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EMPLOYMENT LAW

Technical Redundancy Changes to the State Sector Act 1998 Now in Force

In July 2013 changes were made to the State Sector Act 1998 (the **SSA**) which impacted the redundancy entitlements of State Sector employees. These changes were delayed until three years after they were inserted into the SSA, meaning they have now come into force (as at 18 July 2016).

Previous Provisions

Previously, the SSA stated that a “technical redundancy” situation arose when Department A’s functions were being transferred to Department B and an employee was offered an equivalent position at Department B or accepted other employment at Department B. If the transfer of functions was implemented by an Order in Council, the employee would not be entitled to redundancy compensation. That part of the SSA was repealed and replaced with a far broader section which has now come into force.

New Law

The new s61A provides that when a Public Service employee receives notice of redundancy, they are not entitled to redundancy compensation if, before the employee’s employment has ended, the employee is either:

- offered and accepts another position in the State services (not necessarily within the same department) that begins on or immediately after the date on which the employee’s current employment ends, which is on terms no less favourable and is treated as being continuous service within the State services; or
- offered an alternative position in the State services that begins on or immediately after the date on which the employee’s current employment ends, which has comparable duties and responsibilities to those of the employee’s current position and is within a reasonable commuting distance, on terms no less favourable and is treated as being continuous service within the State services.

The new s61A specifically overrides part 6A of the Employment Relations Act 2000 (Continuity of employment if employees’ work affected by restructuring).

This is a broad provision, and does not simply apply to transfer of functions (i.e. a reorganisation or amalgamation of departments).

What should you be thinking about?

In any State Sector restructuring situation, you will need to make it clear to affected employees that these provisions may apply to their situation.

If functions are being transferred from one agency to another, the implications for staff need to be assessed and managed.

Management of change processes, consultation documentation and letters giving notice of termination for redundancy will need to inform employees of the implications of the technical redundancy provisions. Employees affected by redundancy in agencies covered by the State Sector Act will have a good faith obligation to inform their employer if they are offered or accept a role in the State Services.

It may be advisable to include reference to the technical redundancy obligations on employees in a Code of Conduct.

Please seek advice if you are unsure how this could apply to your agency.