



POLICY NO	CP/HR-3351	
POLICY	Severance	
RESPONSIBLE DIRECTORATE	Governance	
RESPONSIBLE OFFICER	Chief Executive Officer	
COUNCIL ADOPTION	Date: 23 February 2016	Resolution No: 11272
REVIEWED/MODIFIED	Date:	Resolution No:
	Date:	Resolution No:
REVIEW DUE	Date: February 2018	
LEGISLATION	<i>Local Government Act 1995 – Section 5.50</i>	
RELATED POLICIES	Nil	
RELATED ORGANISATIONAL DIRECTIVES	OD/OD-4305 Recognition of Employee Service Organisational Directive	

PURPOSE:

The purpose of this Policy is to outline the circumstances and the manner of assessment upon which the Shire of Wyndham East Kimberley will pay an employee an amount (**severance payment**) in addition to any amount to which they are entitled under a contract of employment, award, enterprise bargaining agreement or order by a Court or Tribunal.

This Policy shall not be considered as a contractual entitlement under the employment relationship.

DEFINITIONS:

Final annual remuneration in respect of a person means the value of the annual remuneration paid, or payable, to the person by the local government which employed that person immediately before the person's employment with the local government finished.

Senior Designated Employee refers to the class of employee whose position title commences with the word 'Director' and who report directly to the Chief Executive Officer.

Redundancy is when an employer doesn't need an employee's job to be done by anyone.

Resignation refers to the voluntary exercise by an employee of their right to terminate his/her contract of employment by the communication of the intention to do so.

Severance is money, exclusive of wages, backpay etc., paid to an employee who has tenure and who is dismissed because of lack of work or other reasons beyond the employee's control.

Weeks pay means the normal weekly salary or wage payable to the employee including any penalty rates normally paid for ordinary hours but excluding overtime or intermittent payments. This includes salary or wages specifically sacrificed for additional non-award benefits; and does not include the value of any non-award benefit normally provided for in the employee's position (such as a vehicle and where normal use of that vehicle is a non cash component of a salary package, and any over award superannuation provided to employees).

POLICY STATEMENTS:

1. Determinations

This Policy applies to all employees of the Shire of Wyndham East Kimberley.

Decisions under this Policy are to be made –

- a. by the Council – where the decision involves a severance payment to the Chief Executive Officer (CEO) and Senior Designated Employee; or
- b. by the CEO – where the decision involves a severance payment to any other employee of the Shire of Wyndham East Kimberley.

2. Circumstances for severance payment

The Shire of Wyndham of East Kimberley may pay a severance payment in the below circumstances:

2.1. A terminating employee is entitled to severance pay and benefits in accordance with:

- any Federal or State award or industrial agreement applicable to that employee;
- any applicable provisions within the employee's contract of employment;
- any applicable award or order made by a Federal or State Industrial Tribunal arising from the circumstances of that employee being specifically brought before that tribunal, subject to any right of appeal;
- Where the CEO/Council so agrees, any recommendation made by a Federal or State Industrial Commissioner arising from the circumstances of that employee being specifically brought before that Commissioner.

2.2. Where a dismissed employee has taken or is proposing to take litigation for alleged unfair dismissal, the CEO/Council may decide to settle to avoid expensive litigation. Matters to be taken into consideration by the CEO/Council as to whether to seek a settlement and if to do so, the extent of any financial offers include:

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

2.3. The CEO/Council may decide to settle in a situation where an employee, due to illness or impairment is unable to perform their job and there has been mutual agreement that employment must end. Matters to be taken into consideration by the CEO/Council in determining the extent of any financial offers may include:

- the length of service;
- the conscientiousness of the employee over the period of employment;
- the value of the employee's service having regard to position(s) held and the regard given by the CEO/Council to the employee's contribution;
- length of time to retirement;

- the personal circumstances of the employee including family responsibility, future employment prospects and alternative sources of income; and
- possible exposure to litigation if the employee was dismissed having regard to obligation of CEO/Council under the State Equal Opportunity Act, the Commonwealth Disability Discrimination Act and the Commonwealth.

2.4. Exclusions

A severance payment will not be made to an employee who-

- a. is redeployed within the Shire of Wyndham East Kimberley;
- b. accepts or rejects an offer of employment;
- c. is dismissed for serious misconduct;
- d. is employed on either a temporary or casual basis;
- e. has less than one year's service with the Shire of Wyndham East Kimberley; or
- f. is classified as a trainee or apprentice or under probation.

3. Redundancy Process

3.1. Consultation

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

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

3.2. Transfers Within the Organisation

- a. Wherever possible and practical, appropriate employees should be offered a transfer to other positions within the organisation and also offered the necessary and reasonable training to effect a successful transition.

- b. Where an employee is transferred to other duties for the purpose of avoiding retrenchment and those duties attract a lesser rate of pay than the incumbent's previous position, the Shire will make up the difference between the two rates for a period of twelve months. After this time, the lesser rate will apply.

3.3. Counselling

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

3.4. Re-employment

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

3.5. Severance Benefits

The offer will be limited to a maximum of an additional 20% based on the total redundancy or severance pay package as determined by the award, contract or enterprise agreement or in the case of retirement.

4. Financial Liability for Taxation

The employee accepts full responsibility for any taxation payable on a severance payment, and agrees to full indemnify the Shire of Wyndham East Kimberley in relation to any claims or liabilities for taxation in relation to the severance payment.

EXPLANATORY NOTES:

This Policy ensures that there are clear guidelines for making payments to employees above the entitlement under a contract of employment, award, enterprise bargaining agreement or order by a Court or Tribunal.

Legislation

Local Government Act 1995: Section 5.50 Payments to employees in addition to contract or Award

(1) A local government is to prepare a policy in relation to employees whose employment with the local government is finishing, setting out –

(a) the circumstances in which the local government will pay an employee an amount in addition to any amount to which the employee is entitled under a contract of employment or award relating to the employee ; and

*(b) the manner of assessment of the additional amount,
and cause local public notice to be given in relation to this policy.*

(1a) A local government must not make any payment of the kind described in subsection (1) a) unless the local government has adopted a policy prepared under subsection (1).

- (2) A local government may make a payment –
- (a) to an employee whose employment with the local government is finishing; and
 - (b) that is more than the additional amount set out in the policy prepared under subsection (1) and adopted by the local government, but local public notice is to be given in relation to the payment made.
- (3) The value of the payment or payments made to a person under this section is not to exceed such amount as is prescribed or provided for by regulations.
- (4) In this section a reference to a payment to a person includes a reference to the disposition of property in favour of, or the conferral of any other financial benefit on, the person.

Local Government (Administration) Regulations 1996 – Regulation 19A: Payments in addition to contract or award, limits of (Act s.5.50(3))

- (1) The value of a payment or payments made under section 5.50(1) and (2) to an employee whose employment with a local government finishes after 1 January 2010 is not to exceed in total –
- (a) the value of the person's final annual remuneration, if the person –
 - (i) accepts voluntary severance by resigning as an employee; and
 - (ii) is not a CEO or a senior employee whose employment is governed by a written contract in accordance with section 5.39;
 - or
 - (b) in all other cases, \$5,000.
- (2) In this regulation –

final annual remuneration in respect of a person, means the value of the annual remuneration paid, or payable, to the person by the local government which employed that person immediately before the person's employment with the local government finished.

Public Notice Requirements

In accordance with Section 5.50 of the *Local Government Act 1995* a local public notice is to be given:

1. as soon as practicable of the adoption of this Policy; and
2. as soon as practicable on any payment to an employee that is in excess of the amounts provided for in this Policy

Note: A payment in excess of this Policy must still be within the limits prescribed in the Act and Regulations.

RISK:

Risk: Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

Control: Review policies and procedures in accordance with review schedule.