Human Resources

Managing Surplus Employees
Public Service

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OVERVIEW

The purpose of this guide is to set out the arrangements for the management and resolution of surplus employee situations in the Department. A surplus employee situation arises where the Department has a greater number of employees than is necessary for the operations of the Department. This is often initiated by proposed changes to the workplace. A surplus employee situation may arise due to technological change, changes to programs or functions of the Department or other changes in work methods, or changes in the nature, extent or organisation of the functions of the Department.

The usual process for the management of ongoing surplus public service employees is illustrated below:

CONSULTATION

Where there is likely to be a surplus employee situation, the Department will keep all affected employees informed throughout the process and consult with the appropriate union(s) in accordance with its obligations under the Victorian Public Service Enterprise Agreement 2016 (the VPS Agreement) and the Nurses (Department of Education and Training) Agreement 2016 (the Nurses Agreement). For the purposes of these procedures, appropriate union(s) means the Community and Public Sector Union or Australian Nurses and Midwifery Federation depending on the category of employee affected.

The purpose of the consultation is, where possible, to resolve potential surplus employee situations without the need to identify employees surplus to the requirements of the Department.

Consultation with the relevant union(s) will commence at least one week before any action in relation to a potentially surplus employee is initiated and can cover any issues related to the strategy for managing surplus employees including the:

- measures that could be taken to remove or reduce the incidence of employees becoming surplus;
• retraining of the employees concerned; and
• redeployment prospects for the employees concerned.

Consultation will continue for as long as is necessary for each particular situation. The relevant union(s) as well as employees should be given opportunity to put any views on proposed changes to the staffing structure of an affected work area before a decision is finalised. Where the representations of either party are rejected proper reasons for rejection should be provided.

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

IDENTIFICATION

Once the necessary consultation and discussions have been completed, the Department will implement the change that was the subject of consultation which may result in an employee being identified as unplaced (for the avoidance of doubt, unplaced does not mean surplus to the requirements of the Department in accordance with Schedule A of the VPS Agreement and Schedule 3 of the Nurses Agreement).

If the unplaced employee situation remains unresolved, the Department may formally declare an employee surplus to the requirements of the Department.

The identification of an employee must be made on objectively assessed grounds related to suitability for the work to be undertaken in the Department, and by reference to relative efficiency if there is more than one employee suitable to undertake the work.

The Executive Director, Regional Director or other responsible manager should:
• take into account any submissions from individual employees on reasons for not being considered;
• make every effort to ensure that an employee is not identified as surplus where there are compelling personal compassionate grounds pertaining to that person;
• give appropriate consideration to any suggestions made by an employee or the relevant union(s) which may provide an alternative to redeployment;
• ensure that an employee identified as surplus receives advice in writing including being directed to a copy of these guidelines; and
• ensure that the employee identified as surplus is counselled on the redeployment procedures (the employee may bring a support person to the meeting, who may be a representative of their union).

In the identification of an employee as surplus the Department will ensure that it does not unlawfully discriminate against any employee on the basis 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 the above attributes;
• absence from work during maternity or other parental absence.

Once the identification process has been completed, the Executive Director, Regional Director or other responsible manager must advise Corporate People Services of the employee(s) identified ensuring the following details and documentation are provided:

• employee(s) full name, work location and record number;
• description of duties being undertaken while surplus;
• a resume;
• any specific details relating to what the employee may be seeking through redeployment (eg. duties, location, classification); and
• identification of the redeployee’s manager within the work unit for co-ordination of redeployment action.

The declaration of employees as surplus to workplace requirements is a process to facilitate redeployment to other vacancies and is not a substitute for dealing with unsatisfactory performance or misconduct issues. This does not however preclude an employee who is the subject of unsatisfactory performance or misconduct processes from being declared surplus for genuine surplus reasons. Where this occurs any procedures that are underway should continue. Redeployment must not be used to change the employment status of an employee.

Where the identification of an employee as surplus requires a selection to be made between two or more employees, the selection will be made by reference to objective criteria.

The Department will ensure that surplus employees are provided with meaningful work during the redeployment period.

**Redeployment**

*Redeployment principles*

• In managing employees identified as surplus, the Secretary recognises the relevant obligations of the Department and commits to placing surplus employees into vacancies for which they are suitable. Surplus employees are to commit to participate in the redeployment process in good faith including actively considering reasonable alternative employment. 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 will apply the following redeployment policy principles in accordance with the VPS Agreement and the Nurses Agreement:

  ○ 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 public service unless the person is determined to be unsuitable for appointment to that vacancy by the Department or other 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;
  ○ Where the Department forms the view that it is unlikely that a surplus employee will be redeployed to a suitable position, other action, including retrenchment, may be considered. Retrenchment 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;
Retrenchment 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 are expected to actively engage in the redeployment process.

Support for surplus employees

The relevant Executive Director, Regional Director or other responsible manager has an obligation to support a surplus employee. This support will involve:

- fair treatment of affected employees;
- providing employees with regular and meaningful work, appropriate to their skills and experience, during the period in which they are surplus;
- taking all reasonable steps to identify vacancies within the Department to which the surplus employee can be referred;
- giving first consideration for suitable vacancies to employees as they arise within the Division;
- providing appropriate training or retraining, where practicable. This may take the form of on-the-job training (which could include temporary placement in another work location in the Department or with an outside employer) and/or the undertaking of an appropriate course to provide new skills or update existing skills;
- considering career transition programs, such as skill development in job search;
- ensuring counselling is available to the employee throughout the redeployment process to help with emotional issues that result from becoming surplus;
- ensuring that the cost of any support programs are met by the Division or Regional Office;
- conducting regular meetings with the surplus employee to discuss and monitor progress toward redeployment; and
- giving the employee the option to bring a support person (who may be a union representative) to any discussions held as part of the redeployment process.

Redeployment Process

There are three stages to the redeployment process: preparation, redeployment and assignment or transfer.

Stage 1: Preparing for redeployment

Preparation for redeployment is to occur within two weeks of identification of a surplus employee. The relevant Executive Director, Regional Director or other responsible manager will be responsible for preparing the surplus employee for redeployment and will:

- arrange for a skills audit of the surplus employee to be undertaken;
- organise resume preparation and interview skills training; and
- establish job search criteria with the employee (duties, location and classification).
Stage 2: Commencing redeployment period

The aim of the redeployment period is to identify and offer duties as close to the employee’s current level as is possible. On commencing the formal three month redeployment period, steps to be undertaken by the relevant Executive Director, Regional Director or other responsible manager include:

- identifying all possible public service vacancies for matching and discussing options to facilitate the matching process and any retraining required;
- facilitating the consideration of the surplus employee by the relevant employer;
- providing feedback to the surplus employee after a referral or interview.

The Department will ensure that all relevant vacancies are reviewed to maximise the opportunities for valid offers for redeployment to be made.

In using best endeavours to identify potential duties to offer surplus staff, priority will be accorded to duties in the following order:

- duties for which the employee is already qualified or who would become qualified for the position as a result of incidental or top up training within a reasonable distance from the location of existing duties and not less than at the same level or status;
- duties at a lower level or status (where this change of level or status is acceptable to the employee) within a reasonable distance from existing duties; or
- duties at a lower level or status and at a different location (where this change of level, status and location is acceptable to the employee).

Stage 3: Assignment or transfer to a suitable vacancy

- Where a vacancy exists for which a redeployee is suitable and is the only candidate or the best candidate amongst redeployees, 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 completes the redeployment process.
- 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.
- An assignment/secondment to a fixed term vacancy requires that the relevant Executive Director, Regional Director or other responsible manager and surplus employee will continue to pursue ongoing vacancies during the placement.
- Salary maintenance for up to six months will be provided where the redeployee is placed by agreement in a lower classified vacancy.

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

- where 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 other responsible manager should conduct a merit selection process to determine the most suitable surplus employee and provide a written report indicating the preferred ranking of the suitable surplus employee. The Department’s Public Service Selection Report may be used to complete the written report (see Managing Surplus Employees-Public Service).
Corporate People Services will advise the surplus employee, in writing, of the outcome of the referral and provide a copy of the report relating to him/her. 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 in 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.

**Reimbursement of Expenses**

An employee who is required to travel in order to attend an interview as part of the redeployment process will have reasonable and necessary expenses reimbursed by the Department in accordance with the Department’s *Personal Expenses Policy*.

An employee who is redeployed to a different locality, which requires the moving of his/her residence, is entitled to reasonable costs associated with that relocation subject to the circumstances. The approval for reimbursement of costs should be obtained from the relevant Executive Director, Regional Director or other responsible manager of the surplus employee prior to the employee accepting an offer of redeployment.

**RETRENCHMENT**

All reasonable efforts must be made to redeploy surplus employees to suitable alternative positions. Where the Secretary forms the view that it is unlikely that a surplus employee will be redeployed to a suitable position, other action, including retrenchment, may be considered.

Retrenchment will not be considered unless the employee has been named as surplus to the requirements of the Department for a period of three months or more, excluding any periods of assignment/secondment to a specific term vacancy.

Retrenchment cannot occur without the approval of the Secretary (or delegate). This will be coordinated through the Executive Director, People Division, who will liaise with the redeployee, Corporate People Services, and the relevant union(s).

If retrenchment is being considered, the Executive Director, Regional Director or other responsible manager must provide the following information to the Executive Director, People Division:

- an assessment of the redeployment prospects of the employee;
- details regarding the redeployment efforts which have been made, including any retraining; and
- recommended action.

The Executive Director, Regional Director or other responsible manager and the surplus employee will be advised in writing of the decision of the Secretary or delegate.

An employee who is retrenched will be entitled to receive any targeted separation package in accordance with public sector policy applicable from time to time and payment of accrued leave entitlements.

**REVIEW OF ACTION**

The Department’s Review of Action (Personal or Selection Grievance) processes are available and are managed expeditiously in relation to issues raised by surplus employees.

Where Departmental Review of Action processes are utilised:

- all time frames continue unless Fair Work Commission recommends that specific time frames are suspended in which case the Department will observe the recommendations;
• the relevant union(s) are to be provided with necessary information to be satisfied that the provisions of this policy have been complied with where the union(s) are representing the interests of aggrieved employees.

An employee, or the union on an employee's behalf, may lodge a grievance in relation to:

• being identified as a surplus employee; or
• being assessed as unsuitable for redeployment to an advertised position; or
• being identified for retrenchment.

For further information regarding the Department’s Review of Action processes see Grievances - Public Service.