



THIRTY-NINTH PARLIAMENT

REPORT 82
**JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**
EXPLANATORY REPORT IN RELATION TO THE
PUBLIC SECTOR MANAGEMENT
(REDEPLOYMENT AND REDUNDANCY)
REGULATIONS 2014

Presented by Mr Peter Abetz MLA (Chairman)

and

Hon Robin Chapple MLC (Deputy Chair)

May 2015

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Date first appointed:

28 June 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“10. Joint Standing Committee on Delegated Legislation

- 10.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 10.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chair must be a Member of the Committee who supports the Government.
- 10.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 10.4 (a) A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.
- (b) Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House's consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.
- 10.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 10.6 In its consideration of an instrument, the Committee is to inquire whether the instrument –
- (a) is within power;
- (b) has no unintended effect on any person's existing rights or interests;
- (c) provides an effective mechanism for the review of administrative decisions; and
- (d) contains only matter that is appropriate for subsidiary legislation.
- 10.7 It is also a function of the Committee to inquire into and report on –
- (a) any proposed or existing template, *pro forma* or model local law;
- (b) any systemic issue identified in 2 or more instruments of subsidiary legislation; and
- (c) the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary legislation that has yet to be published.
- 10.8 In this order –
- “instrument” means –
- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
- (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
- “subsidiary legislation” has the meaning given to it by section 5 of the *Interpretation Act 1984*.”

Members as at the time of this inquiry:

Mr Peter Abetz MLA (Chairman)
Hon John Castrilli MLA
Hon Mark Lewis MLC
Mr Paul Papalia MLA

Hon Robin Chapple MLC (Deputy Chair)
Hon Peter Katsambanis MLC
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EXECUTIVE SUMMARY, FINDING AND RECOMMENDATION FOR THE

EXPLANATORY REPORT OF THE
JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO THE

PUBLIC SECTOR MANAGEMENT (REDEPLOYMENT AND REDUNDANCY) REGULATIONS 2014

EXECUTIVE SUMMARY

- 1 The *Public Sector Management (Redeployment and Redundancy) Regulations 2014* (**Instrument**) were published in the *Government Gazette* on 30 December 2014 and tabled in the Legislative Council on 19 February 2015. It stood referred to the Joint Standing Committee on Delegated Legislation (**Committee**) upon its gazettal.
- 2 The Committee observes that, on 24 February 2015, Hon Kate Doust MLC gave notice of motion in the Legislative Council to disallow regulations 28 to 38 of the Instrument. The notice of motion to disallow moved *pro forma* on 10 March 2015 (**Disallowance Motion**). The Committee resolved to prepare this Report to assist the Houses of Parliament during debate on the Disallowance Motion and any other disallowance motion affecting the Instrument.
- 3 The Instrument prescribes the administrative procedures by which Public Sector employees can access, and be subject to, the enhanced and more flexible redeployment and redundancy arrangements introduced into the *Public Sector Management Act 1994* by Part 3 of the *Workforce Reform Act 2014* on 1 July 2014. The introduction of the involuntary severance of Public Sector employees was perhaps one of the most significant changes brought in by those amendments. The substantive provisions of the Instrument commenced operation on 1 May 2015.
- 4 The Committee finds that the Instrument is within power. However, there is the potential for the Instrument to be inconsistent with the *Fair Work Act 2009* (Cth), and therefore, in breach of section 109 of the *Commonwealth of Australia Constitution Act*, whenever the Instrument applies to a State Public Sector employee whose employment conditions are governed by the national system of industrial relations. The State Government has confirmed to the Committee that it is aware of this potential and accepts that, in certain limited circumstances, the Instrument must yield to the national system to the extent of any inconsistency. There are currently no State Public Sector employees who fall within the national system.

- 5 This Report provides information about the manner in which certain redeployment and redundancy payments will be made to employees to whom the Instrument applies, including any State Public Sector employees who fall within the national system.
- 6 Finally, the Committee notes that the Disallowance Motion affects only selected provisions of the Instrument, some of which are not easily severed from the Instrument.

FINDINGS AND RECOMMENDATIONS

- 7 The Finding and Recommendation are grouped as they appear in the text at the page number indicated:

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Finding 1: The Committee finds that, although it is acknowledged there is the potential for inconsistency with Commonwealth law, the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* are within power.

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Recommendation 1: The Committee recommends that the Legislative Council and the Legislative Assembly take note of the information contained in this Report for the purpose of considering any disallowance motion in relation to the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.

**EXPLANATORY REPORT OF THE
JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION**

IN RELATION TO THE

PUBLIC SECTOR MANAGEMENT (REDEPLOYMENT AND REDUNDANCY) REGULATIONS 2014

1 REFERENCE AND PROCEDURE

- 1.1 The Parliament of Western Australia has delegated the role of scrutinising subsidiary legislation to the Joint Standing Committee on Delegated Legislation (**Committee**) against four Terms of Reference.¹
- 1.2 The *Public Sector Management (Redeployment and Redundancy) Regulations 2014* (**Instrument**) (reproduced in **Appendix 1**) were published in the *Government Gazette* on 30 December 2014 and tabled in the Legislative Council on 19 February 2015. The Instrument falls within the definition of ‘instrument’ in the Committee’s Terms of Reference.² As such, it stood referred to the Committee upon its gazettal.³
- 1.3 An instrument is subject to disallowance once it is tabled in the Parliament.⁴ The Committee observes that, on 24 February 2015, Hon Kate Doust MLC gave notice of motion in the Legislative Council to disallow regulations 28 to 38 of the Instrument.⁵ The notice of motion to disallow moved *pro forma* on 10 March 2015 (**Disallowance Motion**).⁶
- 1.4 In relation to the Instrument, the Committee undertook its usual process of scrutiny, which, among other things, involves:
- consideration of the instrument and the empowering Act;
 - consideration of the explanatory material provided by the relevant law-making authority;

¹ “In its consideration of an instrument, the Committee is to inquire whether the instrument (a) is within power; (b) has no unintended effect on any person’s existing rights or interests; (c) provides an effective mechanism for the review of administrative decisions; and (d) contains only matter that is appropriate for subsidiary legislation.”: Schedule 1, Clause 10.6 of the Standing Orders of the Legislative Council.

² See Term of Reference 10.8.

³ By virtue of the Committee’s Term of Reference 10.5.

⁴ Section 42(2) of the *Interpretation Act 1984*.

⁵ Hon Kate Doust MLC, Parliament of Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 24 February 2015, p498.

⁶ Standing Order 67(3) of the Standing Orders of the Legislative Council.

- research; and
- liaising with the relevant law-making authority.

1.5 In this case, the Committee also considered a submission from the Community & Public Sector Union/Civil Service Association of WA.

1.6 The Committee resolved to prepare this Report to assist the Houses of Parliament during debate on the Disallowance Motion and any other disallowance motion affecting the Instrument.

2 BACKGROUND

2.1 The Instrument was made pursuant to the amendments to the *Public Sector Management Act 1994 (PSM Act)* contained in Part 3 of the *Workforce Reform Act 2014 (WR Act)*, which commenced operation on 1 July 2014. Among other things, Part 3 of the WR Act aimed:

*to provide the capacity to implement enhanced and more flexible redeployment arrangements that may ultimately end with the involuntary severance of [Public Sector] employees that are surplus to an agency's requirements or whose post, office or position has been abolished and cannot effectively be redeployed;*⁷

2.2 The introduction of the involuntary severance of Public Sector employees was perhaps one of the most significant changes brought in by the WR Act.

2.3 The Instrument repeals and replaces the *Public Sector Management (Redeployment and Redundancy) Regulations 1994* and applies “*across the public sector*”.⁸ The substantive provisions of the Instrument commenced operation on 1 May 2015.⁹

2.4 A ‘registrable employee’ is defined in the PSM Act as a person:

- a) who is surplus to the requirements of a department or organisation; or
- b) whose office, post or position has been abolished; or
- c) in a category prescribed by the regulations (the Committee notes that there is no such prescription in the Instrument).¹⁰

⁷ Workforce Reform Bill 2013, *Explanatory Memorandum*, p1.

⁸ *Public Sector Management (Redeployment and Redundancy) Regulations 2014, Explanatory Memorandum*, p1. For more information about the application of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*, refer to paragraphs 3.2 to 3.5.

⁹ Regulation 2(b) of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.

¹⁰ Section 94(1A) of the *Public Sector Management Act 1994*.

2.5 The Instrument prescribes the administrative procedures by which registrable employees and registered employees can access, and be subject to, the following redeployment and redundancy arrangements:

- internal transfers for registrable employees;¹¹
- voluntary severance and the associated payment entitlements for registrable employees;¹²
- special leave for registered employees to attend employment interviews, career counselling and financial counselling;¹³
- retraining for registered employees;¹⁴
- redeployment within and outside of the Public Sector and the associated payment entitlements for registered employees.¹⁵ If the Public Sector Commissioner is satisfied that, among other things, a registered employee has received an offer for 'suitable employment', the Commissioner may direct him or her to accept the offer of redeployment.¹⁶ This is explicitly authorised by section 94(3)(c)(i) of the PSM Act; and
- redundancy for registered employees and the associated payment entitlements. The Committee notes that regulation 30 provides that a registered employee is automatically terminated on the day after the last day of their redeployment period, which will generally be six months, commencing on the day of their registration.¹⁷

2.6 The Instrument also provides for any affected employees to accept employment within the same department or organisation where the department or organisation has had all or part of its activities privatised or shifted to a contractor outside of the Public Sector.¹⁸ If an affected employee receives an offer of a 'suitable office, post or position',¹⁹ their employing authority may direct the employee to accept the offer.²⁰ This direction is explicitly authorised by section 94(2)(b)(i) of the PSM Act.

¹¹ Regulation 10 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.

¹² *ibid*, Part 3.

¹³ *ibid*, regulation 19.

¹⁴ *ibid*, regulation 20.

¹⁵ *ibid*, Part 5.

¹⁶ *ibid*, regulation 23.

¹⁷ *ibid*, Part 6.

¹⁸ *ibid*, Part 7.

¹⁹ See section 94(6) of the *Public Sector Management Act 1994* and *ibid*, regulation 7.

3 STATUTORY FRAMEWORK

Regulation-Making Power

- 3.1 The Instrument is made pursuant to sections 94 and 95A, read in conjunction with section 108 of the PSM Act.

Interplay with the *Fair Work Act 2009* (Cth)

Instrument is Within Power

- 3.2 Subject to the limits of application prescribed in regulation 5, the Instrument applies only to all employees²¹ in ‘departments’ and ‘organisations’.²² This is distinct from all employees in the ‘Public Sector’.²³
- 3.3 The Committee notes that the Instrument does not apply to people who are employed by the bodies listed in Schedule 1 of the PSM Act, including ‘government trading enterprises’, because these entities:
- are not departments;²⁴ and
 - are excluded from the definition of ‘organisation’ under that Act.²⁵
- 3.4 These Schedule 1 entities include any port authority established under the *Port Authorities Act 1999*, the Water Corporation, Western Power and Racing and Wagering Western Australia. Schedule 1 is reproduced in **Appendix 2**.
- 3.5 The Committee also notes that the Instrument does not apply to ‘ministerial offices’,²⁶ despite the fact that they are included in the entities which make up the definition of the State’s ‘Public Sector’.²⁷

²⁰ Regulations 38(2) to (4) of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.

²¹ “**employee** means a person employed in the Public Sector by or under an employing authority” and ‘employing authority’ is defined in section 5: section 3 of the *Public Sector Management Act 1994*.

²² Regulation 4 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*. ‘Department’ and ‘organisation’ are defined in section 3 of the *Public Sector Management Act 1994*.

²³ “**Public Sector** means all — (a) the agencies; and (b) the ministerial offices; and (c) the non-SES organisations” and “**agency** means — (a) a department; or (b) a SES organisation”: section 3 of the *Public Sector Management Act 1994*. See further, paragraph 3.5.

²⁴ Sections 3 and 35 of the *Public Sector Management Act 1994*.

²⁵ “**organisation** means a non-SES organisation or SES organisation”: section 3 of the *Public Sector Management Act 1994*. The entities listed in Schedule 1 of that Act are not ‘SES organisations’ (see section 3 and Schedule 2) and they are explicitly excluded from the definition of ‘non-SES organisations’ (see section 3 and Schedule 1).

²⁶ “**ministerial office** means one or more ministerial officers appointed to assist a particular political office holder”: section 3 of the *Public Sector Management Act 1994*.

- 3.6 In Western Australia, the employment conditions of most Public Sector and local government employees are governed by the state system of industrial relations. However, it is possible for some State Public Sector or local government employers to have registered agreements in the national system. Employees covered by those agreements fall within the national system.²⁸ According to the Public Sector Commission, as advised by the Department of Commerce (Labour Relations), there are currently no Public Sector employees who fall into this category.²⁹
- 3.7 Despite the fact that there are currently no national system State Public Sector employees (**NSSPS employees**), the Instrument appears to have been drafted with these employees in mind, as there are references to employees for whom “*all or some of the conditions of employment are determined under a Commonwealth award*”.³⁰ As the NSSPS employees are employed by the State Public Sector, the Committee is satisfied that there is a sufficient nexus between these employees and the State to authorise the State Government to make a law governing aspects of their employment. The subject matter of the Instrument is also authorised and contemplated by the PSM Act.
- 3.8 However, the Committee was concerned that any overlap or conflict between the Instrument and the *Fair Work Act 2009* (Cth) (**FW Act**) in relation to the NSSPS employees would render the Instrument invalid to the extent of any inconsistency, pursuant to section 109 of the *Commonwealth of Australia Constitution Act* (**Commonwealth Constitution**).³¹
- 3.9 Regulations 13, 25, 26 and 40 are examples of provisions which stand out as potentially breaching section 109. These provisions prescribe methods of calculating payments and other benefits which are to be given to employees in circumstances of redeployment and redundancy. Regulations 13(6), 25(6), 26(5) and 40(4) provide that NSSPS employees are not entitled to any payment provided for by the preceding subregulations. However, regulations 13(7), 25(7), 26(6) and 40(5) then prescribe that such an employee is entitled to a payment that is determined by their employing authority (or the Public Sector Commissioner, in the case of regulation 40) and is capped at the amount which would have been payable had the employee been covered by the state system. The Committee notes that the substance of these provisions

²⁷ Refer to footnote 23 for the definition of ‘Public Sector’ in the *Public Sector Management Act 1994*.

²⁸ <http://www.fairwork.gov.au/about-us/the-fair-work-system>, (viewed on 18 March 2015).

²⁹ Email from Mr Lindsay Warner, Director Policy and Reform, Accountability, Policy and Performance Division, Public Sector Commission, 23 March 2015.

³⁰ For example, regulation 13(6). ‘Commonwealth award’ is defined as “(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”: regulation 3(1).

³¹ Section 109 provides that “When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.”

already existed in the regulations which were repealed and replaced by this Instrument.³² It appears that those existing provisions were part of the original *Public Sector Management (Redeployment and Redundancy) Regulations 1994*.

3.10 The Committee was concerned that the above provisions may trigger section 109 of the Commonwealth Constitution, either on the basis that:

- they attempt to override the operation of a Commonwealth award.³³ In contrast, section 29 of the FW Act provides that a FW Act modern award or enterprise agreement prevails over a law of a State or Territory to the extent of any inconsistency; or
- the FW Act already provides for the calculation of these payments and benefits to NSSPS employees. Sections 26 to 28 of the FW Act provides that it is intended to apply to the exclusion of all State or Territory industrial laws (except in relation to certain prescribed matters) so far as they would otherwise apply in relation to a ‘national system employee’³⁴ or a ‘national system employer’.³⁵

3.11 There may be other, less obvious, areas in which the Instrument overlaps or conflicts with the FW Act. However, the Committee notes that redundancy payment calculations and minimum redundancy payments prescribed under Part 6 of the Instrument do not discriminate between employees under the state and national systems. The *Explanatory Memorandum* explained that the minimum redundancy payments set out in the table to regulation 34 reflect those prescribed under the FW Act.³⁶

3.12 The Committee raised the above concerns with the Public Sector Commission, which advised that the State Government is well aware of the potential application of section 109 of the Commonwealth Constitution on the Instrument. It accepts that, in certain limited circumstances, the Instrument must yield to the FW Act to the extent of any inconsistency:

We are aware of the federal jurisdictional arguments about ‘constitutional corporations’ which may potentially affect some State

³² See regulations 20(5), 18(7), 19(5) and 9(5) of the *Public Sector Management (Redeployment and Redundancy) Regulations 1994*: Email from Mr Lindsay Warner, Director Policy and Reform, Accountability, Policy and Performance Division, Public Sector Commission, 23 March 2015.

³³ Among other things, section 95B of the *Public Sector Management Act 1994* provides that regulations referred to in section 94 or 95A (this would include the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*) prevail, to the extent of any inconsistency, over the terms and conditions applying to an employee’s employment under a contract of employment.

³⁴ See sections 12 and 13 of the *Fair Work Act 2009* (Cth).

³⁵ See *ibid*, sections 12 and 14.

³⁶ See *ibid*, section 119(2) (Part 2-2, Division 11).

public sector agencies. As provided in our response of 23 March, although we understand that there are currently no employees employed under agreements registered under the federal system, we accept that it is possible for some WA State Government employees to be covered by Commonwealth awards in the event there was a judicial finding that their employer was a constitutional corporation.

We understand there to be no inconsistency at present. In the event of a court or tribunal's finding of a particular state instrumentality to be a constitutional corporation, to the extent of an inconsistency the Commonwealth legislation would prevail and the state arrangements would fall away or be read down.

We anticipate that where such a finding arises in the future that this would be dealt with on a case by case basis and we accept the operation of s109 of the Constitution may potentially be applicable.³⁷

- 3.13 Section 109 of the Commonwealth Constitution would operate to invalidate, rather than void, any inconsistent aspects of the Instrument. As such, the Committee is of the view that the Instrument can exist alongside the FW Act. The application provisions of the FW Act (see Part 1-3, Division 2, particularly sections 26 to 29) appear to be consistent with this view.

Finding 1: The Committee finds that, although it is acknowledged there is the potential for inconsistency with Commonwealth law, the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* are within power.

Redeployment and Redundancy Payments

- 3.14 With respect to the payment calculations prescribed in regulations 13(7), 25(7), 26(6) and 40(5) (discussed in paragraph 3.9), the Committee was advised that these provisions operate to supplement, not replace, the payment which a NSSPS employee is entitled to receive under their Commonwealth award.³⁸ These provisions recognise that the terms of any applicable Commonwealth award prevail over the Instrument³⁹ and, in addition, they seek to provide a 'top up' payment, under the state system, when the Commonwealth award payment is lower than the payment which would otherwise

³⁷ Email from Mr Lindsay Warner, Director Policy and Reform, Accountability, Policy and Performance Division, Public Sector Commission, 24 March 2015.

³⁸ Refer to footnote 30 for the definition of 'Commonwealth award' in the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.

³⁹ Although the provisions are silent on this issue.

have been payable under the Instrument. The Public Sector Commission provided the following explanation:

*Operationally, the Regulations provide the capacity to supplement any payment made under a Commonwealth arrangement to the extent that a payment is no greater than that provided for in the Regulations. These provisions are long standing and are intended to provide a safety net to ensure consistency of application across all WA public sector employees. Such provisions would only be applicable where the benefits provided for in a Commonwealth award are less than that provided for under the Regulations. Of course, where a Commonwealth award provides for benefits greater than that provided for in the Regulations, such State provisions would not be applied and those employees would enjoy the benefits provided to them by that federal instrument.*⁴⁰

- 3.15 However, the relevant provisions do not provide for this “long standing” method of payment that is described by the Public Sector Commission. The provisions provide only that the employing authority (or the Public Sector Commissioner, in the case of regulation 40) has a discretion to make a payment to an affected NSSPS employee. The Committee was advised that, in practice, these payments are supplementary in nature, but only when the Commonwealth award payment falls short of the payment which would otherwise have been payable under the state system.⁴¹
- 3.16 When the Committee queried how the employing authority or the Public Sector Commissioner would determine the amount of any payment made pursuant to regulations 13(7), 25(7), 26(6) and 40(5), the Public Sector Commission advised that:

*It is intended that the employing authority or the Commissioner, in determining how much the employee is entitled to be paid, would apply the terms of the Regulations and act in accordance with a Commissioner’s instruction issued pursuant to s.22A of the Public Sector Management Act 1994.*⁴²

⁴⁰ Email from Mr Lindsay Warner, Director Policy and Reform, Accountability, Policy and Performance Division, Public Sector Commission, 24 March 2015.

⁴¹ *Ibid.*

⁴² Email from Mr Lindsay Warner, Director Policy and Reform, Accountability, Policy and Performance Division, Public Sector Commission, 23 March 2015.

- 3.17 Commissioner's instructions are binding in nature. All Public Sector employees are generally required to comply with Commissioner's instructions and are susceptible to disciplinary procedures if they do not follow or if they contravene an instruction.⁴³
- 3.18 The Committee sought a copy of the Commissioner's instruction which would apply when determining how much to pay a NSSPS employee pursuant to the relevant provisions. In response, the Premier provided a copy of the Commissioner's instruction and advised that it was still in draft form, although it is not anticipated that the provisions relating to payments made under regulations 13, 25, 26 and 40 will be subject to change.⁴⁴ After considering the document, the Committee confirmed that the draft Commissioner's instruction will require the employing authority, or the Public Sector Commissioner, where applicable, to pay NSSPS employees in the "*long standing*" manner which is described in paragraph 3.14.
- 3.19 To assist the Houses, the Committee has produced a flow chart which summarises the manner in which redeployment and redundancy payments will be made to employees to whom the Instrument applies, including any NSSPS employees. This flow chart appears in **Appendix 3**.

4 SEVERABILITY OF PROVISIONS SUBJECT TO DISALLOWANCE MOTION

- 4.1 As stated in paragraph 1.3, the Disallowance Motion affects regulations 28 to 38 of the Instrument. The Committee notes that, of these provisions, regulations 28, 32, 33, 35, 37 and 38 are referred to in other parts of the Instrument which are not subject to the Disallowance Motion. If the Legislative Council agrees to the Disallowance Motion, those references will, at best, be meaningless. At worst, the meaningless references may cause the remaining parts of the Instrument to be unworkable.
- 4.2 For example, regulations 37 and 38 (in Part 7 of the Instrument) are particularly difficult to sever. These two provisions establish the process for dealing with the redeployment of Public Sector employees whose positions are affected by the privatisation and/or contracting out of their department or organisation's activities. The provisions are required by, and relied upon for the operation of, the remaining provisions in Part 7.

5 CONCLUSION

- 5.1 The Committee concludes that the Instrument is within power. It commends this Report to the Houses of Parliament for the purpose of assisting debate on the Disallowance Motion and any other disallowance motion affecting the Instrument.

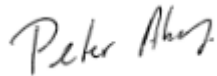
⁴³ For example, refer to sections 9 ("*Principles of conduct by public sector bodies etc*"), 30 ("*Duties of CEOs and chief employees when performing functions*"), 32 ("*CEOs and chief employees to comply with directions etc. of responsible authority*"), 80 ("*Breaches of discipline, defined*") and Part 5 ("*Substandard performance and disciplinary matters*") of the *Public Sector Management Act 1994*.

⁴⁴ Letter from Hon Colin Barnett MLA, Premier, 17 April 2015.

6 RECOMMENDATION

6.1 The Committee makes the following recommendation:

Recommendation 1: The Committee recommends that the Legislative Council and the Legislative Assembly take note of the information contained in this Report for the purpose of considering any disallowance motion in relation to the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.



**Mr Peter Abetz MLA
Chairman**

7 May 2015

APPENDIX 1
***PUBLIC SECTOR MANAGEMENT (REDEPLOYMENT AND
REDUNDANCY) REGULATIONS 2014***

Western Australia

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

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Public Sector Management Act 1994

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

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

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

2. Commencement

These regulations come into operation as follows —

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

3. Terms used

- (1) In these regulations —

accrued long service leave means each of the following —

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

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

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

award means —

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

Commonwealth award means —

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

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

employment instrument means —

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

enterprise bargaining allowance means a payment that —

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

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

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

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

pay means the sum of the following —

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

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

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

ending on the day of acceptance by the employee of —

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

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

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

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

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

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

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

4. Application

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

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

5. Limits on application of regulations

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

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

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

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

- (1) For the purposes of paragraph (c) of the definition of *suitable office, post or position* or *suitable employment* in section 94(6) of the Act, the prescribed criteria to be satisfied by an office, post, position or employment, as the case requires, are that —
 - (a) it is the most suitable actually available; and
 - (b) the maximum pay applicable to the office, post, position or employment is —
 - (i) as close to that applicable to the former office, post, position or employment as is reasonably practicable; and
 - (ii) in any case, subject to subregulation (2), not less than 80%, nor more than 110%, of the maximum pay applicable to the range of classification within which the office, post or position or employment occupied or formerly occupied by the employee in question is or was situated.
- (2) For the purposes of subregulation (1) the maximum pay of a part-time employee must be the same proportion of the maximum full-time pay as the number of hours worked each week bears to the number of hours provided for in the employment instrument as constituting a week's work.

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Part 2 — Registrable employees

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

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

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

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

10. Transfer of registrable employees

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

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

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Part 3 — Voluntary severance

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

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12. Substituted voluntary severance for registrable employees

(1) If —

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

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

(2) On the resignation by the other employee of his or her office, post or position under subregulation (1), the employing authority of the department or organisation of the registrable employee must —

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

13. Amount of severance payment

(1) In this regulation —

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

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

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

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

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

- (7) An employee mentioned in subregulation (6) is entitled to such payment as is determined by the employee's employing authority, being an amount not greater than the amount that would be payable under this regulation to the employee if none of his or her conditions of employment were covered by a Commonwealth award.

14. Other benefits payable on voluntary severance

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

15. Incentive payment for early resignation

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

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

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16. Targeted separation scheme

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

17. Restriction on employment in Public Sector

- (1) Subject to subregulation (2), a person to whom a severance payment is made under regulation 13 or under a scheme approved under regulation 16 must not subsequently be employed in the Public Sector before the expiry of the number of weeks (the *period of restriction*) after the day on which the severance payment is made that is equal to the number of weeks in respect of which the person received a severance payment (the *severance pay period*).
- (2) The Commissioner may, in writing, as from a specified day, exempt from subregulation (1) a person to whose employment that subregulation would otherwise apply.
- (3) If the person's severance pay period exceeds the portion of the period of restriction up to the specified day, the exemption is

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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.

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Part 4 — Registered employees

18. Registration of registrable employee

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

19. Special leave for registered employees

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

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

20. Retraining of registered employees

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

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

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

21. Management of registered employees

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

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22. Form of offer of employment

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

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

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

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

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

24. Employing authority may be directed to offer employment

(1) If the Commissioner is satisfied that —

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

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

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

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

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

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relocation expenses, relocation expenses in accordance with the employment instrument or written law.

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

must during the period of 6 months after the day on which the registered employee begins employment in the new office, post or position pay to the registered employee the rate of pay the registered employee received in respect of the previous office, post or position.

- (5) After the expiry of the period of 6 months referred to in subregulation (4), the employee concerned is to receive pay at the rate applicable to the new office, post or position.
- (6) Despite this regulation, an employee in respect of whom all or some of the conditions of employment are determined under a Commonwealth award is not entitled to the benefits and payments provided for by this regulation.
- (7) An employee mentioned in subregulation (6) is entitled to such benefits and payments as are determined by the employing authority being not greater than the entitlements the employee would have under this regulation if none of the employee's conditions of employment were covered by a Commonwealth award.

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

- (1) If an employing authority arranges for an offer of a suitable office, post or position outside the Public Sector to be made to a registered employee and the registered employee accepts that offer by resigning his or her employment, the employing authority of the registered employee must, in addition to paying any amount payable to the registered employee under any relevant employment instrument, pay to the registered employee —
- (a) cash in lieu of all accrued long service leave of the registered employee (calculated for each completed year of service) to the extent, if any, not provided for by that instrument; and
 - (b) a transition payment of an amount —
 - (i) determined by the employing authority; and
 - (ii) not less than the amount of 4 weeks' pay and not more than the amount of 12 weeks' pay.
- (2) For the purposes of subregulation (1)(b), the weekly pay of an employee who, during the employee's period of continuous service, worked a different number of hours in different weeks is to be calculated as follows —

$$A = B \times C$$

where —

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

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- (3) In subregulation (1)(b) —
pay means pay, as defined in regulation 3(1), at the time of acceptance of the offer, except that it also includes —
- (a) any allowance of the following kinds that has been paid continuously for the preceding 12 months —
 - (i) an allowance for temporarily undertaking duties other than those of the substantive office, post or position of the relevant employee;
 - (ii) a higher duties allowance;
 - and
 - (b) a shift allowance that is paid on a regular basis including during periods of annual leave.
- (4) Where an organisation is abolished and its functions or some of its functions become vested in a body that is established by a written law and is owned by the State but is not within the Public Sector, any office, post or position in that body is not an office, post or position outside the Public Sector for the purposes of subregulation (1).
- (5) Despite this regulation, an employee in respect of whom all or some of the conditions of service are determined under a Commonwealth award is not entitled to the payments provided for by this regulation.
- (6) An employee mentioned in subregulation (5) is entitled to such payments as are determined by the employee's employing authority, being an amount not greater than the amount that would be payable under this regulation to the employee if none of his or her conditions of employment were covered by a Commonwealth award.

27. Registration ceases on redeployment

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

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Part 6 Termination of employment

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Part 6 — Termination of employment

28. Terms used

In this Part —

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

redeployment period means —

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

29. Employing authority may suspend redeployment period or revoke registration

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

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

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30. Employment terminates at end of redundancy period

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

31. Notice of impending termination

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

32. Earlier termination of employment at request of employee

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

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

33. Redundancy pay at end of redundancy period

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

34. Minimum amount of redundancy pay

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

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

Table

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

35. Other benefits payable on termination

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

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

36. Restriction on employment in Public Sector

- (1) Subject to subregulation (2), a person to whom a redundancy payment is made under regulation 32 or 33 must not subsequently be employed in the Public Sector before the expiry of the number of weeks (the *period of restriction*) after the day on which the redundancy payment is made that is equal to the number of weeks of pay the person received as a redundancy payment (the *redundancy pay period*).
- (2) The Commissioner may, in writing, as from a specified day, exempt from subregulation (1) a person to whose employment that subregulation would otherwise apply.
- (3) If the person's redundancy pay period exceeds the portion of the period of restriction up to the specified day, the exemption is subject to the person repaying to the employing authority an amount that bears to the redundancy payment the same proportion as the excess bears to the redundancy pay period.

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Privatisation and contracting out

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Part 7 — Privatisation and contracting out

37. Notification to employee of privatisation or contracting out

- (1) If the whole or any part of —
- (a) the undertaking of a department or organisation is, or is to be, sold or otherwise disposed of to a person outside the Public Sector; or
 - (b) the production or provision of goods or services or both by a department or organisation is, or is to be, replaced by the production or provision of goods or services or both by a person outside the Public Sector,

the employing authority of the department or organisation must give written notice of the sale, disposal or replacement to each employee in the department or organisation who is or will be affected by the sale, disposal or replacement.

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

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

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

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

39. Employee may be directed not to hinder selection process

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

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

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

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must, in addition to paying any amount payable to that employee under any relevant employment instrument, pay to that employee —

- (a) cash in lieu of all accrued long service leave of that employee (calculated for each completed year of service) to the extent, if any, not provided for by that instrument; and
 - (b) a transition payment of an amount —
 - (i) determined by the Commissioner; and
 - (ii) not less than the amount of 4 weeks' pay and not more than the amount of 12 weeks' pay.
- (2) For the purposes of subregulation (1)(b), the weekly pay of an employee who, during the employee's period of continuous service, worked a different number of hours in different weeks is to be calculated as follows —

$$A = B \times C$$

where —

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

- (3) In subregulation (1)(b) —

pay means pay, as defined in regulation 3(1), at the time of acceptance of the offer, except that it also includes the following —

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

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- (ii) a higher duties allowance;
 - (b) a shift allowance that is paid on a regular basis including during periods of annual leave.
- (4) Despite subregulations (1), (2) and (3), an employee in respect of whom all or some of the conditions of employment are determined under a Commonwealth award is not entitled to the payments provided for by this regulation.
- (5) An employee mentioned in subregulation (4) is entitled to such payments as are determined by the Commissioner being an amount not greater than the amount that would be payable under this regulation to the employee if none of his or her conditions of employment were covered by a Commonwealth award.

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Miscellaneous **Part 8**

r. 41

Part 8 — Miscellaneous

41. Information to be given to Commissioner

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

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

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

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

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

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

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

44. Prescribed period for certain references

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

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

Part 9 Repeal and transitional

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Part 9 — Repeal and transitional

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

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

46. Transitional provisions

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

N. HAGLEY, Clerk of the Executive Council.

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Defined terms

Defined terms

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

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

APPENDIX 2

SCHEDULE 1 OF THE *PUBLIC SECTOR MANAGEMENT ACT 1994*

Public Sector Management Act 1994
Entities which are not organisations **Schedule 1**

Schedule 1 — Entities which are not organisations

[s. 3 and 108]

[Heading amended by No. 19 of 2010 s. 4.]

Column 1 Item	Column 2 Entity
1	The Governor's Establishment referred to in the <i>Governor's Establishment Act 1992</i>
2	A department of the staff of Parliament referred to in the <i>Parliamentary and Electorate Staff (Employment) Act 1992</i>
3	The electorate office of a member of Parliament
4	Any court or tribunal established or continued under a written law and any judge or officer exercising a judicial function as a member of that court or tribunal
5	The Police Force within the meaning of the <i>Police Act 1892</i>
6	Curtin University of Technology established under the <i>Curtin University of Technology Act 1966</i>
7	Edith Cowan University established under the <i>Edith Cowan University Act 1984</i>
8	Murdoch University established under the <i>Murdoch University Act 1973</i>
9	The University of Notre Dame established under the <i>University of Notre Dame Australia Act 1989</i>
10	The University of Western Australia established under the <i>University of Western Australia Act 1911</i>
11	Gold Corporation and Goldcorp Australia established under the <i>Gold Corporation Act 1987</i> and the Mint within the meaning of that Act
12	The Independent Market Operator established under the <i>Electricity Industry (Independent Market Operator) Regulations 2004</i>
13	The R & I Bank of Western Australia Ltd within the meaning of the <i>R & I Holdings Act 1990</i> ⁴

Public Sector Management Act 1994**Schedule 1** Entities which are not organisations

Column 1 Item	Column 2 Entity
14	SGIO Insurance Limited established under the <i>SGIO Privatisation Act 1992</i>
15	Any local government or regional local government or the council of a local government or regional local government
16	Racing and Wagering Western Australia established under the <i>Racing and Wagering Western Australia Act 2003</i>
16A	Any port authority established under the <i>Port Authorities Act 1999</i>
17	Western Australian Land Authority established by the <i>Western Australian Land Authority Act 1992</i>
18	Western Australian Treasury Corporation established by the <i>Western Australian Treasury Corporation Act 1986</i>
19	A body established by or under the <i>Water Corporations Act 1995</i> section 4, namely — <ul style="list-style-type: none"> (i) the Water Corporation; and (ii) the Bunbury Water Corporation; and (iii) the Busselton Water Corporation; and (iv) a body established by the Governor.
20	Western Australian Greyhound Racing Association established by the <i>Western Australian Greyhound Racing Association Act 1981</i>
21	A body established by the <i>Electricity Corporations Act 2005</i> section 4(1)
<p><i>[Schedule 1 amended by No. 73 of 1990 s. 22(3)(a)(iii); No. 89 of 1994 s. 109; No. 73 of 1995 s. 188; No. 14 of 1996 s. 4; No. 57 of 1997 s. 99(4); No. 5 of 1999 s. 23; No. 58 of 1999 s. 106; No. 24 of 2000 s. 14(13) and 34(2); No. 35 of 2003 s. 23 and 221(3); No. 67 of 2004 s. 45(2); No. 18 of 2005 s. 139; No. 25 of 2012 s. 224; No. 25 of 2013 s. 44; amended in Gazette 16 Sep 1994 p. 4803; 23 Jun 1995 p. 2508; 3 Nov 1995 p. 5204; 4 Jan 2005 p. 6.]</i></p>	

APPENDIX 3

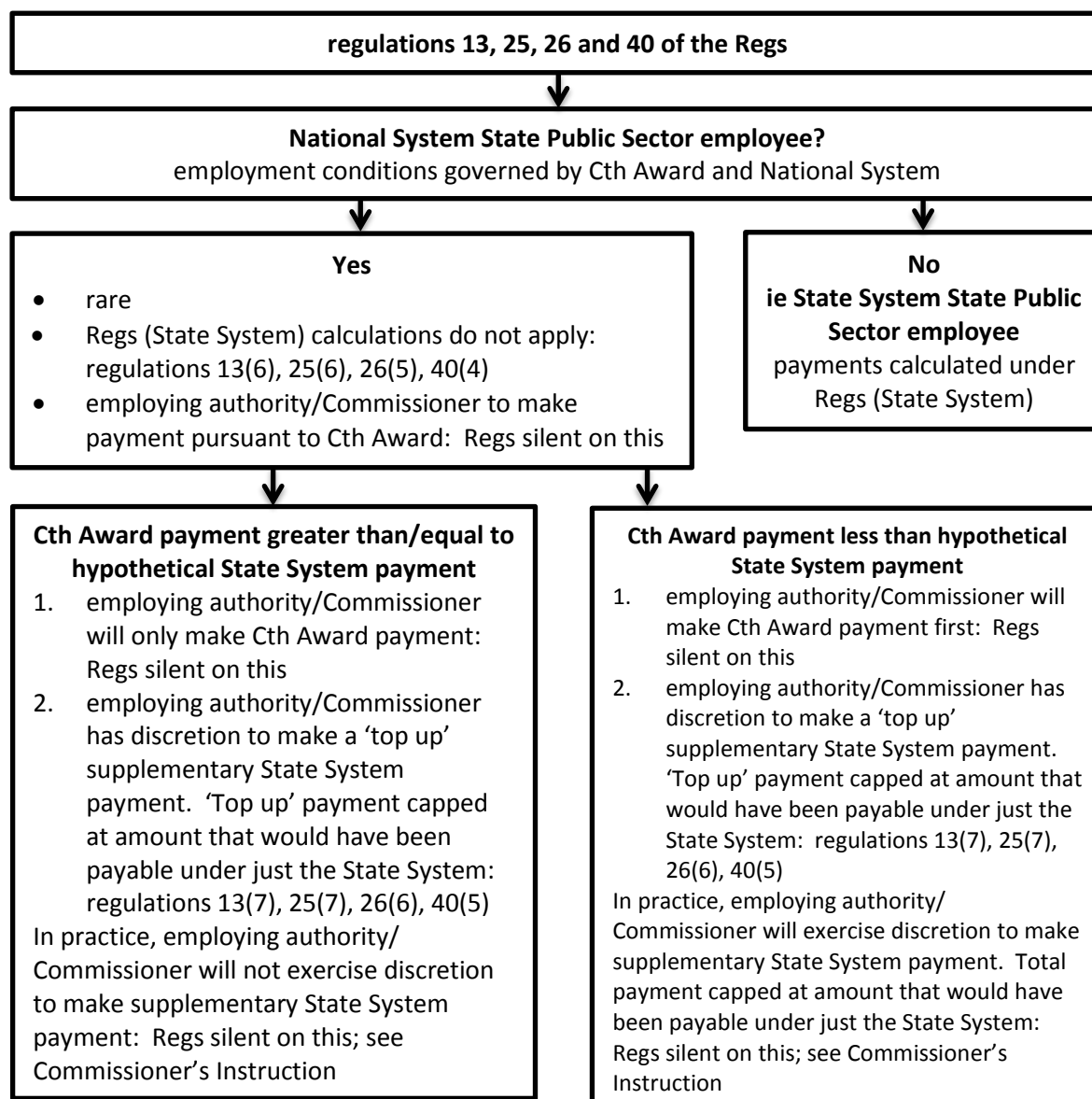
REDUNDANCY AND REDEPLOYMENT PAYMENTS

FLOW CHART

Commissioner = Public Sector Commissioner

Cth Award = 'Commonwealth award' as defined in regulation 3 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*⁴⁵

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



⁴⁵

“(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;”