

## DIRECTIVE 04/18

Supersedes: 16/16

# Minister for Industrial Relations Directive: Early Retirement, Redundancy and Retrenchment

### 1. Purpose:

To specify the action to be taken and the conditions and entitlements applying to public service employees in relation to an early retirement package, redundancy package or retrenchment package.

### 2. Effective date: 11 May 2018

### 3. Legislative authority:

Section 54(1) of the *Public Service Act 2008* (PSA).

Sections 51 and 52 of the *Public Service Act 2008* (PSA) and section 941 of the *Industrial Relations Act 2016* apply if there is a conflict with an act, regulation or industrial instrument.

### 4. Application:

This Directive applies to all public service employees except:

- employees engaged on a temporary basis under sections 147 or 148 of the PSA; or
- employees engaged on a casual basis under sections 147 or 148 of the PSA; or
- employees on contracts under the PSA\*; or
- employees whose employment is terminated in accordance with disciplinary action, or retirement because of mental or physical incapacity.

\*NOTE - Officers under section 122 contracts who revert to tenured public service employment will regain their eligibility under this directive on reversion.

### 5. Variation

This Directive can be varied by –

- The Minister responsible for industrial relations; or
- Legislation.

### 6. Previous references:

- Directives 16/16, 11/12, 4/12, and 17/09: Early Retirement, Redundancy and Retrenchment
- Directives 10/05, 9/04, 26/99, 2/98, 22/97 and 7/97: Retrenchment
- Directives 11/05, 10/04, 27/99, 1/98, 21/97 and 6/97: Voluntary Early Retirement
- Directive 7/96: Action Because of Surplus Employees
- Public Sector Management Standard for Staffing Options to Manage Organisational Change in the Queensland Public Sector

## 7. Related information:

Government policy is to deploy employees where possible. This directive needs to be read in conjunction with:

- directive about supporting employees affected by workplace change;
- directive about relocation expenses for officers retiring from the service;
- relevant Australian Taxation Office legislation and Taxation Rulings;
- the government's Employment Security Policy; and
- the government's Contracting Out of Government Services Policy.

## DIRECTIVE

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### 'SCHEDULE A'

#### 8. Definitions

- 8.1 **"Early retirement"** is where an employee accepts an early retirement package in exchange for voluntarily terminating their employment with an agency.
- 8.2 **"Redundancy"** is the situation where a position or function becomes redundant as a result of workplace change and this leads to a decision by the chief executive to terminate the employee's employment.
- 8.3 **"Retrenchment"** is the termination of employment of an employee whose position is redundant and for whom action to support employment security under the directive relating to supporting employees affected by workplace change has been reasonably exhausted.
- 8.4 **"Severance payment period"** is the period of time which equates to the payment of the severance payment expressed in weeks (note this period of time does not include recreation leave, long service leave, the notice period or if applicable the incentive payment).
- 8.5 **"Week's pay"** means the ordinary time rate of pay for the employee concerned. The following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, fares and travelling time allowances and any other ancillary payments.

#### 9. Early retirement

- 9.1 The chief executive may offer early retirement to employees where the scheme is approved by the Commissioner of Taxation.
- 9.2 The scheme must satisfy the legislative requirement that all employees who comprise such a class of employees as the Commissioner of Taxation approves may participate in the scheme; and
- 9.3 The scheme must be implemented with a view to rationalising or reorganising the agency's business operations<sup>1</sup>; and
- 9.4 Before the early retirement scheme is implemented the Commissioner of Taxation must have issued written approval of the early retirement scheme.
- 9.5 Allegations or findings of unsatisfactory performance or conduct due to any cause are not grounds for offering an employee an early retirement package.
- 9.6 The chief executive must establish the bona fides of each early retirement scheme and ensure that the relevant income tax provisions are complied with.
- 9.7 If applicable, the chief executive must ensure that the provisions of the directive relating to supporting employees affected by workplace change and sections 329 and 330 of the *Industrial Relations Act 2016* are met including consultation with employee organisations and notification is provided to the relevant Australian Government department whose primary function is helping unemployed people find work.

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<sup>1</sup> As part of this process, agencies should consider government policy on organisational restructure.

## 10. Redundancy

10.1 When workplace change results in redundant positions or functions an agency must explore options for placing affected employees as per the directive relating to supporting employees affected by workplace change.

Further, an agency is to have regard to the government's commitments to employment security, as stated in industrial instruments as well as prevailing labour market conditions and skills shortages, and consider the opportunities for placement of affected employees into other agencies.

10.2 An agency must actively explore the placement options outlined above, and conclude that the skills and abilities of affected employees cannot be reasonably used in other public service roles, before redundancy packages may be offered.

10.3 As a means of promoting industrial harmony, the chief executive must seek expressions of interest from eligible employees willing to accept a redundancy package; however, the decision to make an offer of a redundancy package rests with the chief executive.

10.4 The chief executive may determine that a position is redundant and the incumbent employee is surplus to requirements.

10.5 An employee is considered to be genuinely surplus if:

- (a) the chief executive has made a definite decision that the job the employee has been doing is no longer required to be done by an employee;
- (b) that decision is not due to the ordinary and customary turnover of labour;
- (c) the decision led to the proposal to terminate the employee's employment; and
- (d) the proposed termination of employment is not on account of any personal act or default of the employee, for example unsatisfactory performance or behaviour.

10.6 Prior to making an offer of a voluntary redundancy, the chief executive must establish the bona fides of each redundancy event and ensure that the relevant income tax provisions are complied with to ensure any redundancy payment qualifies as a genuine redundancy payment for taxation purposes.

10.7 The chief executive must provide a statement of advice to the employee before deciding to make an employee redundant that confirms the requirements of this section have been met. This statement of advice must be provided to the affected employee before their separation date.

10.8 The chief executive must ensure that the provisions of the directive relating to supporting employees affected by workplace change and sections 329 and 330 of the *Industrial Relations Act 2016* are met including consultation with employee organisations and notification is provided to the relevant Australian Government department whose primary function is helping unemployed people find work.

10.9 An employee must be less than 65 years old at the time of termination for a redundancy payment to qualify as a genuine redundancy payment under the relevant legislative provisions of income tax law and any Taxation Ruling issued by the Commissioner of Taxation.

## 11. Retrenchment

11.1 The chief executive may approve the retrenchment of public service employees only in exceptional circumstances and in accordance with the directive relating to supporting employees affected by workplace change.

11.2 Exceptional circumstances are where action to support employment security under the directive relating to supporting employees affected by workplace change has been reasonably exhausted or the employee whose position is redundant is not participating actively in strategies to secure a suitable alternative placement.

11.3 In considering the case for retrenchment the chief executive must provide to the employee whose position is redundant the circumstances on which the proposal to retrench are based and an

opportunity for the employee to establish that retrenchment is unreasonable in the circumstances. The employee must be given a minimum of 10 working days to respond. If the employee does not establish to the chief executive's satisfaction that retrenchment is unreasonable, the chief executive may proceed with action to retrench the employee. The chief executive's reasons for proposing retrenchment, the employee's response and the final decision must be in writing.

- 11.4 The chief executive must ensure that the relevant income tax provisions are complied with when issuing a severance payment to an employee to ensure the payment qualifies as a genuine redundancy payment for taxation purposes.
- 11.5 The chief executive must provide a statement of advice to the employee before deciding to make a position redundant that confirms the requirements of this section have been met. This statement of advice must be provided to the affected employee before their separation date.
- 11.6 If applicable, the chief executive must ensure that sections 329 and 330 of the *Industrial Relations Act 2016* are met including consultation with employee organisations and notification is provided to the relevant Australian Government department whose primary function is helping unemployed people find work.

## **12. Reporting**

- 12.1 Each agency must state in its annual report the number of packages paid to employees with respect to early retirement schemes, redundancies and retrenchments in the previous financial year and the total monetary value of these packages, including incentive payments.
- 12.2 Each agency will establish a register identifying the following information about each employee who accepts an early retirement package, redundancy package or retrenchment package: surname, given names, date of birth, employment status (full-time, part-time), severance date, amount of severance payment received (expressed in weeks), the amount of any incentive payment and the weekly rate of pay.

## **13. Re-engagement**

- 13.1 A person who has received an early retirement package, redundancy package or retrenchment package and who is subsequently engaged in one Queensland Government entity<sup>2</sup> or more as a consultant, contractor, or employee for a total cumulative period of more than twenty full-time equivalent (20) working days in the severance payment period is required to refund to the Crown a portion of their severance payment. The person will be entitled to retain only that portion of the severance payment which covers the period of time for which they were not engaged in a Queensland Government entity or a minimum of twenty days' salary, whichever is the greater.
- 13.2 For example, a person who receives a severance payment of 30 weeks' pay may work only for a total cumulative period of 20 days in the 30 week period after the date on which the retirement, redundancy or retrenchment becomes effective without having to refund a portion of the severance payment.
- 13.3 Continuing this example, once the same person works in excess of 20 days within the 30 week severance payment period, the person is entitled to retain that portion of the severance payment applicable to the period of time for which they were not engaged in a Queensland Government entity. The person would be required to refund to the Crown the remainder of the severance payment, provided that the person would be entitled to retain a minimum of 20 days' salary.
- 13.4 A part-time employee who receives a severance payment for the loss of one part-time job and who retains another part-time job in the Queensland public service, will be required to refund the portion of severance payment to which they are not entitled should they subsequently increase their part-time hours during the severance payment period.
- 13.5 The chief executive of the re-engaging department is responsible for implementing procedures to collect the refund.

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<sup>2</sup> As defined in section 24 of the *Public Service Act 2008*

## 14. Transitional Provision

- 14.1 Other than as provided for in clause 14.2, the provisions of this directive take effect from the date set out in clause 2, including in relation to employees to whom Directive 16/16 have been applied.
- 14.2 Where an employee has been offered a voluntary redundancy under a previous directive, the offer remains valid and able to be accepted. If the offer is declined, the provisions of this directive take effect from the date of decline.

## 'SCHEDULE B'

### 15. Entitlement

- 15.1 Packages provided by this directive are compensation for loss of job tenure.

#### Early Retirement

- 15.2 An early retirement package will comprise the following:

- (a) Accrued recreation leave<sup>3</sup>;
- (b) Accrued long service leave for employees who have worked for at least one year, on the basis of 1.3 weeks for each year of continuous service and a proportionate amount for an incomplete year of service<sup>3</sup>;
- (c) A severance payment of two weeks' full-time pay per full-time equivalent year of service and a proportionate amount for an incomplete year of service paid at the employee's substantive appointed level. The minimum payment is four weeks' pay, and the maximum is 52 weeks, provided that no employee will receive less than the severance payment under the Termination, Change and Redundancy Statement of Policy issued by the Queensland Industrial Relations Commission.

- 15.3 An early retirement package may comprise an incentive payment (refer to clause 17 for further information on incentive payments).

#### Redundancy

- 15.4 A redundancy package will comprise the following:

- (a) Accrued recreation leave<sup>3</sup>;
- (b) Accrued long service leave for employees who have worked for at least one year, on the basis of 1.3 weeks for each year of continuous service and a proportionate amount for an incomplete year of service<sup>3</sup>;
- (c) A severance payment of two weeks' full-time pay per full-time equivalent year of service and a proportionate amount for an incomplete year of service paid at the employee's substantive appointed level. The minimum payment is four weeks' pay, and the maximum is 52 weeks, provided that no employee will receive less than the severance payment under the Termination, Change and Redundancy Statement of Policy issued by the Queensland Industrial Relations Commission.

- 15.5 A redundancy package may comprise an incentive payment (refer to clause 17 for further information on incentive payments).

#### Retrenchment

- 15.6 A retrenchment package will comprise the following:

- (a) Accrued recreation leave<sup>3</sup>;
- (b) Accrued long service leave for employees who have worked for at least one year, on the basis of 1.3 weeks for each year of continuous service and a proportionate amount for an incomplete year of service<sup>3</sup>;
- (c) A severance payment of two weeks' full-time pay per full-time equivalent year of service and a proportionate amount for an incomplete year of service paid at the employee's substantive appointed level. The minimum payment is four weeks' pay, and the maximum is 52 weeks,

<sup>3</sup> If the officer is performing higher duties at the date of termination, the calculation must be consistent with the requirements of the Ministerial Directive on higher duties.

provided that no employee will receive less than the severance payment under the Termination, Change and Redundancy Statement of Policy issued by the Queensland Industrial Relations Commission.

## **16. Tenured part-time employees**

- 16.1 Tenured part-time employees affected by redundancy and retrenchment situations or who are eligible for an early retirement package will be entitled to a severance payment. The payment is calculated on two weeks' full-time pay per year of full-time equivalent service and a proportionate amount for an incomplete year of service (minimum four weeks, maximum 52 weeks).
- 16.2 Employees who hold two or more tenured part-time jobs will be entitled to a severance payment calculated only on the proportion of full-time equivalent years of service applicable to the part-time position which becomes redundant.

## **17. Incentive payment**

- 17.1 In addition to the severance payment, an incentive payment may be offered once only to encourage employees to exit the department on or by a specified date. The payment will be \$6,500 or 12 weeks' pay at the employee's substantive level, whichever is the greater.
- 17.2 The incentive payment reduces by the equivalent of one week's pay for each week the employee delays leaving the department after the specified date.
- 17.3 Tenured part-time employees who are offered an incentive payment will be entitled to a portion of the incentive payment, which will be adjusted to reflect the proportion of full-time hours worked by the employee. For example, if .5 is the proportion of full-time hours worked by an employee for the position, the incentive payment applicable would be \$3,250 or 12 weeks' salary, calculated at the employee's usual part-time rate (i.e. in this example .5), whichever is the greater.
- 17.4 Incentive payments may apply to early retirements and redundancies, but do not apply to retrenchments.
- 17.5 The incentive payment includes payment in lieu of notice.

## **18. Recognition of previous employment**

- 18.1 Employees whose previous employment is recognised for the purpose of calculating long service leave entitlement are entitled to have that recognised service included in calculating their severance payment. The total severance payment will not exceed 52 weeks' pay.

### Note:

Previous recognised employment includes all recognised employment (including temporary employment) in the categories specified in the directive relating to recognition of previous service and employment.

- 18.2 Employees whose previous employment is recognised for the purpose of calculating long service leave entitlement and who have received a severance payment from their previous employer will be entitled to a severance payment calculated only on their current period of employment.

## **19. Relocation expenses**

- 19.1 Public service officers who accept an early retirement package, redundancy package or retrenchment package will be entitled to relocation expenses consistent with the Ministerial Directive on relocation expenses for officers retiring from the service.