b) the production or provision of goods or services or both by a department or organisation 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 organisation must give written notice of the sale, disposal or replacement to each employee in the department or organisation who is or will be affected by the sale, disposal or replacement.

- (2) The notice must specify the manner in which the employee is or will be affected.
- (3) Where an organisation is abolished and its functions or some of its functions become vested in a body that is established by a written law and is owned by the State but is not within the Public Sector, that body is not a person outside the Public Sector for the purposes of this regulation.

38. Private sector offers of offices, posts or positions on privatisation or contracting out

- (1) Any offer of an office, post or position made by a person outside the Public Sector referred to in regulation 37(1)(a) or (b) to an employee who is notified under regulation 37(1) must —
- (a) be in writing; and
 - (b) set out the terms and conditions (including pay) subject to which the offer is made.

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Part 7 Privatisation and contracting out

r. 39

- (2) Subject to subregulation (4), the employing authority of an employee to whom an offer referred to in subregulation (1) is made may, if that offer is an offer of a suitable office, post or position, direct the employee to accept the offer.
- (3) The direction must be given —
 - (a) in writing; or
 - (b) orally, with written confirmation given to the recipient of the direction within 2 days after the oral direction is given.
- (4) An employing authority must not give a direction under subregulation (2) unless the employing authority is satisfied that the employee to whom the direction is to be given has been offered suitable employment.

39. Employee may be directed not to hinder selection process

- (1) If an employee in the department or organisation referred to in regulation 37 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 regulation 38(1), the employing authority of the first-mentioned employee may direct that employee to refrain from that hindrance or obstruction.
- (2) The direction must be given —
 - (a) in writing; or
 - (b) orally, with written confirmation given to the recipient of the direction within 2 days after the oral direction is given.

40. Benefits to which employees accepting offers of employment are entitled

- (1) The employing authority of an employee who voluntarily accepts an offer referred to in regulation 38(1), or accepts an offer in compliance with a direction made under regulation 38(2), by resigning his or her office, post or position

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Privatisation and contracting out

Part 7

r. 40

must, in addition to paying any amount payable to that employee under any relevant employment instrument, 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 instrument; and
 - (b) a transition payment of an amount —
 - (i) determined by the Commissioner; 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 employee's period of continuous service, worked a different number of hours in different weeks is to be calculated as follows —

$$A = B \times C$$

where —

A is the employee's weekly pay;

B is the employee's full-time weekly pay;

C is the employee's average weekly hours expressed as a percentage of the employee's potential full-time weekly hours.

- (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 the following —

- (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;

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Part 7 Privatisation and contracting out

r. 40

- (ii) a higher duties allowance;
 - (b) a shift allowance that is paid on a regular basis including during periods of annual leave.
- (4) Despite subregulations (1), (2) and (3), an employee in respect of whom all or some of the conditions of employment are determined under 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 Commissioner 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.

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Miscellaneous

Part 8

r. 41

Part 8 — Miscellaneous

41. Information to be given to Commissioner

An employing authority who makes a payment for the purposes of regulation 13, 14, 15, 26, 32, 33 or 35 or a scheme approved under regulation 16 must give the Commissioner any information about the payment that the Commissioner requires.

42. Rate of pay of employee whose office, post or position is abolished

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.

43. Employees dismissed under certain sections of Act not entitled to certain payments

An employee who is dismissed under section 82A(3)(a), 88(a) or 89(1) of the Act is not entitled to any payment under regulation 40 or to a severance payment or redundancy pay.

44. Prescribed period for certain references

For the purposes of sections 95(3) and 96A(3) of the Act the prescribed period is 21 days.

***Public Sector Management (Redeployment and Redundancy)
Regulations 2014***

Part 9 Repeal and transitional

r. 45

Part 9 — Repeal and transitional

**45. *Public Sector Management (Redeployment and Redundancy)
Regulations 1994 repealed***

The *Public Sector Management (Redeployment and Redundancy) Regulations 1994* are repealed.

46. Transitional provisions

- (1) In this regulation —
commencement day means the day on which this regulation comes into operation;
repealed regulations means the regulations repealed by regulation 45.
- (2) An employee who has been given notice and consulted under regulation 4AA of the repealed regulations is taken to have been given notice and consulted under regulation 8.
- (3) An employee who has been given notice under regulation 4A of the repealed regulations is taken to have been given notice under regulation 9.
- (4) If an employee is, immediately before commencement day, registered under regulation 11(3) of the repealed regulations —
 - (a) the employee is taken to be registered under regulation 18; and
 - (b) the employee's redeployment period for the purposes of Part 6 commences on commencement day.

N. HAGLEY, Clerk of the Executive Council.

**Public Sector Management (Redeployment and Redundancy)
Regulations 2014**

Defined terms

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
acceptance day	15
accrued long service leave	3(1)
average weekly hours	3(1)
award	3(1)
commencement day	46(1)
Commonwealth award	3(1)
continuous service	3(1)
employment instrument	3(1)
enterprise bargaining allowance	3(1)
full-time weekly pay	3(1)
new office, post or position	10(1)
notified employee	11(1)
other employee	12(1)
pay	3(1), 13(1), 26(3), 28, 40(3)
period of continuous service	3(1)
period of restriction	17(1), 36(1)
potential full-time weekly hours	3(1)
previous office, post or position	25(4)
redeployment period	28
redundancy pay period	36(1)
registered employee	3(1)
registrable employee	3(1)
repealed regulations	46(1)
resignation day	15
seasonal employee	5(1)
severance pay period	17(1)
suitable employment	3(1)
suitable office, post or position	3(1)