Managing Surplus Employees – Public Service
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OVERVIEW

Where the Department has a greater number of employees than is necessary for its operations, it may become necessary to declare employees surplus. This may arise due to technological change, changes to programs or other changes in work methods, or changes in the nature, extent or organisation of the functions of the Department.

Unless specifically indicated, the procedures in this document apply to all ongoing Public Service employees of the Department, including employees covered by the Victorian Public Service Enterprise Agreement 2016 or the Nurses (Department of Education and Training) Agreement 2016.

These procedures do not apply to the following categories of employees:

- Fixed-term employees, other than in exceptional circumstances
- Casual employees
- Executive Officers
- Employees currently in their probationary period of their employment.

The responsibility for the identification and management of surplus employees rests with the Executive Director/Regional Director to whom the employee reports. The responsibility for the formal declaration of an employee as Surplus rests with the Secretary, the Deputy Secretary, People and Executive Services Group and the Executive Director, People Division. The Secretary has responsibility for the decision as to when an employee’s position is to be made redundant.

Where workplace change is proposed, the Executive Director/Regional Director concerned is to contact the Executive Director, People Division to seek advice about implementing change, consultation procedures and timelines to be followed.

The surplus process is summarised in figure 1 below:
CONSULTATION

Where there are likely to be employees declared excess, the consultation provisions under the Victorian Public Service Enterprise Agreement 2016 or the Nurses (Department of Education and Training) Agreement 2016 may apply. Where consultation is required, the Department will keep all affected employees informed throughout the process and consult with the appropriate union(s), being the Community and Public Sector Union (CPSU) and/or Australian Nursing and Midwifery Federation (ANMF).

The purpose of consultation is, where possible, to avoid the need to identify employees as surplus to the requirements of the Department, and to make an employee’s position redundant.

Consultation is required where the Department is proposing to restructure the workplace, introduce new technology or change existing work practices which affect employees. The Department is required to notify employees and their unions of the proposed changes including the various management-initiated outcomes that may ensue and the likely effects on employees’ responsibilities and working conditions. Further information on the consultation provisions is available on HRWeb at: Implementation of Change, Policy and Employee Relations Branch can assist in determining whether consultation is required and what this involves.

IDENTIFICATION

If the surplus situation remains unresolved following consultation and discussions, the Department may formally commence the process of identifying any employee whose position is surplus to its requirements.

The declaration of an employee’s position as surplus to requirements is a process to facilitate redeployment to suitable vacancies, and priority status for vacant roles and is not to be used as a substitute for dealing with unsatisfactory performance or misconduct.

Where the identification of an employee as surplus requires a selection to be made between two or more employees, the selection between those employees must be made, as far as practicable on objective grounds related to the employees’ suitability to perform the work to be undertaken.

When identifying an employee to be recommended to be declared as surplus, the Executive Director, Regional Director or other responsible manager should:

- consider any submissions from individual employees as to why they should or should not be declared surplus
- consider any suggestions made by the employee or representative which provide an alternative
- ensure every effort has been made not to identify an employee as surplus where there are compelling personal compassionate grounds

In the identification of an employee as surplus, the Department will ensure that it does not unlawfully discriminate against any employee, including based of any of the following reasons:

- part-time employment or resumption from leave
- temporary absence from work because of illness or injury
- trade union membership or participation in union activities outside working hours, or with the employer’s consent during working hours
- non-membership of a trade union or association that has applied to be a registered union under the Fair Work Regulations 2009 (Registered Organisations)
- seeking office as, or acting or having acted in the capacity of, a representative of employees
- the filing of a complaint, or the participation in proceedings, against the employer
- age, breastfeeding, carer status, disability, employment activity, gender identity, industrial activity, lawful sexual activity, marital status, parental status, physical features, political belief or activity, pregnancy, race (including colour, nationality, ethnicity and ethnic origin), religious belief or activity, sex, sexual orientation, expunged homosexual conviction, or personal association (whether as a relative or otherwise) with a person who is identified by reference to any of these attributes
- absence from work due to parental leave.

Once the identification process has been completed, the Executive Director, Regional Director or responsible manager must write to the Executive Director, People Division to request a recommendation is made to the Secretary (or delegate) to declare the employee as surplus.

Following the Secretary’s approval to declare an employee surplus, the employee will receive advice in writing that they have been declared surplus. This advice will also direct an employee to a copy of these guidelines. A meeting will be held with the employee where they will be provided this advice and be counselled on the redeployment procedures. The employee is to be given the opportunity to bring a support person to the meeting, who may be a representative of their union. The role of the support person is not to advocate on the employee’s behalf.

MEANINGFUL WORK

The applicable Executive Director, Regional Director or other responsible manager has an obligation to ensure surplus employees have regular and meaningful work, appropriate to their skills and experience, during the period in which they are unattached/surplus.
REDEPLOYMENT PRINCIPLES

Redeployment is the primary workforce management strategy to resolve situations where ongoing employees are identified as surplus to the needs of the Department.

The Department and surplus employees will comply with the following redeployment policy principles set out at Schedule A to the Victorian Public Service Enterprise Agreement 2016 or Schedule 4 of the Nurses (Department of Education and Training) Agreement 2016. These provide:

- the redeployment of surplus employees wherever practical and consistent with the application of merit
- surplus employees have priority to be placed in vacancies that occur within the VPS unless the surplus employee is determined to be unsuitable for appointment to that vacancy by the prospective employing agency
- the placement of surplus employees will be managed by the Department. The Department will provide individualised case management and support, including counselling, provision of job search skills, liaison and retraining to assist in achieving placements
- the Department’s processes will be consistent with the application of the principles of fair and reasonable treatment and merit selection
- redundancy and payment of a separation package will be used as an action of last resort where redeployment within a reasonable period does not appear likely
- where a vacancy exists for which a redeployee is suitable and is the only candidate or the best candidate among redeployees, a valid offer will be made. Such an offer involves an offer of duties to a suitably qualified employee (which may be at the same or different level or status or the same or different general location as the employee’s previous employment)
- redeployees will have priority access to vacancies both at the employee’s classification level and below their classification level and, where appropriate, will be provided with salary maintenance for 6 months where the position is below their classification
- the Department will provide support to redeployees being placed in alternative positions utilising high quality and professional expertise
- redeployees will actively engage in the redeployment process
- a public service employee who has been formally declared surplus and applies for, or is referred to, a vacancy has priority to be selected for that vacancy provided he or she meets the selection criteria for that vacancy.

EMPLOYEE OBLIGATIONS

Redeployees are expected to proactively participate in the redeployment process, including:

- accepting positions to be placed into, where those positions are at level and they have the skills to perform the position
- actively seeking alternative roles in the Department and other public sector agencies.

REPORTING REQUIREMENTS

Where a surplus employee is being considered for a vacancy the following reporting requirements apply:

- if the surplus employee is considered suitable, a written report is not required
- where the surplus employee is considered unsuitable, a written report must be prepared which identifies the reasons the employee is considered unsuitable for the vacancy, specifically addressing the selection criteria
- where there is more than one surplus employee referred to the same vacancy, the Executive Director, Regional Director or responsible manager should conduct a merit selection process to determine the most suitable surplus employee and provide a written report indicating the ranking of suitable surplus employees, and if no employee is suitable, the reasons for this determination. The Department’s VPS Selection Report which is available on HRWeb at: Forms-Public Service. This may be used to complete the written report.

Corporate People Services will advise the surplus employee, in writing, of the outcome of the referral and provide them a copy of the report. The original copy of the report will be temporarily retained in the event of a review of action being lodged with the Merit Protection Boards.

A record of redeployment action taken with respect to an employee must be maintained. This should include all positions considered for possible redeployment and any reasons given by an employee for refusing referral to a vacancy or an offer of redeployment. All records prepared in respect to redeployment action should be signed by the manager and the employee. This will include comments by either or both parties where there is no agreement on suitability.

STAGES OF REDEPLOYMENT

Stage 1: Preparing for Redeployment

The preparation for redeployment will occur within two weeks after an employee is declared surplus. The Executive Director, People Division will appoint a case manager for each surplus employee.

To ensure appropriate case management can be provided to a surplus employee, the Executive Director, Regional Director or responsible manager must advise Corporate People Services of the employee(s) declared as surplus ensuring the following details and documentation are provided:
- employee(s) full name, work location and ID number
- description of duties being undertaken while surplus
- any specific details relating to what the employee may be seeking through redeployment (e.g. duties, location, classification)
- identification of the redeployee’s manager within the work unit for co-ordination of redeployment action.

The case manager will, in consultation with the employee:
- undertake a skills audit of the surplus employee
- organise CV preparation and interview skills training
- establish job search criteria with the employee (duties, location, time fraction and classification).

**Stage 2: Formal Redeployment Period**

On commencement of the formal three-month redeployment period, the case manager will:
- work with the surplus employee to identify suitable public service vacancies the surplus employee could be matched for (in both the Department and other agencies), and discuss options for matching including any required retraining
- facilitate the consideration of the surplus employee by the prospective employer
- provide feedback to the surplus employee after any referral or interview.

**Stage 3: Assignment or transfer to a suitable vacancy**

The following applies where a surplus employee has made application to a vacancy at or below their level or status or is found to be suitable/unsuitable for a vacancy:
- where the surplus employee is the only candidate or the best candidate amongst other redeployees, and is suitable, a valid offer will be made.
- a valid offer involves an offer of duties to a suitably qualified employee (which may be at the same or lower level or status or the same or different general location as the employee’s previous employment).
- where an employee accepts the offer, the assignment to an internal ongoing vacancy or transfer to an ongoing role in another agency, the redeployment process is completed.
- where the employee declines an offer of redeployment, the reasons for the refusal should be recorded. Counselling may be made available to the employee before any decision is finalised.
- placement in a fixed term vacancy of up to three months temporarily stops or extends the redeployment period.
- an assignment/secondment to a fixed term vacancy requires the approval of the relevant Executive Director, Regional Director or responsible manager. The surplus employee must continue to pursue ongoing vacancies during the assignment/secondment.
- salary maintenance for up to six months will be provided where the redeployee is placed by agreement in a lower classified vacancy.

**REDUNDANCY**

Where the Department forms the view that it is unlikely that a surplus employee will be redeployed to a suitable position, other action, including redundancy, may be considered. Redundancy will not be considered unless an employee has been surplus to requirements for a period of three months or more and all reasonable redeployment efforts have been made.

If redeployment is not achieved at the end of the redeployment period, the employment of the surplus employee may be terminated by the Department on the grounds of redundancy. Where termination of employment is a result of a bona fide redundancy the employee may be eligible for a Targeted Separation Package (TSP). An employee who has not proactively participated in the redeployment process will not be eligible for a TSP, except in exceptional circumstances, as determined by the Executive Director, People Division. In this instance, the redundancy provisions under the *Fair Work Act 2009* will apply.

A TSP is a compulsory redundancy package and action of last resort. The Department will exhaust the redeployment opportunities before applying a TSP.

An employee’s employment must not be terminated unless they have been given the period of notice or pay in lieu as set out below:

<table>
<thead>
<tr>
<th>Employee’s period of continuous service with the employer</th>
<th>Period of notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than 1 year</td>
<td>At least 1 week</td>
</tr>
<tr>
<td>More than 1 year but less than 3 years</td>
<td>At least 2 weeks</td>
</tr>
<tr>
<td>More than 3 years but less than 5 years</td>
<td>At least 3 weeks</td>
</tr>
<tr>
<td>More than 5 years</td>
<td>At least 4 weeks</td>
</tr>
</tbody>
</table>
The minimum period of notice is increased by one week if the employee is over 45 years of age and has completed at least 2 years of continuous service with the employer.

GRIEVANCES

An employee, or the union on an employee’s behalf, may lodge a personal grievance with the Merit Protection Boards in relation to being identified as a surplus employee.

Where the Secretary has endorsed termination of an employee’s employment on the grounds of redundancy the employee may seek a review by the Victorian Public Service Commissioner under Regulation 9 of the Public Administration (Review of Action) Regulations 2015.

Nothing in these procedures precludes a grievance from being pursued in accordance with the provisions of the Fair Work Act 2009 or any relevant agreement or award made under that Act.

FURTHER ASSISTANCE

Further information, advice or assistance on any matters related to Managing Surplus Employees is available by:

- accessing the A-Z topic list on HRWeb
- using the related topics list (http://www.education.vic.gov.au/hrweb/workm/Pages/Surplus-VPS.aspx) or
- contacting the Policy and Employee Relations Branch on 9637 2454 or email any query to employee.relations@edumail.vic.gov.au