

Management of Excess Teaching Service

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Overview

An excess staff situation arises where a school has a greater number of employees than is necessary as identified in the school's preferred staffing profile. An excess staff situation may also arise due to technological change, changes to educational programs or other changes in work methods, or changes in the nature, extent or organisation of the functions of the school.

An excess staff situation may occur where funding within the Student Resource Package (SRP) is insufficient to cover the salaries of all employees at the school. The workforce plan should be used to determine whether the school is likely to have an excess staff situation. Where a salary deficit is indicated in the SRP Management Report (i.e. there are insufficient funds available to meet salary commitments) the principal should develop a deficit management strategy with the aim of eliminating the deficit in the shortest possible time.

To avoid the need to identify employees as excess, principals may put in place a range of alternative strategies, consistent with the workforce plan, such as the reorganisation of duties of employees within the school, investigating any possible reductions in time fractions, approving leave applications, or by negotiating the temporary transfer of an employee to another school.

Unless specifically indicated, the procedures in this document apply to all employees in schools.

The processes describe the arrangements for the management and resolution of excess staff situations in schools.

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

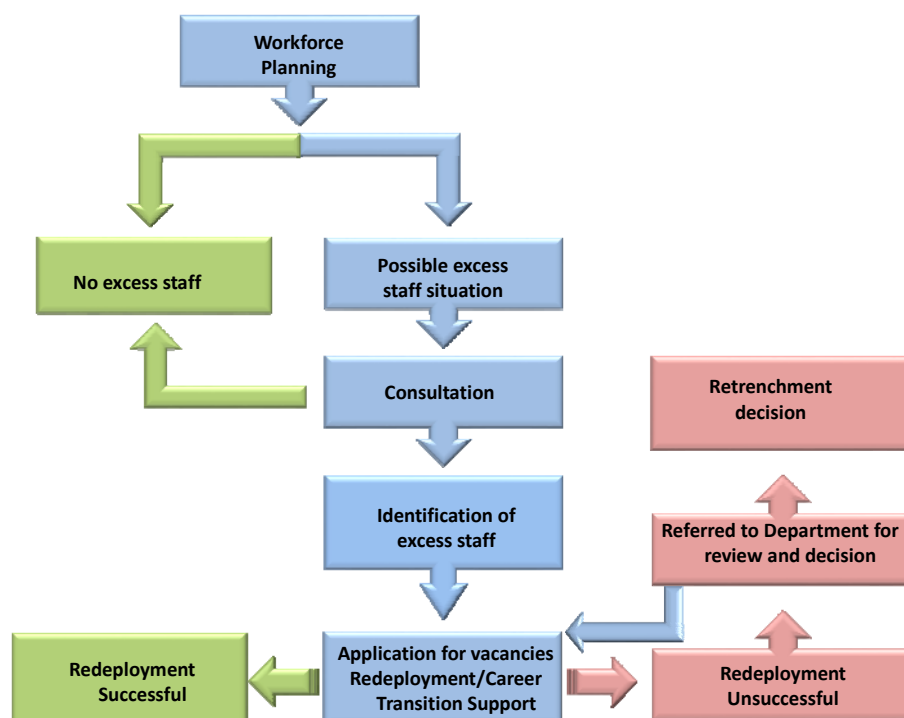
- fixed-term employees, other than in exceptional cases
- casual employees
- school council employees (employed under section 2.3 of the *Education and Training Reform Act 2006*)
- employees in the Principal Class
- employees currently in the probationary period of their employment.

The responsibility for the identification of excess staff and the management of these employees rests with the principal. The responsibility for the identification of employees who may be subject to retrenchment rests with the Department.

In managing excess staff situations principals must ensure:

- fair treatment of affected employees
- that the process is not used as a substitute for the procedures for managing unsatisfactory performance or the discipline procedures.

The school excess staff process is illustrated below:



Consultation

Where there is likely to be an excess staff situation the principal must keep all employees fully informed throughout the process and consult with the appropriate union(s). For the purposes of these procedures, appropriate union(s) means the Australian Education Union, the Community and Public Sector Union or the Australian Nursing and Midwifery Federation depending on the category of employee affected.

The purpose of the consultation is, where possible, to resolve potential excess staff situations without the need to identify employees excess to the requirements of the school. During this consultation phase the principal must:

STEP 1.

Provide the union sub-branch with the following details at least one week before the commencement of discussions:

- the reasons an employee is likely to be excess
- the school's workforce plan, including details of the school's preferred staffing profile
- the details of the employee(s) likely to be affected
- where changes in the staffing structure are proposed the projected student enrolments, the number and classification of employees affected and the number and classification of the employees expected to be required for the performance of any continuing function of the employer.

To avoid any disputes over the date details were provided to the union sub-branch, principals should keep a record of the date details were provided.

The *School Level Consultation – Potential Excess Form* should be completed (Part A where the sub-branch is notified as set out above, or Part B where the appropriate union(s) does not have a sub-branch at the school) and forwarded to the Department.

Where there is no sub-branch at the school the Department will notify the appropriate union(s) on behalf of the principal.

STEP 2.

Discuss the situation with the union sub-branch and attempt to reach agreement. The discussions should concentrate on the management of the excess staff situation and can cover any issues related to the strategy for managing the potential excess staff situation, but must include:

- the number of employees likely to be excess
- the measures that could be taken to remove or reduce the incidence of employees becoming excess
- retraining strategies to assist affected employees with further employment opportunities
- the redeployment prospects for the employees concerned. It is important that realistic advice about the redeployment prospects of the affected employees is given.

The discussions should take place over a reasonable time period which takes account of the particular situation and the need to proceed as quickly as possible.

STEP 3.

Consider any representations of the union sub-branch which should be given the opportunity to put its views on any proposed changes to the staffing structure of an affected work area before any decisions are finalised. Where the representations are rejected reasons for rejection should be provided.

NOTE

Where there is no sub-branch at the school the appropriate union(s) may request to be involved in Steps 2 and 3. Where this does not occur the school's agreed consultative arrangements should be used to satisfy the requirements of Steps 2 and 3.

Grievances arising from steps 1 to 3 above are to be managed in accordance with the grievance resolution procedures set out in sub-clauses 12(8) to (13) of the *Victorian Government Schools Agreement 2017*.

Identification

Once the necessary consultation and discussions have been completed and the excess situation remains unresolved, the process for the identification of an excess employee(s) may commence. Where the excess staff situation has arisen due to a reduction or cessation of Student Support Funding or comparable funding and the person identified through the process set out below is in the first seven years of employment, their employment can be terminated subject to them receiving not less than twelve weeks' written notice. Where the person identified has more than seven years of service, the person will be subject to the excess procedures set out in this Guide.

The declaration of employees as excess to workplace requirements is a process to facilitate redeployment to other vacancies and should not be used as 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 excess for genuine excess reasons. Where this occurs any procedures that are underway should continue.

The following procedures should be used to identify the excess employee:

- (a) The principal, after appropriate consultation, will determine the curriculum or work areas in which there may be employees excess to the requirements of the school.
- (b) The principal will convene meetings of employees from such curriculum areas or work areas to seek volunteers to be identified as excess.
- (c) Where insufficient volunteers are forthcoming the principal will provide an opportunity for employees in such curriculum areas or work areas to provide reasons in writing why they should not be considered for declaration as excess.
- (d) The principal will take into account the overall curriculum needs or work needs of the school, the submissions from individual employees in accordance with (c) above and consult with the union sub-branch, or where there is no sub-branch at the school the appropriate union(s), before declaring as excess those employees whose declaration would cause the least disruption to the program at the school.
- (e) The principal will make every effort to ensure that an employee is not identified as excess to workplace requirements where there are compelling personal compassionate grounds pertaining to that employee or where the employee has been compulsorily redeployed within the previous two years.

Where the identification of an employee as excess requires a selection to be made between two or more employees, the selection must be made as far as practicable on objectively assessed grounds related to the suitability for the program determined for the school.

The principal should not 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
- 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, an 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 any parental absence.

Once the process of identification has been completed the principal must advise:

- the employee(s) identified as excess
- the Department of the names of employee(s) identified as excess
- the union sub-branch, or where there is no sub-branch at the school the Department, of the names of employee(s) identified as excess.

The above advice must be in writing and issued without delay.

Where a person identified due to a reduction or cessation of Student Support Funding or comparable funding is in their first seven years of employment, they will receive not less than twelve weeks' written notice of termination and be entitled to redeployment for the duration of the notice period. Where the person identified has more than seven years of service, the person will be identified as excess and subject to the procedures set out in this Guide.

The *Identification of Excess Employee Form* should be used to notify the Department of the name of any employee identified as excess. This form is also to be used to confirm that any person identified in respect to a reduction or

cessation of Student Support Funding or comparable funding who is in the first seven years of employment, has been provided with at least twelve weeks' written notice of termination. Where there is no sub-branch at the school the Department will notify the appropriate union(s) on behalf of the principal.

Once an employee has been identified the principal should encourage the employee to enter a resume on Recruitment Online and set up the Job Search Agent facility to assist the employee to identify suitable advertised vacancies to maximise opportunities for redeployment.

Principals should refer to the Staffing Cooperation guide for additional information where it is identified that an employee who works in more than one school is potentially excess to requirements.

Redeployment/career transition support

Teaching Service employees who have been identified as excess will be provided with dedicated redeployment and career transition support whilst they remain in excess. The Department has appointed Hudson as its Redeployment and Career Transition provider.

On receipt of the form identifying an employee as excess the Department will provide the Redeployment and Career Transition provider with contact details for the employee. The provider will contact the principal and the excess employee to commence the Redeployment and Career Transition support.

The Redeployment and Career Transition provider has responsibility for redeployment and career transition support for all employees with excess status in all locations across Victoria. In order to do this the provider will:

- actively assist excess employees identify and respond to suitable vacancies including those advertised on Recruitment Online
- implement an information system that will track levels of support provided to excess employees
- provide monthly activity reporting to principals/managers and the Department
- facilitate identification and consideration of opportunities outside the Teaching Service should an excess employee wish to pursue this option.

The Redeployment and Career Transition provider will provide the following support and assistance to excess employees:

- Reviewing the excess employee's current employment situation and working closely with the employee to plan a career path that enables the employee to achieve their career goals
- Appointing a personal career coach who will assist the excess employee to develop strategies and practice approaches likely to enhance the employee's career prospects

Providing specific career management assistance including:

- identifying role preferences and transferable skills
- encouraging the employee to set up the Job Search Agent facility to assist in identifying suitable advertised vacancies
- effectively addressing selection criteria
- building a professional resume
- preparing for interviews
- seeking quality feedback
- attending group workshops / webinars covering key elements of the excess employee's search for a new role
- providing online access to a purpose built careers portal that includes appropriate self-assessments to assist career decision making
- access to other material specifically designed to assist excess employees transition to a new role.

Retraining of excess employees may improve their redeployment prospects. The focus of any retraining should be to enhance the redeployment prospects of the employee. The principal and the Redeployment and Career Transition provider will work with the excess employee to identify any suitable retraining options. This may take the form of on-the-job training but could include, in some cases, the undertaking of a short course to provide new skills or update existing ones.

Principals should ensure excess employees have time within the normal hours of attendance to pursue redeployment or career transition opportunities.

Where an employee has been named as excess to the requirements of the school for a period of more than twelve months for a teacher, or more than six months for an education support class employee, the principal should review the redeployment prospects of that employee and determine an appropriate course of action for that employee.

To assist the principal in determining an appropriate course of action for that employee the Redeployment and Career Transition provider will provide a redeployment summary report and a summary of the positions (generated via Recruitment Online) for which the employee has been an applicant.

Schools with excess employees are responsible for meeting the cost of the Redeployment and Career Transition support and schools will be invoiced on a monthly basis for the provision of the service.

Gainful employment

The principal has an obligation to ensure that excess employees have regular programmed duties prior to redeployment. For a teacher this includes but is not limited to rostered teaching duties, team teaching, replacement classes, extras and supervisory duties.

Employees identified as excess to workplace requirements will continue to be charged to the school.

During the redeployment period a school should continue to give the excess employee first consideration for placement opportunities as they arise in the school including temporary placement into any suitable fixed-term position that may arise in the school.

The Region will make all reasonable efforts to ensure employees who are excess as a result of a school closure are placed in suitable alternative positions.

Redeployment

APPLICATIONS FOR VACANCIES

The expectation is that excess employees will actively monitor vacancies that are advertised on Recruitment Online and make application for any suitable vacancy to maximise their redeployment prospects. In addition, the Redeployment and Career Transition provider will monitor vacancies and, where the provider becomes aware of a vacancy through advertisement or otherwise it considers would be suitable for an excess employee, the provider will consult the excess employee about that vacancy.

Excess employees are guaranteed an interview for any vacancy at or below their classification and salary range for which they are an applicant. Excess employees are not precluded from applying for vacancies at a higher classification and salary range. However in these cases the excess employee is not guaranteed an interview and will be considered in accordance with the selection procedures set out in the Recruitment in Schools Guide.

In making an application for a vacancy, excess employees are strongly encouraged to provide a full response to the selection criteria through Recruitment Online. Applications for advertised vacancies must be lodged no later than the advertised closing date for the vacancy unless the principal of the school with the vacancy elects to accept a late application in accordance with the selection procedures set out in the Recruitment in Schools Guide.

CONSIDERATION OF EXCESS STAFF

An excess employee who is an applicant for an advertised vacancy at or below their classification and salary range must be interviewed and will be considered on merit against other applicants in accordance with the selection procedures set out in the Recruitment in Schools Guide.

Whilst excess employees are encouraged to provide a full response to the selection criteria for any vacancy for which they are an applicant they may choose to submit a written statement regarding suitability or a curriculum vitae. In assessing the excess employee's ability, capacity and suitability the selection panel must consider any information provided by the employee. Where an excess employee does not provide a response to the selection criteria, the selection panel must assess the person against the selection criteria using whatever information is available.

The selection panel may seek comments from referees nominated by the excess employee (if any). The selection panel may wish to contact persons other than nominated referees to assist in assessing the employee's ability, capacity and suitability for a position provided that the employee is advised of these extended inquiries prior to contacting a person(s) not nominated as a referee. In such instances the employee is to be informed of the name of any person the selection panel intends to contact and provided with an opportunity to comment.

Where an excess employee is not selected for a vacancy the employee may seek access to their individual selection report to assist both the employee and the Redeployment and Career Transition provider to identify areas of strength and weakness in order to improve the employee's potential for redeployment.

REDEPLOYMENT (PERMANENT TRANSFER)

An excess employee who is selected for a vacancy of longer than twelve months duration (or in the case of a parental absence replacement where the replacement continues beyond twelve months) must be offered redeployment to the position as advertised and given ten working days to accept or reject the offer. If the excess employee accepts the offer, the employee will be permanently transferred to that school and cease to be an excess employee.

An employee who accepts redeployment to a vacancy at or below their substantive classification level is permanently transferred to that position on the same terms and conditions that would have applied had that transfer not been a redeployment. Salary on redeployment to a lower classified position (including redeployment to a lower salary range within the same classification) is determined in accordance with the salary on transfer policy that would have applied had that transfer not been a redeployment.

An excess leading teacher/learning specialist whose salary is reduced on redeployment to a lower classification level will receive an allowance to maintain the salary received by the leading teacher/learning specialist immediately prior to the redeployment. This allowance will be paid from the date of the redeployment until twelve months following the date the leading teacher/learning specialist was identified as excess irrespective of that person's tenure as a leading teacher/learning specialist. Should the redeployment to a lower classification level occur more than twelve months after the leading teacher/learning specialist was identified as excess no allowance will be paid.

Where an excess employee's temporary placement at a particular school extends beyond twelve months, as a result of an advertised vacancy or otherwise, the excess employee must be offered redeployment to the position and given ten working days to accept or reject the offer. If the excess employee accepts the offer, they will be permanently transferred to that school and cease to be an excess employee and the position does not need to be advertised.

On the redeployment of an excess employee the principal of the school where the employee was identified in excess will inform the employee in writing and the Schools Recruitment Unit via email at Schools.Recruitment@edumail.vic.gov.au that the employee is no longer identified as an excess employee.

REDEPLOYMENT (ABSORBED AT THE BASE SCHOOL)

If the circumstances in a school with excess employees changes during a school year resulting in the school no longer having an excess staff situation for that year action should be taken to absorb the excess employee(s). The changes in a school's circumstances that may resolve the excess staff situation include the permanent departure of staff (transfer, promotion, resignation, retirement etc.), the absence of staff on long term leave (leave of longer than six months that extends to the end of the school year), unexpected enrolment changes or changes to a school's budget position.

Where an excess employee is absorbed the principal will inform the employee in writing and the Schools Recruitment Unit via email at schools.recruitment@edumail.vic.gov.au that the employee is no longer identified as an excess employee.

TEMPORARY PLACEMENT (TEMPORARY TRANSFER)

An excess employee who is selected for a vacancy of twelve months or less duration must be offered temporary placement to the position as advertised and given ten working days to accept or reject the offer. At the conclusion of the temporary placement the excess employee will return to their original school unless the employee has been placed into another vacancy.

During this temporary placement the employee will continue to be identified as an excess employee and may apply for other vacancies as an excess employee, including those commencing in the following year. The Redeployment and Career Transition provider will continue to provide support and assistance to excess employees during the period of any temporary placement.

Should an excess employee who is accepted for temporary placement at another school not be available to take up the position due to an absence of leave expected to be for longer than six weeks the temporary placement will not proceed and the excess employee will remain at the base school.

Should an excess employee who is temporarily placed at another school take up the position and subsequently commence a period of leave that is expected to be six weeks or longer the temporary placement may be cancelled by the principal with the vacancy and the employee return to the base school.

Where an excess employee accepts temporary placement in a position of twelve months or less at or below their current salary range and/or classification, the employee maintains their salary for the duration of the temporary placement. The salary of an employee cannot be temporarily reduced as a result of temporary placement. However, where an excess leading teacher's/learning specialist's tenure expires during the temporary placement or before taking up the temporary placement salary will be reduced to the classroom teacher level on expiry of the tenure in accordance with the salary on non-renewal policy.

REIMBURSEMENT OF EXPENSES

An excess employee who is required to travel in order to attend an interview for an advertised vacancy as part of the redeployment process will have reasonable and necessary expenses reimbursed.

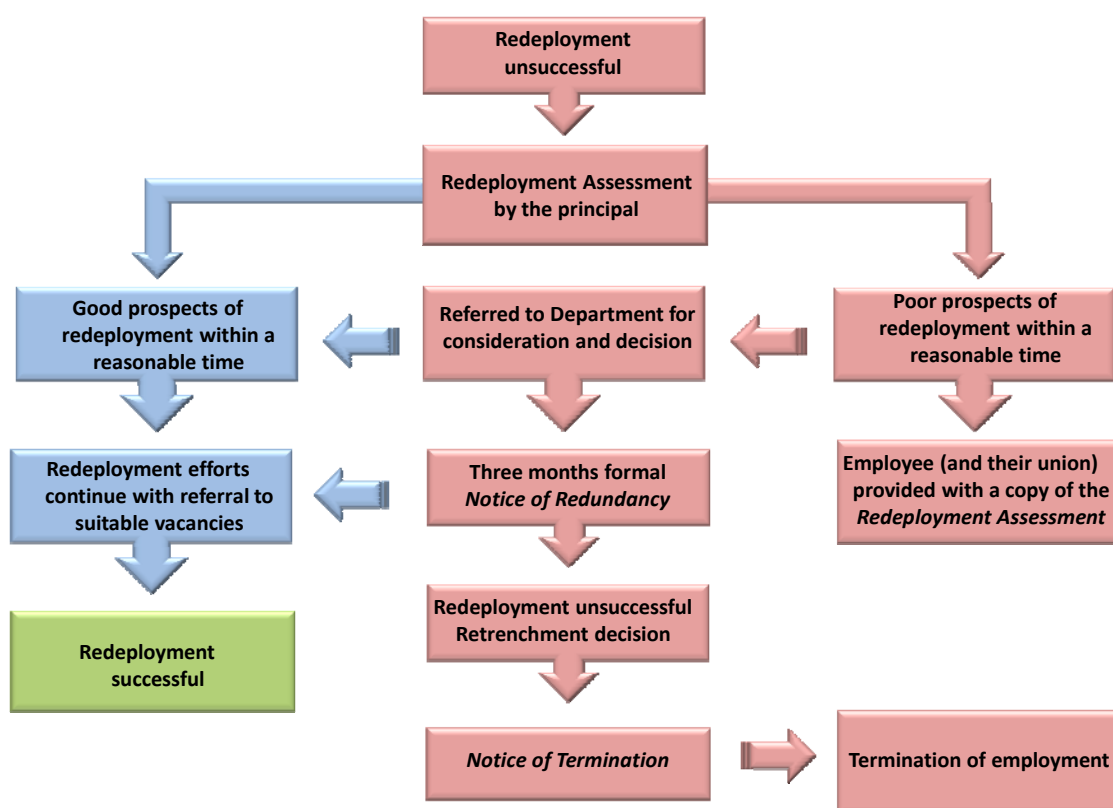
An excess employee who is redeployed to a different locality may be entitled to reasonable costs associated with the relocation in accordance with a Ministerial Order.

Retrenchment

All reasonable efforts will be made to redeploy excess employees to suitable alternative positions. Where a principal forms the view that it is unlikely that an excess 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 excess to the requirements of the school for a period of more than twelve months for a teacher or more than six months for an education support class employee and all reasonable efforts have been made to redeploy the excess employee to an alternative position and other options, such as retraining, properly considered.

The retrenchment process can be illustrated as follows:



If retrenchment is being considered, an assessment of the employee's redeployment prospects must be undertaken by the principal. This assessment will consider the summary report provided by the Redeployment and Career Transition provider and factors such as the redeployment efforts which have been made (including any retraining), the likelihood of a suitable vacancy arising within a reasonable period and the employee's participation in the redeployment process.

If the principal assesses that an excess employee's prospects of redeployment are poor the principal is to provide the excess employee and the Executive Director, People Division with a copy of the *Redeployment Assessment* comprising:

- the principal's assessment of the employee's redeployment prospects and the proposed course of action
- a copy of the summary report provided by the Redeployment and Career Transition provider
- a copy of the summary of the positions (generated via Recruitment Online) for which the employee has been an applicant.

The principal is to provide a copy of the *Redeployment Assessment* to the employee's union if requested by the employee.

Prior to considering retrenchment action the Secretary (or delegate) must be satisfied that all reasonable efforts have been made to redeploy an employee to suitable alternative positions. As part of the Secretary's (or delegate's) consideration the employee will be invited to make any comments or provide relevant information within fourteen days from the date the employee receives a letter from the Department to this effect.

At this time, in order to avoid the involuntary retrenchment of an excess employee, all other employees in the school will be invited to volunteer to be named in excess to replace that excess employee. This invitation will remain open for seven days or such longer period as determined by the principal. A volunteer who elects to accept such an invitation may be named in excess:

- where it would result in the original excess employee no longer being excess to requirements and being absorbed into the school's workforce; and
- the original excess employee agrees to be absorbed into the school's workforce.

Where the above requirements are satisfied but the volunteer is not accepted the original excess employee cannot be retrenched.

Where a volunteer is accepted to replace an excess employee the requirement that retrenchment action will not be considered unless the employee has been named as excess for a period of more than twelve months for a teacher or more than six months for an education support class employee does not apply to the volunteer.

NOTICE OF REDUNDANCY

Where the Secretary (or delegate) is satisfied the excess procedures have been followed and it is likely the employee (or a volunteer named in place of that employee) will be excess to the requirements of the Teaching Service, the employee will be issued with a *Notice of Redundancy* providing a further minimum period of three months (the formal notice period) to enable the employee to seek redeployment. The union(s) with coverage of the category of employee will be informed that a *Notice of Redundancy is to be issued*. At the employee's request, the employee's union will be provided with a copy of the *Notice of Redundancy*.

Where the Secretary (or delegate) proposes to retrench an employee, the Secretary (or delegate) will notify the employee in writing, no earlier than two weeks before the expiration of the formal notice period, of the action the Secretary (or delegate) proposes to take and advise the employee that they have fourteen days to make any comments to the Secretary (or delegate) on the proposed action.

NOTICE OF TERMINATION

After considering any comments received from the employee and should the employee continue to be in excess the Secretary (or delegate) may decide to proceed with any proposed termination action.

The Secretary (or delegate) will advise the principal and the excess employee in writing of the decision and the employee may be retrenched following four weeks' notice of termination.

The notice of termination is increased by one week if the employee is over 45 years of age and has completed at least two years' continuous service with the Department.

An employee may elect to terminate their employment from an earlier date and be paid in lieu of the remaining period of notice. The employee must notify the employer of this election in writing. Any payment received in lieu of notice is in addition to the entitlements received on retrenchment.

ENTITLEMENTS ON RETRENCHMENT

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

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 an excess employee; or
- being identified for retrenchment.

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 the management of excess is available by:

- accessing the A-Z topic list on [HRWeb](#),
- using the [related topics](#) list; or
- contacting Schools Recruitment Unit on 1800 641 943.