

Redeployment and Redundancy

Commissioner's Instruction 12

Statement of intent

This Commissioner's instruction (CI) sets out further requirements of a procedural nature to support the operation of Part 6 of the *Public Sector Management Act 1994* (PSM Act) and the Public Sector Management (Redeployment and Redundancy) Regulations 2014 (the Regulations).

Scope and application

This CI applies to all employing authorities and employees under the PSM Act. It replaces Commissioner's Circular 2009-28.

References

When making redeployment and redundancy employment decisions and exercising employment powers and functions the employing authority of each public sector body and its employees must comply as applicable with this CI, in addition to compliance generally with the PSM Act (particularly sections 8 and 9), [Public Sector Code of Ethics](#) and other relevant legislation.

Instruction

1. Registrable employees

When making a 'section 94 decision' (as defined by section 95(1) of the PSM Act) the relevant employing authority, or when being subject to a 'section 94 decision' the relevant employee, must comply as applicable with the following requirements:

1.1 Consultation with employees who may become registrable (Regulation 8)

As soon as practicable after a determination is made, an employing authority must ensure that affected employees are given an appropriate opportunity to comment and express their views concerning the determination.

1.2 Transfer of registrable employees (Regulation 10)

An employing authority may only transfer a registrable employee to an office, post or position that is suitable according to the meaning given in section 94(6)(a) and (b) of the PSM Act as read with Regulation 7(1)(a).



1.3 Registrable employees may be offered voluntary severance (Regulation 11)

- a. Before an offer of voluntary severance is made to a registrable employee, an employing authority must 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 at the registrable employee's current regional location (including the metropolitan area).
- b. Where there is a reasonable likelihood of the registrable employee being found suitable alternative employment elsewhere in the public sector, an offer of voluntary severance must not be made by an employing authority.
- c. An employing authority must provide reasons in writing to a registrable employee, if that employee has sought voluntary severance but an offer of severance is not made.
- d. An employing authority must not make an offer of voluntary severance to a registrable employee as a means primarily of addressing disciplinary, substandard performance or ill-health issues, for which appropriate mechanisms exist elsewhere.
- e. Where a registrable employee is the subject of a workers' compensation claim, any decision by an employing authority to make an offer of voluntary severance to that employee shall only be made after discussion of the particular case with RiskCover.
- f. An employing authority must advise the Public Sector Commissioner (the Commissioner) of all severance offers made through the posting of relevant details on the online Recruitment Advertising Management System (RAMS).

1.4 Amount of severance payment (Regulation 13)

Where an employing authority is required to determine and make a payment to an employee who is not otherwise entitled to payment under the regulations (by virtue of the fact that conditions of employment of that employee are covered by a Commonwealth award), that payment shall proceed on the following basis:

- a. It must be made where payment under the relevant Commonwealth award falls short of the entitlement that is due to those employees who are subject to the regulations; and
- b. It must be an amount that makes up for (but does not exceed) the relevant shortfall.

2. Registered Employees

2.1 Registration of registrable employee (Regulation 18)

- a. An employing authority must not register an employee for redeployment as a means primarily of addressing disciplinary, substandard performance or ill-health issues, for which appropriate mechanisms exist elsewhere.
- b. Where a registrable employee is, or becomes, the subject of a workers' compensation claim, any decision by an employing authority relating to registration of that employee shall only be made after discussion of the particular case with RiskCover.
- c. An employing authority must notify the the Commissioner of the registration of a registrable employee through the posting of relevant details on RAMS.



2.2 Retraining of registered employees (Regulation 20)

Where an employing authority makes arrangements for the retraining of a registered employee, those arrangements must be in writing and include provision for terminating the arrangement.

2.3 Management of registered employees (Regulation 21)

Employing authority

- a. Once an employee has been registered, the employing authority of that employee must ensure through appropriate case management processes that the employee is adequately and reasonably supported in identifying, being referred to, and given priority consideration for alternative suitable job or retraining opportunities.
- b. An employing authority must provide a registered employee with meaningful interim work arrangements, which could be different from work undertaken in their former position.

Employee

- a. A registered employee must actively participate in the redeployment process and must cooperate in consideration of all reasonable job or retraining options identified, both internal and external to the relevant department or organisation.
- b. While awaiting redeployment, a registrable employee is required to fulfil their employment responsibilities and undertake meaningful interim work arrangements.

2.4 Form of offer of employment (Regulation 22)

Where an offer of employment involves an employee who is on a fixed term contract, that offer must not extend beyond the duration of the fixed term contract under which the employee is currently employed.

2.5 Registered employee may be directed to accept offer of employment (Regulation 23)

Employing authority may be directed to offer employment (Regulation 24)

Any request to the Commissioner to issue a direction must be made by at least one of the employing authorities involved with the redeployment of the relevant registered employee.

2.6 Benefits to which registered employee accepting public sector employment is entitled (Regulation 25)

Benefits to which registered employee accepting private sector employment is entitled (Regulation 26)

Where an employing authority is required to determine and make a payment to an employee who is not otherwise entitled to payment under the regulations (by virtue of the fact that conditions of employment of that employee are covered by a Commonwealth award), that payment shall proceed on the following basis:



- a. It must be made where payment under the relevant Commonwealth award falls short of the entitlement that is due to those employees who are subject to the regulations; and
- b. It must be an amount that makes up for (but does not exceed) the relevant shortfall.

2.7 Employing authority may suspend redeployment period or revoke registration (Regulation 29)

- a. Where a dispute about a 'section 94 decision' is before the Western Australian Industrial Relations Commission for resolution an employing authority must give consideration to suspending the relevant employee's redeployment period until that process has been finalised.
- b. Where a registered employee is, or becomes, the subject of a workers' compensation claim, any decision by an employing authority relating to suspension of the redeployment period shall only be made after discussion of the particular case with RiskCover.
- c. Where any decision to suspend the redeployment period for the purposes of retraining or secondment is made, that suspension or those suspensions must not exceed a total of six months in duration within the same redeployment period.

3. Privatisation and contracting Out

3.1 Benefits to which employees accepting offers of employment are entitled (Regulation 40)

Where the Commissioner is required to determine and make a payment to an employee who is not otherwise entitled to payment under the regulations (by virtue of the fact that conditions of employment of that employee are covered by a Commonwealth award), that payment shall proceed on the following basis:

- a. It must be made where payment under the relevant Commonwealth award falls short of the entitlement that is due to those employees who are subject to the regulations; and
- b. It must be an amount that makes up for (but does not exceed) the relevant shortfall.

4. Information about payments

4.1 Information to be given to Commissioner (Regulation 41)

Where any payment is made to an employee under the regulations referred to in Regulation 41, an employing authority must as soon as practicable advise the Commissioner through the online 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 an employing authority seeks to fill a vacancy in an office, post or position in its department or organisation, the employing authority must comply with the following requirements:



5. Notification of and filling vacancies (for periods in excess of 6 months)

5.1 Requirement to notify vacancies

- a. Whenever a vacancy (as defined in Commissioner's Instruction No.2: Filling a public sector vacancy) to be filled occurs in an office, post or position in a public sector department or organisation, an employing authority must post details of that vacancy on the online RAMS and this must include appropriate job description details (JDF or similar) as well as relevant contact officer's details.
- b. The vacancy referred to under Paragraph 5.1(a) must not be filled until cleared through the online RAMS by the Commissioner.
- c. For the purposes of seeking an exemption from the requirements of Paragraph 5.1(a), an employing authority must obtain the approval of the Commissioner, who may by a notice in writing served on an employing authority either exempt (with or without conditions) an employing authority from referring such vacancies (or a class of vacancies as is specified in that notice) or amend or revoke an exemption.

5.2 Priority access to job vacancies for registered employees

- a. An employing authority must give priority consideration to registered employees who are referred to them as possibly suitable candidates for filling a vacancy and must, unless agreed with the employing authority which makes the referral, complete and return to that latter employing authority a formal assessment of suitability within 10 working days of the RAMS referral notice date.
- b. In assessing the suitability of the registered employee for placement in a vacancy, an employing authority must give consideration to the employee's ability to fulfil the requirements of the job within a reasonable period of time, with reasonable training.