IN THE EMPLOYMENT COURT OF NEW ZEALAND
WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA

[2024] NZEmpC 248
EMPC 303/2024

IN THE MATTER OF	A challenge to a determination of the Employment Relations Authority
BETWEEN	SECRETARY FOR EDUCATION Plaintiff
AND	PUBLIC SERVICE ASSOCIATION – TE PŪKENGA HERE TIKANGA MAHI INCORPORATED Defendant

Hearing: 21 and 23 October 2024

Appearances: H Kynaston and R Doyle, counsel for plaintiff
P Cranney and A C S Wilson, counsel for defendant

Judgment: 13 December 2024

JUDGMENT OF JUDGE J C HOLDEN

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[1] The Secretary for Education and the Public Service Association – Te Pūkenga Here Tikanga Mahi Inc (PSA) are parties to a collective agreement covering the period 1 March 2023 to 17 January 2025 (the current collective agreement).

[2] In March 2024, following a directive from the Government to achieve cost savings, the Ministry of Education commenced several change processes, alongside another change process that was already in train. Those change processes affect many Ministry employees.[1]

[1] Ministry employees are employed by the Secretary for Education but in this judgment, I use both "the Secretary" and "the Ministry" as the employer.

[3] The parties dispute the way in which the terms of the current collective agreement apply to those change processes. The parties' dispute was the subject of an Employment Relations Authority determination.[2]

[4] The Secretary has filed a non-de novo challenge to that determination. There are two key issues:

(a) whether cl 11.15.1 of the current collective agreement requires the parties to reach agreement on the options that are appropriate to the circumstances and will be available to surplus staff; and

(b) whether cl 11.15.1 requires that the implementation of the options is to be negotiated change process by change process or individual employee by individual employee.

[5] Essentially, on the first issue, while the Ministry accepts it must engage with the PSA and try to agree on options available for employees, and that it must engage on an individual level with employees on their particular circumstances, it says that ultimately the decision whether to make an individual employee redundant is for it. The PSA says that an employee cannot be made redundant without the PSA's agreement that redundancy is an option. It also says that pursuant to cl 11.16 of the current collective agreement, the individual employee's agreement to redundancy is required.

[6] On the second issue, the Ministry says the negotiation required by cl 11.15.1 is to be conducted change process by change process; the PSA says it is on an individual employee by individual employee basis.

[7] Section 11 of the current collective agreement deals with change management. It is a detailed section and is set out in full in the attachment to this judgment. It is fair

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2 *Public Service Association – Te Pūkenga Here Tikanga Mahi Inc v Secretary for Education* [2024] NZERA 432 (Member Szeto).

to say some parts of it could be drafted more clearly. For the purposes of this judgment, the most relevant parts of section 11 are:

> **SECTION 11 - CHANGE MANAGEMENT**
>
> **Ngā Kaupapa – Kaitiakitanga/pono**
>
> The PSA's Ngā Kaupapa "Kaitiakitanga" and the Ministry's He Huarahi Pai principle "Pono" will be used to underpin this section of this agreement.
>
> The definition of "Kaitiakitanga" within the context of this section is:
>
> *"Protection of members to secure fair working conditions and a secure future."*
>
> The definition of "Pono" within the context of this section is:
>
> *"Doing the right thing, not the easy thing i.e. implementing the clauses outlined within Section 11."*
>
> […]
>
> **Section 1- PREAMBLE**
>
> **11.1** The parties to this agreement recognise the serious consequences that the loss of employment can have on employees and propose to minimise this as far as possible by using the provisions of this agreement to keep as many employees as possible in employment.
>
> […]
>
> **11.14.2 Notification of Surplus**
>
> (a) The Ministry will notify the PSA and the surplus employees, either a minimum of two months (for those appointed or last appointed to the Ministry prior to 1 July 1992) or one month, (for those appointed or last appointed to the Ministry since 1 July 1992) prior to the date that the surplus is required to be discharged. When circumstances warrant this date may be varied by agreement between the parties
>
> (b) […]
>
> (c) […]
>
> **11.15 Redeployment**
>
> The Ministry may, following consultation and agreement with the PSA,

ask members to complete a curriculum vitae seeking redeployment within the Ministry or within other Public Service departments or other state sector agencies or organisations. The same provisions will apply as for reassignment. Time off may be made available for job seeking. Assistance will be given to prepare curricula vitae.

11.15.1 Details of Conditions and Options

During this period the PSA and the Ministry will meet to reach agreement on the options which are appropriate to the circumstances and will be available to surplus employees will be agreed.

The following options may be available:

(a) Leave without pay
(b) Enhanced early retirement
(c) Retraining
(d) Redeployment/job search
(e) Severance (case by case basis)
(f) Retirement
(g) Voluntary Redundancy

How these options, or other options, including the types and levels of financial assistance) are implemented, will be negotiated on a case by case basis between the Ministry and the PSA.

Leave Without Pay

[…]

Enhanced Early Retirement

[…]

Retraining

[…]

Redeployment

[…]

11.16 Severance

Following agreement that the option of a redundancy payment is to be made available and where it is mutually agreed on the individual ceasing service (as per Clause 11.16) the formula for severance is detailed below.

[formula set out]

These payments are regardless of length of service but are conditional on employees finishing on an agreed date.

[8] On the two key issues, the Authority determined that:

(a) pursuant to cl 11.15.1, the parties are required to reach agreement about the options and negotiate about the implementation of the options[3]; and

(b) "case by case" in cl 11.15.1 means individual by individual.[4]

The main issues are with respect to the interpretation of cl 11.15.1 and 11.16

[9] The Ministry accepts that cl 11.15.1 requires it to negotiate with the PSA about the options to be made available. It says, however, that the parties are not required to reach agreement at this stage; the obligation goes to process, not outcome. It says this also is implicit in the Authority's determination.

[10] It does not accept that cl 11.15.1 requires that the options which are appropriate to the circumstances will be agreed and that failure to agree on the options is not contemplated by the clause.

[11] As noted, it also does not accept that "case by case" requires the implementation of the options to be negotiated individual by individual. It says that cl 11.15.1 requires the implementation of the options to be negotiated between the Ministry and the PSA change process by change process.

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3 At [91], [97], and [98].
4 At [106]-[107].

[12] The Ministry says further that cl 11.15.1 does not require that the parties agree on how the options, including the types and levels of financial assistance, are implemented.

[13] The Ministry says that cl 11.16 determines the amount of redundancy compensation payable in the event of redundancy. It says it is not the means by which surplus employees are made redundant. Rather, it says, cl 11.14.2(a) enables the Ministry to give notice of termination for redundancy and that the Ministry does not require the PSA's or individual employee's agreement to terminate employment for redundancy.

[14] The PSA says the Ministry has, by agreement, restricted its ability to determine the outcome of a restructuring, limiting the possible outcomes to those agreed with the PSA. As noted, it says further that cl 11.16 requires agreement to redundancy from individual employees.

There is evidence regarding the approach previously to decisions on redundancy

[15] Both parties gave evidence on the approach the Ministry has previously taken when faced with restructuring decisions.

[16] From that evidence, it is apparent that previous restructurings have been on a quite different scale to that presently envisaged. The numbers of PSA members who ultimately left employment with the Ministry as a result of those restructurings were comparatively small. It appears that something over 100 PSA members had their employment terminated in restructuring processes between June 2010 and December 2018, and then approximately 14 further PSA members were made redundant by the Ministry in the five years that followed. The overall impact of the change proposals currently at issue includes a potential job loss for approximately 755 Ministry employees.

[17] The evidence demonstrates that previous restructurings have followed a similar, and not surprising, path. It seems that, overall, the Ministry and the PSA have a good working relationship. When a restructuring was imminent, that was discussed

between them; the preference was, again understandably, to keep people in employment. Where there were, however, no suitable positions the person was made redundant and paid severance. Sometimes that redundancy was initiated by the employee, sometimes it was an agreed course and sometimes it was by a unilateral decision of the Ministry. It seems notice of redundancy was given in all cases, and compensation was paid as per the formula in the collective agreement.

[18] The issue now before the Court has not been an issue previously; essentially, it seems that where none of the options that would keep the employee in employment were available, the employee's employment ended for redundancy and the employee received a severance payment. The mechanism for termination may have been variable, but the outcome seems to have been accepted by all parties.

[19] Because of the different context, it is difficult to draw any assistance from previous practice on the issues that are now in dispute, except to say that, regardless of mechanism, compensation for redundancy was calculated in the same way.

Contract interpretation principles apply to collective agreements

[20] Although collective agreements are not contracts in the conventional sense, the central principles of interpretation relating to contracts also apply to them.[5]

[21] The proper approach is an objective one, with the aim of ascertaining the meaning that the document would convey to a reasonable person, having all the background knowledge that would reasonably have been available to the parties in the situation in which they were in at the time the agreement was concluded. This objective meaning is taken to be what the parties intended. While there is no conceptual limit on what may be regarded as "background", it has to be background that a reasonable person would regard as relevant. Accordingly, the context provided by the agreement as a whole and any relevant background informs meaning.[6]

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5 *New Zealand Air Line Pilots' Assoc Inc v Air New Zealand Ltd* [2017] NZSC 111, [2017] 1 NZLR 948 at [74] – [78].

6 *Firm PI 1 Ltd v Zurich Australia Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432 at [60] – [63].

[22] Further, while context is a necessary element of the interpretive process, and the focus is on interpreting the document rather than particular words, the text remains centrally important. If the language at issue, construed in the context of the collective agreement as a whole, has an ordinary and natural meaning, that will be a powerful, albeit not conclusive, indicator of what the parties meant. But the wider context may point to some interpretation other than the most obvious one, and may also assist in determining the meaning intended in cases of ambiguity or uncertainty.[7]

[23] Collective agreements have unique features that distinguish them from commercial contracts. These include their relational nature, representing the progression of an employment relationship on an ongoing basis over a lengthy period, the fact that the collective agreement is a creature of statute, and the reality that, generally, collective agreements are not drafted, negotiated, or settled by practising lawyers.[8] Another important feature is that collective agreements are negotiated between the employer and the relevant union(s), but then bind union members even where they did not vote to ratify the terms of the collective agreement and/or were not employed at the time the collective agreement was entered into.

[24] These features are reflected in this Court's role in interpreting collective agreements, which is unique and reflects the recognition in the Employment Relations Act 2000 that the work the Court does is specialised.[9] The Court, however, does not substitute its own view as to what the meaning of the clause in issue is; rather, the wording is to be interpreted in light of the relational background between the parties.[10] The Employment Court also has an equity and good conscience jurisdiction, but that does not allow it to make a decision or an order that is inconsistent with an applicable collective agreement.[11]

[25] The Ministry submits that the context is consistent with the plain meaning of the provisions in the collective agreement. It says further that, in the context of the current and well-understood approach to restructuring decisions and managerial

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7 At [63].
8 *New Zealand Air Line Pilots' Association Inc v Air New Zealand Ltd*, above n 5, at [75]–[76].
9 Employment Relations Act 2000, ss 214(1) and 216; see also *Le Gros v Fonterra Co-Operative Group Ltd* [2023] NZEmpC 193, [2023] ERNZ 800 at [18].
10 *New Zealand Air Line Pilots' Association Inc v Air New Zealand Ltd*, above n 5, at [77].
11 Employment Relations Act 2000, s 189(1).

prerogative, and in the context of a government ministry responsible for public monies and for the delivery of the Government's policy agenda, for the Court to conclude that the parties agreed that termination for redundancy could occur only with agreement from the PSA and the employee, the wording would need to be explicit and unambiguous.

[26] The PSA, on the other hand, points to s 66(b) of the Public Service Act 2020, whereby the ability to remove an employee from their office or employment is subject to any conditions of employment included in the employment agreement applying to the employee. This reflects that the right to terminate employment can be fettered by agreement. The PSA also points to the history of the public service whereby employees have had enhanced expectations of job security and continuity of employment. It submits that, in that context, a requirement that there be agreement before any employee is made redundant, is unsurprising.

[27] The PSA points to the Court's decision in *Commissioner of Police v Coffey*, in which the Court did not disturb or disagree with the position adopted by the Authority in respect of a severance clause, being that agreement was required before Mr Coffey could be made redundant.[12] I note that the *Coffey* case did not analyse the wording of the agreement, but focussed on which of two agreements applied; it was assumed that the later agreement did not require employee agreement, whereas the earlier one did, and the Court found that the earlier agreement applied.

[28] The PSA also relies on the Court's decision in *Spotless Services (NZ) Ltd v Service & Foodworkers Union*, in which the employer accepted, the PSA says correctly, that an employer has the right to manage unless a collective agreement specified otherwise in any particular field or fields. The Court found the employer had bound itself to invoke stated voluntary options and to negotiate them on a case by case basis with the union.[13]

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12 The Authority's finding on that issue was not challenged: *Commissioner of Police v Coffey* [2014] NZEmpC 194 at [14]–[15]; *Coffey v Commissioner of Police* [2013] NZERA 152 at [37] (Member Stapp).

13 *Spotless Services (NZ) Ltd v Service & Foodworkers Union* [2000] 1 ERNZ 125 at 13-15.

[29] Considering these principles and the evidence before the Court, I proceed on the following basis:

(a) The words of cl 11.15.1 and cl 11.16 need to be interpreted based on their ordinary and natural meaning, but in the context of section 11 and of the collective agreement as a whole.

(b) The relational nature of the collective agreement is relevant.

(c) The public service context is relevant to the interpretation issue, which includes both the point made by the Ministry about the role of the public service in delivering the Government's policy agenda using public money, and that made by the PSA about the legislation that binds public service employers and the context of public service employment.

(d) Previous practice is, in the current case, of only limited assistance, given the nature and context of previous restructurings in comparison with the ones in issue in these proceedings.

The change management process is set out in section 11

[30] Mr Cranney, counsel for the PSA, focussed his argument on the opening words of cl 11.15.1:

> During this period the PSA and the Ministry will meet to reach agreement on the options which are appropriate to the circumstances and will be available to surplus employees will be agreed.

and cl 11.16:

> Following agreement that the option of a redundancy payment is to be made available and where it is mutually agreed on the individual ceasing service (as per Clause 11.16) the formula for severance is detailed below

[31] He submits that the ordinary and natural meaning of these words mean that agreement to redundancy is required from the PSA and from the individual employee. He points to the development of the change management provisions, and of the public service, to demonstrate that, although it now may seem surprising that agreement to redundancy from the PSA and from the affected employee is required, that

interpretation is supported by the nature of public sector employment over time and the history of the collective agreements between the parties.

[32] Mr Kynaston, counsel for the Ministry, submits that such an interpretation is not borne out by the plain meaning of the clauses, especially when they are read in context. He also submits that it would defeat the purpose of the change management section, and in particular the part of section 11 that deals with reviews/restructures (cl 11.6-11.17). Further, he says it is inconsistent with the concept of managerial prerogative and business commonsense in the context of the public service.

The parties refer to the terms of previous collective agreements

[33] Change management provisions have been included in successive collective agreements for many years. The parties took the Court to the history of the provisions from 1988.

[34] It is true that previous collective agreements do not envisage a restructuring process leading to loss of employment, except by agreement. That the parties did not see the need to include the eventuality of compulsory redundancy in the collective agreement may reflect a different time, when the expectation was that public servants would only be dismissed for cause, rather than imposing a prohibition on the employer making staff redundant. As has been said, "The past is a foreign country: they do things differently there."[14]

[35] While the previous collective agreements provide background, the focus of the Court's enquiry is on the current collective agreement.

What does section 11 envisage?

[36] Section 11 commences with the underlying principles of kaitiakitanga and pono. Both terms are defined for the purposes of the section.

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[14] L P Hartley, *The Go-Between* (Hamish Hamilton, England, 1953, republished by Penguin, 2004, 2010).

[37] The definition of kaitiakitanga "protection of members to secure fair working conditions and a secure future" is also reflected in the recognition of the serious consequences that loss of employment can have on employees, with the parties jointly agreeing that the aim is to minimise that loss of employment as far as possible, by using the provisions of the collective agreement to keep as many employees employed as possible (cl 11.1).

[38] That overarching intention is reflected throughout the section with the progressive consideration of different options to try and retain the employment of as many employees as possible, and to support employees impacted by change processes.

[39] I accept that, notwithstanding the recognition of the seriousness of loss of employment, and the desirability of keeping as many employees in employment as possible, section 11 anticipates restructurings resulting in potential loss of employment. In addition to cl 11.1, which talks of minimising loss of employment, other clauses make reference to this potential. Clause 11.8 refers to the Ministry requiring a reduction in the number of employees; cl 11.9 includes "managed attrition"; cl 11.14.1 refers to employees potentially being "surplus"; and cl 11.14.2 requires the Ministry to give notice prior to the date the "surplus is required to be discharged". That a change management process ultimately may lead to employees losing their job also is consistent with pono, as defined in section 11, which recognises that, in implementing section 11, hard things may be required.[15]

[40] Another indication that the Secretary retains the right to make employees redundant is found in section 2 of the current collective agreement, which includes that the PSA "recognises the right of the Ministry to plan, manage, organise and finally decide on the operations and policy of the Ministry."

[41] I agree with Mr Kynaston that the principles in cl 11.3 are orthodox principles that recognise managerial prerogative but also recognise the need to deal fairly with employees and to engage properly with the PSA, including through "proactive involvement" and "consultation".

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[15] See [7] above for the definition of pono.

[42] Clause 11.7, Reviews and Restructures, refers, under subcl (f) to a "consultation period", with the aim of reaching agreement. This is the first in a series of steps, and therefore a relevant part of background and context. It is a standard part of a restructuring process.

[43] In cl 11.8, at the conclusion of the consultative process, when "the Ministry *requires a reduction* in the number of employees", "every attempt will be made to redeploy…" It is clear at this point that the Ministry has a commitment to retaining employees, if possible, but may *require* a reduction. There is no element of employee agreement in the word "require".

[44] Under cl 11.13, Voluntary Redundancy, subcl (a) begins "Where a change process results in redundancies…". Again, this is not a mutual agreement; without one of the options listed later, there will be redundancies. Voluntary redundancy is an option which may be offered but is not a right; the Ministry "may seek expressions of interest." Agreement to this option is, firstly, a subset of "redundancies"; and secondly, expressly leads to the application of cl 11.16, being the "Severance" provisions (subcl 11.13(c)). The only occurrence of the term "mutually agreed" occurs in the introduction to cl 11.16, and can be seen as being linked to and following on from an agreement to voluntary redundancy.

[45] Clause 11.14 is key. That is because where the employee has not been offered or else has declined redeployment, they are surplus. They do not have to agree to being surplus. This also is reflected in paragraph 11.14.2(a), where there is reference to notification that the surplus is "required to be discharged".

[46] Then, at cl 11.15.1, under Redeployment, the Ministry and the PSA will meet to "reach agreement" on options to be available. Clause 11.15.1 lists possible options being made available to "surplus employees" (again, the status of "surplus" is not negotiated, let alone agreed). While I acknowledge that the statement is poorly constructed, the clause envisages two components; meeting to agree on options; and how the options are implemented, which is to be negotiated on a case-by-case basis with the PSA.

[47] The first part of cl 11.15.1 therefore speaks to an obligation to meet; the purpose of meeting is for the Ministry and PSA to reach agreement on the range of options available. Once the options are worked out, *how they are implemented* will be negotiated, which is not a commitment to reaching agreement.

[48] The concluding words of the opening paragraph of cl 11.15.1 do not, however, provide for the eventuality that the parties fail to agree on the options available. This gives rise to two possibilities. Either the collective agreement simply does not deal with what happens if there is no agreement or the clause includes an "agreement to agree" on the options. If, as suggested by the PSA, the intention of the parties was that, absent agreement, employees could not be made redundant, more explicit language would be required.[16]

[49] If the collective agreement does not deal with what happens where there is no agreement, the position will be as in general. The Ministry has the managerial prerogative to determine the way in which the Ministry is to operate, but must act in good faith and as a fair and reasonable employer could in the circumstances.

[50] Agreements to agree may be unenforceable if their terms are uncertain.[17] In that situation, where the agreement to agree forms part of the agreement, and is not essential, it can be severed, leaving the remainder of the agreement in force.[18] Here, that would lead to the same result, the Ministry retains its managerial prerogative.

[51] On balance, and read in context, I agree with the Ministry that cl 11.15.1 is a process obligation, requiring the Ministry to meet with the PSA and to endeavour to reach agreement as to the options available. It is not an agreement to agree, and nor does it say that absent agreement, the Ministry cannot make surplus staff redundant. Were it otherwise, it would be necessary to ignore all the references to Ministry decisions about surplus staff. The Ministry's interpretation is consistent too with the context of section 11 within the current collective agreement.

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16 *Canterbury Spinners Ltd v Vaughan* [2003] 1 NZLR 176 at [18].

17 *Walford v Miles* [1992] AC 128; *Electricity Corp of New Zealand Ltd v Fletcher Challenge Energy Ltd* [2002] 2 NZLR 433 at [62].

18 See for example *Walsh v Matamau Co-operative Dairy Co Ltd* [1918] NZLR 850 and *Williams v Wairarapa Automobile Assoc Mutual Insurance Co* [1943] NZLR 322.

[52] Clause 11.16 then provides for a redundancy payment where it is agreed that one should be available. That picks up on the potential for voluntary redundancy to be agreed. As noted, cl 11.13(c) expressly leads to cl 11.16. The clause also reflects that there may be circumstances where the parties do not agree that a severance payment should be available to a redundant employee – examples are where an employee declines a suitable reassignment, or where they choose to take enhanced early retirement. Another example suggested by both parties might be where an employee prefers to carry their service over to a new position.

[53] In conclusion, I agree with the Ministry that cl 11.15.1 of the current collective agreement requires the parties to meet to endeavour to reach agreement on the options that are appropriate to the circumstances, and which will be available to surplus employees. It does not require them to reach agreement, nor does it prevent the Ministry from negotiating with the PSA on how the options that the Ministry makes available are implemented. I also agree that the Ministry does not require the agreement of individual employees to terminate their employment for redundancy. To the extent the Authority's determination is contrary to these findings, it is set aside, and this judgment stands in its place.

Case by case applies to the change management process

[54] Mr Kynaston advises that, practically, on the issue of what is meant by "case by case" in cl 11.15.1, there is not much between the parties; the Ministry agrees that it must engage individually with employees and take into account their individual circumstances. It says, however, that obligation does not arise under cl 11.15.1 but is due to the Ministry's broader obligations to its employees to act fairly, reasonably and in good faith when managing change and considering redundancy. The Ministry's interpretation also is consistent with cl 11.4(a), which records that quality management of change requires each management of change process to be designed to meet the needs of the unique change situation.

[55] The difficulty with the position adopted by the PSA, and found by the Authority,[19] is that it would lead to the unlikely situation that an individual's personal

[19] *Public Service Association – Te Pūkenga Here Tikanga Mahi Inc v Secretary for Education*, above

circumstances are to be negotiated without their inclusion. It also would require the Ministry to negotiate with the PSA even if the employee does not seek the PSA's involvement. It is quite different from the cases on which the PSA relies, where the negotiation was to be between the employer and the employee.[20] Further, and significantly, the requirement for case by case negotiation is in the clause dealing with options.

[56] In context, I accept the Ministry's interpretation – that how the options, including the types and levels of financial assistance, are implemented, will be negotiated between the Ministry and the PSA for each change management process, leaving discussion over an employee's individual circumstances to be dealt with between the Ministry and the employee (with PSA support if the employee wishes) as a separate step.

[57] The finding by the Authority that how the options, including the types and levels of financial assistance, are implemented, will be negotiated between the Ministry and the PSA individual by individual is set aside, and the Court's judgment stands in its place.

The process, in summary

[58] Bringing the threads together, the process envisaged by Section 11 is that when the Ministry has a change proposal:

(a) The aim is to minimise loss of employment as far as is possible, while meeting the operational and policy objectives of the Ministry.

(b) The Ministry gives notification to and collaborates with the PSA about the change proposal, with the aim being to reach agreement. Recommendations (which may or may not be joint or agreed) are made to management, who will endeavour to take the views into account as

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n 2, at [98].

20 *Waikato District Health Board v Archibald* [2017] NZEmpC 132; *Matthes v New Zealand Post* [1994] FRNZ 994 (CA).

far as possible before making final decisions, but with those final decisions being for the Ministry.

(c) If the Ministry requires a reduction in the number of employees, or employees can no longer be employed in their current position, the process moves to the next phase of consideration and management of managed attrition, reconfirmation, and reassignment. The Ministry also may seek expressions of interest in voluntary redundancy, which the Ministry may accept or decline.

(d) Then, employees not placed by reconfirmation or who have not been offered reassignment are considered surplus and the Ministry must give notice to the PSA and to the surplus employees.

(e) The PSA and the Ministry must meet, with the aim being to reach agreement on the options that are available to surplus employees. A non-exhaustive list of options is included in clause 11.15.1.

(f) How the options, including the types and levels of financial assistance, are implemented, will be negotiated between the Ministry and the PSA for each change management process.

(g) The Ministry and each affected employee (with PSA support if the employee wishes) will still need to meet to discuss and try and resolve the outcome for the employee, taking into account the employee's individual circumstances.

(h) If the employee's situation is not otherwise resolved, their employment ends at the end of the period specified under cl 11.14.2(b). Provided the parties agree on the option of a severance payment, the employee is paid severance in accordance with cl 11.16.

Personal information protected

[59] The evidence in this case included personal information about former employees of the Ministry. It has not been necessary to refer to that information in this judgment. At the joint request of the parties, however, I order that, if there is an application by a non-party for access to documents held on the Court file, the parties are to be advised of that request and given an opportunity to raise any issues with the Court before the Court decides whether to grant access and, if granted, on what conditions.

Costs are reserved

[60] Costs are reserved in the expectation that the parties will be able to resolve them between them. If, however, that does not prove possible, and the Ministry seeks an order, it may apply for costs by filing and serving a memorandum by 4pm on Friday 31 January 2025. The PSA is to respond by memorandum filed and served within 21 days of receipt of the Ministry's memorandum, with any reply from the Ministry to be filed and served within a further 7 days.

J C Holden
Judge

Judgment signed at 3pm on 13 December 2024

SECTION 11 - CHANGE MANAGEMENT

Ngā Kaupapa – Kaitiakitanga/pono

The PSA's Ngā Kaupapa "Kaitiakitanga" and the Ministry's He Huarahi Pai principle "Pono" will be used to underpin this section of this agreement.

The definition of "Kaitiakitanga" within the context of this section is:

"Protection of members to secure fair working conditions and a secure future."

The definition of "Pono" within the context of this section is:

"Doing the right thing, not the easy thing i.e. implementing the clauses outlined within Section 11."

This section has been divided into three sections as outlined below:

Section 1- PREAMBLE

11.1 The parties to this agreement recognise the serious consequences that the loss of employment can have on employees and propose to minimise this as far as possible by using the provisions of this agreement to keep as many employees as possible in employment.

The relationship agreement between the Ministry and the PSA outlines the approach that will be applied to change within the Ministry.

11.2 Notification to PSA

In accordance with the principles contained within clause 2.1 of this agreement, the parties outlined below will be notified by the Ministry of proposals for change that are likely to affect/impact members due to significant changes to organisational structure or work practices:

(a) the PSA Ngā Kaitiaki team i.e. the PSA National Organiser, the PSA National Co-Convenor and the PSA Hinonga Māngai Māori Co-Convenor; and

(b) National Delegates where the proposal for change is being undertaken.

11.3 Principles

The parties recognise and agree that:

(a) Change within the Ministry is an accepted part of organisational

development.

(b) The benefits of effective and successful management of change includes proactive involvement with the PSA in support of their members.

(c) Consultation between the Ministry and the PSA is timely, consistent and thorough.

(d) A Change Protocol (Appendix 1) to guide both parties' approach to management of change has been developed.

They may, from time to time, agree a change protocol to guide the parties' approach to change.

11.4 Quality Management of Change

Quality management of change requires:

(a) Each management of change process is designed to meet the needs of the unique change situation

(b) Change processes are fair and consistent

(c) Change processes enable member's choice are timely, fair and consistent

(d) Members and the PSA actively participate in the management of change processes

(e) Certainty is provided to members as soon as possible to minimise disruption to them and to the Ministry

(f) Communication between managers, employees and the PSA is open, transparent, timely and regular

(g) Members are provided with support throughout the process

(h) Members impacted by change feel supported and valued throughout the process including any transition process

(i) Previous management of change experiences are drawn on

(j) The Ministry will consult with the PSA on the use of temporary employees, if required, during a review.

11.5 Updates on reviews, restructures and soft change

The Ministry will provide the PSA with regular updates on the status of current reviews/restructures and advise of potential reviews/restructures

at the regular People Capability/ PSA relationship meetings

Section 2 - REVIEWS/RESTRUCTURES

11.6 Reviews/Restructures

These provisions relate to members who are or may be affected and/or impacted by a management of change including a restructuring situation and applies to all permanent members. They will not be applicable to members engaged as fixed-term or temporary employees (as defined in clause 1.4 of this agreement).

11.7 Reviews/Restructures process

The PSA and the Ministry agree to the process outlined below for the management of change:

(a) The Ministry will notify the PSA (as per Clause 11.2) of a proposal for change.

(b) The Ministry will invite the PSA nominated delegate(s) to support members affected/impacted by the change, to attend a briefing to discuss the proposal for change. At the briefing the Ministry will provide:

(i) Proposal for change documentation which must include a timeline that notes the dates that the Ministry met with the PSA prior to the release of the proposal for change and the final decision documentation
(ii) The names of all members in the team/group that the management of change is being proposed
(iii) Information on potential impacts to members from the proposed change,
(iv) The Ministry will provide this information in a timely manner, no less than 7 days prior to announcement to affected staff

(c) The PSA will inform the Ministry of the name(s) of the delegate(s) that will be supporting members affected/impacted by the change.

(d) The Ministry will advise members in writing that they have briefed PSA on the proposal for change and they will include

PSA in all communications sent to members throughout the change

(e) The Ministry will include the names(s) of the PSA delegate(s) in the proposal for change documentation and encourage members to liaise with the PSA with regard to the change.

(f) The Ministry agrees to a minimum of 10 working days for the consultation period on the proposal for change documentation.

(g) The PSA will support members at each stage of the change process, including attendance at any consultation meetings, workshops or other forms of engagement and will collate and submit member feedback on their behalf to the Ministry where requested to do so.

(h) The PSA will support any members affected/impacted by the change in accordance with the terms and conditions outlined in this agreement.

The aim of this mechanism will be to reach agreement and make recommendations to management, who will endeavour to take the views into account as far as possible before making final decisions.

11.8 Members impacted from Change Process

When, as a result of the review referred to above and at the conclusion of the consultative process, the Ministry requires a reduction in the number of employees; or employees can no longer be employed in their current position, at their current grade (pay band) or work location (i.e. the terms of appointment to their present position are altered) every attempt will be made to redeploy those employees affected and the following provisions will apply.

11.9 Managed Attrition

(a) Attrition means that as people leave their jobs because they retire, resign, transfer, die or are promoted then they may not be replaced. In addition or alternatively, there may be a partial or complete freeze on recruiting new employees.

(b) Within the context of a process of organisational change the Ministry may decide to use managed attrition to achieve the outcome of the change.

(c) Where the Ministry determines that a freeze is necessary the PSA will be consulted as to how the freeze would apply.

(d) The parties recognise that attrition can have an effect on employees and their ability to meet Ministry objectives. The policy will be regularly reviewed by the Ministry to address organisational, operational or training issues.

11.10 Technical Redundancy

(a) Where the functions and duties undertaken by the member are transferred to a new organisation or business and the person or organisation acquiring the business, or the part being sold or transferred offers to employ the member on conditions the same or no less favourable than the member currently has, then the provisions of clause 11.12 will apply.

(b) Where the Ministry uses reconfirmation or reassignment as part of a change process the following provisions will apply.

11.11 Reconfirmation

11.11.1 Reconfirmation applies when there is one clear candidate for a position that is to be transferred into a new structure (within or outside the Ministry) where:

(a) The new job description is the same (or very nearly the same);

(b) The salary for the new position is the same;

(c) The terms and conditions, including career prospects are no less favourable;

(d) The location is the same or in the same vicinity.

11.11.2 In those situations where there is more than one clear candidate the position will be advertised, with appointment made as per normal Ministry appointing procedures;

(a) Proposed reconfirmations will be advised to all affected employees to enable them to assess whether they meet the criteria, for those employees who meet the criteria and do not wish to be reconfirmed the only option available will be leave without pay.

(b) Job descriptions will be available to employees prior to reconfirmation.

(c) Employees who decline the offer of reconfirmation are not eligible to access the surplus employee provisions (clause 11.14) of this agreement.

11.12 Reassignment

11.12.1 Following reconfirmation, and where under clause 11.12, agreement has been reached between the Ministry and the PSA on reassignment, if there are positions still vacant, then the Ministry and the PSA will meet to assess the skills of all those members still left without a position, and to reach agreement on the process for appointment to new positions.

11.12.2 In determining the parameters for reassignment the Ministry and the PSA will deal with cases on an individual basis, with a view to placing as many employees as possible by matching individual skills with positions which require similar skills. Interviews will be held to determine the level of skill. This exercise may involve individuals undertaking some on- the-job training or attending training courses (e.g. keyboard skills). Such training needs will be identified prior to the individual being reassigned.

11.12.3 Members to be reassigned under this process shall be consulted prior to any appointment being made.

11.12.4 Where a suitable reassignment is offered and this offer is not accepted the member will not be surplus and the provisions relating to surplus employees will not be available. A suitable position shall mean a position, at a similar responsibility level, in which an employee can adequately perform the duties with their current skills and knowledge and:

(a) The offered employment is within a reasonable commuting distance from their home and

(b) The salary, and conditions are no less favourable and

(c) The duties and responsibilities are comparable.

11.12.5 Reassignment on a lower salary or in a different location

(d) A member may decline reassignment on a lower salary and/or a different location in which case they will retain access to the surplus employee provisions of this agreement.

(e) A member may agree to reassignment on a lower salary and/or a different location in which case the equalisation allowance will apply.

11.12.6 Equalisation Allowance

Where a suitable reassignment is offered at a lower salary, an equalisation allowance will be paid to preserve the salary of the member at the rate paid in the old job at the time of reassignment. This allowance will be paid with the member's usual fortnightly salary and is abated by any subsequent salary increases.

11.12.7 Relocation

(a) Where the new job is at a location outside the local area, assistance with transfer expenses shall be provided on the basis that the employee should not suffer financial loss in respect of expenses incurred as a result of transfer. In these circumstances, the member may decline the reassignment offer and retain access to the surplus employees' provisions (11.14) of this agreement.

(b) A decision will be made by the Ministry on the provisions to be applied in each particular case. A package from the range of items listed below may be selected, (The range of Items is not exclusive and the level of compensation for an item may be varied).

Items:

(i) Reimbursement of fares and accommodation expenses for the journey to the new location;

(ii) Assistance with living expenses for up to three months, but on a decreasing basis for employees who move to the new location but whose dependents are still at the former location

(iii) Reimbursement of accommodation expenses, initially for up to seven days at the new location, with further assistance on a subsidy basis for up to a maximum of

three months before permanent housing is available at the new location

(iv) Reimbursement of land agent's commission and legal fees where the employee sells their house and/or buys another house at the new location

(v) A variable grant for employees on moving to the new location up to a maximum of the equivalent of one month's salary

(vi) A variable grant for employees after a predetermined number of years at a location, with a maximum grant up to the equivalent of three months' salary, provided the grant does not exceed the equivalent of one month's salary for each year of the qualifying period

(vii) Reimbursement of additional actual and reasonable child care expenses, including travel costs, for one year

(viii) Where employees are to be relocated at least three months' notice shall be given, provided that in any situation a lesser period of notice may be mutually agreed between the PSA and the Ministry where the circumstances warrant it (and the agreement will not be unreasonably withheld).

11.12.8 Travel Costs

(a) Where the new job is within the same local area and extra travelling costs are involved, actual additional travelling expenses equivalent to travelling by public transport shall be reimbursed for up to 12 months.

(b) Where the new job is within the same local area and the extra travelling time one- way to the new place of work by public transport is more than 30 minutes, transfer expenses as in clause 11.12.7 if there is a reduction in travelling time by public transport of 30 minutes from the new domicile to the new place of work.

(c) Where members are to be relocated at least 3 months' notice shall be given to employees, provided that in any situation a lesser period of notice may be mutually agreed between the PSA and the Ministry where the circumstances warrant it (and agreement shall not be unreasonably withheld).

11.13 Voluntary Redundancy

(a) Where a change process results in redundancies, i.e. fewer positions than there are affected employees, the Ministry may seek expressions of interest for voluntary redundancy.

(b) Where expressions of interest are received, the Ministry may decline any expression of interest on the grounds that the position or person filling the position needs to be retained. A decision to decline any expression of interest in voluntary redundancy is solely at the discretion of the Ministry.

(c) Where the Ministry accepts and approves an application for voluntary redundancy written acceptance will be provided to the member and such notification is binding. Cessation of employment will be by way of redundancy and the severance provisions of this agreement will apply.

11.14 Surplus Employees

11.14.1 All affected employees who:

(a) Are not placed by reconfirmation and
(b) Who have not been offered a suitable reassignment or
(c) Who have declined an offer of reassignment at a different location or at lesser terms and conditions, are surplus and the following apply.

11.14.2 Notification of Surplus

(a) The Ministry will notify the PSA and the surplus employees, either a minimum of two months (for those appointed or last appointed to the Ministry prior to 1 July 1992) or one month, (for those appointed or last appointed to the Ministry since 1 July 1992) prior to the date that the surplus is required to be discharged. When circumstances warrant this date may be varied by agreement between the parties

(b) At that time the following information shall be made available to the PSA National Organiser and Co-Conveners of National Delegates with a copy to the appropriate Regional Office the:

(i) location(s) of surplus

(ii) total number of surplus employees

(iii) positions, names and ages of the surplus employees.

(c) The PSA will be supplied with additional information on request.

11.14.3 Preferential applicants

Members who have been identified as being affected by the change and whose positions have been declared surplus to requirements will have preferential right of appointment to vacancies within the Ministry of Education up to their last date of employment in the surplus position. They will be advised in writing of their preferential status.

11.15 Redeployment

The Ministry may, following consultation and agreement with the PSA, ask members to complete a curriculum vitae seeking redeployment within the Ministry or within other Public Service departments or other state sector agencies or organisations. The same provisions will apply as for reassignment. Time off may be made available for job seeking. Assistance will be given to prepare curricula vitae.

11.15.1 Details of Conditions and Options

During this period the PSA and the Ministry will meet to reach agreement on the options which are appropriate to the circumstances and will be available to surplus employees will be agreed.

The following options may be available:

(a) Leave without pay
(b) Enhanced early retirement
(c) Retraining
(d) Redeployment/job search
(e) Severance (case by case basis)
(f) Retirement
(g) Voluntary Redundancy

How these options, or other options, including the types and levels of financial assistance) are implemented, will be negotiated on a case by case basis between the Ministry and the PSA.

Leave Without Pay

There is provision for special leave without pay within a defined period without automatic right of re- engagement (this excludes parental or sick leave). This may include an opportunity for training.

Enhanced Early Retirement

As an alternative to the severance option, members who are within 10 years of eligibility for National Superannuation and have 10 years total service may have their severance paid as enhanced early retirement, and may use the payment to make up the actual superannuation annuity payable. Service does not have to be continuous nor is membership of a superannuation scheme relevant to eligibility for this alternative.

Enhanced early retirement may be made available at any time to eligible employees not declared surplus if a surplus employee seeking redeployment replaces them.

Retraining

Retraining is an efficient and worthwhile option for dealing with employees surpluses. To this end the Ministry will, as far as it's able:

1. Identify particular skill shortages in the Education Service or elsewhere in the state services.
2. Assess where there are generally job opportunities in the Public Service and/or in the private sector.

When an employee's surplus is identified the Ministry (and the State Services Commission where appropriate) will consider the skills, training, etc of the members who are surplus and will determine whether there are retraining opportunities for them for work either in the Public Service or the private sector.

If retraining opportunities are identified specific retraining programmes will be designed. Examples of financial assistance which may be available are:

(a) Teacher retraining (Secondary, Primary and Early Childhood) - up to two years salary maintenance and, if necessary, up to six months leave on pay while waiting to commence the training course.

(b) Individual retraining - The minimum financial assistance available for Individual Retraining is payment of salary equivalent (as at last day of duty in the Public Service) for the length of the course up to one academic year (usually 38 weeks).

Members whose course is more than one year may be paid their salary equivalent for the weeks of the long vacation before the course recommences in the following year provided that the Ministry can guarantee employment and wishes to employ them during this time.

Additional finance is available for expenses up to a maximum equivalent to the average severance payment calculated for all employees in that particular surplus, had severance been an option. Expenses may include, for example: salary whilst training if the course is longer than one academic year; books and equipment; transfer costs if applicable; leave on pay whilst awaiting commencement of the course in certain circumstances. In some cases the maximum additional finance available is varied to take account of particular training needs.

Redeployment

The redeployment provisions in Clause 11.15 will apply.

11.16 Severance

Following agreement that the option of a redundancy payment is to be made available and where it is mutually agreed on the individual ceasing service (as per Clause 11.16) the formula for severance is detailed below.

Ordinary pay is defined as basic taxable salary, plus regular taxable allowances paid on a continuous basis, except in the case of employees on parental leave where ordinary pay shall be ordinary pay at the time of taking leave. Where an employee is a member of GSF, the value of

Ministry contributions will be included to the extent that it is included in the calculation of the employee's remuneration rate.

Note: For further information refer to Section 8 Crediting Previous Service

(a) Members appointed or last appointed prior to 30 July 1992 will receive the following payments

25% of total ordinary pay for the preceding 12 months plus 4% of total ordinary pay for the years numbering 2-7 plus 5% of total ordinary pay for the years numbering 8-15 plus 3.5% of total ordinary pay for the years numbering 16-20

0.333% of total ordinary pay for the preceding 12 months times the number of completed months in addition to completed years of continuous service provided total service is less than 20 years.

The maximum gross payable for the above severance payment is $55,000.

(b) Members appointed or last appointed since 1 July 1992

10% of total ordinary pay for the preceding 12 months

10% of total ordinary pay for the preceding 12 months continuous service

4% of total ordinary pay for the preceding 12 months times number of years continuous service, minus 1, up to a maximum of 15 years and

5% of total ordinary pay for the preceding 12 months times number of years continuous service between 16 - 19 and

0.333% of total ordinary pay for the preceding 12 months times the number of completed months in addition to completed years of continuous service provided total service is less than 16 years

0.416% of total ordinary pay for the preceding 12 months times the number of completed months in addition to completed years of continuous service provided total service in years is between 16-19 and less than 20 years.

The maximum gross amount payable for the above severance payment is $43,260.

(c) For all members:

(i) 4.165% of total ordinary pay for the preceding 12 months for one person (other than dependent child) who is dependent on the employee and receives a gross annual income of less than $22,319

(ii) 8.33% of total ordinary pay for the preceding 12 months for each dependent child of employee.

Dependent Child

Dependent Child means all children up to the age of 15 years and all children between the ages of 15 and 18 who are not:

(a) In paid employment or

(b) In receipt of a state benefit or

(c) In receipt of a basic grant or independence circumstances grant under the Student Allowances Regulations; and including those for whom employees are paying maintenance in terms of Ministry of Social Development requirements and those for whom liable parent contributions are made. Where both parents are declared surplus, only one parent can claim for dependent children. It is the employee's choice as to which one claims.

These payments are regardless of length of service but are conditional on employees finishing on an agreed date.

Cessation Leave

Cessation Leave in accordance with the scales below will be paid, subject to the leave being reduced by the amount of paid anticipated retiring leave and resigning leave already taken. Service for cessation leave shall be calculated as below.

Months	**0**	**2**	**4**	**6**	**8**	**10**
Years						
0-5 yrs	0					
5-10 yrs	22					
10-15 yrs	44					
15-24 yrs	65					
25	65	66	66	67	68	68
26	69	70	71	71	72	73
27	74	74	75	76	76	77

28	78	79	79	80	81	81
29	82	83	84	84	85	86
30	86	87	88	89	89	90
31	91	91	92	93	94	94
32	95	96	96	97	98	99
33	99	100	101	101	102	103
34	104	104	105	106	106	107
35	108	109	109	110	111	111
36	112	113	114	114	115	116
37	116	117	118	119	119	120
38	121	121	122	123	124	125
39	125	126	126	127	128	129
40	131					

The maximum gross payable for cessation leave from 1 July 1993 is $15,000.

Note: For further information refer to Section 8 Crediting Previous Service.

Outstanding Annual Leave and long Service leave may be separately cashed up.

(d) B1-3 Band transition arrangements

Members employed in a B1-3 Band position on 1 November 2013 shall be entitled to severance compensation which is the higher of either:

- the provisions of this clause; or
- 8 weeks salary plus two weeks salary for each subsequent complete year of continuous service with the Ministry.

The maximum gross amount payable for severance compensation for members employed in Bands B1-3 on 1 November 2013 is $42,000 or six months' salary whichever is the higher. For the purpose of redundancy compensation calculations, salary includes any assigned value for employer contributions to the GSF if applicable. For members on parental leave this will be calculated based on their salary at the time of taking leave.

(e) Bands B4-6

8 weeks salary for the first complete year of continuous service, plus two weeks salary for each subsequent complete year of continuous service with the Ministry.

The maximum gross for the above redundancy compensation is $42,000 or six months' salary whichever is the higher. For the purpose of redundancy compensation calculations, salary includes any assigned value for employer contributions to the GSF if applicable. For members on parental leave this will be calculated based on their salary at the time of taking leave.

11.17 Continuity of Employment if Ministry's Business Restructured

The purpose of this provision is to provide protection for the employment of members (other than employees to whom Schedule 1A of the Employment Relations Act 2000 applies) if the Ministry is restructured as a result of:

(a) entering into a contract or arrangement under which the Ministry's functions (or part of those functions) are undertaken for the Ministry by another person or

(b) selling or transferring the Ministry's functions (or part of those functions) to another employer.

If the Ministry is being, or is proposed to be restructured and, as a result of that restructuring, the work being performed by any affected members of the Ministry is, or is to be, performed by a new employer, then the following provisions will apply:

(a) Within a reasonable period prior to the restructuring taking effect, the Ministry will notify the new employer of the number of affected members and provide details of the work currently performed by those members together with details of the terms and conditions of their employment (including the total remuneration of each affected member, length of service and any accrued benefits or entitlements)

(b) The Ministry will request that the new employer submit a proposal for the employment of the affected members by the new employer, including the terms and conditions upon which those members would be offered employment by the new employer

(c) When the new employer submits a proposal, the Ministry will arrange to meet with the new employer for the purpose of negotiating on the proposal.

The following shall be matters for negotiation with the new employer:

(a) The number and type of positions in respect of which the affected members may be offered employment by the new employer

(b) The terms and conditions of employment on which the affected members may be offered employment in those positions (including whether the affected members will transfer to the new employer on the same terms and conditions of employment)

(c) The arrangements, if required, for the transfer of any existing superannuation scheme benefits or entitlements and any other accrued benefits and entitlements in relation to those affected members who may be offered employment by the new employer

(d) The arrangements, if required, for when and how offers of employment are to be made to the affected members and the mode of acceptance

(e) The Ministry will also endeavour to arrange a meeting between the new employer and the PSA as soon as practicable prior to the restructuring taking place

(f) The Ministry will keep the PSA informed regarding negotiations with the new employer in respect of matters contained in (a)-(d) above.

The Ministry will make a genuine and reasonable attempt to reach agreement on the matters for negotiation in an effort to procure the employment of the affected members by the new employer, or as many of the affected members as is reasonably practicable, on terms and conditions of employment which are the same as, or not less favourable than the current terms and conditions of their employment with the Ministry, However, the Ministry is not bound or required to reach agreement with the new employer.

The following provisions will apply to any affected members who do not transfer to the new employer.

(a) The provisions of this clause do not apply to the determination of entitlements as a consequence of a transfer of functions between the Ministry and another department which is the subject of an Order in Council under section 30D of the State Sector Act 1988.

(b) For the purposes of this clause, “employment in an equivalent position”

in relation to an affected member's position in the Ministry is employment:

(i) in substantially the same position and
(ii) in the same general locality and
(iii) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy and superannuation conditions) and
(iv) on terms that treat the period of service with the Ministry (and any other period of service recognised by the Ministry as continuous service) as if it were continuous service with the new employer.

(c) The surplus employees provisions of this Agreement will apply to an affected member who is either:

(i) not offered employment by the new employer or
(ii) not offered employment in an equivalent position by the new employer.

(d) The surplus employees provisions of this Agreement will apply to an affected member who declines an offer of employment in an equivalent position with the new employer except that the employee shall not be entitled to retraining options or a redundancy payment.

Section 3 - SOFT CHANGE

11.18 Soft Change

The provisions in this section also apply to change which affect/impact on members working environment and practices but is not a formal restructuring process. For the purpose of this clause this will be called "soft change", Examples of soft change include but are not limited to:

(a) Change to reporting line

(b) Change of location (locally)

(c) Change to work practice and/or policy

(d) Changes to job description (minor i.e.< 20%)

(e) Out of cycle remuneration

11.19 Soft Change process

Soft change does not follow the formal change process.

11.9.1 Where there is soft change the Ministry will notify the PSA (as per Clause 11.2) and will consult with affected members.

11.9.2 The Ministry agrees to a minimum of 5 working days for the consultation period on the proposal for change documentation.

11.9.3 During consultation , the members will be provided with the opportunity to submit feedback on the proposed soft change prior to implementation. The Ministry is required to:

(a) consider feedback received before making a final decision; and
(b) ensure any feedback used has been included within the final decision documentation.

11.9.4 Members will be provided with written confirmation of the soft change.

The provisions within this section informs members that the effort they have put into providing feedback was heard.