



Office of the **C**ommissioner for **P**ublic **E**mployment

# Redeployment

## Procedures

and the

## Award



Northern Territory Government



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# NORTHERN TERRITORY OF AUSTRALIA

## *Public Sector Employment and Management Act*

### **DETERMINATION 11 OF 1998**

I, DAVID JOHN HAWKES, Commissioner for Public Employment for the Northern Territory, pursuant to my powers under Section 14 of the Public Sector Employment and Management Act, and in accordance with Section 13 of that Act, hereby determine that:-

1. The provisions of the Northern Territory Public Sector Redeployment and Redundancy Provisions Award 1996, and the Agreed Redeployment Procedures as in force on 30 June 1998 shall apply to an employee; and
2. These provisions shall apply to an employee covered by:
  - (a) the Towards NTPS 21, 1997 – 1999 Certified Agreement;
  - (b) the Northern Territory Public Sector Teachers and Educators Certified Agreement 1997;
  - (c) the Medical Officers (Northern Territory Public Sector) Certified Agreement, 1998 – 2000; or
  - (d) the Darwin Port Authority (Northern Territory Public Sector) Certified Agreement 1998;

for the life of the relevant agreement.

Dated 23 September, 1998.

*Original signed by D J Hawkes*

D J HAWKES  
Commissioner for Public Employment

## DEFINITIONS

**ACT** means the *Public Sector Employment and Management Act* for the Northern Territory.

**AGENCY** means a Department or other unit of administration as defined in accordance with section 3(1) of the *Public Sector Employment and Management Act*.

**AWARD** means the Northern Territory Public Sector Redeployment and Redundancy Provisions Award 1996.

**CHIEF EXECUTIVE OFFICER** means a Chief Executive Officer as defined in section 3 (1) of the Northern Territory *Public Sector Employment and Management Act*.

**COMMISSIONER** means the Commissioner for Public Employment for the Northern Territory.

**POTENTIALLY SURPLUS EMPLOYEE** means:

- (i) an employee who is in a class of employees comprising of a greater number of employees than is necessary for the efficient and economical working of the agency, or
- (ii) an employee whose services cannot be effectively used because of technological or other changes in the work methods of the agency, or changes in the nature, extent or organisation of the functions of the agency.

**SERVICE** means a period of continuous service with the Northern Territory Public Sector, which includes service as a compulsory transferee as defined in accordance with By-law 45 (1) of the Act. An employee who is classified as a voluntary transferee and becomes or is likely to become redundant from the date of effect of this award, will for all purposes of this award have their previous continuous service with the Commonwealth Government recognised. A voluntary transferee is an employee who was on leave without pay under the former Australian Public Service Regulation 61Q prior to 1 October 1987 to work for the NT Public Service, having prior continuous service with the Commonwealth Government.

It should also be noted that some situations or cases may arise where an employee has service that falls outside of the scope of this definition, and which the employee, their union or the Agency believes should warrant inclusion for the purpose of calculating redundancy payments under clause 10 of the Award. Such cases may be considered under clause 22 of the Award "substitution or other provisions". However, no guarantee of agreement to include such service should be given to the employee. Rather the provisions of Clause 22 should be explained with advice that agreement by the Commissioner and the relevant Union must be obtained for service outside of the scope of the definition to be included, and that such agreement will not necessarily be forthcoming. It is open to the Agency, the Union, or the Employee to put a case to the CPE.

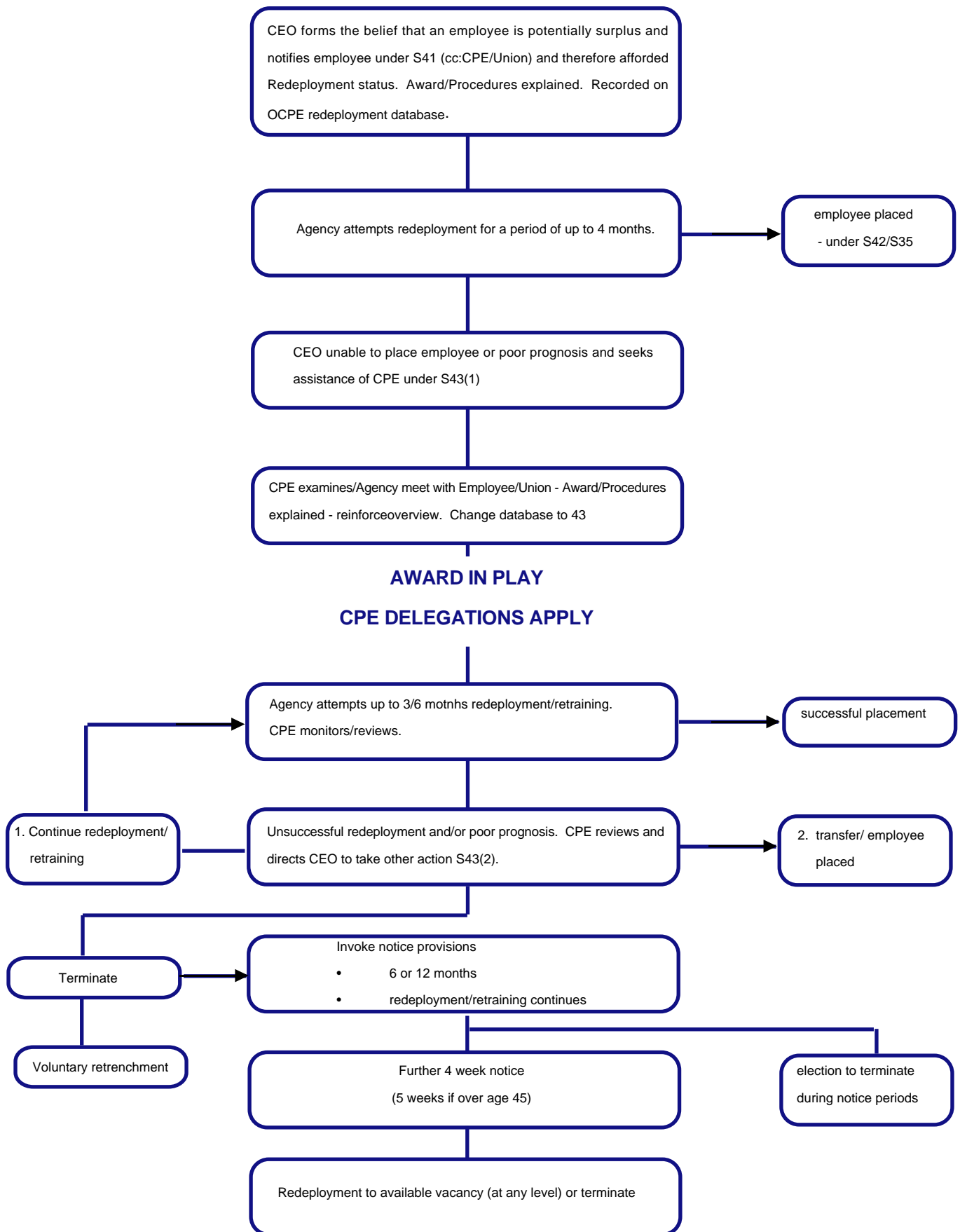
## DEFINITIONS continued.

**SUITABLE EMPLOYMENT** means employment agreed to be suitable by the Commissioner or the Chief Executive Officer of the employee's home agency and the union(s) having regard to an employee's:-

- (i) skills/qualifications profile,
- (ii) background and experience,
- (iii) designation level,
- (iv) salary level (the inclusion as salary of allowances or loadings other than temporary promotion allowance shall be at the discretion of the Commissioner),
- (v) expressed desires in respect of alternative employment,
- (vi) retraining requirements
- (vii) current work location.

**UNION** means, a trade union as defined in section 4 of the Workplace Relations Act 1996 and which is a party to this Award.

# REDEPLOYMENT & REDUNDANCY PROCESS & PROCEDURES



# Procedures

## PREAMBLE

The Award and Redeployment procedures cover all situations where employees are identified as potentially surplus. Where large numbers of potentially surplus or employees require redeployment as a result of major restructuring or major organisational change there shall be prior consultation between the parties to the Award on procedures to facilitate the effective operation of large scale redeployment exercises. Any agreement arising from consultation shall be consistent with the Award and Redeployment procedures.

The following procedures should be considered in conjunction with the *Northern Territory Public Sector Redeployment and Redundancy Provisions Award 1996*, Part 6 of the *Northern Territory Public Sector Employment and Management Act* (the Act) and Employment Instruction Number 1 of the Act.

These procedures do not apply to an employee who in accordance with section 46 of the Act, is unable or unfit to perform in his/her normal position or field of work, and requires assistance with redeployment.

## **1. AGENCY ACTION - when an employee is identified as being potentially surplus**

### **1.(a) ADVICE TO THE EMPLOYEE**

Pursuant to Section 41 of the Act, when an agency identifies an employee as being potentially surplus to its staffing requirements, the following action must take place:-

The Chief Executive Officer (CEO) of the agency concerned must advise the employee in writing of the following:

- the employee's potentially surplus status with the agency, the reason therefore and include copies of the Award and these procedures;
- whether or not the agency is likely to permanently place the employee within the next 3-6 months;
- a request to arrange an interview date and time at which the employee's status is to be discussed and that a union representative may be present, if desired;
- the employee is to acknowledge receipt of notification and a copy is to be placed on the case file.

A confidential case file must be raised to record redeployment details of the employee.

### **1.(b) THE INTERVIEW**

The agency shall ensure the interview is conducted by a suitably skilled and experienced employee who, with regard to the redeployee's status, explains and discusses:-

- Sections 41, 42 and 43 of the Act; provisions of the Award and these Procedures.
- Redeployment possibilities including transfer to a lower level and salary maintenance.
- Relocation.
- Retraining.
- Responsibilities/expectations and observations of employee.
- Commissioner's and the CEO's expectations of the employee in respect of redeployment which includes a commitment to retraining and active job seeking.

- Agency/Commissioners role and responsibilities.
- Appeal rights.
- Request an up to date copy of CV, and provide assistance with preparation if needed.
- Discuss Career Planning.

## **1.(c) ADVICE TO THE COMMISSIONER**

The agency, must also send a copy of the letter referred to in 1.(a) to the Commissioner, with the following employee supplementary information:-

- Full name.
- AGS number.
- Date of birth.
- Name of union eligible to become a member of and whether a member at present.
- Work contact telephone number.
- \*\*Designation.
- \*\*Date of commencement in NTPS/APS.
- \*\*Date/Compulsory transfer to the NTPS.
- \*\*Location current and preferred.

## **1.(d) ADVICE TO THE UNION**

In accordance with Section 41(2) of the Act the CEO will notify the relevant union(s) of an employee being potentially surplus to their requirements, and in addition provide the following:-

- for a union member, holding a classification below the salary level of Executive Officer 1, all supplementary information details in accordance with 1.(c) of these procedures,
- for an employee who is not a member of a union but would be eligible to become a member of a union specified in Clause 3.2 of the Award, and who holds a classification carrying a salary level below that of Executive Officer 1, the details marked “\*\*\*” in accordance with 1.(c) of these procedures will be provided to the relevant union.

- for an employee who holds a classification carrying a salary level equivalent to or above that of Executive Officer 1, all details provided in accordance with 1.(c) of these procedures will be provided to the relevant union only if the employee so requests irrespective of the employee being a member of a relevant union.

The advice to the union shall be provided at the same time as the employee is advised under 1.(a).

### **1.(e) REDEPLOYMENT AND RETRAINING ACTION**

The agency shall undertake action set out in Sections 3 and 4 of these procedures during the stages of redeployment and retraining under both sections 41 and 43 of the Act.

### **1.(f) WHEN TO SEEK ASSISTANCE OF THE COMMISSIONER**

Where a CEO has notified an employee under section 41 of the Act to be potentially surplus, and after 4 months of unsuccessful attempts at redeployment and retraining, or sooner if a poor prognosis is apparent, the CEO will formally seek the assistance of the Commissioner in accordance with Section 43 of the Act, and ensure the following action is taken:-

- advise the employee in writing of action under section 43 of the Act ;
- include a request to arrange an interview date and time at which the employee's status is to be discussed and advise that a union representative may be present, if desired;
- arrange for a representative of the Commissioner to attend the interview.

The interview is to address information outlined under section 1(b) of these procedures.

## 2. RECORDING AND MONITORING BY THE COMMISSIONER

The Commissioner shall cause the following action to take place:-

**2.(a)** Where an employee has been notified in accordance with Section 41 of the Act as being potentially surplus to the requirements of his/her agency, the Commissioner shall ensure the employee's details are recorded on a central data base for the purpose of maintaining statistical information, and maximising redeployment opportunities and reporting to government.

**2.(b)** Where an employee has been notified in accordance with section 43 the Act, the Commissioner shall write to the employee acknowledging notification and the request for assistance from his/her agency. This letter will also advise the employee of a contact person within the Office of the Commissioner, should the employee have any queries about his/her status. The Commissioner shall forward the employee's details to the union in accordance with Clause 7 of the Award and enter reviewed Section 43 status on the data base.

**2.(c)** Agency information and recommendations will be assessed and the CEO will be advised to take one or more, of the following courses of action:-

- Redeployment ( refer Section 3 )
- Retraining ( refer Section 4 )
- Voluntary retrenchment ( refer Section 5 )
- Notice of redundancy ( refer Section 6 )
- Further consider Career Planning

**2.(d)** Monitor, assess, review and provide advice to the agency and employee on matters relating to the redeployment process.

**2.(e)** Review and assess all interview reports recommending the non selection of a redeployee following referral for assessment for a vacancy.

### **3. REDEPLOYMENT - Agency actions under sections 41 & 43 of the Act**

#### **3.(a) MONITORING VACANCIES**

- (i) CEOs will ensure all permanent vacancies within the NTPS are monitored for redeployment purposes. Monitoring of vacancies should also be extended to redeployees on leave only if the employee concerned has requested to be notified of vacancies and has made appropriate arrangements.
- (ii) Temporary vacancies must also be considered if there is a reasonable expectation that the temporary vacancy will become a permanent vacancy, or could be used for retraining.
- (iii) Although gazette action is not required in respect of temporary vacancies that are less than 6 months duration, they are still required for redeployment purposes and can provide ideal retraining opportunities for redeployees.
- (iv) CEOs' shall ensure temporary vacancy notifications are well distributed throughout the NTPS.
- (v) All temporary vacancy notices must also be forwarded to the Office of the Commissioner.
- (vi) Agencies are required to consider their own potentially surplus employees for permanent vacancies prior to undertaking recruitment action (Section 3(b) refers).
- (vii) Media advertising should not occur where placement of a redeployee is likely.

#### **3.(b) MATCHING REDEPLOYEES WITHIN AN AGENCY TO VACANCIES**

- (i) In identifying a vacancy, CEO's will consider their own redeployees with the objective of matching the employee and the vacancy, in the context of the following points as specified in Clause 6.4 of the Award:-
  - the employee's skills/qualifications profile;
  - care should be taken in checking that an employee's qualifications are relevant to a vacancy especially with regard to vacancies requiring formal qualifications;
  - the employee's background and experience;
  - designation/ classification level;

- salary level (the inclusion as salary, of allowances or loadings other than temporary promotion allowance, shall be at the discretion of the Commissioner);
  - the employee's expressed desires in respect of alternative employment;
  - retraining requirements;
  - the employee's preferred work location.
- (ii) Placement of a redeployee in a temporary vacancy especially short term vacancies, should not defer any activity in finding the employee a suitable permanent vacancy.

### **3(c) APPLICATIONS FOR VACANCIES AND REDEPLOYEES**

- (i) Agencies must actively encourage their redeployees to apply for suitable vacancies and monitor the gazette for this purpose.
- (ii) Where a redeployee has directly applied for a vacancy he/she should advise their agency Case Officer to ensure the Case Officer formally refers the employee for assessment in accordance with Section 3(d) of these procedures.
- (iii) A redeployee may, if he/she desires, apply for a vacancy by requesting that their Case Officer forward a copy of their resume under a covering letter from the home agency.

### **3(d) ASSESSMENT AND SELECTION OF REDEPLOYEES FOR AN ADVERTISED VACANCY**

- (i) The suitability of a redeployee will be considered in the added context of ability to perform the duties of the vacancy with a reasonable period of training.
- (ii) Where more than one redeployee is assessed for a vacancy, selection based on the merit principle shall apply between the redeployees.
- (iii) Where a redeployee is being considered for a vacancy outside his/her home agency, agencies are to liaise with each other regarding assessment of the employee.
- (iv) Redeployment may take place at the employee's substantive level or to a lower level and salary.
- (v) Where a redeployee is transferred to a lower level, the CEO shall:-
- advise the Commissioner (in accordance with Clause 14 of the Award), of a request for maintenance of income;

- unless the CEO can substantiate otherwise, maintenance of income will be assessed for payment for a period of either 6 or 12 months based on the notice period the employee would be eligible for in accordance with Clause 9 of the Award.

### **3(e) REDEPLOYEE ASSESSED AS SUITABLE**

Where a redeployee is assessed as suitable, with or without training, the employee will be transferred under Section 35 or 43 of the Act, and the relevant parties advised accordingly. Appropriate consultation with the workplace shall take place to ensure that the work environment is conducive to successful placement. Upon successful placement the employee's case file will be closed.

### **3(f) REDEPLOYEE ASSESSED AS UNSUITABLE**

- (i) Where an employee is assessed as unsuitable, the agency which conducted the interview will:-
- forward the interview report including copies of the job specification; selection criteria, referee reports and the redeployee's application for the vacancy to the Commissioner for assessment;
  - advise the employee that their report has been referred to the Commissioner for assessment;
  - provide the employee with a copy of the interview report relating to the employee.
- (ii) All recruitment action will be frozen until the Commissioner has completed the assessment of documentation associated with the interview panel's recommendaton.

In assessing the interview panel's report the Commissioner may request clarification from persons associated with the interview process.

- (iii) The redeployee may request the interview panel to conduct a post interview counselling session.
- (iv) If the Commissioner accepts the interview panel's report, the Commissioner will advise the agency to proceed with recruitment action.
- (v) If the Commissioner concludes that there has been unfair or unreasonable treatment of the redeployee through the selection process the Commissioner will:-
- instruct the CEO to take appropriate action to resolve the matter;
  - advise all relevant parties of the action taken.

### **3(g) ACTION AFTER 3 MONTHS OF ACTIVE AND UNSUCCESSFUL JOB REFERRALS**

The redeployee will be re-interviewed by the agency every 3 months to discuss the following matters (a union representative may be present if the redeployee desires):-

- the employee's attitude toward redeployment;
- likelihood of permanent placement within the next 3 to 6 months;
- clarification of the employee's needs, i.e. retraining;
- future options, i.e. continuation of the redeployment process, voluntary retirement, notice of redundancy.

The discussion and outcome/action should be documented and placed on the redeployee's case file.

## **4. RETRAINING - Agency actions under sections 41 & 43 of the Act**

**4.(a)** Where an employee needs additional skills or exposure to new areas of work, a retraining program may be arranged in consultation with the employee to take place over a 3 to 6 month period.

Such a retraining program will be arranged by the home agency but not necessarily within the employee's home agency.

**4.(b)** Retraining is generally undertaken in a structured "on-the-job" training program. The redeployee may be placed in an area of work as an additional person, or, in an actual temporary vacancy.

**4.(c)** If a temporary vacancy is used as a training placement, it is expected that there would be a structured training program applied to the placement for the purpose of assessing the redeployee's performance and ability associated with new skills to be learned.

**4.(d)** The employee's home Agency will monitor retraining progress. Written progress reports completed by the supervisor of the training placement are to be sent to the redeployee's home agency at least once a month. The supervisor, before forwarding the report to the home agency, should discuss it with the redeployee and give him/her an opportunity to comment and sign the report.

**4.(e)** Where it is considered necessary and reasonable, formal courses of study may be considered for retraining purposes.

## 5. VOLUNTARY RETRENCHMENT

**5.(a)** Where every endeavour has been made to place a potentially surplus employee in other suitable employment or arrange training for such employment, and after assessing all relevant information and the circumstances of the case, it is considered that the employee is unable to be retrained, the CEO will arrange for a meeting with the employee and union, if relevant, to discuss the option of voluntary retrenchment.

In discussing the option of voluntary retrenchment the provisions of Clause 10 of the Award should be addressed.

**5.(b)** If all parties agree, the CEO will request that the Commissioner formally invite the redeployee to elect to be voluntarily retrenched and, where accepted, the employee may be retrenched in accordance with Clause 10 of the Award.

**5.(c)** It should be made clear to the employee that only the Commissioner can formally invite an employee to be voluntarily retrenched.

## 6. NOTICE OF REDUNDANCY

**6.(a)** Clause 9 of the Award will not be formally invoked unless prior advice is given to the employee and the Union (if relevant), in a meeting which will be arranged by the Commissioner.

**6.(b)** The process is outlined in the Award commencing with Clause 9.

Clause 10 of the Award (Voluntary Retrenchment) will not apply where Clauses 9 or 11 have been invoked.

**6.(c)** Some features of the Notice process are outlined below:-

- During all periods of notice, the redeployment process and retraining, if necessary, will continue as outlined in Section 3 and 4 of these procedures.
- Normal entitlements will continue to accrue.
- At any time during all periods of notice, an employee may elect, with the Commissioner's approval, to terminate employment from the NTPS or be transferred.
- An employee may be transferred at his/her substantive level or to a lower level and salary. Where an employee is transferred to a lower level and

salary, income maintenance in accordance with the Award provisions will apply.

- Assistance may be provided to an employee where the employee wishes to seek employment outside the NT Public Sector.

**6.(d)**

If the employee's employment in the Public Sector, is to be terminated either during or at the end of a notice period, the Commissioner shall advise all relevant parties and the employee's case file will be closed.

## **7. APPLICATION OF INABILITY PROVISIONS TO FORMER REDEPLOYEES**

If a redeployee has been placed in accordance with section 3.(e) of these procedures and the placement is unsuccessful, despite appropriate training being provided, the CEO shall be notified and shall arrange discussions with the employee, the Union and (if required) the Commissioner. Discussions shall include but need not be exclusively confined to:

- transferring the employee;
- further training;
- notification to the CPE;
- commencement of the inability process provided under Employment Instruction Number 6.

## **8. DUTY OF CARE**

The Agency and CPE are required to exercise due care to ensure that staff who prepare/provide information to employees are suitably qualified to do so, provide accurate information, (including any calculations of entitlements and taxation deductions on those entitlements), and maintain confidentiality in relation to the employee's entitlements and employment.

If further clarification on taxation is sought, employees should be referred to the Taxation Office. Employees should also be advised to seek financial advice from a qualified professional.

# Award

**This reproduction of the Northern Territory Public Sector Redeployment and Redundancy Provisions Award 1996, has been prepared by the Office of the Commissioner for Public Employment, for internal use within the NTPS. It does not purport to be an official reproduction of the Award and should not be interpreted to be so.**

**An official reproduction of the Award may be obtained from the Australian Industrial Relations Commission.**

# AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996  
s.111(1)(b) application for consent award

**Commissioner for Public Employment for the Northern Territory**  
(C No. 80112 of 1996)

## **NORTHERN TERRITORY PUBLIC SECTOR REDEPLOYMENT AND REDUNDANCY PROVISIONS AWARD 1996**

Public Sector Employees

Northern Territory

SENIOR DEPUTY PRESIDENT HANCOCK

ADELAIDE, 23 DECEMBER 1996

### **CONSENT AWARD**

## **PART 1 - APPLICATION AND OPERATION OF AWARD**

### **1. TITLE**

This award is known as the Northern Territory Public Sector Redeployment and Redundancy Provisions Award 1996.

## **2. ARRANGEMENT**

This award is arranged as follows:

### **Part 1 - Application and operation of award**

1. Title
2. Arrangement
3. Parties bound and application
4. Duration
5. Supersession
6. Definitions

### **Part 2 - Employer and employees' duties, employment relationship and related arrangements**

7. Advice to union(s)
8. Finding of other employment
9. Notice of redundancy
10. Voluntary retrenchment
11. Notice of transfer or termination of employment
12. Leave and expenses to seek employment
13. Election to terminate employment or be transferred

### **Part 3 - Wages and related matters**

14. Provision of income maintenance
15. Calculation of income maintenance payments
16. Retention of employee during notice periods
17. Refusal of suitable employment or training
18. Moving household
19. Use of accumulated sick leave
20. Compensation for losses etc
21. Right of appeal

### **Part 4 - Communication, consultation and dispute resolution**

22. Substitution or other provisions
23. Exemption
24. Dispute settling procedures

## **3. PARTIES BOUND AND APPLICATION**

The parties bound by this award are:

- 3.1** The Commissioner for Public Employment for the Northern Territory, and
- 3.2** the Community and Public Sector Union;  
the Australian Nursing Federation;  
the Transport Workers Union of Australia;  
the Automotive Food, Metals, Engineering, Printing and Kindred Industries Union;  
the Australian Liquor, Hospitality and Miscellaneous Workers Union;  
the Electric, Electrical, Energy, Information, Postal, Plumbing and Allied Services  
Union of Australia;  
the Association of Professional Engineers, Scientists and Managers, Australia;  
the Australian Education Union; and  
the Maritime Union of Australia.

This award applies to:

- 3.3.1** employees who are members or eligible to be members of the above unions and who are;
- 3.3.2** employees of agencies, prescribed authorities or units of administration of the Northern Territory Public Sector.

## **4. DURATION**

This Award comes into operation on 30 May 1996 and remains in force for a period of 12 months.

## 5. SUPERSESSION

5.1 This award supersedes the following:

- 5.1.1 the whole of the Northern Territory Public Service Redeployment and Redundancy Provisions Award 1987;
- 5.1.2 the whole of the Northern Territory Public Service Redeployment and Redundancy Provisions (ADSTE/ ETU) Award 1988;
- 5.1.3 the whole of the Northern Territory Teaching Service Redeployment and Redundancy Award 1987; and
- 5.1.4 Clause 5 only of the Redundancy and Termination of Employment in the Power and Water Authority Employees Award 1988.

## 6. DEFINITIONS

- 6.1 Act means the *Public Sector Employment and Management Act for the Northern Territory*.
- 6.5 Agency means a Department or other unit of administration defined in section 3(1) of the *Public Sector Employment and Management Act*.
- 6.8 Chief Executive Officer means a Chief Executive Officer defined in section 3(1) of the Act.
- 6.2 Commissioner means the Commissioner for Public Employment for the Northern Territory.
- 6.6 Potentially surplus employee means:
  - 6.6.1 an employee who is in a class comprising a greater number of employees than is necessary for the efficient and economical working of the agency; or
  - 6.6.2 an employee whose services cannot be effectively used because of technological or other changes in the work methods of the agency, or changes in the nature, extent or organisation of the functions of the agency.
- 6.3 Service means a period of continuous service with the Northern Territory Public Sector, which includes service as a compulsory transferee as defined in accordance with By-Law 45(1) of the Act.
  - 6.3.1 An employee who is classified as a voluntary transferee and becomes or is likely to become redundant from the date of effect of this award, will for all purposes of this award have their previous continuous service with the Commonwealth Government recognised. A voluntary transferee is an employee who was on leave without pay under the former Australian Public Service Regulation 61Q prior to 1 October 1987 to work for the NT Public Service, having prior continuous service with the Commonwealth Government.

- 6.4** Suitable employment means employment agreed to be suitable by the Commissioner or the Chief Executive Officer of the employee's home agency and the union(s) having regard to an employee's:
- 6.4.1** skills/qualifications profile;
  - 6.4.2** background and experience;
  - 6.4.3** designation level;
  - 6.4.4** salary level (the inclusion of allowances or loadings as salary, other than temporary promotion allowance, is at the discretion of the Commissioner);
  - 6.4.5** expressed desires in respect of alternative employment;
  - 6.4.6** retraining requirements;
  - 6.4.7** current work location.
- 6.7** Union means a trade union, as defined in section 4 of the Workplace Relations Act 1996 and which is a party to this award.

## **PART 2 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS**

### **7. ADVICE TO UNION(S)**

- 7.1** Where it appears to the Commissioner that a potentially surplus situation or a situation of redundancy has occurred or is likely to occur affecting members of the union(s) the Commissioner must:
- 7.1.1** immediately advise the union(s) to this effect and immediately provide all details required by the agreed Redeployment Procedures; and
  - 7.1.2** arrange discussions with officers of the union(s).
- 7.2** Where it appears to the Commissioner that a potentially surplus situation has occurred or a redundancy situation has or is likely to occur, affecting persons who are eligible to be members of the union(s), the Commissioner:
- 7.2.1** is not required to notify any details to the union(s) in respect of employees holding a designation with a salary level equivalent to or above that of Executive Officer Level 1; unless the employee concerned requests that the union(s) be notified;
  - 7.2.2** must immediately provide details to the union(s) in respect of employees holding a designation with a salary level below that of Executive Officer Level 1.

## 8. FINDING OF OTHER EMPLOYMENT

- 8.1** Where the union(s) has been notified in accordance with clause 7 of this award, the Chief Executive Officer of the employees' agency (CEO) and Commissioner must make every endeavour to place a potentially surplus employee in other suitable employment or arrange training for such employment.
- 8.2** In addition to any other action the CEO and/or Commissioner may have taken in the period before notice is given in accordance with clauses 9 or 11 of this award the CEO and Commissioner will, during all such period of notice, make every endeavour to place the employee in other suitable employment or arrange training for such alternative employment.

## 9. NOTICE OF REDUNDANCY

- 9.1** Where the Commissioner decides, after consultation in accordance with clause 7, that redeployment of any potentially surplus employee is not feasible:
- 9.1.1** an employee is entitled to 6 months formal notice that he or she is surplus to the requirements of the service; or
  - 9.1.2** where an employee has 20 or more years service or is over the age of 45 years, the employee is entitled to 12 months formal notice that he or she is surplus to the requirements of the service.
- 9.2** A surplus employee cannot be given notice under this clause if:
- 9.2.1** he or she has not been invited to elect for retrenchment in accordance with clause 10; or
  - 9.2.2** the employee has made an election for retrenchment and the Commissioner has refused to approve it.

## 10. VOLUNTARY RETRENCHMENT

- 10.1** Where an employee is unable to be placed in other suitable employment or retrained, the employee may be invited to volunteer retrenchment in accordance with this clause, subject to clause 7 and the agreed Redeployment Procedures.
- 10.2** An employee cannot be invited by the Commissioner to volunteer retrenchment until four weeks has elapsed since the relevant union was advised of a redundancy situation. A lesser period of time may be agreed upon by the Commissioner and the union.
- 10.3** Where the Commissioner approves an election for retrenchment under this clause, the period of notice is 4 weeks subject to subclause 10.4. The period of notice for an employee over the age of 45 years is 5 weeks.

- 10.4** The employee may be retrenched at any time within the period of notice under subclause 10.3 where:
- 10.4.1** the Commissioner so directs or the employee so requests; and
  - 10.4.2** the employee is entitled to receive payment in lieu of salary for the unexpired portion of the notice period.
- 10.5** An employee retrenched in accordance with this clause is entitled to be paid a sum equal to 2 weeks salary including, where applicable, Northern Territory allowance:
- 10.5.1** for each completed year of continuous service; and
  - 10.5.2** a pro rata payment for the months of continuous service completed since the last year of continuous service.
- Provided that:
- 10.5.2(a)** the minimum payable under this subclause is 4 weeks salary and the maximum is 48 weeks salary;
  - 10.5.2(b)** the sum payable to an employee under this subclause must not exceed the salary that would be payable were the employee to continue in his or her employment until the maximum retirement age for the class of employees to which he or she belongs.
- 10.6** For the purpose of calculating payment under 10.5:
- 10.6.1** where an employee has been acting in a higher designation for a continuous period of at least 12 months immediately prior to the date of notification that he or she is a surplus employee, the salary level is the employee's salary in their higher designation at the date of notification;
  - 10.6.2** where an employee has been paid a loading for shift work for 50% or more of the 12 months immediately preceding the date of notification, the weekly average amount of shift loading received during that period will be counted as part of "weeks salary";
  - 10.6.3** the inclusion of other allowances which are in the nature of salary will be at the discretion of the Commissioner.
- 10.7** All recreation leave, long service leave and leave loading entitlements, including pro rata entitlements, must be paid in full.
- 10.8** An employee is entitled to all reasonable removal and relocation expenses. This entitlement should be used within 90 days after the date of retrenchment unless otherwise approved by the Commissioner.
- 10.9** An employee is entitled to the use of or payment equivalent to 1 accrued airfare entitlement for the employee and his or her recognised dependents. This entitlement is in lieu of removal and relocation expenses in 10.8

Provided that:

- 10.9.1** where the employee elects to use his or her accrued airfare entitlement they do so within 90 days after the date of retrenchment, unless otherwise approved by the Commissioner.

## **11. NOTICE OF TRANSFER OR TERMINATION OF EMPLOYMENT**

- 11.1** An employee must be given 4 weeks formal notice that he or she will be transferred to a lower salary or employment will be terminated when:
- 11.1.2** the relevant period of notice in clause 9 has expired and the employee cannot be placed in other suitable employment;
  - 11.1.3** the relevant period of notice in clause 9 has expired and the training for alternative employment cannot be arranged.
- 11.2** An employee over the age of 45 years is entitled to 5 weeks formal notice that he or she will be transferred to a lower salary or will be terminated from employment.

## **12. LEAVE AND EXPENSES TO SEEK EMPLOYMENT**

- 12.1** For the purpose of attending employment interviews, an employee who has received notice in accordance with clauses 9 or 11 is entitled:
- 12.1.1** to reasonable leave with full pay; and
  - 12.1.2** to reasonable travelling and incidental expenses necessary to attend an interview where those expenses are not met by the prospective employer.

## **13. ELECTION TO TERMINATE EMPLOYMENT OR BE TRANSFERRED**

- 13.1** With the approval of the Commissioner, an employee who has received notice in accordance with clauses 9 or 11 may elect to terminate employment or be transferred before the expiry date of the notice period. The date elected then becomes the date of termination of employment or transfer for the purposes of this award.
- 13.2** Where the Commissioner approves an election to terminate employment, the employee will be entitled to receive payment in lieu of salary for the unexpired portion of the notice period. This payment includes NT allowance where it is applicable.
- 13.3** An employee who has declined an invitation to volunteer retrenchment prior to clauses 9 and 11 being invoked, is not entitled to receive a greater payment under subclause 13.2 than the employee would have been entitled to receive had he or she elected to be voluntarily retrenched.

## **PART 3 - WAGES AND RELATED MATTERS**

### **14. PROVISION OF INCOME MAINTENANCE**

An employee will be able to receive maintenance of income payments in accordance with clauses 15, 16 and 17 where their employment is terminated or where they have been transferred to a lower designation and salary.

### **15. CALCULATION OF INCOME MAINTENANCE PAYMENTS**

**15.1** Income maintenance payments are calculated as follows:

**15.1.1** where an employee is unemployed, an amount equivalent to his or her salary level at the date of termination of employment less the amount, if any, of unemployment benefits;

**15.1.2** where an employee obtains employment, the amount, if any, necessary to bring his or her salary at the lower level up to the salary level at the date of the transfer or termination of employment.

**15.2** Where an employee has been acting in a higher designation for a continuous period of 12 months immediately prior to the date which he or she received notice under clause 9, the employee's salary, for the purposes of this clause, is that received at the higher designation at the date of receiving notice.

**15.3** The inclusion of allowances or loadings as salary, other than temporary promotion allowance, is at the discretion of the Commissioner.

**15.4** The appeal procedure prescribed by clause 21 is available to settle disputes under this clause.

### **16. RETENTION OF EMPLOYEE DURING NOTICE PERIODS**

**16.1** An employee is entitled to be retained as an employee for the notice periods referred to in clauses 9 and 11 provided that:

**16.1.1** where his or her employment is terminated during either of the notice periods pursuant to clause 13, he or she is entitled to receive maintenance of income payments, if any, for the balance of the relevant notice period; and if the employee's circumstances so require.

**16.2** He or she will not be eligible to receive maintenance of income payments after he or she has reached the maximum retiring age applicable to their class of employees, or in any other case the employee reaches the age of 65 years.

### **17. REFUSAL OF SUITABLE EMPLOYMENT OR TRAINING**

Where an employee becomes unemployed, he or she will not be eligible to receive maintenance of income payments if they refuse offers of suitable employment or suitable training.

## 18. MOVING HOUSEHOLD

An employee is entitled to all reasonable expenses associated with moving his or her household to a new location if, in the opinion of the Commissioner, the transfer is necessary to enable the employee to take up alternative employment.

## 19. USE OF ACCUMULATED SICK LEAVE

- 19.1** The periods of notice under clauses 9 and 11 of this award will be extended by any periods of certificated sick leave taken during such periods.
- 19.2** An employee who, at the date of termination or transfer, has accumulated sick leave credits is entitled to receive maintenance of income payments in respect of loss of income through sickness until such time as those accumulated sick leave credits have been exhausted.

Provided that:

- 19.2.1** the rate of payment will be as set out in clause 15 of this award;
- 19.2.2** the entitlement to maintenance of income payments under this subclause:
- 19.2.2(a)** will not exceed six months leave credits;
  - 19.2.2(b)** will not apply to uncertificated absences;
  - 19.2.2(c)** will not extend beyond the maximum retirement age applicable to the class of employees to which he or she belongs, or in any other case attains the age of 65 years.
- 19.2.3** the period for which maintenance of income payments are paid under clause 16 of this award will be extended by the period or periods for which payments are made under this subclause;
- 19.2.4** access to sick leave credits is available only during the period of income maintenance.

## 20. COMPENSATION FOR LOSSES ETC

An employee who is eligible for the payment of maintenance of income is entitled to receive compensation for all other identifiable and quantifiable disabilities, losses and expenses experienced or incurred by reason of his or her transfer or termination of employment which in the opinion of the Commissioner were brought about by the termination of employment or transfer.

## 21. RIGHT OF APPEAL

- 21.1** A surplus employee will have the right of appeal against any administrative decision made in relation to his or her eligibility for benefits under this award or in relation to the amount of those benefits.

**21.2** The appeal is to be referred to a Committee comprising:

**21.2.1** an independent Chairperson agreed upon by the Commissioner and the union concerned;

**21.2.2** an employee or nominee of the Commissioner;

**21.2.3** an employee or nominee of the union.

**21.3** The Committee must report its findings to the Commissioner and it must provide a recommendation for appropriate action.

**21.4** This entitlement does not affect the employee's rights under the Workplace Relations Act 1996.

## **PART 4 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION**

### **22. SUBSTITUTION OR OTHER PROVISIONS**

Where the union, the employee and the Commissioner agree, provisions may be applied to an employee specified in subclauses 7.1 and 7.2 which are in addition or in substitution for any or all of the provisions prescribed in this award.

### **23. EXEMPTION**

This award does not apply to those term or contract employees employed under section 34 of the Act, unless otherwise agreed between the Commissioner and the relevant union.

### **24. DISPUTE SETTLING PROCEDURES**

**24.1** Every endeavour must be made to settle a dispute arising in relation to this award amicably, by direct negotiations and consultation between the parties to the award. To facilitate the settlement of a dispute the following channels of communication will apply:

**24.1.1** the employee must discuss the matter affecting them with a senior Human Resource Management representative of their agency;

**24.1.2** if the matter is not resolved at this level within 48 hours, the employee may discuss the matter with their union representative at a time suitable to the senior Human Resource Management representative. Permission for such a discussion must not be unreasonably withheld;

**24.1.3** if negotiations between management and the union do not resolve the dispute within 24 hours, either party is at liberty to refer the matter to the Commissioner or to his or her nominee. That person must determine the matter within 24 hours;

- 24.1.4** it is agreed that work must continue during the period of negotiation, discussion, and consultation except where the work is considered to be unsafe. Where work is considered to be unsafe management must immediately consult to determine whether safety regulations are being observed;
- 24.1.5** the time limits set out above are cumulative and may be extended by agreement;
- 24.1.6** despite the above, it is open to any party or any employee exercising appeal rights under clause 21, to have the matter referred to the Australian Industrial Relations Commission for resolution.

## FURTHER INFORMATION

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