APPENDIX 2 WHY THE LEVEL OF SEVERANCE PAY SHOULD NOT BE INCREASED TO THE NSW STANDARD

Introduction

The ACTU’s claim

1. The ACTU’s claim seeks to increase the current level of severance pay to the standard adopted by the NSW Commission in 1994 – that is, four weeks after one year’s service increasing to a maximum of 16 weeks after six years, and an additional 25 per cent loading for employees aged 45 years and over.

2. In addition, the claim seeks to alter the current definition of a week’s pay for severance pay by expanding the components included in its computation. Specifically, the ACTU seeks to include all amounts payable in respect of the employee’s ordinary hours of work (even if not standard hours). These include allowances, loadings, penalties and any other amount payable under the employee’s contract of employment.

3. The ACTU’s claim relies on three main assertions. First, that severance pay should compensate redundant employees for all potential losses that may be incurred as a result of redundancy and therefore should include a component for income maintenance during any period of unemployment. This is consistent with the rationale underpinning the decision of the NSW Commission in Re Application for Redundancy Awards (1994) ¹. Second, the ACTU contends that higher levels of severance pay generally occurring in the public sector should be taken into account. Third, higher levels in private sector agreements ought also be considered. The ACTU further maintains that hardship due to job loss is greater now than in 1984.

The Commonwealth’s position

4. The Commonwealth opposes the proposed increase in severance pay. The key reasons for this opposition include:

¹ 53 IR 419.
• The claim directly conflicts with the underpinning basis of the federal standard which has had widespread acceptance across Australia for close to two decades. The ACTU’s claim relies on the NSW standard which includes a component to tide retrenched employees over until they obtain another job – reasoning that was specifically rejected by the federal Commission in 1984.

• Providing income support at a safety net level for retrenched employees until a new job is found is not a function for industrial tribunals. It is not appropriate to be addressed by the workplace relations safety net. It is a core function of the social security safety net. Only the social security system can ensure that appropriate safeguards are in place to guarantee funds are targeted to those who need them most. Only the social security system can ensure that individual circumstances are taken into account in an appropriate manner to achieve optimal outcomes.

• Public sector standards of severance pay are not relevant in determining the safety net level of severance pay. There is no linkage between a national minimum TCR safety net standard and public sector severance pay levels. The two entitlements are directed at achieving different outcomes. While the national TCR safety net standard is directed at compensating for hardship and the loss of non-transferable credits, public sector payments include components that are designed to encourage voluntary redundancy.

• Higher levels of severance pay found in some areas of the private sector have largely been used to secure acceptance of company restructuring proposals and voluntary retrenchments necessary to implement the new structure. Such higher levels are not relevant to the safety net standard. Agreements frequently contain special provisions which take account of specific features of particular redundancy situations, and may often be ‘one-off’ agreements.  

• On the rationale for severance pay used by the federal Commission there is no justification for increasing severance pay. Under this rationale, severance pay is compensation for non-transferable credits and the inconvenience and hardship imposed on employees, and these factors have not changed since 1984 in ways that warrant an increase in severance pay.

3 8 IR 34, 73.
• An examination of the components of severance pay and their evolution since 1984 shows that the severance pay entitlement is relatively more generous today than it was 18 years ago. The non-transferable credits which are compensated by severance pay have less monetary value in 2003 than in 1984. For instance, loss of superannuation entitlements is much less of an issue with today’s preservation and immediate vesting requirements (at least to the level of the SGC).

• Similarly, structural reform over the last decade has resulted in an economy which today is able to generate stronger and more sustained employed growth. This stronger and more flexible labour market is better able to accommodate retrenchees. Rather than the negative consequences and hardship associated with retrenchment having increased, available data suggests that reforms to the Australian economy have altered the patterns of retrenchment so that these negative consequences have been lessened.

• There is no justification for granting a greater severance pay entitlement to employees aged 45 years and over. Age is only relevant in the income supplementation model rejected previously by this Commission. As the ACTU and the Commission recognised in 1984, granting such a claim would be counterproductive for older workers.

• The cost of granting the ACTU’s claim is excessive. The costings submitted by the ACTU are fundamentally flawed, omitting key elements, and significantly underestimating the true cost to Australian businesses, workers and the economy. The key deficiencies in the ACTU’s estimate of the cost impact of the claim include:
  
  – The costings fail to estimate the actual impact of the claim on the businesses that would have to pay higher severance pay if the claim were granted. The labour cost impact of the claim is much greater on employers who actually retrench than is indicated in the ACTU’s costings. Its impact on those businesses that retrench in any given year is in the order of 4.6 per cent of wages\(^4\) – this is greater than the percentage increase in wages that applied at the C14 level due to last year’s Safety Net Review.

  – The costings ignore the fact that the ACTU’s claim will impact disproportionately on those firms seeking to innovate and

\(^4\) As indicated previously, this assumes recessionary rates of retrenchment.
restructure and those that are facing financial difficulties. To impose additional costs on these businesses will retard innovation and growth and place an unwarranted burden on firms struggling to remain viable.

- The costings completely ignore contingent liability. The contingent liability that would be created by the claim would be about 6 per cent of wages costs for all private sector employers subject to the claim.

- The ACTU ignores the large body of international research which demonstrates that onerous firing costs (which may take a number of forms including severance payments) have a harmful effect on the labour market. Firing costs discourage recruitment, limit job opportunities and hamper essential change in the labour market.

- Contrary to the ACTU’s assertions, most employers who retrench do so to survive. In these cases retrenchment does not produce additional benefits that can be distributed to employees.

• If granted, the increased severance pay will impose additional financial obligations on the Commonwealth, through the General Employee Entitlements and Redundancy Scheme (GEERS). Additional obligations in the order of $20.3 million for a 12 month period would be incurred from insolvencies should the full claim be granted and spread to all other jurisdictions.

• The significant increase in severance pay would narrow the scope for terms and conditions of employment to be settled at the workplace level. This would undermine the positive shift to workplace bargaining which has been a cornerstone of the Commonwealth Government’s microeconomic reforms to improve workplace efficiency. This is essential for sustainable economic and employment growth.

• This would be in direct conflict with the objects of the WR Act to ensure that primary responsibility for determining employment related matters rests with employers and employees at the workplace. The maintenance of the existing severance pay standard would ensure that workplace agreements are underpinned by a fair minimum standard.

• Bargaining is the most appropriate avenue for establishing severance pay entitlements above the current minimum standard. Where employers can afford to pay superior severance pay, or have a
specific need to encourage employees to take redundancy, such payments may be included in enterprise agreements.

- The increased severance pay claimed by the ACTU in also contrary to the object of the WR Act to pursue high employment and international competitiveness through higher productivity. The current TCR standard is, in the Commonwealth’s view, an effective safety net standard which ought to be retained.

- Increasing the severance pay entitlement for employees covered by federal awards will have no effect in meeting Australia’s international obligations with respect to TCR. The current standard fully meets these obligations.

5. In the remainder of this Appendix we will substantiate each of these points in detail.

**Arbitral history**

The rationale for severance pay in the federal jurisdiction is diametrically opposed to the rationale adopted by the NSW jurisdiction

6. The central basis for severance pay in the NSW jurisdiction is fundamentally different to the basis underpinning the current federal standard. In short, severance pay in NSW includes an amount for income supplementation. An analysis of the major decisions concerning severance pay in the NSW jurisdiction clearly shows that this is the case.

7. In 1983, in what is commonly known as the ‘Croker Case’, President Fisher concluded:

> The major application of severance pay where the dismissal relates to redundancy caused by the economic recession is likely to be directed towards the amelioration of social hardship by supplementing income from unemployment benefits and so prolonging the maintenance of living standards and extending the period during which the search for work can be conducted without the serious erosion of family assets and family stability. It would also help meet the absence of income which seems customary during the first three to four weeks of unemployment until receipt of unemployment benefits.\(^5\)

\(^5\) 7 IR 273, 292.
8. The NSW Commission reaffirmed this view in 1987 when it reviewed redundancy arrangements for clerks, electricians and plant operators, stating:

For a limited period, it is reasonable that industry should make a direct contribution to the welfare of those affected by frictional unemployment by targeting such assistance as will have immediate and direct effects upon the condition of the newly unemployed and enhance their prospects of re-employment.  

The Commission further stated:

In conformity with the general approach in Crocker’s case we consider that severance payments should be made to assist temporarily displaced members of the industrial community to regain employment. The median duration of unemployment becomes a significant figure. At some stage, every unemployed person who remains unemployed makes a transition from being a temporarily unemployed member of an industrial society properly the responsibility of industry, to a citizen subject to long term unemployment, and thus primarily the responsibility of the social service network.

Just where this turning point is located is a matter of difficulty, but the median duration is probably the best approximation that can be obtained. The statistical evidence received, showing a relatively stable median term of unemployment of 26 weeks, has been used in a consideration of a suitable scale.

...We define as the main purpose of severance pay as the assistance it gives in ameliorating immediate hardship, and in the regaining of employing of those displaced from employment.

9. This rationale was continued in 1994 when redundancy levels in NSW were last reviewed and adjusted.

10. In stark contrast to the reasoning of the NSW Commission, however, the federal Commission specifically rejected any relationship between severance pay and the need to tide an employee over while searching for another job, stressing:

“..we do not believe that the primary reason for the payment of severance pay relates to the requirement to search for another job and/or to tide over an employee during a period of unemployment......We prefer the view that the payment of severance pay is justifiable as compensation for non-transferable credits and the inconvenience and hardship imposed on employees.

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6 21 IR 29, 46.
7 Ibid 49.
8 53 IR 419.
9 8 IR 34, 73.
The federal Commission did not grant additional benefits for older workers

11. Workers aged 45 and over in NSW are provided with 1.25 times the rate of severance pay as other workers. This is consistent with the overall rationale underlying redundancy provisions in that State and is based on the view that older workers have a longer period of unemployment than workers of other age groups. President Fisher noted in his 1983 Statement:

    In deference to our familiar concept of service related payment, a short incremental scale may be permissible. The evidence certainly supports added hardship over the age of 45, an impression confirmed by the personal accounts of witnesses. This added hardship can logically be reflected by increasing the rate not lengthening the scale.\(^10\)

And later,

    there is evidence both lay and expert that some difficulties are compounded by age and resulting social and family circumstances. Any age division must be arbitrary, but 45 years and above appears on the evidence to approximate to the zone of added difficulty.\(^11\)

12. In its 1987 Decision the NSW Commission in Court Session reaffirmed Croker's decision:

    “we accept that the statistics indicate employees over 45 years of age do have increased difficulty in obtaining employment. In line with Crocker's case we recommend that an employee retrenched having attained the age of 45 years should be paid at the rate of 1.25 weeks for every week of entitlement according to the cited scale of payments”.\(^12\)

13. The additional payments were retained by the NSW Commission in its 1994 decision.

14. Again in direct contrast, the federal Commission rejected age related payments:

    We are prepared to have regard to length of service in determining an appropriate quantum but, for the reasons outlined by the ACTU and because the problems of age on the evidence before us are related more towards the attempt to find alternative employment, we have decided not to provide age

\(^{10}\) 7 IR 273, 291-292.
\(^{11}\) Ibid 293.
\(^{12}\) 21 IR 29, 52.
related payments. Of course, indirectly, older employees will benefit from a scale of payments on years of service.\(^\text{13}\)

15. The federal Commission did, however, take age considerations into account in its consideration of the claim dealing with period of notice of termination, noting:

*Extended notice based on age is also supported by the evidence before us which indicates that persons in higher age groups often find it more difficult to obtain and adapt to comparable work elsewhere.....Employees over 45 years of age shall be entitled to an additional week’s notice of termination after two years’ service.*\(^\text{14}\)

16. In its December 1984 decision the federal Commission clarified its position, specifying that to qualify for the extended notice the employee should be over 45 years of age at the time at which the notice is given and that to make the position clear, special provision should be made for the splitting of notice.\(^\text{15}\)

**The NSW standard of severance pay should not be adopted**

The rationale to include income maintenance in severance pay is diametrically opposed to the rationale underpinning the federal TCR standard

17. The previous section in this Appendix traced the arbitral history as it applies to the differing rationales underpinning the national TCR standard and the NSW TCR standard. It seems that it is common ground in these proceedings that the current rationale for severance pay in the federal jurisdiction is not about income maintenance and tiding an employee over during a period of unemployment. However, the ACTU is suggesting that the Commission should abandon its long-standing approach and adopt a rationale which compensates employees for loss of income during periods of unemployment.\(^\text{16}\)

18. The ACTU also relies in part on the 1987 South Australian decision which flowed the federal TCR standard to South Australian State award

\(^{13}\) 8 IR 34, 73.  
\(^{14}\) Ibid 50.  
\(^{15}\) 9 IR 115, 119.  
\(^{16}\) ACTU’s Contentions volume 1 paragraphs 14 and 19.
employees. In reaching its decision, the South Australian Commission stated:

Like the Australian Commission we would regard severance payments as being justifiable primarily to compensate for loss of non transferable credits and the inconvenience and hardship imposed on employees consequent upon their job being made redundant. However we recognise that the question of income maintenance may play some part in the fixation of such payments. Having considered all relevant matters we are satisfied that justice will best be achieved if we grant a prescription which reflects the standard established by the Australian Commission….

It is clear from the above excerpt that the South Australian Commission was in fact not persuaded to disregard the federal Commission’s 1984 decision, but instead decided it was in the best interests of all to grant severance pay in a consistent manner with the federal standard. Importantly, it did not grant a higher level of severance payment that included a component for income maintenance.

19. In the Commonwealth’s view the federal Commission got it right in 1984 and its rationale for severance pay should remain. The Commission should not disregard this accepted basis as the ACTU has asked it to do. The basis of severance pay in NSW is inappropriate, it goes beyond the employer/employee relationship, and encroaches on the functions of the social security safety net.

20. Several key federal Commission decisions concerning alternative employment arrangements have referred back to the original purpose for which severance pay was granted in 1984, that it is compensation for non-transferable credits and the inconvenience and hardship imposed on employees. The decisions have not referred to any ‘income maintenance’ function for severance pay. For example, see the decision by Vice President Ross in the wool industry, the decision by Commissioner Cargill in the graphic arts industry, and the decision by Commissioner Leary in the meat industry.

17 25 IR 316.
20 Print Q8258, 3 November 1998.
21 Print M5479, 19 September 1995.
Income maintenance at the safety net level during periods of unemployment is the responsibility of the social security safety net.

21. The responsibility for the establishment and maintenance of the safety net of income support for those who are unemployed (including retrenched employees) lies with the Commonwealth. This responsibility is discharged through the social security system; it is not a responsibility of industrial tribunals. Appendix 1 broadly outlines income support and employment assistance arrangements that have been established by the Commonwealth.

22. In 1984 the federal Commission agreed that finding jobs for the unemployed and solving the problems of the chronically unemployed “must remain, in our view, primarily a social rather than an industrial responsibility”\textsuperscript{22}. To impose obligations on employers for periods of unemployment experienced by former employees is outside the realm of the acknowledged responsibility of employers. It is, rather, a function of the Commonwealth through the social security system, and it is only through the social security system that payments related to unemployment can be directed, regulated and maintained in a proper manner.

23. Australia’s social security system is a comprehensive system, undergoing continual reform and enhancements. In August 2001 the Commonwealth announced a fundamentally new direction for Australia’s social security system. This was in response to the Final Report of the Reference Group on Welfare Reform, known as the McClure Report. This reform is wide ranging, challenging and will take several years to complete.

24. The Commonwealth recognises that the social security system needs to be one based on engaging people in active social and economic participation. It is committed to the five principles outlined in the McClure Report: individualised service delivery; simpler income support; better financial incentives and assistance; mutual obligation; and fostering social partnerships.

25. Australia's social security system, unlike social security systems in most other developed countries is not a contributory scheme. It is funded from general revenue, rather than from direct contributions from individuals. For this reason, the Government has a responsibility to

\textsuperscript{22} 8 IR 34, 73.
ensure that the limited funds available for social security expenditure are directed to those in the community most in need and that these funds are distributed in a fair and reasonable manner. This targeting of payments is achieved through many interacting components such as income tests, waiting periods, age considerations and intensive support arrangements to name just a few.

26. The ACTU contends that there is a range of losses which may be suffered by an employee whose employment is terminated. However, not all retrenches will experience all these losses and some may not suffer any of them. The extent to which the losses are experienced by retrenched employees varies very markedly between retrenched employees. To pay all retrenched employees the same level of compensation would mean that many retrenched employees would enjoy a windfall gain. In contrast, the social security safety net is able to take these individual circumstances into account through various targeting initiatives.

27. In the case of Newstart Allowance, for example, the imposition of waiting periods aims to encourage self reliance and provide incentives for people to find work in the early days of unemployment when their prospects for successful job search are better. Eligibility requirements, such as the requirement to be unemployed and to satisfy the activity test ensure that payment is directed only to genuine job-seekers. Details of the Newstart Allowance setting out qualification, income and assets tests, waiting periods and other criteria are at Appendix 1, Attachment F. The changes which have been made to these arrangements since 1984, often in response to community demands for better targeting of income support, are detailed in Appendix 1, Attachment G.

28. Income assistance to the unemployed is, of course, only one aspect of the broader social security system. The Commonwealth and States and Territories also assist retrenched workers through a range of appropriate employment programs, including job search support, training, self employment assistance and specific initiatives such as information training skills for older workers. Retrenches’ access to employment programs is largely determined by their eligibility for income support, so that there is significant interaction between the social security system and the administration of employment programs. Further details on the range of assistance available for retrenched workers are provided in Appendix 1.

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23 ACTU’s Contentions volume 1 paragraph 11.
29. In 1984 the federal Commission recognised that extended notice provisions would not ensure all retrenched employees found jobs but as it said, finding jobs for the unemployed and solving the problems of the chronically unemployed “must remain, in our view, primarily a social rather than an industrial responsibility”. Later in its decision it reaffirmed this view saying: “We agree with the CITCA recommendations. The burden of assisting employees who lose their jobs should not fall solely on employers. The responsibility is, in part, a community responsibility…”

30. Employers of course are already contributors to the social security safety net, as tax payers. The federal Commission when discussing redundancy pay in 1984 accepted that the entire community plays a role in this safety net:

There is no doubt that there is hardship necessarily inherent in redundancy situations but we have provided for extended notice on termination of employment and we have imposed obligations on employers which will assist employees in finding alternative employment. In these circumstances, it is arguable that employers that the employer should not be required to do more. Redundancy caused unemployment is no different from unemployment due to any other event and, through legislation, the community at large accepts the burden of paying unemployed persons amounts determined appropriate.

31. The issue of whether the social security safety net is adequate or requires supplementation is not something that should be considered and determined by industrial tribunals which have responsibility for establishing the workplace relations safety net. The adequacy or otherwise of the social security safety net in the post employment period is a matter only for the institution which establishes and maintains that safety net. There is a clear delineation of responsibility here and it is inappropriate for one institution to encroach on the other’s areas of expertise and domain.

32. It is not just that it is outside the responsibilities of industrial tribunals to create entitlements that are intended to serve functions that are the responsibility of the social security safety net. Industrial tribunals also do not have the power or the administrative support to establish and implement an effective system of income support for retrenchees. As we have seen, to discharge its responsibilities for income support effectively

24 Ibid.
25 Ibid 78.
26 Ibid 71.
and fairly, the Commonwealth has implemented a wide range of measures designed to ensure that available funds are targeted to those in greatest need, and to ensure that the unemployed are provided appropriate incentives and disincentives. If industrial tribunals were to establish effective and fair income support arrangements, and were to use employer’s funds most effectively in doing so, they would have to emulate the types of measures used by the Commonwealth. They clearly do not have the resources or capacity to do so.

33. Changes to the WR Act since 1984 have considerably strengthened the case against the Commission intruding into an area that is properly dealt with by the social security safety net. The WR Act now specifically provides that the federal award system is to operate as a safety net. The objects of the WR Act specifically encourage bargaining occurring at the workplace, upon a foundation of minimum standards, and that an effective award safety net of fair minimum wages and conditions of employment is established.

34. Section 88B(2) of the WR Act further strengthens the role of the Commission in ensuring that a safety net of fair minimum wages and conditions of employment is established. The Commission has reiterated this responsibility in decisions emanating from Safety Net Reviews.27

35. The federal Commission decided in 1984 not to establish severance pay that has an income support function. Given legislative changes since 1984, the case for the Commission to make a similar decision in 2003 is considerably stronger than in 1984.

Public sector standards should not influence minimum standards for severance pay

36. The ACTU has argued that the severance pay standard should be increased because there are significant numbers of Australian employees who have access to more generous levels of severance pay, including public sector employees.

37. The evidence they provide for this are documents detailing the redundancy provisions of Commonwealth, State and Territory public service employees and a Witness Statement of Steve Ramsey.28

27 For example, see Prints P1997, 22 April 1997; PR002001, 2 May 2001; PR002002, 9 May 2002.
28 ACTU’s Contentions volumes 4 and 6.
38. We would contend that while it is clear that public sector employees have access to levels of severance pay significantly higher than that provided by the current level of severance pay in the TCR standard, it does not naturally follow that there is a case to increase the TCR standard.

39. As we have demonstrated, the current level of severance pay in the TCR standard was established to compensate for the hardship associated with job loss and for the loss of non-transferable credits. The current federal TCR standard does not include amounts to compensate retrenchees for the future loss of earnings, or to tide them over until they gain new employment.

40. In contrast, the levels of public sector severance pay have been set on a very different basis to the TCR standard. The levels of severance pay in the Commonwealth, State and Territory public sectors have been influenced by factors not included in or relevant to the TCR standard, such as the future loss of earnings, and the provision of income supplementation.

41. These additional factors have influenced the level of public sector severance pay because a major emphasis of public sector redundancy policies has been voluntary retrenchment. If severance pay is to be set at a level that achieves a high proportion of voluntary separations, it must reflect these additional factors. It must compensate sufficient numbers of employees for the future earnings that they expect they will lose as a result of their retrenchment. If severance pay is not set at a level that will achieve this, it will not attract a high proportion of voluntary separations.

42. Attachment A demonstrates that redundancy arrangements in the Commonwealth, State and Territory public sectors have been heavily influenced by the objective of achieving a significant proportion of voluntary retrenchments. In particular, the arrangements in the NSW, Western Australian and South Australian public sectors are currently subject to an explicit policy that only voluntary retrenchments will be initiated. Forced involuntary retrenchments are explicitly excluded (this is confirmed by the material provided by the ACTU in Section 1 Public Sector Redundancy Provisions of Volume 4 of its Contentions).

43. The material in Attachment A also demonstrates that when the current level of severance pay was established in the Commonwealth
public sector, a key policy objective was to establish a system that emphasised voluntary retrenchments.

44. The Attachment goes on to demonstrate that even where there is no explicit policy that precludes forced redundancies, in practice the overwhelming majority of retrenchments in the Commonwealth, State and Territory public sectors are, in fact, achieved voluntarily. A strong emphasis on voluntary retrenchment is universal throughout the public sector in Australia, and the levels of public sector severance pay have been developed in this context.

45. **Attachment A** also outlines the history of Commonwealth public sector redundancy arrangements and policies. The redundancy pay provisions applicable to Commonwealth public sector employees have been established to enable the employer (that is, the Government) to facilitate the restructuring of its workforce in the light of increasing flexibility in the labour market and changes in working patterns and attitudes. The benefit level was also negotiated against the background of a fundamental change to the nature of employment, particularly in the APS ‘career service’, namely the erosion of permanency of a career for life.

46. This restructuring was facilitated initially through the use of redeployment provisions, but from the mid 1980s the use of voluntary redundancies and severance pay became the more dominant way of managing excess Commonwealth employees. These provisions have enabled the restructuring of the Australian Public Service and other Commonwealth agencies to be undertaken with limited industrial disputation or dislocation.

47. The APS redundancy pay provision – severance pay of two weeks’ salary for each completed year of service with a minimum sum payable of four weeks’ salary and a maximum of 48 weeks’ salary – was a provision agreed with between the Government of the day and the relevant unions. It had initially been agreed to by the Government to facilitate restructuring in the Defence factories, and was adopted shortly afterwards as a standard for voluntary retrenchment throughout Commonwealth employment. The negotiated arrangements were a complete set of arrangements comprising the award and the associated administrative instructions.

48. It should be noted that as this level of redundancy pay arose from agreement between the relevant parties it has not been the subject of
any arbitral consideration of its merit as a redundancy standard for Commonwealth employees.

49. Given this background, the level of Commonwealth, State and Territory public sector severance pay is not relevant to determining whether the safety net severance pay standard should be increased. Public sector levels of severance pay have been set on a vastly different basis to the TCR standard and they have been established by agreement, not arbitration. If this was ignored and the safety net level was increased because of the level of public sector severance pay, components would be imported into the safety net level of severance pay that are inappropriate. This would have the effect of incorporating into TCR severance pay compensation for the expected loss by retrenches of future earnings, and the provision of income supplementation.

50. For these reasons, the use of public sector severance pay standards to justify an increase in the TCR standard would directly contradict the rationale for severance pay established by the 1984 TCR decisions. If the Commission were to use public sector levels in this way, it would be abandoning the rationale adopted in 1984.

51. The ACTU’s claim if granted would also put substantial upwards pressure on the most prevalent level of severance pay in the Commonwealth public sector (two weeks’ pay per year of service, with a cap of 48 weeks). This is not a theoretical prediction. It was the outcome in the NSW jurisdiction when the severance pay scale sought by the ACTU was established. When the NSW tribunal granted its current level of severance pay in 1994, the public sector standard was two weeks for each year of service with a cap of 26 weeks (page 45 of the decision). The NSW public service standard has since been increased to three weeks per year of service, with a cap of 52 weeks.\(^{29}\)

52. In part the severance pay scale sought by the ACTU would have this effect because of its peculiar structure. The level of severance payments that would apply under the ACTU scale is often substantially above the level that would apply under a scale based on two weeks per year of service for retrenches with less than 10 years’ service, particularly if the retrenchee is aged over 45. This is demonstrated by the table at Attachment B that compares the levels of severance pay provided by the two scales.

\(^{29}\) ACTU’s Contentions volume 4 page 12.
53. For these reasons the ACTU’s claim, if granted, could be expected to destabilise all existing severance pay structures that are based on two weeks pay for each year of service, whether the scale applies in the private or public sector.

54. If the ACTU’s proposed scale were granted, it would be imperative in our view that the Commission make it clear in its decision that it would not accept a ‘cherry picking’ approach when the new standard is flowed into awards. Consistent with the past practice of the Commission, unions should not be able to achieve the best of both worlds by adopting in an award the new scale where it is higher, and the pre-existing scale where it is higher – for example, the new scale for up to six years service, and two weeks per year of service thereafter.

55. However, such an approach obviously would not prevent the ACTU’s scale from eventually destabilising existing severance payments based on two weeks per year of service, particularly in the agreement stream, if the claim were granted.

56. In the Commonwealth’s view the minimum TCR standard, including any changes that result from these proceedings, should replace any superior standards that currently exist in awards. In particular, the minimum standard should replace entitlements such as the APS standard that are ‘paid rates’ in nature and that, as we have demonstrated in detail in this submission, have been established on an entirely different basis to the minimum TCR standard.

57. The WR Act limits the matters that may be dealt with in awards. Subsection 89A(3) limits the Commission’s award making powers to making minimum rates awards. The award system has been substantially remodelled as a safety net of fair minimum wages and conditions of employment. References to minimum wages and conditions of employment are made in paragraphs 88A(c) and 88(2)(b) of the Act. Paragraph 3(d)(ii) of the Act refers to ‘an effective award safety net of fair and enforceable minimum wages and conditions of employment’.

58. These issues were considered recently by a Full Bench of the Commission in a case concerning the Australian Sports Drug Agency Award 1999 and the Australian Fisheries Management Authority Award 2001. The decision rejected the Commonwealth’s position that the Commission should include the minimum TCR standard in those awards.
rather than the APS standard. However, the Commission stated in the decision that:

_In granting the applications we are not approving the particular level of redundancy pay sought as such. We are correcting a clear anomaly in the award conditions of the employees concerned because, in the absence of any explanation for the anomaly, it would be unfair not to do so._  

59. The Commonwealth is considering options for challenging this decision.

**Higher levels of severance pay in private sector agreements should not influence the minimum safety net**

60. The workplace bargaining provisions in the WR Act provide the scope for the parties to agree to higher levels of severance pay or for different levels to be established for different causes of redundancy.

61. The contents of certified agreements show that some employers have taken advantage of the scope provided by enterprise bargaining to agree to higher levels of severance pay to encourage their workforce to accept restructuring proposals. In some cases agreements contain levels of severance pay that are many times higher than the level of the current TCR standard.

62. The rationale for these high severance payments bears almost no relationship to the rationale for the severance payments contained in the TCR standard. The TCR severance payments were established to compensate for the hardship associated with job loss, and for the loss of transferable credits. The higher payments found in some private sector agreements are generally designed to encourage voluntary retrenchment and to attract employee support for restructuring. As such, they are generally designed to apply only to a small subset of an employer’s workforce, not to the entire workforce in the event of insolvency.

63. The emphasis on voluntary retrenchment inherent in these arrangements has meant that additional factors such as the future loss of earnings and the provision of income supplementation have influenced the level of severance pay. These additional factors must be reflected in the severance pay level if it is to achieve a high proportion of voluntary

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30 PR921706, 26 August 2002.
separations. The severance pay must be able to compensate enough employees for the future earnings that they expect they will lose if they are retrenched.

64. It is inappropriate for severance pay levels based on these considerations to play a part in establishing a minimum standard that is to apply to forced redundancies. They are particularly irrelevant in those cases where the retrenchment is due to insolvency of the company. It underlines the need for separation of redundancies due to insolvency or financial incapacity and those stemming from restructuring.

65. In addition, as we demonstrate later in this Appendix when dealing more generally with the terms of workplace agreements, only a relatively small minority of federal agreements – around 20 per cent – include severance pay entitlements that are in excess of the TCR standard. Combined with the above analysis of the reasons for these higher levels – to primarily encourage voluntary retrenchment and gain acceptance of restructuring proposals – this provides very strong reasons to disregard these higher levels when reviewing the TCR standard.

Changes in the value of the factors compensated by severance pay does not justify an increase

66. A detailed examination of the basis on which the federal Commission established the severance pay level in 1984 clearly illustrates that there is no justification for increasing the level of severance pay within the rationale for the existing standard. The federal Commission saw severance pay in terms of “compensation for non-transferable credits and the inconvenience and hardship imposed on employees”.\textsuperscript{31} The Commission agreed with the conclusions found in the CITCA Report which gave examples of non-transferable credits:

\textit{...- compensation for non-transferable credits that have been built up, such as: accrued benefits like sick leave and long service leave; loss of seniority; and loss of the employer’s contribution to pension or superannuation}\textsuperscript{32}

67. It is important to be conscious, however, that the severance pay awarded by the federal Commission was not intended to fully compensate for the loss of entitlements such as sick leave and long service leave. In its August 1984 decision the Commission specifically

\textsuperscript{31} 8 IR 34, 73.
\textsuperscript{32} Ibid.
rejected the claim that sick leave and long service leave should be fully paid out on redundancy, saying:

As previously mentioned, the loss of service towards long service leave entitlements, sick leave and annual leave loading have been taken into account by us in reaching our decision that a general standard of severance pay should apply. To add to this general provision specific payments for these factors would be a form of double counting. In addition, we are of the view that none of the claims have merit except as part of a general claim for loss of entitlements due to redundancy.

Numerous decisions of this Commission and other industrial tribunals make it clear that sick leave should be regarded as a contingent right analogous to insurance. It is meant to provide for periods when a worker is ill and it would be wrong in principle to determine that this accumulated safeguard against loss of wages during an employee’s working life should be turned into a cash payment on termination of employment.

The same can be said in relation to long service leave; the purpose is different to that of severance pay as is indicated by the Full Bench decision regarding the Food Preservers (Long Service Leave) Award 1964.\textsuperscript{33}

68. If we look at how the treatment of these employment conditions in the federal jurisdiction has evolved since 1984 it becomes apparent that the TCR standard is relatively more generous today than it was when originally granted. Issues of seniority do not hold the same importance in today’s workplaces as they did 18 years ago – having now largely been replaced by merit-based criteria.

69. In the absence of specific legislation, the federal long service leave entitlement is generally taken to be that set out in the key metal industry award – the Metal Engineering and Associated Industries Award, 1998 Part IV. The award prescribes a general entitlement for long service leave of 13 weeks after 15 years’ service, and a pro rata payment on termination after 10 years of employment. This provision remains unchanged since 1984.

70. Since 1984 federal award employees have gained access to unpaid adoption leave and unpaid paternity leave. Maternity leave was made available to female employees in 1979.\textsuperscript{34} The 1985 Adoption Leave Test Case\textsuperscript{35} awarded up to 52 weeks’ unpaid leave to female employees adopting a child under the age of five. The 1990 Parental

\textsuperscript{33} Ibid 77.
\textsuperscript{34} (1979) 218 CAR 120.
\textsuperscript{35} (1985) 298 CAR 321.
Appendix 2

Leave Test Case\textsuperscript{36} added to the maternity and adoption leave provisions by allowing male employees to share up to 52 weeks of the parental leave with their spouse. In practical terms, the effect on the value of non-transferable credits of extending unpaid parental leave to male employees is minimal. In 2001 unpaid parental leave was extended to long term casuals who have a reasonable expectation of on-going employment.\textsuperscript{37}

71. Full-time and regular part-time employees have also gained access to personal/carers leave since the TCR standard was awarded. The personal/carers’ leave standard was established through a two stage process, stemming from the Family Leave Test Case decision of 1994\textsuperscript{38} and the Personal/Carers’ Leave Test Case Stage 2 decision.\textsuperscript{39} The test case standard (from Stage 2) provided a model clause to apply to leave in the circumstances of employee sickness (sick leave), the death of a close relative or household member (bereavement leave) and to care for a close relative or household member (carers’ leave). The main feature of the model clause is the aggregation of sick leave and bereavement leave entitlements into a pool which could be used for all personal/carers leave circumstances identified above. The quantum for carers' leave is capped at five days per annum to be taken from sick/bereavement leave credits. The quantum of sick/bereavement leave credits is based on existing award entitlements.

72. While this provision represents overall a more beneficial entitlement to leave than previously existed, it has minimal (or even a negative) impact on the value of non-transferable credits. This is because associated with the improved leave entitlement is a broadening of the circumstances under which employees may access the entitlement. It follows that with greater usage of the entitlement its accumulation will slow and hence the value of the entitlement as a non-transferable credit will decline, on average.

73. In respect to annual leave loading, in some cases this condition has been rolled into employees’ base salaries or is paid out on termination, and so is now compounded in the calculation of severance pay. Arrangements regarding superannuation have also changed quite significantly since 1984. In 1984, prior to award superannuation and later the SGC, superannuation gave rise to non-transferable credits

\textsuperscript{36} Print J3596, 26 July 1990.
\textsuperscript{37} PR 904631, 31 May 2001.
\textsuperscript{38} Print L6900, 29 November 1994.
\textsuperscript{39} Print M6700, 28 November 1995.
when it was not fully vested on retrenchment. In 2003, lost superannuation payments are not at issue, at least up to the level of the SGC. SGC contributions are fully vested, immediately.

74. It is clear from the above discussion that the TCR entitlement is relatively more generous today. Overall, the items comprising the non-transferable credits that are compensated by the TCR standard in fact have less value in 2003 than they did in 1984. Superannuation was a major item in 1984, but SGC superannuation entitlements are now subject to immediate vesting and preservation requirements.

75. Significantly, the ACTU has not seriously attempted to demonstrate any change in these elements which would justify an increase in severance pay. Witness statements provided by the ACTU (see ACTU paragraph 20) do not provide evidence of improvements in non-transferable credits since 1984. Rather, they outline losses incurred through the loss of sick leave and long service leave (for example, Holmes, Burrows and Johnson). We have shown above that both these conditions of employment were specifically considered by the Commission in 1984 and the claim for full compensation of these elements was rejected by the Full Bench.

76. Losses incurred by retrenched employees due to longer periods of unemployment or lower wages received by the retrenched employee in a new job (see ACTU’s Contentions, volume 2, paragraph 25) can only translate to an increase in severance pay if the Commission decides to adopt the NSW rationale. However, if the Commission retains the rationale adopted by this Commission in 1984, there is no basis whatsoever to increase severance pay. In any event, even if these factors were taken into account, they do not provide a basis to increase severance pay above the 1984 level – as we demonstrate below, the losses incurred by retrenched employees have declined, on average, since 1984 due to stronger labour market conditions.

Changes in the labour market do not warrant severance pay being increased

77. The ACTU asserts at paragraphs 23 and 24 of volume 1 of its outline of contentions that labour market changes since 1984 have exacerbated the potential negative effects on workers whose employment is terminated as a consequence of redundancy. These
contentions, however, as we show in greater detail in Appendix 8, are not supported by the available evidence.

78. We show in section 1 of that Appendix that the rate of retrenchment is strongly linked to underlying economic conditions and that since 1993 there has been a sustained fall in the retrenchment rate, coinciding with consistent solid growth in GDP. Given the strong economic and employment growth that has occurred over the past nine years, coupled with ongoing reforms implemented by successive governments, the Australian economy is well placed for continued sustained growth. It is thus expected that the rate of retrenchment will continue to decline in the future.

79. The structure of the labour market has changed considerably since 1984. The ageing of the population, increased participation of women in the workforce, changes in industry structure and the shift towards high-skilled employment have all contributed to marked changes in the labour market over the last 20 years. However, available research does not support the ACTU’s contention that the potential negative effects of redundancy have been exacerbated.

80. The ACTU asserts that much of the new jobs growth that has occurred over past years has been in non-standard forms of employment. This is not correct. While there has been significant growth in part-time employment, the ACTU has failed to acknowledge either the reasons behind this growth or the even stronger growth in full-time positions. Similarly, the ACTU’s supporting material makes no reference to the extent of permanent jobs growth that has occurred alongside growth in casual employment.

81. It is inappropriate to characterise the composition of jobs growth as being predominantly ‘non-standard’. The latest available data shows that between August 1996 and August 2001, 433,700 permanent jobs were created compared to only 276,300 casual jobs.

82. We also show in Appendix 8 that today’s labour market is more robust and resilient to economic shocks than the labour market of 1984. The unemployment rate is a particularly important indicator of the strength of the underlying labour market conditions. We show in Appendix 8, Section 2 that the unemployment rate in December 1984 was considerably higher than that recorded in December in 2001.
83. Furthermore, average economic growth was also significantly greater in 2002 compared to 1984. The labour market of the 1980s was characterised by a boom/bust cycle with interest rates at 17.5 per cent, an unemployment rate of 10.9 per cent, and inflation standing at 12.5 per cent. Today, the economy is experiencing an unparalleled period of strong and sustained growth which is far more conducive to retrenches regaining employment than in 1984.

84. Economic growth is expected to slow in the near term, largely due to the effects of the drought and geopolitical tensions. Nonetheless, Treasury’s Mid-Year Economic and Fiscal Outlook employment growth forecasts remain strong and economic indicators suggest that labour market conditions will remain solid and thus continue to support retrenches in the job market compared to 1984.

85. In Appendix 8, section 2 we also show that between 1994 and 2001 there has in fact been a significant reduction in the number of retrenches remaining unemployed and an associated increase in the proportion of positive employment outcomes. This is due to the strong and sustained growth that was recorded during this seven year period.

86. The trend in the duration of unemployment for retrenches over the same period provides a similarly positive outlook and it is not unreasonable to assume that ongoing growth will continue to improve re-employment prospects for retrenches.

87. In summary, the available evidence suggests that reforms to the Australian economy have altered the patterns of retrenchment and contrary to ACTU contentions have reduced the negative consequences of retrenchment on employees. An increase in severance pay cannot therefore be justified on the basis of greater hardship due to job loss based on the structure of today’s labour market.

Establishing the level of severance pay

88. To have its claim for increased severance pay accepted, the ACTU has to justify the particular quantum and structure of severance pay it seeks. To do this the ACTU should demonstrate how the net losses of income incurred by retrenches necessitate the level and structure of severance pay it is claiming. At a minimum, this demonstration would have to quantify the net losses suffered by retrenches. To estimate net losses it would have to take into account the income support provided by
the social security safety net. Both the quantum and the structure of severance pay would have to be designed in the light of the quantum and structure of income support available through the social security system.

89. As we explore further in Appendix 8 section 2(b), the ACTU has failed to provide such an analysis. The Webber and Weller material submitted by the ACTU purports to identify losses incurred by employees who are retrenched\(^ {40}\). But this material does not quantify those losses. It fails to undertake this essential step in designing a severance pay standard to compensate the losses. It also fails to provide any sound basis on which the Commission could identify the quantum and structure of severance pay needed to mesh effectively with existing social security arrangements.

90. In fact the Webber and Weller material demonstrates that the structure and quantum of severance pay sought by the ACTU is inappropriate and unfair. The claim would over-compensate many employees who are retrenched. This is because many of those who are retrenched find subsequent employment relatively quickly\(^ {41}\). Such an over-compensation of employees may in fact result in the perverse situation of providing employees with a considerable financial incentive to seek out a redundancy package.

91. As acknowledged by Weller and Webber\(^ {42}\), the individual circumstances of retrenched employees are diverse, and the costs to employees resulting from retrenchment vary significantly across employees and through time. Clearly, no ‘one-size fits all’ set of severance pay increments can adequately provide a fair and effective system of income maintenance and is, therefore, intrinsically inappropriate.

92. The ACTU has also failed to address how severance pay designed to provide income support would be adjusted to remain fair and relevant as labour market conditions change. To maintain a consistent approach the level of severance pay would need to be continually reviewed as the length of unemployment periods rose and fell and when the level of unemployment benefits changed, so that the overall benefit to retrenched employees was appropriate and fair, and so that employers were not funding windfall gains for retrenched employees.

\(^{40}\) ACTU’s Contentins volume 2 page 1-41.


Employees 45 years and over should not be granted an additional severance pay loading

93. The ACTU has claimed that those employees aged 45 years and over should receive severance pay at the rate of 1.25 times that of other employees. They are seeking to directly flow this provision from the NSW TCR standard. These additional payments are consistent with the rationale which underpins severance pay in NSW – that is, that severance pay should help tide a retrenchee over a period of unemployment, and the average duration of unemployment increases with age. However, it is totally inconsistent with the rationale adopted by this Commission in 1984.

94. The federal Commission explicitly rejected granting older workers greater severance pay, saying:

We are aware that extended notice, which we have granted, will not be sufficient to ensure that all employees find alternative employment and we are aware that these provisions will not solve the problems of the chronically unemployed. However, these must remain, in our view, primarily a social rather than an industrial issue. Nevertheless, we are prepared to grant severance pay, in addition to the measures we have awarded to assist employees to find alternative employment.

We are prepared to have regard to length of service in determining an appropriate quantum but, for the reasons outlined by the ACTU and because the problems of age on the evidence before us are related more towards the attempt to find alternative employment, we have decided not to provide for age related payments. Of course, indirectly, older employees will benefit from a scale of payments on years of service.43

95. The ACTU recognised these disadvantages in 1984 when, during the federal TCR test case, it considered it inappropriate to relate severance payments to age because it may act as a disincentive to the employment of older workers thus adding to existing difficulties for those workers in finding employment. It also considered that scales based on service tend to provide higher levels of compensation to older workers, and that selection criteria would allow special measures to be taken to protect the jobs of older workers.44

43 8 IR 34, 73.
44 Ibid 71.
96. The federal Commission, rather, provided older workers with extended notice periods of termination, noting that “extended notice based on age is also supported by the evidence before us which indicates that persons in higher age groups often find it more difficult to obtain and adapt to comparable work elsewhere.” Employees must have two years service to be entitled to the extended notice.

97. The NSW decisions upon which the ACTU’s rationale is derived noted that older employees spend a longer period unemployed and therefore have a greater need for income supplementation. President Fisher in 1983 considered that “the evidence certainly supports added hardship over the age of 45” and that “this added hardship can logically be reflected by increasing the rate not lengthening the scale.” This relationship between age and a greater need for income supplementation was retained by the NSW Commission in 1987 when it said:

\[\text{we accept that the statistics indicate employees over 45 years of age do have increased difficulty in obtaining employment. In line with Crocker’s case we recommend that an employee retrenched having attained 45 years should be paid at the rate of 1.25 weeks for every week of entitlement according to the cited scale of payments.}\]

98. The provision of an additional loading for older workers only fits within the NSW rationale that a primary aim of severance payments is to supplement income during a period of unemployment. The additional loading could not be incorporated in the federal standard without an abandonment of the rationale that currently underpins that standard. Furthermore, such a loading would be counterproductive – it would disadvantage older workers in the labour market.

**The basis used to calculate severance pay should not be changed**

99. The ACTU’s claim seeks to change the method of calculation for severance pay so that it includes allowances, penalties, loadings and amounts payable under the employee’s contract of employment. The ACTU has proposed that the definition of a week’s pay should be consistent with the provisions of section 170CM(5) of the WR Act, that is, with the definition used for notice of termination.

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46 7 IR 273, 293.
47 21 IR 29, 52.
48 ACTU’s Contentions volume 1 paragraphs 50-51
100. The distinction between payment in lieu provisions and payment of severance pay is central here. The two payments have very different objectives. The words ‘in lieu’ are the key to the objective of the first payment. The federal Commission, in its 1984 supplementary decision, said “in cases where payment in lieu of notice is made the employee should receive the wages he/she would have received in respect of the ordinary time he/she would have worked during the period of notice had his/her employment not been terminated.” The underlying rationale is that employees should not be disadvantaged because their employer prefers to pay the notice period out rather than have the employee remain at work for the duration of the notice period. They should not receive less money than they would otherwise have been entitled to.

101. However, severance payments are not made on the basis that they are ‘in lieu’ of an employee working. They are an additional payment made as compensation because the employee is no longer in an employment relationship and as a result has lost certain non-transferable credits and may suffer inconvenience and hardship from that loss of employment. It follows that severance payments should not include payments that can only be earned by being at work. The employee is not at work and neither does he or she have the opportunity to be at that workplace once the employment relationship has been terminated.

102. It follows that the basis for the calculation of severance pay should remain as it is. It would not be reasonable to increase the cost of severance pay in this manner.

The economic impact of granting the claim is excessive

103. The ACTU substantially underestimates the economic impact of the claim. The ACTU wrongly asserts that the cost of the claim is negligible. It estimates the cost at about 0.08 per cent of the total wages bill. A significant component of this arises from the ACTU’s proposed increase in severance pay. As we demonstrate in detail in Appendix 7, there are seven key sources of underestimation in the ACTU’s assessment of the economic impact of the claim. When these are corrected, the economic impact of the claim is very significant.

104. The first flaw in the ACTU’s estimate occurs in the calculation of the cost of the new severance standard. Rather than the figure of
0.1212 per cent, the new standard would cost the equivalent of 0.1318 of the annual wages bill. Correcting for this flaw takes the cost of the claim to 0.9 per cent of the wages bill.

105. The second flaw in the ACTU’s estimate results from a significant underestimate (apparently due to a respondent recall problem) in the retrenchment rates that are used from the ABS Retrenchment and Redundancy Survey. Due to this problem, the retrenchment rates in at least the first two years of the survey seriously underestimate actual retrenchment rates. As a result, costings based on these rates will also seriously underestimate true costs. Correcting for this flaw increases the cost of the claim by 170 per cent.

106. The third flaw in the ACTU’s estimates is the use of retrenchment rates for 2001. These reflect relatively favourable economic conditions. But the prevalence of retrenchment varies significantly with the economic cycle, as the ACTU’s own evidence acknowledges. It is inappropriate to cost the claim on the basis of the lower retrenchment rates that apply during favourable economic conditions. Any severance pay standard has to be affordable and viable during the worst economic conditions. This is a very significant flaw in the ACTU costings: correcting it increases the cost of the claim by a further 169 per cent. This takes the cost of the claim to over 0.26 per cent of the annual wages bill. This does not amount to a negligible impact on the economy.

107. The next three sources of underestimation in the ACTU’s analysis arise because the ACTU expresses the cost as a proportion of the total wages bill across the entire economy. This approach produces a very misleading impression of the economic impact of the claim. The immediate and direct impact of the claim does not fall on all employers across the economy. Instead, the direct costs arising from the claim fall only on those employers who actually retrench and who are subject to the claim. Contrary to the impression created by the ACTU’s costings, the claim does not represent a small cost increase born by all employers. Rather, it would impose a much more significant and potentially damaging increase on a much smaller subset of employers – those who actually retrench employees in any given year.

108. The first correction that needs to be made to the ACTU’s estimates to rectify this deficiency is to express them as a proportion of the private sector wages bill. The ACTU’s estimates are based on retrenchment

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50 M Webber and S Weller, ‘Retrenchment and Labour Market Change’ ACTU Contentions volume 2 - tag 1 paragraphs 5, 32 and 53.
rates in the private sector, so the costs that arise are born solely by the private sector employers. Correcting for this flaw increases the cost of the claim by a further 130 per cent to 0.33 per cent of the private sector wages bill.

109. The second correction that needs to be made to the ACTU’s estimates to rectify this deficiency is to express them as a proportion of the wages bill for private sector employers covered by federal awards. This is because the ACTU’s estimate is based on retrenchments that arise under federal awards only, so the costs are born solely by private sector employers under federal awards. Correcting for this flaw increases the cost of the claim by a further 250 per cent to 0.83 per cent of the wages bill of the private sector covered by federal awards.

110. The third correction that needs to be made to the ACTU’s estimates is to express them as a proportion of the annual wages bill of employers who actually retrench employees in a year. This final correction is necessary to ensure that the costings estimate the increase in labour costs of those employers who would be directly affected if the ACTU’s claim was granted – that is, those employers who actually retrench. Correcting for this flaw increases the cost of the claim by a further 556 per cent to 4.62 per cent of the annual wages bill of private sector employers covered by federal awards who retrench in a year.

111. This is a very substantial labour cost increase. Its impact on those businesses who retrench in any given year would be significant. An increase of 4.62 per cent of the wages bill for an employer is broadly equivalent to a general wage increase for all employees of the same magnitude. It is greater than the percentage increase in wages at the C14 level that resulted from last year’s Safety Net Review. It should count strongly against the ACTU’s case that it has not sought to have the cost of its claim taken into account in this year’s Safety Net Review. If both claims succeed, firms would be caught between rising labour costs and greater financial penalties if they adjust the size or the composition of their workforces. Firms will become reluctant to hire, reducing the prospects of job seekers.

112. But these significant corrections to the ACTU’s estimates still do not give a full picture of the undesirable economic impacts of the claim. In particular, it needs to be recognised that retrenchments are generally undertaken by two categories of firms – those that need to downsize or adjust due to falling demand or financial difficulties, and those that are restructuring in conjunction with the introduction of new technology or
some other innovation. The fact that the costs of the ACTU’s claim would fall disproportionately on these two categories of firms means that its undesirable consequences would be significantly greater than otherwise.

113. In the case of firms that are retrenching due to adverse circumstances or poor performance, the retrenchments are likely to be necessary to make savings which will allow the survival of the firm. Increased severance payments would jeopardise that survival and endanger even more jobs. In the case of firms that are retrenching in association with innovation, the ACTU’s claim would reduce the economic profits and rewards that are obtained through innovation. To the extent that innovation is impeded, the benefits that flow to the economy more widely from innovation will also be reduced. The detrimental impact of the ACTU’s claim would be concentrated on these two categories of firms but would also have negative ramifications for the broader economy in terms of unnecessary disruption and lower productivity.

The contingent liability

114. The ACTU’s costings also ignore the impact of the claim on employers who are not retrenching. The ACTU’s costings are founded on the premise that costs arise from the claim only when an employee is retrenched. They assume that no costs arise for employers in relation to all employees who are not retrenched in any given year. The ACTU’s costings therefore attribute no cost to employers in relation to over 90 per cent of employees who are not retrenched in any year.

115. The ACTU’s approach is inappropriate. Contrary to the ACTU’s position, the granting of the claim would have a very significant impact on all employers subject to the claim, whether they actually retrench employees in any given year. The claim, if granted, would create a very substantial additional contingent liability for all employers in relation to each of their employees subject to the claim. The contingent liability is the amount of severance pay that an employer would have to pay out to each employee if the employee was retrenched. It is the amount that an employer would have to set aside if unions succeeded in their objective of requiring employers to pay sufficient amounts into Manusafe-type funds to cover the severance pay entitlements of all employees.
116. The additional contingent liability created by the claim is much greater than the ACTU estimates, even after the estimates are corrected in the ways we have dealt with above. This is because a relatively small percentage of employees are retrenched each year, while the contingent liability accumulates in respect of all employees. In Appendix 7 we show that the additional contingent liability created by the claim would be about 6 per cent of wages costs for all private sector employers subject to the claim.

117. In the 1984 TCR case the ACTU also ignored the significance of the contingent liability when it costed its claim. The full impact of the contingent liability does not appear to have become clear in that case until after the Commission made its initial decision. In the lead up to the Supplementary Decision employers introduced new evidence that graphically demonstrated how the creation of a new unfunded contingent liability would have a detrimental impact on employers. This evidence is summarised in the Supplementary Decision.

118. Of course, it is not compulsory for employers to put funds aside to cover the contingent liability. To the extent that they do, it is clear that the economic impact of the claim is many, many times higher than the ACTU estimates. To the extent that they do not provide for the contingent liability, employers will also be detrimentally affected by the claim. If they do not have money set aside, and have to undertake retrenchments, they are likely to have difficulty in funding the severance payments. This is particularly the case if the retrenchments are necessitated by deterioration in the business cycle, falling demand, or financial difficulties. Firms that have not provided adequately for severance pay will have a very powerful incentive to avoid retrenchments. This can produce risk-averse behaviour, including reduced hirings, which will have wider economic costs.

119. Firms that set money aside to cover severance pay will also face a disincentive to hire new employees. If they take on new staff, they will have to set additional funds aside for the new employees. The significant impact of increased severance pay on hirings is confirmed by a large body of international research. This demonstrates that onerous firing costs (which may take a number of forms including severance payments) have a harmful effect on the labour market (see Appendix 7). Firing costs discourage recruitment, limit job opportunities and hamper essential change in the labour market. The ACTU’s contentions totally ignore this research, despite the clear implication that the claim will make it harder for retrenched workers to regain employment.
120. The challenges which confront retrenching firms, and the business adjustments and failures which arise from them, are part of the inevitable and fundamental processes of technological, social and economic change. Often innovation and adaptation require change not only in the structure of the organisation but also of the type and level of work required. In order to innovate and adapt successfully, firms need to adjust their workforce, shedding skills that have become obsolete and gaining new skills that are required, or sometimes simply reducing its size. By making firm-based adjustment more expensive, the ACTU’s claim will make it more difficult for Australia to respond positively to these changes.

The benefits to employers

121. The ACTU is also wrong in its assessment of the benefits that might flow to employers from making retrenchments. In paragraph 15 of volume 1, its Outline of Contentions the ACTU asserts that the losses incurred by retrenches are complemented by reciprocal benefits to employers and the national economy. The ACTU goes on to argue that it is fair that the losses to employees be compensated by a transfer of resources form those who benefit.

122. If it were true that employers gain sufficient benefits from retrenchments to compensate retrenches for their losses, it could be argued that they have the capacity to pay appropriate severance pay. But this is far from true, and the ACTU has fallen far short of substantiating its proposition.

123. As we demonstrate in detail in Appendix 7, the majority of firms that retrench do so to survive. It is particularly obvious that the ACTU’s argument fails for firms that are near insolvency or that become insolvent – they do not reap increased profits through retrenchments. The same applies to businesses that retrench in order to reduce losses because of falling demand or financial difficulties. And the evidence shows that the majority of firms that retrench are in difficult circumstances. As we have stated above, increasing severance payments would jeopardise the survival of these firms and endanger even more jobs.

124. Even in the case of the smaller proportion of firms that retrench in association with the introduction of new technology or other innovation, the ACTU’s argument fails. The studies discussed in Appendix 7 show
that in many cases firms do not gain an extra ordinary benefit (that is, prolonged excess profit in the economic sense) from the processes of innovation and adaptation. At the firm level, innovation is often undertaken simply to keep abreast of competitors.

125. The fact that a very small proportion of firms might receive significant benefits or rents from innovation does not justify a higher level of safety net severance payments. It would be disastrous to impose higher severance pay on all employers when only a small proportion of firms reap the benefits that might enable them to fund the higher payments. Workplace bargaining is the appropriate process for distributing some of these benefits to employees where an employer receives above-normal profits from innovation.

The Commonwealth would incur increased financial obligations through the General Employee Entitlements and Redundancy Scheme

126. The Commonwealth plays a key role in the protection of employee entitlements arising from employer insolvency, first addressing the issue through the implementation of the Employee Entitlements Support Scheme (EESS) in 2000. The scheme was introduced as a safety net scheme to compensate for employee's legal entitlements left unpaid due to an employer's insolvency.

127. In September 2001 the Federal Government announced a new safety net scheme, GEERS, to replace the EESS. GEERS is fully-funded by the Federal Government. EESS continues to apply to claims lodged in respect of terminations due to insolvency from 1 January 2000 up to and including 11 September 2001, and GEERS applies to terminations due to insolvency occurring on or after 12 September 2001. Additional information on the operation of GEERS is provided in Attachment C.

128. If granted, the ACTU’s claim would add to the Commonwealth’s financial obligations under GEERS. The table at Attachment D provides

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51 Under the EESS safety net, and based on combined Federal / State funding, where claimants have a legal entitlement derived from legislation, an award, a statutory agreement or a written contract of employment, as it was at the date of their former employer's insolvency, they may be eligible for a maximum of 29 weeks pay equivalent the following specified, unpaid entitlements:

- up to 4 weeks unpaid wages; up to 4 weeks annual leave accrued in the last year; up to 5 weeks pay in lieu of notice; up to 4 weeks redundancy pay; and up to 12 weeks long service leave.

The maximum rate of payment for each week’s entitlement is the rate corresponding to an annual wage of $40,000. There is a $20,000 cap on the amount any individual may receive from the fund. The Commonwealth contributes 50% of these funds and for full payment of the safety net to be made the relevant State or Territory government must contribute the remaining 50%.
details of activity under GEERS, including the number of insolvency cases dealt with, the amount of Commonwealth funds paid, the growth rate that claims are being received with, and estimates of additional costs to GEERS that the ACTU’s claim would generate for a 12 month period.

129. At least three elements of the claim would directly increase the Commonwealth’s financial obligations under GEERS if it were granted. The removal of the small business exemption and the extension of severance pay to long-term casual employees would both act to increase the number of employees of insolvent businesses who are entitled to severance pay. Furthermore, the 25 per cent loading for workers over 45 would increase the entitlement of some workers who currently qualify for GEERS. We estimate that if the claim were granted and spread to all other jurisdictions the additional financial obligation would be in the order of $20.3 million. These impacts arise on the basis of the existing standards recognised by GEERS. They do not assume any increase in the level of entitlement accepted by GEERS.

130. Under GEERS, the Government may make payments to eligible employees who lose their jobs due to the insolvency of their employer, where all other sources of available funds have not been sufficient to meet the employer’s obligation in respect of outstanding employee entitlements and up to the limits prescribed under the Scheme.

131. Under GEERS, employers remain liable for the payment of their employees’ full entitlements. Where there are insufficient funds available from an insolvent employer, however, taxpayer funded payments can be made under the scheme as an advance. The Commonwealth seeks to recover from the insolvent companies the monetary advances made to employees. As a consequence, the existence of GEERS does not change the amounts of funds available to creditors of insolvent businesses who are ranked below employees. Furthermore, if severance pay were increased and if all other things were equal, this would reduce the amount of funds available to lower-ranked creditors, even if GEERS were amended to cover the increased entitlement.

132. The Government’s intention is that eligible employees whose employers go out of business and cannot pay employee entitlements will be eligible to claim GEERS payments. If employees have already received more than the GEERS entitlements from other sources, the Government scheme is not available. Similarly, where an employer has put in place employee entitlement protection arrangements, the
Government will not make any payments under GEERS until such time as the funds available from such arrangements have been fully exhausted. The Government scheme is a safety net, not a replacement.

133. The primary source of funding for employee entitlements is, and must remain, the responsibility of the employer. The means by which employers provide any such protection for employee entitlements is a matter for each employer to consider. GEERS is not a business subsidy or business restructuring support.

Workplace bargaining would be restricted if the claim were granted

134. A substantial increase in the minimum level of severance pay as claimed by the ACTU would unnecessarily reduce the existing scope for terms and conditions of employment to be agreed and settled at the workplace. This would undermine the very significant economic gains that have been made through a closer relationship between employers and their staff, and the ability to implement conditions which best suit their particular needs and workplaces.

135. A vital ingredient for sustained economic and employment growth is greater productivity and competitiveness. The Commonwealth has recognised that increased labour market flexibility and reduced regulation can contribute to this as an integral part of microeconomic reforms designed to improve workplace efficiency. A positive shift to workplace bargaining has been the cornerstone of these reforms.

136. The WR Act reinforces agreement making as the primary focus of the workplace relations system in Australia. Its principal object stresses that the primary responsibility for determining matters affecting the employment relationship rests with employers and employees at the workplace [section 3(b)]. The means is to be provided for wages and conditions of employment to as far as possible be determined by agreement at the workplace [section 3 (d)(i)]. The Commission has acknowledged its role in encouraging employers and employees to reach agreements at the workplace. In the April 1997 Safety Net Review decision the Commission interpreted its role as one of balancing “the need to adequately protect employees who have for whatever reason been unable to reach an agreement with their employer and the need to encourage the making of agreements between employers and employees at the workplace.”

137. It is essential that agreement making at the workplace continue to be encouraged – indeed, the Commission has a statutory responsibility to encourage this. Workplaces need to continue to have this flexibility so that local needs and circumstances can be accommodated to the mutual benefit of both employers and employees. In the Commonwealth’s view, the most appropriate way for employees to access severance payments above the current minimum standard is via the bargaining process. In this way, those employers who wish to offer increased severance pay, perhaps in relation to a specific restructuring exercise, can do so in consultation with their employees. Similarly, only through an effective bargaining process can employees determine the priority they wish to attach to wages and specific employment conditions.

138. The ACIRRT Report submitted by the ACTU (included at Tab 2 of volume 4 of its supporting material), confirms that a variety of redundancy provisions have been included in many federal and state agreements.\textsuperscript{53} The report shows that these agreements cover a range of redundancy issues including the level of severance pay, the treatment of superannuation, consultation, age differentiated severance pay and others. It also shows that a number of workplace agreements across all jurisdictions include TCR provisions that are different to the national standard. That is, employers and their employees have used the various bargaining provisions in legislation to adapt the TCR standard to suit their needs.

There is no emerging community standard for severance pay above the current TCR standard

139. An examination of the ACIRRT Report also demonstrates that the current TCR standard is still highly relevant and provides the basis for most current redundancy provisions. The report indicates that nearly all federal awards that were surveyed for provide the current TCR standard for severance pay. Awards provide no basis to suggest that the current TCR standard is not a fair standard or is not the prevailing community standard. In fact, the ACIRRT Report concludes that “recent literature concerning redundancy standards in Australia, while fairly sparse, tends to support the notion that the provisions of the 1984 TCR case continues to provide the basis for most current redundancy practices”\textsuperscript{54}


\textsuperscript{54} Ibid page 63.
140. The ACCIRT report also shows that only a small minority of the agreements surveyed contained severance pay that is above the current TCR standard. This can be seen by examining Tables 2.1, 2.14, 2.15 and 2.16 of the ACIRRT report. At Attachment E is an extract of transcript of the cross-examination of Professor Callus of ACIRRT as part of the 2002 review of the TCR standard in the Queensland jurisdiction. The cross-examination takes Professor Callus through the survey of awards and agreements as outlined above and demonstrates that the prevailing TCR standard in agreements is not yet in excess of the federal TCR standard. Attachment F sets out these figures in tabular form.

141. That only a minority of agreements contain severance pay provisions that are in excess of the current TCR standard was confirmed by Professor Callus during cross-examination in the Queensland TCR case in 2002:

[Mr Stewart] So if it was suggested to you that the increase in TCR and severance pay sought by the union in this case were needed to ensure that the award standard in Queensland better reflects the standards generally prevailing in the community, that you couldn't substantiate that statement based on your report?
[Professor Callus] No.\(^55\)

142. A detailed analysis of the ACIRRT material clearly illustrates why Professor Callus reached this conclusion. Table 2.1 in the ACIRRT report identifies the number of agreements from each jurisdiction that were surveyed by ACIRRT. For example, Table 2.1 shows that 1065 federal agreements were surveyed. Table 2.14 shows the maximum level of severance pay in the agreements that were surveyed. The second row in the table shows the number of agreements that had the maximum set out in the current TCR standard, or a lower maximum. All other rows refer to maxima that are above the current TCR standard. So adding up the numbers in all rows except for the second row gives the number of agreements of all those surveyed that were above the TCR standard. This number can then be divided by the total number of agreements surveyed from the respective jurisdiction to give the proportion of agreements for each jurisdiction that contained a maximum level of severance pay above the TCR standard.

143. For federal awards, analysis shows that of the 1065 agreements surveyed, only 20.84 per cent contained a maximum severance pay above the TCR standard. And across all jurisdictions, only 17.05 per cent of the agreements surveyed were above the TCR standard. Again, this analysis confirms that the current TCR standard has not fallen behind what could be reasonably termed a community standard. **Attachment F** sets out these and related figures in tabular form.

144. A similar analysis of the data in Tables 2.15 and 2.1 confirms these conclusions. The second row in Table 2.15 shows that only 72 federal agreements provided for severance pay at the rate of two weeks per year of service. This represents only 6.76 per cent of all federal agreements that were surveyed, and only 5.79 per cent of all agreements. Similarly, severance pay at the rate of three weeks for each year of service was found in only 8.36 per cent of federal agreements that were surveyed, and only 6.25 per cent of all agreements. Again, these and related figures are set out in tabular form in **Attachment F**.

145. A similar analysis of Table 2.16 shows that only 5.07 per cent of federal agreements that were surveyed contained a different rate of severance pay at age 45, and only 4.46 per cent of all agreements did so (see **Attachment F**).

146. The ACIRRT report shows that only a small minority of all the agreements surveyed across all jurisdictions contained severance pay provisions that are above the current TCR standard.

147. The fact that a small proportion of workplaces have negotiated higher levels of severance pay in their agreements in no way suggests the standard should be increased. Parties negotiating agreements are not constrained by the rationale adopted by the federal Commission in setting the minimum TCR standard. As we have already illustrated, negotiated outcomes can and do include additional amounts to attract employee support for restructuring, to encourage older employees to voluntarily retire, to supplement employee incomes while they look for alternative employment, and to assist employees to start an alternative career, retrain, or begin a business.

148. Furthermore, it would be inappropriate to flow back into the minimum standard these bargaining outcomes – they have been established to suit only one enterprise, they have not been designed as a minimum standard capable of a much wider application, and they are not
a community standard. To flow back bargaining outcomes into the minimum award standard would raise the potential for an undesirable interaction between awards and agreements which could lead to inflationary pressures. Further, if agreement outcomes were an appropriate consideration in the variation of awards, it would provide a significant disincentive for employees and unions to enter into agreements.

Australia’s international obligations are fully met by the current TCR standard

149. Article 11 of International Labour Organization (ILO) Convention No. 158, Termination of Employment, 1982 (C158) provides that: A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he or she is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his or her employment during the notice period. Article 12 provides that:

1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to -

(a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or
(b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
(c) a combination of such allowance and benefits. (our emphasis added)

150. The Convention itself does not set out any actual minimum standards of notice or payment. These are matters for national law and practice. In the ILO context, national law and practice means and includes any applicable law and practice at the Federal, State and Territory levels. So in relation to Australia’s obligations under C158 the setting of appropriate severance pay and periods of notice is a matter in which the federal jurisdiction is competent to set standards.

151. In summary, no obligation to raise severance pay is created by C158. The current standards are in compliance with the Convention.
Conclusion

152. There is no merit in the ACTU’s claim to increase severance pay to the same level as the NSW standard. It is common ground in these proceedings that the rationale for severance pay adopted by the federal Commission in 1984 does not include a component to help tide employees over until they find another job as the NSW rationale does. We have clearly shown that for the Commission to adopt this rationale, it would be moving outside its role of providing a safety net of minimum wages and employment conditions. The Commission should not take over functions of the social security system. This is not within its realm of responsibility.

153. The ACTU’s claim is inconsistent with the objects of the WR Act in several respects. First, the Act reinforces the role of the Commission in maintaining an effective award safety net. The current TCR standard forms part of that safety net and the ACTU has failed to provide evidence to support the view that it is not operating as a fair safety net for employees.

154. Second, the WR Act encourages the determination of conditions of employment by agreement making at the workplace. Acceding to the ACTU’s claim would in fact narrow the scope for agreement making and discourage workplace parties from entering into agreements.

155. Third, the economic prosperity of Australians achieved through high employment, higher productivity and international competitiveness will not be aided by the imposition of significant new costs on employers.

156. We have shown that the cost impact of acceding to the ACTU’s claim is excessive and unaffordable by both business and the economy. Granting the claim would retard economic growth and prosperity, narrow employment opportunities, particularly for older workers, and push businesses towards insolvency.

157. In summary, the ACTU has failed to prove its case. The claim for increased severance pay is unaffordable, unnecessary and should be rejected by the Commission.
AUSTRALIAN GOVERNMENT EMPLOYMENT (AGE) REDUNDANCY ARRANGEMENTS

Introduction

The following paper outlines the redundancy arrangements that apply to Australian Government Employment employees, the historical background to these arrangements and a comparison of these arrangements with those applying in the State and Territory public services.

Current Arrangements

Australian Public Service

Award provisions

The Australian Public Service Award 1998 [AW766579] (the APS Award) applies to all employees employed under the Public Service Act 1999 except for any limitations or exclusions identified in the award.

As specified in the Ramsey Witness Statement, ACTU Volume 6 (pp 117) organisations that fall under groups A, B, C and D, in Attachment A of the witness statement, employ under the Public Service Act 1999, and therefore the APS award applies to employees in these organisations. However, it should be noted that this list is regularly revised by the APS Commission and as stated by Mr Ramsey the list of Australian Public Service agencies is not the current list but rather dates back to July 2002.

Clause 23 of this award - see Volume 4 of the ACTU’s submission (pp 6-9) - defines the circumstances in which an employee may be made excess and provides an entitlement to redundancy pay and notice of termination which applies to excess Australian Public Service (APS) employees who are ongoing employees and not on probation. It provides for the following.

- An excess employee whose employment is terminated will be entitled to redundancy pay of a sum equal to 2 weeks salary for each completed year of continuous service, plus a pro rata payment for completed months of continuous service since the last completed year of service

- The minimum sum payable as redundancy pay on termination is 4 weeks salary and the maximum is 48 weeks salary

- Service for redundancy pay purposes may include in particular circumstances service with other Commonwealth employers

- For the purposes of calculating redundancy pay salary will include
− the employee’s full time salary, adjusted for periods of part time service

− and certain allowances may be included in particular circumstances

  ▪ i.e. where these are paid during periods of annual leave and on a regular basis and are not a reimbursement for expenses incurred of a payment for disabilities associated with the performance of a duty

  ▪ additional payments for the performance of duties at a higher classification level where the employee has been performing duties at a higher classification for a continuous period of 12 months immediately preceding the date on which the employee is given notice of termination

  ▪ shift penalties where the employee has undertaken shift work and is entitled to shift penalties for 50% or more of the pay periods in the 12 months preceding the date on which the employee is given notice of termination.

− Where an excess eligible employee is terminated, the period of notice will be 4 weeks unless they are over 45 years of age with at least 5 years continuous service, in this case the period of notice is 5 weeks.

− An employee will be entitled to reasonable time off with full pay to attend necessary employment interviews and where expenses to attend interviews are not met by the prospective employer, the employee will be entitled to reasonable travel and incidental expenses incurred.

− Where an agency head proposes reducing an excess employees classification the employee will be given the same period of notice as the employee would have been entitled to receive if the employment had been terminated or the employer may pay an amount to maintain the level of salary received by the employee at the date of notice of reduction in classification for the number of weeks of notice still owing.

**Australian Public Service – Statutory agencies**

As detailed in the Ramsey Witness Statement, ACTU Volume 6 (pp 117) organisations that fall under group E, in Attachment A of the witness statement, are APS Statutory agencies that have dual staffing powers, that is they may engage staff under the PS Act or other legislation. As stated by Ramsey the whole or the substantial whole of the staff of those bodies are employed under the terms of the PS Act and the APS award applies to their employment with the exception of a few particular agencies whose circumstances are discussed below.

The Ramsey statement is correct with regard to the Australian National Training Authority. In the case of the Australian Bureau of Statistics (ABS) there is a specific agency award, the Australian Bureau of Statistics (Interviewers) Award 2000 which contains no redundancy provisions however it should be noted that this award applies to ABS employees who are employed specifically for work on the census,
and are all non-ongoing employees engaged for a specified term or task. The main ABS workforce fall under the provisions of the APS Award.

As noted in the section on Non APS agencies below it is considered also that the Australian Securities and Investment Commission, in group E in Attachment A of the witness statement, may potentially be subject to the terms of Australian Government Statutory Authorities Redeployment and Retirement (Redundancy) Award 1988 [AW765679].

**Agreements**

Agreement making in the APS is governed by the *Policy Parameters for Agreement Making in the APS (June 2002)*. Parameter 4 of these provides for the following:

4. Agreements are to include compulsory redeployment, reduction and retrenchment provisions, with any changes not to enhance existing redundancy arrangements
   • an Agency Minister may, in consultation with the Minister Assisting the Prime Minister for the Public Service, approve separate financial incentives to resolve major organisational change. Such incentives are to be cost neutral to the agency in the context of the major organisational change.

Redundancy entitlements for APS employees are now generally contained in certified agreements or in Australian Workplace Agreements with almost all APS agencies displacing the provisions of the APS award in their agreements.

The provisions contained in most APS agreements are closely aligned to the APS award provisions, and also include provisions dealing with redeployment and retention in employment as an alternative to acceptance of a redundancy benefit. A number of APS agencies have, through their agreements, streamlined and simplified the redundancy arrangements operating in their agencies i.e. providing for involuntary retrenchment (with a benefit) without a period of retention, limiting the retention period to 7 months, not allowing retention period to be extended by certificated sick leave – see Annexure A for examples.

While the Policy Parameters provide that agencies must include compulsory redeployment, reduction and retrenchment provisions, many agency agreements recognise that in practice retrenchments will, wherever possible be conducted on a voluntary basis.

In addition, the majority of agency agreements have a strong emphasis on redeployment and many have clauses which provide along the following lines –
   • the Agency Head can invite employees who are not excess to express interest in voluntary retrenchment, where the retrenchment of these employees would permit the redeployment of employees who are in a redundancy situation and would otherwise remain excess
   • The Agency Head will not involuntarily terminate an excess employee where there is another employee doing the same work at the same level who is seeking voluntary retrenchment and the excess employee can demonstrate the same level of performance and expertise as the employee who is seeking voluntary retrenchment.
• Similar clauses were included in awards prior to award simplification – for example, see clause 11.4.12 of the General Employment Conditions Award 1995.

Non APS agencies

There are a number of agencies within the Commonwealth public sector that do not employ under the PS Act. These agencies fall into three groups - statutory authorities, government business enterprises (GBEs), and other statutory bodies that are not as easily defined i.e., for example the Murray Darling Basin Commission (MDBC) which is responsible to a number of governments.

The Ramsey Witness Statement, Volume 6 (pp 118 and Attachment B) does not make this distinction between statutory authorities and other statutory bodies for example the MDBC is included in Attachment B of the Ramsey Witness Statement though it is not a statutory authority. As discussed below Attachment B of this document provides details of Statutory Authorities – though does not provide detail on other statutory bodies.

As for GBEs, the list of GBEs at paragraph 8 of the Ramsey Witness Statement, Volume 6 (pp 118) does not include the following bodies that are currently classed as GBEs:

- Australian Government Solicitor;
- Australian Rail Track Corporation Limited;
- Australian Technology Group Limited;
- Bankstown Airport Limited;
- Camden Airport Limited;
- ComLand Limited; and
- Hoxton Park Airport Limited.

The Snowy Mountains Hydro-Electric Authority also is no longer a GBE.

Award provisions

In general, the APS Award does not cover APS agencies, contrary to the contents page of Volume 4 of the ACTU material which describes the excerpts from the APS Award as referring to Commonwealth employment. As discussed in the Ramsey Witness Statement, Volume 6 and this paper the APS award is relevant only to employment under the PS Act.

There are two multi employer awards containing redundancy provisions, which apply to a very limited number of non APS (AGE) agencies.

The first is the Australian Government Statutory Authorities Redeployment and Retirement (Redundancy) Award 1988 [AW765679] [former code A0449]. It appears to have potential application in only one Australian Government Employment (AGE) agency – the Australian Securities and Investment Commission (ASIC) – an APS agency that has dual staffing arrangements.
At this point in time, the parties to this award are awaiting a decision of the AIRC regarding the s.51 Item Schedule 5 Transitional WROLA Act 1966 review (simplification) of the award. (Note: The TWU have argued that provisions relating to retention periods and income maintenance should not be removed as part of the simplification of this award, DEWR appearing on behalf of the APS Commissioner opposed this position.)

Currently the award provides for:
- generally, the same redundancy pay as the APS award;
- retention periods – in the case of an employee who has twenty or more years of service or who is over 45 years of age – thirteen months, in the case of other employees – 7 months;
- income maintenance payments.


The award provides for:
- six months’ formal notice for an ongoing employee
- twelve months’ formal notice for an ongoing employee, who has twenty or more years of service or who is over 45 years of age
- one month’s formal notice for a non ongoing employee
- one month’s formal notice that an ongoing employee is to be transferred to a lower salary level or terminated
- calculation of income maintenance payments

A number of non-APS agencies also have provisions for redundancy included in their own agency specific award – see Annexure B for details for statutory authorities (excludes GBEs, and other statutory bodies). Attachment B of the Ramsey Witness Statement provides the same information as at Annexure B, except with regard to the following:
- as discussed other statutory bodies have not been included;
- agencies have only been included where there is an agency specific award;
- where information at Attachment B of the Witness Statement is incorrect or incomplete. For example, the Australian Broadcasting Corporation has a number of awards, and the relevant award for the Australian Council is the Australian Council Award 2000 [AW806422] rather than the Australian Trade Commission Award 2001.

The great majority of these agency specific awards closely follow the provisions of the APS Award and provide for the same level of redundancy pay.

Agreements
The Government's Workplace Arrangements for Commonwealth Authorities govern the agreement making of non-APS agencies, classed as Commonwealth Authorities. They provide at Parameter 4 for the following:

Certified agreements and AWAs are to:

- provide for access to compulsory redeployment, reduction and retrenchment and ensure that:
  - any revision to redundancy provisions, including in an AWA, is not an enhancement of the existing redundancy obligations applying to an authority; and
  - any separate financial incentives to resolve major organisational change involve no additional cost to the authority in the context of that change and subject to the approval of the responsible Minister, in consultation with the Minister for Employment, Workplace Relations and Small Business.

GBEs and statutory marketing authorities are not limited in the same way, but are subject to the Government’s GBE Governance Arrangements promulgated by the Finance Minister. These Arrangements simply require GBEs to manage their relations with their employees consistent with the WR Act 1996.

The majority of non-APS agencies will have certified agreements or AWAs that contain provisions relating to redundancy – see Annexure C for examples of these.

These provisions while broadly similar to the provisions contained in APS agency agreements can vary significantly with regard to the level of severance pay provided, but where they do vary the level of severance pay provided will generally be higher.

As noted by the Ramsey Witness Statement at paragraph 9 (pp.118) GBEs generally provide agreement redundancy entitlements in excess of the TCR standard.

**Background to AGE Redundancy Arrangements**

A summary of the significant developments that have led to the current AGE redundancy arrangements is at Annexure D.

**Pre redundancy pay period**

Public Service legislation has included provisions relating to the redeployment and retirement of excess staff since Federation. However, up until the mid 1970s these powers were used very infrequently.

Ministerial approved Redundancy Guidelines for Australian Government Employment (the RAGE Guidelines) were introduced in 1974. They provided for a period of income maintenance for excess staff for a period of 6 months from the date of termination or transfer to a lower level position but did not provide for redundancy pay. The Guidelines reflected the emphasis given at that time to redeployment, but did also provide for compulsory retrenchment.
This approach was continued when the Commonwealth for the first time addressed in an industrial instrument the issue of redeployment and retrenchment in Commonwealth Employment. Public Service Arbitration Determination 509 of 1977 extended the income maintenance period to 12 months for Australian Public Service (APS) employees and employees of some non-APS bodies who were over 45 years of age or who had more than 20 years service.

In 1986 this award was varied to become the Redundancy Provisions Australian Government Employment Award 1986 [R0036] (the RPAGE award). As discussed in the previous section this award has now become the Redundancy Provisions Australian Government Employment Award 2002 [AW817960] but it still retains its original core provisions – six and twelve month notice periods, income maintenance and no provision for severance payments. Again the emphasis with this award was on redeployment and the avoidance of retrenchment being the appropriate way to manage excess employees.

**Redundancy pay**

However, the reality was that by the mid 1980’s enforced retrenchments in the AGE area were being avoided by the usage of voluntary redundancy as much as because of successful redeployments.

Public Service Arbitration Determination 509 of 1977, the RPAGE award and other relevant instruments contained substitution arrangements – that is, provisions that by agreement might apply to excess employees in addition to or in substitution for existing entitlements. Under these provisions, voluntary redundancy packages were negotiated where it was considered the redundancy situation made the standard redeployment framework costly or of limited use. These situations usually involved:

- large numbers of surplus staff;
- staff of statutory authorities, especially those disbanded;
- staff in locations where few vacancies were likely to arise;
- staff with specialised skills and experience;
- temporary, including part time staff;
- staff whose functions were transferred to states or the private sector; and
- staff who were not motivated to remain with the Commonwealth workforce.

These voluntary packages were based on providing employees with a lump sum payment which was a percentage of the salary that would have been payable during the 6 or 12 months notice of redundancy periods (the existing award entitlements). The standard capitalization rate applying for APS employees was generally 50%, while rates for statutory authorities varied but were above the 50% rate. For example, Snowy Mountains Engineering Corporation staff received 66.66% due to the special factors relating to their location in Cooma, including transfer expenses and the loss on sale of houses.

In 1986 the then Government initiated the restructuring of the Defence factories, a major redundancy exercise, which involved reducing the number of staff by 1000. Given the nature of the redundancy situation it was clear that voluntary retrenchments would be required to facilitate the restructuring. However, it had also become apparent that the capitalization arrangements were no longer attractive to the
Government and public service unions and a redundancy package based on them was unlikely to be agreed upon. Of particular concern was that:

- the capitalization standard rate was too low; and
- the benefit received did not adequately relate to years of service.

The redundancy package that was agreed upon provided for severance pay of two weeks salary for each completed year of service, with a minimum sum payable of 4 weeks salary and a maximum of 48 weeks salary. In developing this package the following points were of significance:

- basing severance pay on years of service;
- the then Government not wishing to be a pacesetter;
- private sector practice and benefits; and
- state public service practice and benefits.

In 1987 the Australian Public Service and other AGE agencies ceased sharing the same redundancy award provisions with the making of the Australian Public Service Redeployment and Retirement (Redundancy) Award 1987 [A03389] (APS RRR award). This award applied to all persons employed under the Public Service Act and provided for the options of voluntary redundancy with redundancy pay or retention in employment for a defined period (13 months for officers who had 20 or more years service or who were over 45 years of age). Staff who elected retention and were not successfully redeployed during the retention period could have their employment terminated at the end of that period with no entitlement to redundancy pay. Shortly after this award was made, the Australian Government Statutory Authorities Redeployment and Retirement (Redundancy) Award 1988 [A0449] was made which mirrored the provisions of the APS RRR award. This award, though, only applied to AGE agencies that were named respondents.

Both awards contained the current redundancy pay provision – severance pay of two weeks salary for each completed year of service, with a minimum sum payable of 4 weeks salary and a maximum of 48 weeks salary, for persons electing voluntary redundancy. As discussed above, this redundancy pay had been agreed to by the Government to facilitate restructuring in the Defence factories, and shortly afterwards was adopted as a standard for voluntary retrenchment throughout Commonwealth employment (*RAGE Guidelines and Policy Guidelines for Commonwealth Statutory Authorities, December 1987*).

The introduction of voluntary redundancy and redundancy pay was one element in a set of reforms for the AGE area in this period. In the 1985-86 Public Service Board Annual Report (p.22-23), it was noted that the framework of legislation and industrial awards for handling APS redundancy situations was “complex, difficult to understand and difficult to administer” with consequent detrimental effects for both management and staff. Union dissatisfaction with the nature and level of retrenchment benefits was also noted. Against this background, redundancy arrangements became a matter of consideration for the then Government’s wide ranging review of options for streamlining APS personnel management processes.

In September 1986, the then Prime Minister announced a range of decisions taken by the Government directed towards improvement of public sector efficiency, including the proposed streamlining of various APS personnel management
processes. As a result, the Public Service Legislation (Streamlining) Act 1986 contained new provisions relating to redeployment and retirement which came into effect on 20 July 1987. On the same date, the APS RRR award came into operation with its new voluntary redundancy option and redundancy pay.

The following extracts from Streamlining Booklet No. 7 – Excess staff, which was issued at the time the new framework for managing excess staff situations in the APS was developed, reflected the thinking of the time:

“The new framework is less complex than the old one and is designed to achieve more rapid and less costly resolution of redundancies through simplified processes, more effective redeployment action and, where retrenchments are necessary, an emphasis on a voluntary system.” (para 7)

“Voluntary retrenchment is a key feature of the new framework…” (para 9)

“In any situation where retrenchments are going to be necessary, the voluntary retrenchment system offers the means of obtaining fast and mutually agreed selections of staff for retrenchment together with an accelerated termination process once staff give their consent. By this means the slower, costlier and dispute-prone procedures leading to involuntary retrenchment can be avoided” (para 10).

**Longer term**

This view was again conveyed in the Public Service Commission’s 1993-94 Annual Report (pp34-5):

“Excess staff situations in the APS have been managed since 1987 in accordance with the terms of the Australian Public Service Redeployment and Retrenchment (Redundancy) Award 1987. The Award introduced a framework designed to achieve more rapid and less costly resolution of redundancies, through simplified processes, more effective redeployment action at and below level, and where retrenchment/retirement is necessary, an emphasis on a system of voluntary retrenchment while retaining involuntary retirement as a last resort.”

In the longer term these redundancy arrangements have been effective in facilitating the downsizing and restructuring that has taken place in the APS since their inception. The overwhelming majority of redundancies over this period have been voluntary, as illustrated in Table 1 below and have occurred with limited industrial disruption or dislocation.

**Table 1 - APS Total Retrenchments and Involuntary retrenchments 1987/8-2001/2002**

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<td>1996</td>
<td>1915</td>
<td>7</td>
</tr>
<tr>
<td>1997</td>
<td>10076</td>
<td>31</td>
</tr>
<tr>
<td>1998</td>
<td>10240</td>
<td>38</td>
</tr>
<tr>
<td>1999</td>
<td>9058</td>
<td>73</td>
</tr>
<tr>
<td>2000</td>
<td>3672</td>
<td>19</td>
</tr>
<tr>
<td>2001</td>
<td>1490</td>
<td>Not available</td>
</tr>
<tr>
<td>2002</td>
<td>2124</td>
<td>Not available</td>
</tr>
<tr>
<td>TOTAL</td>
<td>49,443</td>
<td>175 (1.7.90-5.12.99)</td>
</tr>
</tbody>
</table>

* Total retrenchments as per APS Statistical Bulletins
# Involuntary retrenchment figures for 1996-97, 1997-98, 1998-99 and 1999-2000 as per Public Service Commissioner Annual Reports. Earlier figures from internal APS Commission records. The requirement for Agencies to obtain the approval of the Public Service Commissioner before involuntarily retiring APS employees ceased with the introduction of the Public Service Act 1999 on 5 December 1999. Figures for involuntary terminations are not available for years ending 30 June 2001 and 30 June 2002 and figures for year ending 30 June 2000 are for the period 1 July 1999 to 4 December 1999 only.

**Non APS agencies**

In the early 1990's a number of Government Business enterprises (GBEs) and non-APS authorities (e.g. the ABC) secured Ministerial approval to enhance their redundancy provisions beyond the standard provisions to facilitate significant organisational change. To do so, GBEs and authorities had to demonstrate, *inter alia*, that:

- some different redundancy arrangement was essential to achieve the restructuring or reorganisation;
- the particular circumstances limited the scope for flow-on to other areas; and
- the structural change could not be facilitated by labour market adjustments other than special redundancy arrangements.

These enhanced redundancy arrangements ranged up to a maximum payment of 84 weeks' pay for Telstra and Australia Post (the most generous enhanced redundancy payment applied at Australian National Rail which provided a severance benefit of 4 weeks' pay for each year of service, with no limit on the maximum benefit payable).

These enhanced packages are still reflected in the agreements of a number of non APS agencies – see Annexure C.
Similar to the APS experience, the enhanced redundancy arrangements applying in a number of GBEs and non-APS authorities were integral in facilitating restructuring in those organisations.

**Comparison with State and Territory public services**

All of the State/Territory jurisdictions have Service-wide redundancy benefits. In the Queensland, Tasmania, Northern Territory and the ACT public sectors, the redundancy benefits paid to excess employees are broadly similar to those applying in the APS. In the other jurisdictions, the benefit levels are currently as follows:

- **NSW** – 3 weeks’ pay for each year of service (up to a maximum of 39 weeks) plus notice; (Note that NSW also provides 12 weeks paid job search leave (in addition to the redundancy benefit) for persons accepting VR)
- **Victoria** – 2 weeks’ pay for each year of service (up to a maximum of 30 weeks for voluntary redundancies or 20 weeks for targeted separations) plus notice, in addition a financial incentive of up to $10,000 is available in respect of voluntary redundancies;
- **Western Australia** – 2 weeks’ pay for each year of service (up to a maximum of 46 weeks); and
- **South Australia** – Minimum of 8 weeks pay plus 3 weeks per completed year of service to a maximum of 104 weeks if separate within 4 weeks of formal offer. Minimum of 4 weeks pay plus 2 weeks per completed year of service to a maximum of 52 weeks if employee separates more than 4 weeks after formal offer.

A summary of the redundancy arrangements applying in all State and Territory Public Services is included at Annexure E. The accuracy of the material included in this summary has been verified by the relevant State and Territory agencies responsible for redundancy policy in the various jurisdictions. The ACTU has included copies of various advices issued by the States and Territories (except Tasmania) on redundancy provisions that apply in their jurisdictions (see Volume 4 of the ACTU’s submission) The information provided by the ACTU and that included in the summary at Annexure E is broadly consistent in relation to the arrangements that apply in Victoria and NSW. For the other States/Territories however, the following differences are noted:

- In Queensland, employees who accept an offer of voluntary early retirement within 2 weeks of it being made are entitled to an additional $6,500 or 8 weeks pay, whichever is the greater (below senior officer level).
- In the Australian Capital Territory, new arrangements (as outlined in the table at Annexure E) will be incorporated into their enterprise bargaining arrangements by June 2003 and backdated to September 2002.
- In relation to the Northern Territory, the ACTU’s submission includes excerpts from the *Northern Territory Public Sector Redundancy Provisions Award 2001*
[AW806389], which is a simplified award. The Office for the Commissioner for Public Employment has advised that for the most part, however, Northern Territory Public Service (NTPS) employees are dealt with under the *Northern Territory Public Sector Redeployment & Redundancy Provisions Award 1996* [AW791171] which forms part of all NTPS Enterprise Bargaining Agreements.

- In Western Australia, Regulation 20(2a) of the *Public Sector Management (Redeployment and Redundancy) Regulations 1994* (which is included in the ACTU’s submission) refers to a severance benefit of 3 weeks pay per year of service up to a maximum of 52 weeks being available during the ‘relevant period’. The West Australian Department of Premier and Cabinet has advised that this arrangement was only available to public sector employees for a short period during 2002 - they have now reverted to the standard arrangements of 2 weeks pay to a maximum of 46 weeks. WA has also advised that while the Regulations apply to the majority of WA public sector employees and reflect current Government policy, there are some employees that have coverage under federal award/agreements - notably the "RRR Award" covering ALHMWU employees. The wording and some provisions that apply to employees covered under that Award do differ in application to the Regulations.

- In South Australia, the Office for the Commissioner for Public Employment issued a new PSM Act Determination on 9 January 2003 entitled Targeted Voluntary Separation Package (TVSP) Scheme which is operational from 12 August 2002 until 11 August 2003. This Determination replaced an earlier one made on 9 August 2002 which presumably replaced the one that is included in the ACTU’s submission which is dated 16 October 2000 (although the benefit level under the current scheme and those that are set out in the 2000 document are the same)- the summary at Annexure E notes that an enhanced scheme applied for a short time in 2001.

In addition, the data set out below shows that most State/Territory Public Sectors have also made use of voluntary retrenchments to facilitate the restructuring their workforces. The experiences in State/Territory public sectors mirror the Commonwealth in that the overwhelming majority of retrenchments are voluntary. In fact, three jurisdictions (NSW, South Australia and Western Australia) have an explicit Government’s policy that there are no involuntary retrenchments. In the other jurisdictions, like the Commonwealth, involuntary retrenchments are not explicitly excluded, but in practice are extremely rare. In the Commonwealth, State and Territory public sectors, the levels of severance pay are universally part of redundancy regimes in which the emphasis is on voluntary separations.

The following tables show numbers of retrenchments and number of compulsory redundancies for the States and Territories where this information is available. Note this information is not available for NSW, Victoria or Queensland State Public Services.

**Table 2 – Tasmania (Public Service) Total Retrenchments and Involuntary Retrenchments 1992/3-2002/3**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Retrenchments</th>
<th>Involuntary</th>
</tr>
</thead>
</table>


<table>
<thead>
<tr>
<th>Year</th>
<th>Total Retrenchments</th>
<th>Retrenchments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992-93*</td>
<td>936</td>
<td>100-120 (estimate)</td>
</tr>
<tr>
<td>1993-94</td>
<td>1024</td>
<td>Nil</td>
</tr>
<tr>
<td>1994-95</td>
<td>464</td>
<td>Nil</td>
</tr>
<tr>
<td>1995-96</td>
<td>251</td>
<td>Nil</td>
</tr>
<tr>
<td>1996-97</td>
<td>615</td>
<td>Nil</td>
</tr>
<tr>
<td>1997-98</td>
<td>457</td>
<td>Nil</td>
</tr>
<tr>
<td>1998-99</td>
<td>125</td>
<td>Nil</td>
</tr>
<tr>
<td>1999-00</td>
<td>9</td>
<td>Nil</td>
</tr>
<tr>
<td>2000-01</td>
<td>24</td>
<td>Nil</td>
</tr>
<tr>
<td>2001-02</td>
<td>14</td>
<td>Nil</td>
</tr>
<tr>
<td>2002-03</td>
<td>Nil to date</td>
<td>Nil</td>
</tr>
</tbody>
</table>

**Table 3 – Western Australia (Public Service) Total Retrenchments and Involuntary Retrenchments 1993/4-2002/3**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Retrenchments</th>
<th>Retrenchments</th>
</tr>
</thead>
<tbody>
<tr>
<td>93/94</td>
<td>471</td>
<td>Nil</td>
</tr>
<tr>
<td>94/95</td>
<td>926</td>
<td>Nil</td>
</tr>
<tr>
<td>95/96</td>
<td>2373</td>
<td>Nil</td>
</tr>
<tr>
<td>96/97</td>
<td>1255</td>
<td>Nil</td>
</tr>
<tr>
<td>97/98</td>
<td>428</td>
<td>Nil</td>
</tr>
<tr>
<td>98/99</td>
<td>706</td>
<td>Nil</td>
</tr>
<tr>
<td>99/00</td>
<td>537</td>
<td>Nil</td>
</tr>
<tr>
<td>00/01</td>
<td>476</td>
<td>Nil</td>
</tr>
<tr>
<td>01/02</td>
<td>1057</td>
<td>Nil</td>
</tr>
<tr>
<td>02 to date</td>
<td>298</td>
<td>Nil</td>
</tr>
</tbody>
</table>

**Table 4 – Northern Territory (Public Service) Total Retrenchments and Involuntary Retrenchments 1992/3-2001/2**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Retrenchments</th>
<th>Retrenchments</th>
</tr>
</thead>
<tbody>
<tr>
<td>92/93</td>
<td>314</td>
<td>Nil</td>
</tr>
<tr>
<td>93/94</td>
<td>157</td>
<td>Nil</td>
</tr>
<tr>
<td>94/95</td>
<td>102</td>
<td>Nil</td>
</tr>
<tr>
<td>95/96</td>
<td>88</td>
<td>Nil</td>
</tr>
<tr>
<td>96/97</td>
<td>123</td>
<td>Nil</td>
</tr>
<tr>
<td>97/98</td>
<td>183</td>
<td>Nil</td>
</tr>
<tr>
<td>98/99</td>
<td>151</td>
<td>Nil</td>
</tr>
<tr>
<td>99/00</td>
<td>204</td>
<td>Nil</td>
</tr>
<tr>
<td>00/01</td>
<td>194</td>
<td>Nil</td>
</tr>
<tr>
<td>01/02</td>
<td>170</td>
<td>Nil</td>
</tr>
</tbody>
</table>

Source: Office of the Commissioner for Public Employment, Feb 2003
Table 5 – Australian Capital Territory (Public Service) Total Retrenchments and Involuntary Retrenchments 1994/5 -2002/3

<table>
<thead>
<tr>
<th>Separation Reason</th>
<th>VOL</th>
<th>VOL4</th>
<th>VOL5</th>
<th>IREP</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1994-95</td>
<td>225</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>225</td>
</tr>
<tr>
<td>1995-96</td>
<td>98</td>
<td>72</td>
<td>71</td>
<td>0</td>
<td>241</td>
</tr>
<tr>
<td>1996-97</td>
<td>21</td>
<td>288</td>
<td>321</td>
<td>0</td>
<td>630</td>
</tr>
<tr>
<td>1997-98</td>
<td>12</td>
<td>91</td>
<td>100</td>
<td>0</td>
<td>203</td>
</tr>
<tr>
<td>1998-99</td>
<td>1</td>
<td>124</td>
<td>181</td>
<td>0</td>
<td>306</td>
</tr>
<tr>
<td>1999-2000</td>
<td>21</td>
<td>125</td>
<td>196</td>
<td>0</td>
<td>342</td>
</tr>
<tr>
<td>2000-01</td>
<td>17</td>
<td>33</td>
<td>74</td>
<td>0</td>
<td>124</td>
</tr>
<tr>
<td>2001-02</td>
<td>31</td>
<td>53</td>
<td>0</td>
<td>0</td>
<td>84</td>
</tr>
<tr>
<td>2002-03*</td>
<td>6</td>
<td>24</td>
<td>0</td>
<td>0</td>
<td>30</td>
</tr>
<tr>
<td>Grand Total</td>
<td>395</td>
<td>770</td>
<td>1020</td>
<td>0</td>
<td>2185</td>
</tr>
</tbody>
</table>

* to end of January

Note: These figures are based on separations recorded on Perspect (ACT Public Service HRM data system) with a separation reason of VOL (voluntary redundancy), VOL4 (voluntary redundancy 4 weeks notice), VOL5 (voluntary redundancy 5 weeks notice) and IREP (involuntary redundancies). However, no involuntary redundancies have been recorded. These figures are not public, and do not include VRs from ACT bodies not recorded by Perspect.

South Australia

According to the 2001-02 Annual report of the South Australian Office of the Commissioner for Public Employment, since 1990, voluntary separation package schemes have been used by successive governments to facilitate the separation of approximately 24,000 public sector employees affected by budget reductions, outsourcing, asset sales and public sector re-skilling and restructuring initiatives. All separations were voluntary.
1. SUMMARY OF FLEXIBILITIES INTRODUCED BY AGENCIES

- removal of retention as an option for excess employees with a redundancy benefit being paid on both voluntary and involuntary retrenchment - Department of the Treasury, Australian Centre for International Agricultural Research (which both have a two month redeployment period), Commonwealth Rehabilitation Service;
- reducing the redundancy benefit available to employees with less than 5 years service - Australian Institute of Aboriginal and Torres Strait Islander Studies;
- limiting the retention period to a lesser period—examples include:
  - a fixed period (seven months) for all staff – Department of Defence;
  - a fixed period of three months with employees who are involuntarily retrenched at the end of this period being entitled to receive the standard severance benefit less the amount of salary received during the retention period (provided that this reduction cannot be more than half the amount the employee would have received had they consented to termination) – Office of the Commonwealth Director of Public Prosecutions;
  - seven months for all staff with the flexibility to extend the period for up to a further three months in certain circumstances – Department of Education, Science and Training;
  - seven months for new starters and 13 months for existing staff over 45 years of age or with more than 20 years service – Comcare;
  - an entitlement to three or nine months retention instead of the usual seven or 13 month period – Australian War Memorial;
- shortening the consultation and/or consideration periods to two weeks for each – Australian Valuation Office;
- allowing a period 20 days from the offer of voluntary retrenchment and consolidating the consultation and consideration periods which are paid out as an additional benefit – Australian Transactions Reports and Analysis Centre;
- including accelerated separation options which allow persons to access an additional payment (the actual payment varies from agency to agency) as a lump sum in lieu of the consultation period, the consideration and/or the notice period provided the employees agrees and is terminated within a set period – Australian Customs Service, Department of Agriculture, Fisheries and Forestry, Australia, Australian Greenhouse Office, APS Commission, Aboriginal and Torres Strait Islander Commission, Administrative Appeals Tribunal, Bureau of Meteorology, Office of National Assessments, Torres Strait Regional Authority; Department of Education, Science and Training, Department of the Environment and Heritage; National Capital Authority; Office of the Commonwealth Director of Public Prosecutions;
- not allowing retention periods to be extended by certificated sick leave (ComSuper, Department of Family and Community Services, National Library of Australia, Defence Housing Authority, Federal Court) or limiting the amount by which the retention period can be extended by certificated sick leave to a lesser period—e.g. 26 weeks in Centrelink, GeoScience Australia & Migration Review Tribunal; 2 months in Australian National Audit Office, 6 months in Defence;
including provisions which allow an agency the discretion to pay the balance of the retention period as a lump sum in cases where redeployment proves impracticable. Most agencies that have included such a provision stipulate that this can only occur with the agreement of the employee while others (e.g. Australian Competition and Consumer Commission, Child Support Agency, Federal Court) do not require employee agreement;

- only paying half the balance of the remainder of the retention period as a lump sum (if the person agrees to be terminated during the retention period) - Centrelink;

- providing for the notice periods prescribed under the WR Act rather than the usual APS provision of four or five weeks notice - Centrelink.

2. EXAMPLES OF CLAUSES

Involution retrenchment without a period of retention – Australian Centre for International Agricultural Research

C.12 Where the Director is of the opinion that the requirements of C.11 have been met, he/she will immediately confirm in writing that the employee is excess to the requirements of ACIAR and will offer voluntary retrenchment to that employee. Only one offer of voluntary retrenchment will be made to the excess employee.

C.13 If the employee does not wish to accept voluntary retrenchment at that time but is interested in redeployment within the APS, he/she will immediately be referred to APSLMAP or to an appropriate employment agency.

C.14 Where the employee declines to accept such a referral, or a two-month period has elapsed since the employee accepted the referral, the employee will be involuntarily retrenched. Employees who are involuntarily retrenched are entitled to the same benefits as those who accept voluntary retrenchment.

Reduction of redundancy benefit for persons with short service - Australian Institute of Aboriginal and Torres Strait Islander Studies

9.6.1 Severance Benefit. An employee under clause 9.4.1 with less than five years service since their probationary period ended is entitled to a severance benefit according the following schedule:

<table>
<thead>
<tr>
<th>Employee’s period of continuous service with the employer</th>
<th>Severance benefit: employee to be paid a sum equal to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than 1 year</td>
<td>At least 1 week’s salary</td>
</tr>
<tr>
<td>More than one year but not more than 3 years</td>
<td>At least 2 weeks salary</td>
</tr>
<tr>
<td>More than 3 years but not more than 4 years</td>
<td>At least 3 week’s salary</td>
</tr>
<tr>
<td>More than 4 years but not more than 5 years</td>
<td>At least 4 week’s salary</td>
</tr>
</tbody>
</table>

9.6.2 An employee under clause 9.4.1 who has more than five years service since their probationary period ended is entitled to be paid a sum equal to two week’s
salary for each completed year of service, plus a pro rata payment for completed months of service since the last completed year of service.

Shortening of retention periods – Commonwealth Director of Public Prosecutions

A8.24 The redeployment process commences from the date the employee is advised, in writing, that they are an excess employee. If after two months from this date, the employee has not been re-assigned and has not consented to termination, the Director will refer the matter to the Public Service Commissioner to ascertain if the Commissioner is prepared to use her/his power, under s. 27 of the Public Service Act, to move the excess employee to another Agency. It remains open to an employee to consent to termination at the end of the two month period and before the matter is referred to the Public Service Commissioner, in preference to continuing redeployment action. If an employee consents to termination at this point they will be eligible to receive the full redundancy benefit as described at A8.11 - A8.13.

A8.26 If after 3 months from the date an employee has been identified as an excess employee:
• The Director has been unable to assign duties to the employee (at or below level) despite having taken all reasonable steps to do so;
• The employee has not consented to termination; and
• The Public Service Commissioner has not exercised her/his power to move the excess employee to another Agency
the Director may decide to compulsorily terminate the excess employee under s. 29 of the Public Service Act 1999.

A8.31 Compulsorily terminated employees will receive the same entitlements on termination as employees who consent to termination except that the redundancy benefit will be reduced to account for salary payments received during the redeployment period. The reduction in the amount of the redundancy benefit (as defined at A8.11 - A8.13) cannot be more than half the amount the employee would have received if they had provided their consent to termination.

Retention period – Defence

An excess employee will commence a seven month period of retention in employment from the date of the excess declaration. This retention period may be extended by any Personal Leave granted for personal illness/injury during the retention period where that leave is supported by a medical certificate or other appropriate supporting material, up to a maximum of a further six months. The retention period may also be extended for a fixed period at the discretion of Defence and with the agreement of the employee.

Retention periods – Department of Education, Science and Training

The retention period will commence on the day the employee becomes excess and will continue for a period of seven months, during which time an employee’s employment will not be terminated under section 29 of the Act without their consent.
Where an employee has more than 20 years of service or is over 45 years of age and has not been redeployed at the expiration of their 7 month retention period, the Secretary may, having regard to the attempts to secure redeployment to date for and by the employee and the likelihood of success in continuing to pursue redeployment, extend the retention period for up to a further 3 months, or alternatively, provide equivalent outplacement services where agreed by the employee and the Secretary. Any extension of the period will be combined with an individually tailored redeployment and retraining plan.

Consideration and consultation - Australian Transactions Reports and Analysis Centre

The Director may offer an employee a redundancy package, in circumstances where the employee’s services cannot be effectively used in AUSTRAC. The employee has 20 working days to accept the offer of a redundancy package. During this time it is the employee’s responsibility to obtain independent financial advice on the matter. AUSTRAC will reimburse the employee for any reasonable expenses up to $500 incurred in obtaining such advice.

Accelerated separation - various

Where the Agency Head invites an excess employee to accept voluntary retrenchment, the Agency Head may also invite the excess employee to accept an accelerated separation option. This option provides, in addition to the severance benefit, a payment of four weeks salary in lieu of any further consultation where the excess employee agrees to termination of employment, and the employment is so terminated within 14 days of receiving an offer of voluntary retrenchment.

OR

The Agency Head may provide employees likely to be subject to the redeployment, reduction and retrenchment provisions of this agreement with an accelerated separation option. This option provides employees who have been identified as eligible to be made an offer of voluntary retrenchment the option of payment to 10 or 11 weeks salary in lieu of any consideration, consultation and notice periods which would otherwise apply. Employees choosing this option must agree to be terminated within 14 days of receiving an offer.

OR

The employee has 20 working days to accept the offer of a redundancy package. The employee, as a result of accepting an offer of redundancy, will receive a redundancy package consisting of 9 weeks salary plus 2 weeks salary for each completed year of service with the APS. The employment of the employee will be terminated on receipt of the notice of acceptance of the offer of redundancy, as if the notice of acceptance had been received 20 working days from the date of the offer.

Notice as provided by Workplace Relations Act - Centrelink

Voluntary retrenchment with a benefit

The date of retirement will be:

- the end of the period of notice as set out in the Workplace Relations Act 1996; or
- where the delegate directs or the employee requests an earlier retirement date within the period of notice, that earlier date.
Involuntary retrenchment
An excess employee will be given notice in accordance with the *Workplace Relations Act 1996* where it is proposed that he or she will be involuntarily retired.
Where an employee agrees to be retrenched, or is retrenched at the beginning of, or within, the notice period, he or she will receive payment in lieu of notice as set out in the *Workplace Relations Act 1996* for the unexpired portion of the notice period.

**Pay half the balance of the retention period - Centrelink**

Where the delegate believes there is insufficient productive work available for an excess employee during the retention period, the delegate may, with the agreement of the employee, terminate the employee prior to the expiration of the retention period. In this event the employee will be paid a lump sum of an amount equivalent to the salary they would have received for half of the balance of the retention period. This payment will be taken to include the payment in lieu of notice of retirement.

**Limited extension of retention by certificated personal leave - Centrelink**

The retention period will be extended by continuous absences on personal leave for sick leave purposes in excess of four weeks and up to twenty-six weeks. The extension will be for a period equal to the personal leave absence.

**Limited extension of retention by certificated personal leave – Australian National Audit Office**

Retention periods in this clause will be extended by any periods of certified sick leave, up to a maximum of 2 months, but only to the extent of available sick leave credits on full pay.
## NON-APS STATUTORY AGE AGENCIES AWARD REDUNDANCY ENTITLEMENTS

<table>
<thead>
<tr>
<th>Agency</th>
<th>Award</th>
<th>Redundancy Entitlement ie. YES or No</th>
<th>Description</th>
<th>Above TCR standard ie. YES or No</th>
<th>Exclusions ie. casuals etc</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Federal Police</td>
<td>Australian Federal Police Award 2002 [A0571/AW819698]</td>
<td>YES</td>
<td>2 weeks salary for each year of service Min = 4 weeks &amp; Max = 48 weeks</td>
<td>YES</td>
<td>excludes probationers, casuals and specified term employees</td>
</tr>
<tr>
<td>Australian Film Commission</td>
<td>Australian Film Commission Award 2002 [A0330/AW813388]</td>
<td>YES</td>
<td>2 weeks salary for each year of service Min = 4 weeks &amp; Max = 48 weeks</td>
<td>YES</td>
<td>excludes probationers, casuals and fixed term employees</td>
</tr>
<tr>
<td>Australian Prudential Regulation Authority</td>
<td>Australian Prudential Regulation Authority Award 2000 [AW807409]</td>
<td>YES</td>
<td>2 weeks salary for each year of service Min = 4 weeks &amp; Max = 48 weeks</td>
<td>YES</td>
<td>Excludes fixed term employees</td>
</tr>
<tr>
<td>Australian Sports Commission</td>
<td>Australian Sports Commission (Professional Coaching Staff) Award [A1329/AW766266]</td>
<td>YES</td>
<td>Four weeks notice or pay in lieu plus: - 2 wks pay for each year of continuous ASC employment or 1 mths pay for each unexpired</td>
<td>YES</td>
<td>Excludes short term employees</td>
</tr>
<tr>
<td>Agency</td>
<td>Award</td>
<td>Redundancy Entitlement ie. YES or No</td>
<td>Description</td>
<td>Above TCR standard ie. YES or No</td>
<td>Exclusions ie. casuals etc</td>
</tr>
<tr>
<td>-----------------</td>
<td>-----------------------------------------------------------------------</td>
<td>-------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td></td>
<td>Australian Government Employment, Australian Workers’ Union Salaried Staff Award 1992 [A0615/AW805151]</td>
<td>NO</td>
<td>year of the term, calculated to the nearest mth provided that: 1. the min. sum payable is 4 wks salary and the max. is 48 wks; 2. the sum payable shall not exceed the sum of salary that would have been payable if the employee had continued in employment to the expiry date of the fixed term.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Airservices</td>
<td>Air services Australia (Consolidated) Award 2000 [A2121/AW767]</td>
<td>YES</td>
<td>2 wks salary per year of service plus pro rata for part</td>
<td>YES</td>
<td>Doesn’t apply to fixed term employees or probationers.</td>
</tr>
<tr>
<td>Agency</td>
<td>Award</td>
<td>Redundancy Entitlement ie. YES or No</td>
<td>Description</td>
<td>Above TCR standard ie. YES or No</td>
<td>Exclusions ie. casuals etc</td>
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</tr>
<tr>
<td>Albury/Wodonga Development Corporation</td>
<td>Albury-Wodonga Development Corporation 2000 [A0353/AW806463]</td>
<td>YES</td>
<td>2 weeks salary for each year of service Min = 4 weeks &amp; Max = 48 weeks</td>
<td>YES</td>
<td>Does not include:</td>
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<td>• probationers</td>
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<td>• temp employees with</td>
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<td>less than 1 yrs service</td>
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<td>• short term casuals</td>
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<td>• employees employed</td>
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<td>for the duration of a</td>
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<td>specific project.</td>
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<tr>
<td>Australia Council</td>
<td>Australia Council Award 2000 [A0321/AW806422]</td>
<td>YES</td>
<td>2 weeks salary for each year of service Min = 4 weeks &amp; Max = 48 weeks</td>
<td>YES</td>
<td>Does not include:</td>
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<td>• probationers</td>
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<td>• short-term casual</td>
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<td>• temp employees with</td>
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<td></td>
<td>less than 1 yrs service</td>
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<tr>
<td>Australian Dairy</td>
<td>Community and Public</td>
<td>YES</td>
<td>2 weeks salary for</td>
<td>YES</td>
<td>Excludes</td>
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<td>employees with</td>
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<tr>
<td>Corporation</td>
<td>Sector Union (Australian Dairy Corporation) Award 1999 [A0541/AW777795]</td>
<td></td>
<td>each year of service Min = 4 weeks &amp; Max = 48 weeks</td>
<td></td>
<td>less than 12 months service.</td>
</tr>
<tr>
<td>Australian Film Television and Radio School</td>
<td>Australian Film Television and Radio School Award 1993 [A0586/AW809496]</td>
<td>YES</td>
<td>Redundancy differs for different types of employees- Fixed term employees (CPSU eligible) contract longer than 12 mths Below senior Exec salary – one mths salary for each uncompleted year of contract, max 3mths. Senior Exec salary or above – two mths salary for each uncompleted year of contract, max 6mths. All other employees 2wks salary per year of service plus pro rata for part years. Min 4wks max 52 wks for teaching</td>
<td>YES</td>
<td>Temps with less than 12 month contract</td>
</tr>
<tr>
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<td>Award</td>
<td>Redundancy Entitlement ie. YES or No</td>
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<td>Exclusions ie. casuals etc</td>
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<tr>
<td>Australian Fisheries Management Authority</td>
<td>Australian Fisheries Management Authority Award 2001 [A0299/AW812464]</td>
<td>YES</td>
<td>2 weeks salary for each year of service Min = 4 weeks &amp; Max = 48 weeks</td>
<td>YES</td>
<td>Probationers, fixed term employees, short term casuals, temp employees employed less than one year</td>
</tr>
<tr>
<td>Australian Institute of Marine Science</td>
<td>Australian Institute of Marine Science Award 2001 [C0180/AW810100]</td>
<td>YES</td>
<td>2wks salary per year of service plus pro rata for part years. Min 4wks max 48 wks.</td>
<td>YES</td>
<td>Probationers, fixed term employees, short term casuals, temp employees employed less than one year</td>
</tr>
<tr>
<td>Australian Law Reform Commission</td>
<td>Australian Law Reform Commission Award 2000 [A3997/AW768815]</td>
<td>YES</td>
<td><strong>Indefinite Employees</strong>&lt;br&gt;2wks salary per year of service plus pro rata for part years. Min 4wks max 48 wks. Pro rata for PT service if less than 24 years FT service <strong>Fixed Term Appointees</strong></td>
<td>YES</td>
<td>None apparent</td>
</tr>
<tr>
<td>Agency</td>
<td>Award</td>
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<tr>
<td>Australian Maritime Safety Authority</td>
<td>Australian Maritime Safety Authority (Shore-based staff) Award 1999 [A1684/AW766595]</td>
<td>YES</td>
<td>Less than one year of service – 3 months salary. 1 year to 2 years and 9mths of service – 2 months salary</td>
<td>YES</td>
<td>Probationers, Employed less than 12 months, Fixed term employees, Casuals</td>
</tr>
<tr>
<td>Australian Nuclear Science and Technology Organisation</td>
<td>Australian Nuclear Science and Technology Organisation (General) Award 2000 [A0555/AW765755]</td>
<td>YES</td>
<td>2wks salary per year of service. Min 4wks max 48 wks.</td>
<td>YES</td>
<td>Probationers; Employees who have not had more than one year of service; Casual Employee; Temp Employee; Apprentice</td>
</tr>
<tr>
<td>Australian Tourist Commission</td>
<td>Australian Tourist Commission Award 2001 [A0331/AW810902]</td>
<td>YES</td>
<td>2wks salary per year of service plus pro rata for part years. Min 4wks max 48 wks</td>
<td>YES</td>
<td>Probationers; Casual Employees; Temp Employees on Fixed Term Contracts</td>
</tr>
<tr>
<td>Australian Trade Commission</td>
<td>Australian Trade Commission Award 2001</td>
<td>YES</td>
<td>2wks salary per year of service plus pro rata for part years.</td>
<td>YES</td>
<td>Probationers; Fixed Term Employees</td>
</tr>
<tr>
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<tr>
<td>Central and Northern Land Councils</td>
<td>Community and Public Sector Union (Central and Northern Land Councils) Award 2001 [P0213/AW810322]</td>
<td>YES</td>
<td>2wks salary per year of service plus pro rata for part years. Min 4wks max 48 wks</td>
<td>YES</td>
<td>Probationers</td>
</tr>
<tr>
<td>CSIRO</td>
<td>CSIRO (Salaries and Conditions of Service) Award 1999 [C0285/AW772288]</td>
<td>YES</td>
<td>2wks salary per year of service plus pro rata for part years. Min 4wks max 48 wks</td>
<td>YES</td>
<td>Probationers; Temps; Casuals</td>
</tr>
<tr>
<td>Health Insurance Commission</td>
<td>Health Insurance Commission (Salaries and Conditions of Employment) Award 1989 [H0085/AW783518]</td>
<td>YES</td>
<td>2wks salary per year of service plus pro rata for part years. Min 4wks max 48 wks</td>
<td>YES</td>
<td>Probationers; Fixed Term Employees</td>
</tr>
<tr>
<td>Health Insurance Commission</td>
<td>Health Insurance Commission Out of Hours Restriction – Officers Agreement 1992 [H0097/AW783525]</td>
<td>NO</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
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<tr>
<td>National Gallery of Australia</td>
<td>National Gallery of Australia Award 2000 [A0388/AW806349]</td>
<td>YES</td>
<td>2wks salary per year of service plus pro rata for part years. Min 4wks max 48 wks</td>
<td>YES</td>
<td>Probationers; Fixed Term Employees; Temp with less than 1 year service; Casual Employees</td>
</tr>
<tr>
<td>National Registration Authority</td>
<td>National Registration Authority Award 2001 [N0387/AW808134]</td>
<td>YES</td>
<td>2wks salary per year of service plus pro rata for part years. Min 4wks max 48 wks</td>
<td>YES</td>
<td>Probationers; Fixed Term Employees; Temp with less than 1 year service; Casual Employees</td>
</tr>
<tr>
<td>National Standards Commission</td>
<td>National Standards Commission Award 1999 [N0214/AW790744]</td>
<td>YES</td>
<td>2wks salary per year of service plus pro rata for part years. Min 4wks max 48 wks</td>
<td>YES</td>
<td>Probationers; Fixed Term Employees; Temp with less than 1 year service</td>
</tr>
<tr>
<td>Reserve Bank of Australia</td>
<td>Reserve Bank of Australia Salaried Employees Award 2000 [R0300/AW794934]</td>
<td>YES</td>
<td>An employee who retires, resigns, is retrenched or ill-health retired and has not attained ten years paid continuous service with the Bank, shall be entitled to a gratuity payment, Can possibly provide higher payout.</td>
<td>Can possibly provide higher payout.</td>
<td>Does not appear to cover employees with over 10 years service</td>
</tr>
<tr>
<td>Agency</td>
<td>Award</td>
<td>Redundancy Entitlement ie. YES or No</td>
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<td>provided he or she satisfies the following criteria:</td>
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<td>for employees who are retrenched or ill health retired, no minimum service requirement;</td>
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<tr>
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<td>for other employees, no less than five years paid continuous service with the Bank.</td>
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<tr>
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<td></td>
<td>Gratuity payment shall be calculated on the basis of 0.673 hours for every 35 ordinary working hours worked since joining the Bank.</td>
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<tr>
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</tr>
<tr>
<td>Reserve Bank of Australia Maintenance Staff Award 1995 [R0392/AW812401]</td>
<td>NO</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Special Broadcasting Service Corporation</td>
<td>SBS Employment Conditions Award 2001 [C1440/AW807923]</td>
<td>YES</td>
<td>2 weeks salary for each completed year plus pro-rata for completed months of service. Minimum 4 weeks, maximum 48 weeks.</td>
<td>YES</td>
<td>Clause 14 excludes employees on probation, SES employees and the Managing Director</td>
</tr>
<tr>
<td>Australian Institute of Criminology</td>
<td>Australian Institute of Criminology Award 2000 [A0380/AW769149]</td>
<td>YES</td>
<td>2 weeks salary for each completed year plus pro-rata for completed months of service. Minimum 4 weeks, maximum 48 weeks.</td>
<td>YES</td>
<td>Does not include; probationers, fixed term, short-term casual, temp employees with less than 1 yrs service</td>
</tr>
<tr>
<td>Australian Sports Drug Agency</td>
<td>Australian Sports Drug Agency Award 1999 [A4263/AW769067]</td>
<td>YES</td>
<td>2 weeks salary for each completed year plus pro-rata for completed months of service. Minimum 4 weeks, maximum 48 weeks.</td>
<td>Does not include; probationers, fixed term, short-term casual, temp employees with less than 1 yrs service</td>
<td></td>
</tr>
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<tr>
<td>Civil Aviation Safety Authority</td>
<td>Civil Aviation Safety Authority Award 2002 [AW818193]</td>
<td>YES</td>
<td>2 weeks for each year of continuous service. Min 4 weeks. Max 48 weeks.</td>
<td>YES</td>
<td>Temporary employees, probationers (unless that employee was a continuing employee at time of appointment).</td>
</tr>
<tr>
<td>Army and Air force Canteens Service</td>
<td>Canteen Assistants, etc. (AAFCANS) Award 1988 [C0233/AW772272]</td>
<td>NO</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>FCU Clerical Officers (Army and Air force Canteens Service) Award [F0095/AW781135]</td>
<td>NO</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Australian Broadcasting Corporation</td>
<td>ABC Senior Executives (Points 1-4 Award 2000 [A0293/AW765622]</td>
<td>YES – clause 17</td>
<td>1 year or less – Nil 1-2 years – 4 weeks pay 2-3 years – 6 weeks pay 3-4 years – 7 weeks pay</td>
<td>NO</td>
<td>Employees engaged for a specified period or for specified tasks.</td>
</tr>
<tr>
<td>Agency</td>
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<tr>
<td></td>
<td></td>
<td>NO</td>
<td>More than 4 years – 8 weeks pay</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[No reference to Transfer to lower paid duties]</td>
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<tr>
<td>Actors etc. (ABC Radio and Television) Award 2000</td>
<td>[A0301/AW765625]</td>
<td>NO</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Australian Broadcasting Corporation Staff Union – ABC 38 Hour Week Agreement 1986</td>
<td>[A0313/AW765632]</td>
<td>NO</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Australian Broadcasting Corporation Journalists and Reporters (Salaries) Award 2000</td>
<td>[A0546/AW765752]</td>
<td>YES</td>
<td>Period of notice determined according to length of employment and level:</td>
<td>YES and NO.</td>
<td>Casual employees, fixed term contract, or employees on specified task.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Level 2 or above</td>
<td>. 10 years or more –</td>
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<td></td>
<td>16 weeks . 12 mths - 10 yrs – 12 weeks . less than 12 months – 8 weeks Level 1 (salary points 19,21) – 8 weeks Level 1 (all other) – 4 weeks Cadets &amp; trainees – 2 weeks</td>
<td>YES – clause 22</td>
<td>Casual employees, employees engaged for a specified period of task.</td>
</tr>
<tr>
<td></td>
<td>ABC-CPSU Award 2000 [A4153/AW768965]</td>
<td>YES – clause 22</td>
<td>As per TCR standard.</td>
<td>NO</td>
<td></td>
</tr>
</tbody>
</table>

As per TCR standard.
## EXAMPLES OF NON-APS AGENCY AGREEMENTS – REDUNDANCY PROVISIONS

<table>
<thead>
<tr>
<th>Agency</th>
<th>Severance Pay</th>
<th>Incentive</th>
<th>Retention period</th>
<th>Restriction on re-employment of retrenched employees</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airservices Australia (Airservices Australia Enterprise Agreement 2002-2005)</td>
<td>4 weeks pay per year for the first 5 years plus 3 weeks pay per year thereafter to a maximum of 75 weeks plus 4 weeks notice (payment in lieu of notice is available).</td>
<td>N/A</td>
<td>N/A</td>
<td>A person receiving a redundancy from Airservices Australia cannot be permanently re-appointed to the organisation for 12 months from the date of the payout. There are no restrictions on an individual who has received a redundancy working for the Airservices under an Agency contract. There are no restrictions on people who have received redundancies from other organisations.</td>
<td>Employees entitled to 3 months notice before involuntary retirement. Where involuntary retirement occurs employees are entitled to same benefits as those accepting VR. Individuals identified as potentially redundant are entitled to: - leave with pay to attend interviews; - reasonable travel costs to attend interviews; -reasonable relocation costs if transferred to another location; and - reasonable retraining costs.</td>
</tr>
<tr>
<td>Australian Fisheries Management Authority (AFMA Certified Agreement 2002).</td>
<td>2 weeks pay per completed year of continuous service, minimum of 4 weeks, maximum of 48 weeks plus 4 weeks notice (or 5 weeks if over 45 years). Payment in lieu of notice is available</td>
<td>N/A</td>
<td>13 months</td>
<td>Restrict former AFMA staff from being re-employed for 12 months. There are no restrictions on the employment of non-AFMA staff who have taken redundancies.</td>
<td>Involuntary termination at conclusion of retention period with no severance benefit.</td>
</tr>
<tr>
<td>Australian Law Reform Commission (ALRC Certified Agreement 2000).</td>
<td>Indefinite employees - 2 weeks pay per completed year of continuous service, minimum</td>
<td>N/A</td>
<td>13 months</td>
<td>Not specified.</td>
<td>Normal ALRC employment regime changed from indefinite employment to 3 year fixed term appointments (with extensions available of up to 2 years) for new starters from 1997. These staff are not entitled to redundancy benefits. Fixed term employees declared</td>
</tr>
<tr>
<td>Agency</td>
<td>Severance Pay</td>
<td>Incentive</td>
<td>Retention period</td>
<td>Restriction on re-employment of retrenched employees</td>
<td>Comments</td>
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</tr>
<tr>
<td>NED 30 June 03</td>
<td>of 4 weeks, maximum of 48 weeks plus 4 weeks notice (or 5 weeks if over 45 years).</td>
<td></td>
<td>employees. Involuntary termination at conclusion of retention period.</td>
<td></td>
<td>excess (including on performance grounds) receive payment of an amount equal to the period of long service leave entitlement plus 2 or 3 months salary (depending on period until employment would normally have ended).</td>
</tr>
<tr>
<td>Agency</td>
<td>Severance Pay</td>
<td>Incentive</td>
<td>Retention period</td>
<td>Restriction on re-Employment of retrenched employees</td>
<td>Comments</td>
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<tr>
<td>Australian Hearing (AH Certified Agreement 2000)</td>
<td>Still current 2 weeks pay per year for the first 10 years of service, plus 2.5 weeks per year for between 11 and 20 years of service and 3 weeks per year of service thereafter to a maximum of 78 weeks. Notice periods in accordance with the Workplace Relations Act.</td>
<td>N/A</td>
<td>The 4 week notice period can act as a retention period if the employee wishes to use that time to pursue redeployment. Employees who elect to take VR immediately will receive 4 weeks pay in lieu. Those employees who elect to take VR during the 4 week period receive payment for the balance of this period.</td>
<td>No situations have arisen to date. Re-employment would only be considered in special circumstances - 12 months rule of thumb would be applied.</td>
<td>Redundancy benefits paid on voluntary or involuntary retrenchment. In the absence of employee election for VR, notice of termination is given 4 weeks after the day employee is declared excess.</td>
</tr>
<tr>
<td>Australian Postal Corporation (Australia Post Enterprise Agreement 1999-2001 &amp; Australia Post RRR Agreement 1995)</td>
<td>Same conditions 4 weeks pay per year for the first 5 years plus 3 weeks pay per year thereafter (for employees over 50, 4 weeks pay for each year of service after age 50), minimum of 8 weeks and maximum of 84 weeks (incl. pay in lieu of notice).</td>
<td>N/A</td>
<td>Employees entitled to 2 years salary maintenance when redeployed to a lower level.</td>
<td>Not specified</td>
<td>Where redeployment proves impracticable after 3 month investigation, employee may be involuntarily retrenched with payment of same benefits as those accepting VR.</td>
</tr>
<tr>
<td>Australian Trade</td>
<td>4 weeks pay for first 5 years of</td>
<td>N/A</td>
<td>No retention period</td>
<td>Austrade does not normally employ former Commonwealth</td>
<td>Redundancy benefit paid on voluntary or involuntary retrenchment. In the absence of employee election for VR, notice of termination is given 4 weeks after the day employee is declared excess.</td>
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<tr>
<td>Commission (Austrade Certified Agreement 2000-2003)</td>
<td>Service plus 2.5 weeks pay for each subsequent year – minimum 12 weeks and maximum 70 weeks.</td>
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<td>Employees who have been retrenched within the preceding 12 months with a redundancy benefit.</td>
<td>Agreement, an employee is terminated 5 weeks after being notified they are redundant, or provided with a payment in lieu of notice.</td>
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<td>NED 30 June 03</td>
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<tr>
<td><strong>Australian Sports Commission</strong> (ASC Certified Agreement 2001-2004) Still current</td>
<td>4 weeks redundancy base pay plus 2 weeks pay per year of eligible service - minimum 4 weeks and maximum of 48 weeks. WR Act notice periods apply. Coaches are employed on a fixed term for 1-4 years. Where employment is terminated before the expiry of the agreed term for reasons other than performance, conduct or discipline, redundancy provisions will apply. Where coaches have been employed for two or more consecutive terms and the ASC does not offer a further term, the ASC makes a special payment of 2</td>
<td>Nil</td>
<td>No retention period</td>
<td>Employees in receipt of redundancy from the ASC are not eligible for re-employment for a minimum of 12 months. ASC does not distinguish between voluntary or involuntary redundancy, there is only redundancy. Employees are given 5 weeks notice period (or payment in lieu) when formally notified they are redundant. An employee who is potentially redundant and is placed in another ASC job at the same salary, or with their agreement in a job with lower pay, is no longer redundant. The ASC has an obligation to consider any other employment options available prior to determining a redundancy situation exists.</td>
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<td>weeks pay for each continuous year of service up to a maximum of 20 weeks pay.</td>
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<td>Civil Aviation Safety Authority (CASA Certified Agreement 2002 - 2005 and CASA Award 1996)</td>
<td>4 weeks pay for each of the first 5 years of completed continuous service and 3 weeks pay for each subsequent year to a maximum of 75 weeks plus 4 weeks notice (or 5 weeks if over 45 years). Payment in lieu of notice is available</td>
<td>N/A</td>
<td>If VR is not accepted, retention periods of 7 or 13 months apply.</td>
<td>CASA staff who receive a severance benefit of any kind on cessation of employment are not to be re-employed for at least 18 months unless there are exceptional circumstances justifying that employment.</td>
<td></td>
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<tr>
<td>Commonwealth Scientific and Industrial Research Organisation (CSIRO Enterprise Agreement 2002-2005)</td>
<td><strong>Lump sum option</strong> - 2 weeks pay per year of service – min of 4 weeks and max of 48 weeks plus 5 weeks notice. <strong>Income maintenance option</strong> – payment of salary for 8 months (or 14 months for those with 20 or more years service or who are over 45) – employees are terminated before income maintenance commences.</td>
<td>Officers not contesting redundancy and terminated within 10 days of receipt of formal advice are paid the equivalent of 8 weeks pay in addition to normal lump sum payment or income maintenance arrangements (includes 5 week notice period)</td>
<td>Employees can, with the agreement of CSIRO sacrifice all or part of their income maintenance period in return for an equivalent period of retention in employment.</td>
<td>Any proposals to re-engage former staff who have received a retrenchment benefit must be approved by the delegate who approved the retrenchment. In assessing a proposal for reengagement, the delegate must be fully satisfied that the circumstances (eg nature of work, hours of work, work location, etc)</td>
<td>Note - Amount paid as income maintenance is adjusted depending on persons circumstances after termination (e.g. amounts received for unemployment benefit or amounts received in other employment, are deducted).</td>
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<td>Health Insurance Commission (HIC Certified Agreement 2001-2003) NED 2 July 2003</td>
<td>2 weeks per year of service – minimum 4 weeks and maximum 48 weeks plus 4 weeks notice (or 5 weeks if over 45 years). Payment in lieu available.</td>
<td>Lump sum payment of $2500 to recognise streamlined process for separation (i.e. reduction of consideration period to 2 weeks).</td>
<td>5 months or 9 months for employees with 20 or more years service or who are over 45.</td>
<td>There is a restriction on the re-employment of HIC staff who have taken a redundancy within 12 months of separating from HIC. There are no restrictions in place on the employment of other persons who have taken redundancy.</td>
<td>Involuntary termination at conclusion of retention period with no severance benefit.</td>
</tr>
<tr>
<td>Health Services Australia (HSA Certified Agreement 2001-2003) NED 30 June 2003</td>
<td>2 weeks per year of service – minimum 4 weeks and maximum 48. A notice period of 4 weeks (5 weeks for staff over 45 years with at least 5 years of service) is in force, and may be paid in lieu.</td>
<td>N/A</td>
<td>N/A</td>
<td>No</td>
<td>Redundancy benefit paid on voluntary or involuntary retrenchment. In the absence of agreement, an employee is terminated 4 weeks after being notified they are redundant.</td>
</tr>
<tr>
<td>National Gallery of Australia (NGA Certified Agreement 2001-2003) NED 31 Dec 03</td>
<td>2 weeks per year of service – minimum 4 weeks and maximum 48 weeks plus 4 weeks notice (or 5 weeks if over 45 years). Payment in lieu available.</td>
<td>Accelerated separation payment of 8 weeks additional pay (or 9 weeks of persons 45 or over with at least 5 years service) available for employees who retire within 14 days of being made an offer. This includes</td>
<td>13 months for employees with 20 or more years of service or who are over 45 7 months for other employees.</td>
<td>There are no restrictions on the employment of persons who have been made redundant from the APS.</td>
<td>Involuntary termination at conclusion of retention period with no severance benefit.</td>
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<td>payment in lieu of notice.</td>
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<td>Medibank Private (MPL Certified Agreement 2001-2004) NED Jan 2004)</td>
<td>2 weeks per year of service - min 4 weeks and max 48. Casual employees receive 1 week for every 6 months of service, providing they have been employed for more than 12 months continuously. 4 weeks notice or 5 weeks if over 45 years of age and have had 5 years or more of service. Payment in lieu of notice available.</td>
<td>$800 for financial/skills retraining. Additional $1000 if employee has 5 years or more of service. Employees over 40 and with 20 years or more service receive an extra $2000 plus $500 for skills retraining, in addition to the above payments.</td>
<td>N/A</td>
<td>No</td>
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</table>
SUMMARY OF SIGNIFICANT DEVELOPMENTS

1922 – 1975

- Prior to 1975 the retirement of staff excess to requirements could be effected under section 20 of the Public Service Act.
- This formal retirement provision was only used once to redeploy a small number of country telephonists.
- Redundancy Guidelines for Australian Government Employment (RAGE Guidelines) were introduced in 1974 with Ministerial approval to provide a standard approach to dealing with redundancy situations across all levels of Commonwealth employment.

1976

- Commonwealth Employees (Redeployment and Retirement) Bill was introduced
  - Bill lapsed when Parliament was prorogued in February 1977

1977

- Public Service Arbitration Determination – Det 509/77 - made in July 1977
- First time the Commonwealth had addressed in an industrial instrument the issue of redeployment and retrenchment in Commonwealth employment.
  - Applied to Australian Public Service Departments
  - Redundancy pay was sought only by Federated Clerks Union – claim rejected by Public Service Arbitrator

1979

- Revised Commonwealth Employees (Redeployment and Retirement) Bill introduced

1980

- On 18 December 1980 Det 509/77 was amended via Determination 491 of 1980, which inserted a large number of non-APS authorities as respondents to the determination.
- Det 503 of 1980 made - covered redeployment and retirement for members of ACOA, APSA and the Federated Clerks Union to whom the CERR Act applied and who were employed in any Department of State.
  - Preference clause included.
• Issue of redundancy pay raised by all applicants - claim rejected by Full Bench on same grounds as Arbitrator rejected claim in Det. 509 of 1977.

1981

• The Commonwealth Employees (Redeployment and Retirement) Act was introduced. The PS Board issued administrative procedures dealing with the declaration, redeployment and retirement of surplus employees. The new procedures operated in conjunction with the CE(RR) Act and Regulations, and Det 509/77.

• Government indicated intention to seek disallowance of Determination 503 of 1980.
  ▪ disallowed by the House of Representatives – March 1981

• CERR Act 1979 amended to remove redeployment and retirement from arbitral jurisdiction.

1984

• Det 509/77 became an award as the PS Arbitrators jurisdiction was transferred to the Australian Conciliation and Arbitration Commission in 1984 and the relevant legislation provided that all Arbitrator Determinations had the status of awards.

1985

• Commonwealth Employees (Redeployment and Retirement) Act Award 1985 comes into force (Print F7900). The award was drawn up to complement the CERR Act and to replace Determination 509 of 1977
  ▪ CERR Act Award 1985 superseded Determination 509 of 1977 for staff covered by ACOA and APSA in organisations covered by CERR Act.
  ▪ No redundancy pay provision.

1986

• In January 1986, Det 509/77 was varied to become the Redundancy Provisions Australian Government Employment Award 1986 (RPAGE Award) [R0036] with little or no change in terminology or effect from the Determination
  ▪ R0036 bound all Ministers of the Crown for the Commonwealth and covered the Australian Public Service and the authorities listed in clause 3(a)(ii).

• Amended RAGE guidelines issued. Replaced others which did not recognise the CERR Act Award 1985

1987
• The Australian Public Service and other Australian Government Employment organisations ceased sharing the same redundancy award provisions with the making of the Australian Public Service Redeployment and Retirement (Redundancy) Award 1987 [A0389].
  
  ▪ Applied to persons employed under the Public Service Act; superseded Redundancy Provisions Australian Government Employment Award 1986 (R0036) and Commonwealth Employees (Redeployment and Retirement) Act Award 1985 (C0163) in respect of persons employed under the Public Service Act 1922.

  ▪ Provided redundancy pay in the case of voluntary retrenchment (4/48 weeks).

• Shortly after this award was made, the Australian Government Statutory Authorities Redeployment and Retirement (Redundancy) Award 1988 [A0449] was made which mirrored the Australian Public Service Redeployment and Retirement (Redundancy) Award 1987 [A0389].

• These two awards introduced the option of voluntary redundancy (clause 7 of A0449) i.e. severance pay of 2 weeks’ salary for each completed year of continuous service etc.

• Only some Australian Government Employment organisations became parties to the Australian Government Statutory Authorities Redeployment and Retirement (Redundancy) Award 1988 [A0449] - it did not have general coverage in the Australian Government Employment area.
  
  ▪ It superseded the Redundancy Provisions Australian Government Employment Award 1986 (R0036) for parties to the award.

• Advice to all authorities concerning the RAGE Guidelines and Policy Guidelines for Commonwealth Statutory Authorities noted that:
  
  ▪ the application of the RAGE guidelines, noting that “Where staff are covered by …the Australian Public Service Redeployment and Retirement (Redundancy) Award 1987, Redundancy Provisions Australian Government Employment Award 1987 (formerly Public Service Arbitrator’s Determination 509 of 1977) or other awards or registered industrial agreements which incorporate a redundancy provision, these guidelines do not apply”;

  ▪ the voluntary retention provisions in the Guidelines were based on clauses 6 and 7 of the APS
Redeployment and Retirement (Redundancy) Award 1987, including the maximum 48 weeks redundancy entitlement. ((Redundancy) Award 1987.

1995

- 130 APS Awards rationalised to an integrated set of nine main awards – the principal award being the Australian Public Service General Employment Conditions Award 1985 (GECA)
  - which superseded the Australian Public Service Redeployment and Retirement (Redundancy) Award 1987 [A0389].
  - GECA continued the pre-existing redundancy benefits (4/48) for APS staff

1997


1998

- Workplace Relations Arrangements for Commonwealth Authorities circulated January 1998
- The RAGE Guidelines were withdrawn in December 1998
  - At this time only a small number of agencies remain subject to the RAGE Guidelines, as they did not have an award or agreement providing redundancy provisions.
- Allowable award matters from the set of 9 APS awards were incorporated into GECA which was then renamed the Australian Public Service Award 1998 (AW766579).
  - The retention periods of 7 and 13 months were removed from the award, as a result of simplification, at this point.
  - APS Award retained redundancy pay (4/48) payable to a retrenched employee regardless of whether the employee has been terminated with or without consent.

2002

- The Redundancy Provisions Australian Government Employment Award 1986 [AW794745] as part its s.51 Item Schedule 5 Transitional WROLA Act 1966 review (simplification) was renamed the Redundancy Provisions Australian Government Employment Award 2002 [AW817960] [former code R0036] and as part of this had its respondency rationalised to two agencies – the Australian Wine and Brandy Corporation and the Anglo-Australian Observatory.
Applications by the CPSU to incorporate redundancy provisions equivalent to those applying in most AGE awards into the Australian Sports Drug Agency and the Australian Fisheries Management Authority awards were granted by the AIRC Full Bench [PR921706], largely because of the widespread application of the benefits sought by the CPSU in AGE awards.
## Summary of Redundancy Arrangements in State and Territory Public Services

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<thead>
<tr>
<th>Jurisdiction</th>
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<tbody>
<tr>
<td>New South Wales</td>
<td>3 weeks pay per year of service to a maximum of 39 weeks maximum plus 4 weeks notice (or 5 weeks if over 45 years) Employees engaged on a short term/casual basis or for a specified period, temporary employees with less that 12 months service and temporary employees engaged for a specific term/project of greater than 12 months when the contract of employment has come to an end due to the expiry of time or the original project has been completed are excluded from these provisions</td>
<td>If VR accepted within 2 weeks and employee terminates on date nominated by employer the following additional payments are available: 2 wks for &lt; 1yr 4 weeks for 1-2 yrs 6 weeks for 2-3 yrs 8 weeks for 3 yrs or over.</td>
<td>Staff who do not want retrenchment may be redeployed with salary maintenance available for 12 months.</td>
<td>Restricted to the period covered by the severance payment and the up to 8 weeks additional payment. If re-employed within that time must refund that portion covered by the re-employment.</td>
<td>Government policy is no involuntary retrenchment and these standards are not to be exceeded. Maximum payment of 52 weeks salary. (39 week severance benefit plus 8 weeks incentive plus 5 weeks pay in lieu of notice). Departments may offer persons accepting VR up to 12 weeks paid Job Search leave. Reimbursement of Job Assistance training up to $5000.</td>
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<td>Victoria</td>
<td><strong>Voluntary Departure Package:</strong> 2 weeks pay per year of service up to a maximum of 30 weeks plus 4 weeks notice (or payment in lieu). Probationers and specified term/contract employees are excluded from VDP</td>
<td>Lump sum voluntary departure incentive of up to $10,000.</td>
<td>N/A</td>
<td>3 year restriction on re-employment in public sector for persons accepting VDP – Agency Head may approve re-employment in extraordinary circumstances.</td>
<td>Government benchmark standards are not to be exceeded. VDP is an early retirement scheme aimed at achieving reductions in employment levels without the need for large scale compulsory redundancies – employees clearly have a choice whether to depart or remain as employees and management is not bound to offer a VDP. TSP is not a voluntary process and is only used in circumstances where employees cannot be provided with continuing work and redeployment prospects have been exhausted.</td>
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<td><strong>Targeted Separation Package:</strong> 2 weeks pay per year of service up to a maximum of 20 weeks plus 4 weeks notice (5 weeks if over 45 with at least 2 years service). Payment in lieu available.</td>
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<td>Queensland</td>
<td><strong>Voluntary Early Retirement (VER):</strong> 2 weeks pay per year of service - minimum benefit 4 weeks, maximum 52 weeks (includes payment in lieu of notice). Temporary employees, casuals and contractors are excluded from VER arrangements.</td>
<td>For VER · $6,500 or 8 weeks pay whichever is greater, below Senior Officer level or; · an additional 2 weeks pay for Senior Officers and SES if VER is accepted within 2 weeks of offer.</td>
<td>N/A</td>
<td>If a person accepting a VER is re-employed for a total of more than 20 days as a consultant or on a full time, part time or casual basis, he/she is entitled to retain only that proportion of the package that relates to the period of time they were not employed, or a minimum of 20 days salary, whichever is the greater.</td>
<td>Government benchmark standards are not to be exceeded. VER Scheme is to be utilised at the discretion of CEOs (and for SES with the approval of the Public Service Commissioner). Employees rejecting an offer of VER (or those to whom the scheme is not applied) are to be provided with transfer at level and/or redeployment and reasonable retraining opportunities.</td>
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<td>Western Australia</td>
<td>2 weeks pay per year of service to a maximum of 46 weeks. Employers must provide 12 weeks written notice to an excess employee. The employee is entitled to receive 1 weeks pay for each week or part of a week of notice not given. This potential 12 week payment is in addition to the voluntary severance payment but is only available to surplus employees prior to registration for redeployment actions. Provisions do not apply to an employee who is employed under a contract of employment that has a fixed term and who is not a permanent officer, or to casual/seasonal employees.</td>
<td>N/A</td>
<td>N/A</td>
<td>Restricted as an employee or contractor for a period equal to the total number of weeks in respect to the severance payment and LSL and annual leave. Minister may waive this restriction and require repayment of any unexpired severance benefit.</td>
<td>Government policy of no compulsory retrenchment. Voluntary retrenchment must be approved by Department of the Premier and Cabinet in accordance with Government benchmark. A reduced payment applies in outsourcing/privatisation situations where staff accepting suitable alternative employment receive a transition payment of between 4-12 weeks pay. Note (1) During 2002 WA offered a special one-off severance arrangement which provided for a severance payment of 3 weeks pay per year of service up to a maximum of 52 weeks. That offer has now expired. Note (2) These arrangements (as set out in the Redeployment and Redundancy Regulations apply to the majority of WA public sector employees. There are some employees, however, that have coverage under federal award/agreements, notably the &quot;RRR Award&quot; covering ALHMWU employees. The wording and some provisions that apply to employees covered under that Award do differ in application to the Regulations.</td>
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| Tasmania     | Targeted Employment Separation Arrangements (TESA): Employees <55 contributing to defined benefits superannuation scheme | At an agencies discretion:  
Incentive payment of $5000 if employee accepts within a specified period and agrees to separate at a time specified by the employer.  
Flat incentive payment of $5000 plus special incentive payment of $2000 if employee accepts within a specified period and agrees to separate at a time specified by the employer. | Under the State Service Act 2000, it is possible to involuntarily terminate an employee where redeployment options are not available or have been exhausted (after a period of 12 months) and voluntary separation arrangements are not accepted. Entitlements are the same as for those offered VR except that for each month that redeployment is attempted, the years of service payment is reduced by one twelfth. | Persons who accept voluntary separation enter into an agreement not to seek or obtain employment either as an officer, employee or consultant in the Tasmanian public sector for a period not exceeding 5 years calculated as follows: Amount of payout Period in years = $25,000  
Exemption may be given by the Secretary of the Department of Premier and Cabinet and the Head of the Agency in exceptional circumstances. | TESA focuses on natural attrition, redeployment etc, but recognises that separations may be necessary to augment the process. Premier must approve any offer of voluntary separation only in accordance with Government benchmark. Fixed term employees <55 The lesser of:  
• 12 weeks pay + 3 weeks pay per year of service – minimum of 16 weeks and maximum of 72 weeks; or  
• where applicable the amount the employee would have received had the employee worked until the end of their contract Fixed term employees 55 & over  
• Incentive payment of $5000 + special incentive payment of $2000 if employee accepts within a specified period and agrees to separate at a time specified by the employer.  
the lesser of 12 weeks pay + 3 weeks/year of service – min 16 weeks and max 72 weeks; or the amount of salary otherwise paid had person continued in employment until age 65. |

Note - separate arrangements apply for fixed term employees – see comments column. However, Fixed-term employees that have

been engaged for under 12 months or on a longer employment contract where it clearly stated that there is no expectation of ongoing employment are excluded from any redundancy payments
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<tr>
<td>South Australia</td>
<td>Targeted Voluntary Separation Package (TVSP) for non-executives</td>
<td>N/A</td>
<td>N/A</td>
<td>Employees accepting TVSP resign from the public sector and cannot work for government or contractor to the government with existing contract or provide services to Government as an associated entity for a period of 3 years.</td>
<td>Government policy is no forced redundancy. TVSP is voluntary. Only excess or potentially excess employees requesting an offer can be made one, but employer reserves right not to make an offer. Current scheme (in operation from 12.8.02 to 11.8.03) provides benefits as outlined in column 2. For 6 months during 2001, an Enhanced TVSP applied which provided for 20 weeks pay plus 3 weeks per completed year of service up to a maximum of 116 weeks. No whole of Government Separation Scheme was been in operation in the SA Public Sector between 19.10.01 and 11.8.02.</td>
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<td>Minimum of 8 weeks pay plus 3 weeks per completed year of service to a maximum of 104 weeks if separate within 4 weeks of formal offer. Minimum of 4 weeks pay plus 2 weeks per completed year of service to a maximum of 52 weeks if employee separates more than 4 weeks after formal offer. Executive separation packages negotiated between individual and Commissioner for Public Employment. TSVPs will not be offered to employees who are casual, or on contracts without any right to ongoing employment.</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Severance Pay</td>
<td>Incentive</td>
<td>Retention period</td>
<td>Restriction on re-employment of retrenched employees</td>
<td>Comments</td>
</tr>
<tr>
<td>---------------------</td>
<td>------------------------------------------------------------------------------</td>
<td>-----------</td>
<td>----------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>2 weeks pay per year of service- minimum 4 weeks and maximum of 48 weeks pay, plus 4 or 5 weeks notice (payment in lieu available). NT Public Sector Management Act (s.41) provides that only permanent employees can be declared potentially surplus to the requirements of an Agency.</td>
<td>N/A</td>
<td>Persons not accepting VR entitled to 6 months notice (if less than 20 years service) or 12 months if more than 20 years service or over 45 that they are surplus to the requirements of the Service. VR benefits are not payable.</td>
<td>Ineligible to apply for re-employment for 2 years although Commissioner for Public Employment may exempt individuals in exceptional circumstances.</td>
<td>There is no set period for redeployment, although after 4 months of unsuccessful redeployment the Agency is to seek the assistance of the Commissioner for Public Employment. Only the Commissioner for Public Employment can formally invite an employee to be voluntarily retrenched in accordance with Government benchmark.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Severance Pay</td>
<td>Incentive</td>
<td>Retention period</td>
<td>Restriction on re-employment of retrenched employees</td>
<td>Comments</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------</td>
<td>-----------</td>
<td>------------------</td>
<td>-----------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>ACT</td>
<td>2 weeks pay per year of service- minimum 4 weeks and maximum of 48 weeks pay, plus 4 or 5 weeks notice (payment in lieu available). Probationers, fixed term employees, workforce entry programme employees and casuals are excluded.</td>
<td>N/A</td>
<td>7 or 13 months based on age and length of service (same as APS).</td>
<td>24 month restriction for persons taking voluntary retrenchment and 12 months for those who are involuntarily retrenched.</td>
<td></td>
</tr>
</tbody>
</table>

Note: The following are proposed arrangements given in-principle support by ACT unions. These new arrangements are expected to be incorporated within most ACTPS enterprise bargaining agreements by June 2003 and backdated to September 2002.

| ACT          | 2 weeks pay per year of service- minimum 26 weeks and maximum of 48 weeks pay, plus 4 or 5 weeks notice (payment in lieu available). | N/A | 7 months. | No restriction for those involuntarily retrenched and 24 month restriction for persons taking voluntary retrenchment. | |

Note: The information set out in this document is current to February 2003
The ACTU’s claim in the Redundancy test case is to increase the level of severance pay to mirror the current NSW public service standard. The following table shows that the proposed changes to the TCR standard would deliver a higher benefit for certain staff, (especially those with less than 10 years service and who are over 45), than are currently available under APS redundancy arrangements.

### Impact Of Proposed Amendments To TCR Provisions On APS Retrenchment Benefits

<table>
<thead>
<tr>
<th>Period of continuous service</th>
<th>Current TCR standard</th>
<th>Proposed amendment to TCR standard</th>
<th>Proposed amendment to TCR standard (employees over 45)</th>
<th>APS Award provisions</th>
<th>Impact of New TCR Provision (if agreed) on APS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 year or less</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Pro rata for completed months of service (provided not on probation)–benefit would be less than 2 weeks pay</td>
<td>Employees under 45</td>
</tr>
<tr>
<td>1-2 years</td>
<td>4 weeks pay</td>
<td>4 weeks pay</td>
<td>5 weeks pay</td>
<td>Between 2 and 4 weeks pay</td>
<td>Up to 2 weeks pay</td>
</tr>
<tr>
<td>2-3 years</td>
<td>6 weeks pay</td>
<td>7 weeks pay</td>
<td>8.75 weeks pay</td>
<td>Between 4 and 6 weeks pay</td>
<td>Up to 3 weeks pay</td>
</tr>
<tr>
<td>3-4 years</td>
<td>7 weeks pay</td>
<td>10 weeks pay</td>
<td>12.5 weeks pay</td>
<td>Between 6 and 8 weeks pay</td>
<td>Up to 4 weeks pay</td>
</tr>
<tr>
<td>4-5 years</td>
<td>8 weeks pay</td>
<td>12 weeks pay</td>
<td>15 weeks pay</td>
<td>Between 8 and 10 weeks pay</td>
<td>Up to 4 weeks pay</td>
</tr>
<tr>
<td>5-6 years</td>
<td>8 weeks pay</td>
<td>14 weeks pay</td>
<td>17.5 weeks pay</td>
<td>Between 10 and 12 weeks pay</td>
<td>Up to 4 weeks pay</td>
</tr>
<tr>
<td>6-7 years</td>
<td>8 weeks pay</td>
<td>16 weeks pay</td>
<td>20 weeks pay</td>
<td>Between 12 and 14 weeks pay</td>
<td>Up to 4 weeks pay</td>
</tr>
<tr>
<td>7-8 years</td>
<td>8 weeks pay</td>
<td>16 weeks pay</td>
<td>20 weeks pay</td>
<td>Between 14 and 16 weeks pay</td>
<td>Up to 4 weeks pay</td>
</tr>
<tr>
<td>8-9 years</td>
<td>8 weeks pay</td>
<td>16 weeks pay</td>
<td>20 weeks pay</td>
<td>Between 16 and 18 weeks pay</td>
<td>Nil</td>
</tr>
<tr>
<td>9-10 years</td>
<td>8 weeks pay</td>
<td>16 weeks pay</td>
<td>20 weeks pay</td>
<td>Between 18 and 20 weeks pay</td>
<td>Nil</td>
</tr>
<tr>
<td>10 years plus</td>
<td>8 weeks pay</td>
<td>16 weeks pay</td>
<td>20 weeks pay</td>
<td>20 weeks pay plus 2 weeks pay for each additional year of service (and pro rata for completed months) up to a maximum of 48 weeks pay exclusive of notice</td>
<td>Nil</td>
</tr>
</tbody>
</table>
ATTACHMENT C

OUTLINE OF GENERAL EMPLOYEE ENTITLEMENTS AND REDUNDANCY SCHEME

The terms of the General Employee Entitlements and Redundancy Scheme (GEERS) are set out in its Operational Arrangements. A key element of GEERS is that it is a safety net arrangement. This is set out in the Operational Arrangements at paragraphs 6.5 to 6.7:

6.5 Amounts payable under GEERS will be reduced where payments in respect of employee entitlements are made to employees during the insolvency process and after the employee’s employment has been terminated. For example, if an employee is owed seven weeks’ redundancy pay at the time of termination, and if two weeks’ redundancy pay is provided for the former employee during the insolvency process but before GEERS makes a payment, the maximum GEERS payment would be five weeks’ redundancy pay. The Scheme does not relieve employers or insolvency practitioners of their responsibility to meet employee entitlements to the extent that there are sufficient assets to do so.

6.6 Circumstances which would lead to reduced GEERS payments in the way described in paragraph 6.5 may include proceeds of asset sales or funds that become available to creditors under Deeds of Company Arrangement.

6.7 Any payments made under GEERS are made without any legal obligation on the part of the Commonwealth to do so and the Commonwealth reserves to itself the right to determine in its absolute discretion matters of eligibility and amount of any payments that it makes under GEERS. Without limiting the application of this discretion, it will be applied in cases where outstanding entitlements are unable to be adequately verified and in cases where Uncommercial Transactions benefiting the employees (as defined in section 588FB of the Corporations Act 2001 may be occurred.

Specifically, where employees have a legal entitlement derived from legislation, an award, a statutory agreement or a written contract of employment, as it was at the date of their former employer’s insolvency, they may be eligible to receive GEERS payments equivalent to the following:

- all unpaid wages including unpaid amounts in respect of paid leave already taken and allowances such as shift allowance and overtime;
- all unpaid annual leave including annual leave loading;
- all unpaid pay in lieu of notice;
- up to 8 weeks’ redundancy pay; and
- all long service leave.
The maximum annual income at which GEERS assistance is calculated is $75,200 for employees terminated in 2001-2002 and $81,500 for employees terminated during 2002-2003. This income cap is indexed annually. Recipients earning more than this amount are still eligible for GEERS, but GEERS will be paid as if they earned the relevant income cap.

**GEERS redundancy payments**

GEERS pays up to 8 weeks redundancy pay. This 8 week limit, which reflects the maximum national TCR standard for severance pay, ensures that all eligible employees who are owed redundancy entitlements are guaranteed a ‘safety net’ payment of up to 8 weeks redundancy pay.

Workers who receive more than eight weeks redundancy pay from other sources will not be eligible for GEERS in respect of the amount of redundancy above the eight weeks because GEERS is a safety net not a supplement to other sources of funds.
## GENERAL EMPLOYEES ENTITLEMENTS AND REDUNDANCY SCHEME ACTIVITY

<table>
<thead>
<tr>
<th>Figures for Year 2002</th>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>QLD</th>
<th>SA</th>
<th>TAS</th>
<th>VIC</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No of Insolvency Cases</td>
<td>25</td>
<td>445</td>
<td>3</td>
<td>191</td>
<td>95</td>
<td>20</td>
<td>370</td>
<td>148</td>
<td>1297</td>
</tr>
<tr>
<td>No of Claims Received</td>
<td>192</td>
<td>3936</td>
<td>16</td>
<td>1453</td>
<td>581</td>
<td>223</td>
<td>3495</td>
<td>1097</td>
<td>10993</td>
</tr>
<tr>
<td>No of Claims Paid</td>
<td>107</td>
<td>2611</td>
<td>11</td>
<td>1244</td>
<td>381</td>
<td>221</td>
<td>1924</td>
<td>773</td>
<td>7272</td>
</tr>
<tr>
<td>Total Paid</td>
<td>$683,386</td>
<td>$20,832,970</td>
<td>$27,539</td>
<td>$7,119,721</td>
<td>$2,432,272</td>
<td>$624,844</td>
<td>$14,927,323</td>
<td>$3,749,808</td>
<td>$50,397,863</td>
</tr>
<tr>
<td>Average Paid</td>
<td>$6,387</td>
<td>$7,979</td>
<td>$2,504</td>
<td>$5,723</td>
<td>$6,384</td>
<td>$2,827</td>
<td>$7,758</td>
<td>$4,851</td>
<td>$6,930</td>
</tr>
<tr>
<td><strong>Small Business</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No of Small Businesses</td>
<td>20</td>
<td>326</td>
<td>3</td>
<td>155</td>
<td>71</td>
<td>15</td>
<td>263</td>
<td>123</td>
<td>976</td>
</tr>
<tr>
<td>No of EE's in Small Business</td>
<td>82</td>
<td>1470</td>
<td>16</td>
<td>736</td>
<td>279</td>
<td>70</td>
<td>1217</td>
<td>578</td>
<td>4448</td>
</tr>
<tr>
<td>Average Size of Small Business</td>
<td>4.1</td>
<td>4.5</td>
<td>5.3</td>
<td>4.7</td>
<td>3.9</td>
<td>4.7</td>
<td>4.6</td>
<td>4.7</td>
<td>4.6</td>
</tr>
<tr>
<td><strong>Redundancy</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No of Claims Paid Red</td>
<td>31</td>
<td>1054</td>
<td>0</td>
<td>459</td>
<td>180</td>
<td>47</td>
<td>990</td>
<td>256</td>
<td>3017</td>
</tr>
<tr>
<td>Total RED Paid</td>
<td>$102,278</td>
<td>$4,561,572</td>
<td>$0</td>
<td>$1,645,786</td>
<td>$601,504</td>
<td>$124,343</td>
<td>$4,177,031</td>
<td>$763,624</td>
<td>$11,976,138</td>
</tr>
<tr>
<td>Average RED Paid</td>
<td>$3,299</td>
<td>$4,328</td>
<td>$0</td>
<td>$3,586</td>
<td>$3,342</td>
<td>$2,646</td>
<td>$4,219</td>
<td>$2,983</td>
<td>$3,970</td>
</tr>
<tr>
<td>Casual Average RED Paid</td>
<td>$1,320</td>
<td>$1,731</td>
<td>$0</td>
<td>$1,434</td>
<td>$1,337</td>
<td>$1,058</td>
<td>$1,688</td>
<td>$1,193</td>
<td>$1,588</td>
</tr>
<tr>
<td><strong>Long Term Casuals</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24.8% self Id casual private sector</td>
<td>27</td>
<td>648</td>
<td>3</td>
<td>309</td>
<td>94</td>
<td>55</td>
<td>477</td>
<td>192</td>
<td>1803</td>
</tr>
<tr>
<td>54% long Term Casuals</td>
<td>14</td>
<td>350</td>
<td>1</td>
<td>167</td>
<td>51</td>
<td>30</td>
<td>258</td>
<td>104</td>
<td>974</td>
</tr>
<tr>
<td>Additional Cost for Long Term Casuals</td>
<td>$18,911</td>
<td>$605,322</td>
<td>$0</td>
<td>$238,939</td>
<td>$68,202</td>
<td>$31,320</td>
<td>$434,854</td>
<td>$123,516</td>
<td>$1,546,325</td>
</tr>
<tr>
<td><strong>Cost of Removal of Small Business Exemption ( Excluding 45 years &amp; over employees)</strong></td>
<td>$234,250</td>
<td>$4,773,637</td>
<td>$0</td>
<td>$2,215,895</td>
<td>$761,905</td>
<td>$166,673</td>
<td>$2,869,072</td>
<td>$1,539,180</td>
<td>$13,079,673</td>
</tr>
<tr>
<td><strong>Number of Employees Paid Redundancy 45 years and over</strong></td>
<td>11</td>
<td>367</td>
<td>0</td>
<td>118</td>
<td>51</td>
<td>7</td>
<td>537</td>
<td>62</td>
<td>1153</td>
</tr>
<tr>
<td><strong>Additional 25% payment for 45 years and over</strong></td>
<td>$45,365</td>
<td>$1,985,409</td>
<td>$0</td>
<td>$528,875</td>
<td>$213,033</td>
<td>$23,149</td>
<td>$2,832,154</td>
<td>$231,175</td>
<td>$5,721,117</td>
</tr>
<tr>
<td><strong>Total Additional Cost</strong></td>
<td>$298,526</td>
<td>$7,364,368</td>
<td>$0</td>
<td>$2,983,708</td>
<td>$1,043,140</td>
<td>$221,141</td>
<td>$6,136,079</td>
<td>$1,893,871</td>
<td>$20,347,115</td>
</tr>
</tbody>
</table>

**Notes:**

- 24.8% Self Identified casuals; Of These 54% are long term casuals
- Average RED paid for casual labour is 40% of the Average
- Figures from ABD Cat 6359.0
CALLUS CROSS-EXAMINATION

Extract from Transcript

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

FULL BENCH

MS D M LINNANE, Vice President
MR A L BLOOMFIELD, Commissioner
MR B J BLADES, Commissioner

No B209 of 2002

INDUSTRIAL RELATIONS AWARD 1999

APPLICATION BY QUEENSLAND COUNCIL OF UNIONS PURSUANT TO SECTION 288 FOR A STATEMENT OF POLICY REGARDING TERMINATION, CHANGE AND REDUNDANCY

No B308 of 2002

APPLICATION BY THE AUSTRALIAN WORKERS' UNION OF EMPLOYEES, QUEENSLAND PURSUANT TO SECTION 288 FOR A STATEMENT OF POLICY REGARDING TERMINATION, CHANGE AND REDUNDANCY

BRISBANE

..DATE 16/09/2002

CONTINUED FROM 28/08/2002

..DAY 16
THE VICE PRESIDENT: Mr Stewart, are you first off the rank?

MR STEWART: Thank you, Vice President.

CROSS-EXAMINATION [of Mr Callus]:

Now, I'd refer you to page 45?-- Yep.

Which brings us to the summary of the award surveys. First of all if I'd refer you to the section headed "Federal" and in a sentence midway through that summary am I correct in interpreting it as meaning that basically the Federal Award Survey showed that in Federal awards the current Federal TCR standard applied in nearly all awards? The awards were almost uniform in containing those provisions?-- Mmm.

Could you - is that a yes?-- Sorry. Yes. That's what the sentence says, yeah.

Now, moving to the section headed "Queensland", and midway through that there's a sentence which says, and I quote, "Surprisingly a lot of awards did not contain provisions relating to severance pay, but of those that did most were the same as the Commission Standard." Why was that surprising?-- Well, perhaps surprising in the sense that one would expect awards contain provisions relating to severance pay given the other jurisdiction's incidents of that. But perhaps it's not surprising.

But they do contain provisions which create an entitlement to the TCR standard even though that provision doesn't mention severance pay?-- Yes.

So it's not surprising that they deal with it twice, is it?-- No.

Now, you don't summarise the position in Queensland awards there the way you do for Federal awards where you say for Federal awards that they nearly all contain the TCR standard so we need to sort of complete that exercise now. By my calculation 10 of the 11 private sector Queensland awards that you surveyed have the TCR standard, either by adopting the statement of policy or incorporating it actually in the award?-- Right.

Would you agree with that, that 11 out of 12 of the private sector awards you've surveyed nearly all but one contain the standard?-- I'd have to check the data, but I accept that if you've done that, then that's right.

And the only award that doesn't is the mirror Building Construction Award. So in essence the award standard in Queensland is the TCR standard?-- That's your conclusion. We didn't look at that.

But you surveyed a sample of Queensland awards?-- Yeah. But we didn't do the exercise you just did.

Right. Thanks for clarifying that. I'll now take you to part two of your report which deals with the agreement surveys. Now, agreement surveys are generally very significant and important in test cases such as this, aren't they?-- Perhaps.
Why would they be significant and important in a test case that's looking at whether an existing standard should be reviewed?-- Well, presumably on the assumption that if the agreements are widespread, then that is setting the standard, the community standard agreement, is the principal means of setting standards not the award, then the argument would flow from that I would have thought. So that what we should be looking at then in seeing the significance of the outcome of your survey, is the extent to which there's widespread provision for severance pay that's above the existing standard?-- Possibly. Or indeed it may simply - I mean the problem of course with the agreement sector, is it's a very quirky sector, as you well understand, because it's highly dominated by large organisations and it's - tends to be obviously dominated by the union sector. So-----

But it's highly relevant to look and see whether a community standard has arisen which is beyond the existing TCR standard?-- That could well be.

So I'll take you to page 53 then of your report and the second paragraph on that page, it deals with the maximum severance pay entitlement in agreements?-- Mmm.

So do you agree that that's the part of your agreement survey that we should go to to see the extent to which agreements throughout a number of jurisdictions have gone beyond the award standard for severance pay?-- Yes, both the minimum and the maximum.

But in terms of going beyond the - to a higher quantum of severance pay, it's the maximum we'd be particularly interested in, wouldn't it?-- Mmm.

Yes?-- Yes, sorry.

Now, I'd refer you to the final sentence in that paragraph which says, and I quote, "Agreements that provided for more generous entitlements such as a maximum of more than 52 weeks were predominantly from New South Wales Federal and Queensland jurisdictions." Can you show us - or take us through your table 2.14 and show us how that inference is supported by that table?-- Well, if you add for example in column 1 Federal -we're talking about 2.14?

Yes, 2.14?-- Well, as you can see in the Federal jurisdiction, column on1, more than 52 is - goes to 18 per cent, right? Adding the last two rows together column - in that column. New South Wales, adding those two gives you 19.3 and Queensland gives you something around 14, significantly lower than the other two jurisdictions when you add those two columns - rows together.

But significantly higher than South Australia and Western Australia?-- Yes. Well, that's the point.

Just to assist, one may look at the number of agreements that are above TCR would be to take the - to subtract off the - from 100 per cent those that are at the TCR standard which is the second row, isn't it? The first row is where there's no cap on the entitlement, the second row where it's up to 8 weeks?-- Yes.
And it's that second row that's TCR, existing TCR, therefore or below and then all the rest are above TCR, so, we could proceed, couldn't we by - if we wanted to look at the proportion of agreements that are above TCR, we'd take off 100 per cent, the percentages in column 2, would that be fair?-- Sorry, say again?

If we wanted to look at the - calculate the proportion of agreements that are above TCR, then we'd take off for each column, we'd take off the 100 per cent the proportion that are TCR or below-----?-- And the first two lines.

Well, it's the second line because the first line is actually where there's unlimited?-- That's right.

Yes. So doing that, I calculate that for Federal Awards at 71.4 per cent according to your table or above TCR for New South Wales it's 94.7, for Queensland 68.1, for South Australia it's 36.1 and for Western Australia 84.6?-- That's of those agreements that provide this is not of all agreement surveyed, so if you look at the bottom row, the totals, of totals there as you can see aren't the total number of agreements surveyed.

So that's an important point, so, what you're saying is that those percentages we've just worked out and in fact the percentages in the table itself don't give us the percentage of agreements that are above TCR?-- No.

Amongst those surveyed, it gives us the percentage of agreements that specifically mention severance pay?-- That's right.

So if we want to find out to the extent to which agreements in this jurisdiction for example have above TCR severance pay, then we can't bet it from table 2.1(4) we have to do some other calculations, is that correct?-- That's right.

Well fortunately I have those calculations, because as you've agreed it's this survey that can show us the extent to which the community standard has emerged above the TCR?-- Well, the community standard as specified in the awards, the other part of all of this of course is that it could simply be management policy to provide standards of different levels, so we're simply talking about those contained in agreements.

In agreements. I think if you recollect the earlier evidence you gave it was to the effect that agreement surveys are important because they can show us what the community standard is?-- I'm sorry, they're one measure of community standards, yes.

Right. You're not backing away from us here, are you?-- No, they're one measure of community standard.

Well, let's see what the community standard is. So, I've actually - tables 2.1(4), 2.1(5) and 2.1(6) all deal with this issue of the severance pay and the extent to which it's gone above the standard. And, I want to ask you questions about what the survey shows in terms of - the extent to which agreements have moved beyond the standard?-- Sure.

And therefore for each of those tables, I've recalculated the percentages so that for each field the percentages, now the proportion of all agreements surveyed in each
jurisdiction. So, it's purely a mathematical recalculation and I'll hand you a table that does that mathematical recalculation. So just to indicate clearly what I've done to generate that table?-- Yes.

If we look at the Queensland column-----?-- Yes.

-----in table 2.1(4) where the number of agreements in each category of severance pay is set out. I've recalculated the percentages on the basis of the proportion of that number represents of all the agreements you surveyed in the Queensland jurisdiction, and I got that from page 47?-- Yes, no, I think you're right. But the question is------

Yes, see, I want to take everyone through this?-- Oh, sorry.

Through you. So, from table 2.1 I think, I'm correct to say that that sets out all the agreements you surveyed, so looking at table 2.1 on page 47, moving across the bottom there, you surveyed 1,065 Federal Agreements, 262 in New South Wales, 511 in Queensland, 215 South Australia, 124 Western Australia. So the new table 2.1(4), the key to it is the totals at the bottom where for the Queensland column it now shows that 13.5 per cent of Queensland Agreements surveyed included specific TCR provisions. Do you agree that we can then look at the percent of Queensland agreements that are above TCR by deducting the percentage that's in the second row, as we did previously, from the total of 13.50, and that gives us the percentage of Queensland agreements that are above TCR of 9.19 percent?-- Yeah, I mean, how you calculate these percentages is a mute point, because, you could argue, as we have I guess, implicitly in the report, that one should only include those that have redundancy provisions in them, and of those, which is what we did, what is the provision. So this is a subset of agreements that have some sort of redundancy provision, and the proportion of those has been calculated. You're presenting this evidence as a proportion of all agreements, irrespective of whether they have a redundancy provision or not.

And you know-----?-- And that's-----

-----you can work out why we're doing that, can you, in the sense that you know that Queensland agreements that don't include specific provisions for severance pay, generally adopt - generally specify they're to be read in conjunction with the Award?-- The Award. Yeah.

Let's get that clear. I spoke over you then?-- No, no, I understand, but that's true of most agreements that are silent on these sort of matters. Yep.

So, just to get that absolutely clear, it's true of most agreements, Federal and State, that a silence on matters such as TCR, that they pick up the Award provision?-- That's generally the case. Yes.

And you're Award survey has shown us the extent to which Awards in Queensland, for example, have gone beyond TCR?-- Mmm hmm.

Practically none have, and it's the same Federally, according to your report. So, we can infer very securely, can't we, that the agreements that don't specifically include
TCR provisions, that those employees under those agreements in nearly all cases will be getting the award TCR standard?-- If - yeah, if the agreement's specifically says that matters that the agreements silent on the Award - no, there are different ways that agreements handle the relationship with the Award, in some cases, they specifically say, "For provisions that aren't in the agreement go to the Award," effectively, in other cases, the agreement might have a blanket provision that matters that the agreement's silent on should be led in conjunction with the Award. So, whether they specifically talk about TCR provisions to go to the Award, or just simply have a blanket provision, I don't what the difference is, but the effects the same.

The effect is the same. That is that we can be confident that the overwhelming majority of those Queensland agreements and other agreements that don't specifically include severance pay have the award standard?-- Well, we can be reasonably confident that about 85 - well, 86 per cent of agreements have to be read in conjunction with the award, either in part or in full, and I don't have the break up of whether - to what extent this is in part or in full.

So we've just extended - we've used that table, the recalculated table, 2.14, to see that 9.19 per cent of the Queensland jurisdiction agreements that you serve are above the TCR standard. If we undertake a similar calculation, that is by deducting the percentage in column 2 from the-----?-- I think this is a bit misleading, to be honest, because what you're saying is you're including agreements that have nothing at all to say about redundancy, and this - the coding of this provision only comes into effect obviously as if there is a redundancy provision there. So I'll - if you're interested in what is the standard for agreements that have redundancy provisions, you're better off looking at the table in our report and this one, so it really comes down to what it is that you're interested in.

Well-----

COMMISSIONER BLOOMFIELD: But if we do that, we'll get the wrong picture of 2.17, because what 2.17 says is that if we follow it as it's written, that none of the Queensland agreements - well, sorry, 475 out of 511 of the Queensland agreements don't provide for time off during redundancy periods to look for jobs?-- That's true.

Well, in fact, I disagree with you.

MR STEWART: Sorry?

COMMISSIONER BLOOMFIELD: I disagree with him.

MR STEWART: You disagree with the witness? I think we all do but the - but just to try and bring it out, the - just to take you through the steps again-----?-- Yep.

-----because I think we have been through this before and I think your answers lead to a different conclusion to the one you just stated, so I'll take you through it once more. The Queensland agreements that you surveyed - there are 511 of them, 69 of them specifically mention TCR. Those that don't you've agreed, haven't you, that generally they are to be read in conjunction with the award, and you've agreed that the award standard in Queensland, from your survey, is clear, and that is that nearly all awards
have the TCR standard. Do you agree with that step?-- Well, that was the information you supplied in terms of the-----

Well, I'd actually - we could laboriously go through and check it but-----?-- Yeah, okay.

Check it after the event, so I won't waste everyone else's time?-- No, no. No.

And so we can assume therefore, can't we, that the agreements that don't specifically mention severance pay - that a very high proportion of those that adopt the award provisions will in fact, the employees under those agreements, will receive the TCR standard?-- Mmm.

That's the final step in the logic, do you agree with it?-- Well, to the extent that we know that those award provisions apply to the TCR standard.

That's right. And I think nearly everyone in this room knows that without doing the survey?-- Okay.

And they also know that Queensland agreements that don't mention severance pay adopt the award provisions and therefore adopt the TCR standard?-- Accept that.

So that leaves us with, in this exercise, designed to look at the extent to which there is a community standard in Queensland jurisdiction above the TCR standard, 9.19 per cent of agreements are our best estimates so far of the proportion that are above TCR?-- Of those that specify acts of a number of weeks.

No, 9.19 per cent of all agreements-----?-- Sorry. Of all agreements, yes.

Yes?-- Yes.

9.19 per cent of all agreements surveyed?-- Yeah.

So if we go across to the Federal column and do a similar exercise it comes to 20.84 per cent?-- Right.

New South Wales is 20.61 and we need to note, don't we, in relation to New South Wales, that the award standard there is higher so the silent agreements in New South Wales, if they pick up their award standard-----?-- I understand what you're saying, Mr Stewart. The question really comes back to the point I was making before is, what's the significance of that?

Well, we'll get to that. I'm asking you the questions?-- No, no, I mean in terms - well, but in terms of the meaning of this table. Because you're trying to impute that this table has some meaning in terms of a total population - the total sample. What I'm saying is, that the total sample is a bit misleading because these issues only get raised if there's a redundancy provision that deals with severance pay and then the next question is, well, what is it? But there's a filter question that gets you to this and this is the details based on that filter question.
If you wanted to know the extent to which people employed under agreements in the Queensland jurisdiction - if you want to know the extent to which for them there was a community standard above TCR, then wouldn't the figure of 9.19 per cent, on the information we've got, be the best estimate you could make of that?-- Well, it's - you know, it-----

Compared with your estimate which - well, compared with using your table?-- Well, our community standard is based on - of those that provide for some maximum, that's the standard of those.

That's right?-- That's the point.

That's the difference. You've looked at-----?-- That's right.

-----the standard for those - that-----?-- Yeah.

-----specifically include something. What you haven't looked at-----?-- No.

-----is the extent to which everyone under agreements in Queensland - looking at everyone who's under agreements in Queensland-----?-- No, that's right.

-----the extent to which - as a proportion of that community?-- Yes. Absolutely. And I think that exercise is less useful in terms of the finding of those that have a particular provision, what is the standard amongst those.

So you're looking at it - you've looked at a different community-----?-- Yeah.

-----to the one that I'm taking you to?-- Yes, I agree.

The community you're looking at is the community that are covered by agreements that specifically mention severance pay. The community that I'm looking at, would you agree, is the community that is - I want to on the record clear, would you agree that the community that I'm looking at and it's reflected in my table, is the community of all Queensland employees covered by agreements?-- Yes.

THE VICE PRESIDENT: Mr Stewart, we might take a break there and reconvene at 25 to. Thank you.

THE COMMISSION ADJOURNED AT 11.03 A.M.

THE COMMISSION RESUMED AT 11.37 A.M.

RON CALLUS, CONTINUING CROSS-EXAMINATION:

THE VICE PRESIDENT: Yes, Mr Stewart?
MR STEWART: Thank you. Now, Mr Callus, you agreed just before the adjournment that your table 2.14 expressed the proportion of above TCR standard severance pay considering the community of agreements - Queensland agreements that specifically included severance pay, while my table expressed the proportion of all Queensland agreements, yes?-- That's right. Yes, I agree with that.

So the - if we wanted - if we're looking at the community standard where the community is all employees covered by Queensland State jurisdiction agreements, then the 9.19 per cent that are above TCR is the best estimate we have of the extent to which above TCR standard severance pay applies in that community, would you agree?-- That's the best estimate of standards that apply, those agreements that have standards ins the agreement, yes.

Sorry, the 9.19 is - covers all agreements whether they have severance pay or not?-- Yeah.

So 9.19 is the best estimate for all Queensland agreements?-- That - that's true.

So 9.19 per cent of all Queensland employees covered by - sorry, 9.19 per cent of agreements being above the TCR standard does not suggest that the prevailing community standard in the Queensland jurisdiction is above TCR, does it?-- Well, as I say, it's an interpretation of what your population is for determining the standard and I guess we differ there a bit.

You guess - sorry, how did you conclude?-- Well, I think a statistic that is based on those agreements that provide for redundancy, it will give you the standard of those agreements that do provide for that.

Yes, it will, but what I'm asking you about is the community's - prevailing community standard amongst agreements in the Queensland jurisdiction?-- Mmm.

And do you agree that the prevailing community standard amongst Queensland agreements is the current TCR standard?-- Only in as much as that I accept your proposition that the award is what - those that are silent on it, refers to the award provision.

So if you accept the proposition that the agreements that are silent pick up the award standard TCR provision and on that assumption the prevailing - you'd agree that the prevailing community standard amongst agreements in the Queensland jurisdiction is the TCR standard?-- If that's what the award provisions are referred to, then yes.

And would you agree that the figures that you've got in 2.14 cannot possibly lead to a conclusion that amongst Queensland agreements in the Queensland jurisdiction the prevailing community standard is above TCR?-- Well, here we go again. It's simply - this table simply says, of those agreements the standard, where there is a standard, this is the standard. Where the standard's been set in agreements this is the standard that's provided in 2.14.

Yes, I'm not criticising your table or-----?-- No, I know, but it's really a question of interpretation.
But your table doesn't bear directly on the question of what the community standard is, does it? Where the community standard is the standard in the Queensland jurisdiction generally?-- If you're saying it doesn't bear on what the majority of workers and employees - sorry, the majority of employees in Queensland are covered by, that's true.

Right. And it's the same for your - for Federal - employees covered by Federal agreements that your table bears only - or conveys information only in relation to those who are covered by agreements that specifically include-----?-- That's right.

-----severance pay?-- That's right.

So going to table 2.14 that I gave you, we derived 9.19 per cent as the proportion of all Queensland agreements for above TCR. We can use a similar methodology to come up with 20.84 for Federal agreements, 20.61 for New South Wales agreements, 12.09 for South Australian agreements and 17.74 for Western Australian agreements.

Would you agree that generally, looking at those proportions of agreements in all jurisdictions, then the prevailing community standard amongst all agreements in all jurisdictions is not beyond TCR yet?-- Based on the assumptions that you're making of the community standards, yes, I agree with it.

Now, moving over to table 2.15 and also looking at - it's the table 2.15 that I have you. If we look at that in conjunction with your report on page 54, and I'd refer on - particularly on page 54 to the second sentence where it says, "Such a formula varies between agreements. However, agreements predominately provided for three weeks pay, 15 working days, per year of service, 40.8 per cent of all agreements or two weeks pay, 10 working days per year of service, 37.8 per cent of all agreements."

Now, you'd confirm, would you, that when you say all agreements, what you mean is not all agreements?-- No. No, you're right. The sub-set of agreements that we analysed, yep.

So if we then just refer to the table 2.15 I gave you, if we go to the second row and at the end of the second row we see, across all jurisdictions that only 5.79 per cent of all agreements had two weeks per year of service and then we move down to the next row and find that only 6.25 per cent of all agreements had three weeks per year of service?-- Mmm.

And you agree that that shows the percentage of all agreements across all jurisdictions that had those levels of severance pay?-- Yes.

Finally I'd take you to table 2.16 which deals with the other key aspect of the union claim, that is the issue of whether a loading ought to apply to severance pay for any particular age group. And in particular if we look at your table 2.16 and we look at the second row which looks at the cases of where the differential comes in, the loading comes in at age 45, and if we move to the end of that row we see that 99.4 per cent of agreements are shown as having a differential that applies at age 45 and if we move back to the table 2.16 that I gave you and we go to that middle row, age 45 row, go across to the end we see that 4.46 per cent of all agreements use age - have a differential of age 45?-- Yes.
And you agree that that 4.46 per cent is the percentage for all agreements?-- Yes.

And would you agree that 4.46 per cent does not represent a prevailing community standard for the use of age 45 to introduce a differential level of severance pay?-- Well, that's true according to your definition of community standards.

Can you imagine - can you think of any definition of community standard that any reasonable person in the world or the universe might have that might suggest that a total of 97 agreements-----?-- No, no, no, but-----

I will just finish the question. That would suggest that a total of 97 agreements out of many thousands of agreements represents the community standard?-- No, you are misunderstanding the way that the data was presented.

Sorry, the question-----

THE VICE PRESIDENT: It's not many thousand, it's 2,177 isn't it?

MR STEWART: 2,177, yes, Vice President. So 97 out of 2,177, the question I'm asking you is not whether there's anything wrong with your table or anything, what I'm asking you is can 97 out of 2,177 possibly indicate a prevailing community standard?-- Not when you define the community in terms of everybody with agreements and that's the point I'm trying to make and I will try it again. The point we were simply making in terms of representing this data in the way that we did, that there is a filter question first, "Do you have redundancy provisions". If they answer "yes", then these are the proportions of agreements that have various redundancy provisions. Now that's the standard way of presenting data when you are presenting a subset of a larger data set. So the argument could be that the community standard is set by the agreements that actual take on this issue of setting the days. So if that's the population, those agreements that set the days, this is that community standard. Your definition of a community is those that never even talk about provisions like this in the agreement and that's fair enough, it's a difference of definition of what are community standard or what are a standard or what a proper level of analysis should be.

There's a fairly consistent understanding of what community standard means in relation to industrial relations in general, isn't there?-- But we don't have any data on community standards. We don't have any survey evidence on what the community standards are with respect to custom and practice, managerial policy, a whole range of other things that make up community standards.

So your report doesn't relate to the prevailing community standard for retrenchment and redundancy?-- No.

So when Mr Shipstone informed this Commission and I quote from line 40 of page 427 of the transcript. "The two key areas or parts to the government's evidence relate to the cost impact of the claim and the prevailing community standards for retrenchment
and redundancy." Then he wasn't referring to any evidence you've brought before the
Commission?-- You'll have to ask him that.

But you can tell us for sure and for certain that your evidence doesn't relate to the
prevailing community standards for retrenchment and redundancy?-- It does to the
extent that it looks at what the standards are for agreements that have these
provisions. Now if that's not the community standard, so be it.

So if someone said to you they wanted to know to what extent do employees in the
Queensland jurisdiction get above TCR then you would agree that it's a very, very
small proportion?-- Yes.

THE VICE PRESIDENT: Mr Callus, if - and I don't think the State Public Service
standards are in awards here, they are in generally I think and I might stand corrected,
but I understand they are an administrative arrangement. They are not included in this
data neither, are they?-- No.

And they'd be a big employer?-- Presumably.

In community-----?-- One would think so, yes. I will just check the list of agreements
that I included and I don't think there was any Public Service agreements.

I doubt if they'd be agreements they'd be dealing with awards? I don't know about
other state governments or the federal government but-----?-- There's Public Sector
agreements Queensland Ambulance, Rail operations, so there are Queensland
agreements that have been included in the analysis, yes.

MR STEWART: So to get that clear, your survey of agreements does cover Public
Sector agreements?-- Well, just looking at that list on page 67 and 68, just eyeballing
it, as I said I can spot a few there where there is some City Council agreements, there
was-----

THE VICE PRESIDENT: The City Council is local authority?-- Local Authority.

My understanding is they are in administrative arrangements-----?-- Well I can't-----

-----in the Queensland Government?-- Sorry, no, you're right. There doesn't seem to
be any-----

There's a Queensland Ambulance Service Enterprise Partnership Agreement. I don't
know whether that covers - and Queensland Fire and Rescue Authority Enterprise
Partnership, CA2000 referred to there?-- That's right. Queensland Rail Operational
Systems, Queensland Fire and Rescue Authority Enterprise, yes, they seem to be the
one that on page 69 there are a few there.

MR STEWART: So the 9.10 per cent of agreements that you surveyed, that are
above TCR included, key areas of the public sector?-- Well to the extent that those
ones I read out and any others I've missed are above them, yes. I don't know what
the specifics of those agreements are.
So if it was suggested to you that the increases in TCR and severance pay sought by the union in this case were needed to ensure that the award standard in Queensland better reflects the standards generally prevailing in the community, that you couldn’t substantiate that statement based on your report?— No.

That ends my questioning if the Commission pleases.

THE VICE PRESIDENT: Thank you. Ms Lindsay?

MS LINDSAY: I have no questions of Mr Callus.

THE VICE PRESIDENT: Mr Lepahe?

MR LEPAHE: No questions.

THE VICE PRESIDENT: Mr Shipstone.

RE-EXAMINATION:

MR SHIPSTONE: Mr Callus, are you aware of public sector agreements that provide redundancy standards in excess of the public sector standard generally?— Which jurisdiction, Queensland?

In the Queensland Public Sector?— No, I'm not aware.

I don't have any further questions.

MR STEWART: Excuse me, Vice President.

THE VICE PRESIDENT: Yes.

MR STEWART: I'm sorry, I forgot to do one process issue and that is, could I seek that the tables that I handed up, subject to checking by the parties, be included as an exhibit?

THE VICE PRESIDENT: They're not this witness' exhibit though, are they?

MR STEWART: That's right. And previously-----

THE VICE PRESIDENT: They're not his tables.

MR STEWART: No, previously in these procedures a similar issue arose and basically it was not admitted as an exhibit until the parties had a chance to - the relevant parties had a chance to check it. It is purely a mathematically calculation, but it summarises it effectively and we'd like to have it in.
MS RALSTON: Can I just draw to the Bench's attention, I think Mr Stewart is alluding to Exhibit 28, which was the Exhibit-----

THE VICE PRESIDENT: Schedule of Severance Prescriptions in the Retail Industry Certified Agreement?

MS RALSTON: That's right. That's right.

THE VICE PRESIDENT: Which came out of a document, but these figures have come out of - as I understand it - material that is in Mr Callus'-----

MR STEWART: That's right.

THE VICE PRESIDENT: -----report, with a different slant on things. So I think they're using the figures that's in the report, but using them in a different way.

MS RALSTON: But I think the issue will be surely contained within submissions-----

THE VICE PRESIDENT: Yes, but-----

MS RALSTON: -----because the point that Mr Callus has made, is that is an unacceptance of that as a methodology.

THE VICE PRESIDENT: I understand that, but in terms of the figures that are used, what you make of the figures at the end of the day is a totally different set of circumstances, it's simply - this is a different slant on the figures that are already used in the document. I'll mark it "B" for identification at this point in time and it will need the other parties to look at the figure.

MARKED "B" FOR IDENTIFICATION

THE VICE PRESIDENT: And as I say, I think the figures have simply come out of the report and - but Mr Stewart has put a different slant on which Mr Callus has sometimes accepted and has not accepted it other times. So - and it's up to the parties then to make submissions on how that document should be used. Thank you, Mr Callus, for your attendance today, you're excused.

WITNESS EXCUSED
## INCIDENCE OF AGREEMENT PROVISIONS ABOVE THE TCR STANDARD

### Table 2.14
**Sev pay: max no of weeks * Jurisdiction Crosstabulation**

<table>
<thead>
<tr>
<th></th>
<th>Federal</th>
<th>NSW</th>
<th>QLD</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
<th>% based on total number of agreements in jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sev pay: max no of weeks</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<tr>
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<td>32</td>
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<td>9</td>
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<tr>
<td>up to 8</td>
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<td>72</td>
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<td>47</td>
<td>26</td>
<td>22</td>
<td>371</td>
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<td><strong>TCR Standard</strong></td>
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<td>20.61%</td>
<td>9.19%</td>
<td>12.09%</td>
<td>17.74%</td>
<td>17.05%</td>
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% based on total number of agreements in jurisdiction
### Table 2.15
Sev pay: no of working days per yr of service * Jurisdiction Crosstabulation

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Federal</th>
<th>NSW</th>
<th>QLD</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total No. of agreements</td>
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<td>262</td>
<td>511</td>
<td>215</td>
<td>124</td>
<td>2177</td>
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<td>Sev pay: no of working days per yr of service</td>
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<td>11</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>18</td>
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<td>&gt;5-10</td>
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<tr>
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<td>13</td>
<td>13</td>
<td>4</td>
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<tr>
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<td>&gt;15</td>
<td>23</td>
<td>20</td>
<td>6</td>
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<tr>
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<td>40</td>
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<tr>
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<td>19</td>
<td>3.72%</td>
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<tr>
<td></td>
<td>15</td>
<td>6.97%</td>
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<tr>
<td></td>
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<td>4.84%</td>
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<tr>
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<td>189</td>
<td>8.68%</td>
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% based on total number of agreements in jurisdiction
### Table 2.16  
**Severance pay differs at certain age (yrs) * Jurisdiction Crosstabulation**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Federal</th>
<th>NSW</th>
<th>QLD</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
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<td>1065</td>
<td>262</td>
<td>511</td>
<td>215</td>
<td>124</td>
<td>2177</td>
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<tr>
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<td>1</td>
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<td>54</td>
<td>34</td>
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<td>97</td>
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<td>12.98%</td>
<td>1.37%</td>
<td>0.47%</td>
<td>0.81%</td>
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<td>35</td>
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<td>1.57%</td>
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<td>0.81%</td>
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<td>4.82%</td>
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% based on total number of agreements in jurisdiction