

Public Service and Merit Protection Commission

## **OUTSOURCING**

# **HUMAN RESOURCE MANAGEMENT PRINCIPLES, GUIDELINES, GOOD PRACTICE**

SECOND EDITION

Australian Government Publishing Service  
Canberra

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ISBN

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Published by the Australian Government Publishing Service

## FOREWORD

This second edition of the Outsourcing - Human Resource Management Principles, Guidelines, Good Practice booklet has been revised to reflect a number of legislative and policy changes that have occurred since the original booklet was issued in September 1996.

The most significant of these changes concern:

- changed superannuation arrangements for Australian Public Service (APS) employees affected by the outsourcing of a function;
- the removal of the expressed preference for using the Clean Break approach;
- the introduction of mechanisms to support the Phased approach where people have received a severance benefit;
- the clarification of the taxation treatment of redundancy benefits made to APS staff under the Clean Break approach; and
- the inclusion of more detailed information on the ethical management of outsourcing.

This booklet emphasises the importance of developing an effective human resource management strategy, linked to the overall corporate strategy, in each outsourcing exercise. The management of staff affected by a decision to outsource an activity is a crucial and integral part of any outsourcing initiative. This booklet aims to assist agencies in ensuring that any legislative requirements are satisfied and in achieving good practice in managing the human resource aspects of outsourcing.

The Public Service and Merit Protection Commission is also issuing a separate booklet which deals specifically with the human resource aspects of Information Technology Outsourcing. This booklet, called *Employment Framework for Information Technology Outsourcing*, focuses specifically on the employment transition framework that has been developed to give effect to the Government's whole of government Information Technology initiative and it should be read in conjunction with this publication.

I hope that you find this booklet of assistance, both in ensuring that the legislative requirements in relation to outsourcing are satisfied, and in helping you to achieve good practice in managing the staffing aspects of outsourcing.

Helen Williams  
Public Service Commissioner

July 1998

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## INTRODUCTION

The Commonwealth Public Sector is striving to improve efficiency, improve customer service, be more competitive, implement best practice and to simultaneously reduce costs. Outsourcing is one means of achieving these objectives.

Outsourcing, which is also known as contracting out, refers to an arrangement where an agency has an activity or function performed by a private sector provider, or by another public sector or APS organisation. Under such arrangements the original agency retains overall responsibility and accountability for the activity. The main purpose of outsourcing is to allow an agency to concentrate on its core activities and to provide better value for money. It may also be pursued as part of an industry development policy.

Outsourcing of APS activities is now taking place at an increasing rate. It has been extensively used by Commonwealth agencies, mainly in the areas of construction, consultancies, business and property, transport and storage, communications, health education, museums, libraries, cleaning, gardening, training, marketing information and public relations. In April 1997, the Government agreed in principle to the outsourcing of its Information Technology Infrastructure subject to a competitive tendering process.

This booklet gives managers an overview of the key principles, legal context and good practice issues that need to be addressed in managing the human resource aspects of outsourcing. The booklet makes no judgement on whether an activity should be outsourced. This is a matter for the relevant decision makers.

Effective human resource management is crucial to successful outsourcing. Both the Industry Commission in its report, *Competitive Tendering and Contracting by Public Sector Agencies* and the Auditor-General in his *Audit Report No. 45 1991-92* on the outsourcing of the Department of Veterans' Affairs National Computer Centre underscored the importance of effective human resource management in achieving a productive and efficient outsourcing process.

In response to the Industry Commission's Report, the Government decided that Ministers should require agencies to systematically review their activities to ensure that they are carrying out tasks that are primarily the responsibility of the Commonwealth. Where ongoing Commonwealth responsibility is established, managers are required to consider ways in which performance improvement tools, such as benchmarking, business process re-engineering, purchaser provider models and competitive tendering and contracting can be used to improve efficiency and effectiveness. Further information is available in two publications issued by the Department of Finance and Administration entitled *The Performance Improvement Cycle - Guidance for managers* and *Competitive Tendering and Contracting - Guidance for managers*.

The policies, principles and good practice set out in this booklet have been developed by the Public Service and Merit Protection Commission (PSMPC) in co-operation with the Department of Finance and Administration (DoFA) and the Department of Workplace Relations and Small Business (DWRSB), and after consultation with other APS agencies, in particular the Departments of Defence and Veterans' Affairs. Agencies should seek advice from central agencies on any pending policy or legislative changes which may affect the future management of outsourcing exercises. Appendix A provides further information on the role of central agencies in outsourcing exercises.

This booklet deals with human resource management strategies and processes after the decision to outsource has been made. It is divided into three parts:

Part One details the principles and legal requirements to be applied in managing the human resource aspects of outsourcing in the APS. It covers the requirements specified in the *Public Service Act 1922* (the PS Act) and other relevant legislation, and identifies the two approaches that have been developed for managing the staffing aspects of outsourcing.

Part Two places HRM issues in the overall context of outsourcing and provides good practice guidance on managing the human resource management aspects of outsourcing. It also provides guidance to agencies on the effective application of the principles and legal requirements outlined in Part One.

Part Three focuses on case studies, based on key lessons learnt from outsourcing exercises undertaken by agencies.

The term 'agency' is used in this booklet to mean any departments and agencies staffed under the PS Act.

## PART ONE

This Part provides advice on the principles and legal requirements to be applied by agencies when managing the human resource aspects of outsourcing. It also outlines two approaches to address the human resource management aspects of outsourcing.

## **1. OUTSOURCING**

### **1.1 Definition of outsourcing**

Outsourcing refers to the arrangement where an agency decides to have an activity or function performed by a private sector provider, or by another public sector or APS organisation. Under such an arrangement, the agency retains overall responsibility and accountability for the activity. The main purpose of outsourcing is to allow an agency to concentrate on its core activities and to provide better value for money. It may also be pursued as part of an industry development policy.

### **1.2 In-house bids**

In-house bids, although technically falling outside the definition of outsourcing, may be an option that an agency may wish to consider. Following an in-principle decision to outsource an activity, agencies need to decide whether to allow an in-house bid. In its publication *Competitive Tendering and Contracting - Guidance for managers*, DoFA suggests that decisions about whether to allow an in-house bid should be made on a case-by-case basis taking into account the costs and benefits of each case. The publication also sets out relevant issues to consider in reaching this decision and identifies two approaches (sequential and parallel) that can be used where it is decided to allow an in-house bid.

The decision on whether or not to allow a team to prepare an in-house bid should be made before the tender process commences, to ensure that staff carrying out the activity are not involved in preparing tender documents, and the process is fair and equitable.

Where an in-house bid is undertaken, the Commonwealth's Competitive Policy Neutrality Statement requires that the principle of competitive neutrality must be observed. The key elements of competitive neutrality include:

- the tender process not give an unfair advantage to either in-house or external tenderers,
- organisational structures ensure visible and auditable accountability arrangements;
- financial comparisons reflect full cost attribution, including taxation or a tax equivalent regime, return on capital and overheads (including where these are notional costs to the in-house bidder) do not give a net advantage to the in-house bid.

When an in-house bid is successful, the activity remains part of the APS, and positions are filled in accordance with normal APS principles and practices. An implementation directive, which is the internal equivalent of a commercial contract, is issued for the conduct of the activity in accordance with the processes set out in the in-house bid. This would include filling of positions, purchasing of equipment, maintenance of finances, etc.

### **1.3 Transfers of functions and sales of assets**

Transfers of functions (for example, from the APS to a Commonwealth authority or to a State or Territory Government) and sales of assets do not fall within the definition of outsourcing. For information on transfers of functions and sales of assets refer to Appendix B.

### **1.4 Major legislation governing outsourcing**

APS staff affected by outsourcing decisions are subject to the relevant provisions of the *Public Service Act 1922* (the PS Act), the *Workplace Relations Act 1996* and the *Superannuation Acts*. The *Redeployment and Retirement provisions of the APS General Employment Conditions Award 1995* (GECA) and the *Job Security and Redeployment provisions of the Continuous Improvement in the APS Enterprise Agreement: 1995-96*, or the redeployment and retirement provisions included in an agency specific Certified Agreement or Australian Workplace Agreements (collectively referred to in this booklet as

"the relevant redeployment and retirement provisions") deal with the management and entitlements of staff who are excess to requirements, including as a result of the outsourcing of an APS activity. For further details including good practice advice, refer to the PSMPC's publication *Management of Excess Staff Situations in the APS - Principles, Guidelines, Good Practice*.

### **1.5 Principles underlying the management of the HRM aspects of outsourcing**

The principles that underlie the efficient and effective management of the HRM aspects of the outsourcing of an APS activity are as follows:

#### ***Ensure fair and equitable treatment of all staff affected by the decision***

This principle is central to the success of good people management. The Government recognises the value of staff and will ensure that staff are treated fairly and equitably in any outsourcing situation. To help facilitate this, staff and their representatives will be consulted on issues affecting staff as a result of the outsourcing of Commonwealth functions. An integral part of the implementation process will be the development and utilisation of a communications strategy. Privacy and natural justice will need to be considered as part of this process.

#### ***Provide a degree of certainty about the approach to be adopted so as to assist all relevant parties to make appropriate decisions in relation to staffing matters***

The provision of timely information to staff is crucial to maintaining a transparent process, and in fostering a conducive industrial relations climate. In order to achieve this, agency management will need to clearly understand the objectives of the process and to have developed a comprehensive communication strategy to achieve this.

#### ***Seek to maximise a harmonious industrial environment and minimise the potential for industrial disputation prior to, and during, the changeover to the new provider***

The minimisation of industrial disputation and the promotion of a harmonious industrial relations environment enables a smooth changeover to the new provider and a reduction in uncertainty for staff affected by the process.

To achieve this agencies will need to identify industrial issues early in the process and to develop contingency plans to deal with any industrial and staffing issues that may arise.

#### ***Maintain the viability of the function during the outsourcing process***

It is imperative that the viability of an activity be maintained prior to, and during, the changeover to the new provider. The effectiveness of the management of the changeover period will require that all parties are fully informed of their role in the process and the desired outcomes. An effective changeover will reduce the disruption to staff, the new provider and the Government.

#### ***Ensure that related processes are focused on achieving the best value for money***

Achieving value for money requires a balance between risks and benefits, and an assessment of the most efficient and effective way of delivering a service. Agencies should ensure that the implementation of a decision to outsource is based on achieving the maximum return to the Government in the given circumstances.

#### ***Ensure that staff are aware of what constitutes ethical standards and behave ethically in relation to the outsourcing of an APS activity***

Public Servants occupy positions of trust, power and privilege and they must act with the highest ethical standards if they are not to breach that trust or misuse that power or privilege.

The APS must have the highest ethical standards, including the highest standards of probity, in all phases of the outsourcing process. The Government has recently endorsed a set of APS Values that are necessary to maintain public confidence in the integrity of the public service and the professionalism of public servants and a Code of Conduct which will apply to all staff. Certain provisions of both the Values and the Code of Conduct are relevant to the management of outsourcing exercises and the handling of the HRM aspects of outsourcing. The values and the code have been incorporated into the Public Service Regulations. For further information refer to subsection 2.2 in Part Two of this booklet).

### **1.6 HRM matters to be considered when outsourcing an activity**

The circumstances of each outsourcing proposal may vary considerably given the particular interests and priorities of the agency involved and the particular industrial context.

The following elements have been identified as relevant to the successful outsourcing of an activity:

- the **early involvement of an agency's specialists** in human resource management and industrial relations, who are cognisant of the objectives and constraints of the outsourcing exercise;
- a clear identification of **an appropriate strategy** for dealing with the HRM elements - Clean Break or Phased approach;
- a **structured approach** based on the development of an HRM plan that supports the commercial objectives of the specific outsourcing exercise. (Refer to section 2.4 in Part Two and Appendix C for further information on developing HRM plans);
- allocation of sufficient **financial and staffing resources** to implement the HRM plan;
- development of a **communications strategy** which provides for early and ongoing information and consultation with staff and their representatives. (For further information refer to subsection 2.4.2 in Part Two of this booklet);
- the need to ensure that all staff affected by the outsourced activity are treated **fairly and equitably**. (For further information refer to subsection 2.4.4 in Part Two of this booklet);
- an understanding of the superannuation options available to APS staff who are either made redundant or resign to take up employment with a new provider as a result of an outsourcing decision. (For further information refer to section 3.1 in Part Three of this booklet);
- **effective management of any excess staff** under the relevant redeployment and retirement provisions. (For further information refer to subsection 2.4.5 in Part Two and section 3.2 in Part Three of this booklet);
- the need for agencies to comply with the *Workplace Relations Act 1996* (For further information refer to section 3.4 in Part Three of this booklet);
- the need for new providers to comply with the *Affirmative Action (Equal Opportunity for Women) Act 1986*. (For further information refer to section 3.5 in Part Three of this booklet);

- the need for agencies to appreciate the application of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS(CE) Act). (For further information refer to section 3.6 in Part Three of this booklet);
- the need for agencies to be aware of the requirements of the *Archives Act 1983* as it applies to the transfer of custody or ownership of records. (For further information refer to section 3.7 in Part Three of this booklet);
- the need for agencies to be aware of developments in the administrative law area - for example the Government has signified its intention to seek certain amendments to the *Privacy Act 1988* and the *Freedom of Information Act 1982* which, if passed, will bring government information controlled by private contractors to the government within the scope of these Acts; and
- avoid making voluntary redundancy payments to any staff for whom jobs and terms and conditions of employment have been negotiated with the new provider prior to, or at the time, an activity is outsourced. (For further information refer to section 2.7.2 in Part Two and Case Study 2 in Part Three of this booklet).

### **1.7 Specific approaches for handling HRM aspects of outsourcing**

Experience over recent years has highlighted a range of common HRM issues that arise in the context of outsourcing. This has led to the development of two approaches for handling the HRM aspects of outsourcing, namely:

- **the Clean Break approach;** and
- **the Phased approach**

Each approach provides a discrete set of options for dealing with the people management and industrial relations issues in the outsourcing process.

The key elements of each approach are explained in section 2.7 of Part Two of this booklet.

In relation to Information Technology (IT) outsourcing, an agreed whole of Government approach has been established. In situations where it is decided to use the Phased approach, the transitional entitlements of staff accepting employment with the new provider are fixed. Further information is contained in the separate booklet on IT outsourcing.

### **1.8 Variations to the Clean Break and Phased approaches where the new provider is an APS organisation or a Commonwealth or State body**

#### ***1.8.1 Outsourcing an activity to another APS organisation***

It should be noted that in relation to the outsourcing of an activity to another APS organisation or to a Commonwealth or State body, as opposed to a private sector provider, there are some limitations on the full application of these approaches.

When the new provider is an organisation staffed under the PS Act and the new provider requires additional staff to perform the activity:

- these staff should be obtained in the first instance from amongst the appropriately skilled staff of the organisation currently performing the work and these staff are either:
  - transferred to the new provider under section 50 of the PS Act; or
  - transferred by the Public Service Commissioner, under section 51(3) of the PS Act, in the interests of the efficient administration of the Service;
- any staff moving to the new provider become the responsibility of that organisation; and

- staff not required by the new provider should be managed under the relevant redeployment and retirement provisions by the outsourcing agency.

### ***1.8.2 Outsourcing an activity to a Commonwealth or State body***

Movement of staff under the Phased approach from the APS to another Commonwealth authority as a result of the outsourcing of an activity is effected under section 81C of the PS Act. For further information, please refer to Appendix B.

Where a non-APS Commonwealth authority successfully tenders for an activity, APS officers who move to employment with the new provider may have certain rights of return to the APS. Further information on these provisions is provided in section 3.3 in Part Three of this booklet.

In circumstances where a State Government body is the successful tenderer for an outsourced APS activity, there is no provision in the PS Act which enables the compulsory transfer of staff to the State. However, section 87J of the PS Act provides a process for facilitating the voluntary movement of staff in certain circumstances and provides officers with certain rights of return to the APS. For further information, please refer to Appendix B.

## **PART TWO**

The advice contained in this Part is not mandatory. It seeks to place human resource management issues within the overall context of outsourcing and to provide good practice guidance on managing the HRM aspects of outsourcing. However, any actions taken in relation to management of staff affected by outsourcing should comply with the principles and legal requirements contained in Part One of this booklet.

## **2. HUMAN RESOURCE MANAGEMENT - AN INTEGRAL ELEMENT OF OUTSOURCING**

Prior to embarking on an outsourcing exercise, it is good practice for an agency to develop a **corporate strategy or framework** to ensure a coordinated approach to the HRM aspects of outsourcing. An example of such a framework is the one developed for the Department of Defence's Commercial Support Program.

Ideally, the corporate framework should outline the policy and guidelines to be adopted by an agency in outsourcing and provide a template for the development of a **project plan** specific to the outsourcing exercise.

### **2.1 The need for a specific HRM plan**

The management of staff affected by a decision to outsource an activity is a critical and integral part of any outsourcing exercise. HRM issues have a major bearing on the successful conduct of an outsourcing exercise.

While some of the HRM issues will have been addressed in the development of the corporate strategy, it is essential to develop a specific HRM plan to ensure that attention does not focus exclusively on the commercial aspects of an outsourcing decision.

The earlier the HRM issues are identified and addressed, the more likely it is that staff and their representatives will have an understanding of the reasons for, and the processes involved in, the outsourcing exercise. As a result, staff will be better informed to make decisions about their future, and better able to contribute in a positive sense to the outsourcing processes.

The flow chart on page XX places HRM in the context of an outsourcing strategy.

### **2.2 Ethical management of the outsourcing exercise**

The Government has stated its commitment to ensuring the APS has the highest ethical standards with the introduction of APS Values and a Code of Conduct in the Public Service Regulations. In relation to outsourcing this means that the highest standards of probity must be maintained throughout the outsourcing process. To assist agencies, the APS Values and the Code of Conduct are reproduced at Appendix D.

In summary, the following should be kept in mind during the outsourcing process:

- an APS employee is required to behave at all times in a way that upholds the APS Values (sub-regulation 7(11));
- Agencies Heads are required to uphold and promote the new APS Values and will be required to report to the Public Service Commissioner on the extent to which they are being upheld within their agency (regulations 6 & 12); and
- an APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment (sub-regulation 7(7)).

To avoid any real or apparent conflict of interest, or potential conflict of interest, in-scope staff should not make decisions about who the successful tender will be. Agencies should ensure that no one person controls the final outcome and that all significant decisions and recommendations are subject to review by peers and senior management.

To maintain the integrity of the process, the Government believes that key decision makers should not be employed by the successful tenderer within 12 months of the completion of the tendering process.

In outsourcing an activity agencies should ensure that:

- they perform their functions in a professional manner;
- services are delivered to the Australian public in a fair and impartial way;
- decisions are made in the interests of the Commonwealth; and
- they observe the highest ethical standards and that all staff are aware of and understand the APS Values and APS Code of Conduct.

The Office of Asset Sales and Information Technology Outsourcing (OASITO) has developed probity protocols for agencies outsourcing IT activities and these may also be useful as a guide for agencies when outsourcing other functions. A copy of the protocols is at Appendix E.

### **2.3 Good practice in HRM in outsourcing**

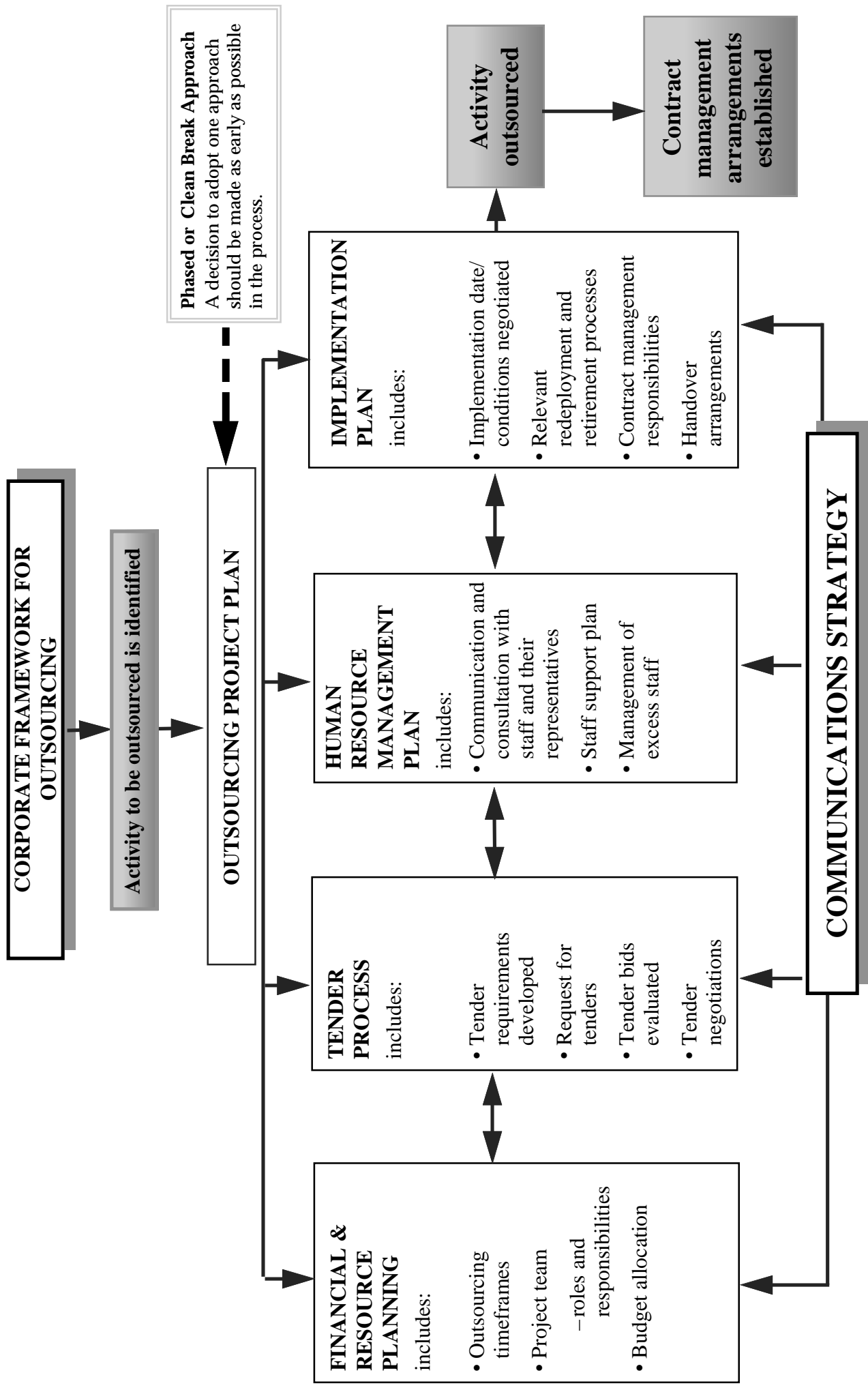
The approaches that an agency takes in managing the human resource aspects of outsourcing need to be consistent with the principles and legal requirements set out in Part One of this booklet. Human resource managers, line managers and others concerned with the implementation of an outsourcing decision should ensure that they are familiar with those requirements.

Experience has shown that there is a range of practices which will assist the successful management of the human resource aspects of outsourcing and, consequently, the successful outsourcing of the function.

These include:

- a structured approach to outsourcing;
- development of an HRM plan;
- sufficient staffing and financial resources;
- communications and consultative strategies;
- fair and equitable treatment of staff; and
- effective management of excess staff.

# Human Resource Management - One Element in an Outsourcing Activity



Past experience demonstrates that the earlier staff and their representatives are consulted in an outsourcing exercise, the smoother the outsourcing of the function is likely to be. It is also important that agencies involve HRM and industrial relations specialists at the earliest possible stage in an outsourcing exercise.

## **2.4 Developing an HRM plan for outsourcing**

It is good practice for an agency to develop a structured approach to the management of the HRM aspects of outsourcing, as soon as it contemplates the outsourcing of an activity. The development of a HRM plan is the first step to ensuring that a structured approach is undertaken. This will lead to early recognition of the nature and scope of the HRM aspects to be addressed. Failure to address these issues early in the process may result in delays in implementation, industrial disputation and poor staff relations.

The management of the human resource aspects is only one element to be considered in an outsourcing exercise. Consequently, the HRM plan must take into account the interacting elements of the outsourcing exercise and must be sufficiently flexible to adapt to changing circumstances. It is extremely important to ensure that sufficient lead time is allowed to meet target dates.

Agencies should allocate adequate resources dedicated solely to the development, management and implementation of the plan.

Where the likely outcome is that staff may be declared excess, the HRM plan should ensure the date negotiated for handover of the activity to the new provider takes into account the time frames required under the relevant redeployment and retirement provisions.

Below are the key elements which an agency will need to address when developing an HRM plan. (A suggested checklist is also provided at Appendix C.)

### **2.4.1 Resource allocations**

Sufficient resources should be allocated to implement the HRM plan. This includes sufficient funding to support these activities.

A detailed analysis of the staffing profile within the work areas affected by outsourcing will provide an indication of the scope and nature of the exercise. The allocation of resources to support the HRM plan will be affected by things such as:

- the number of permanent and continuing staff (as opposed to short-term temporaries) and the extent of higher duties;
- the number of workers' compensation cases;
- the marketability of the skills of existing staff.

Resources could include:

- dedicated project team members who are adequately trained in, and conversant with, the HRM processes and issues associated with outsourcing an activity;
- support services for the HRM project team - this could include facilities, travel, training, retraining, consultancy and other fees (e.g. referral fees to the APS Labour Market Adjustment Program (APSLMAP) in the PSMPC);
- staff to implement the communication plan (discussed below); and
- adequate personnel resources to process the resignations of staff moving to the new provider and the redeployment or retrenchment of affected staff (for example, calculation of severance payments and use of ComSuper for the calculation of

superannuation benefits and options).

#### **2.4.2 A communications strategy**

There is a need to develop a communications strategy to provide early and ongoing consultation with staff involved in an outsourcing activity and their representatives.

The plan should be dynamic, and properly integrated into the HRM plan. It should:

- clearly state the roles and responsibilities for project team members, including central and regional team members, if applicable, and target dates;
- as early as practicable, provide processes for discussions with staff and their representatives and for their input to the development of HRM strategies (including the formal consultative requirements under the relevant redeployment and retirement provisions);
- contain a timetable for communication to staff and their representatives on a regular basis (for example, through information sessions, bulletin boards, newsletters) to provide details on:
  - the outsourcing processes, the proposed time frame and updates on progress of the activity;
  - options available to staff (for example, employment with the new provider, redeployment);
  - support available to staff;
- recognise the impact on other areas of the organisation that may be affected by change, by raising the level of awareness and understanding of staff in areas where displaced staff from the outsourcing exercise may be placed.

An honest approach to the provision of information on the likely impact of outsourcing on staff is likely to contribute to a smoother implementation of the change.

#### **2.4.3 Staff support strategy**

In addition to regular communication and consultation with staff and their representatives, a staff support strategy should be developed to help minimise the personal stress of staff affected by an outsourcing decision. Support mechanisms should be designed to be flexible to meet the needs of different work groups in various ways at different stages of the outsourcing exercise and be provided through both group and individual sessions.

Support may include:

- information and briefings from:
  - APSLMAP;
  - ComSuper;
  - Australian Taxation Office;
  - Centrelink;
  - Agency HRM & industrial relations specialists; and
  - Financial counsellors;
- information kits to provide staff with details of their individual financial entitlements, details of counselling and support available, an outline of the relevant redeployment and retirement provisions and, in the case of the Phased approach, the conditions to apply on movement to the new provider;
- resources allocated to deal with individual staff issues (to address individual problems, preparation of staff training/retraining plans and provision of counselling and outplacement assistance, if required); and

- skills training and retraining activities identified to assist redeployment, (such activities may include the development of interview skills, assistance with the preparation of job applications and curricula vitae, etc).

#### ***2.4.4 Fairness and equity***

Consistent with the principles of workplace diversity, agencies are responsible to ensure that all staff affected by the outsourcing process are treated fairly and equitably.

Agencies should ensure that:

- all staff have access to training and retraining opportunities;
- all staff are given a reasonable opportunity to compete for positions available for redeployment; and
- any staff with special needs are identified and additional support and advice offered to assist them during this period, for example:
  - the provision of information in languages other than English, and
  - the provision of specialist support and counselling services.

Consideration could also be given to reporting on the effects of outsourcing an activity on members of EEO groups.

#### ***2.4.5 Effective management of excess staff***

Any staff excess to requirements as a result of outsourcing should be managed in accordance with the relevant redeployment and retirement provisions. Agencies should be cognisant of any mandatory time frames under the relevant redeployment and retirement provisions in developing an outsourcing implementation timetable.

To allow staff to make informed decisions on redeployment and retrenchment options, staff should be provided with:

- information on the formal processes;
- information on entitlements and the support mechanisms available, for example:
  - estimates of superannuation and other entitlements;
  - professional financial counselling;
  - advice on redeployment opportunities and the support available - the APS Labour Market Adjustment Program may be an appropriate organisation to provide this information; and
- access to advice on employment opportunities outside the APS.

The early development of revised staffing profiles in the affected work area(s) will help to identify redeployment opportunities. Staff in some employment categories will have better redeployment prospects than others. Several useful mechanisms that may be adopted are:

- personal approaches to other agencies to canvass likely redeployment opportunities;
- staff surveys - to help plan for the allocation of sufficient resources at critical stages of the HRM plan;
- the use of the substitution arrangements under subparagraph 11.4.12(b) of GECA, or similar provisions in a Certified Agreement or Australian Workplace Agreement, to create suitable redeployment opportunities for excess staff by allowing the retrenchment of other staff in the organisation.

#### **2.4.6 Contract management arrangements**

The agency which outsources an activity retains overall responsibility for ensuring that the activity continues to be performed at the required standard, and in particular that client service needs are adequately met. It is therefore good practice for an agency to include appropriate contract management arrangements in their outsourcing strategy. This ensures the activity is successfully maintained during the handover to the new provider and during the contract period.

Both the Auditor-General and the Senate Finance and Public Administration References Committee have stressed the importance of APS agencies focusing more strongly on developing contract management skills and expertise.

#### **2.5 Indicators of good practice in managing the human resource aspects of outsourcing**

The following are some useful indicators of good in managing the human resource aspects of an outsourcing exercise:

- defined plans are in place to manage the various aspects of HRM;
- staff and their representatives are consulted and advised in accordance with current requirements;
- staff involved with the implementation of the HRM plan are fully conversant with their responsibilities, the processes to be followed, and the objectives of the outsourcing exercise;
- the process is managed in a timely and cost effective way with minimal industrial disputation;
- staff affected by the outsourcing exercise are consulted and advised in a timely manner and are advised of the possible implications for them - professional advice and support is provided to staff, as required;
- decisions are made in accordance with the HRM principles of effectiveness, equity and accountability, and with proper regard to natural justice and privacy considerations;
- the viability of the activity is maintained during the changeover to the new provider;
- legislation and policy requirements are complied with, in particular the relevant redeployment and retirement provisions, and the making of voluntary redundancy payments to any staff for whom jobs and terms and conditions of employment have been negotiated with the new provider has been avoided;
- staff are advised of their responsibilities regarding official conduct and conflict of interests when tenders are being called; and
- staff do not assist tenderers with their bids.

#### **2.6 The variables that might apply in each outsourcing exercise**

The circumstances of each outsourcing proposal will vary considerably in accordance with the interests and priorities of the agency. These variables may include:

- the extent to which the agency has an ongoing interest in the performance standard of the activity. The level of interest may be determined by how critical the activity is to the agency's core business. For example, the performance standard of an agency's computer services may be more critical than for cleaning services;

- the extent to which the skills of existing staff are critical to the continuation of the activity. This may be determined by the specialist nature of the activity, or the length of training or experience required to perform the activity;
  - management should ensure that the highest standards of ethics are maintained and that the APS Code of Conduct is not breached, for example, that there is no conflict of interest where staff are managing an outsourcing contract and determining who should be employed by the new provider;
- whether specialist skills are required to perform the activity and the availability of those skills in the general labour market; and
- the capacity of the agency to manage the staffing consequences of the adopted approach. An agency's capacity may be affected by:
  - the time frame involved;
  - the number of staff involved in the activity;
  - the cost of each approach, and the organisational costs of supporting them;
  - the availability of sufficient specialist HRM staff to assist on site;
  - whether sufficient resources are available within the agency, or whether assistance may need to be provided through consultancy arrangements;
  - the industrial relations environment;
  - redeployment prospects within the organisation or the APS for the staff involved; and
  - the capacity of the organisation to fund retrenchment and redeployment activities.

## **2.7 The approach to outsourcing - determining the use of a Clean Break or Phased approach**

As noted in section 1.7 of Part One of this booklet, two approaches have been developed for handling the HRM aspects of outsourcing. The key features of each approach is described below.

### ***2.7.1 Clean Break approach***

The Clean Break approach does not involve any negotiating of jobs and terms and conditions of employment by the outsourcing agency with the new provider. The new provider is free to enter negotiations with affected staff regarding employment opportunities with the new provider. This does not preclude the agency entering discussions with the new provider about the number of staff required to perform the function. All staff associated with the activity to be outsourced are placed in suitable positions elsewhere in the agency or are subject to the relevant redeployment and retirement provisions.

Where the new provider is an organisation staffed under the PS Act, this approach can only be utilised if the new provider does not require any of the staff previously involved in the activity to be outsourced.

Under the Clean Break approach, the following steps would usually occur:

- the new provider is free to recruit the employees it requires to meet its business needs from any source;
- the outsourcing agency will not provide details of affected staff to the new provider other than general information which may be required under due diligence (for example, details of staffing structures and profiles);

- there are no leave without pay or secondment arrangements for affected staff to work for the new provider (normal leave arrangements to undertake short periods of training with the new provider may be permissible subject to the operational requirements of the outsourcing agency);
- employees are free to choose whether or not to accept a job offer from the new provider;
- no agreements or understandings are entered into between the outsourcing agency and the new provider, or the agency and its employees, about the employment of any specific individuals or any groups of individuals by the new provider;
- all staff who cannot be placed elsewhere in the outsourcing agency may be declared excess (after completion of steps required under the relevant redeployment and retirement provisions);
- staff may be redeployed or retired, voluntarily or involuntarily, under the relevant redeployment and retirement provisions;
- there is no restriction on the subsequent employment of former APS staff with the new provider (though there are restrictions on subsequent APS employment - see section 3.9 in Part 3 of this booklet for further details);
- members of the Public Sector Superannuation Scheme (PSS) or the Commonwealth Superannuation Scheme (CSS) who are made redundant as a result of these processes before 1 July 1999 will have the option of access to a lump sum payment of their total superannuation benefit, including the employer contribution;
  - in the case of any redundancies occurring on or after 1 July 1999, the total employer component will be required to be preserved until retirement from the workforce on or after preservation age (currently age 55);
  - in addition, from 1 July 1999, employee contributions made and interest earned on or after that date will be required to be preserved until retirement from the workforce on or after preservation age.

The Australian Taxation Office has provided advice on the taxation treatment of severance payments made to staff under the Clean Break approach where staff take up employment with the new supplier of the outsourced function. This advice is included in section 3.8 in Part 3 of this booklet.

### ***2.7.2 Phased approach***

The Phased approach provides for staff currently performing the activity to be considered for jobs with the new provider prior to the activity being outsourced and prior to invoking the relevant redeployment and retirement provisions.

Under this strategy the following steps would usually occur:

- the agency advises all tenderers that the contract may contain a provision for the new provider to fill vacancies initially from the APS staff currently performing the activity;
- the agency (with assistance from central agencies) negotiates with staff and their representatives on the terms and conditions to be offered to staff accepting employment with the new provider. At the same time, the agency has separate discussions with the successful tenderer. (Note : for IT outsourcing, where the Phased approach is used, the transitional entitlements for staff accepting employment with a new provider are fixed);
- successful APS applicants who accept a negotiated job with the new provider are identified prior to the activity being outsourced. This ensures that these persons do not receive an offer of voluntary redundancy and a job with the new provider prior to the

activity being outsourced;

- APS staff who obtain a position with a private sector provider resign from the APS. Special provisions apply where the new provider is another APS agency or a Commonwealth or State Government body (for further information refer to section 1.8 in Part One of this booklet);
- in addition to the normal superannuation options available to staff on resignation, staff who resign to accept a job with a new private sector provider will be able to access the additional option of rolling over their total superannuation benefit into another superannuation scheme. Employees may then access a lump sum payment of their own contributions plus interest with the employer component of the lump sum being preserved in the relevant scheme until retirement from the workforce on or after preservation age (currently age 55);
  - it needs to be noted however that from 1 July 1999 access to the employee component of superannuation will be restricted to contributions made and interest earned before that date; and
- APS staff who remain with the agency and who cannot be placed in another suitable position are covered by the relevant redeployment and retirement provisions.

### ***2.7.3 Mechanism to support the Phased approach***

Where an agency adopts the Phased approach, staff accepting employment with the new provider are expected to resign from the APS to take up their new employment.

An additional mechanism has been developed to ensure that a private sector provider supports the effective application of the Phased approach by carrying out any recruitment of APS staff before handover. This is achieved by including a provision in the tender documentation which will have the effect of requiring the new provider to pay an amount (\$25,000) to the outsourcing agency in each case where that provider employs a person who has received a severance benefit within 6 months of the outsourcing of the activity.

The adoption of such an arrangement recognises the investment of resources by the Commonwealth in arranging a Phased approach. The provision is not intended as a restriction on the employment of former APS employees but rather as a mechanism to ensure that the new provider supports the effective implementation of the Phased approach where it is being used. The use of this mechanism to support the Phased approach will assist in ensuring the integrity of APS outsourcing.

A formal set of words, developed with the assistance of the Attorney-General's Department, for inclusion in tender documentation where the Phased approach is used is at Appendix F.

### ***2.7.4 Identification of advantages and disadvantages of the two approaches***

The advantages and disadvantages of using the **Clean Break approach** include:

#### ***Advantages***

- **Administratively simpler**

There is no attempt to negotiate jobs and terms and conditions with the new provider. This avoids the heavy demand for resources that can result from having to negotiate these arrangements.

- **Maintains a wider skills market for the new provider**

Highly skilled and experienced staff may be those most attracted to a redundancy package. Under the Clean Break approach, skilled staff who take a redundancy package may compete immediately for jobs with the new provider.

- **Reduced implementation time frame**

Negotiations on staffing issues are likely to be significantly less protracted than under the Phased approach thus minimising the real costs of outsourcing. This allows wind-down of the activity in the APS, if required, and the rapid re-establishment of the activity with the new provider in line with the essential objective of achieving a better use of resources and the most cost effective delivery of services.

### *Disadvantages*

- **Public perceptions**

There may be sensitivities about situations where staff obtain a severance benefit from the outsourcing agency and then, immediately or within a short period, obtain a job with the new provider.

- **Agency liability for redundancy payments**

The agency could be liable for high redundancy payment costs if left with a large number of displaced officers who do not have appropriate skills and expertise to obtain redeployment within the APS.

- **Industrial disputation**

There may be industrial disputation if the number of excess staff is greater under this approach than it would be under the Phased approach.

- **Continued viability of the activity**

If the new provider is unable to retain or recruit staff with sufficient experience and skills, then the continued viability of the activity may be adversely affected.

The advantages and disadvantages of using the **Phased approach** include:

### *Advantages*

- **Facilitates the agency's interest in ensuring that the activity is continued at an acceptable standard**

The employment of appropriately skilled staff who were previously performing the activity will help to ensure that the activity continues to operate efficiently, especially in situations where some of the necessary skills and knowledge may not be available elsewhere.

- **Minimises staff receiving both voluntary redundancy payments and a job with the new provider.**

When the filling of jobs has been negotiated between the agency and the new provider prior to the activity being outsourced, the agency can ensure that individuals do not receive a voluntary redundancy payment in addition to a job with the new provider.

### *Disadvantages*

- **Complex and protracted negotiations**

This is seen as the main disadvantage to the use of the Phased approach and its impact should not be underestimated. The ability to work within tight and reasonably well defined time frames is essential to maintaining the viability of the activity or function while the outsourcing process is finalised. The complexity and potentially protracted nature of negotiations with staff and their representatives and tenderers on the terms and conditions of employment for staff who accept employment with the new provider can greatly extend the time frame of the outsourcing exercise, thus increasing the real costs

of outsourcing and compromising the objective of achieving better use of resources and the cost effective delivery of services.

There may be additional complexities for organisations who undertake concurrently a large number of outsourcing exercises, in that they may face the risks of industrial action which could bid up conditions or lead to arguments about the flow-on of conditions.

- **Administrative costs**

Administrative and resource costs incurred by the outsourcing organisation, and by central agencies, in negotiating with staff and their representatives and in administering any ongoing arrangements may in some cases outweigh the benefits of outsourcing.

- **Agency liability for redundancy payments**

The use of the Phased approach will not necessarily obviate the need to make redundancy payments. While it is true that the number of redundancies will generally be less under the Phased approach than under the Clean Break approach, the difference may not be significant.

## **Conclusion**

Each of the two approaches described above provides a discrete set of options for managing the human resource issues and workplace relations aspects that agencies need to address in an outsourcing process. While it is up to each agency to decide which approach is the more appropriate in the context of a particular outsourcing exercise, it needs to be reiterated that:

- only one approach may be used by an agency in any particular outsourcing situation; and
- no hybridisation of either approach is available.

An agency will need to determine a preferred course of action based on the Clean Break or the Phased approach at the start of any market testing process. This is important not only for informing staff of the options they have, but also because the approach that is adopted will affect vendor responses in the tendering process and may impact on overall pricing. It also needs to be recognised that the selection of the preferred provider may have an impact on which approach is adopted.

Where an agency identifies a preferred approach before the new provider is known, it will have to modify this approach where the new provider is an organisation staffed under the PS Act or a Commonwealth body (for further information refer to section 1.8 in Part One of this booklet).

## **PART THREE**

Further information to assist agencies in managing the HRM aspects of outsourcing is provided in this part.

### **3. OTHER SIGNIFICANT HUMAN RESOURCE MANAGEMENT ISSUES**

The following information is provided to supplement issues raised in earlier sections of the Booklet.

#### **3.1 Commonwealth superannuation benefits**

Superannuation may be a significant issue for staff considering their redeployment and retrenchment options in the context of outsourcing.

In June 1997, the Minister for Finance announced a number of changes to the superannuation arrangements for Commonwealth employees affected by the outsourcing of a function or the sale of an enterprise. In relation to the APS, the changes mean that:

- under the Clean Break approach, APS employees in either the PSS or CSS who are made redundant will have the option of access to a lump sum payment of their total superannuation benefit, including the employer contribution. In the case of any redundancies occurring after 1 July 1999, the employer component will be required to be preserved until retirement from the workforce on or after preservation age (currently age 55);
  - in addition, from 1 July 1999, employee contributions made and interest earned on or after that date will be required to be preserved until retirement from the workforce on or after preservation age.
- under the Phased approach, APS employees in either the PSS or the CSS who resign to take up a job with the new supplier will be able to access the additional option of rolling over their total superannuation benefit into the new employer's (or another) superannuation scheme. This allows employees, if they choose, to access a lump sum payment of their own contributions plus interest. The employer component of the lump sum, however, will be required to be preserved until retirement from the workforce on or after preservation age (currently age 55). Employees who are not offered jobs and are made redundant will have access to the same options as staff made redundant under the Clean Break approach;
  - it needs to be noted however that from 1 July 1999 access to the employee component of superannuation will also be restricted to contributions made and interest earned before that date.

This decision has removed the uncertainty surrounding the question of access to the lump sum superannuation benefit for APS staff affected by outsourcing decisions who accept voluntary retrenchment. It means that APS employees who, under the Phased approach, resign to take up employment with the new provider will be able to roll over their total superannuation benefit to a superannuation fund or Retirement Savings Account of their choice and access their own contributions plus interest (keeping in mind however that from 1 July 1999 access to the employee component of superannuation will be restricted to contributions made and interest earned before that date).

These changes mean that, from 1 July 1999, the superannuation lump sum will be treated in the same way irrespective of whether the person resigned under the Phased approach or was made redundant under either approach. The changes are expected to make the Clean Break approach more administratively workable, and the Phased approach more attractive, than has previously been the case.

To assist staff in reaching decisions on redeployment and retrenchment options, agencies should contact ComSuper as early as practicable to enable staff to be fully cognisant of

their individual superannuation projected benefits and options.

*For assistance and further information agencies should contact ComSuper.*

### **3.2 Management of excess staff**

Staff who become excess as the result of an outsourcing exercise should be managed in accordance the relevant redeployment and retirement provisions - i.e. either under the *APS General Employment Conditions Award 1995 (GECA)* and the Job Security and Redeployment provisions of the *Continuous Improvement in the APS Enterprise Agreement: 1995-96*, or under the redeployment and retirement provisions included in the agency specific Certified Agreement or in Australian Workplace Agreements.)

Agencies should be aware that not all staff displaced by the outsourcing of an activity are necessarily covered by the relevant redeployment and retirement provisions. The current Service-wide provisions **do not** extend to temporary employees who have been employed for less than one year, Senior Executive Service officers, or officers whose probationary appointment to the APS has not been confirmed.

If voluntary retrenchment is being considered for staff who have been displaced by an outsourcing exercise, an offer of voluntary retrenchment may not be available for staff who are on extended leave without pay or unfit for duty. This highlights the importance of developing and analysing the profile of the staff in the affected areas as early as possible.

*For assistance and further information agencies should contact the PSMPC's Staffing, Structures and Mobility Team.*

### **3.3 Part IV mobility rights**

Part IV of the PS Act sets out certain provisions relating to the rights of APS staff who leave the APS to work for non-APS Commonwealth authorities. In March 1998, new Public Service Regulations were made which have the effect of removing most Commonwealth authorities from coverage under these provisions. The existing rights of persons covered by the Part IV mobility provisions are not affected by these amendments.

The mobility provisions in Part IV of the PS Act have never applied to staff who accept employment with a private sector provider. Officers who take up employment with a private sector provider under the Phased approach are expected to resign from the APS.

*For assistance and further information agencies should contact the PSMPC's Staffing, Structures and Mobility Team.*

### **3.4 Workplace Relations Act 1996**

The Department of Workplace Relations and Small Business is responsible for administering the Workplace Relations Act. *Agencies should seek advice and further information from that Department as required.*

### **3.5 Affirmative Action (Equal Opportunity for Women) Act 1986**

It is Government policy that any organisation which fails to comply with the *Affirmative Action (Equal Opportunity for Women) Act 1986* is ineligible for government contracts and specified forms of industry assistance.

The policy is applied to non-complying employers who have been named in Parliament. It is administered by all Commonwealth Government departments and agencies.

*To ensure that a preferred new provider is in compliance with the legislation, agencies may obtain a list of non-complying agencies from the Affirmative Action Agency. The list is updated quarterly.*

### **3.6 Occupational Health and Safety (Commonwealth Employment) Act 1991 (OHS(CE) Act)**

The OHS(CE) Act defines the classes of people to whom it relates and matters relating to the Commonwealth's duty of care in each case. This interest includes contractors, and suppliers of plant and substances to the Commonwealth.

Agencies have an overriding duty of care to take all reasonably practicable steps to comply with the provisions of the Act and should refer to the OHS(CE) Act and Regulations when considering the application of the legislation in each outsourcing exercise.

*Comcare Australia is the Commonwealth agency responsible for administering the OHS(CE) Act and agencies should seek advice and further information from Comcare as required.*

### **3.7 Archives Act**

On 30 January 1997 the Australian Archives issued advice (reference 93/313) to all APS Departments, Statutory Authorities and Government Business Enterprises regarding the requirements of the *Archives Act 1983* in relation to the retention of records of Commonwealth agencies undergoing corporatisation, sale or outsourcing.

*Agencies should be aware that any transfer of custody or ownership of Commonwealth records will require authorisation by the Australian Archives.*

### **3.8 Taxation treatment of redundancy benefits under the Clean Break approach**

The Australian Taxation Office (ATO) has provided the following advice on the taxation treatment of redundancy benefits paid to staff under the Clean Break approach.

*Bona fide redundancy* - such payments fall for consideration under the provisions of section 27F of the Income Tax Assessment Act 1936 and are explained in Taxation Ruling TR 94/12.

In essence, section 27F is designed to provide concessional tax treatment to that part of an Eligible Termination Payment that represents a compensation payment to an employee for the hardship and inconvenience experienced upon losing a job - in APS terms this equates to the severance payment of two weeks pay for each completed year of service under paragraph 11.4.7 of the *APS General Employment Conditions Award 1995* (GECA) or equivalent payments under an agency specific Certified Agreement (CA) or Australian Workplace Agreements (AWA).

Some useful principles on what constitutes a 'bona fide redundancy' are set out in Taxation Ruling TR 94/12 and these are set out in Appendix G of this booklet.

*Involuntary dismissal* - the ATO has advised that one test to be satisfied for a payment to qualify as a 'bona fide redundancy' payment is that the dismissal is **involuntary** - that is, the termination is instigated by the employer. In relation to the APS, if a Secretary retires an employee as an excess officer under section 76W of the Public Service Act 1922 and a benefit is paid under paragraph 11.4.7 of GECA or similar provision in a CA or AWA, the requirement for the dismissal to be involuntary is satisfied.

*Outsourcing* - the ATO has also advised that in relation to the use of the Clean Break approach in an outsourcing situation, where an APS agency will no longer be carrying out a particular function and will no longer require the people to do the work that is to be done by the new provider, then prima facie there is a 'bona fide redundancy'.

*Agreement to employ* - however, there is also another test that must be satisfied for a payment to be regarded as a 'bona fide redundancy' payment, namely that at the 'time of termination' there must not be any 'agreement' between the outsourcing agency and the taxpayer, or between the outsourcing and the new service provider, about the employment of any specific individuals or any groups of individuals by the new provider.

*Time of termination* - under subsection 27F(1) of the *Income Tax Assessment Act 1936* (the Income Tax Act) this is the date that an employee ceases work with the employer who is making them redundant.

*Agreement* - Subsection 27A(1) of the Income Tax Act defines an ‘agreement’ in very broad terms, namely “*any agreement, arrangement or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings*”.

The ATO has advised that the agreement test is subjective and in the end depends on the circumstances of each case. The critical issue is whether there is, prior to entitlement to a redundancy payment, an arrangement between the department and the new provider to re-employ a specific individual. To achieve this, the department and the new provider would clearly have to enter into negotiations on an employee’s behalf.

The ATO has expressed the view that where a tenderer indicates, as part of the tender, that they intend to employ a group of very specifically skilled staff (e.g. all of the agency’s lawyers, or all its senior managers), there is likely to be an arrangement to re-employ specific persons and as such this would **not** be a ‘bona fide redundancy’.

However, where the tenderer indicates an intention to employ as many of the employees as they find useful to their continued business operations, and to enter into discussions with the outsourcing department about the number and profile of staff required to perform the function (as is countenanced under the Clean Break approach), the ATO has indicated that they would not see this as an arrangement to re-employ specific persons and as such there would be a ‘bona fide redundancy’.

The ATO has confirmed that the mere provision of names, classifications and details of service of all employees will **not** in itself constitute an agreement or understanding between a department and the new provider that would compromise the concessional tax treatment of redundancy payments for any of these employees who subsequently are made redundant and take up employment with the new provider. However, it should be made clear to the new provider that the department is adopting the Clean Break approach and as such would not be in a position to enter into any negotiations regarding the future employment of any current staff.

A ‘bona fide redundancy’ situation would arise where staff, through their own efforts and dealings with the tenderer, are able to secure employment with the tenderer. The fact that an employee:

- enters into negotiations with the new provider about subsequent employment opportunities prior to his or her termination from the APS;
- accepts an offer of employment with the new provider prior to his or her termination from the APS ; and/or
- commences employment with the new provider immediately after ceasing employment with the APS;

does not of itself compromise the concessional tax treatment of redundancy payments.

*For assistance and further information agencies should contact the Australian Taxation Office.*

### **3.9 Restrictions on subsequent employment of persons accepting voluntary retrenchment**

In order to ensure the effective implementation of the Government’s decision to restrict the subsequent employment in the APS of persons who have accepted voluntary retrenchment, the Public Service Commissioner has exercised powers under section 33A and paragraph

82AD(10) of the PS Act to notify changes to the appointment and temporary employment provisions operating in the APS.

These changes, which apply to both Senior Executive Service (SES) and non-SES staff, have the effect of excluding persons who have accepted voluntary retrenchment from the APS from:

- applying for appointment within 12 months of their retirement from the APS; and
- being selected for short term temporary employment within the 12 month period following their retirement from the APS, except where a Secretary is satisfied that the short term employment of such a person is essential due to the nature of the duties to be performed and the skills, experience and/or qualifications of the person.

In addition, the arrangements applying to the engagement of fixed term provide that a Secretary cannot approve the engagement as a fixed term employee of a person who has applied for the vacancy within the 12 month period following voluntary retirement from the APS.

The spirit of the Government's decision to restrict re-employment in the APS in these circumstances applies to the engagement of staff in other employment categories specified in the Act. In addition, agencies should ensure that any engagement in a consultancy of a former APS employee who has received a severance benefit within the previous 12 months is consistent with Government guidelines on the use of consultants and with the spirit of the Government's decision to restrict employment of persons accepting voluntary retirement.

*For assistance and further information agencies should contact the PSMPC's Staffing, Structures and Mobility Team.*

## CASE STUDIES

### CASE STUDY 1 - THE IMPORTANCE OF AN EFFECTIVE COMMUNICATIONS STRATEGY

#### *Background*

This case study examines the outsourcing of a support service activity from an agency with a large number of regional offices. 137 staff were involved in the activity, which was located in a country regional centre. There were limited redeployment or private sector employment opportunities in the region and the skills and knowledge of the staff involved were not generally marketable. A number of staff were from non-English speaking backgrounds. In accordance with the relevant redeployment and retirement provisions, staff were offered a choice of redeployment (including retraining, if required) or voluntary retrenchment.

#### *How the process was managed*

The Clean Break approach was adopted. Delegations under the relevant redeployment and retirement provisions were held centrally in Canberra; however, the staff were managed locally by the Personnel section (comprising 1 full-time and 1 part-time officer). The Personnel section was responsible for the HRM aspects of the outsourcing exercise in addition to their usual duties.

Group information sessions were provided to all staff on the outsourcing methodology and processes under the relevant redeployment and retirement provisions at several stages during the exercise. During these sessions, staff were advised of the lack of employment opportunities in the region. Staff were also provided with extensive financial advice. A briefing by Centrelink was arranged to discuss employment opportunities and unemployment benefits. Group training sessions on job-seeking skills were conducted by the local TAFE and were offered to all staff. Relevant unions were advised formally of the outsourcing activity and invited to attend these activities.

The majority of staff elected to accept offers of voluntary retrenchment. When the agency sought union agreement to make offers of voluntary retrenchments under the relevant redeployment and retirement provisions, the union notified an industrial dispute. The dispute related to a failure by the agency to look at redeployment opportunities and to provide adequate and timely retraining opportunities.

During the proceedings in the Australian Industrial Relations Commission (AIRC), it became clear that a number of fundamental HRM aspects had been poorly addressed during the outsourcing process.

#### *Insufficient resources*

Although an appropriate level of resources had been allocated to manage the outsourcing exercise at the central office level, the same level of resources was not available locally. The local personnel staff were required to carry additional work associated with the outsourcing exercise, and it was not possible to provide adequate individual attention for the staff concerned.

Consequently:

- individual staff preferences and concerns were not adequately explored. It was also unclear whether the large number of staff with non-English speaking backgrounds fully understood the processes and the options available to them;
- redeployment opportunities within the agency but outside the local region were not fully explored; and

- staff/management relations were poor, resulting in industrial action and delays in the implementation.

***Lack of a communications strategy***

The communication strategy did not include adequate feedback and monitoring mechanisms to address central and regional office roles and responsibilities. This resulted in:

- an incorrect assumption by central office that all staff affected by the outsourcing exercise in the local office were being provided with an appropriate level of assistance and support;
- a failure by the regional office to advise the central office of the inadequacy of the resources allocated to manage HRM aspects of the exercise; and
- staff interest in interstate redeployment opportunities being overlooked. Staff interest in relocation only came to light during the AIRC proceedings.

Further, the lack of an established communication network between regions resulted in the local Personnel staff being unaware of redeployment opportunities outside the immediate region.

## **CASE STUDY 2 - THE IMPORTANCE OF A STRUCTURED APPROACH**

### ***Background***

This case study examines a situation where an agency decided it would get better value for money by outsourcing its graphic design activity. 28 specialist staff were affected. Their skills and knowledge were highly marketable in the commercial sector.

This was the agency's first outsourcing exercise and consequently no detailed corporate framework had been put in place. Consequently, no detailed project plan or HRM plan was developed.

A new provider was selected and the agency entered into discussions with central agencies and relevant union concerning the development of an appropriate staffing strategy.

### ***How the process was managed***

The agency had a high level of interest in the continuing viability of the activity and considered that the skills of existing staff were essential to maintaining the activity. Therefore, the agency was keen to negotiate employment conditions that would be attractive enough for staff to resign and take up employment with the new provider.

The central agencies were concerned to preserve the integrity of the processes relating to staff separations. They wished to avoid an approach that supported in any way the concept of having access to severance and superannuation entitlements under voluntary retrenchment provisions as well as access to jobs with the new provider on negotiated terms and conditions.

Negotiations between the agency, central agencies and the union were time consuming and required significant amounts of skilled staff resources. The outcome of the negotiations resulted in a wide range of options being offered to staff. These were:

- voluntary retrenchment (recognising the staff's rights under the relevant redeployment and retirement provisions as a consequence of losing Commonwealth employment) with no restriction on subsequent employment with the new provider;
- negotiated job with some APS conditions (recognising the agency's concern that the skills of the staff were essential to the continued viability of the activity); and
- redeployment.

The above options were offered to all staff and were intended to run in parallel, and not in isolation from each other. A considerable period of time was spent negotiating jobs, but all staff separating from the Commonwealth elected to take voluntary retrenchment and a large number of these staff subsequently obtained employment with the new provider.

### ***Need for a structured approach***

The differing priorities of the stakeholders resulted in a wide range of options being offered to staff. This resulted in:

- significant resources being tied up in negotiating brokered jobs which were subsequently not taken up by staff;
- the implementation time frame being greatly extended; and
- a public perception of staff receiving a voluntary redundancy package and a guaranteed job with the new provider which has been negotiated by the Commonwealth.

While this was acknowledged as a difficult exercise for the agency to manage, the adoption of a more structured approach may have resulted in a different outcome. Additionally, the agency may have been able to manage a combination of approaches by:

- offering voluntary retrenchment to interested staff after the new provider had been identified and the required staff had been selected; or
- including a provision in the tender documentation (as per Appendix F) requiring the contractor to pay an amount to the agency where they employed a person who had received a severance benefit within 6 months of the outsourcing occurring; or
- offering voluntary retrenchment early in the process so that interested staff are retired prior to, and in isolation from other options.

***Avoidance of negative public perceptions***

An agency can maintain the integrity of the Clean Break approach and avoid making voluntary redundancy payments to staff for whom jobs and terms and conditions of employment have been negotiated with the new provider by:

- ensuring potential tenderers do not establish links during the tendering phase with staff currently performing the activity;
- not assisting with the promulgation of material to existing staff on the terms and conditions of employment of potential new suppliers;
- not facilitating processes that could be seen as providing existing staff with a "foot in the door" in terms of access to jobs with the new provider e.g. APS staff should not assist in the preparation of material comparing APS terms and conditions with those of the new provider;
- avoiding commitments in the contract that the new provider should fill vacancies initially from the APS staff currently performing the activity; and
- including provisions in the contract to support the effective application of the Phased approach.

It is important to ensure that links between the Commonwealth's voluntary retrenchment process and the new provider's recruitment program are not established. This will avoid the possibility of negative public perceptions about staff receiving a voluntary redundancy payment and a job with the new provider.

## **CASE STUDY 3 - PLANNING - THE NEED TO CONSIDER ALL ASPECTS**

### ***Background***

This case study examines the outsourcing of an agency's catering services located in Canberra. 60 staff were employed in the activity. No redeployment opportunities were available in the APS in Canberra for the catering staff. This was the first outsourcing activity that the agency had undertaken.

### ***How the process was managed***

Separate teams were set up to undertake specific tasks, for example, to develop the tender requirements, undertake tender assessment, and develop the contract. The teams were located separately and operated fairly independently of each other.

The responsibility for HRM aspects was allocated to the local Personnel section, and an additional staff member was provided to coordinate the retrenchments that were considered to be a likely outcome of the process.

These staff were not fully conversant with nor were they trained in the processes involved in managing the staffing aspects of an outsourcing decision. They therefore had little understanding of the possible negative effects that an outsourcing decision could have on staff displaced by an outsourcing decision.

Following the announcement of the successful tenderer (a commercial catering company), a contract implementation team was set up and an implementation time frame negotiated with the new supplier. The date negotiated was eight weeks after the announcement of the outsourcing decision, to coincide with a seasonal lull in the organisation's catering commitments.

In order to maximise savings from the new arrangements, the implementation team planned that staff currently performing the activity should be either redeployed or retrenched prior to the handover of the activity to the new provider.

Immediately following the announcement of the tendering decision, Personnel officers briefed staff on options available under the relevant redeployment and retirement provisions. Staff were also provided with financial and other counselling in order to assist them in determining their choice of redeployment or redundancy. These briefings were conducted in the two weeks immediately prior to formal offers of voluntary retrenchment being made to staff.

### ***Inadequately trained staff / poor communication***

In a later survey of staff affected by the outsourcing exercise, results indicated that staff felt that the information provided to them during the exercise was inadequate and lacking in detail. They indicated that little information was provided on the steps associated with outsourcing the activity, so they had little understanding of what was happening to their jobs, and the time frames associated with each stage of the exercise. As a result, rumour and speculation was widespread. Staff felt that this situation had a negative impact on productivity and morale throughout the outsourcing process.

The survey indicated that the level of knowledge about outsourcing and its affect on individuals was low amongst the staff responsible for managing the process. It was evident that they were on a learning curve and seemed to be 'learning by doing'. Inevitably, this was at the expense of the staff affected by the outsourcing.

Staff also felt that if they had received more information about their options earlier in the process, they would have been less distressed and been in a better position to make informed decisions about their future - it was only after the announcement of the decision of the preferred tender that detailed information was available.

*Inadequate planning (lack of a structured approach)*

Each element of the exercise was managed discretely with no one individual having overall responsibility for the exercise. No strategies existed to facilitate interaction between each element of the outsourcing exercise. Consequently, when the decision was made on the implementation date, no account was taken of the time allowed under the relevant redeployment and retirement provisions for offers of voluntary retrenchment to be made.

In order to maximise the savings resulting from outsourcing the activity, management pressured the Personnel section to have displaced staff either redeployed or retired by the commencement of work by the new provider. With only a few weeks allowed for implementation, staff felt that the speed at which the redeployment and retrenchment processes were conducted was unseemly, with insufficient time for staff to fully consider the opportunities available to them.

# **APPENDICES**

## ROLE OF CENTRAL AGENCIES

### *Public Service and Merit Protection Commission (PSMPC)*

The PSMPC has responsibility for major elements of human resource management policy in the APS. The PSMPC takes a broad view of its human resource management responsibilities in setting an appropriate strategic framework for the APS.

As a general approach, the PSMPC sees its role in strategic management along the following lines:

- setting an appropriate framework (in the form of a policy statement, guidelines or broad instructions), usually after consultation;
- communicating and promoting the framework;
- monitoring and obtaining feedback on the implementation of the framework;
- identifying and communicating good practice, where this is appropriate and productive;
- undertaking evaluation or promoting evaluation methodologies; and
- revising policy where necessary and re-commencing the above cycle.

In relation to outsourcing of APS activities, the PSMPC, together with the Department of Finance and Administration and the Department of Workplace Relations and Small Business, assists agencies with outsourcing related HRM and industrial issues.

The PSMPC has policy responsibilities for mobility arrangements between the APS and other Commonwealth Authorities under Part IV of the PS Act, and provides policy advice on the management of excess staff and the operation of the relevant redeployment and retirement provisions. Redeployment assistance is also provided through the PSMPC's APS Labour Market Adjustment Program.

### *APS Labour Market Adjustment Program (APSLMAP)*

Under the *Continuous Improvement in the APS Enterprise Agreement: 1995-96* (the APS Agreement), staff who have been declared excess and wish to be redeployed must be referred to APSLMAP. The APS Agreement continues to apply unless replaced by an agency specific Certified Agreement or Australian Workplace Agreements.

Surplus (potentially excess) staff who have not been formally declared excess may also be referred to APSLMAP.

The Government continues to support the effective redeployment of excess staff. Redeployment provides substantial direct savings in redundancy, recruitment and training costs, both to the APS agency and to taxpayers, and provides indirect savings because the Commonwealth is able to retain people with the skills and experience it requires. Importantly, it also provides individuals with a chance to continue their APS careers.

Agencies not covered by the Service-wide redeployment and retirement provisions are encouraged to work with APSLMAP in resolving the people aspects of structural change and in referring staff for career advice and assistance with redeployment.

APSLMAP operates on a full cost recovery basis. In addition to career advice and redeployment assistance, it provides a wide range of other services including a Surplus and Excess Officers' Orientation Program, various job search services and access to Skills Development and Change Management programs. Further information on these services and relevant fees is available from APSLMAP representatives located in PSMPC offices.

### ***Department of Finance and Administration (DoFA)***

The Department of Finance and Administration is responsible for providing advice on the Commonwealth's role as portfolio employer insofar as this impacts on outlays and improved management in the public sector. It is involved in both Budget policy development and coordination, and in the development and maintenance of financial Service-wide systems. Specifically, its work includes:

- setting appropriate frameworks for encouraging efficient and effective resource management by departments and agencies;
- addressing any supplementation funds transfer requests by agencies;
- providing policy advice on and central agency coordination of superannuation arrangements for Commonwealth sector civilian employees and Parliamentarians; and
- managing the payment of APS salaries via the PAY system, although agencies are now able to make their own pay arrangements.

In addition, DoFA is now responsible for the Remuneration Tribunal Secretariat which services the Remuneration Tribunal (RT). The RT determines salary, travelling allowance and some conditions for Heads of Commonwealth Departments, Judges and full-time and part-time Public Office Holders, and allowances, entitlements and some additional salaries for Members of Parliament.

In relation to outsourcing, DoFA has responsibility for the superannuation aspects, through ComSuper's provision of advice on the various superannuation options available to APS staff affected by outsourcing.

### ***Office of Asset Sales and Information Technology Outsourcing (OASITO)***

OASITO plays a lead role in implementing the Commonwealth's IT Infrastructure Initiative. OASITO has responsibility for providing the strategic direction for the Initiative and undertaking the major IT outsourcing projects. This includes providing the overall project management framework for the whole initiative as well as the development of standard tendering processes, standardised services agreements and costing models to assist agencies with the competitive tendering process.

***Department of Workplace Relations and Small Business (DWRSB)***

DWRSB has responsibility for providing policy advice to the Minister for Workplace Relations and Small Business and the Minister Assisting the Prime Minister for the Public Service on the development and implementation of the Government's workplace relations policy in the Australian Government Employment (AGE) sector.

In fulfilling this role DWRSB works with its AGE client organisations to implement the Government's workplace reform agenda by providing general policy advice to client organisations using agreement-making options under the *Workplace Relations Act 1996* as appropriate, to improve productivity, and achieve better pay and conditions outcomes in the workplace.

In relation to outsourcing, DWRSB has responsibility for providing policy advice to client AGE agencies on industrial relations and human resource management issues that may arise in the outsourcing of functions.

In addition, DWRSB may provide tailored workplace relations products and services to individual agencies on a cost-recovered basis where appropriate.

## TRANSFERS OF FUNCTIONS AND SALES OF ASSETS

Transfers of functions (for example from the APS to a Commonwealth authority or to a State or Territory Government) and sales of assets are not included in the definition of outsourcing. However, it is important to bear in mind that:

- similar staffing issues and principles to those outlined in this booklet, such as the proper use of the relevant redeployment and retirement provisions, will also be relevant; and
- any terms and conditions negotiated in the context of an outsourcing decision may set precedents for negotiations in relation to transfers of functions and asset sales.

While transfers of functions are seen as separate to the outsourcing of an activity, in circumstances where the Phased approach is adopted and certain staff move from the APS to another Commonwealth Authority, the transfer of the staff concerned is effected under the transfers of functions provisions (section 81C) of the PS Act.

The following gives a brief description of each of the mechanisms used.

### *Transfers of Functions to a Commonwealth Body*

The Government may decide that a function currently undertaken by the APS could be more effectively performed by a Commonwealth body or a Government Business Enterprise (GBE). These transfers may be administered under section 81C of the PS Act or through specific legislation. Affected staff generally follow the function on negotiated terms and conditions.

### *Transfers of functions to a State or Territory*

The Government may decide that a function currently undertaken by the APS should be transferred to the responsibility of a State or Territory. Such transfers of functions may be effected under section 87J of the PS Act or through specific legislation. Under section 87J, certain affected staff are able to follow the function on agreed terms and conditions.

*For further information on transfers of functions, contact the Staffing, Structures and Mobility Team, PSMPC.*

### *Sales of Assets*

The Government may decide to sell a function as a going concern, or dispose of the assets. Staff may be offered employment by the buyer, be redeployed in the APS or become excess.

*For further information on sales of assets, contact the Office of Asset Sales and Information Technology Outsourcing.*

**CHECKLIST : HUMAN RESOURCE MANAGEMENT PLAN**

*Aim:*

To define the human resource management objectives, processes and responsibilities for the implementation of an outsourcing decision to enable timely implementation of the relevant procedures and to identify the responsibility for each of those procedures.

*Steps:*

Identify key stakeholders, including affected staff, contracting and project managers, central and local management, personnel management and personnel processing areas and relevant unions.

Develop a plan which supports the agency's preferred approach (i.e. Clean Break or Phased), and the commercial objectives and time frames of the outsourcing exercise.

Keep in mind any special considerations due to the particular circumstances of the outsourcing exercise. Such issues could include:

- the location of the activity;
- the classification and/or skills profile of the staff;
- employment status (i.e. permanent, continuing, fixed-term or short-term);
- the industrial relations environment;
- the number of staff involved and consequent impact on resources;
- the timing of decisions;
- the likelihood of an excess staff situation;
- early provision of information to staff.

A staffing profile will assist in the identification of the critical areas which need support or specialist staff.

*Resources:*

- Has the strategy for managing the HRM elements been clearly identified?
- Has a staff survey been undertaken to identify critical areas where specialist support may be required?
- What funding has been/should be set aside for managing the HRM Plan?
- What is the time frame and target dates and are they consistent with the project plan?
- Have central agencies been advised?

*For support of activity:*

- How many specialist support staff are required, and who are they?
- What are the responsibilities and reporting lines of each team member?
- How much training is required for support staff to upgrade skills and obtain sufficient knowledge to manage the HRM aspects of the outsourcing processes?

- What facilities/infrastructure are required (e.g. dedicated office, office equipment, travel facilities, etc)?

*Staff support:*

- What is the time frame and target dates?
- Have the critical areas of need been identified?
- How much funding is required?
- Who is responsible for collection of staffing profile information?
- What assistance is going to be given to staff (group and/or individual)?
- Is external assistance needed (e.g. APSLMAP)?
- Are external consultants required for specialist assistance?
- Who is responsible for arranging assistance?
- Who is to arrange for calculation of severance payments, if required?
- Who is to liaise with ComSuper for retirement benefit information?
- Who is to manage the other payroll aspects, e.g. group certificates?

*Consultation and communications:*

- What is the time frame and target dates?
- Is the time frame sufficient to meet the requirements of the relevant redeployment and retirement provisions?
- Who is responsible for developing a communication plan for dissemination of information to staff and their representatives?
- What is the mechanism for interaction with other project teams (e.g. tender and implementation team) ?
- How is information to be presented (e.g. information sessions, information kits, newsletters, bulletin boards, electronic mail, etc)
- How much involvement will the executive have (e.g. visits to sites, internal memos, etc)?
- How will individual assistance be delivered?

*Consultation/liaison with staff and their representatives*

- What is the time frame and target dates?
- Which unions are involved?
- Who are the nominated contacts (including workplace delegates, organisers and officials)?
- Who is responsible for communication and consultation with staff and their representatives?

- What information needs to be conveyed formally?
- How will staff representatives wish to be involved in the process (e.g. involvement in information sessions, redeployment and retrenchment processes, Phased approach negotiations)?
- Who is to liaise on relevant redeployment and retirement provisions?

*Fairness and equity*

- How are staff with special needs to be identified?
- What additional support is to be provided (e.g. translators, interpreters, literacy skills training)?
- Has appropriate funding been allocated to provide the support?

*Management of excess staff*

- What is the time frame and target dates?
- Is the time frame sufficient to meet requirements of the relevant redeployment and retirement provisions?
- Who is to advise staff on options/rights/entitlements available and how?
- How are staff preferences to be identified?
- Who is to identify redeployment prospects?
- Who is to advise on vacancies - local, internal to the agency, across the APS?
- How are substitution arrangements to be managed, if at all?
- Who is to decide when staff should be declared excess; who is to negotiate processes with staff representatives?
- How is necessary training/retraining to be identified?
- Has funding for training/retraining been allocated?
- Who is to provide each element of training/retraining?
- Who should obtain severance/superannuation figures?
- Is external assistance needed (e.g. specialist counsellors)?
- Who is going to prepare timetable of assistance (including processing of severance payments) to coincide with implementation time frame and the relevant redeployment and retirement provisions?
- Will excess or potentially excess staff be referred to APSLMAP?
- Has funding been allocated for referrals to APSLMAP?
- In the event that 15 or more staff are retrenched, who will notify Centrelink?

**APS VALUES AND THE APS CODE OF CONDUCT**

**APS values**

- the APS is apolitical, performing its functions in an impartial and professional manner;
- the APS is a public service in which employment decisions are based on merit;
- the APS provides a workplace that is free from discrimination and recognises the diverse backgrounds of APS employees;
- the APS has the highest ethical standards;
- the APS is accountable for its actions, within the framework of Ministerial responsibility, to the Government, the Parliament and the Australian public;
- the APS is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and implementing the Government's policies and programs;
- the APS delivers services fairly, effectively, impartially and courteously to the Australian public;
- the APS has leadership of the highest quality;
- the APS establishes cooperative workplace relations based on consultation and communication;
- the APS provides a fair, flexible, safe and rewarding workplace; and
- the APS focuses on achieving results and managing performance.

**APS Code of Conduct**

- an APS employee must behave honestly and with integrity in the course of APS employment;
- an APS employee must act with care and diligence in the course of APS employment;
- an APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment;
- an APS employee, when acting in the course of APS employment, must comply with all applicable Australian laws;
- an APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction;
- an APS employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff;
- an APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment;
- an APS employee must use Commonwealth resources in a proper manner;

- an APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment;
- an APS employee must not make improper use of:
  - inside information; or
  - the employee's duties, status, power or authority;in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person;
- an APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS;
- an APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia; and
- an APS employee must not, except in the course of his or her duties as an APS employee or with the Agency Head's express authority, give or disclose, directly or indirectly, any information about public business or anything of which the employee has official knowledge.

## PROBITY PROTOCOLS

### Background

In April 1997, the Commonwealth Government announced the IT Infrastructure Initiative.

Over the next two years, Requests for Tenders (RFTs) for various Projects will be released to industry.

The Government is committed to ensuring a high standard of probity in all phases of evaluation and decision making for the Projects.

The probity process has been developed to ensure there is objective and consistent assessment during all phases of the decision making for each Project to promote industry and community confidence in the Initiative.

The following protocols contemplate situations that Group Agency employees and consultants may face in relation to Meetings. These protocols are in addition to and supplement any other obligations which apply to Group Agency employees as public servants such as those in the Public Service Act, the Crimes Act, the Privacy Act, the Archives Act and guidance such as Guidelines on Official Conduct of Commonwealth Public Servants.

The Government will view any failure to comply fully with any of these protocols as a breach of process which may have serious ramifications.

If you are aware of any breach of the protocols, or if any tenderer or potential tenderer encourages you in any way to breach these protocols, or if you are concerned that the process may have been compromised or that such a perception may exist, you should document all details immediately and inform your Agency's Project Manager and the Project Coordinator or Project Directorate at the IT Infrastructure Initiative (ITII).

### Protocols

#### *Agency nomination of meeting participants*

Meetings are not open for any interested person to attend. Agencies are responsible for the selection of their representatives for Meetings. It is preferable for agencies to nominate a permanent representative, in order to maintain consistency.

Prior written notice of the names and positions of all such representatives should be given by the Project Manager at each Agency to the Project Coordinator at the ITII. The Project Coordinator will be present at all Meetings. The Project Coordinator will commence all Meetings with a roll call of the nominated representatives to ensure that only those people are in attendance.

#### *Confidentiality and privacy*

Group Agency employees must comply with the confidentiality and privacy obligations imposed under the Public Service Act and Privacy Act, respectively.

Consultants must execute and return to the Project Coordinator at the ITII a copy of the attached Deed of Confidentiality and Privacy before being admitted to a Meeting, and must strictly comply with its terms. Compliance with this requirement will be checked by the Project Coordinator at the roll call of each Meeting.

The proceedings and minutes of Meetings are confidential. Where that information must be disclosed to Agency personnel for the purposes of the Initiative, the confidentiality of the information must be impressed upon those personnel.

#### *Declarations of interest*

If you (or in the case of a consultant, others in your firm or business entity) have any existing business or personal relationship (or develop a relationship during the duration of the Initiative) with a tenderer or potential tenderer which could raise a conflict of interest or give the appearance of a conflict of interest, you must inform your Project Manager and the ITII Project Directorate promptly in writing of the nature of this relationship.

#### *Gifts, hospitality and other benefits*

You must not seek or receive any gifts (including Christmas gifts) hospitality (including Christmas functions) or any other benefits from any tenderer or potential tenderer. You must immediately inform your Project Manager and the Project Coordinator if any tenderer or potential tenderer offers you any gifts, hospitality or other benefits.

#### *Conferences*

You must not attend or participate in conferences organised or sponsored by tenderers or potential tenderers, unless specific prior written permission is given by the Project Manager in consultation with the Project Coordinator. You may attend or participate in other IT & T industry conferences. Under no circumstances should a tenderer or potential tenderer pay for your attendance at a conference or any related expenses. In any event, you should excuse yourself from social functions associated with any conference at which tenderers or potential tenderers are present and you should comply fully with these protocols and their intent at all times.

#### *Offers of employment*

If any tenderer or potential tenderer discusses the possibility of offering you employment during or after the completion of the Project, you must immediately inform your Project Manager who will inform the Project Coordinator.

#### *Inquiries from government personnel not engaged in the initiative*

Information about the Initiative, a Project or an RFT process should only be provided to Government personnel not engaged in the Initiative on a strict need to know basis. If any Government employee (including your Agency) not engaged in this Initiative makes any inquiry or requests any information regarding the Initiative or a Project, you must refrain from providing any such information and promptly inform your Project Manager and the Project Coordinator at the ITII.

### *Existing relationships with industry*

It is possible that Government arrangements may exist which require Group Agency personnel or consultants engaged directly on the Initiative to interact with tenderers and potential tenderers in matters unrelated to the Project (eg. incumbent suppliers). Under no circumstances should the Initiative, a Project or the RFT process be discussed during interactions relating to these existing arrangements. You must advise your Project Manager and the Project Coordinator of any unauthorised attempt by a tenderer or potential tenderer to enter into such discussions during these interactions.

### *Media*

The Initiative, a Project or an RFT process must not be discussed with the media nor must any comments be made which are capable of being reported. Any media request made to you should be directed to the Office of the Minister for Finance and Administration and the Project Coordinator should be informed immediately.

### *Perception*

Not only must a high standard of probity be maintained but you must also ensure that your conduct does not give rise to a perception that would allow for the erosion of industry and community confidence in the way in which the Initiative, all Projects and all RFT processes are implemented. Conduct which has a tendency to increase the risk of issues of integrity to be raised as a matter of public concern should be avoided.

## **PRIVACY AND CONFIDENTIALITY DEED**

Non APS Staff

Name:

Address:

### **DEED**

1. “Confidential Information”:
  - (a) means all information that:
    - (i) I become aware of or create (whether disclosed to me orally, in writing or in any other form) while carrying out my duties for the Commonwealth regarding the IT Infrastructure Initiative (ITII); and
    - (ii) is confidential to any person including the Commonwealth Government, the Office of Asset Sales and IT Outsourcing (OASITO), Commonwealth agencies, suppliers or consultants;
  - (b) includes all copies and notes that I make based on or arising out of any disclosure under clause 1(a); and
  - (c) does not include information to the extent that I:
    - (i) independently develop or know the information; or
    - (ii) am required to disclose the information by law.
2. “Personal Information” means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can be reasonably ascertained, from the information or opinion.
3. I acknowledge that it could cause significant loss and damage to the Commonwealth if I use or disclose the Confidential Information or Personal Information other than as necessary for my duties relating to the ITII.
4. In return for being given access to the Confidential Information and Personal Information I agree:
  - (a) to keep the Confidential Information confidential;
  - (b) only to use the Confidential Information and Personal Information as necessary to carry out my duties relating to the ITII;
  - (c) only to copy the Confidential Information as directed by OASITO and to mark any such copy “Confidential”; and
  - (d) that I will not disclose the Confidential Information.
5. I agree that I will immediately notify OASITO if I become aware that any of the Confidential Information or Personal Information:
  - (a) has been used, copied or disclosed without authority; or
  - (b) is required to be disclosed by law.
6. If:
  - (a) OASITO asks me to return or destroy any or all copies of Confidential Information or Personal Information;
  - (b) I breach any provision of this Deed; or

- (c) I no longer need to use the Confidential Information or Personal Information to carry out my duties relating to the ITII (e.g. because I leave),

then I will immediately:

- (d) destroy all copies of the Confidential Information and Personal Information that I have made and stored in electronic form on any equipment other than Commonwealth owned equipment; and
- (e) return to OASITO all other copies of the Confidential Information and Personal Information (e.g. photocopies); and

and I will never disclose or make any further use of the Confidential Information or Personal Information.

7. This Deed:

- (a) does not transfer any interest in any intellectual property; and
- (b) is governed by the laws applicable in the Australian Capital Territory.

EXECUTED as a Deed on 199 .

SIGNED SEALED and DELIVERED by

(Print name)

in the presence of

(Signature)

(Signature of witness)

(Print name of witness)

## APPENDIX F

### **Contractual obligation on an outsourcing contractor to pay an amount to a department/agency where the contractor employs or engages a person who has received a severance benefit from the department /agency in a situation where the 'Phased' approach has been adopted**

#### **Overview**

A payment will be made to a department or agency only where the 'Phased' approach has been adopted, i.e., where a department or agency has negotiated with a Contractor the filling of vacant positions initially from APS staff currently performing the activity and certain terms and conditions to be offered to APS staff accepting employment with the Contractor.

#### **Obligation**

Where the Contractor employs or engages a person within six months of the commencement of the contract who has received a voluntary redundancy benefit from the contracting department or agency under the provisions of clause 11 of the *APS General Employment Conditions Award 1995* or any successor provisions (including an agency specific Certified Agreement or Australian Workplace Agreements) the Contractor will pay to the department or agency an amount of \$25,000.

A payment will be due and payable in respect of each person engaged irrespective of the period of employment or engagement by the Contractor, provided they are in the employment of the Contractor at some time between the commencement of the contract and the sixth month anniversary of the contract. The Contractor will pay the amount within 14 days of being advised by the department or agency of the amount payable by the Contractor. If the amount is not paid within 14 days the department or agency has the right to deduct the amount from monies otherwise payable to the Contractor.

No payment is required where the Contractor employs or engages a person who has resigned from the APS.

#### **Administration**

The Contractor is to provide in writing to the department or agency within 14 days after:

- (a) the date on which the contract between them commences, the names, dates of birth, addresses and dates of commencement of all person employed or engaged by the Contractor on the commencement of the contract to perform work covered by the contract; and
- (b) the commencement of a person's employment or engagement if the person is employed or engaged within six months after the commencement of the contract to perform work covered by the contract, the name, date of birth, address and date of commencement of the person.

**BONA FIDE REDUNDANCY AND CONCESSIONAL TAX TREATMENT**

Some useful principles for determining what constitutes 'bona fide redundancy' as expressed in taxation ruling TR 94/12 are as follows:

- There must be an involuntary termination of employment (ordinarily instigated by the employer who ultimately decides the number of staff positions to be reduced and which employees will actually be made redundant);
- Redundancy can be described as the situation where an employer no longer requires employees to carry out the work of a particular kind or to carry out work of a particular kind at the same location;
- Redundancy refers to a job becoming redundant and not to an employee becoming redundant. An employee's job is considered redundant if:
  - an employer has made a definite decision that job the employee has been doing will no longer be done by anyone;
  - that decision is not due to the ordinary and customary turnover of labour;
  - that decision led to the termination of the employee's employment; and
  - that termination of employment is not on account of any personal act or default of the employee.

Dismissal also includes the notion of constructive dismissal which arises if an employer places an employee in a position in which the employee has little option but to tender his or her resignation. For example, an employer may be reducing the size of its operation and may offer voluntary redundancy to a selected employee. If the employee refuses the offer, he or she may be forced to accept another position which may not be commensurate with his/her qualifications and experience or may involve a lower level of remuneration. Alternatively the employee may consider that by not accepting the package, he or she may be dismissed without the benefits available under the package. The termination of employment in these circumstances would amount to constructive dismissal.

For 'bona fide redundancy' payments to qualify for concessional tax treatment the following conditions contained in section 27F of the *Income Tax Act 1936* must be satisfied:

- there must be an Eligible Termination Payment (ETP) made in relation to the taxpayer:
  - in consequence of the taxpayer being dismissed from employment because of a 'bona fide redundancy';
- the time of dismissal or termination must be before:
  - the date on which the taxpayer attained age 65; or
  - such earlier date on which the taxpayer's employment would necessarily have had to terminate under the terms of employment because of the taxpayer attaining a certain age or completing a certain period of service;
- if the taxpayer and employer were not at arm's length in relation to the termination of employment, the amount of the ETP must not be greater than the amount that could reasonably be expected to have been paid if the parties had been at arm's length; and
- there must not be, at the time of termination, any agreement between the current employer (i.e. the outsourcing agency) and either the taxpayer or the new provider about the employment of the taxpayer by the new provider at a later time.

## REFERENCES AND FURTHER READING

### Relevant Legislation

*Public Service Act 1922.*

*Workplace Relations Act 1996.*

*Superannuation Act 1976.*

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### Awards/Agreements

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Agency specific Certified Agreements and Australian Workplace Agreements.

### Suggested Reading

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