



Western Australia

## **Public Sector Management (Redeployment and Redundancy) Regulations 1994**

Compare between:

[27 Jun 2013, 02-e0-04] and [30 Dec 2014, 02-f0-02]



## Public Sector Management (Redeployment and Redundancy) Regulations 1994

### Part 1 — Preliminary

#### 1. Citation

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

#### 2. Commencement

These regulations come into operation on the day on which Part 6 of the Act comes into operation<sup>1</sup>.

#### 3. Terms used in these regulations

- (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;

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- (b) an award, industrial agreement or order under the *Industrial Relations Act 1979*; or
- [(c) deleted]
- (d) 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 Western Australian Industrial Relations Commission;

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

**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;

- (aa) 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 or 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; and
- (d) a tally or piece rate,

but does not include an allowance of any other kind unless the Commissioner has approved the allowance for the purposes of this definition;

**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);

**the employee's average weekly hours** means the average number of hours (not including overtime) that the employee worked each week during the employee's period of continuous service;

**the employee's full-time weekly pay** 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;

***the employee's period of continuous service*** 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 Commissioner's opinion, there are reliable records of the hours worked each week by the employee; or
- (b) if paragraph (a) does not apply, in the period of 10 years, ending on the day of acceptance by the employee of, as the case requires —
  - (c) an offer referred to in regulation 9(1) or 19(1); or
  - (d) an offer of a severance payment referred to in regulation 20(1);

***the employee's potential full-time weekly hours*** means the number of hours (not including overtime) that the 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.

- (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.
- (5) 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, is owned by the State but is not within the Public Sector —
  - (a) that body is not “a person outside the Public Sector” for the purposes of regulation 8(1); and
  - (b) any office, post or position in that body is not an “office, post or position outside the Public Sector” for the purposes of regulation 19(1).

*[Regulation 3 amended in Gazette 12 Dec 1995 p. 6067-8; 24 May 1996 p. 2166-7; 16 Aug 1996 p. 4049; 15 Aug 2003 p. 3691; 5 Nov 2010 p. 5569; 26 Jun 2013 p. 2649-50.]*

#### **4. Application**

- (1) Subject to subregulations (2A) and (2), these regulations apply to and in relation to all employees in departments or organisations and to all employing authorities of departments or organisations.

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- (2A) An employee who is employed under a contract of employment that has a fixed term and who is not a permanent officer —
- (a) is not eligible for redeployment under these regulations; and
  - (b) if section 59 of the Act applies to the employee or the employee is a ministerial officer, is not eligible for voluntary severance under these regulations.
- (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; or
  - (b) whose employment in the Public Sector is terminated because of misconduct or substandard or unsatisfactory performance; or
  - (c) who is dismissed under Division 3 of Part 5 of the Act; or
  - [(d) *deleted*]
  - (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.

*[Regulation 4 amended in Gazette 16 Aug 1996 p. 4050;  
26 Jun 2013 p. 2650-1.]*



## **Part 1A — Notice of redundancy**

*[Heading inserted in Gazette 1 Sep 2000 p. 5020.]*

### **4AA. Entitlement to be consulted regarding redundancy**

- (1) As soon as is practicable after an employing authority determines that —
  - (a) the office, post or position of an employee is to be abolished and the employee may become surplus to the requirements of his or her department or organisation; or
  - (b) the employee may otherwise become surplus to the requirements of his or her department or organisation,the employing authority must give the employee written notice of all relevant information relating to the determination.
- (2) Without limiting subregulation (1), the notice given under that subregulation is to include —
  - (a) the reasons why —
    - (i) the office, post or position of an employee is to be abolished and the employee may become surplus to the requirements of his or her department or organisation; or
    - (ii) the employee may otherwise become surplus to the requirements of his or her department or organisation;and
  - (b) any measures the employing authority considers could be taken that would avoid the employee becoming surplus to the requirements of the department or organisation; and
  - (c) the period within which the employee may become surplus to the requirements of the department or organisation; and

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- (d) if other employees in the same department or organisation are the subject of a determination of the kind referred to in subregulation (1), the number of those employees.
- (3) The employing authority of an employee given a notice under subregulation (1) must consult the employee in relation to the matters set out in the notice.
- (4) 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.
- (5) Notice given to an employee under subregulation (1) does not constitute notice for the purposes of regulation 4A(2).

*[Regulation 4AA inserted in Gazette 8 Aug 2006 p. 2904-5;  
amended in Gazette 26 Jun 2013 p. 2651.]*

**4A.      Entitlement to notice of redundancy and pay in lieu**

- (1) In this regulation —  
**pay** has the same meaning as it has in regulation 20(7);  
**prescribed written notice** means —
  - (a) in the case of notice in relation to an employee who is an applicant under a scheme approved under regulation 5A(1) — 20 weeks' written notice;
  - (b) otherwise — 12 weeks' written notice.
- (2) The employing authority of an employee must give the employee at least the prescribed written notice of the fact that —
  - (a) the employee's office, post or position is to be abolished and the employee will become surplus to the requirements of his or her department or organisation; or
  - (b) the employee will otherwise become surplus to the requirements of his or her department or organisation.

- (3) An employee who does not get such notice is entitled to one weeks' pay for each week, or a part of a week, of notice that he or she did not get.
- (4) Payment of an entitlement under subregulation (3) may only be made if the employee accepts an offer made under regulation 6, 15 or 16.

*[Regulation 4A inserted in Gazette 1 Sep 2000 p. 5020; amended in Gazette 19 Apr 2002 p. 2117; 26 Jun 2013 p. 2652.]*

**5A. Minister may approve voluntary severance 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.

*[Regulation 5A inserted in Gazette 26 Jun 2013 p. 2653.]*

## **Part 2 — Transfer and voluntary severance**

### **5.        Certain employees may be transferred**

- (1) The employing authority of an employee whose office, post or position in a department or organisation is abolished may transfer that employee from the abolished office, post or position 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.
- (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.

### **6.        Voluntary severance for certain employees**

- (1) The employing authority of an employee may, with the prior approval of the Commissioner, offer voluntary severance to an employee —
  - (a) whose office, post or position is, or is to be, abolished and who is, or will become, surplus to the requirements of his or her department or organisation; or
  - (b) who is, or will become, otherwise surplus to the requirements of his or her department or organisation.
- (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 Commissioner such information concerning the severance payment as the Commissioner requires.

*[Regulation 6 amended in Gazette 5 Nov 2010 p. 5569;  
26 Jun 2013 p. 2653-4.]*

**7. Substituted voluntary severance for surplus employees**

- (1A) In this regulation —

**surplus employee** means an employee —

- (a) whose office, post or position has been abolished and who is surplus to the requirements of his or her department or organisation; or
- (b) who is otherwise surplus to the requirements of his or her department or organisation.

- (1) If —

*[(a) deleted]*

- (b) a surplus employee is willing to be transferred to the office, position or post of another employee in another department or organisation who wishes to resign his or her office, post or position (**the other employee**); and
- (c) the Commissioner 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 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 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 Commissioner such information concerning the severance payment as the Commissioner requires.

*[Regulation 7 amended in Gazette 5 Nov 2010 p. 5569;  
26 Jun 2013 p. 2654.]*

## **Part 3 — Privatization and contracting out**

### **8. Private sector offers of offices, posts or positions on privatization 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; 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 shall notify in writing each employee in that department or organisation who is or will be affected by that sale or other disposal, or replacement, of —
- (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 organisation 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.

**9. 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 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 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; and
- 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 —
  - (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 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.

*[Regulation 9 amended in Gazette 24 May 1996 p. 2167;  
5 Nov 2010 p. 5569.]*

**10. 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 9 or to a severance payment.

*[Regulation 10 inserted in Gazette 5 Nov 2010 p. 5570.]*

**11A. Employees dismissed under certain continued sections of Act not entitled to certain payments**

An employee who is dismissed under section 86(3)(a) or (9)(b)(i), 88(1)(b)(i) or 89(1) of the Act, as continued under Schedule 8 clause 2(1) of the Act, is not entitled to any payment under regulation 9 or to a severance payment.

*[Regulation 11A inserted in Gazette 5 Nov 2010 p. 5570.]*

## **Part 4 — Registered employees**

### **11. Registration of employees**

(1A) In this regulation —

*surplus employee* means an employee —

- (a) whose office, post or position has been abolished and who is surplus to the requirements of his or her department or organisation; or
  - (b) who is otherwise surplus to the requirements of his or her department or organisation.
- (1) The employing authority of a surplus employee who cannot be transferred within his or her department or organisation may apply to the Commissioner to register that employee.
- (2) An application made under subregulation (1) shall be —
- (a) in writing; and
  - (b) on such form as the Commissioner approves.
- (3) If, on an application made under subregulation (1), the Commissioner is satisfied that the employee is an employee of the kind described in that subregulation, the Commissioner may register the employee.

*[Regulation 11 amended in Gazette 16 Aug 1996 p. 4050;  
5 Nov 2010 p. 5569; 26 Jun 2013 p. 2654-5.]*

### **12. Special leave for registered employees**

- (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.

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- (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.

**13. Redeployment of registered employees**

- (1) If a registered employee is offered employment, whether in his or her own department or organisation or in another department or organisation, 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 Commissioner is satisfied that, a registered employee having been offered suitable employment in a department or organisation, the registered employee has —
  - (a) refused that offer; or
  - (b) hindered or obstructed his or her redeployment to that suitable employment,the Commissioner may in writing direct the registered employee forthwith to accept that offer.
- (3) 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 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.

*[Regulation 13 amended in Gazette 5 Nov 2010 p. 5569.]*

**14. Retraining of registered employees**

- (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 Commissioner.
- (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 Commissioner 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

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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.

*[Regulation 14 amended in Gazette 5 Nov 2010 p. 5569.]*

**15. Voluntary severance for certain registered employees**

- (1) The employing authority of a registered employee may, with the prior approval of the Commissioner, 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 Commissioner such information concerning the severance payment as the Commissioner requires.

*[Regulation 15 amended in Gazette 5 Nov 2010 p. 5569.]*

**16. Voluntary severance initiated by registered employees**

- (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 Commissioner, 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 Commissioner such information concerning the severance payment as the Commissioner requires.

*[Regulation 16 amended in Gazette 5 Nov 2010 p. 5569.]*

**17. Substituted voluntary severance for surplus registered employees**

- (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 Commissioner 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 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 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 Commissioner such information concerning the severance payment as the Commissioner requires.

*[Regulation 17 amended in Gazette 5 Nov 2010 p. 5569.]*

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

- (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 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) 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 Commissioner 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.

*[Regulation 18 amended in Gazette 16 Aug 1996 p. 4050;  
5 Nov 2010 p. 5569.]*

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

- (1) If the Commissioner 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 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; and
- 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 —
- (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 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.

*[Regulation 19 amended in Gazette 24 May 1996 p. 2168;  
5 Nov 2010 p. 5569.]*

## **Part 5 — Voluntary severance payments and other benefits**

### **20. Severance payments**

- (1) Subject to subregulations (1a), (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 3 weeks' pay for each complete year of continuous service served by the employee in the Public Sector (including a ministerial office).
- (1a) A severance payment made under regulation 6, 7, 15, 16 or 17 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.
- (2) The amount of a severance payment is not to exceed the amount of 52 weeks' pay.
- (3) For the purposes of subregulations (1) and (2), 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; and
  - C is the employee's average weekly hours expressed as a percentage of the employee's potential full-time weekly hours.
- (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 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.

- (6) If the Commissioner 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 Commissioner may approve of that higher severance payment being made to an employee who comes within that class.

- (7) 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 —

- (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.

*[Regulation 20 amended in Gazette 24 May 1996 p. 2168; 19 Apr 2002 p. 2117-18; 16 May 2003 p. 1703; 8 Aug 2006 p. 2905; 5 Nov 2010 p. 5569.]*

## **21. Other benefits payable on voluntary severance**

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.

**22. Restriction on employment in Public Sector**

- (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 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 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.

*[Regulation 22 amended in Gazette 5 Nov 2010 p. 5569.]*

## **Part 6 — General**

### **23. Rate of pay of surplus employees**

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.

### **24. Employing authorities to notify Commissioner of vacancies**

- (1) Subject to subregulation (2), whenever a vacancy occurs in an office, post or position in a department or organisation, the employing authority of the department or organisation shall in writing notify the Commissioner of the vacancy and the vacancy shall not be filled without the approval of the Commissioner.
- (2) The Commissioner may, by notice in writing served on the employing authority of a department or organisation —
  - (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.

*[Regulation 24 amended in Gazette 5 Nov 2010 p. 5569.]*

### **25. Prescribed period for certain references**

For the purposes of section 95(3) of the Act, the prescribed period is 21 days.

*[Regulation 25 amended in Gazette 16 Aug 1996 p. 4050.]*

**26.        Transitional provision: Ministerial actions**

- (1) In this regulation —
- commencement day*** means the day on which the *Public Sector Management (Redeployment and Redundancy) Amendment Regulations 2010* Part 2 comes into operation.
- (2) Any approval, direction or exemption given, determination, allowance or arrangement made or agreement entered into by the Minister under a provision of these regulations as in force before the commencement day and of effect immediately before that day continues to be of effect as if it were an approval, direction or exemption given, a determination, allowance or arrangement made or an agreement entered into by the Commissioner under that provision.
- (3) Any application made or notice given to the Minister under a provision of these regulations as in force before the commencement day and of effect immediately before that day continues to be of effect as if it were made or given to the Commissioner under that provision.

*[Regulation 26 inserted in Gazette 5 Nov 2010 p. 5568-9]*



## Notes

- <sup>1</sup> This is a compilation of the *Public Sector Management (Redeployment and Redundancy) Regulations 1994* and includes the amendments made by the other written laws referred to in the following table<sup>1a</sup>. The table also contains information about any reprint.

**Compilation table**

Citation	Gazettal	Commencement
<i>Public Sector Management (Redeployment and Redundancy) Regulations 1994</i>	30 Sep 1994 p. 5033-55	1 Oct 1994 (see r. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Public Sector Management (Redeployment and Redundancy) Amendment Regulations 1995</i>	12 Dec 1995 p. 6067-8	12 Dec 1995
<i>Public Sector Management (Redeployment and Redundancy) Amendment Regulations 1996</i>	24 May 1996 p. 2166-8	24 May 1996
<i>Public Sector Management (Redeployment and Redundancy) Amendment Regulations (No. 2) 1996</i>	16 Aug 1996 p. 4049-50	16 Aug 1996
<i>Public Sector Management (Redeployment and Redundancy) Amendment Regulations 2000</i>	1 Sep 2000 p. 5019-20	1 Sep 2000
<b>Reprint of the <i>Public Sector Management (Redeployment and Redundancy) Regulations 1994</i> as at 1 Mar 2002</b> (includes amendments listed above)		
<i>Public Sector Management (Redeployment and Redundancy) Amendment Regulations 2002</i>	19 Apr 2002 p. 2117-18	19 Apr 2002
<i>Public Sector Management (Redeployment and Redundancy) Amendment Regulations 2003</i>	16 May 2003 p. 1703	16 May 2003
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003</i> r. 15	15 Aug 2003 p. 3685-92	15 Sep 2003 (see r. 2)
<i>Public Sector Management (Redeployment and Redundancy) Amendment Regulations 2006</i>	8 Aug 2006 p. 2903-5	8 Aug 2006
<b>Reprint 2: The <i>Public Sector Management (Redeployment and Redundancy) Regulations 1994</i> as at 27 Oct 2006</b> (includes amendments listed above)		

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Public Sector Management (Redeployment and Redundancy) Amendment Regulations 2010</i>	5 Nov 2010 p. 5568-70	Pt. 1: 5 Nov 2010 (see r. 2(a)); Pt. 2: 1 Dec 2010 (see r. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563); Pt. 3: 28 Mar 2011 (see r. 2(c) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Public Sector Management (Redeployment and Redundancy) Amendment Regulations 2013</i>	26 Jun 2013 p. 2649-55	r. 1 and 2: 26 Jun 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 27 Jun 2013 (see r. 2(b))

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### **Provisions that have not come into operation**

<b><u>Citation</u></b>	<b><u>Gazettal</u></b>	<b><u>Commencement</u></b>
<i>Public Sector Management (Redeployment and Redundancy) Regulations 2014</i> r. 45 <sup>2</sup>	30 Dec 2014 p. 5523-63	1 May 2015 (see r. 2(b))

<sup>2</sup> On the date as at which this compilation was prepared, the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* r. 45 had not come into operation. It reads as follows:

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