

**Effective as from 1 January 2017**

## **RETRENCHMENT POLICY**

### **Preamble**

The LAC recognises its responsibility as an employer. As such, it does not terminate the services of its employees without good reason and accepts that staff need security of employment. The Centre recognises the employee's right to be informed about proposed retrenchments and to negotiate and to make suggestions in this regard and in particular to the retrenchment package.

LAC, however, also recognises that operational and financial needs may, from time to time, require a reduction in expenditure, which cannot be achieved without a reduction in staffing levels. Whenever possible, this will be achieved without retrenchment, but where unavoidable, the following policy guidelines will apply.

Retrenchment is a managerial prerogative and the Director in consultation with the Trustees has the sole right to make decisions in this regard.

*NB: Where the staff member is a member of a trade union recognised by LAC, such trade union must be informed of any impending retrenchments, and must be included in any negotiations with the employees concerned.*

### **2. Notice of Termination:**

- 2.1 Where the probability of retrenchment arises, LAC will notify the employees concerned and the appropriate union, if applicable. This will be done as soon as possible in order to discuss the matter and/or to negotiate, where necessary.
- 2.2 If retrenchment is being considered, the Coordinator of the department affected, and the persons in the positions which may be eliminated will be notified as soon as the possibility of this step arises. Persons affected shall be entitled to three months' notice of the potential retrenchment. This is not equivalent to notice of the actual retrenchment, but is rather in the nature of an "alarm bell" period to give the department in question time to seek alternate funds or solutions which could avoid the potential retrenchment.
- 2.3 In all cases of probable or actual retrenchment, LAC will give full reasons for the termination intended.

### **3. Factors to be considered**

- 3.1 In negotiations with employees and the appropriate trade union representatives, the LAC will consider all possible and practical means for avoiding the proposed termination/s of service.



3.2 While it may not be possible or practical to avoid retrenchments, the following will be considered prior to a decision to terminate:

3.2.1 Is future funding for the department or position assured? If so, how long is the gap between funding?

3.2.2. What is the likelihood that future funding for the department or position will be obtained? For example, are there outstanding funding applications which appear promising? What is the general trend in funding for the type of work in question both internationally and in Namibia?

3.2.3 How does the department or position contribute to the overall work of the LAC?

- Does the department/position work in close cooperation with other departments on specific projects?
- Does the department or position contribute significantly to the general services or the public profile of the LAC as a whole?
- What will be the impact on other departments of the LAC if the department/position in question is eliminated?
- How would the most essential services of the department or position be continued if retrenchment takes place?

3.2.4. How productive has the department or position been in the last year? This question should be considered in light of measures such as

- number of clients served and court cases completed or underway
- people reached in training workshops
- publications produced
- impact on law reform, jurisprudence, government policy, etc.

3.2.5. Is there a possibility of reducing the cost of maintaining the department or position by downsizing, seconding positions to other departments, making some positions part-time, etc. as an alternative to eliminating the department or position in question completely?

3.2.6. Would it be feasible or preferable to phase out the department or position gradually instead of all at once, considering possibilities such as downsizing, part-time work or continuing key work on a consultancy basis? Such possibilities should be considered in light of the personal preferences of the persons affected.

#### 4. Selection Criteria

4.1. In all cases of retrenchment, the LAC must continue to meet its objectives while at the same time acting fairly as an employer.

4.2 If termination of service is unavoidable, then the selection of persons to be retrenched will take account of such factors as set out below in the following order of priority:



- (i) Operational needs of the Unit/Project
- (ii) Job experience, qualifications, skills and training.
- (iii) Length of service (the 'last in, first out' principal to apply).

*Note: The 'last in, first out' principle will only be applied when all other factors are truly equal.*

## **5. Consultations/Negotiations with Staff/Trade Unions on Selection:**

- 5.1 At least four (4) weeks prior to any retrenchment the Director shall call a meeting of the staff and inform them of the proposed retrenchment (s) and the reasons therefor, and confirm such retrenchment and reasons in writing to affected employees.
- 5.2 At the above meeting the Director shall furnish the staff with a list indicating
  - 5.2.1. the name of each employee to be retrenched;
  - 5.2.2 his or her commencement date with the Centre;
  - 5.2.3 the basis of selection;
  - 5.3.4 the effective date of the retrenchments.
- 5.3 The person (s) selected shall be given a period of one (1) week from the date of said meeting to carry out such investigations which they deem may be relevant to the question of retrenchment. This period may be extended or varied by the parties by mutual agreement.
- 5.4 A second meeting between the staff and the Director shall be held within ten (10) days of the initial meeting to consider representations regarding the proposed retrenchments, possible alternatives and individual selections.
- 5.5 The Director may take time to consider any representations made in which event the above meeting shall be adjourned for such period as the Director may consider necessary.
- 5.6 Further meetings may take place between the parties should these be required.
- 5.7 The above time frames may be changed at the discretion of the Director, provided that it does not prejudice a particular individual employee.

The final decision for selecting employees for retrenchment rests with LAC.

## **6. Retrenchment Process**

As required by Section 34 of the Labour Act (Act 11 of 2007), LAC shall inform the Labour Commissioner and, if applicable, any trade union at least four (4) weeks prior to the intended dismissal of the following;

- 6.1 The intended dismissal;
- 6.2 The reasons for the reduction in the workforce;



6.3 The number and categories of employees affected;

6.4 The date of the dismissal.

## **7. Severance Package:**

In the event that the employment contract of an employee is to be terminated in terms of these guidelines, such employee will qualify for a severance benefit as per section 35 (3) of the Labour Act.

*NB: The payment of severance pay in terms of this section does not affect an employee's right to any other amount that the employer is obliged to pay the employee*

## **8. Further Assistance**

8.1 LAC will provide each employee with a Certificate of Service, which will include details of their position at the time of retrenchment, length of service, salary and reason for termination.

8.2 Upon request of the employee, the Director may issue a testimonial to such an employee.

## **9. Retirement Benefits**

Staff members will receive all benefits due to them from their retirement fund.

**APPROVED BY THE BOARD OF TRUSTEES ON 9 DECEMBER 2016**

