Redeployment and Redundancy

A Guide for Agencies

Introduction 2

Legislative framework 3

Operating framework 4

Roles and responsibilities 6

Stage 1: Registrable employees 8

Voluntary severance 10

Stage 2: Redeployment 18

Stage 3 - Termination of employment 24

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Introduction

Part 6 of the *Public Sector Management Act 1994* (PSMA) now provides the capacity for regulations to made in regards to redeployment and redundancy arrangements. Such arrangements may ultimately end with the termination of employment of employees who are surplus to an agency’s requirements or whose office, post or position has been abolished and cannot be found alternative suitable employment.

Involuntary termination of employment is a measure of last resort for employees, who after the defined redeployment period, are unable to be redeployed to an alternative suitable position elsewhere in the public sector.

The Public Sector Management (Redeployment and Redundancy) Regulations 2014 take effect on 1 May 2015 and set out the arrangements for redeployment and redundancy applications. Commissioner’s Instruction (No. 12) – Redeployment and Redundancy sets out further requirements of a procedural nature to support the operation of Part 6 of the PSMA and the regulations.

The new redeployment and redundancy arrangements facilitate a cultural change in the employment relationship. A greater onus is now placed on both the employer and the employee to be more active in managing these arrangements.

It is important that agencies are aware of the framework governing redeployment and redundancy applications and exercise their relevant obligations in regards to managing their workforce.

These guidelines are not intended to be prescriptive in nature but have been prepared to assist in the practical application of the redeployment and redundancy framework.

Information contained within these guidelines must be read in conjunction with legislative provisions contained within the PSMA, the regulations and applicable Commissioner’s instructions.

Case management guidelines supplements these guidelines and is intended to provide a practical resource for agency case managers when providing case management support to employees.

Agencies may find this section helpful in the development of their own internal policies relating to the provision of appropriate case management.

Legislative framework

Arrangements for redeployment and redundancy in the Western Australian public sector are set out in regulations made under the PSMA and supported by Commissioner’s instructions (CI). It is important that all instruments are read in conjunction with each other.

## Public Sector Management Act – Part 6

Following amendments made in July 2014, the PSMA now provides the capacity to implement redeployment arrangements that may ultimately end with the involuntary termination of employees who are surplus to an agency’s requirements or whose office, post or position has been abolished.

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

The regulations repeal and replace the Public Sector Management (Redeployment and Redundancy) Regulations 1994.

The regulations apply to all employees covered by the PSM Act. Parts 2 – 6 of the regulations do not apply to those employees set out in regulation 5.

## Commissioner’s instructions

### Commissioner’s instruction (No.11) – Redeployment Standard (CI No.11)

This CI applies to employing authorities and employees under the PSMA to the extent that matters of redeployment are not dealt with by the operation of Part 6 of the PSMA and the regulations.

Effectively, it deals with scenarios of narrow application. It applies only to the movement of an employee, together with the movement of his or her office, post or position within departments and organisations.

### Commissioner’s instruction (No.12) – Redeployment and Redundancy (CI No.12)

This CI sets out further requirements of a procedural nature to support the operation of Part 6 of the PSMA and the regulations.

## Termination, Change and Redundancy General Order

The Termination, Change and Redundancy General Order issued by the Western Australia Industrial Relations Commission provides minimum entitlements for all employees dismissed other than for reason of misconduct. This Order must be read in conjunction with the above legislation, CIs and these guidelines.

## Relevant Circulars

A number of Government circulars issued by the Department of Mines, Industry Regulation and Safety have relevance to redeployment and redundancy matters. Please refer to the Department of Mines, Industry Regulation and Safety [website](https://www.commerce.wa.gov.au/labour-relations/circulars-departments-and-organisations) for further information.

Operating framework

# Operating model

The legislative framework underpins a three stage operating model: Stage 1: Identification and notification of a registrable employee Stage 2: Employee registered for redeployment period

Stage 3: Employee redundancy/termination of employment

The following diagram provides an illustration of the operating model.



## Key principles of the operating model

The framework is supported by a number of underlying principles and practices:

1. **Involuntary termination of employment is a measure of last resort.**

As a consequence of a change process, for example structural change, jobs may be abolished or there may be a number of employees who are surplus to the requirements of the agency. Internal placement, appropriate retraining opportunities, voluntary severance and redeployment remain preferred approaches where practicable.

Involuntary termination is an option of last resort following an exhaustive period of pursuing the preferred options.

Involuntary termination of employment should not be used primarily as a means of dealing with disciplinary, substandard performance or health issues, for which established mechanisms already exist.

1. **A shared and ongoing responsibility exists between the employing authority and the employee.**

Employees are required to take an active and cooperative approach to obtaining alternative suitable employment.

Agencies are required to appropriately resource and provide adequate case management and other support services to assist employees in managing change activities and effect work transition outcomes.

1. **Priority should be given to registrable and registered employees for placements where appropriate.**

Prior to registration, efforts should be made to effect the movement of registrable employees to public sector placement opportunities (internal to the agency or elsewhere in the public sector) through collaborative and negotiated arrangements where appropriate.

Suitably qualified registered employees must be given priority consideration for placement in public sector vacancies. Agencies with vacancies are required to consider the claims of any referred registered employees prior to advertising.

# Appeal rights established under the PSMA

Sections 95 and 96A of the PSMA establish rights for matters to be referred to the Western Australian Industrial Relations Commission (WAIRC) (but not to its constituent authorities, such as the Public Service Arbitrator or the Railways Classification Board).

A ‘section 94 decision’ is defined by section 95(1) and means a decision made or purported to be made under regulations referred to in section 94 (other than a decision which is a lawful order by virtue of section 94(4)). A section 94 decision relates to any decision made under the regulations up to the point of involuntary termination. The WAIRC is able to review the matter to the extent of determining whether or not the regulations have been fairly and properly applied.

A matter can be referred to the WAIRC within a period of 21 days after the making of the decision.

Rights of review to the WAIRC also exist for an employee who has been the subject of involuntary termination of employment under s95A of the PSMA. Such a matter can be referred for review within a period of 21 days after employment is terminated.

In relation to section 95A decisions, section 96A of the PSMA confines the jurisdiction of the WAIRC to determining whether the employee has been allowed the benefits to which they are entitled under the regulations. Practically, the WAIRC can determine whether an employee has been afforded the appropriate severance payment.

Roles and responsibilities

## Employing authority

The employing authority has responsibility and accountability for the management of their employees affected by changed work situations. It is expected that employing authorities will:

* be aware of their specific obligations as set out in the regulations and CIs
* ensure registrable and registered employees are provided with the appropriate level of assistance and case management support
* consult and notify employees as required under regulations 8 and 9 and CI No.12 ensure agency operating policies and procedures are accessible
* provide employees with meaningful interim work arrangements.

## Registrable and registered employees

Registrable and registered employees are expected to actively participate in the redeployment process and need to cooperate in considering all reasonable public sector job or retraining opportunities both internal and external to their agency.

It is expected that employees will:

* be flexible and responsive to changing work situations
* cooperate with services offered to equip them and assist their career transition efforts including coping with change and job readiness training
* prepare a competitive resume, and when referred for positions prepare for the interview, familiarise themselves with the role and function of the agency and present in a positive manner
* cooperatively and actively participate in job readiness training and other development opportunities
* co-operate and be accepting of the agency’s efforts to provide them with meaningful interim work arrangements
* actively pursue alternative employment opportunities and be willing to consider all available options including, internal transfer, secondments, retraining and external redeployment
* be aware of their obligation to adhere to the requirements of relevant legislation, CIs and operating policies

## Public Sector Commission

The Public Sector Commissioner has responsibility for the overall effective management and operation of the public sector including supporting the sector in the administration of the redeployment process.

The Public Sector Commissioner retains the power to direct an employee and an employing authority as set out in regulations 23 and 24.

Specifically, the Commission will:

* implement and maintain a whole of sector redeployment and redundancy framework to assist agencies effectively manage their registrable and registered employees
* provide advice to the sector about relevant legislation, Commissioner's instructions and guidelines
* provide electronic access to job vacancies, and the management of redeployment and redundancy activity through the Recruitment Advertising Management System (RAMS)
* manage the RAMS contract and maintain a central redeployment and redundancy database for whole of Government reporting.

Stage 1: Registrable employees

# Registrable employee

Section 94(1A) of the PSMA establishes the definition of a ‘registrable employee’ as an employee:

1. who is surplus to the requirements of a department or organisation; or
2. whose office, post or position has been abolished; or
3. in a category prescribed by the regulations.

Both permanent employees and employees employed under a fixed term contract can be identified as registrable for the purposes of Part 6 of the PSMA and the regulations.

## Identification of a registrable employee

The basis for an employee being identified as registrable will vary depending on the reasons associated with their job being abolished or the employee being surplus to requirements.

Major structural changes may potentially result in a large number of employees becoming registrable employees. In other circumstances, only one or a few employees may be impacted by changes in job roles to meet revised work priorities, or as a result of the introduction of new technology.

Each circumstance needs to be considered on its individual merits and all decisions should be transparent.

## Consultation and notification requirements

Regulation 8 requires the employing authority to consult appropriately and notify the employee in writing that an employee is or may become a ‘registrable’ employee and the reasons for such.

As soon as practicable after a determination is made, an employing authority is to ensure that affected employees are given an appropriate opportunity to comment and express their views concerning the determination. This requirement is contained in CI No.12.

Further notification requirements, set out in regulation 9, require an employee to be notified if they are or are to become registrable. The notice advises the employee in writing that their job is, or is to be, abolished, or they are, or will become, surplus to requirements and that they may be:

1. transferred under regulation 10 or
2. registered under regulation 18.

The notice should also confirm the date on which the employee became or is to become a registrable employee.

The legislative framework does not prescribe a specified duration for the period an employee can remain a registrable employee. The employing authority has the discretion to determine the period a person remains a registrable employee and may at any time, in writing, revoke a registrable employee notification.

## Case management and support services

Once notified, an employing authority must take reasonable measures to assess opportunities for ongoing employment in their agency and the broader public sector and support the registrable employee in pursuing these.

Agency case managers play an important role in facilitating outcomes for registrable employees.

Outcomes may be facilitated through the provision of a number of services associated with job matching and referral processes; providing mediation services and assisting employees to better equip and prepare themselves for change and alternative placement opportunities.

More detailed information on case management services and processes are provided in the Case Management Guidelines.

# Interim work placement

Registrable employees are to be provided with meaningful interim work arrangements, which could be different from work undertaken in their former position.

Wherever possible, interim project or other work is to be appropriate to their level of classification, skills and experience. The employing authority is also responsible for the continued payment of salaries/wages during this time.

## Internal placements

It is expected that appropriate internal placements are actively sought for any registrable employee. This may include suitable placements that are currently available or likely to become available into which the employee may be retrained or placed.

A framework for assessing the suitability of registrable employees for appointment to internal job placements may need to be considered as part of developing an agency’s internal policies.

## Transfer of registrable employee

Regulation 10 provides for registrable employees to be transferred internally to an alternative position at the same or equivalent level of classification. For this purpose, ‘equivalent’ may involve positions that have comparable conditions and rates of pay. This may enable registrable employees to move to alternative internal positions that involve across award movement.

For employees employed on a fixed term contract, transfers may occur to another position within the agency under a new fixed term contract on the same or equivalent terms and for a term that does not exceed the term of the contract they were previously employed.

## Access to external public sector vacancies during stage 1

RAMS provides agency case managers of registered employees with a daily listing of public sector job placement opportunities. Placement opportunities on that listing may be considered for potential retraining and/or placement opportunities for registrable employees.

Case managers may contact relevant agencies to facilitate such consideration by managers. While there is no obligation on the agency with the vacancy to agree to consider the registrable employee’s claims it is expected that agencies will undertake some consideration.

Voluntary severance

The employing authority may offer voluntary severance to a registrable employee who has been notified under regulation 9(1) and who cannot be suitably transferred to another position within the agency.

CI No.12 also requires the employing authority to take reasonable measures to ensure the employee is not engaged in an occupational group for which employment shortages or demands exist in the public sector. Offers of voluntary severance must not be made where a reasonable likelihood of the employee being found alternative employment elsewhere in the public sector exists.

Voluntary severance can be offered to both eligible permanent employees and employees employed on a fixed term contract. For registrable employees engaged on a fixed term contract, voluntary severance may only be offered where a clear net benefit to Government can be demonstrated based on the amount that would be paid for a severance payment compared to the cost involved for the remaining portion of time left on the employee’s contract term.

Voluntary severance is not available to an employee once they are registered for redeployment.

Voluntary severance should not be used as a means of primarily addressing disciplinary, substandard performance or ill-health issues, for which appropriate mechanisms exist elsewhere.

## Calculation of a voluntary severance payment

Regulation 13 provides for a standard severance payment of three weeks’ pay for each year of continuous service, up to a maximum of 52 weeks. Employees who have completed more than one but less than two years of continuous service are entitled to a severance payment equal to four weeks’ pay.

The regulations provide for ‘continuous service’ when determining a severance payment to be both:

* service that constitutes continuous service as defined in the [Wages Employees Long Service Leave General Order](http://www.wairc.wa.gov.au/index.php/en/general-orders); and
* service that has been served by the employee in the Western Australian Public Sector as defined in section 3 of the PSM Act. Service also includes service in other Commonwealth or State Government jurisdictions where no more than one week has elapsed between the external service and commencement in the WA public sector. It does not include service within Local Government or as a sworn officer in the WA Police Service.

### Rate of pay for part time service

In determining the weekly pay of an employee who, during the employee’s continuous service, worked a different number of hours in different weeks the following formula as set out in regulation 13 is to be used:

**A = B x C**

Where:

A = the employee’s weekly pay

B = the employee’s full time weekly pay

C = the employee’s average weekly hours expressed as a percentage of the employee’s potential full time weekly hours.

### Rate of pay applicable when higher duties involved

For the purposes of calculating an employee’s ‘pay’, regulation 13(1) includes the payment of an allowance for temporarily undertaking duties other than those of the employee’s substantive position or a higher duties allowance that has been paid to the employee continuously for the preceding 12 month period.

Where an employee has been in receipt of a higher duties allowance at two different classification levels, the higher duties allowance rate received by the employee for the greater portion of the preceding 12 month period of the acting period would be the rate applied for the severance calculation.

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| **Example of Severance Payment Involving Different Hours in Different Weeks**An employee who has worked a different span of hours over the past four years of their continuous service in the public sector has been offered and is interested in accepting an offer of severance.They had worked an average of 22.5 hours per week for 6 months, 30 hours per week for six months, 37.5 hours per week per week for 12 months, 30 hours per week for 12 months and 37.5 hours per week for the last 12 months. Had they been employed on a full time basis their rate of pay at the date of accepting voluntary severance would have been $ 60,000. Their potential full time weekly hours would have been 37.5 hours.Their severance payment would be 12 weeks based on the application of regulation 13(2) – i.e. three weeks’ pay for each year of continuous service.The rate of pay to be applied would be calculated as follows: A = the pay rate to be determined.B = the pay rate they would have received had they been employed on a full time basis, i.e. $ 60,000.C = average weekly hours expressed as a percentage of the employee’s potential full time weekly hours, i.e., 37.5 hours.Calculation:* total period worked = four years or 208 weeks.
* total hours worked in that period = 6825 hours.
* average weekly hours: 6825 (total hours) divided by 208 (total weeks) = 32.81 hours.
* percentage of full time weekly hours (i.e., 37.5 hours) = 87.5 %.

Payment rate then based on 87.5% x current rate of pay (as defined under regulation 3 of the Public Sector Management (Redeployment and Redundancy) Regulations 2014). |

### Substituted voluntary severance arrangements

Regulation 12 provides the capacity for substituted voluntary severance for registrable employees.

Substituted severance is open to both permanent and fixed term contract employees if a registrable employee is willing to be transferred to the office, post or position of another employee in the same or another agency.

Where the appropriate circumstances exist to facilitate a substituted severance arrangement, the two respective agencies involved should liaise directly with each other to negotiate an outcome.

The agency with the registrable employee will be responsible for facilitating the transfer of the employee to the resultant vacancy and meeting the costs associated including the severance payment, any leave entitlements and an incentive payment.

Where a substituted severance arrangement has been facilitated, the agency with the registrable employee is required to notify the Public Sector Commission by submitting the relevant details on RAMS.

Substituted severance arrangements are not applicable to registered employees.

### Incentive payment

Regulation 15 provides for the payment of the following incentive payment to an employee who accepts an offer of voluntary severance and resigns within a period of four weeks from the date of acceptance of the offer. regulation 15 is also applicable to substituted severance arrangements.

The incentive payment will decrease proportionately as follows:

|  |  |
| --- | --- |
| Resignation day | Incentive Payment |
| If resignation day is less than one week after acceptance day | 12 weeks’ pay |
| If resignation day is more than one week and less than two weeks after acceptance day | eight week’s pay |
| If resignation day is more than two weeks and less than three weeks after acceptance day | four weeks’ pay |

An incentive payment is not applicable where the resignation day is more than three weeks and less than four weeks after acceptance day.

The incentive payment is in addition to the voluntary severance payment calculated under regulation 13 and does not form part of the employee’s ‘period of restriction’ for subsequent re-employment in the public sector.

## Process considerations

### Offer of voluntary severance

The process associated with the offering of voluntary severance will vary depending on the nature of the individual agency circumstances.

Regulation 11(2) requires the employing authority to make a formal offer of severance to the employee which must:

* specify a period within which the registrable employee is required to accept or refuse the offer- being a period that is no less than 8 weeks from the date of the offer. [Non- receipt of a response by the completion of that period will be taken to mean that the employee has refused the offer]
* notify the employee that refusal to accept the offer may result in the employee being registered for redeployment with the potential for their employment being terminated
* provide for the estimated payment of a severance payment under the regulations which should be paid as soon as practicable after the resignation takes effect
* provide estimated payments for the employee's leave entitlements and an incentive payment
* inform the employee of public sector re-employment restriction requirements.

### Accepting an offer of voluntary severance

An employee who accepts an offer of voluntary severance must do so in writing and formal acceptance of the offer is binding on the employee.

As soon as practicable after the receipt of the acceptance of the offer the employing authority will provide formal confirmation to the employee regarding the cessation of their employment.

The letter in that regard will confirm the decision and the terms and conditions of the voluntary severance including:

* confirmation of the cessation date
* final severance; leave and incentive payment details
* details of re-employment restriction arrangements.

### Taxation and superannuation considerations

Individual employees are encouraged to obtain their own advice direct from the Australian Taxation Office on any taxation enquiries concerning their personal circumstances.

Similarly, for matters relating to superannuation, individuals should contact their individual superannuation provider to obtain current and relevant superannuation advice.

### Notification requirements

Regulation 41 requires the employing authority to advise the Public Sector Commissioner through RAMS of the name and former office, post or position of the employee, the amount of the payment and the basis upon which the amount was calculated.

Where structural change activity is likely to involve a significant number of employees being offered voluntary severance, the employing authority should also inform the relevant Minister and the Department of Commerce (Labour Relations Directorate).

### Obligation to notify Centrelink

The Termination Change and Redundancy General Order places requirements on employers to notify Centrelink of terminations. This requirement applies regardless of the number of employees involved.

Agencies should be aware of these specific obligations in order to ensure compliance with Centrelink’s requirements.

# Restriction on re-employment

Unless granted an exemption under regulation 17(2), registrable employees taking a voluntary severance payment cannot be re-employed within the public sector for a period of restriction determined under regulation 17(1) on either:

* a contract of service basis; or
* a contract for service basis, where direct consultancy arrangements apply.

Both of these arrangements imply a direct employment relationship and are not permitted.

The period of restriction equates to the total number of weeks in respect to the severance payment made to the individual. It does not include any periods associated with the employee's leave component or incentive payment. The same basis applies for determining the period of restriction for employees who have worked part time.

## Severance payment refund calculation

The following formula, incorporated into an example to assist agencies, is used to calculate a severance repayment where a former employee who accepted voluntary severance is granted an exemption and is re-employed within the period that was used to calculate their severance payment.

 **A = B X (D-C) /D**

Where:

A = the amount repayable.

B = severance component of the redundancy payment as defined by regulation 13.

C = the number of weeks from the date of the severance payment to being re-employed in
State Government employment.

D = the number of weeks used to calculate the severance payment (in the period of
restriction).

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| **Example of Severance Repayment** An employee has accrued 10 years’ service with a public sector employing authority. At the time that employee's substantive position was declared redundant, the weekly rate of pay was $500 per week. On accepting severance, the employee also received a 12 week incentive payment and payment for 10 weeks of accrued leave.Based on the above the total ‘period of restriction’ is thirty (30) weeks, being the amount paid for the severance pay period. (three weeks’ pay for 10 years of service).Fifteen weeks after the date the severance payment was made, the employee obtains an exemption and takes up a position with another public sector employing authority. The amount to be repaid would therefore be as follows:A = B x (D-C)/D.= $15,000 x (30 - 15)/30.= $7,500 repayment.Where:B = Weekly rate of pay x 30 = $15,000 (i.e. three weeks’ pay for every year of service, i.e. 3 x 10), as per regulation 13) for the employee’s severance component.C = 15 weeks (time elapsed since the date of their severance payment).D = 30 weeks (severance component of period of restriction). |

# Targeted separation scheme

Regulation 16 enables the Minister to approve a scheme which employees are invited to apply to be offered voluntary severance.

Under the terms of a targeted scheme, the Minister may provide for severance amounts that exceed the 52 weeks' payment applied under normal voluntary severance provisions.

Employees accepting voluntary severance under such a scheme are subject to the same re-employment restriction arrangements that apply under normal severance arrangements.

Stage 2: Redeployment

# Registration for redeployment

The employing authority may register a registrable employee for redeployment. The decision to register an employee is one for which the employing authority is solely responsible, and does not require the prior approval of the Public Sector Commissioner.

Registration may occur subject to compliance with requirements set out in regulation 18 and CI No.12.

Regulation 18 enables registration to occur if

1. the employee -
	1. has been given notice under regulation 9(1) of the regulations; and
	2. is a registrable employee; and
	3. cannot be transferred within his or her organisation; and
2. has been given written notice of the employing authority's intention to register the employee at least 14 days before the day of registration.

CI No.12 sets out that employers are not to register an employee for redeployment as a primary means of addressing disciplinary, substandard performance or ill health issues for which other established mechanisms exist.

## Process for registration

Regulation 18 requires the registrable employee to be given written notice of the employing authority's intention to register the employee for redeployment at least 14 days prior to registration.

It is expected that the formal notice would include the date on which the registration is to occur and the conditions associated with the redeployment period (for example the six month duration).

Registration is facilitated by the agency completing the online registration template on RAMS. The RAMS registration template requires information to be entered to confirm an agency has considered the requirements of regulation 18(1) and CI No.12.

It is important that the actual commencement date entered on RAMS reflects the registration date stated in the formal redeployment registration notice given to the employee.

# Redeployment period

The regulations provide for a redeployment period of six months to enable the registered employee the opportunity to be redeployed to alternative suitable employment.

For fixed term contract employees the redeployment period cannot exceed the duration of the term of their contract. Where the contract term is less than six months, the redeployment period ends on the last day of the employee's term of appointment.

The redeployment period commences on the date the employee becomes a registered employee as stipulated in the written notice of registration provided to the employee and reflected on RAMS.

Agencies are expected to provide adequate and reasonable support through the redeployment period and provide the employee with meaningful interim work arrangement. This could be different from work undertaken in their former position. Ideally, the work provided will be commensurate with the employee’s substantive classification level.

Registered employees are to receive classification maintenance. Classification maintenance offers the employee protection of the rate of pay to which the employee was entitled in respect to the substantive classification of their former position.

The duration of the redeployment period excludes any period of suspension approved by the employing authority and ceases if the employee's registration is revoked or they have found suitable employment.

## Capacity to suspend redeployment period or revoke registration

Regulation 29 provides the capacity for the employer to suspend the registered employee's redeployment period or revoke the employee’s registration. The decision to suspend or revoke rests with the employing authority and will be based on the individual merits of each case.

A decision to revoke the employee's redeployment registration should only be utilised in exceptional circumstances.

Such decisions need to be entered on RAMS.

## Benefits afforded to the registered employee during the redeployment period

### Priority access to public sector vacancies

Unless an exemption applies, CI No. 12 requires employing authorities to post all vacancies in excess of 6 months duration on RAMS and to gain a redeployment clearance from the Public Sector Commissioner prior to their filling.

Employing authorities with vacancies are required to give priority consideration to registered employees referred to them as possibly suitable candidates for filling a vacancy.

Processes for the matching, referral and assessment of registered employees are covered in more detail in Case management guidelines.

Vacancies submitted on RAMS must include an appropriate job description (JDF or similar) as well as relevant contact officer details and take the following into consideration:

**Vacancy defined**

For redeployment purposes, a vacancy as defined in CI No. 2 – Filling a - Public Sector Vacancy, includes all posts, offices or positions, newly created, recently vacated or to be filled on a temporary basis in excess of six months.

**Exemption to refer vacancies**

CI No. 12 enables the Public Sector Commissioner to exempt the referral of vacancies for redeployment clearance. All requests for exemptions need to be formally submitted to the Public Sector Commission.

Requests may be sought to exempt a specific vacancy or for the referral of a class of vacancies. Requests for exemptions will be considered on a case by case basis.

**Pool recruitment**

Pool recruitment entered in RAMS that does not involve the immediate filling of an actual vacancy receives an automatic redeployment exemption. The purpose of these advertisements and processes simply involves the gathering together of a pool of suitable applicants for possible placement in future positions.

Pool recruitment that does involve the immediate filling of an actual position(s), with secondary actions involving the possibility of suitable applicants being considered for appointment to future vacancies do not represent a pool advertisement for redeployment exemption purposes.

All subsequent vacancies that arise and which are to be filled from applicants contained in an appointment pool or from a recruitment process need to be submitted for redeployment clearance. This requirement applies regardless of the time that has elapsed between the posting of the advertisement and the occurrence of the subsequent vacancy.

**Resubmission of cleared, non-advertised vacancies**

A vacancy clearance notification is valid for 3 months (90 days) from the date the vacancy status was changed in RAMS to ‘cleared for advertising’. A further redeployment clearance is required should actions to advertise or fill the position not have commenced prior to the expiration of that period.

**Process for filling reclassified positions**

The decision to give the current occupant of the position the benefit of any reclassification is a decision for the employing authority and is made in accordance with any relevant requirements.

However once the agency seeks to advertise and fill the position the normal redeployment clearance process using RAMS applies. There are no automatic clearances given in these circumstances and the claims of any registered employees referred for consideration should be treated in the same manner as any other redeployment referral.

### Special Leave

Regulation 19 requires an agency to grant their registered employee reasonable leave with pay to attend employment interviews either within or outside the public sector. The provision also requires reasonable leave to be granted for the purposes of seeking appropriate career and financial counselling.

‘Reasonable leave’ may be considered in circumstances where the employee is seeking career counselling or financial advice associated with redundancy pay arrangements, taxation or superannuation.

### Pay maintenance

Regulation 25(4) provides for pay maintenance arrangements to apply for a period of 6 months to a registered employee who accepts an offer of suitable employment which attracts a lesser rate of pay to the rate of pay they were entitled to in their former position. This provision is applicable in circumstances where a new placement is on a permanent or fixed term basis.

The pay maintenance period commences the day after the registered employee begins employment in a new position.

Pay maintenance arrangements provided for in regulation 25(4) do not apply to a registered employee who is employed in a position for retraining purposes under regulation 20. In the event the employee was subsequently offered and accepts an appointment to the position, the 6 month pay maintenance provision would commence on the date the registered employee begins employment in the position.

For pay maintenance purposes, regulation 3 defines pay as the award rate of pay and enterprise bargaining allowances and allowances for being in charge of other employees.

Allowances that are always paid with the award rate of pay applicable to the employee’s substantive classification, and which do not relate to conditions such as the time, place and circumstances at or in which the person is employed would also be included.

All leave entitlements are transferred to the new employing authority as provided for under regulation 25(2).

### Relocation assistance

Agencies are expected to be aware of requirements to meet relocation expenses where provided for in a relevant award or other written law. Where such a requirement is provided for, reimbursement will be in accordance with that award or written law.

### Retraining

Regulation 20 permits an employing authority to arrange for registered employees to be employed in a position for retraining purposes either inside or outside the public sector.

The period of retraining cannot exceed the registered employee's redeployment period. For term employees, with less than 6 months left on their contract, the maximum redeployment period will equate to the remaining term of their contract.

Retraining requires the approval of the employing authority. Consideration of the appropriateness of retraining is likely to depend on an assessment of employment being secured.

All three parties (the employee, their employing authority, and the employing authority providing the retraining opportunity) must agree to the retraining arrangements and the terms and conditions that are to apply. Retraining is not facilitated through an offer of employment.

CI No.12 requires the employing authority to confirm the retraining arrangements in writing to the registered employee. The notice also needs to provide provision for terminating the retraining arrangement.

Associated costs are to be met by the registered employee’s home agency, unless otherwise negotiated.

## Suitable employment criteria

The PSMA and the regulations provide specific criteria for defining what constitutes ‘suitable employment’ for registered employees. Such provisions broaden the scope for a suitably qualified registered employee to access a wider range of employment opportunities to those available under normal recruitment practices.

A suitable office, post or position or suitable employment is defined as one which:

* is suitable having regard to the respective responsibilities attached to it and to the office, post or position or employment occupied or held by the employee at the time when the relevant offer is made and to the experience, qualifications and competence of the employee
* does not require the employee to change his or her place of residence
* is the most suitable actually available; and the maximum pay applicable to the office, post or position or employment is:
	1. as close to that applicable to the former office post or position or employment as is reasonably practicable; and
	2. in any case, subject to regulation 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 by the employee.

### 80-110% provisions

The 80-110% provisions were intended to facilitate the movement of employees across awards. While designed to achieve redeployment outcomes these provisions were never intended to circumvent the principles of merit selection. Nor were they designed to be applied capriciously or oppressively to effect indiscriminate regressions and/or promotions within an employee’s existing award.

The application of the 80%-110% provisions is illustrated in the following example.

Mr X is employed at a level that carries a salary range of $92 490 - $98 501 per annum. To determine the range of salaries which may constitute potentially

suitable employment, the maximum of the range (i.e. $98 501) is multiplied by 80% to give the minimum acceptable salary and multiplied by 110% to give the maximum acceptable salary.

Minimum salary = $98 501- x 80% = $78 800

Maximum salary = $98 501 x 110% = $10 8351

Therefore alternative positions that carry a maximum salary of between $78 800 and $108 351 may, if all other criteria are met, be considered to be suitable positions.

# Cessation of registration

Following acceptance of an offer of suitable employment, a registered employee ceases to be registered on the day they commence in the new position.

This does not apply to the acceptance of retraining placements as an offer of employment cannot be made for the purposes of retraining.

Stage 3 - Termination of employment

# Termination of employment

A registered employee who has not been successfully redeployed by the end of the redeployment period will by virtue of that fact be deemed to be redundant. The operation of Part 6 of the regulations will result in the employment of that employee being terminated.

## Notice of redundancy

At least 4 weeks prior to the end of the employee’s redeployment period, the relevant employing authority must notify the registered employee in writing of their impending redundancy.

In accordance with the requirements of regulation 31 the employee must be advised of:

* the date of the last day of their redeployment period;
* that their employment terminates at the end of that period if they have not been redeployed by the completion of that period; and
* provided with details of the redundancy payment to which they would be entitled on termination.

Alternative redeployment opportunities can continue to be pursued by the registered employee following such notice being given up until the last day of the redeployment period.

## Registered employee may request early termination

At the request of the registered employee, an employing authority may agree to

terminate the employee’s employment prior to the completion of the redeployment period.

The request for early termination may be made by the employee at any time throughout their redeployment period and must be submitted in writing to the employing authority.

The decision to accept or reject the application for early departure is at the sole discretion of the employing authority. A decision must be conveyed to the employee in writing. That notice must confirm the date on which the termination is to take effect and details of the redundancy pay and other entitlements involved.

## Redundancy payment

Where the employment of a registered employee terminates at the completion of the 6 month redeployment registration period, the employee is entitled to receive:

* a redundancy payment of three weeks’ pay for each year of continuous service, up to a maximum of 52 weeks, served by the employee in the Public Sector (including a Ministerial Officer) less an amount equal to 26 weeks' pay; or
* where the amount calculated above is less than the minimum amount specified in the table set out in regulation 34, the minimum amount applies.

|  |  |  |
| --- | --- | --- |
|  | Employee’s period of continuous service with the employer at termination of employment | Redundancy pay period |
| 1 | Less than 1 year | Nil |
| 2 | At least one year but less than two years | four weeks |
| 3 | At least two years but less than three years | six weeks |
| 4 | At least three years but less than four years | seven weeks |
| 5 | At least four years but less than five years | eight weeks |
| 6 | At least five years but less than six years | 10 weeks |
| 7 | At least six years but less than seven years | 11 weeks |
| 8 | At least seven years but less than eight years | 13 weeks |
| 9 | At least eight years but less than nine years | 14 weeks |
| 10 | At least nine years | 16 weeks |

Where the employing authority agrees to terminate the employee’s employment prior to the completion of the redeployment period, the employee is entitled to receive:

* a redundancy payment of three weeks’ pay for each year of continuous service, up to a maximum of 52 weeks, 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 their employment terminates; or
* where the amount calculated above is less than the minimum amount specified in regulation 34, the minimum amount applies.

 ‘Continuous service’ to be recognised when determining a redundancy payment must be both:

* service that constitutes continuous service as defined in the [Wages Employees Long Service Leave General Order](https://www.wairc.wa.gov.au/en/guides-procedures?id=198) (Search under General Orders); and
* service that has been served by the employee in the Western Australian Public Sector as defined in section 3 of the PSM Act. It does not include service in other Federal or State Government jurisdictions or in Local Government or as a sworn officer in the WA Police Service.

Redundancy payments do not include any incentive payments.

# Restriction on employment in the public sector

An individual to whom a redundancy payment is made under regulation 32 or 33 must not be subsequently employed in the public sector for a period of restriction determined under regulation 36(1) on either:

• a contract of service basis or

• a contract for service basis, where direct consultancy arrangements apply.

The period of restriction equates to the total number of weeks in respect to the redundancy payment made to the individual. It does not include any periods associated with the employee's leave component. The same basis applies for determining the period of restriction for employees who have worked on a part time basis.

## Reporting requirements

Regulation 41 and CI No.12 require an agency to provide the Public Sector Commissioner with information on any redundancy payments made and any other relevant details as required.

For this purpose details regarding the termination of employment of a registered employee, including redundancy payment details, are required to be entered on RAMS.

## Taxation and superannuation implications

Individual employees are encouraged to obtain their own advice direct from the Australian Tax Office on any taxation enquiries concerning their personal circumstances.

Similarly, for matters relating to superannuation, individuals should contact their individual superannuation provider to obtain current and relevant superannuation advice