



CIRCULAR TO DEPARTMENTS AND AUTHORITIES NO. 1 OF 2015

NOTIFICATION AND CONSULTATION OBLIGATIONS - PUBLIC SECTOR REFORMS

In late 2014 the Government announced a suite of public sector reforms which included the Targeted Voluntary Severance Scheme, Agency Expenditure Reviews and the Workforce Renewal Policy.

The Government recognises the importance of appropriate consultation and information sharing by public sector agencies in implementing reforms.

On 28 November 2014 Circular to Departments and Authorities (CDA) No. 11 of 2014 - Notification of Change was issued, replacing CDA No. 9 of 2013. This Circular is to be read in conjunction with that advice.

In response to concerns raised by the Civil Service Association (CSA) in the Western Australian Industrial Relations Commission in late December 2014, a Memorandum of Understanding (MOU) was signed to provide a framework facilitating consultation and information sharing between agencies, their affected employees and the CSA. A copy of the MOU is attached.

The Department of Commerce Labour Relations Division Public Sector Directorate (PSD) will coordinate implementation of the MOU.

The CSA will be conducting training for union representatives in readiness for Joint Consultative Committee discussions on the changes arising from the three identified reform processes. To assist with the successful operation of the MOU and where it is operationally reasonable to do so, agencies are encouraged to exercise the discretion established in award provisions to support the timely release of identified union representatives for this training.

Please contact your PSD Labour Relations Adviser for further information and/or assistance.

KRISTIN BERGER
A/EXECUTIVE DIRECTOR
LABOUR RELATIONS

29 January 2015

MEMORANDUM OF UNDERSTANDING

Between

Acting Executive Director, Labour Relations, Department of Commerce on behalf of Public Sector Employing Authorities

and

The Civil Service Association of Western Australia (Incorporated)

Purpose

1. This Memorandum of Understanding (MOU) establishes a framework that facilitates the application of existing industrial award and agreement requirements for the provision of information and consultation between Employing Authorities, their affected employees and the Civil Service Association of Western Australia (Incorporated) (CSA) relating to changes in the workplace arising from:
 - the Targeted Voluntary Separation Scheme 2014-2015 (TVSS);
 - Agency Expenditure Reviews; and
 - the Public Sector Workforce Renewal Policy.
2. Decisions of Employing Authorities relating to implementation of Government reforms identified in this MOU will continue to be made by the employer who is responsible and accountable to Government for the effective and efficient operation of the agency.
3. For the avoidance of doubt, where any provision of this MOU is inconsistent with the applicable award and/or agreement provision, the industrial instrument provision will prevail.
4. It is intended that this MOU will address issues reflected in the Western Australian Industrial Relations Commission (WAIRC) Application PSAC 30 of 2014.
5. The operation of and the need for this MOU will be reviewed by the Peak Consultative Forum (PCF) prior to the end of financial year 2015-2016.

Scope

6. The parties to this MOU are the CSA and the Acting Executive Director, Labour Relations, Department of Commerce (Commerce) in accordance with the Premier's Circular 3 of 2013 Coordination and Governance of Public Sector Labour Relations acting as agent for the Employing Authorities, and their successors, who are party to the awards and agreements, and their replacements, listed at Schedule 1.
7. The MOU will operate from the date it is signed by the parties.

Definitions

8. **“Employing Authority”** means the employer parties, and their successors, to the awards and agreements, and their replacements, listed at Schedule 1.
9. **“Joint Consultative Committee (JCC)”** means a consultative mechanism established pursuant to Part 9 Consultative Mechanisms of the *Public Service and Government Officers Agreement 2014* (PSAAG 7 of 2014) (PSGOGA) or other registered industrial agreements between Employing Authorities and the CSA as listed in Schedule 1.
10. **“Change”** means situations where the employer proposes to make changes likely to affect existing practices, working conditions or employment prospects of employees, and/or changes in production, programme, organisation, structure or technology that are likely to have significant effects on officers, without limiting the meanings contained in the applicable industrial instrument as listed in Schedule 1.
11. **“Significant effects”** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of officers to other work or locations and restructuring of jobs.

Background

12. On 10 December 2014, the CSA sought an urgent compulsory conference in the WAIRC (PSAC 30 of 2014) on the grounds that Employing Authorities had not adequately:
 - informed their employees or the CSA;
 - consulted on proposals to initiate targeted redundancies; and
 - addressed mitigation of the likely effect on employees.
13. On 18 December 2014 in a WAIRC conference, the CSA outlined its view that agencies are in breach of consultation obligations, specifically inadequate notification; information or consultation by agencies on the TVSS; and, concern with the associated timeframes. In addition, the CSA indicated that agencies had not met information or consultation obligations regarding proposed Agency Expenditure Reviews and other Public Sector reform initiatives.
14. The Government representatives advised the WAIRC that agencies are aware of their consultation obligations and that the PCF established in the PSGOGA is the appropriate forum to address the CSA concerns.
15. Following negotiations between the parties and further WAIRC conference proceedings, the WAIRC requested that Commerce consider and develop proposals on how the information and consultation processes can be improved, implemented and managed.

16. The parties subsequently agreed to a Heads of Agreement dated 24 December 2014 and agreed to finalise a MOU during the week commencing 5 January 2015. On 9 January 2015, the parties agreed to extend this deadline to the week commencing 19 January 2015.

Information and Consultation Principles

17. Where there is a requirement to consult in the applicable industrial instruments with the CSA and affected employees, the consultation process will be open and transparent, and the following principles will apply:
 - a. Employing Authorities will ensure that adequate time and resources are available for the consultation process, including support to affected employees to participate;
 - b. the CSA and affected employees will be provided with tabled minutes, notes, or other documents arising from consultations;
 - c. information provided to affected employees/CSA in the consultation process will not disclose confidential commercial, business or personal information;
 - d. information will be available to all affected employees in order that issues are understood;
 - e. information will be clear and succinct with adequate background information to ensure affected employees have all details;
 - f. Employing Authorities will ensure that sufficient time will be allowed for information to be considered by affected employees and/or the JCC; and
 - g. Employing Authorities commit to genuinely consider matters raised by the CSA and employees and provide feedback.

Framework for Information and Consultation Obligations

18. Employing Authorities are required to provide information to, and consult with, affected employees and the CSA when they propose to introduce changes. These requirements are contained in legislation, industrial awards and agreements.
19. The amount and level of detail of information and consultation, and the steps that need to be taken, may vary according to the nature and scale of the proposal.
20. For the purposes of this MOU Employing Authorities are required to provide, as soon as possible, to the CSA, and if relevant the affected employees, information on workforce changes related to the TVSS; Agency Expenditure Reviews; and Public Sector Workforce Renewal policy except confidential commercial, business or personal information, the release of which is likely to seriously harm a party or individual, about those proposed changes. Such workforce information includes, but is not limited to, the following:
 - a. any proposal with workforce implications for proposed changes;
 - b. any changes with workforce implications that are being considered, in addition to the abolition of positions or severance of employees who are otherwise surplus to requirements;

- c. the effects that all proposed changes are likely to have on affected employees; and
 - d. measures considered by the employer to mitigate any adverse impact on the directly affected and/or remaining employees including, where relevant:
 - i. the impact of the changes on workloads; and
 - ii. the changes on service delivery, including services which may be discontinued; services which may be modified and how they will be modified.
21. The relevant workforce information includes, but is not limited to, the following:
- a. all positions abolished, or to be abolished;
 - b. non identifying information of employees who are, or will be, otherwise surplus to requirements;
 - c. the number of registered redeployees offered, or to be offered, severances; and
 - d. the number of Fixed Term Contract employees offered, or to be offered, severances.
22. The detail required includes, but is not limited to, the following:
- a. position number or item number;
 - b. position title;
 - c. position classification;
 - d. position location (i.e. address);
 - e. positions currently occupied by a permanent employee;
 - f. positions currently occupied by a Fixed Term Contract employee;
 - g. where positions are occupied by a Fixed Term Contract employee, the expiry date of the contract;
 - h. whether the position is currently not occupied; and
 - i. where known, whether the position is being targeted through the TVSS; Agency Expenditure Reviews; or Public Sector Workforce Renewal Policy.
23. The CSA Delegates and nominated JCC members will be afforded paid time to consult with members throughout the consultation process subject to the applicable industrial instruments.
24. Where required for the successful operation of this MOU and where the JCC considers it necessary and operationally reasonable to do so, restrictions that may be contained in JCC terms of reference that limit the number of CSA nominated representatives may be adjusted.

Peak Consultative Forum (PCF)

- 25. The PCF is established pursuant to Clause 47 of PSGOGA.
- 26. The PCF will convene as required to consider matters related to this MOU and monitor its implementation.

27. The PCF will establish a working group of CSA and Commerce representatives to assist the PCF to:
 - a. oversee and monitor the implementation of the MOU;
 - b. consider status reports from Employing Authorities in a format to be agreed; and
 - c. monitor the effectiveness of the template in Schedule 2 and revise as is appropriate.

Miscellaneous

28. **TVSS Timeframes** – There may be flexibility in relation to TVSS timeframes announced in the TVSS guidelines. However, the final exit date of 30 June 2015 for employees accepting offers of separation is not negotiable.
29. **TVSS Business cases** – Subject to confidentiality and privacy requirements, the CSA will be provided with the draft business case for requests to offer voluntary severance of those employees being referred to the Public Sector Commission.
30. **Information sharing and template** –
 - a. Out of session JCC meetings may be convened during January and February 2015 to fast track discussions and feedback so that TVSS processing timeframes are met.
 - b. The template in Schedule 2 is to assist, as appropriate, Employing Authorities in providing all reasonable and relevant information. The completed template can be forwarded to the CSA and/or distributed at the JCC.

Reserved Matter

31. In relation to the Public Sector Workforce Renewal Policy, the parties agree to further consider the CSA claim for information sharing regarding all positions where an employee permanently ceases employment at a public sector body through resignation, retirement, permanent transfer or appointment to a position at another public sector body, or dismissal for a breach of discipline or substandard performance.

Dispute Settlement Procedure

32. Any questions, difficulties or disputes arising under this MOU shall be referred to the PCF working group for resolution.
33. Where agreement cannot be reached, either the Employing Authority or the CSA may refer the matter to the WAIRC.

SIGNATURES OF PARTIES

Signed:


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Signature

27/01/15
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Date

Toni Walkington
General Secretary
The Civil Service Association of Western Australia (Inc)

Signed:


.....
Signature

22 January 2015
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Date

Lorraine Field
A/Executive Director, Labour Relations
Department of Commerce
Acting as agent for each Employing Authority

SCHEDULE 1

The Employing Authorities, or their successors, who are party to the following awards and agreements, or their replacements, are party to this MOU:

AGREEMENTS
Public Service and Government Officers General Agreement 2014
Corruption and Crime Commission Industrial Agreement 2013
Country High School Hostels Authority Residential College Supervisory Staff Agreement 2014
Dental Officers Industrial Agreement 2013
Dental Technicians Industrial Agreement 2011
Department of Corrective Services Youth Custodial Officers' General Agreement 2014
Department of the Attorney General Jury Officers Agreement 2014
Electorate and Research Employees General Agreement 2014
Family Resource Employees General Agreement 2014
Government Officers (Insurance Commission of Western Australia) General Agreement 2014
Main Roads – CSA – Enterprise Agreement 2012
School Support Officers (Government) General Agreement 2014
Social Trainers General Agreement 2014
AWARDS
<i>Public Service Award 1992</i>
<i>Government Officers Salaries, Allowances and Conditions Award 1989</i>
<i>Country High School Hostels Authority Residential Colleges Supervisory Staff Award 2005</i>
<i>Department for Community Development (Family Resource Workers, Welfare Assistants and Parent Helpers) Award 1990</i>
<i>Education Department Ministerial Officers Salaries, Allowances and Conditions Award 1983, No. 5 of 1983</i>
<i>Electorate Officers Award 1986</i>
<i>Government Officers (Insurance Commission of Western Australia) Award, 1987</i>
<i>Government Officers (Social Trainers) Award 1988</i>
<i>Juvenile Custodial Officers' Award</i>

SCHEDULE 2

CONSULTATION INFORMATION SHARING TEMPLATE

Information in relation to the number of severances offered or to be offered

AGENCY:

INFORMATION AS AT:

POSITION DETAILS	Registered Redeployee	Abolished or to be abolished	Surplus or will be	Vacant position	Permanent occupant	Occupied by a FTC	If FTC - expiry date of contract
Number Title Classification Location							
Number Title Classification Location							
Number Title Classification Location							
Number Title Classification Location							
Number Title Classification Location							
TOTALS							

Disclaimer: The (Insert Agency name) has endeavoured to provide the most relevant information available as at the date provided above. The information includes offers that are subject to final acceptance by the relevant employees.

Position details are to be provided on a case by case basis so as not to identify individuals and protect privacy and confidentiality rights of employees.

Note: FTC - Fixed Term Contract