

---

# Deed

---

## Sydney Trains



and

## NSW Trains



and

Association of Professional Engineers, Scientists and Managers, Australia;  
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union;  
Australian Municipal, Administrative, Clerical and Services Union;  
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and  
Allied Services Union of Australia;  
Australian Workers' Union;  
Australian Rail, Tram and Bus Industry Union, and  
Construction, Forestry, Mining and Energy Union.

---

## **PARTIES**

**This Deed made between:**

**Sydney Trains and NSW Trains (Rail Entities)**

And

**Association of Professional Engineers, Scientists and Managers, Australia; Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union; Australian Municipal, Administrative, Clerical and Services Union; Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia; Australian Workers' Union; Australian Rail, Tram and Bus Industry Union; Construction, Forestry, Mining and Energy Union.**

## **RECITALS**

- A Sydney Trains and NSW Trains and the following unions have been engaged in negotiations with the intention of entering into new enterprise agreements to replace the RailCorp Enterprise Agreement 2010 (2010 Agreement) which applies to Sydney Trains and NSW Trains
- (a) Association of Professional Engineers, Scientists and Managers, Australia;
  - (a) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union
  - (b) Australian Municipal, Administrative, Clerical and Services Union;
  - (b) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia;
  - (c) Australian Workers' Union;
  - (d) Australian Rail, Tram and Bus Industry Union; and
  - (e) Construction, Forestry, Mining and Energy Union,
- collectively Unions.
- B The 2010 Agreement has a nominal expiry date of 31 March 2014.
- C In consideration for this Deed, the Parties to this Deed have agreed on the terms of enterprise agreements to replace the 2010 Agreement, to be provided to employees to approve in accordance with s182 of the FW Act, with the intention that the 2014 Agreements will be approved by the FWC.
- D Sydney Trains and NSW Trains and the Unions have agreed that this Deed will apply to the Beneficiaries from the Commencement Date.
- E The Unions enter into this Deed on behalf of the Beneficiaries who are their members.

---

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

#### 2. Definitions

The following words have these meanings in this document:

**12 month period** refers to 12 consecutive calendar months from the date of a definite decision to implement the change following the consultation process provided in Clause 7.3 of the 2014 Agreements, including the Notice Period and Retention Period, before an Excess Employee who has not been redeployed must leave the organisation with a forced redundancy.

**2010 Agreement** means the RailCorp Enterprise Agreement 2010.

**2014 Agreements** means the enterprise agreements that have been negotiated between Sydney Trains and NSW Trains respectively, and the relevant Unions to replace the 2010 Agreement, and which will commence operation in 2014 subject to and once approved by their employees, and the FWC.

**Authorised Position** means a position that the Rail Entity intends to maintain on its active establishment.

**Beneficiaries** means the employees of Sydney Trains and NSW Trains, who are covered by the 2014 Agreements as at the Commencement Date and who will be covered by the 2014 Agreements when employed during the term of this Deed.

**Commencement Date** is the date the 2014 Agreements commence following approval by the FWC.

**Excess Employee** means an employee whose position is no longer required because of technological or organisational change, or whose position no longer exists due to a restructure or other administrative decision, including where the position is moved to a substantially different workplace and the employee does not agree to move to this location. An employee being excess has a corresponding meaning.*[See also definition of substantially different workplace below.]*

**FWA** means the Fair Work Act.

**FWC** means the Fair Work Commission.

**MEE** means the NSW Government Managing Excess Employees policy which is attached as Attachment A.

**Notice Period** means the 6 month notice period in clause 5.8.

**Retention Period** means the period of 13 weeks commencing two weeks after an employee has been declared excess in accordance with clause 5.12.

**Substantially different workplace** means a workplace would be considered substantially different where the time taken to commute to it would be in excess of



---

90 minutes each way, or more than the time taken to travel to the former work location if that was in excess of 90 minutes each way. Extenuating personal circumstances must also be taken into account when assessing whether a workplace is substantially different.

**Standard Training Period** means the period of time (days or weeks) sufficient for the attendance at courses or structured training and supervised on-the-job development of skills up to the assessment of competency by the applicable method and authority.

### 3. General

The following apply in the interpretation of this document, unless the context requires otherwise.

- (a) A reference to this agreement, this Deed, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires.
- (b) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (c) A reference to a party means a person who is named as a party to this document.
- (d) Person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (e) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this document, their substitutes and assigns.
- (f) An agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally.
- (g) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (h) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this document.
- (i) A heading is for reference only. It does not affect the meaning or interpretation of this document.

## 1 TERM

This Deed operates from the Commencement Date and terminates on the day the 2014 Agreements are replaced by another Agreement to apply to the employees of Sydney Trains or NSW Trains respectively.



---

## 2 ENFORCEABILITY AND OPERATION OF DEED

The parties agree that the agreement constituted by this Deed is legally binding and legally enforceable by the Parties and by the Beneficiaries. The Parties agree that the agreement constituted by this Deed shall also be enforceable by the Parties and by the Beneficiaries as an agreement under hand.

The performance of this Deed is a matter of utmost importance to the Parties, and the Parties acknowledge that damages are an inadequate remedy for breach.

Accordingly, it is acknowledged that any Party or Beneficiary is entitled to seek specific performance or injunctive relief as a remedy for any conduct or threatened conduct that is or will be a breach of this Deed in addition to any other remedies at law or equity available to that Party or Beneficiary.

The Rail Entities, a Beneficiary, and the Unions, on their own behalf and on behalf of any Beneficiary, shall have standing to commence any proceeding for an alleged breach of the Deed or the agreement or its enforcement. No Party to this Deed may take an objection to the bringing of any proceeding by a Beneficiary or a Union party to this Deed on behalf of a Beneficiary.

## 3 CONSIDERATION

Consideration shall consist of:

- the mutual promises and undertakings made by the Parties to this Deed;
- payment of \$20.00 by each Union Party to both Sydney Trains and NSW Trains; and
- the agreement specified in Recital C.

## 4 MANAGING EXCESS EMPLOYEES

- 4.1 During employee briefings which took place in relation to the 2014 Agreements, Sydney Trains and NSW Trains have consulted their employees on all issues relating to the management of Excess Employees. It is agreed by the Rail Entities and Unions that all requirements for the implementation of this Deed have been met.

During the negotiations between the Rail Entities and Unions, considerable discussion and amendments to the original proposals were made by both Parties. Specifically;

- (a) The proposal to adopt the NSW Government Managing Excess Employees Policy (**MEE**) and associated changes were initially tabled on 11 November 2013 with union representatives and subsequently discussed at meetings and delegates conferences;
- (b) The proposal to adopt the MEE and associated changes have been communicated to affected employees by way of a series of written communications, briefings, meetings and delegates conferences.

- 
- (c) Within the communications referred to above, information has been provided to affected employees and union representatives about the proposed change, any effects on employees and the rationale for the proposed change based on business needs;
  - (d) A series of meetings, workplace briefings and delegate conferences have been held with affected employees and/or their union representatives. These discussions have included the effects of the changes proposed on employees and measures proposed to minimise any possible adverse impact of affected employees: The application of the MEE and use of a legally enforceable Deed as the appropriate means to reflect these measures was proposed in April and May 2014, and discussed by the parties between May to August 2014;
  - (e) During the series of meetings, briefings and conferences affected employees have been given the opportunity to ask questions and provide feedback and suggestions on the application of the MEE, proposed changes and use of the Deed with managers and union representatives. Employees also referred additional or individual questions through a designated email address;
  - (f) Sydney Trains and NSW Trains have responded to feedback from employees and Union representatives through a series of written and verbal communications.
- 4.2 It is agreed that Sydney Trains and NSW Trains will apply the MEE subject to the specific changes in this Deed from the Commencement Date.
- 4.3 The Disclaimer in item 2 of the MEE is not to apply in its entirety and the parties can enforce this Deed according to law and the terms of this Deed.

## **5 ORGANISATIONAL CHANGE AND CAREER TRANSITION**

- 5.1 To maximise the employee's opportunity for a successful career transition within either of the Rail Entities or in other employment, where a Rail Entity proposes an organisational change that may affect an employee's job security, the Rail Entity will ensure that an employee will not be required to leave the organisation with forced redundancy within 12 months (including the Notice Period and Retention Period) from a definite decision to implement the change following completion of the consultation process provided in Clause 7.3 of the 2014 Agreements.
- 5.2 The parties acknowledge that a successful career transition requires a planned approach where employees proactively plan and take action as part of their career planning and Rail Entities provide appropriate support. This will involve two phases as set out below.

### **Planning and Preparation Phase**

- 5.3 Once a Rail Entity commences consultation in regard to a proposed organisational change that may affect an employee's job security:



- 
- the Rail Entity can call for expressions of interest in voluntary redundancy;
  - employees impacted by the organisational change are able to actively consider whether they wish to consider an alternative career path.
- 5.4 Employee consideration of alternative career path may include:
- preparing for exit in the event that redundancy is offered or
  - seeking alternative employment within the Rail Entities or within the broader NSW public sector.
- 5.5 Where employees elect to consider such a transition, the Rail Entity will offer appropriate and reasonable support to these employees including:
- the provision of general financial advice,
  - career assessment and advice,
  - job vacancy advice, and
  - job readiness training (including CV preparation training and interviewing/assessment techniques).
- 5.6 A Rail Entity will provide relevant additional services as outlined in 5.10 and 5.11, consistent with the employee's obligation to continue to perform normal duties as required.
- 5.7 This phase continues during the consultation on proposed changes and up to an employee being given written notice of being declared excess, the Rail Entity deciding to proceed with the organisational change without declaring employees excess, or the Rail Entity deciding not to proceed with the organisational change.

#### **Notice and Retention Period**

- 5.8 An employee who is to be declared excess will be given 6 months' written notice of an intention to declare the employee excess.
- 5.9 The Rail Entities may offer an employee voluntary redundancy at any time during the Planning and Preparation Phase or the Notice Period. This Deed does not preclude an agreement with an employee to take voluntary redundancy during this phase. Should an employee accept a voluntary redundancy the payments in Attachment B of this Deed will apply to an employee whose employment terminates on or before 30 September 2017.
- 5.10 During the Notice Period and Retention Period:
- (a) employees will work with designated support officers to maximise opportunities for career transition or placement, fully participate in career planning activities, consider all vacancies or temporary placements, seek assistance when applying for roles and request/act on feedback.



- 
- (b) the Rail Entities will assist the employee with redeployment, identification of alternate roles and job opportunities within Sydney Trains and NSW Trains (for which they will be eligible for priority assessment), counselling and assistance with job applications.
  - (c) the employee will be removed from normal duties.

During the Retention Period an employee will be eligible for priority assessment in the NSW public sector.

- 5.11 During the Notice Period and the Retention Period employees will be offered training if it is appropriate and reasonable to develop specific skills to increase access to career opportunities. Retraining is offered in working time for the Standard Training Period. If employees do not qualify within this period, training may be available within their own time. Education and training for a significant career change for employees will not be subject to financial support by the Employer.
- 5.12 If, at the conclusion of the 6 months' Notice Period, the employee has not been redeployed to a permanent placement in an Authorised Position in a NSW public sector agency's establishment, Sydney Trains or NSW Trains will declare the employee excess and will offer voluntary redundancy. In accordance with the MEE, an employee will have two weeks to consider an offer of Voluntary Redundancy. The employee will then commence the Retention Period. Should an employee accept a voluntary redundancy the employee will receive the payments in accordance with Attachment B of this Deed if terminated on or before 30 September 2017, and if terminated subsequently as provided in the MEE as amended by Part B of Attachment B.
- 5.13 An employee can choose to accept voluntary redundancy at any time within 10 weeks of commencement of the Retention Period and must terminate their employment within 2 weeks of accepting an offer or at a later time nominated by the Rail Entity.
- 5.14 An employee accepts voluntary redundancy by notice in writing to their employer. An employee may withdraw their acceptance of voluntary redundancy at any time during the Retention Period if the employee accepts an offer of redeployment.
- 5.15 If after the 13 week Retention Period an excess employee has not accepted an offer of voluntary redundancy and is still employed by Sydney Trains or NSW Trains and has not been redeployed to a permanent placement in an Authorised Position in a NSW public sector agency's establishment the employee's employment will immediately cease on the basis of being made forcibly redundant in accordance with item 7 of the MEE.
- 5.16 An employee who receives notice in accordance with clause 5.8 of this Deed will maintain the salary payable at the time of the notice while the employee remains employed (together with any increments falling due or salary increases paid in accordance with the 2014 Agreements) and is progressing through the process in clauses 5.8 to 5.15 of this Deed.

- 
- 5.17 If an excess employee accepts temporary assignment or secondment and the retention period ends during the assignment, the employee will continue to be employed for the remaining period of the secondment or assignment, except where the excess employee chooses to accept a voluntary redundancy and leave the organisation within the period specified in Clause 5.13. When the secondment or assignment ends, if the excess employee has not been redeployed or secured an extension of the secondment or assignment, the excess employee is then made forcibly redundant. This clause applies to employees covered by Clause 5.18.

### **Transitional arrangements**

- 5.18 Any employee currently excess and being managed by INS has been considered and the following arrangements apply:
- (a) An excess employee will have the benefit of services outlined in 5.10 and 5.11 until redeployed, placed or exits from the organisation.
  - (b) An employee who was declared excess prior to 1 April 2014 must exit within 12 weeks of the Commencement Date to access the voluntary redundancy payments in Attachment B.
  - (c) An employee who was declared excess on or after 1 April 2014 must exit within nine months from the date they were declared excess to access the voluntary redundancy payments in Attachment B.
  - (d) If an employee has not accessed voluntary redundancy and has not been redeployed to a permanent placement in an Authorised Position in a NSW public sector agency's establishment, and is still employed by Sydney Trains or NSW Trains seven days after the relevant period outlined above, the employee's employment will immediately cease on the basis of being made forcibly redundant in accordance with item 7 of the MEE.

## **6 VOLUNTARY REDUNDANCY PAYMENT**

- 6.1 Where an excess employee's employment is terminated on the basis of voluntary redundancy on or before 30 September 2017 the employee will be paid in accordance with Attachment B and 5.2 of the MEE will not apply.
- 6.2 Where an excess employee's employment is terminated on the basis of voluntary redundancy after 30 September 2017 the employee will be paid in accordance with 5.2 of the MEE as amended by Part B of Attachment B.

## **7 NATIONAL EMPLOYMENT STANDARDS**

The payments in accordance with this Deed are inclusive of payments under Part 2-2 Division 11 of the Fair Work Act.

## **8 EXPRESSIONS OF INTEREST FOR VOLUNTARY REDUNDANCY**

- 8.1 When a restructure, staff review or other reform will result in employees becoming excess, an Expression of Interest for Voluntary Redundancy will be sought amongst



---

relevant employees in the first instance. Sydney Trains and NSW Trains will consider all expressions of interest from their employees and make offers of voluntary redundancy taking into account the continuing needs of the business and the preferences expressed by the employees.

- 8.2 Where a formal offer of voluntary redundancy is made, the offer will include the exit date. The exit date can be varied by mutual agreement or by the employer in exceptional circumstances where unforeseen circumstances prevent the employee being released. This will only be used as a last resort.

## **9 JOB SWAPS**

- 9.1 Subject to approval of the receiving manager, an employee affected by a restructure, staff review or other reform may 'swap' jobs with another employee who is willing to accept Voluntary Redundancy, in accordance with Public Service Commission guidelines relating to job swaps.
- 9.2 The employer will maintain a confidential register of its employees who have expressed an interest in exchanging positions with other employees who are affected by a restructure or reform and have indicated in writing they would accept Voluntary Redundancy.
- 9.3 Employees may register their interest in a job swap by emailing [tss.redeployment@transport.nsw.gov.au](mailto:tss.redeployment@transport.nsw.gov.au) prior to being formally declared excess.
- 9.4 Applications to job swap are subject to approval of the receiving manager and will be considered on the following basis:
- There is no skill shortage for the skills of the applicant.
  - The employee affected by the restructure has the necessary skills to undertake the role or can obtain these skills with appropriate and reasonable training.
  - The rates of pay of the applicants are the same or within five per cent.
  - Neither employee is subject to an ongoing disciplinary investigation.
- 9.5 Where an application for a job swap has been denied by the receiving manager, the employee may seek a review of the decision by the Chief Executive or nominee.

## **10 SALARY MAINTENANCE**

- 10.1 Where an employee has at the Commencement Date been permanently appointed to an Authorised Position in Sydney Trains or NSW Trains and is being paid a salary higher than the salary for that position, as a consequence of Clause 26 of the 2010 Agreement or its predecessors, or other agreed arrangements, the employee will continue to be paid a salary higher than the salary for that position in accordance with that arrangement.



---

## **11 REVIEW OF MANAGING EXCESS EMPLOYEE PROCESS**

11.1 The Rail Entities acknowledge the need to provide an improved service for employees who are notified of an intention of being declared excess.

11.2 At commencement of this Deed, the Rail Entities will develop and implement improved practices and procedures for the management of employees who are notified of an intention of being declared excess, in consultation with the Union Parties to this Deed.

11.3 The following principles will be recognised in developing improved arrangements:

- Early provision of support ('case management') services for individual employees who have been given notice of the intention to declare the employee 'Excess'
- Identification of appropriate competencies acquired, accessible and demonstrated by the Employee
- Clarification of the Employee's career and lifestyle plans, and identification of achievable career opportunities;
- Identification of skills requirements to prepare for redeployment, placement or external job opportunities;
- Offer training if it is appropriate, reasonable and necessary to develop specific skills and can be completed within the Notice and Retention Periods;
- Utilise appropriate temporary work placement and assignment processes within the Notice and Retention Periods, as part of an identified training program and/or to enable the Employee to demonstrate competencies;
- Establish arrangements to facilitate 'job swaps' in accordance with Clause 9 of this Deed.
- Establish arrangements for priority assessment against vacant Sydney Trains or NSW Trains positions from commencement of the Notice Period.
- Case by case consideration will be given to the circumstances of existing Excess Employees to ensure fair treatment.

## **12 DISPUTE RESOLUTION PROCESS**

12.1 The Parties agree that all of the terms of this Deed are matters pertaining to the relationship between Sydney Trains and NSW Trains and their respective employees. Accordingly, if a dispute arises in connection with the operation (including an alleged breach of the Deed) or application of this Deed it will be resolved, by conciliation and/or arbitration, in accordance with the Dispute Settlement Procedure in Clause 8 of the 2014 Agreements.

- 
- 12.2 If the Fair Work Commission is unwilling or unable to undertake conciliation and/or arbitration in relation to a dispute in connection with the operation or application of the Deed including on the basis that it forms the view that the subject matter of the dispute is not a matter pertaining to the relationship between Sydney Trains and NSW Trains and their respective employees then the Parties will refer the Dispute to an Agreed Person to conciliate.
- 12.3 Prior to the Commencement Date, the Parties will agree on a Panel of four Agreed Persons to conciliate under subclause 12.2. When a dispute is referred in accordance with subclause 12.2 it will be referred to the next Agreed Person on the Panel of Agreed Persons on a rotating basis.
- 12.4 Notwithstanding the above provisions, the parties to the dispute are free to commence proceedings in a court of competent jurisdiction at any time.

### **13 SEVERABILITY**

If any part of this Deed is for any reason unenforceable, that part must be read down to the extent necessary to preserve its operation. If it cannot be read down, it must be severed. Any invalidity of one or more, or part thereof, of the terms of this Deed will not affect the validity of the Deed as a whole.

### **14 VARIATION**

No provision of this Deed nor a right conferred by it can be varied except in writing signed by the parties.

### **15 PROPER LAW**

This Deed is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts.

### **16 WAIVER**

The failure or delay of any Party to this Deed to insist on the performance of any provision of this Deed is not a waiver of its rights under this Deed.

EXECUTED as a DEED

Dated 3 October 2014

---

**Signed, sealed and delivered by  
Sydney Trains** in the presence of:

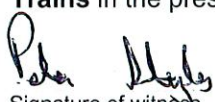
  
Signature of witness

*Atan Kececi*  
Print name

  
Signature of Chief Executive

Howard Collins

**Signed, sealed and delivered by NSW  
Trains** in the presence of:


  
Signature of witness

*Peter Styles*  
Print name

  
Signature of Chief Executive

Rob Mason

**Signed, sealed and delivered by  
Association of Professional Engineers,  
Scientists and Managers, Australia** in  
the presence of:

  
Signature of witness

*Paul Grainger*  
Print name

  
Signature of authorised representative

*Paul Davies*  
Print name




Signed, sealed and delivered by  
Automotive, Food, Metals, Engineering,  
Printing and Kindred Industries Union  
in the presence of:

  
Signature of witness


  
Print name


  
Signature of authorised representative


  
Print name

Signed, sealed and delivered by  
Australian Municipal, Administrative,  
Clerical and Services Union in the  
presence of:

  
Signature of witness

  
Print name


  
Signature of authorised representative

  
Print name

Signed, sealed and delivered by  
Communications, Electrical, Electronic,  
Energy, Information, Postal, Plumbing  
and Allied Services Union of Australia  
in the presence of:

  
Signature of witness

  
Print name

  
Signature of authorised representative

  
Print name

Signed, sealed and delivered by  
Australian Workers' Union in the  
presence of:

  
Signature of witness

Shaneille Maloney  
Print name

  
Signature of authorised representative

R. K. CORRISON  
Print name

Signed, sealed and delivered by  
Australian Rail, Tram and Bus Industry  
Union in the presence of:

  
Signature of witness

DONNA THOMPSON  
Print name

  
Signature of authorised representative

Alex Claassens  
Print name

Signed, sealed and delivered by  
Constructions, Forestry, Mining and  
Energy Union in the presence of:

  
Signature of witness

Altan Kececi  
Print name

  
Signature of authorised representative

RITA MALLA  
Print name



## Directive

**Directive Title** Managing Excess Employees

**Status** Active

**Document Number** D2011\_007

**File Number** DPC11/01402-001

**Compliance Detail**

**Mandatory for:**

- ☒ NSW Public Service Departments
- ☒ NSW Public Service Other Agencies
- ☒ NSW Non-Public Service Divisions and Special Employment Divisions

**Category** Redeployment, Redundancy, Termination

**Sub Category** Managing Excess Employees

**Summary** Managing Excess Employees (distributed via M2011-11 and updated on 30/1/2012) explains how excess employees are managed in the NSW Government Service.

**Publication Date** 30/January/2012

**Review Date** 23/June/2014

**Author** Public Sector Workforce

**Unit** Performance and Development

**Policy Custodian** Director, Performance Development

**Distribution method** Memorandum

**Circular/Memorandum** M2011-11

**Previous Reference** Policy Document D2008-008

**Archive Note** Nil

**Contact for enquiries** [workforce.design@psc.nsw.gov.au](mailto:workforce.design@psc.nsw.gov.au) or (02) 9272 6100

This Directive may be varied, withdrawn or replaced at any time without notice.  
This Directive is not intended to legally bind the New South Wales Government, the Crown in right of New South Wales, its officers, employees or agents or have contractual effect or form part of any legally enforceable employment contract of any public sector employee



**Premier  
& Cabinet**

## **Managing Excess Employees January 2012**



**Public Service Commission**

**(02) 9272 6100**



## Contents

1. Revision history .....	4
2. Introduction .....	5
3. Application .....	5
3.1 Coverage .....	5
3.2 Previous policy .....	6
4. Declaring an employee excess .....	6
4.1 Options for excess employees .....	6
4.2 Voluntary redundancy .....	7
4.3 Notice of forced redundancy .....	7
4.4 Summary of written advice to be provided to employees upon being declared excess .....	7
5. Voluntary redundancy .....	8
5.1 Approval .....	8
5.2 Voluntary redundancy payments .....	8
5.3 Re-employment or re-engagement in the NSW Public Service .....	9
5.3.1 Obligations of employees .....	9
5.3.2 Obligations of employing agencies .....	9
6. The retention period .....	9
6.1 Scope of the retention period .....	10
6.2 Redeployment within the retention period .....	10
6.2.1 Temporary secondment or assignment within the retention period .....	10
6.3 Case management and career transition assistance .....	11
6.4 Salary maintenance if placed in a lower graded position .....	11
7. Exit during the retention period and at forced redundancy .....	11
7.1 Payments when exiting during the retention period and at forced redundancy ..	12
7.2 Re-employment or re-engagement in the NSW Public Service .....	12
8. Template letter for declaring an employee excess .....	13
9. Managing excess employees flowchart .....	18
10. Associated documents .....	19

## 1. Revision history

Version	Approval Date	Next Review Date	Amendment notes
1.0	22/06/2011	23/06/2014	
2.0	29/01/2012	23/06/2014	Counsel disclaimers added, other document references updated.



## 2. Introduction

This policy explains how excess employees are managed in the NSW Government Service.

As model employers, agencies have an important responsibility to ensure that excess employees:

- are properly informed about their options and entitlements, under this policy
- have access to career transition assistance
- are helped in the search for redeployment, where they choose that option.

To facilitate this, agencies must ensure that they have in place:

- a case manager(s)
- an agreement with their shared service provider for the prompt provision of estimates of employee entitlements
- appropriate career transition assistance, provided in-house, by a third party specialist, or through a combination of these.

At all times, excess employees remain the responsibility of their employing agency.

### *Disclaimer*

This Policy may be varied, withdrawn or replaced at any time without notice. This Policy is not intended to legally bind the New South Wales Government, its officers, employees or agents or have contractual effect or form part of any legally enforceable employment contract of any public sector employee.

## 3. Application

### 3.1 Coverage

This policy applies to **permanent** employees<sup>1</sup> in the NSW Government Service, identified in the *Public Sector Employment and Management Act 2002* (PSEM Act) as:

- Public Service Departments
- Non-Public Service Divisions
- Special Employment Divisions

**Public Service Departments** are staff employed in departments and agencies listed in Schedule 1, Part 1 of the *PSEM Act*.

**Non-Public Service Divisions** are staff employed in divisions assigned to the statutory bodies listed in Schedule 1, Part 2 of the *PSEM Act*.

---

<sup>1</sup> This policy does not apply to temporary employees. In limited circumstances, a temporary employee whose employment is terminated may be entitled to a severance payment based on the NSW Employment Protection Regulation 2001.

**Special Employment Divisions** are staff employed in divisions assigned to the statutory bodies listed in Schedule 1, Part 3 of the *PSEM Act*.

Agencies not covered by this policy include State Owned Corporations, the Health Service, the Teaching Service, the NSW Police Force (police officers), Fire and Rescue NSW (fire fighters), Railcorp, Sydney Ferries, the Country Rail Infrastructure Authority and the Transport Construction Authority.

This policy does not override existing industrial instruments or legislative provisions that deal with managing excess employees.

### **3.2 Previous policy**

This policy supersedes the policy promulgated in Premier's Memorandum 2008-22 - Managing Excess Employees.

## **4. Declaring an employee excess**

An employee is declared excess by their agency when they no longer have a substantive position.

A template letter for declaring an employee excess is at section 8 of this policy. A flowchart of the process is at section 9.

### **4.1 Options for excess employees**

Upon being declared excess, an excess employee has two weeks to choose between two courses of action:

1. Accept an offer of voluntary redundancy and leave the service within two weeks of accepting the offer or at a time nominated by the agency. If voluntary redundancy is declined it will not be offered again.
2. Decline the voluntary redundancy offer and pursue redeployment during the three month retention period. If an excess employee:
  - a) leaves at any time after declining the offer of voluntary redundancy, they will receive a payment using the calculation described in section 7.1 of this policy, or
  - b) is not redeployed at the conclusion of the retention period, they will be made forcibly redundant and receive a payment using the calculation described in section 7.1 of this policy.

If an excess employee fails to notify their employing agency of a course of action within the nominated two week timeframe, this will be taken as the choice to decline voluntary redundancy and pursue redeployment.



## **4.2 Voluntary redundancy**

Upon declaring an employee excess, an agency must provide an offer of voluntary redundancy. The offer is to be estimated using the methodology described in section 5.2 of this policy. If an excess employee declines this voluntary redundancy offer, it will not be offered again.

## **4.3 Notice of forced redundancy**

Upon declaring an employee excess, an agency must provide the employee with written notice of the intention to make the employee forcibly redundant if:

- a) the excess employee refuses the offer of voluntary redundancy, and,
- b) the excess employee is not redeployed at the conclusion of the three month retention period.

Upon being made forcibly redundant, the excess employee will receive the severance benefit described in section 7.1 of this policy.

Agencies must contact Public Sector Workforce to obtain a template letter for notice of termination.

## **4.4 Summary of written advice to be provided to employees upon being declared excess**

Upon declaring an employee excess, agencies must immediately provide written advice that:

1. The employee is excess as at the date of the written advice.
2. The employee has two weeks from the date of the written advice to decide whether to:
  - a) accept the offer of voluntary redundancy (provided with the advice) and leave the service within two weeks of acceptance (or at a time nominated by the agency),
  - or,
  - b) decline the offer of voluntary redundancy and opt to pursue redeployment within the three month retention period.
3. The agency will make the excess employee forcibly redundant if the employee has not left the service, or been redeployed, at the conclusion of the three month retention period.
4. If the excess employee exits the service after declining the offer of voluntary redundancy and at any time during the retention period, or is made forcibly redundant at the end of the retention period, the excess employee will receive a payment calculated using the methodology described in section 7.1 of this policy.

## 5. Voluntary redundancy

Every excess employee must be provided with an offer of voluntary redundancy when they are declared excess.

### 5.1 Approval

Agency heads are responsible for approving the offer of voluntary redundancy to each excess employee. There is no requirement to gain ministerial approval. However, ministerial approval is still required for formal voluntary redundancy schemes associated with organisational change management. Refer to DPC [Agency Change Management Guidelines \(D2011 014\)](#) for more information.

### 5.2 Voluntary redundancy payments

A voluntary redundancy is a voluntary termination payment to a permanent employee. Where employees accept voluntary redundancy, they are entitled to the following payments:

- four weeks notice or payment in lieu, plus
- for employees aged 45 years and over with five or more years of completed service, an additional one weeks notice or payment in lieu, plus
- a severance payment at the rate of three weeks per year of continuous service with a maximum of 39 weeks, with pro-rata payments for incomplete years of service to be on a quarterly basis
- the benefit allowable as a contributor to a retirement fund, plus
- pro rata annual leave loading for leave accumulated at the date of termination, plus
- the following incentive payments based on years of service:

Length of service	Additional payment
Less than one year	Two weeks pay
One year and less than two years	Four weeks pay
Two years and less than three years	Six weeks pay
Three or more years	Eight weeks pay

All continuous service in NSW public sector agencies in accordance with Schedule 3A of the *Public Sector Employment and Management Act 2002* is recognised for voluntary redundancy purposes provided no previous redundancy payment has been made for this service.

For more information on voluntary redundancy, please refer to the supporting documents [Voluntary Redundancy: Superannuation Implications \(D2011 013\)](#) and [Treasury Circular 12/01 - Funding for Redundancy Payments](#).



### **5.3 Re-employment or re-engagement in the NSW Public Service**

Employees who accept a voluntary redundancy cannot be re-employed or re-engaged in any capacity in any NSW public sector agency within the period covered by their severance payment, without first repaying the relevant proportion of their severance pay. This requirement applies to employment or engagement in any capacity as staff members, contractors, consultants or employees or principals of companies engaged in contracting to a public sector agency.

#### **5.3.1 Obligations of employees**

Employees accepting voluntary redundancy are required to sign an undertaking to refund to the Crown that proportion of the severance payment applying to the period of re-employment should they be re-employed or re-engaged in any capacity (including employment in temporary, part-time or casual employment, as a consultant, contractor or subcontractor) in a New South Wales public sector agency within the period covered by the separation payment.

The repayment covers the relevant proportion of the severance payment - ie the sum calculated on years of service and the additional payment of up to eight weeks pay - but excludes pay in lieu of notice.

#### **5.3.2 Obligations of employing agencies**

It is the responsibility of agency heads of the new employing organisation to ensure that this requirement for repayment is met.

Agencies must ensure that:

- the selection panel, convenor or manager responsible for recruitment asks the prospective employee questions regarding any previous public sector redundancy, retrenchment or termination payments. This must be done before any recommendation for permanent, temporary, part time, casual, contracting or consultancy engagement is submitted for approval
- if repayment is required, such repayment is a condition of the offer of employment or engagement of the person as a consultant or contractor
- letters of appointment inform prospective employees that non-disclosure of Government redundancy payments which would otherwise be required to be proportionally refunded will invalidate the appointment and may result in the appointment being annulled.

## **6. The retention period**

Excess employees who decline the voluntary redundancy offer are entitled to a three month retention period. During the retention period, excess employees receive their normal salary while pursuing redeployment opportunities within their agency and



across the Government Service. Redeployment means permanent placement in a funded position on an agency's establishment.

### **6.1 Scope of the retention period**

The retention period commences from the date on which the voluntary redundancy offer is declined by an excess employee, or closes without being accepted by an excess employee.

The retention period runs for three calendar months and is not to be extended by the employing agency. In exceptional circumstances only, an agency head may seek approval from the Department of Premier and Cabinet to extend the retention period.

### **6.2 Redeployment within the retention period**

The purpose of the retention period is to allow excess employees to pursue redeployment to a permanent position in the Government Service. Excess employees may be placed in any suitable vacancy without advertising. Section 87 of the *Public Sector Employment and Management Act 2002* is the mechanism by which excess employees may be redeployed.

During the retention period, excess employees are to be provided with priority access to redeployment opportunities within their own agency and across the Government Service. Where a potentially suitable job match is identified, excess employees are entitled to priority assessment for vacancies before any other applicants. Where two or more excess employees apply for the same vacant position, selection is based on merit between the excess employees.

For detailed guidelines on redeployment job matching and the priority assessment process, please refer to the supporting document [Case Management and Redeployment Guidelines \(D2011 009\)](#).

#### **6.2.1 Temporary secondment or assignment within the retention period**

During the retention period an excess employee may choose to accept a temporary secondment or assignment under sections 86, 86A or 88 of the *Public Sector Employment and Management Act 2002*.

If this occurs and the excess employee's retention period ends during the secondment or assignment, the employee will continue to be employed for the remaining period of the secondment or assignment. When the secondment or assignment ends, if the excess employee has not been redeployed or secured an extension of the secondment or assignment, the excess employee is then made forcibly redundant.

### **6.3 Case management and career transition assistance**

Case managers are responsible for ensuring excess employees are properly informed about their options and entitlements; have access to career transition assistance; and are helped in the search for redeployment, where that is their choice.

Each agency must nominate at least one case manager. In small agencies, the role may be performed in conjunction with other HR responsibilities. In large agencies, or in agencies with a significant number of excess employees, it may be appropriate to appoint a dedicated case manager(s). Agencies undergoing large scale restructuring should consider establishing a career transition unit to coordinate assistance for employees.

Under the [Case Management and Redeployment Guidelines \(D2011 009\)](#), excess employees who seek redeployment are entitled to priority access to redeployment opportunities within their own agency and across the Government Service (see section 6.2 of this policy). Agency case managers have a critical part to play in identifying possible job matches, via *jobs.nsw*, and assisting employees to demonstrate their suitability for vacancies.

Where there is no in-house expertise in career transition counselling and skills development, agencies should engage a qualified external provider to deliver these services.

### **6.4 Salary maintenance if placed in a lower graded position**

If an excess employee is placed in a position at a lower grade, they are entitled to three calendar months salary maintenance at their former grade.

## **7. Exit during the retention period and at forced redundancy**

An excess employee may leave the service at any time after refusing the voluntary redundancy offer and during the retention period.

An excess employee is made forcibly redundant, by the agency head, when all of the following conditions have been satisfied:

- a) the employee has been informed in writing that they are excess
- b) the excess employee has not accepted the offer of voluntary redundancy
- c) the excess employee has exhausted their three month retention period.



### 7.1 Payments when exiting during the retention period and at forced redundancy

Upon exiting the service after refusing the offer of voluntary redundancy and at any time during the retention period, or upon being made forcibly redundant, an excess employee is entitled to the statutory minimum payment as per the NSW Employment Protection Regulation 2001, plus an additional payment of four weeks salary if under the age of 45 or five weeks salary if aged 45 or over.

The exit or forced redundancy payment is to be calculated using the following methodology:

Length of continuous service	Redundancy pay	
	Under 45	45 or Over
Less than 1 year	Nil	Nil
1 year and more but less than 2 years	4 weeks	5 weeks
2 years and more but less than 3 years	7 weeks	8.75 weeks
3 years and more but less than 4 years	10 weeks	12.5 weeks
4 years and more but less than 5 years	12 weeks	15 weeks
5 years and more but less than 6 years	14 weeks	17.5 weeks
6 years or more	16 weeks	20 weeks
<i>plus</i>		
Additional payment	4 weeks	5 weeks

### 7.2 Re-employment or re-engagement in the NSW Public Service

Excess employees who exit the service during the retention period or who are made forcibly redundant are subject to the restrictions on re-employment or re-engagement in the NSW public sector described in section 5.3 of this policy.



## 8. Template letter for declaring an employee excess

[Employee's address]

Dear [Employee's name]

I am writing to advise you that you no longer have a substantive position and are an excess employee from the date of this letter. Attached is a copy of Premier's Memorandum 2011-11 Managing Excess Employees for your convenience.

Please note this Policy may be varied, withdrawn or replaced at any time without notice. This Policy is not intended to legally bind the New South Wales Government, the Crown in right of New South Wales, its officers, employees or agents or have contractual effect or form part of any legally enforceable employment contract of any public sector employee.

As per Premier's Memorandum 2011-11, you must choose whether to:

- a) accept an offer of voluntary redundancy, **or**
- b) pursue redeployment in the public sector during the three month retention period.

**Note:** if you do not respond within fourteen days from the date of this letter, this will be taken as the choice to decline voluntary redundancy and pursue redeployment.

Further information on these options is outlined below.

### Option 1: Voluntary redundancy

You are invited to accept an offer of voluntary redundancy. To accept or decline this offer, you must respond within fourteen days from the date of this letter (i.e. by [Date]) by completing the appropriate section of the attached *Excess Employee Voluntary Redundancy or Redeployment Acceptance* form.

If you accept this voluntary redundancy offer, your last day of service will be the date that is 14 days from the acceptance date [or any other date nominated by the agency]. Please note that should you decline this offer of voluntary redundancy, you will not receive any further offers.

The voluntary redundancy package comprises:

- four weeks notice or payment in lieu, plus
- for employees aged 45 years and over with five or more years of completed service, an additional one weeks notice or payment in lieu, plus
- a severance payment at the rate of three weeks per year of continuous service with a maximum of 39 weeks, with pro-rata payments for incomplete years of service to be on a quarterly basis

- the benefit allowable as a contributor to a retirement fund, plus
- pro rata annual leave loading for leave accumulated at the date of termination, plus
- the following incentive payments based on years of service:

Length of service	Additional payment
Less than one year	Two weeks pay
One year and less than two years	Four weeks pay
Two years and less than three years	Six weeks pay
Three or more years	Eight weeks pay

A schedule estimating the value of your entitlement is attached.

The conditions of acceptance are as follows:

- This voluntary redundancy must be accepted by [date that is 14 days from receipt of this letter].
- Excess employees who accept this voluntary redundancy must agree to leave the NSW Government Service by the date that is 14 days from the acceptance date [or any other date nominated by the agency] (i.e. your last day of service must be on or before [the date that is 14 days from the acceptance date or any other date nominated by the agency]).
- Employees who accept a voluntary redundancy cannot be re-employed or re-engaged in any capacity in any NSW public sector agency within the period covered by their severance payment, without first repaying the relevant proportion of their severance pay. This requirement applies to employment or engagement in any capacity as staff members, contractors, consultants or employees or principals of companies engaged in contracting to a public sector agency.

### Option 2: Redeployment

You may elect to decline the voluntary redundancy offer and pursue redeployment within the NSW Government Service during the three month retention period. To select this option, you must respond by completing the appropriate section of the attached *Excess Employee Voluntary Redundancy or Redeployment Acceptance Form* within fourteen days from the date of this letter (i.e. by [date that is 14 days from the date of this letter]). If you do not return the attached acceptance form, this will be taken as the choice to decline voluntary redundancy and pursue redeployment.

If you choose redeployment, you will be provided with:

- a three month retention period, commencing from the date you choose redeployment or the date the voluntary redundancy offer expires (i.e. on [date that is 14 days from the date of this letter])
- priority consideration for redeployment to suitable positions within the NSW Government Service
- assistance in pursuing redeployment, including career transition services.



For us to be able to support you in being redeployed, you must:

- submit an up to date resume to your case manager by [date] to allow you to be matched to suitable positions across the sector
- proactively participate in the redeployment process, including submitting applications within identified timeframes and attending and participating in priority assessment interviews.

If you have not been appointed to a permanent position at the conclusion of your three month retention period, you will be made forcibly redundant and receive the forced redundancy payment as per section 7 of the policy in Premier's Memorandum 2011-11 Managing Excess Employees.

### **Temporary secondments**

During the retention period you may choose to accept a temporary secondment or assignment under sections 86, 86A or 88 of the *Public Sector Employment and Management Act 2002*.

If this occurs and your retention period ends during the secondment or assignment, you will continue to be employed for the remaining period of the secondment or assignment. When the secondment or assignment ends, if you have not been redeployed or secured an extension of the secondment or assignment, you will then be made forcibly redundant.

### **Salary maintenance**

If you choose to be matched to positions at lower grades, and are placed in such a position, you will be entitled to three calendar months salary maintenance at your former grade.

### **Next Steps**

Please complete the enclosed *Excess Employee Voluntary Redundancy or Redeployment Acceptance* form indicating whether you wish to accept the offer of voluntary redundancy or decline the offer of voluntary redundancy and pursue redeployment.

Please return the form to [HR Director's name/Manager's name] by [date that is 14 days from the date of this letter].

### **Employee Assistance Program**

[Insert details of agency EAPs program].



**Further information**

Please contact [agency HR contact] on [phone number] if you have any questions about your voluntary redundancy estimate.

Please contact [agency HR contact] on [phone number] if you have any questions about the redeployment and redundancy processes.

Yours faithfully

[Name]

[Position Title]

Enclosed:

1. [Premier's Memorandum 2011-11 Managing Excess Employees](#)
2. [Case Management and Redeployment Guidelines \(D2011 009\)](#)
3. Voluntary redundancy entitlements
4. [Voluntary Redundancy: Superannuation Implications \(D2011 013\)](#)
5. Excess Employee Voluntary Redundancy or Redeployment Acceptance Form

## Excess Employee Voluntary Redundancy or Redeployment Acceptance Form

Name:	
Employee Number:	

I declare that (please tick one of the following):

- ☐ I wish to accept the voluntary redundancy offer and voluntarily terminate my services with [name of agency] on [last day of service]. I understand that I cannot be re-employed or re-engaged in any capacity in any NSW Public Sector agency within the period covered by the severance payment without first repaying the relevant proportion of this severance pay. The repayment covers the relevant proportion of the severance payment (up to 39 weeks) and the additional up to eight weeks payment.

**OR**

- ☐ I wish to decline the voluntary redundancy offer and will pursue redeployment within the NSW Government Service. I understand that by choosing this option I will not be offered a further voluntary redundancy and that, should I not be redeployed by the expiration of my three month retention period, I will be made forcibly redundant.

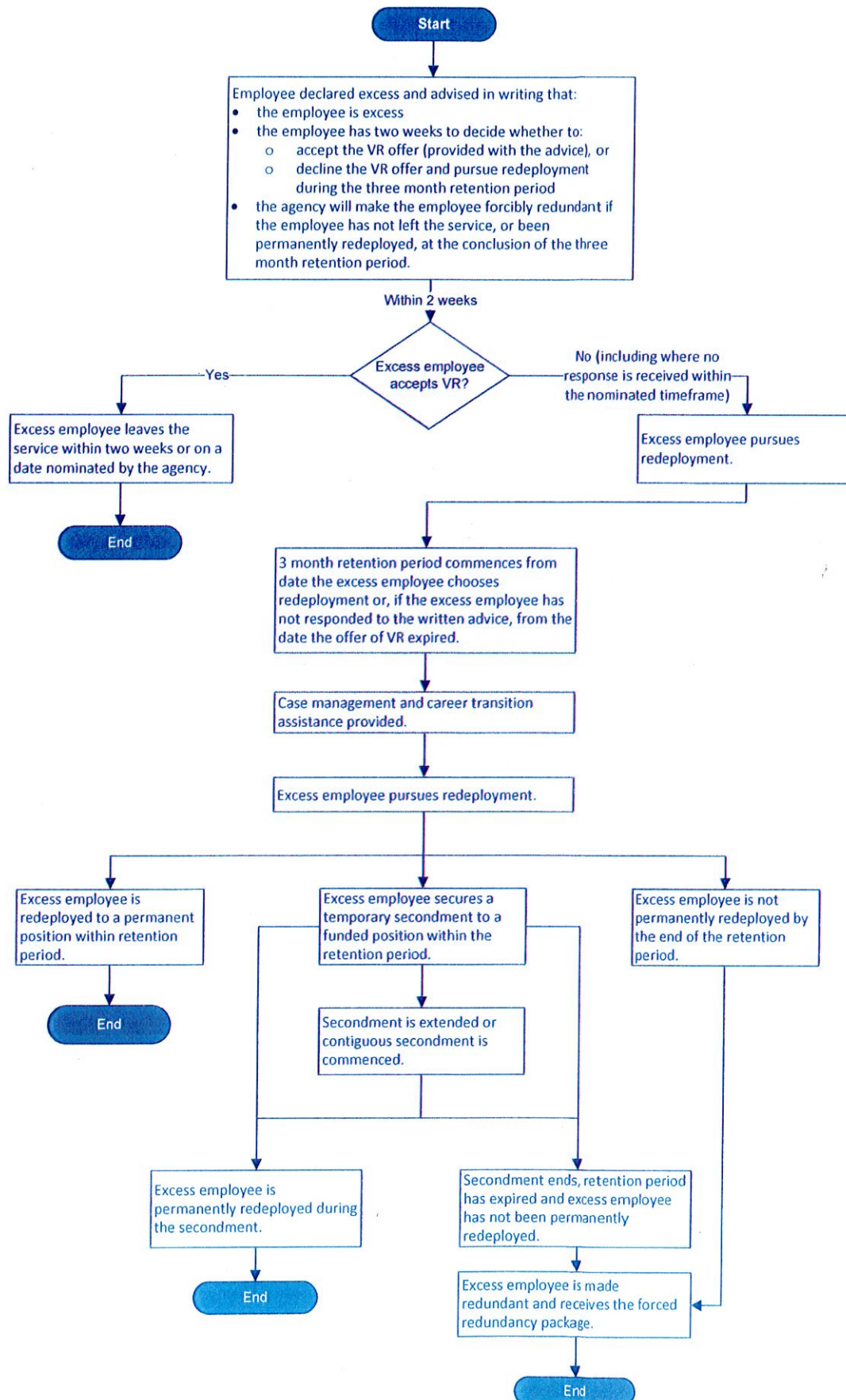
In choosing the option indicated above, I acknowledge that *the Managing Excess Employees Policy* does not legally bind the New South Wales Government, the Crown in right of New South Wales, its officers, employees or agents, or have contractual effect or form part of any legally enforceable employment contract to which I may be a party and may be varied, withdrawn or replaced at any time without notice and that this may affect the benefits available to me under the Policy.

Signature:	
Date:	
Name of current supervisor:	

**Please return this form by [date that is 14 days from the date of this letter] to:**

[HR Director's name/Manager's name]  
[Postal/email address]

## 9. Managing excess employees flowchart





## 10. Associated documents

In managing excess employees, agencies should also refer to the following associated documents available on the Department of Premier and Cabinet and [NSW Treasury websites](#).

- [Agency Change Management Guidelines \(D2011 014\) \(DPC\)](#)
- [Case Management and Redeployment Guidelines \(D2011 009\) \(DPC\)](#)
- [Managing Excess Employees Advice to Agencies No 1 of 29 June 2011 Parental Leave \(D2011 010\) \(DPC\)](#)
- [Managing Excess Employees Advice to Agencies No 2 of 7 July 2011 Workers Compensation \(D2011 011\) \(DPC\)](#)
- [Managing Excess Employees Advice to Agencies No 3 of 1 September 2011 Agency Case Management and Redeployment Policies \(D2011 021\) \(DPC\)](#)
- [Voluntary Redundancy: Superannuation Implications \(D2011 013\) \(DPC\)](#)
- [Treasury Circular 12/01 - Funding for Redundancy Payments \(Treasury\)](#)

---

## ATTACHMENT B

### Part A

Incentive bonus – range from 20 to 24 weeks (depending on length of continuous service). This bonus is available if the offer of redundancy is accepted within 2 weeks of the offer being made. The incentive bonus will be as follows:

- 1 year of service – 20 weeks
- 2 years of service – 21 weeks
- 3 years of service – 22 weeks
- 4 years of service – 23 weeks
- 5 or more years of service – 24 weeks

Additional week available for employees over 45 years of age

Redundancy component – 3 weeks for every year of continuous service (capped at 13 years/39 weeks), with pro-rata payments for incomplete years of service to be on a quarterly basis

Maximum total available – 64 weeks.

### Part B

In addition, employees who have accepted redundancy are entitled to:

payment of the cash value of any accumulated Long Service Leave, Annual Leave, or public holidays worked.

pro-rata long service leave payment where service is more than 5 years but less than 10 years.

where eligible for Annual Leave loading: payment of pro-rata Annual Leave loading for accrued Annual Leave at date of exit.

an additional one-off payment of \$3000 (Employment Assistance Grant) to provide assistance in seeking alternative employment or additional knowledge and skills which are in demand in the marketplace. This payment is linked to the outcomes identified in an Exit Program/Plan for the employee and payable as a lump sum at the time of exit.

### Note

Employees who have been paying into a superannuation scheme may be entitled to additional superannuation benefits if they leave public employment by accepting a redundancy. Employees should contact their superannuation scheme directly for advice on entitlements.

All continuous service in NSW public sector agencies in accordance with Schedule 2 of the *Government Sector Employment Regulation 2014* is recognised for redundancy purposes, provided no previous redundancy payment has been made for this service.