



Town of Cottesloe

**STRATEGIC PLANNING  
COMMITTEE  
20 August 2014**

**POLICY REVIEW - SEVERANCE  
AND REDUNDANCY**

**ATTACHMENT**

**POLICY - SEVERANCE AND  
REDUNDANCY**

**SEVERANCE AND REDUDANCY**

**(1). OBJECTIVE**

For the purpose of Section 5.50 (1) of the Local Government Act 1995, this policy set down circumstances and manner of assessment upon which the Town of Cottesloe will pay an employee an amount (severance payment) in addition to any amount to which the employee is entitled under a contract of employment, award, industrial agreement, or order by a Court or Tribunal.

**(2). PRINCIPLES**

- 2.1 Terminating employees are entitled to severance pay and benefits in accordance with:
- (a) any federal or state award or industrial agreement applicable to that employee;
  - (b) any applicable provisions within the employee's contract of employment;
  - (c) any applicable award or order made by a federal or state industrial tribunal arising from the circumstances of that employee being specifically brought before that tribunal, subject to any right of appeal;
  - (d) where Council so agrees, any recommendation made by a federal or state industrial commissioner arising from the circumstances of that employee being specifically brought before that Commissioner.
- 2.2 That where a dismissed employee has taken or proposes to take litigation for alleged unfair dismissal, Council may decide to settle in order to avoid expensive litigation.
- 2.3 Council will initiate a consultation process with affected employees should it be necessary to implement a redundancy scheme.
- 2.4 Where possible and practicable employees will be offered a transfer to other positions within the enterprise and be offered sufficient training to effect a successful transfer.
- 2.5 Council will make up the difference between the pay for the incumbent's position and the pay for the new position for an agreed period should the pay for the new position be less than the pay for the previous position.
- 2.6 Appropriate award provisions will apply and this policy is to be read in conjunction with those award provisions

**(3). ISSUES**

In determining severance pay and benefits, matters to be taken into account include:

- length of service;
- conscientiousness of the employee during their employment;
- value of the employee's service;
- length of time to retirement;
- personal circumstances of the employee;
- possible exposure to litigation;
- circumstances of severance.
- National Competition Policy
- accountability for service delivery
- cost of service delivery
- competitive tendering
- contracting out
- amalgamation of local governments
- local government boundary changes

**(4). POLICY**

**4.1 Consultation**

- (a) Council will consult employees likely to be affected by any proposed change as to the need for and/or reason for the change and no definite decision will be made until this process has been followed.
- (b) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with their union or unions.
- (c) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (b) hereof, and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.
- (d) For the purposes of the discussion, the employer shall as soon as practicable, provide in writing to the employees concerned and their union(s) all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of

workers normally employed and the period over which the terminations are likely to be carried out.

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be inimical to the employer's interests.

#### **4.2 Transfers Within the Organisation**

- (a) Wherever possible and practical, appropriate employees should be offered a transfer to other positions within the enterprise and also offered the necessary and reasonable training to effect a successful transition.
- (b) Where an employee is transferred to other duties for the purpose of avoiding retrenchment and those duties attract a lesser rate of pay than the incumbent's previous position, the Council will make up the difference between the two rates of pay for a period of twelve months (or 2 years in the case of employees covered by clause 4.4 below). After this time, the lesser rate will apply.

#### **4.3 Legislative Requirement**

- (i). Local Government Act 1995
- (ii). Local Government Industry Award 2010
- (iii). National Employment Standards (Division 11, Subdivision B and C, Clause 123)
- (iv). Town of Cottesloe Enterprise Agreement 2011

#### **4.4 Circumstances for Severance Payment**

The Town of Cottesloe may pay a severance payment in the following circumstances:

**(i). Redundancy**

Redundant will be taken to mean that the duties of a position will no longer be performed by an employee of the Town of Cottesloe

**(ii). Local Government Boundary Changes, Amalgamations and Break-Ups.**

Where a restructuring of Local Government boundaries (such as a break up of a Local Government or an amalgamation of Local Governments) results in a surplus of employees, Schedule 2.1 clause 11 (4) of the Local Government Act 1995 provides for two years guaranteed employment except where employer and employee are able to agree to a mutually acceptable severance package.

**(iii). Termination by Agreement**

The Chief Executive Officer may decide to settle in a situation where an employee, due to illness or impairment, is unable to perform his/her job and there has been mutual agreement that employment must end.

**(iv). Termination - Special Circumstances**

Nothing in this policy prevents the Chief Executive Officer from determining that in special circumstances terminating employees may be paid additional monies or provided additional benefits where justified. If so determined, details of the severance pay and benefits shall be published in accordance with Section 5.50(2) of the Act.

**4.5 Decision**

This policy applies to all employees of the Town of Cottesloe. The decision to consider a severance package is at the absolute discretion of the Chief Executive Officer, except in where the decision involves a severance payment for the Chief Executive Officer then the decision will be made by Council.

**4.6 Notice of Termination**

The Town of Cottesloe is to refer to the National Employment Standards, Division 11, Subdivision A to specify day of termination.

**4.7 Counselling**

- (a) Counselling by a professional counselling service shall be available for any employee who has been or is to be retrenched.
- (b) In appropriate circumstances an outplacement service may also be offered. In this event no payment in lieu of such service will be made.

**4.8 Payment of Severance and Redundancy**

The Town of Cottesloe is to refer to the National Employment Standards, Division 11, Subdivision B to determine the amount payable in respect to a redundancy.

**4.9 Limitation and Exclusions**

The Town of Cottesloe is to refer to the National Employment Standards, Division 11, Subdivision C, Clause 123 to determine employee excluded on this policy.

**4.10 Re-employment**

Terminating employees shall not be re-employed by the local government, as a employee, contractor or consultant for a period of

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two years after the termination date unless the re-employment is approved by the Council.

**ADOPTION:**                      **August, 2014**

**REVIEW:**                         **June, 2019**



Town of Cottesloe

**STRATEGIC PLANNING  
COMMITTEE  
20 August 2014**

**POLICY REVIEW - SEVERANCE  
AND REDUNDANCY**

**ATTACHMENT**

**POLICY - SEVERANCE PAY**

**SEVERANCE PAY**

**(1) OBJECTIVE**

To set down the severance payable to terminating employees, for the purpose of Section 5.50 (1) of the Local Government Act 1995.

**(2) PRINCIPLES**

2.1 Terminating employees are entitled to severance pay and benefits in accordance with:

- (a) any federal or state award or industrial agreement applicable to that employee;
- (b) any applicable provisions within the employee's contract of employment;
- (c) any applicable award or order made by a federal or state industrial tribunal arising from the circumstances of that employee being specifically brought before that tribunal, subject to any right of appeal;
- (d) where Council so agrees, any recommendation made by a federal or state industrial commissioner arising from the circumstances of that employee being specifically brought before that Commissioner.

2.2 That where a dismissed employee has taken or proposes to take litigation for alleged unfair dismissal, Council may decide to settle in order to avoid expensive litigation.

2.3 Redundancy payments will be made pursuant to Council's Redundancy Policy except that Council may agree to a higher severance benefit where clauses 2.1 and 2.2 apply; details of such severance pay and benefits are to be published in accordance with section 5.50 of the Local Government Act 1995.

**(3) ISSUES**

In determining severance pay and benefits, matters to be taken into account include:

- length of service;
- conscientiousness of the employee during their employment;
- value of the employee's service;
- length of time to retirement;
- personal circumstances of the employee;
- possible exposure to litigation;
- circumstances of severance.



## TOWN OF COTTESLOE POLICY

### POLICY

#### 4.1 Severance

- (a) A terminating employee is entitled to severance pay and benefits in accordance with:
- (i) Any federal or state award or industrial agreement applicable to that employee;
  - (ii) any applicable provisions within the employee's contract of employment;
  - (iii) Any applicable award or order made by a federal or state industrial tribunal arising from the circumstances of that employee being specifically brought before that tribunal, subject to any right of appeal;
  - (iv) Where Council so agrees, any recommendation made by a federal or state industrial commissioner arising from the circumstances of that employee being specifically brought before that Commissioner.
- (b) Where a dismissed employee has taken or is proposing to take litigation for alleged unfair dismissal, Council may decide to settle to avoid expensive litigation.

Matters to be taken into consideration by Council as to whether it will seek a settlement and if so, the extent of any financial offers may include:

- the strength of the respective cases in any litigation;
- the cost of legal advocacy and support;
- the cost of witnesses;
- the cost of travel and accommodation in running the case;
- the cost of having staff tied up in the preparation and hearing of the case; and
- the disruption to operations.

#### 4.2 Redundancy

Redundancy benefits shall be made pursuant to Council's Redundancy Policy. This does not preclude Council from agreeing to a higher severance benefit where clauses 4.1(a) & (b) above apply.

Redundancy benefits are:

- (a) A maximum period of notice possible, but in any event no less than 4 weeks or payment in lieu of notice to a maximum of 4 weeks;
- (b) Payment of 2 weeks pay;

## TOWN OF COTTESLOE POLICY

- (c) Plus 2 weeks pay for each completed year of service with the Town of Cottesloe;
- (d) The maximum payable under (b) and (c) shall be 26 weeks pay;
- (e) Where an employee has been employed with the Town of Cottesloe for a minimum of 5 years, pro rata long service leave shall be provided if the employee is not otherwise entitled to pro rata long service leave under the Local Government Long Service Leave Regulations;
- (f) all other pro rata entitlements payable under the appropriate award or agreement to a terminating employee;
- (g) Where the circumstances of a retrenched employee are such that it will be extremely difficult for that employee to find another job, Council may exercise its discretion to provide additional benefits to such employees. In this event, details of the total redundancy package for such an employee shall be published in accordance with section 5.50(2) of the Act.

### 4.3 Termination by Other Means

#### (a) Termination by Agreement

Council may decide to settle in a situation where an employee, due to illness or impairment, is unable to perform his/her job and there has been mutual agreement that employment must end.

Matters to be taken into consideration by Council in determining the extent of any financial offers may include:

- length of service;
- conscientiousness of the employee over the past employment;
- value of the employee's service having regard to position(s) held and the regard given by Council to the employee's contribution;
- length of time to retirement;
- personal circumstances of the employee including family responsibility, future employment prospects and alternative sources of income; and
- possible exposure to litigation if the employee was dismissed having regard to obligations of Council under the State Equal Opportunity Act, the Commonwealth Discrimination Act and the Commonwealth Workplace Relations Act.

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### (b) Termination - Special Circumstances

Nothing in this policy prevents Council from determining that in special circumstances terminating employees may be paid additional monies or provided additional benefits where justified. If Council so determines, details of the severance pay and benefits shall be published in accordance with Section 5.50(2) of the Act.

#### **4.4 Re-employment**

Terminating employees shall not be re-employed by the Town of Cottesloe, as a employee, contractor or consultant for a period of two years after the termination date unless the re-employment is approved by the Council.

#### **4.5 Definitions**

The term "weeks pay" means the normal weekly salary or wage payable to the employee, including any penalty rates normally paid but excluding overtime or intermittent payments. The term also includes salary or wages specifically sacrificed for additional non-award benefits but does not include the value of any non-award benefit normally provided for the employee's position (such as a vehicle in the case of a senior position, the normal superannuation provided to all employees etc.).

**RESOLUTION NO:** P71  
**ADOPTION:** June, 1997  
**REVIEW:** June, 2005



Town of Cottesloe

**STRATEGIC PLANNING  
COMMITTEE  
20 August 2014**

**POLICY REVIEW - SEVERANCE  
AND REDUNDANCY**

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**POLICY - REDUNDANCY**

## **REDUNDANCY**

### **(1) OBJECTIVE**

To provide guidance to Elected Members and Officers when making determinations on redundancy matters.

### **(2) PRINCIPLES**

- 2.1 Council will initiate a consultation process with affected employees should it be necessary to implement a redundancy scheme.
- 2.2 Where possible and practicable employees will be offered a transfer to other positions within the enterprise and be offered sufficient training to effect a successful transfer.
- 2.3 Council will make up the difference between the pay for the incumbent's position and the pay for the new position for an agreed period should the pay for the new position be less than the pay for the previous position.
- 2.4 Appropriate award provisions will apply and this policy is to be read in conjunction with those award provisions (clause 47 of the Local Government Officers' (WA) Award and clause 6B of the Municipal Employees' (WA) Award).

### **(3) ISSUES**

- National Competition Policy
- accountability for service delivery
- cost of service delivery
- competitive tendering
- contracting out
- amalgamation of local governments
- local government boundary changes
- circumstances of the severance.

### **(4) POLICY**

#### **4.1 Consultation**

- (a) Council will consult employees likely to be affected by any proposed change as to the need for and/or reason for the change and no definite decision will be made until this process has been followed.
- (b) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with their union or unions.

- (c) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (b) hereof, and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.
- (d) For the purposes of the discussion, the employer shall as soon as practicable, provide in writing to the employees concerned and their union(s) all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of workers normally employed and the period over which the terminations are likely to be carried out.

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be inimical to the employer's interests.

Note: *Paragraphs (b), (c) and (d) have been taken directly from the awards and reflect the TCR requirements as to discussion prior to termination.*

#### **4.2 Transfers Within the Organisation**

- (a) Wherever possible and practical, appropriate employees should be offered a transfer to other positions within the enterprise and also offered the necessary and reasonable training to effect a successful transition.
- (b) Where an employee is transferred to other duties for the purpose of avoiding retrenchment and those duties attract a lesser rate of pay than the incumbent's previous position, the Council will make up the difference between the two rates of pay for a period of twelve months (or 2 years in the case of employees covered by clause 4.4 below). After this time, the lesser rate will apply.

#### **4.3 Severance Benefits**

Where a position has been made redundant and a suitable transfer has not been possible, an employee may be retrenched on the following basis:

- (a) A maximum period of notice possible, but in any event no less than 4 weeks or payment in lieu of notice to a maximum of 4 weeks;
- (b) Payment of 2 weeks pay;
- (c) Plus 2 weeks pay for each completed year of service with the Council;

## TOWN OF COTTESLOE POLICY

- (d) The maximum payable under (b) and (c) shall be 26 weeks pay provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date;
- (e) Where an employee has been employed with the Council for a minimum of 5 years, pro rata long service leave shall be provided if the employee is not otherwise entitled to pro rata long service leave under the Local Government Long Service Regulations;
- (f) All other pro rata entitlements payable under the appropriate award or agreement to a terminating employee will be paid;
- (g) During the notice period the employee shall be allowed reasonable time off from the job without loss of pay to attend employment interviews or other similar activities to assist the employees find employment;
- (h) Where the circumstances of a retrenched employee are such that it will be extremely difficult for that employee to find another job, Council may exercise its discretion to provide additional benefits to such employees. In this event, details of the total redundancy package for such an employee shall be published in accordance with section 5.50(2) of the Local Government Act;
- (i) Where an employee is immediately transferred to a private sector contractor as a result of a service being outsourced to that contractor, the employee will not be automatically entitled to a severance benefit.

### Definitions:

The term "weeks pay" means the normal weekly salary or wage payable to the employee including any penalty rates normally paid but excluding overtime or intermittent payments. The term also includes salary or wages specifically sacrificed for additional non-award benefits but does not include the value of any non-award benefit normally provided for the employee's position (such as a vehicle in the case of a senior position, the normal superannuation contribution provided to all employees etc.).

#### **4.4 Local Government Boundary Changes, Amalgamations and Break-ups**

- (a) Where a restructuring of Local Government boundaries (such as a break up of a Local Government or an amalgamation of Local Governments) results in a surplus of employees, Schedule 2.1 clause 11(4) of the Local Government Act provides for two years guaranteed employment except where employer and employee are able to agree to a mutually acceptable severance package.

- (b) Clauses 4.1 and 4.2 above will apply. If a transfer is arranged, the “no reduction” provision in clause 4.2(b) will apply for two years.
- (c) Where a transfer is not possible, retrenchment will be offered on the basis of clause 4.3 above. Additional benefits may be offered in accordance with clause 4.3(h) in an endeavour to reach a mutually acceptable severance package.
- (d) If agreement on a severance package is not possible, the employee will be offered work for two years on conditions no less favourable than the existing contract of employment.
- (e) At any time during the two years additional employment the Council and employee may re-open negotiations in an endeavour to reach agreement on a mutually acceptable severance package.
- (f) Where an employee remains in employment for two years pursuant to schedule 2.1 of the Local Government Act and is then made redundant, there will be no entitlement to the severance benefits provided in clause 4.3 above. Redundancy benefits in accordance with the appropriate award will still apply.

#### **4.5 Counselling**

- (a) Counselling by a professional counselling service shall be available for any employee who has been or is to be retrenched.
- (b) In appropriate circumstances an outplacement service may also be offered. In this event no payment in lieu of such service will be made.

#### **4.6 Termination During Notice**

An employee who has been given notice of retrenchment in accordance with clause 4.3 above may terminate during the period of notice and shall be entitled to the same benefits and payments as if he/she had remained until the expiry of the notice. Provided that in such circumstances, the employee shall not be entitled to payments in lieu of notice.

#### **4.7 Alternative Work**

- (a) Should the Council have made suitable arrangements for alternative employment and the employee is not consequently unduly prejudiced, the additional benefits over and above the appropriate award from this Policy shall not apply.
- (b) In addition the Council may make application to the Commission to have the award severance pay prescription varied in the case of such an employee according to the particular circumstances.



**4.8 Exclusions**

- (a) Benefits provided under this Policy which go beyond the appropriate award shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty.
- (b) This Policy does not apply in the case of casual or temporary employees who were engaged for a specific time period or for a specific reason or specific task, project or program.
- (c) This Policy also does not apply to an employee engaged on a fixed term contract where the term of the contract expires.

**4.9 Re-employment**

Terminating employees shall not be re-employed by the local government, as a employee, contractor or consultant for a period of two years after the termination date unless the re-employment is approved by the Council.

**RESOLUTION NO: P72**  
**ADOPTION: June, 1997**  
**REVIEW: June, 2005**



Town of Cottesloe

**STRATEGIC PLANNING  
COMMITTEE  
20 August 2014**

**POLICY REVIEW - SEVERANCE  
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**ATTACHMENT**

**NATIONAL EMPLOYMENT  
STANDARDS - DIVISION 11**

## **Division 11—Notice of termination and redundancy pay**

### **Subdivision A—Notice of termination or payment in lieu of notice**

#### **117 Requirement for notice of termination or payment in lieu**

##### *Notice specifying day of termination*

- (1) An employer must not terminate an employee's employment unless the employer has given the employee written notice of the day of the termination (which cannot be before the day the notice is given).

Note 1: Section 123 describes situations in which this section does not apply.

Note 2: Sections 28A and 29 of the *Acts Interpretation Act 1901* provide how a notice may be given. In particular, the notice may be given to an employee by:

- (a) delivering it personally; or
- (b) leaving it at the employee's last known address; or
- (c) sending it by pre-paid post to the employee's last known address.

##### *Amount of notice or payment in lieu of notice*

- (2) The employer must not terminate the employee's employment unless:
  - (a) the time between giving the notice and the day of the termination is at least the period (the ***minimum period of notice***) worked out under subsection (3); or
  - (b) the employer has paid to the employee (or to another person on the employee's behalf) payment in lieu of notice of at least the amount the employer would have been liable to pay to the employee (or to another person on the employee's behalf) at the full rate of pay for the hours the employee would have worked had the employment continued until the end of the minimum period of notice.
- (3) Work out the minimum period of notice as follows:
  - (a) first, work out the period using the following table:

Section 118

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<b>Period</b>	
	<b>Employee's period of continuous service with the employer at the end of the day the notice is given</b>
1	Not more than 1 year
2	More than 1 year but not more than 3 years
3	More than 3 years but not more than 5 years
4	More than 5 years

- (b) then increase the period by 1 week if the employee is over 45 years old and has completed at least 2 years of continuous service with the employer at the end of the day the notice is given.

**118 Modern awards and enterprise agreements may provide for notice of termination by employees**

A modern award or enterprise agreement may include terms specifying the period of notice an employee must give in order to terminate his or her employment.

**Subdivision B—Redundancy pay**

**119 Redundancy pay**

*Entitlement to redundancy pay*

- (1) An employee is entitled to be paid redundancy pay by the employer if the employee's employment is terminated:
- (a) at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
  - (b) because of the insolvency or bankruptcy of the employer.

Note: Sections 121, 122 and 123 describe situations in which the employee does not have this entitlement.

*Amount of redundancy pay*

- (2) The amount of the redundancy pay equals the total amount payable to the employee for the redundancy pay period worked out using the following table at the employee's base rate of pay for his or her ordinary hours of work:

<b>Redundancy pay period</b>		
	<b>Employee's period of continuous service with the employer on termination</b>	<b>Redundancy pay period</b>
1	At least 1 year but less than 2 years	4 weeks
2	At least 2 years but less than 3 years	6 weeks
3	At least 3 years but less than 4 years	7 weeks
4	At least 4 years but less than 5 years	8 weeks
5	At least 5 years but less than 6 years	10 weeks
6	At least 6 years but less than 7 years	11 weeks
7	At least 7 years but less than 8 years	13 weeks
8	At least 8 years but less than 9 years	14 weeks
9	At least 9 years but less than 10 years	16 weeks
10	At least 10 years	12 weeks

**120 Variation of redundancy pay for other employment or incapacity to pay**

- (1) This section applies if:
- (a) an employee is entitled to be paid an amount of redundancy pay by the employer because of section 119; and
  - (b) the employer:
    - (i) obtains other acceptable employment for the employee; or
    - (ii) cannot pay the amount.
- (2) On application by the employer, the FWC may determine that the amount of redundancy pay is reduced to a specified amount (which may be nil) that the FWC considers appropriate.

Section 121

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- (3) The amount of redundancy pay to which the employee is entitled under section 119 is the reduced amount specified in the determination.

**121 Exclusions from obligation to pay redundancy pay**

- (1) Section 119 does not apply to the termination of an employee's employment if, immediately before the time of the termination, or at the time when the person was given notice of the termination as described in subsection 117(1) (whichever happened first):
- (a) the employee's period of continuous service with the employer is less than 12 months; or
  - (b) the employer is a small business employer.
- (2) A modern award may include a term specifying other situations in which section 119 does not apply to the termination of an employee's employment.
- (3) If a modern award that is in operation includes such a term (the *award term*), an enterprise agreement may:
- (a) incorporate the award term by reference (and as in force from time to time) into the enterprise agreement; and
  - (b) provide that the incorporated term covers some or all of the employees who are also covered by the award term.

**122 Transfer of employment situations that affect the obligation to pay redundancy pay**

*Transfer of employment situation in which employer may decide not to recognise employee's service with first employer*

- (1) Subsection 22(5) does not apply (for the purpose of this Subdivision) to a transfer of employment between non-associated entities in relation to an employee if the second employer decides not to recognise the employee's service with the first employer (for the purpose of this Subdivision).

*Employee is not entitled to redundancy pay if service with first employer counts as service with second employer*

- (2) If subsection 22(5) applies (for the purpose of this Subdivision) to a transfer of employment in relation to an employee, the employee is not entitled to redundancy pay under section 119 in relation to the termination of his or her employment with the first employer.

Note: Subsection 22(5) provides that, generally, if there is a transfer of employment, service with the first employer counts as service with the second employer.

*Employee not entitled to redundancy pay if refuses employment in certain circumstances*

- (3) An employee is not entitled to redundancy pay under section 119 in relation to the termination of his or her employment with an employer (the **first employer**) if:
- (a) the employee rejects an offer of employment made by another employer (the **second employer**) that:
    - (i) is on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the employee's terms and conditions of employment with the first employer immediately before the termination; and
    - (ii) recognises the employee's service with the first employer, for the purpose of this Subdivision; and
  - (b) had the employee accepted the offer, there would have been a transfer of employment in relation to the employee.
- (4) If the FWC is satisfied that subsection (3) operates unfairly to the employee, the FWC may order the first employer to pay the employee a specified amount of redundancy pay (not exceeding the amount that would be payable but for subsection (3)) that the FWC considers appropriate. The first employer must pay the employee that amount of redundancy pay.

Section 123

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**Subdivision C—Limits on scope of this Division**

**123 Limits on scope of this Division**

*Employees not covered by this Division*

- (1) This Division does not apply to any of the following employees:
  - (a) an employee employed for a specified period of time, for a specified task, or for the duration of a specified season;
  - (b) an employee whose employment is terminated because of serious misconduct;
  - (c) a casual employee;
  - (d) an employee (other than an apprentice) to whom a training arrangement applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement;
  - (e) an employee prescribed by the regulations as an employee to whom this Division does not apply.
- (2) Paragraph (1)(a) does not prevent this Division from applying to an employee if a substantial reason for employing the employee as described in that paragraph was to avoid the application of this Division.

*Other employees not covered by notice of termination provisions*

- (3) Subdivision A does not apply to:
  - (b) a daily hire employee working in the building and construction industry (including working in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures); or
  - (c) a daily hire employee working in the meat industry in connection with the slaughter of livestock; or
  - (d) a weekly hire employee working in connection with the meat industry and whose termination of employment is determined solely by seasonal factors; or
  - (e) an employee prescribed by the regulations as an employee to whom that Subdivision does not apply.



*Other employees not covered by redundancy pay provisions*

- (4) Subdivision B does not apply to:
- (a) an employee who is an apprentice; or
  - (b) an employee to whom an industry-specific redundancy scheme in a modern award applies; or
  - (c) an employee to whom a redundancy scheme in an enterprise agreement applies if:
    - (i) the scheme is an industry-specific redundancy scheme that is incorporated by reference (and as in force from time to time) into the enterprise agreement from a modern award that is in operation; and
    - (ii) the employee is covered by the industry-specific redundancy scheme in the modern award; or
  - (d) an employee prescribed by the regulations as an employee to whom that Subdivision does not apply.