

RESTRUCTU RING AND CHANGE MANAGEMENT

TOOLKIT FOR PSA
ORGANISERS AND
DELEGATES

JULY 2009

To contribute resources or suggested
changes contact the PSA Policy Team

Restructuring and change management

Toolkit for organisers and delegates

This kit contains information and resources to help PSA organisers and delegates plan and organise around change. The first section of the kit provides guidance on the PSA approach to change and how we organise our activity. The second section brings together support materials to be used by organisers and delegates.

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Our approach to change

Change is a feature of modern organisations. All organisations operate in a dynamic environment and need to be responsive to government direction, client needs and other environmental factors. Some change will be evolutionary, small scale and low key, other change will be larger scale and/or have more significant effects on what work is done, how it is done and who does it.

As a union, the PSA is not resistant to change. In fact, our strategic agenda promotes changes that we think need to be made to management styles, the quality of jobs, how work is done and how services are delivered.

The current financial crisis and the Government's response to it will drive the need for change in many of the organisations where PSA members work. Some change will be government directed and some will be decided at the enterprise level. For specific information about value-for-money and expenditure reviews, see appendix 6.

When an organisation is considering the need for change, our focus is on:

- Employment and job security:
 - Minimising job losses and maximising opportunities for redeployment, development and training.
- Worker voice:
 - Ensuring PSA members can have a say in the decisions about whether and what change is needed;
 - Ensuring PSA members can have a say in determining any formal process for implementing any change.
- Fairness and transparency:
 - Ensuring change processes are procedurally fair and transparent.
 - Ensuring decision making processes are transparent.
- Ensuring any change promotes sustainable services, high performing productive workplaces and decent jobs:
 - Mobilising members' knowledge to improve the efficiency and quality of services and jobs.
 - Once the change has been implemented, monitoring the impact on workloads and services.
- Maintaining public ownership, control and accountability of State services.

Planning our activity

Organisational change is an opportunity for organisers and delegates to build our union organisation including:

- Recruiting new members.
- Recruiting new delegates and building delegate structures.
- Up-skilling delegates.

It will also be an opportunity to get agreement to and/or strengthen any partnership/constructive engagement arrangements that we have with the employer.

Building our union organisation and strengthening our engagement arrangements will increase our ability to influence and further members' interests.

Good communication with members is key to successful organisation around change. A communication plan template is included with the attached support materials.

Reviews and change may also be an opportunity for us to engage with employers on productivity and continuous improvement approaches such as Lean. We believe that the PSA has a major role to play in supporting an environment in the workplace that is committed to improving productivity, and that improving productivity in the public sector can be progressed if employer wishes to invite constructive engagement with us on a shared goal. This is our preferred approach. However, if the employer does not wish to do this, we know that our members will find it much harder to support these kinds of initiatives and approaches.

Where job losses are resulting from or likely to result from reviews our focus will be on maximising job security. We should ensure employers comply with the consultation and change management provisions of our collective agreements and seek agreement to alternatives to job cuts such as:

- Employee initiated options for fixed term reduced hours of work/flexible working (e.g 4 day weeks, 9 day fortnights).
- Employee initiated options for longer term (e.g 2 years) leave without pay with employment protection for study, OE, parental leave, care of dependents, volunteer work, work with community groups etc. Employment protection means having preferential applicant status for any suitable vacancy on agreed date of return to work and protection of redundancy entitlement if no suitable vacancy exists.
- Good faith requirement that no employee will be pressured into accepting these kinds of arrangements.
- Access to training and development to enable affected employees the opportunity of redeployment to genuine alternative roles.
- A commitment to actively seek redeployment options for affected staff across the State sector.

- Joint work on continuous improvement, increasing productivity, creating efficiencies and saving money without cutting jobs and services.

Once the change process has finished it will be useful to review how we went in each of our areas of focus. A post-change de-brief sheet is attached as appendix 9.

Sharing information

We are building a picture of what changes are happening around the State sector. This is helping us identify any trends and agendas and support our organising and political activity.

When you hear of a review or restructuring please complete the “Reviews and Restructurings Feedback Sheet” and return it to Glenn Barclay in the PSA policy team: glenn.barclay@psa.org.nz

This kit is a living document. If you have or develop any information or resources you think would be useful to share, please send them through to the PSA policy team.

Legal issues

Information about legal issues relating to interpretation of collective agreement change management clauses, consultation requirements and change management processes (including whether a role is suitable for reconfirmation or reassignment and relocation) is contained in the attached briefing from the PSA legal team.

It is well settled that the termination of employment for redundancy can be a justification for dismissal. When reviewing an employer’s decision to make employees redundant, the Employment Tribunal or Court will generally look at two factors: the genuineness of the redundancy and whether the dismissal was carried out in a procedurally fair manner. Before progressing any personal grievance on the basis of unjustified dismissal connected to a change process, please seek advice from your Assistant Secretary or the PSA legal team.

Collective agreement change clauses

Collective agreements should contain clauses that cover:

- Union consultation and participation in reviews/restructurings including decisions about whether or not to change.

- The change management process used to implement any change.
- Redundancy compensation for those who lose their jobs.
- What happens when all or part of an organisation's work is sold/transferred to another employer /contracted out (An "employee protection and technical redundancy" clause).
- The effect of any applicable industry specific legislation.

Examples of these clauses are attached as appendix 5.

If the applicable collective agreement does not cover off these areas, you may need to reach agreement with the employer about these matters. Please see the guidance from the legal team (appendix 4) before doing this. Remember to tidy up any of these issues in the next round of collective bargaining.

Employee protection clauses

These provisions are sometimes known as sale / transfer / contracting out provisions or technical redundancy provisions. You will find some provisions that focus on limiting the employer's liability to pay redundancy in these situations. This is not sufficient on its own as the purpose of these provisions, as set out in s69L of the ERA, is to provide protection for the employment of affected employees in these situations.

The employee protection provision needs to include:

- (1) a process that the employer must follow in negotiating with the new employer about the restructuring to the extent that it relates to the affected employees; and
- (2) the matters relating to the affected employees' employment that the employer will negotiate with the new employer, including whether the affected employees will transfer to the new employer on the same terms and conditions of employment; and
- (3) the process to be followed at the time of the restructuring to determine what entitlements, if any, are available for employees who do not transfer to the new employer (s69L(1)(b)ERA2000).

Members with grandfathered terms and conditions

PSA members with longer service may have grandfathered terms and conditions around change and redundancy entitlements. It is important to identify these members and to ensure continued compliance with and safeguarding of this grandfathering.

Pregnant members and members on parental leave

Workers on parental leave must be given notice of any restructuring affecting their substantive role as if they were still at work. We should ensure this occurs and also ensure any PSA members on parental leave receive our communications and are offered the opportunity to participate in any PSA activities around the restructuring/review.

Pregnancy and/or taking parental leave are not valid reasons for redundancy. If a member suspects they have been made redundant because they are pregnant or taking parental leave then this can be challenged through a personal grievance.

If a worker on parental leave is made redundant then any rights to return to work or preferential re-employment (derived from their parental leave) end with the redundancy.

Members on parental leave may be concerned about the impact of this on their redundancy payment calculations. Service while on parental leave is deemed to be continuous. If the collective agreement requires redundancy calculations to be based on previous earnings, rather than purely on service, please seek advice from the legal team.

Redundancy may affect a worker's entitlement to parental leave payments made through the paid parental leave scheme. If a member is made redundant once she or he has started their parental leave and is receiving parental leave payments, this will not effect their entitlement to payments. If they are eligible for parental leave, have applied for paid parental leave *and have already started* their statutory parental leave, they will still receive the full 14 weeks parental leave payment. This entitlement is the same, even if they were aware of the redundancy at the time of seeking and starting leave, as long as the redundancy was implemented after they started the leave. If they are made redundant before starting statutory parental leave, then they may not be eligible to receive parental leave payments, as they may no longer meet the eligibility criteria. Members can contact IRD for advice about this.

Redundancy tax credits

Depending on their personal situation a "redundancy tax credit" may be available to workers receiving redundancy payments. Delegates and organisers should not give members advice on tax. Members can find information about this on the IRD website at: <http://www.ird.govt.nz/yoursituation-ind/retirement/redundancy-tax-credit/>

The public service redeployment process

We raised concerns with the Minister of State Services about the number of people losing their jobs and sought agreement to measures to minimise the number of redundancies. The Government has now signed off its “Expectations for Redeployment in the State Services”. This outlines a process that agencies can use to help those made redundant find other suitable work within the core public service plus 5 crown entities. The Government expects that agencies will participate in this process.

This is not a Rolls Royce of a process. It is not the same as the “redeployment pool” that existed during the 1990’s public service cuts. It does encourage employers to assist those made redundant to find other work in the public sector and it does provide them with some tools to help with this. We did want more incentives built in to encourage employers to participate however we still hope that this process will help some members stay in employment.

This process is now up and running and we should now be encouraging public service employers who are cutting jobs to use it to help surplus staff find other work. Some collective agreements contain a reference to redeployment within their management of change sections. It may be helpful to draw attention to that reference where it exists.

Please let assistant secretaries know how employers are responding to this concept.

How the process works

SSC have developed guidelines for agencies. A copy is attached to this toolkit as appendix 14. These provide more detail about the process.

Once an agency has gone through the reconfirmation/reassignment process internally those who still don’t have a job will be asked whether they would like to participate in the process. This will involve them having their contact and jobseeker-related details entered into a spreadsheet coordinated by SSC. Agencies can look at the spreadsheet for potential candidates for vacancies and let people know if there is a job they can apply for. The flow chart on the attached Guidelines document outlines the process in more detail.

Once the jobs.govt.nz website upgrade is complete later in July, it will have a new candidate database function that will replace the need for the spreadsheet.

People will be able to opt in or out of the process. Participation in the process does not affect their employment agreement entitlements unless this is negotiated and agreed between the participating worker and their employer.

Opportunity – Learning State skills recognition strategy

Learning State (the State sector industry training organisation) are able to provide a skills recognition service for those affected by change. When we are talking to employers about the kind of support they are providing to workers who affected by change, we may want to draw this service to the employer’s attention. Further information is included in appendix 12, page 35.



SUPPORT MATERIALS

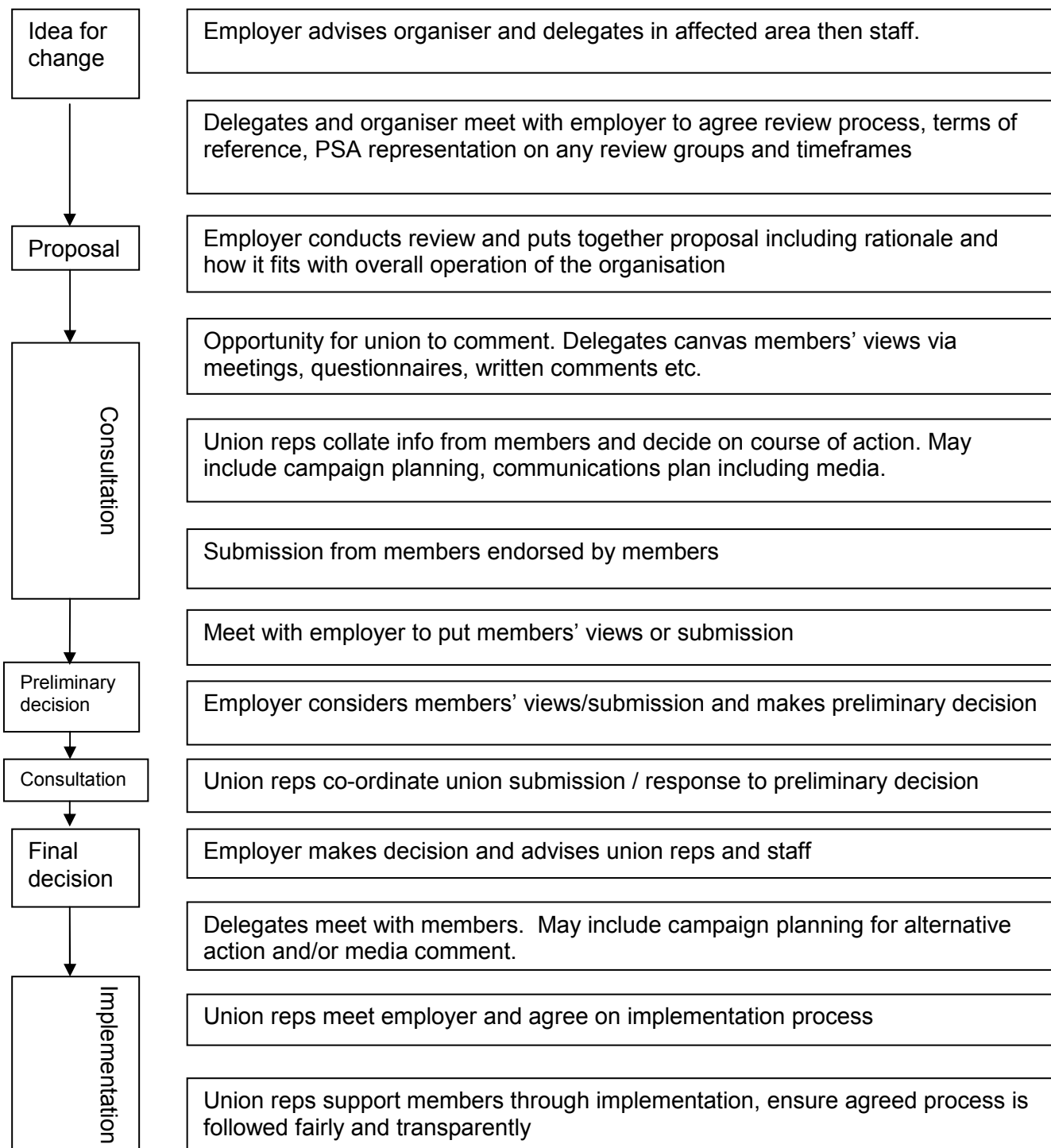
Organising checklist

When you hear of a decision to review or restructure:

- Check the collective agreement - when does it specify we are to be involved and how? Do we need to negotiate with the employer for additional involvement or delegate facility time? Is there sufficient time for consultation?
- Talk to delegates, members and the employer and gather as much information as you can about what is proposed and where the process is at. Organisational charts are useful.
- If the process is far advanced before we are made aware of it, or it has gone badly wrong, consider strategies for how we can have input - do we need to re-negotiate consultation and implementation timeframes? Has the employer complied with its legal obligations around consultation?
- Get the appropriate delegates together (or recruit some) and involve them in planning our activity. Identify the opportunities to influence and decide where to best put our energy. A workplace mapping exercise will be useful and give delegates an opportunity to talk to members.
- Communicate our plan to members – you may want to include the role of the union info sheet. Keeping members informed and involved is vital. How can members participate and be kept fully informed throughout the process?
- Involve members in putting together submissions on the decision and whether and what changes. Primary focus on keeping people in jobs – severance is a last option.
- Negotiate PSA delegate representation on any review groups – train any delegates involved (see delegate training module). How can reps balance participating and maintaining independence? Note: it is not recommended to have PSA representation on any group that decides who gets what job.
- Negotiate with the employer to ensure any change management process or protocol is consistent with the collective agreement, fair and transparent and that support is available to affected members. Staff affected to be “preferential applicants” and able to state their preference.
- Seek agreement to a review after a suitable period of the impact and effectiveness of the change on jobs and services.
- Monitor the implementation of the change and raise any issues with the employer.
- Review and, if necessary, revise your delegate structures to ensure they still work in the new structure.
- After the change is implemented, debrief with your delegate team and, if appropriate, with the employer. You may want to use the de-brief sheet provided.

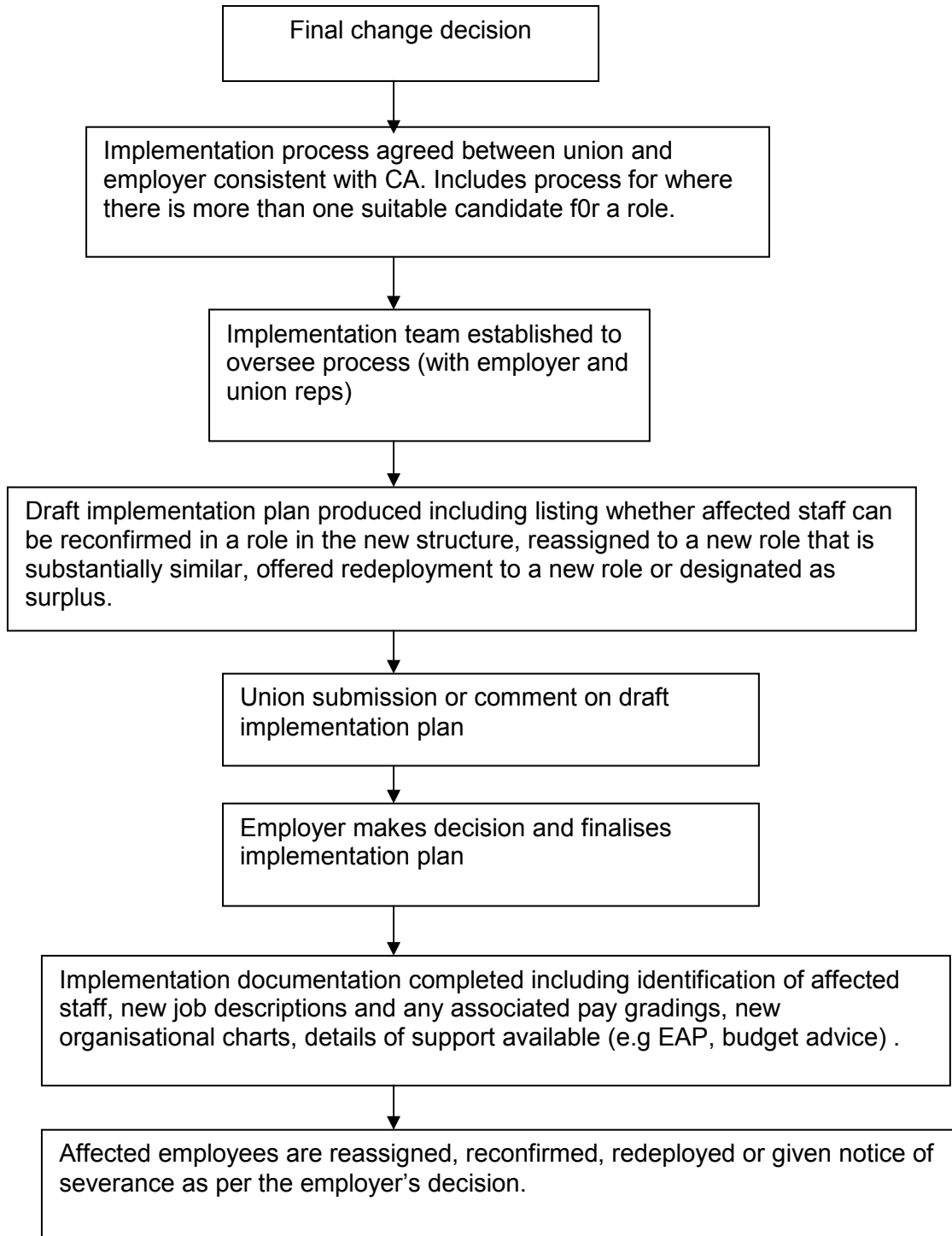
Flowchart of union activity in the consultation phase of a standard change process

Note: The detail of any change process will depend on the scale of the change, the collective agreement provisions and on any other agreements with the employer which may be formal or informal.



Flowchart of implementation phase of standard change process

Note: The detail of any change process will depend on the scale of the change, collective agreement provisions and on any other agreements with the employer which may be formal or informal.



Interim guidance from the PSA legal team on change management

Note: This paper focuses on change in public service departments. It is being revised and broadened to cover all sectors. Before relying on this guidance, especially in relation to mergers or contracting out in DHBs or local government, please check on the PSA intranet for the latest version of this kit.

1. Introduction

This brief paper is aimed at highlighting some of the things to look out for when approaching a redundancy situation and to determine how the PSA Legal Team can best assist organisers dealing with change management.

2. What is the starting point when dealing with change management?

The starting point should be the relevant collective agreement. It is important to realise that the whole CA is relevant and needs to be read and considered. For example, the principles and relationship section of a CA can be useful aids to the interpretation of the change management provisions.

3. How does the Employment Relations Act 2000 (ERA) assist in dealing with change management?

While there is nothing specific in the ERA about change management, the good faith principles outlined in the ERA (and in the common law) continue to apply to change management situations.

For example, the mutual obligations of trust and fair dealing have been said to apply to a redundancy situation. In the *Aoraki* case, the court said:

‘A just employer, subject to the mutual obligations of trust, confidence and fair dealing, will implement the redundancy in a fair and sensitive way.’¹

Section [4\(1A\)\(c\)](#) of the ERA requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employees’ employment, to provide potentially affected employees with access to relevant information, and an opportunity to comment on that information. Accordingly, where an employer is proposing to restructure or sell its business, it will be obliged to provide information to employees who are likely to be made redundant as a result. This operates alongside the provisions of the relevant employment agreement.

The provisions of s 4(1A) of the ERA have been applied in the context of information held by an employer that was relevant to a decision to medically retire an employee: *Green v Commissioner of Police* 17/7/06, A Dumbleton (member), AA241/06. Here, the employer’s failure to provide relevant

¹ *Aoraki* and *NZ Fasteners Stainless Ltd v Thwaites* [2000] 1 ERNZ 739; [2000] 2 NZLR 565

information was held in breach of s 4(1A) of ERA. The Authority also considered that it was implicit in that provision that, at the same time the information is supplied, the employee will be told that the employer is proposing to make a decision that may have an adverse effect on the employee's continuation of employment.

Section 4(1B) of the ERA confirms that an employer does not have to provide access to this information if there is good reason to maintain its confidentiality. Section 4(1C) of the ERA gives a non-exhaustive list of what will constitute a good reason. This includes where the employer is required to comply with statutory obligations, for example as the Securities Markets Act 1988, where the employer is obliged to protect the privacy of individuals, or where it wishes to protect its commercial position from being unreasonably prejudiced.

4. How does the State Sector Act 1988 assist?

Section 56 of the State Sector Act requires an employer in the state sector to comply with the principle of being a good employer. This includes operating a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment. There have been a number of cases in which the good employer principle has been raised. This could be a factor that is worth pointing out and considering in some cases although legal enforcement of it in change management situations where there are CA provisions covering change management could be problematic.

5. How should the CA be interpreted?

We have previously provided information outlining the courts approach to interpreting clauses in contracts. The PSA legal team has these resources on interpreting contracts that can be provided.

Clearly the aim is to find the most worker-friendly interpretation of the CA and apply it to the relevant facts. This is where the principles section of the CA may be of some use. Another option is to identify ambiguous words in the clauses and seek dictionary or case law assistance in interpreting them.

Where you consider there are gaps in the CA, the common law can be applied to the extent that it is not inconsistent with the CA. However, it is important to remember that the starting point is the clauses in the relevant agreements.

6. What are some matters to be aware of when dealing with change management?

a. Documents which employers produce/seek agreement on to supplement the CA provisions

Some of our change management clauses are quite brief and provide for the PSA and the employer to agree on a process to apply in the event of a re-structuring. We should not agree to any documents which undermine the CA or provide worse conditions than the common law on redundancy. We also

need to be cautious in entering into agreements with the employer around change management situations that undermine the interests of some of our members or without the authority of members.

The courts have labelled the concept of agreements to negotiate or agreements on relationships within contracts as 'relational contracts.' They provide a difficulty in interpretation but the approach the courts adopt is to read them in the context of the whole document and the circumstances known to the parties at the time.

b. Agreeing to employer's proposals where we do not have authority of members to agree or agreement is unwise

We need to be very cautious around agreeing to wholesale processes or proposals. This may give rise to questions about whether we were entitled to enter into such agreements and could give rise to claims of the union breaching good faith due to the employment relationship we have with our members. It is for the same reasons that we need to be cautious in the use of joint communications with employers around change management unless they are based on considered, agreed understanding of CA provisions.

c. Agreements to negotiate/agree are not enforceable in the courts

Parties to an employment agreement cannot rely on contractual provisions for further negotiation in the sense of going to Court to have a solution imposed if one was not agreed. All that the courts can adjudicate upon is the meaning of the contract between the parties, including the filling in of any obvious gaps that were necessary to fill to give the contract effect. Neither the Employment Relations Authority or the Employment Court can fix terms and conditions of employment, so cannot impose their view in the absence of agreement between the parties if this is what the clause provides for.

d. Consider the purpose of the clauses in the contract from a worker perspective

When advocating for our interpretation of the clauses in the CA, consider what the most worker friendly interpretation is. For example, if a CA provides that there should be agreement/negotiation sought on a case-by-case basis, use this to show that each worker's individual circumstances must be taken into account in developing the best possible outcome for each person. Likewise, if a clause requires that employees are to be actively engaged in the process, use this to advocate for widespread involvement of members in the process.

e. Understand the limitations of the requirement to consult

While there is in most instances a duty of consultation (or at least a duty to provide information), this is limited in its impact. In *Cammish v Parliamentary Service*, Godard outlined the requirements of effective consultation as :

Consultation is to be a reality, not a charade. The party to be consulted must be told what is proposed and must be given sufficiently precise information to allow a reasonable opportunity to response. A reasonable time in which to do so must be permitted. The person doing the consulting must keep an open mind and listen to suggestions, consider them properly and then (and only then) decide which is to be done. However, consultation is less than negotiation and the assent of the persons consulted is not necessary to the action taken following proper consultation.

While consultation is important, the failure to consult the union will not be fatal to a worker's rights under the agreement if the two end up in conflict. The courts have been clear that consultation is a provision intended to benefit the worker.

f. Go through a thorough process of comparing jobs

If an employer is seeking to utilise the ability to reassign a worker from one job to another and the worker disagrees with the interpretation of suitable position ensure that a thorough process of comparing jobs is undertaken. It is important to look beyond the comparison of terms and conditions of employment and consider the nature of the jobs. For example, look at staffing responsibility, key tasks, position in hierarchy, employment prospects, etc. It may be helpful to have some assistance from colleagues or others who understand the position well. This is a time consuming task but critical.

For further guidance see 7.

g. Keep good notes and files

It is critical that organisers take proper file notes of discussions with employers. In the Andersen case, the notes of John Ryall were 'pivotal' to the acceptance of the union's evidence about the content and proposed order of events in the review. File notes should be dated and written as soon after (or better still, during) the event as possible. Likewise, it is critical that we keep comprehensive files of personal cases, this includes all correspondence, emails, job descriptions, etc.

h. Remember the rules of discovery and ensure that members are aware of them

It is critical that members are aware of the rules of discovery as personal emails and communications can be discovered if the matter ends up in litigation. For example if a worker wants redundancy and the employer wants to reassign that worker, an email from the worker to their friends saying they are refusing to participate in the discussions with an employer because they are holding out for redundancy could be very damaging.

i. Be equipped to respond to 'right to manage' arguments

The right of an employer to manage their organisation features strongly in the case law around change management. While it is recognised, it does not over-ride the terms of the agreement or the relevant case law.

7. What is a suitable Reassignment?

If a restructure occurs in an organisation, it may be necessary to determine whether or not a position has become redundant. If the change between a former position and a new position is substantial, then it is likely that the former position is redundant. However, if the new position is substantially similar to the former position, then it is presumed that there is no redundancy. This is significant because if a worker refuses the offer of suitable alternative employment then that worker loses entitlement to redundancy compensation.

It is important to carefully check the “management of change” provisions of the collective employment agreement, as these may contain the means by which “substantial similarity” or “suitability” of positions will be assessed. In the absence of any contractual provision, we can look to case law to give some indication of the extent to which an employer can reposition staff and insist on alternative employment.

When assessing similarity, a number of factors, including but not limited to pay, location, work, and the personal circumstances of the employee need to be taken into account.

The Court of Appeal has set out an objective test which may be applied:

“Would a reasonable person, taking into account the nature, terms, and conditions of each position and the characteristics of the respondent, consider that there was sufficient difference to break the essential continuity of the employment?”

(Auckland Regional Council v Sanson [1999] 2 ERNZ 597 and McKenna v AFFCO NZ Ltd [2001] 1 ERNZ 75)

Some examples of how the courts have assessed similarity/suitability:

Relocation of the work site

In *National Distribution Union v Gordon & Gotch (NZ) Ltd* 10/7/08, J Wilson (member) AA242/08, the employer shifted its premises from Mt Roskill in Auckland to Wiri in South Auckland, a distance of 15km by road. The Authority concluded that the two affected employees were not made redundant by the shift, despite of difficulties with connecting buses and motorway driving.

When an employer’s premises were relocated from Miramar to Upper Hutt, which meant that the applicant had to travel 86kms return per day, compared to only 6kms prior to the relocation, the Authority held that this constituted redundancy. However, the decision turned on the

employee's personal circumstances and was described by the Authority as "extremely finely balanced" (*Johnson v Salamander Enterprises Ltd* 29/11/07, G Wood (member) WA156/07).

Job description

For a case where it was observed that a perceived change to a job description of 20 per cent could amount to a significant enough change to render it unreasonable to expect an employee to take up the new position, see *Westpac Banking Corporation v Stephen* [2000] 1 ERNZ 566. In this case, the employee's position as an analyst was disestablished and he was invited to apply for a position as a "relationship manager". The Employment Court found that the alternative position involved a "significant change in duties" entitling the employee to redundancy compensation.

Demotion

In *Auckland Regional Council v Sanson*, the employer restructured its business to introduce a new management hierarchy. An employee declined to apply for a position in the new structure, instead relying on assurances that his position would remain "essentially the same". When the new structure was announced, he found that a significant number of his management responsibilities had been transferred to a different person in the new hierarchy, and that he would be required to work in the same position as a number of people who had formerly reported to him. The Court of Appeal held that the new position did not represent a "suitable transfer", and that he was entitled to redundancy compensation.

In summary

The cases indicate that the employer, as part of its right to manage, has an ability to change certain aspects of an employee's job. However, this right must be balanced against the employee's right to claim redundancy compensation if the employer requires them to accept a significantly different position.

Some key factors to consider when assessing similarity include whether or not the new position will offer the same salary, whether the geographical location remains the same, whether or not the duties and responsibilities remain broadly the same, and whether the restructure means that the employee will be "demoted" within the organisation's management structure.

What can you do?

Try to negotiate the best reassignment clause you can. Management prerogative cannot be invoked to override the terms of the agreement. For example, if you want to make sure that employees get reassigned to the same grade, put it in the agreement.

If a member has been reassigned to a position they do not want you could try negotiating a review date in say three months time, and have the severance option held open until then. You could get an assurance from the employer that they will notify the employee of any other vacancies that come up so that they can apply for them.

8. Relocation

When an organisation is relocated to another area and the employee's job remains, the issue may be whether the employee can claim redundancy. Some employment contracts provide for staff mobility, but most do not. In the absence of such a provision, the Authority or Court will determine the matter on the basis of the "reasonableness" of requiring the employee to relocate to the new site. Such factors as the distance between the old and new site, the employee's travel arrangements, suitable public transport, and family arrangements will be considered. When there is relocation attached to restructuring, then a specific relocation agreement may be negotiated or included in a general redundancy agreement.

In *NZ Printing etc IUOW v Sigma Print Ltd* (1979) ERNZ Sel Cas 1; [1979] ACJ 297, Chief Judge Horn held that the employer's decision to move the company from Petone to Featherston (some 60 km away), with the resulting transport difficulties for employees, constituted redundancy. The same result was arrived at in a case where the employer's premises were relocated from Miramar to Upper Hutt, which meant that the applicant employee had to commute 86 kms return per day, compared with only 6 kms return prior to the relocation, but the decision turned on the applicant's personal circumstances and was described by the Authority as "extremely finely balanced": *Johnson v Salamander Enterprises Ltd* 29/11/07, G Wood (member), WA156/07. However, in *NZ Engineers Union v Dunlop NZ Ltd* [1986] ACJ 848, the Court held that a transfer from Sockburn to Wigram meant that the work site was no greater distance from the employees' homes and, therefore, no right to redundancy arose.

In *NZ Post Office Union v NZ Post Ltd* [1990] 3 NZILR 913, a depot was closed and the employee was offered a similar position in another depot. The employee refused to do the new duties. The Court held that it was a similar position and the employer had a right to relocate the employee. When the employee refused to carry out the duties lawfully assigned to her, the employer was justified in dismissing her.

In *Westpac Banking Corp v Money* [2004] 1 ERNZ 576 (CA), the employee, whose role in Wanganui was made redundant, argued that he should have been appointed to a role in Palmerston North as the commuting distance from Palmerston North to Wanganui was reasonable (and therefore he should have been appointed to a substantially similar role in Palmerston North as per the wording of his employment agreement). The employer was seeking to establish that this was not reasonable, and that the position in a remote location some 74 km away was therefore not a substantially similar position. The Court of Appeal dismissed the appeal by Westpac and held that there was no error of law by the Employment Court in determining that the distance of 74 km was a "reasonable commuting distance". But see the reference to 60 km in *Sigma Print* (above).

In *General Distributors Ltd v National Distribution Union* (2007) 8 NZELC 99,043, Judge Travis held, following *McCain Foods (NZ) Ltd v Service & Food Workers Union Inc* [2004] 2 ERNZ 252, that a redundancy situation does not arise in circumstances in which the employer closes one of its supermarkets and transfers the employees' roles from that supermarket to others operated by it. Unlike the situation in *McCain*, the clause in the relevant collective agreement defined redundancy as "labour surplus to requirements ... at any worksite or geographic location". The Court rejected the employer's submission that the common law tests for redundancy recognised by the Court of Appeal in *Auckland Regional Council v Sanson* [1999] 2 ERNZ 597 (CA) and applied by the Employment Court in *Swales v AFFCO NZ Ltd* 18/12/00, Colgan J, AC101/00 should be applied in this case. The Court noted that the interpretation sought by the plaintiff had the effect of either reading the words of the clause down or giving them virtually no meaning whatsoever. Judge Travis went on to note:

"[46] If such clauses had not been present then the present situation would have required the application of the test approved by the Court of Appeal in *Sanson* to determine, as in *Swales*, whether or not there were sufficient differences in the work performed at Woolworths Manurewa and the circumstances of those employees compared to the work to be performed at the other stores operated by the plaintiff and how that impacted on affected employees. The distance between Manurewa and those stores would be one of the relevant considerations."

In *National Distribution Union v Gordon & Gotch (NZ) Ltd* 10/7/08, J Wilson (member), AA242/08, the employer shifted its premises from Mt Roskill in Auckland to Wiri in South Auckland, a distance of 15 km by road. The Authority cited *Sigma Print* (above) and concluded that two employees were not made redundant by the shift, in spite of difficulties with connecting buses and motorway driving.

9. How can the legal team best assist organisers in preparing for change management processes?

- Resources on the common law of redundancy including analysis of the cases
- Further information on how to challenge change management process, PGs, disputes etc.
- Development and circulation of model clauses regarding change management.

Example collective agreement clauses

Note: These examples have been taken from PSA collective agreements. They are not model clauses.

Union consultation and participation

Principles

The best outcomes will be achieved when change is based on the following principles:

- Wherever possible, change maximises opportunities
- The process is flexible, timely, open, equitable and transparent
- The process is consistent with our organisational values
- The process should cause as little anxiety as possible
- Stakeholders, including staff and the PSA are engaged throughout the change process from the development through to post implementation
- Employees are given support through the process and, if a surplus staffing situation exists, then staff being released are given reasonable support in transitioning out of (the organisation) and finding new work
- All parties will act in good faith

Engagement/Consultation on Proposed Changes

Example 1

Where a decision to make a change or to undertake a review is beyond the control of the Chief Executive the PSA will be advised as soon as possible after the decision is announced.

If (the organisation) undertakes a review which may result in significant change affecting employees, (the organisation) will provide the PSA and members with an opportunity to be involved and consulted during such reviews and will take any views into account before decisions are finalised.

Change which does not result in job losses or significant change affecting employees will be discussed with the PSA on an ongoing basis through our partnership/constructive engagement arrangements.

Example 2

Staffing reviews

(1) Initiation of reviews

The (employer) may initiate a review if a significant change is likely to the organisational structure, staffing and/or work practices affecting employees, positions, or roles covered by this Agreement. A union may suggest to the (employer) that a review take place.

The (employer) will advise the union(s) as soon as possible after a decision is made to undertake a review. The (employer) will write to affected staff after consulting with the union(s). Where the decision is beyond the control of the (employer) this notification will be made as soon as possible after the decision is announced.

(2) Consultation on reviews

The (employer) will provide the union(s) with an opportunity to be involved in the review. The aim will be for the parties to reach agreement if possible. The (employer) will take the views of the union(s) into account before making final decisions. The union(s) must advise the (employer) at this time if they wish to be involved throughout the process, and in particular, at any stage where the selection of staff may take place.

The change management process used to implement any change

(3) Positions or roles not affected by the review

After consultation with the appropriate union(s) the (employer) may designate specific positions or roles within the section of the Office being reviewed as not affected by the review.

Employees holding such positions or roles will be so advised at that point in the process.

(4) Current employees affected by the review

Where changes affecting existing job holders arise from a staffing review, following consultation and agreement with the relevant union(s), the (employer) may:

- reconfirm affected employees in their former or a similar role, or
- reassign them to an alternative position or role for which they are suitable.

This may include placement in a suitable position or role in an existing agency or in a new structure or agency established as part of the restructuring. (Refer clause 13.2)

The process for reconfirmation and reassignment is set out in Schedule 13(1).

(5) Increase in staffing numbers and/or positions or roles

Any new roles created in the course of the review will go through the salary range review process in clause 5.1 before being filled.

Any additional jobs in current positions or roles will be filled in accordance with the Office's appointment and role change policies.

(6) Staff Surplus Situation

A surplus staffing situation exists when, as a result of the review referred to in clause 13.1(1) and at the conclusion of the consultative process:

- the (employer) requires a reduction in the number of permanent employees; or
- permanent employees can no longer be employed in their current position, at their current grade (ie. the terms of appointment to their present position are altered).

The options and steps to be followed in a surplus staffing situation are set out in schedule 13(2).

Reconfirmation and reassignment

In some circumstances it may be possible to run the reconfirmation and reassignment phases concurrently.

Where reconfirmation or reassignment takes place the following provisions will apply:

(1) Reconfirmation

The (employer) will advise all affected staff that reconfirmation is to be considered. Job descriptions (current and proposed) and the criteria for confirmation will be available to those employees.

The parties agree that as many employees as possible will be reconfirmed in terms of the following principles:

- (a) Where a position or role is to be transferred into a new structure or new agency, or there is a position or role in the Office or another existing agency, and:
- there is one employee who is a clear candidate for that position or role and
 - the criteria below are met,

then that employee is to be confirmed in it.

- (b) The criteria for reconfirmation are:
 - (i) the new position or role description is the same (or very nearly the same) as that which employee currently has; and
 - (ii) the salary for the new position or role is the same; and
 - (iii) the new position or role has terms and conditions of employment (including career prospects) agreed with the relevant union or unions which are no less favourable.
- (c) The relevant union or unions may propose that an employee be reconfirmed where that employee believes his or her current job is sufficiently similar to a new job.
- (d) Where there is more than one clear candidate, the (employer) will consult to reach agreement with the relevant union or unions about the process to be followed, and either:
 - (i) the position or role will be notified only to the affected employees, or
 - (ii) agreement will be reached amongst the candidates on which candidate(s) will be reconfirmed if there is a clear preference amongst potential candidates to take other options under this agreement.

The (employer) will consider the recommendations of the appointment panel before making a decision on employees to be offered reconfirmation in terms of clause 13.1(5).

- (e) Apart from termination of employment, leave without pay will be the only option from those set out in section 2(2) (Surplus staffing options) below, for those employees who meet the criteria but decline to be reconfirmed.

(2) Reassignment

- (a) If there are positions still vacant or roles still available following reconfirmation, or employees do not meet the criteria for reconfirmation, reassignment will be considered.
- (b) The (employer) will advise all affected employees who are to be considered for reassignment. Job descriptions (current and proposed) will be available to them, and they will have the opportunity to comment through their union, or directly to management if not a union member.
- (c) Management and the relevant union(s) will meet to reach agreement on the process for appointment to available positions or placement in available roles. This will generally follow the standard Office procedures .

Reassignments may be made on the basis that a person will undertake specified training and can be expected to be able to undertake the full range of duties within a reasonable time.

The (employer) will consider the recommendations of the appointment panel before making a decision on employees to be offered reassignment in terms of clause 13.1(5).

- (d) Apart from termination of employment, leave without pay will be the only option from those set out in section 2(2) (Surplus staffing options) below, for those employees who meet the criteria but decline to be reassigned.

(3) Employees accepting reassignment to a role at a lower salary

- (a) Where employees accept reassignment to a role at a lower salary an equalisation allowance will be paid to preserve the salary of the employee at the rate paid in the old job at the time of reassignment.

- (b) The salary can be preserved in the following ways:
 - (i) a lump sum to make up for the loss of basic pay for the next two years (this is not abated by any subsequent salary increases); or
 - (ii) an ongoing allowance paid, equivalent to the difference between the present salary and the new salary. (This is abated by any subsequent salary increases.)
 - (c) Employees to be reassigned under this process will be consulted to determine which option they will elect.

2. Surplus Staffing

(1) Notification of surplus

- (a) All affected staff not placed through reconfirmation or reassignment are surplus. The (employer) will formally advise this to the relevant union or unions and the staff concerned.
- (b) The (employer) will give the following information to the relevant union or unions at the time of notification:
 - the total number of surplus employees
 - the date by which the surplus needs to be discharged
 - the positions, roles, grading, and names of the surplus employees
 - additional relevant information on request.

(2) Discussion of options

Management, the relevant union or unions and each member of staff concerned individually will discuss which of the following options, or any other options, will be offered to the staff member. The details of how the options may be used, the types and levels of financial assistance etc, will be negotiated and agreed on a case by case basis.

- (a) **Attrition**
Attrition occurs when staff are not replaced as they leave their jobs. There may also be a partial or complete freeze on recruiting new employees or on promotions.
- (b) **Leave without pay**
Surplus employees may be placed on special leave without pay for a defined period without automatic right of re-engagement (this excludes parental or sick leave). This may include an opportunity for training.
- (c) **Retraining**
If an employee whose position or role has been disestablished wishes to retrain for other employment, the (employer) may agree to pay tuition fees, costs of books, travel to the course location, and salary for a period, up to the value of the severance payment and leave entitlements due to the employee on the last day of duty. In some cases additional finance may be made available to take account of particular training needs.
- (d) **Job search**
Time off may be made available for job seeking.
- (e) **Severance**
If the options agreed between the (employer) and the relevant union or unions are insufficient to discharge the surplus by the required date, severance will be made available.

Severance may also be considered at any stage on a case by case basis, dependent on the circumstances, and by agreement of the parties.

Following agreement that severance is required and where it is agreed that an individual will cease service, the employee will receive one month's notice and will be offered severance according to the severance formula below.

Employee protection / technical redundancy

Employee Protection Provision

Application

This clause applies to any sale, transfer or contracting out of all or part of the activities or operations of the (employer).

Process

Where the (employer) is contemplating such sale, transfer or contracting out (together a "Transaction") and the Transaction may affect positions of the employees covered by this agreement, the following process will apply:

(A) as soon as is reasonably practicable (taking into account the commercial and confidentiality requirements of any such Transaction) the (employer) will consult with the PSA and the employees potentially affected.

(B) where, following such consultation it has been determined to proceed with the Transaction, the Ministry will endeavour in its negotiations with the potential new employer, to protect employee interests by:

(i) exploring with the potential new employer whether it is in a position to offer employment to the potentially affected employees covered by this agreement on terms and conditions of employment that avoid the need to pay redundancy compensation if the transaction proceeds; and

(ii) where the proposed transaction is not able to be concluded on the basis in paragraph (B)(i) above, or on a basis whereby an employee is prepared to accept a role with the new employer, the (employer) will endeavour to find a suitable alternative position for its staff prior to resorting to redundancy.

Matters to be negotiated

The matters relating to the terms of employment that the (employer) will negotiate with the new employer will be those set out in this written contract of employment and for the avoidance of doubt, will not include any matters contained in (employer) policies or any other discretionary benefits of employment.

Entitlements of Non-Transferring Employees

Where, following the negotiations with the new employer, the Transaction is to take place, and an individual employee covered by this agreement is either not offered employment with the new employer or has declined an offer of employment, the following process will apply:

- (i) Where no offer of employment is made by the new employer, the (employer) will explore redeployment and other options to avoid redundancy for the employee and will endeavour to identify a similar role for the employee with the (employer) on no generally less favourable terms of employment than those contained in this agreement. If such a role is identified for an employee and they are offered such a role, where the employee declines it, they will be made redundant without compensation; and
- (ii) Where an offer of employment is made by the new employer on terms that avoid the need to pay redundancy compensation under clause (x) of this agreement but the employee declines such an offer, they will be made redundant and will not be entitled to any redundancy compensation; and
- (iii) Where the employee is made an offer of employment by the new employer on terms and conditions that do not satisfy clause (x) the employee will be entitled to decline the offer and receive redundancy compensation and any other entitlements in accordance with the terms of this agreement. However, if the employee accepts such an offer, they will not be entitled to redundancy compensation.

NOTE: Nothing in the above clause applies where the employee's employment is transferred within the Public Sector pursuant to the terms of the State Sector Act 1988.

Brief guidance on value for money and expenditure reviews

As part of their preparation for this year's Budget, departments and crown entities (including DHBs) have been required by the Minister of finance to do "line-by-line" reviews of their accounts to weed out any spending that is not "value for money" and/or doesn't fit with the Government's priorities for Budget '09. These priorities are:

- Meeting election campaign commitments
- Working with chief executives to identify an initial round of savings; and
- Reversing unfunded commitments of the previous government.

Departments have been told that there will be no more money for them this year and that they need to operate within baselines.

Some of the value-for-money reviews have resulted in decisions to cut programmes and/or restructure.

The new Government has also said that there will be "expenditure reviews" which will be more complex exercises targeting a limited number of organisations. These will follow the value-for-money exercises.

In January the Minister of Health announced a Ministerial group on improving the quality and performance of the public health system. The group has been tasked with "reviewing expenditure to improve spending quality and services to patients."

There is a panel of senior executives overseeing the reviews and we have requested that we have representation on that panel. We have yet to have this representation confirmed. The government has agreed that Ministers will advise the PSA about any areas to be subject to an expenditure review and the reasons why. They have also said that Minister will engage with the PSA on the outcomes of the reviews.

Impact on organising

It is suggested that organisers proactively approach employers to request information about any reviews and seek PSA engagement on areas that are important to members, including any change management programme that results.

If you'd like to read more about what departments and crown entities are required to do for this year's Budget you can download copies of the relevant Treasury documents here:

<http://www.treasury.govt.nz/publications/guidance/circulars>

Information sheet - the role of the union in reviews and change management processes

When an organisation is considering the need for change, our focus is on:

- Job security:
 - Minimising job losses and maximising opportunities for redeployment, development and training.
- Worker voice:
 - Ensuring PSA members can have a say in the decisions about whether and what change is needed;
 - Ensuring PSA members can have a say in determining any formal process for implementing any change.
- Fairness and transparency:
 - Ensuring change processes are procedurally fair and transparent.
 - Ensuring decision making processes are transparent.
- Ensuring any change promotes sustainable services, high performing productive workplaces and decent jobs:
 - Mobilising members' knowledge to improve the efficiency and quality of services and jobs.
 - Once the change has been implemented, monitoring the impact on workloads and services.
- Maintaining public ownership, control and accountability of State services.

PSA members

- Contribute their ideas and views about the review/change through attending members meetings, discussions with other PSA members and written submissions.
- Support fellow members
- Keep in touch with the union - share information about the review/change with fellow members and PSA delegates and organisers

PSA workplace delegates

- Encourage member involvement.
- Assist members in getting together submissions/responses to the review/change.
- Represent PSA members' views and interests on review groups and to the employer.
- Keep an eye on the fairness and transparency of processes.
- Keep the national/enterprise delegates' committee and the PSA organiser in the loop.
- Distribute PSA communications where appropriate.
- Arrange and facilitate PSA members' meetings when appropriate.

PSA national/enterprise delegates committees

- Work with the PSA organiser to plan PSA activity and response to the review/change.
- Work with the PSA organiser to bring together PSA members' views for submissions/responses to proposals.
- Represent PSA members' views and interests on review groups and to the employer.
- Provide leadership and guidance to workplace delegates and members.
- Provide members and delegates with regular updates on PSA activity.

The PSA organiser

- Works with delegates to plan PSA activity and response to the review/change.
- Works with delegates to bring together PSA members' views for submissions/responses to proposals.
- Provides advice and guidance about the change process.
- Represents and advocates for PSA members views and interests with the employer.
- Ensures compliance with the collective agreement and legislation.
- Works with national/enterprise delegates to keep members up to date with PSA activity.
- Accesses the communications and media, policy, political and legal resources of the PSA where necessary.

The employer

- Gives the union formal notice of the review. Note: this may be embargoed until staff have been notified.
- Formally notifies affected staff of any review or change proposal.
- Must formally consult with affected staff and their unions.
- Must comply with legal requirements, including the collective agreement.
- Is responsible for ensuring processes are procedurally fair and non-discriminatory
- Is responsible for decisions made about reviews and change processes.

All parties

- Must act in good faith towards each other

Communications plan template

Key Events - Create a timeline	What communication is required at each stage?	Who to, Who will send it? What format? Union News? Email? Who will write it?
Delegate meetings	Make sure that all delegates are up to speed with the process Ensure that all support the management of change plan developed by the delegate team. Also think about recruitment opportunities	
Members' meetings	Ensure that members are clear about the plan, and how it has been developed. Ensure members are clear about what and if we can influence – where decisions have been made and by whom? Ensure members are clear about the management of change process. Ensure that members are clear about the role of the union. Look for recruitment opportunities	
Any meetings with the employer	As an ongoing part of the process.	
Submissions and consultation process	How members have input and participate Publicising our submissions/views	

Post-change de-brief

1. Did we build union organisation? (membership density and participation; delegate numbers, capability and organisation)
2. Did we establish or build on engagement with the employer?
3. In relation to each of the following:
 - What went well?
 - What didn't go well?
 - What follow-up is needed? E.g. revising CA provisions at next bargaining, revise delegate structures, monitoring of workload effects of the change etc.
- a. Job security:
 - i. Minimising job losses and maximising opportunities for redeployment, development and training.
- b. Worker voice:
 - i. Ensuring PSA members can have a say in the decisions about whether and what change is needed;
 - ii. Ensuring PSA members can have a say in determining any formal process for implementing any change.
- c. Fairness and transparency:
 - i. Ensuring change processes are procedurally fair and transparent.
 - ii. Ensuring decision making processes are transparent.
- d. Ensuring any change promotes sustainable services, high performing productive workplaces and decent jobs:
 - i. Mobilising members' knowledge to improve the efficiency and quality of services and jobs.
- e. Once the change has been implemented, monitoring the impact on workloads and services.
- f. Maintaining public ownership, control and accountability of State services.

Tips for writing submissions on proposals

- Include your name, position, location and work unit/team.
- State clearly which part (chapter, section, sub-section and sub-heading) of the report/proposal you are submitting on.
- Break your submission down into each part of the report you are submitting on
- Use a new submission form for each part of the report you are submitting on
- Identify any problems that will occur with the new design – including flow-on effects and unintended consequences
- Describe clearly and succinctly what you want changed
- Explain clearly and succinctly the reason/s for this change
- Suggest new wording that reflects your intention
- Keep it brief and to the point
- Use constructive and objective language

Tips for submissions on management of change processes

Any management of change process must be consistent with the collective agreement and should cover:

- What the different decision making and implementation groups are
- Appropriate union consultation and representation
- Reasonable timeframes and notice periods
- Process for providing feedback
- Process for identification of affected positions
- Process for finalising new organisational charts and job descriptions and determining pay for new/changed roles
- Process for reassigning and redeploying affected workers to new/changed roles
- Process for advertising/publicising new positions
- Salary protection for those reassigned/redeployed
- How the next performance round will be managed – any impacts on pay?
- Which options will be available if reconfirmation and reassignment not offered
- Process for challenging decisions about reconfirmation/reassignment/redeployment
- Support for affected staff – counselling, details of how to contact Employee Assistance Programme, career advice contacts, CV development, paid time off for job search etc
- Arrangements for new managers meeting with their new staff prior to implementation date.

PSA submission form

Name(s):

Position(s):

Location:

Work Unit/team:

Proposal document reference:

What I/we want changed:

Reasons for change:

Suggested new wording:

Learning State Opportunity – skills recognition strategy

Find the point of the SSC flowchart for redeployment where it says in a shadowed box **Career planning and job search support.**

At this point Learning State (the public service training organisation) are able to provide for a fee a skills recognition assessment service that may result in some of our members being able to achieve a National Certificate within a six month period. Normally attaining these certificates takes two years. As Learning State is involved in **workplace** learning, this programme has been tailored to take account of the fact that members may only remain in employment for a short time. It is possible therefore that a member will sign on in the last three months of employment and undertake the assessments in the following three months after redundancy has occurred.

If a member has sufficient workplace experience then it is possible that their current level of competence can be recognised by them undertaking assessments in an accelerated fashion to attain a National Certificate.

N.B. This strategy does not include providing members with learning new skills – it is about recognising current ones.

The following National Certificates are currently included in this skills recognition strategy.

Front line management Level 3 and level 4
Client /Customer Services Level 3 and level 4
Business Administration and Computing L3 and level 4
Adult education level 4
Contact Centre operations Level 3
Field Adviser Level 5
Public Sector Induction programme Level 3.

What organisers need to do:

1. Raise this matter with the employer if the member involved is likely to be interested in being assessed for a National certificate.
2. Any fee associated with this service needs to be negotiated with the employer as part of a package for the member
3. Get the member or the employer to contact Learning State about their Skills Recognition Strategy
4. Member or employer asks Learning State to consider the member for an Assessment journey.

Example of an engagement protocol

This protocol sits alongside the collective agreement provisions.

PSA/MSD Students, Seniors & Integrity Services Constructive Engagement Framework for Managing Change From 1 October 2008

Level	What/why	Who	When
Strategic Level	To discuss top level issues and changes across SSIS	<ul style="list-style-type: none"> DCE HR Director General Manager PSA MSD National Organiser PSA Assistant National Organiser PSA SSIS National Delegate Convenor 	As appropriate, at least 3 x year.
Service Line Level	To input to and give feedback on draft proposals prior to communication to staff	<ul style="list-style-type: none"> GM HR Director PSA MSD Assistant National Organiser PSA National Delegate (as appropriate to service line) 	When appropriate
Business Unit/Service Line Level	<ul style="list-style-type: none"> Consult over draft proposal before communicating to staff Input into timelines Encourage submissions and be involved in collating Participate in PSA/MSD joint communications Input in to final proposal Use PSA delegates as the conduit for information both to and from affected members 	<ul style="list-style-type: none"> GM HR Director PSA Assistant National Organiser Local PSA Organiser Local PSA National Delegates 	When appropriate

PSA National Delegate Convenor = Lyn Harrison

PSA MSD National Organiser = Tim Innes/PSA MSH

Assistant National Organiser = Alan Beckwell

Signed: 
Lyn Harrison, PSA
Date: 13/11/08

Signed: 
Alan Beckwell, Assistant National Organiser, PSA
Date: 13/11/08

Guidelines for the Redeployment in the State Services Process

19 June 2009

- 1 Redeployment in this context refers to the process of matching surplus staff within the State Services to suitable positions in other agencies: it does not mean reassignment or reconfirmation, nor is it synonymous with other usages of the term 'redeployment' in other contexts

Guiding principles

- 2 The redeployment process is intended to be as simple as possible
- 3 SSC has oversight of the process, but does not own it
- 4 Each agency is responsible for its implementation and operation of the process
- 5 There is no formal preferential status for, or treatment of, individuals who enter into the redeployment process: appointment to roles is still based on merit
- 6 Individuals who enter into the redeployment process should be treated in a fair and consistent manner, and no stigma should be attached to their status
- 7 The redeployment process makes no formal provision for individuals to retain the terms and conditions from their most recent employing agency when employed in a new agency
- 8 Participation in the redeployment process does not cancel any of the provisions in an individual's collective or individual employment agreement—these remain in place unless negotiated otherwise between the agency and the individual
- 9 Access to relevant individual (candidate) information will be available to all participating agencies participating in the redeployment process

Process

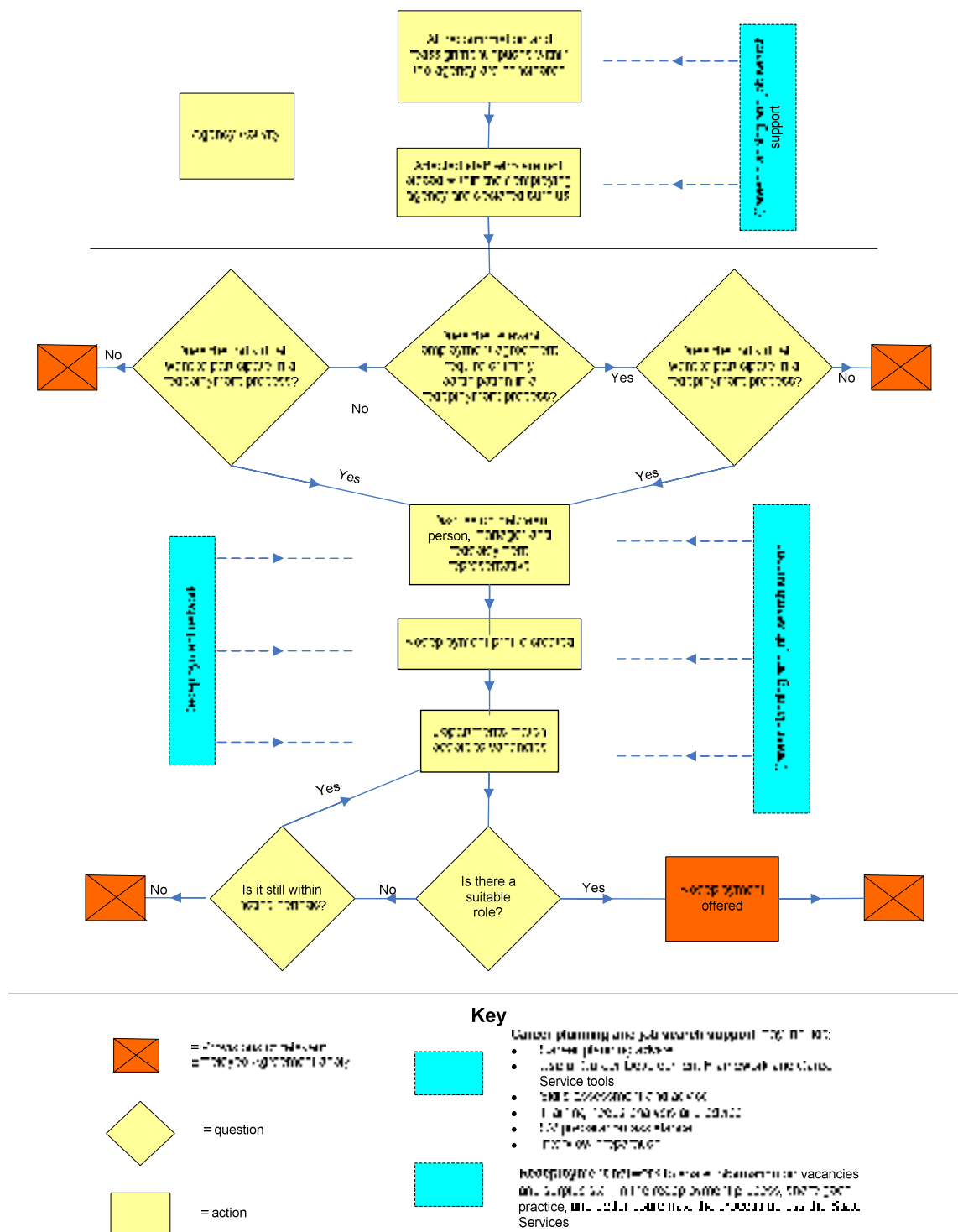
- 10 For hiring agencies, the redeployment process begins after the internal process including consideration of all internal reconfirmation or reassignment options for affected staff in the host agency, has been completed. Affected staff from the host agency may request to have their details entered on the redeployment information file whilst still exploring options in their host agency.
- 11 The process occurs simultaneously with other standard external recruitment activities, and should not delay the recruitment process overall
- 12 Hiring agencies can explicitly search for individuals who have entered into the redeployment process using the new candidate database on the jobs.govt.nz website and the redeployment information file, circulated amongst agencies in the Redeployment network.
- 13 Refer to the attached process map for an outline of the process

Roles, responsibilities, and supporting information

- 14 **Each agency participating in the redeployment process will:**
 - 14.1 consider all internal reconfirmation or reassignment options for affected staff within the department as well as discussing with those staff the merits of entering the redeployment process

- 14.2 manage the redeployment process within their agency to maximise the placement of surplus staff into suitable positions (as a redeploying and/or hiring agency, whether restructuring or not)
- 14.3 support surplus staff participating in the redeployment process by ensuring they are provided with advice on career planning and management, development, and job searching; rights, responsibilities, consequences of entering pool
- 14.4 participate in a redeployment network of agency representatives to share information on vacancies and surplus staff in the redeployment process, share good practice, and better coordinate the process across the State Services
- 14.5 provide information to the State Services Commission (SSC) as required on surplus staff participating in the redeployment process and on current vacancies that are potentially available for redeployment placements (using protocols to be agreed, such as the jobs.govt.nz website)
- 14.6 resolve any issues from collective and individual employment agreements prior to staff being considered for entry into the redeployment process
- 14.7 provide advice to individuals wishing to register on the govt.jobs website as candidates for the redeployment process. This includes but is not limited to providing keyword information to enhance a candidate's ability to be 'searched' by other agencies
- 15 **SSC will:**
 - 15.1 provide guidance to departments on implementing the redeployment process, including the relevant legislative frameworks that support the implementation of the process
 - 15.2 convene the redeployment network of agency representatives to share information on vacancies and surplus staff in the redeployment process, share good practice, and coordinate the process across the State services (in coordination with the PSA and participating agencies)
 - 15.3 coordinate the collection of data and information on surplus staff and vacancies for sharing with the redeployment network
 - 15.4 work with agencies to:
 - 15.4.1 develop protocols for the collection and sharing of information about surplus staff participating in the redeployment process
 - 15.4.2 promote the use of existing tools where possible for the redeployment process (for example, the government jobs website, www.jobs.govt.nz, the Career Development Framework, and Career Services tools)
- 16 **Surplus staff** affected by organisational change who choose to participate in the redeployment process **will:**
 - 16.1 actively seek employment themselves in parallel to participating in the redeployment process
 - 16.2 register as a candidate on the jobs.govt.nz website as part of the redeployment process
 - 16.3 advise the current employing agency of any offer of employment made as part of the redeployment process

State Services Redeployment Process



TUTOR NOTES

Management of change (no restructuring proposal yet)

1 – 2 hour workshop

Objectives:

To develop an action plan for a particular situation and through this for delegates to gain knowledge and confidence about the process of management of change;
for delegates to understand their role in the management of change process.

Session 1

5 min

You say/do

Welcome delegates to the session
Introductions of participants, if necessary.

Explain the length of the session,
the PSA Rules & Kinship (ground rules).

Then go over the objectives (as above) Write them up on whiteboard or have them written up on flip chart paper

Note

Identify someone to do recording – Organiser if possible.

Facilitator needs to identify what is needed to be recorded and check that it has been done as actions are agreed

Session 2

5 – 10 mins

- ***You say as introduction***

Our approach to change

Change is a feature of modern organisations. All organisations operate in a dynamic environment and need to be responsive to government direction, client needs and other environmental factors. Some change will be evolutionary, small scale and low key, other change will be larger scale and/or have more significant effects on what work is done, how it is done and who does it.

As a union, the PSA is not resistant to change. In fact, our strategic agenda promotes changes that we think need to be made to management styles, the quality of jobs, how work is done and how services are delivered.

The current financial crisis and the Government's response to it will drive the need for change in many of the organisations where PSA members work. Some change will be government directed and some will be decided at the enterprise level.

DO NOT SAY but NOTE: For specific information about value-for-money and expenditure reviews, see appendix 6 of Toolkit)

When an organisation is considering the need for change, our focus is on:

- *Employment and job security:*
 - *Minimising job losses and maximising opportunities for redeployment, development and training.*
- *Worker voice:*
 - *Ensuring PSA members can have a say in the decisions about whether and what change is needed;*
 - *Ensuring PSA members can have a say in determining any formal process for implementing any change.*
- *Fairness and transparency:*
 - *Ensuring change processes are procedurally fair and transparent.*
 - *Ensuring decision making processes are transparent.*
- *Ensuring any change promotes sustainable services, high performing productive workplaces and decent jobs:*
 - *Mobilising members' knowledge to improve the efficiency and quality of services and jobs.*
 - *Once the change has been implemented, monitoring the impact on workloads and services.*
- *Maintaining public ownership, control and accountability of State services.*

Planning our activity

Organisational change is an opportunity for organisers and delegates to build our union organisation including:

- *Recruiting new members.*
- *Recruiting new delegates and building delegate structures.*
- *Up-skilling delegates.*

It will also be an opportunity to get agreement to and/or strengthen any partnership/constructive engagement arrangements that we have with the employer.

Building our union organisation and strengthening our engagement arrangements will increase our ability to influence and further members' interests.

NOTE: THIS IS IMPORTANT TO SAY

Where job losses are resulting from or likely to result from reviews our focus will be on maximising job security. We should ensure employers comply with the consultation and change management provisions of our collective agreements and endeavour to seek agreement to alternatives to job cuts such as:

- *Employee initiated options for fixed term reduced hours of work/flexible working (e.g 4 day weeks, 9 day fortnights).*
- *Employee initiated options for longer term (e.g 2 years) leave without pay with employment protection for study, OE, parental leave, care of dependents, volunteer work, work with community groups etc. Employment protection means having preferential applicant status for any suitable vacancy on agreed date of return to work and protection of redundancy entitlement if no suitable vacancy exists.*
- *Good faith requirement that no employee will be pressured into accepting these kinds of arrangements.*
- *Access to training and development to enable affected employees the opportunity of redeployment to genuine alternative roles.*
- *A commitment to actively seek redeployment options for affected staff across the State sector.*
- *Joint work on continuous improvement, increasing productivity, creating efficiencies and saving money without cutting jobs and services.*

Session 3

What do we know?

45 mins

You provide

- copies of Collective Agreement clauses re Management of Change/Restructuring
- any HR policy on managing change

YOU DO

Put the participants into pairs and get them to read/look at the clauses etc

5- 10 mins

YOU LEAD THIS DISCUSSION

Then have a full group discussion and in particular provide information about the meaning of the terms used.

- **NB see CA provisions for specific employer detail or explanations but these explanations are very useful and have been around since the late 1980's! They are in the Toolkit.**

NB: ALWAYS CHECK WORDING IN CA

affected staff

Are staff whose positions, or roles and/or work practices in the organisation will be changed as a result of the review.

reconfirmation,

b) The criteria for reconfirmation are:

- (i) the new position or role description is the same (or very nearly the same) as that which employee currently has; and
- (ii) the salary for the new position or role is the same; and

- (iii) the new position or role has terms and conditions of employment (including career prospects) which are no less favourable.
 - (c) The union may propose that an employee be reconfirmed where that employee believes his or her current job is sufficiently similar to a new job.
 - (d) Where there is more than one clear candidate, the (employer) will usually consult to reach agreement with the union about the process to be followed, and
 - (iii) the position or role will be notified only to the affected employees, or
 - (iv) agreement will be reached amongst the candidates on which candidate(s) will be reconfirmed if there is a clear preference amongst potential candidates to take other options under this agreement
- Once you have been reconfirmed you are no longer eligible to take part in the rest of the process.

reassignment

- (a) If there are positions still vacant or roles still available following reconfirmation, or employees do not meet the criteria for reconfirmation, reassignment will be considered.
 - (b) The (employer) will advise all affected employees who are to be considered for reassignment. Job descriptions (current and proposed) will be available to them, and they will have the opportunity to comment through their union or individually.
- If an employer is seeking to utilise the ability to reassign a worker from one job to another and the worker disagrees with the interpretation of suitable position ensure that a thorough process of comparing jobs is undertaken. It is important to look beyond the comparison of terms and conditions of employment and consider the nature of the jobs. For example, look at staffing responsibility, key tasks, position in hierarchy, employment prospects, etc. It may be helpful to have some assistance from colleagues or others who understand the position well. This is a time consuming task but critical.
 - (c) Management and the union usually will meet to reach agreement on the process for appointment to available positions or placement in available roles. This will generally follow the standard Office procedures .

Reassignments may be made on the basis that a person will undertake specified training and can be expected to be able to undertake the full range of duties within a reasonable time.

Employees accepting reassignment to a role at a lower salary (NB see CA provisions)

- (a) Where employees accept reassignment to a role at a lower salary an equalisation allowance will be paid to preserve the salary of the employee at the rate paid in the old job at the time of reassignment.
 - (b) The salary can be preserved in the following ways: **(NOTE the CA Provisions)**
 - (i) a lump sum to make up for the loss of basic pay for the next two years (this is not abated by any subsequent salary increases); or
 - (ii) an ongoing allowance paid, equivalent to the difference between the present salary and the new salary. (This is abated by any subsequent salary increases.)
 - (c) Employees to be reassigned under this process will be consulted to determine which option they will elect.
- Once you have been reassigned you are no longer eligible to take part in the rest of the process.
 - Refusing to accept a “suitable: reassignment usually means you will have been deemed to have

resigned and will not receive redundancy

Redeployment

Currently the PSA and State Services Commission (SSC) have been in discussion about redeployment options within the state sector. The SSC is developing a website to enable this to happen.

Redundancy

(1) Notification of surplus

- (a) All affected staff not placed through reconfirmation or reassignment are surplus. The (employer) will formally advise this to the union and the staff concerned.
- (b) The (employer) will give the following information to the union at the time of notification:
 - the total number of surplus employees
 - the date by which the surplus needs to be discharged
 - the positions, roles, grading, and names of the surplus employees
 - additional relevant information on request.

(2) Discussion of options

Management, the union and each member of staff concerned individually will discuss which of the following options, or any other options, will be offered to the staff member. The details of how the options may be used, the types and levels of financial assistance etc, will be negotiated and agreed on a case by case basis.

- (a) Attrition
Attrition occurs when staff are not replaced as they leave their jobs. There may also be a partial or complete freeze on recruiting new employees or on promotions.
- (b) Leave without pay
Surplus employees may be placed on special leave without pay for a defined period without automatic right of re-engagement (this excludes parental or sick leave). This may include an opportunity for training.
- (c) Retraining
If an employee whose position or role has been disestablished wishes to retrain for other employment, the (employer) may agree to pay tuition fees, costs of books, travel to the course location, and salary for a period, up to the value of the severance payment and leave entitlements due to the employee on the last day of duty. In some cases additional finance may be made available to take account of particular training needs.
- (d) Job search
Time off may be made available for job seeking.
- (e) Severance/Redundancy
If the options agreed between the (employer) and the union are insufficient to discharge the surplus by the required date, severance/redundancy will be made available. Severance may also be considered at any stage on a case by case basis, dependent on the circumstances, and by agreement of the parties.
Following agreement that severance is required and where it is agreed that an individual will cease service, the employee will receive the relevant notice and will be offered severance according to the severance/redundancy formula .

In some organisations there maybe staff who are on different redundancy/severance calculations (e.g. grandparented calculations)

Enhanced Early Retirement

Same monetary payment as redundancy.

Was previously offered to staff over 50 with 10 years service

Session 4

15 mins

What is the process to follow when we are notified of a review?

YOU DO

Handout to participants

- page 12 of the Toolkit (Flowchart of union activity in the consultation phase of a standard change process) and
- page 13 of the Toolkit (Flow chart of implementation phase of standard change process)
- Judge Goddards decision on consultation

Discuss this with the group to ensure everyone understands.

Session 5

Role of the delegate

25 mins

Go over the role of the delegate:

C ommunicating

O rganising

R ecruiting R epresenting

E ducating E mpowering

about 5mins

Remind delegates their role is carried out in accordance with PSA strategy. **(the Introduction at the beginning of the workshop laid this out)**

It is important that delegates understand the limitations of their role. Where budget cuts are required or Cabinet makes decisions about programme closures, it is not an option to reject revised structures but to work to ensure those structures are the best for the purposes. We influence wherever possible & ensure the processes of the C/A are followed.

YOU DO

Handout the ***Information Sheet – the role of the union in reviews and change management*** (pg 26/7 of Toolkit)

Get the delegates into small groups to identify what their role is throughout the process

Remind them of the 2 Flow Charts

Use flip chart paper for recording the ideas.

about 10 minutes

Report back to full group and ensure all points are covered about 10 mins

Opportunities for workplace mapping to inform recruitment

Members meetings

Delegate meetings – workplace/regional/national/use of conference calls

Union News

Telephone/email “trees”

Submission writing/further workshops/meetings with management

Reach consensus!!!!

Session 5

Create the draft Action/communication plan by Brainstorm?

Make sure the points from Session 4 (role of delegates) are used to inform the Action/Communications Plan.

The Organiser should be actively involved in this session

Use Communications Plan template (page 28 of the Toolkit) if you wish

RECORD who will type up the Action/Communications Plan and send out to participants.

Finish the meeting by thanking participants etc

2 mins

Management of change 1 – 2 hour workshop

Objectives:

To develop an action plan for a particular situation and through this for delegates:

- to gain knowledge and confidence about the process of management of change;
- to understand their role in the management of change process.

Programme outline

Session topics	Session plan	Resources
Welcome, session outline. 2 mins	Welcome delegates to the session, introductions if necessary Explain the length of the session, ground rules Go over the objectives (Identify someone to do recording of actions plan points). Facilitator needs to identify what is needed to be recorded as actions are agreed and check that it has been recorded.	Whiteboard, flip chart paper, whiteboard pens, permanent marker pens, Utac Have objectives on the whiteboard or flip chart paper
What are the facts? 30 -45min	What do we know What are we being consulted upon? (Be clear what is and is not being asked for. At what stage are we in the process? (refer to flowchart in kit) Identify what we can change What don't we know? How do we find out? What is it that we can't change - Provide information here about the meaning of the terms 'affected staff', reconfirmation, reassignment, redundancy and explain how they are applied. Talk briefly about other parts of MOC process in CA. 1. What is the employer proposal? Is there an opportunity to redesign work or achieve cost savings in another way, i.e. productivity gains? This MOC may be an opportunity to comment on some of the things we have thought about, talked about, moaned about informally. Is there a structural change? E.g. is there a change to reporting lines. 2. Is there a loss of a particular	Copies of employer proposal Collective Agreement provisions Appropriate parts of management of change/restructuring kit e.g. flowchart, submission Goddard's principles of consultation H/R policy on management of change Any PfQ agreement in place?

	<p>service? We have shared interest in delivery of services –will it reduce delivery of services? Look at the organisation goals to see if the changes can be critiqued against them– just flag it as something to be done. (identify who/how to do it but don't do the analysis at the meeting)</p> <p>3. Will we make a submission – refer to guidelines in kit. Indicate that individual submissions will of course occur- if there are no collective submission there is no collective view available for the employer to consider.</p> <p>4. Identify the area where there is/will be the most impact.</p> <p>5. Which members will be the most affected?</p> <p>6. How do we engage with those members?</p> <p>7. Delegates need to assure members that the PSA (delegates and organiser) will raise the following matters with the employer to reassure members about what will happen to them.</p> <p>In particular we will seek to have input around the following</p> <ul style="list-style-type: none"> • What is the timeframe for implementation (may have this already) • What will be the process for identification of affected positions • What will the process be for new positions to be advertised • When will the new job descriptions be available • What will the process be around making decisions for those new jobs? Who is making those decisions. • Will there be a review process for 	<p>Have these points on a handout.</p>
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	<p>non appointment?</p> <ul style="list-style-type: none"> • If members are offered jobs at less than their current salary – what are the salary protection options available. • What options will be available if reconfirmation or reassignment not offered. • What the counselling details and when will they be available. • Who will be used for career advice and will there be paid time off for job search. • When will new managers meet with new staff – needs to be prior to final implementation date. 	
<p>Roles</p> <p>15 mins</p>	<p>Go over the role of the delegate: C ommunicating O rganising R ecruiting R epresenting E ducating E mpowering</p> <p>Apply this information to the change situation that is being discussed.</p> <p>It is important that delegates understand the limitations of their role. Where budget cuts are required or Cabinet makes decisions about programme closures, it is not an option to reject revised structures but to work to ensure those structures are the best for the purposes. We influence wherever possible & ensure the processes of the C/A are followed.</p> <p>Remind delegates their role is to represent the collective view of the members (especially if we are making a collective PSA submission); the delegates role is carried out in accordance with PSA strategy.</p>	<p>Whiteboard flip chart paper</p>
<p>What are we going to do when and how?</p> <p>30-45 mins</p>	<p>Action:</p> <p>Use the communication plan template on page 28 of the kit to identify actions and timeframe.</p> <p>1.Develop some discussion questions for members meetings. E.g. what are the key</p>	<p>Communication plan template.</p>

	<p>things to address in a submission</p> <p>2. This is an opportunity to map the workplace and take the time for delegates to work with members.</p> <p>This is what we know about your workplace - Go over the membership data so delegate are clear about the PSA profile in the enterprise. What should be done with this information? Others may want to be heard – ask them to join.</p> <p>3. It is also a time for union visibility for members. We need to know what the members want to say and members need to know they have a delegate to speak to.</p> <p>4. Union news are important. Early to explain what is happening or has happened. Who will do this? When?</p> <p>5. If there is a PSA submission – who will coordinate it and when?</p>	
Action Plan confirmation 5 mins	Make sure everyone knows who is doing what and when.	
Finish	Thank delegates for their participation, ensure that the work that has been done is written up as the plan.	Plan written up by one of the delegates/organiser.

Checklist for providing feedback on management of change process:

Make sure feedback is –

- Concise
- Factual
- Avoids emotional views or judgements
- To remember long submissions are not necessarily more effective than short ones

A submission needs to:

- Identify any problems that will occur with the new design
- Identify any other ideas that might improve the new design
- Identify any flow on effects
- Address the need for new job descriptions (if required)

Handout

The following areas will be raised with the employer on behalf of members.

- What is the timeframe for implementation (may have this already)
- What will be the process for identification of affected positions
- What will the process be for new positions to be advertised
- When will the new job descriptions be available
- What will the process be around making decisions for those new jobs? Who is making those decisions.
- Will there be a review process for non appointment?
- If members are offered jobs at less than their current salary – what are the salary protection options available.
- What options will be available if reconfirmation or reassignment not offered.
- What the counselling details and when will they be available.
- Who will be used for career advice and will there be paid time off for job search.
- When will new managers meet with new staff – needs to be prior to final implementation date.