

**GUIDELINE:  
MANAGEMENT OF EXCESS EMPLOYEES**

Public Sector Act 2009

## **GUIDELINE OF THE COMMISSIONER FOR PUBLIC SECTOR EMPLOYMENT**

### **MANAGEMENT OF EXCESS EMPLOYEES**

PS Act Determination and Guidelines	Management of excess employees
Date of Operation	February 2011
Updated	June 2014

#### **Who is covered by this Guideline?**

This Guideline is intended to assist agencies to manage those employees who may be declared as excess to the requirements of an agency where the role assigned to them at their substantive classification/remuneration level is no longer required or they cannot perform the duties. This Guideline applies to agencies that employ persons under Part 7 of the *Public Sector Act 2009* (the “PS Act”) and the content should also guide chief executives or delegates throughout the remainder of the public sector.

The Commissioner for Public Sector Employment is empowered to issue guidelines relating to public sector employment matters pursuant to section 14(d) of the PS Act.

The Guideline is written with the following Objects of the PS Act in mind:

- to promote a high performing public sector that is responsive to Government priorities;
- to encourage public sector agencies and employees to apply a public sector-wide perspective in the performance of their functions;
- to ensure accountability in the public sector;
- to facilitate the integration of employment and management practices across the public sector;
- to promote uniformity and transparency in governance arrangements for the public sector; and
- to provide the framework for the State’s Public Service and the effective and fair employment and management of Public Service and other public sector employees.

This Guideline should be read in conjunction with Commissioner’s Determination 2: Excess Employees – Income Maintenance.

*If you are in any doubt as to whether this Determination applies to your employment, please contact your Human Resource Management unit to clarify your status.*

## Scope

This Guideline outlines the approach for the redeployment of employees formally declared to be excess employees and is consistent with the requirements of the PS Act and relevant awards, enterprise agreements and other industrial instruments. It applies to all public sector employees whose employment is covered by the Government's no forced redundancy policy. This guideline supersedes any other arrangements for the management of excess employees, with the exception of *Commissioner's Determination No. 2 - 'Excess Employees - Income Maintenance'*.

Casual employees and employees on temporary or longer term contracts who do not have a right to ongoing employment in the public sector are not covered by the no forced redundancy provisions and are therefore not eligible to participate in the redeployment process. The redeployment process may apply to contract employees if they have a right to ongoing employment in the South Australian public sector at expiration of that contract.

This Guideline does not apply to employees who have not been formally declared excess to requirements, but require alternative duties for other reasons (e.g. following disciplinary action, unsatisfactory performance, mental or physical incapacity, organisational or personal reasons). An employee must not be declared excess as a measure to avoid management of unsatisfactory performance.

## Process

Key features of the process are:

- increased obligations for agencies;
- a focus on management from a whole of government perspective;
- requirements to accept and trial excess employees;
- improved data and information management for excess employees;
- minimised use of contractors, consultants and labour hire staff;
- consideration to be given to the placement of excess employees before temporary/term employees are extended; and
- increased assistance for excess employees such as personal and career/vocational assessment and counselling, job search support and training.

Excess employees will be entitled to intensive case management and appropriate employee assistance. A case manager will be assigned by the substantive agency.

## Identification of an Excess Employee

An employee may be declared as excess to the requirements of an agency where the duties assigned to them at their substantive classification/remuneration level are no longer required or they cannot perform such duties and it is not practicable to transfer, assign or appoint the employee to other duties commensurate with their substantive remuneration level.

When considering whether an employee is excess to requirements, consideration should be given to suitable roles within the agency that are available or likely to become available within a reasonable time and into which the employee could be placed with or without retraining.

## Notification

An employee who is identified as being excess must be formally advised in writing of this status by the chief executive or delegate. The notification shall include a statement as to the reasons the employee is excess and the arrangements available to them, in accordance with the procedures set out in this Guideline.

The Commissioner for Public Sector Employment will maintain a database with the details of excess employees. Agency Chief Executives must provide information relating to excess employees to the Commissioner for Public Sector Employment.

## Redeployment principles and process

Ongoing public sector employees who are declared excess to requirements and therefore require alternative duties are to be given priority for available vacancies. Such employees must be transferred or assigned (including the option of appointment on an ongoing basis) to available duties if they can perform the duties to a reasonable standard, within a reasonable period of time and with a reasonable level of training and support.

*Note: Work injured employees who are not able to carry out their normal duties as a result of compensable injury and therefore require alternative duties as part of a Rehabilitation and Return to Work Plan are to be given priority consideration ahead of excess employees.*

Pending placement into suitable duties, an excess employee will be provided with, and will undertake, temporary duties. During the period the employee is undertaking such temporary duties, the employing agency will, in consultation with the employee, seek to identify opportunities for training and development.

Pending placement into suitable roles, the chief executive or delegate should ensure that excess employees are provided with suitable duties commensurate with their substantive remuneration level, experience and abilities pending the employee securing an alternative funded role. During this period, the chief executive or delegate should, in consultation with the employee, seek to identify opportunities for training and development.

The agency in which an excess employee is substantively employed will continue to be responsible for management of the employee and will be required to meet the salary, training and other associated costs relating to the employee until alternative duties, either term/temporary or ongoing are identified. After placement the agency into which the employee is transferred/assigned will meet the employment costs of an employee. The agency in which an excess employee is working is required to actively manage the employee's performance and development.

Agencies will accept the transfer of apparently suitable excess employees into roles that are otherwise ongoing roles for a trial period of six (6) months. Excess employees who are found to be suitable after the six (6) month trial period will be appointed to the role on an ongoing basis. This does not prevent an employee being placed into an ongoing role without a trial period if all parties agree.

In the case of temporary/term vacancies, agencies will accept the transfer of apparently suitable excess employees for the period of the vacancy. Trial periods may be negotiated for longer term roles.

An excess employee will be apparently suitable and thus agencies will be required to accept the transfer of an employee where there is a reasonable skill match between the employee

and the role/duties, unless there is a *bona fide* reason as to why the employee is unsuitable. If an agency determines that an excess employee is not suitable a written explanation clearly explaining the reasons must be provided to the agency in which the employee is substantively employed and (where appropriate) a copy provided to the employee. This documentation will assist the case manager and employee to better identify placement opportunities and training and development needs.

Where it is not possible to adequately assess the suitability of an employee within six (6) months, a further transfer/assignment for another six (6) month trial period may be negotiated.

Where an employee is deemed as unsuitable following the trial period(s), and they are in an agency that is not the agency they are substantively employed in (a host agency), they will return to employment in the agency they are substantively employed in (substantive agency). In these circumstances, the host agency will inform the agency prior to the return of the employee.

An existing excess employee who has been performing duties on a temporary basis for six (6) months or more in an ongoing role will be assigned/transferred immediately to those duties on an ongoing basis.

Excess employees will be considered for suitable vacancies before the extension/reappointment of temporary/term employees. The engagement of contractors, consultants and labour hire staff will be minimised and instead suitable excess employees will be assigned/transferred.

### Suitable placements

Assignment/transfer of excess employees to suitable duties will not necessarily require agreement of the employee. Excess employees are not entitled to refuse an assignment/transfer, except in exceptional circumstances.

Duties will be deemed suitable even if the assignment/transfer involves variation to any, or all of, an employee's existing starting and finishing times; distance from home (providing every effort is made so as not to involve relocation of the employee's household and due consideration is given to the employee's personal circumstances); or remuneration/classification level.

Suitability will be determined through an assessment of the employee's skills and competencies against the requirements of the role/duties. Employees must be assigned/transferred if they can perform the duties to a reasonable standard, within a reasonable period of time and with a reasonable level of training and support.

A suitable role may be at a lower classification/remuneration level than an employee's current substantive classification level, providing the classification does not provide a salary of less than 75% of the employee's substantive salary. Placement in duties with significantly lower classification/remuneration levels should only be considered when other options have been exhausted. Where an employee is placed at a classification level lower than their substantive level the income maintenance provisions of Commissioner's Determination No. 2 apply (where they are employed under Part 7 of the PS Act).

## Responsibilities of employer and employees

Excess employees will:

- prepare and maintain an up-to-date resume and provide it as required to the agency's case manager or other management representative;
- attend interviews or other selection processes as requested and participate in a positive and constructive manner;
- actively co-operate in an agency's efforts to effect transfer or assignment to suitable duties;
- actively identify and seek employment opportunities;
- cooperatively and actively participate in training and other relevant development opportunities;
- comply with any lawful and reasonable direction from the agency's case manager or other persons with authority to issue such directions;
- comply with all attendance requirements; and
- otherwise conduct themselves in accordance with the public sector principles set out in section 5(6) of the *Public Sector Act 2009* and the *Code of Ethics for the South Australian Public Sector*.

Agencies will:

- ensure excess employees are provided with the appropriate level of assistance and intensive case management;
- make reasonable efforts to identify suitable duties that don't require relocation of an employee's household;
- identify, in consultation with the employee, opportunities for training and development in order to expand the employee's options for assignment/transfer;
- actively manage the performance of the excess employee;
- give priority placement consideration to an excess employee from another agency in accordance with this Guideline; and
- ensure excess employees who have open Worker's Compensation claims are managed in accordance with the requirements of the *Workers Rehabilitation and Compensation Act 1986*.

## References

[Public Sector Act 2009](#)

[Public Sector Regulations 2010](#)

[Code of Ethics for the South Australian Public Sector](#)

*Commissioner's Determination 2: Excess Employees – Income maintenance*