



Government  
of South Australia

Office of the Commissioner  
for Public Sector Employment

# DETERMINATION AND GUIDELINE 7: CHANGES TO WORKFORCE COMPOSITION AND MANAGEMENT OF EXCESS EMPLOYEES – REDEPLOYMENT, RETRAINING AND REDUNDANCY

# DETERMINATION AND GUIDELINE 7 OF THE COMMISSIONER FOR PUBLIC SECTOR EMPLOYMENT CHANGES TO WORKFORCE COMPOSITION AND MANAGEMENT OF EXCESS EMPLOYEES – REDEPLOYMENT, RETRAINING AND REDUNDANCY

**Date of Operation** 30 September 2019

**Review Date** Following the approval of a replacement enterprise agreement for either of the following enterprise agreements *South Australian Modern Public Sector Enterprise Agreement: Salaried 2017* and *South Australian Public Sector Wages Parity Enterprise Agreement: Weekly Paid 2017*.

The Guideline of the Commissioner for Public Sector Employment *Management of Excess Employees* will not apply to employees covered by this Determination and Guideline.

The Determination 2 of the Commissioner for Public Sector Employment *Excess Employees Income Maintenance* applies in respect of remuneration for excess employees employed under Part 7 of the *Public Sector Act 2009* (PS Act); public sector employment outside the Public Service that is declared by another Act or the regulations under the PS Act applies; and employment outside of the Public Service to which the Commissioner for Public Sector Employment is empowered to make determinations pursuant to section 16 of the PS Act.

## Who is covered by this Determination and Guideline?

See Section 1. Scope.

If employees are unsure whether the Determination and Guideline applies to them, they should contact the Human Resource function within their agency.

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Determination and Guideline of the Commissioner for Public Sector Employment

**Changes to Workforce Composition and Management of Excess Employees – Redeployment, Retraining and Redundancy**

## 1. SCOPE

Under section 16(1) of the *Public Sector Act 2009* (PS Act), the Commissioner for Public Sector Employment:

“... may issue determinations relating to

- a) *Employment in the Public Service; and*
- b) *Public sector employment outside the Public Service that is declared by another Act or the regulations under this Act to be employment to which this section applies.”*

Accordingly, this document applies as a Determination to:

- employment in the Public Service; and
- public sector employment outside the Public Service that is declared by another Act or the regulations under the PS Act to be employment to which Part 7 of the PS Act applies; and
- employment to which Part 7 of the PS Act otherwise applies; and
- employment outside of the Public Service to which the Commissioner for Public Sector Employment is empowered to make determinations pursuant to section 16 of the PS Act and regulation 9 of the *Public Sector Regulations 2010*.

Specifically, this document applies as a Determination to employment outside of the Public Service as follows:

- employment to whom Part 7 of the PS Act applies by force of the provisions of a Notice of the Premier transferring them within the public sector;
- employment under the *Courts Administration Act 1993* – section 21B;
- employment to which Part 7 of the PS Act applies either in whole or in part by section 41 of the PS Act and regulation 13 of the *Public Sector Regulations 2010*; and
- agencies and employees covered by the *South Australian Modern Public Sector Enterprise Agreement: Salaried 2017* but not otherwise covered by Part 7 of the PS Act (by way of regulation 9 of the *Public Sector Regulations 2010*).

This document as a Determination must be read in conjunction with the *South Australian Modern Public Sector Enterprise Agreement: Salaried 2017*.

Under section 14(1)(d) of the PS Act, the Commissioner for Public Sector Employment may issue guidelines relating to public sector employment matters.

For agencies and employees which are covered by the *South Australian Public Sector Wages Parity Enterprise Agreement: Weekly Paid 2017* this document is to be read as a Guideline of the Commissioner for Public Sector Employment and must be read in conjunction with the *South Australian Public Sector Wages Parity Enterprise Agreement: Weekly Paid 2017*.

This Determination and Guideline does not apply to:

- employees employed on a casual basis and those employed pursuant to term/temporary contracts of employment and/or those absent from duty on leave without pay and who do not have a right of return to public sector employment to which this Determination and Guideline applies on an ongoing basis.

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## 2. WORKPLACES IN RURAL AND REGIONAL LOCALITY IN SOUTH AUSTRALIA

South Australian government departments and agencies use a consistent set of boundaries to define the 12 administrative regions in the state. A map of this area is available at [www.sa.gov.au](http://www.sa.gov.au). The regions that are described as rural and regional for the purposes of this Determination and Guideline are those regions that are defined in the “Greater Adelaide area” and “Country Regions”. This definition is to be applied by agencies to determine if a work place is in a rural or regional locality.

## 3. IMPORTANT CONSIDERATIONS

- Excess employees are to be assigned or allocated suitable duties. Agencies must comply with the criteria for suitable duties in the relevant enterprise agreement.
- The transfer of an excess employee to a suitable funded/substantive role/duties/position does not require the agreement of the employee.

To determine what is “reasonable” and “suitable” for assessing an employee to perform a role, duties or position, chief executives, agency heads and delegates must have regard to the length of the appointment ; the vocation and common transferable skills and experience of the employee, and if the role, duties or position has similar functions to those previously undertaken by the employee.

## 4. EMPLOYEES WHO BECOME EXCESS OTHER THAN AS A CONSEQUENCE OF ORGANISATIONAL CHANGE

Employees can become excess to requirements for reasons other than the consequence of *bona fide* organisational change, for example, for reasons of mental or physical incapacity; or where their substantive/funded role/duties/position is filled on an ongoing basis when they are absent from such role/duties/position.

These employees are to be the subject of active consideration by chief executives, agency heads or delegates for transfer of such employees into alternative roles, duties or positions and will be provided with reasonable training and development opportunities and other support as appropriate.

Such excess employees will not be subject to a redeployment period and, it follows, their employment is not to be terminated on the grounds of them being excess to requirements.

## 5. TEMPLATES AND REPORTING DOCUMENTS

The following templates and reporting documents must be used for the reporting and management of employees formally declared excess to requirements and employed pursuant to the *South Australian Modern Public Sector Enterprise Agreement: Salaried 2017*. These documents are detailed in Attachment A.

Reference	“Salaried Templates”
S1	Prior to Declaration – Agency Checklist
S2	Advice to the Commissioner for Public Sector Employment – Notification of Intention to Declare an Employee/s Excess to Requirements
S3	Declaration Letter
S4	Access to Pre-Publication of Vacancies on I Work For SA
S5	Redeployment Plan

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<b>Reference</b>	<b>“Salaried Templates”</b>
S6	Manager’s/Line Supervisor’s Assessment Skills, Knowledge and Attributes of Employee
S7	Suitability Assessment and Assignment Template
S8	No longer excess letter
S-A	Dispute referral notice Commissioner for Public Sector Employment
SW-B	Notification of excess employee at 9 months
SW-C	Information for Vacancy Hiring Manager

The following templates and reporting documents are provided to assist agencies comply with their obligations for employees who are employed pursuant to the *South Australian Wages Parity Enterprise Agreement: Weekly Paid 2017*. Copies of these documents are detailed in Attachment B.

<b>Reference</b>	<b>“Weekly Paid Templates”</b>
W1	Template letter – Calling for Expression of Interest
W2	Prior to Declaration Agency Checklist
W3	Declaration Letter – Weekly Paid
W4	Redeployment Plan
W5	Dispute Excess Employee Suitability
W6	Offer of Suitable Ongoing Role
SW-B	Notification of excess employee at 9 months
SW-C	Information for Vacancy Hiring Manager