



Our Ref: LR0010/2013  
Enquiries: Agency LR Advisor  
Review Date: November 2015

## CIRCULAR TO DEPARTMENTS AND AUTHORITIES NO. 11 OF 2014

### **2014-15 TARGETED SEPARATION SCHEME – NOTIFICATION OF CHANGE**

This Circular replaces Circular to Departments and Authorities No. 9 of 2013.

The Government recently announced a new targeted separation scheme for 1,500 public sector employees in 2014-15.

Implementation of the scheme may require changes to existing arrangements within agencies with the potential to affect organisational structures, processes, employee numbers, positions and roles, delivery of programs/services and technology. Changes of this nature are likely to have significant impact on employees.

#### **Industrial Obligations – Notification of Change**

In managing workplace reform, agencies need to be familiar with the applicable industrial instrument(s) governing their employees' employment as these instruments generally include "Notification of Change" clauses that detail an employer's obligations to notify employees and their unions in these situations and to discuss proposed changes with them.

If an industrial instrument covering employees affected by the proposed changes does not include a "Notification of Change" clause, Part 5 of the *Minimum Conditions of Employment Act 1993* (MCA) establishes an employer's minimum requirements for those employees and must be complied with.

If the requirements of Part 5 of the MCA are superior in any way to a "Notification of Change" clause in an industrial instrument, then the MCA provisions apply to employees covered by that instrument.

#### **Common Notification Requirements**

Generally, "Notification of Change" clauses in industrial instruments require employers to:

- (i) Notify employees and their union(s) once a definite decision is made to introduce changes that are likely to have "significant effect" on employee's conditions of employment or their employment.

"Significant effect" includes termination of employment, major changes in the composition, operation or size of the workforce or in the skills required, elimination or diminution of job opportunities, promotion opportunities or job tenure, alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

Where employees are absent from work (eg on parental or extended leave) industrial instruments often include notification and support provisions to require employers to take reasonable steps to inform the absent employee about these matters.

- (ii) Discuss (amongst other things) the proposed introduction of change, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of the changes on employees with the employees affected and their union(s) as early as practicable after a firm decision to make the changes has been made by the employer.
- (iii) Give prompt consideration to matters raised by the employees and/or their union(s) in relation to the proposed changes.
- (iv) Provide employees and their union(s) with all relevant information about the changes, including the nature of the changes, the expected effects of the changes on the employees and any other matters likely to affect employees. Employers are generally not required to disclose confidential information which would be detrimental to the employer's interests.

### **Additional Requirements in Other Clauses**

Many industrial instruments include other clauses that affect the manner in which change is managed and which place obligations on employers. Examples include working arrangements such as rosters, hours and commuted allowances, consultative committees, modes of employment, workload management and grievance and dispute settlement procedures. Employers should ensure they are familiar with the range of provisions within their employees' industrial instrument(s) that place obligations on the manner in which the agency implements change.

### **Consequences of Non-Compliance**

Employers must comply with the requirements in the relevant industrial instrument (or the MCA) in relation to both the actions required and the time frame in which those actions must be carried out. In planning the changes and reaching decisions about the manner in which the changes will be implemented, agencies need to incorporate, where practicable, measures to avert or mitigate the effects of the changes on employees.

As notification obligations are an industrial matter under the *Industrial Relations Act 1979*, failure to comply with these obligations may result in referral to the WA Industrial Relations Commission (WAIRC). The WAIRC has broad jurisdiction in relation to such matters including the ability to conciliate (such as requiring certain actions to be done or re-done; establishing meeting schedules between the parties with report back briefings to the WAIRC or to issue orders binding employers. Proceedings of this nature may have the effect of delaying the implementation of workforce reforms.

**Supporting Policies and Documents**

The Public Sector Commission's publication "Structural Change Management - A guide to assist agencies to manage change" and associated documents provides agencies with further information to assist them in introducing, managing and implementing structural change. These publications are available at <http://www.publicsector.wa.gov.au/public-administration/structural-change-management>.

It would be appreciated if this advice is referred to the officers in your agency who are responsible for managing the changes that will arise from implementing the Government's workplace reforms.

A handwritten signature in black ink that reads "Kristin Berger". The signature is written in a cursive, flowing style.

**KRISTIN BERGER  
A/EXECUTIVE DIRECTOR  
LABOUR RELATIONS**

28 November 2014