

**NEW SOUTH WALES DEPARTMENT OF EDUCATION AND COMMUNITIES**  
**MANAGING EXCESS SCHOOL ADMINISTRATIVE AND SUPPORT STAFF**  
**EMPLOYEES**

October 2012

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## 1. Introduction

This policy explains how excess school administrative and support staff employees are managed by the Department of Education and Communities.

The Department has an important responsibility to ensure that excess school administrative and support (SAS) staff:

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

To facilitate this, the Department will ensure that it has in place:

- a case manager;
- procedures for prompt provision of estimates of employee entitlements; and
- appropriate career transition assistance, provided in-house, by a third party specialist, or through a combination of these.

### *Disclaimer*

This Policy may be varied, withdrawn or replaced at any time without notice. This Policy is not intended to bind legally the New South Wales Government, the Crown in the 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 member of the school administrative and support staff.

## 2. Application

### 2.1 Coverage

This policy applies to **permanent**<sup>1</sup> employees under the *Education (School Administrative and Support Staff) Act 1987* (the SASS Act).

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

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<sup>1</sup> This policy does not apply to temporary employees under the SASS Act. 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.

### **3. Declaring an employee excess**

An employee will be declared excess by the Department when they no longer have a substantive position, that is:

1. when the employee's substantive position is deleted (see section 3.1 below) or
2. when the employee returns to their agency following:
  - a) an employee initiated secondment;
  - b) more than 12 months' leave without pay (excluding full time unpaid parental or military leave);
  - c) at the conclusion of a period of approved study leave;

and their position has been permanently backfilled (or deleted), after the employee has been given notice and chosen not to return.

A template letter for declaring an employee excess is attached to this policy.

#### **3.1 SAS Staff – award and staffing procedures**

The procedures below operate in conjunction with Clause 10 of the Crown Employees (School Administrative and Support Staff) Award (the Award) and the relevant provisions of the Department's *School Administrative and Support Staff – Staffing Procedures* or replacement procedures.

- 3.1.1 Subject to the provisions of subclause 10.2 of the Award, school administrative managers affected by decreased student enrolments and not placed in an alternate position during a period of one school term after the conclusion of the four term review period, will have their position deleted and will be declared excess from the commencement of the next school term.
- 3.1.2 Subject to the provisions of subclauses 10.3, 10.4, 10.5 and 10.6 of the Award, School Administrative Officers, School Support Officers, School Learning and Support Officers and Aboriginal Education officers, affected by decreased student enrolments and not placed in an alternate position during a placement period of one school term, will have their position deleted and will be declared excess from the commencement of the next school term.
- 3.1.3 School Learning Support Officers affected by a decrease to the resource allocation to a school and not placed in an alternate position during a placement period of one school term, will have their position deleted and will be declared excess from the commencement of the next school term.

### **3.2 Options for excess employees**

Upon being declared excess, an excess employee has two weeks to choose between two courses of action. (If the notification is sent to the employee's postal address, then the two week period is counted from the fourth working day after the offer was posted).

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 through direct appointment to a school 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 6.1 of this policy, or
  - b) is not redeployed through direct appointment at the conclusion of the retention period, they will be made forcibly redundant and receive a payment using the calculation described in section 6.1 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 the voluntary redundancy and pursue redeployment through direct appointment.

### **3.3 Voluntary redundancy**

Upon declaring an employee excess, the Department will provide an offer of voluntary redundancy to the employee. The offer will be estimated using the methodology described in section 4.2 of this policy. If an employee declines this voluntary redundancy offer, it will not be offered again.

### **3.4 Notice of forced redundancy**

Upon declaring an employee excess, the Department will 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 period.

Upon being made forcibly redundant, the excess employee will receive the severance payment benefit described in section 6.1 of this policy.

The Department will contact the Public Service Commission to obtain a template letter for notice of termination.

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

Upon declaring an employee excess, the Department will immediately provide written advice as follows.

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 Department);
  - or
  - b) decline the offer of voluntary redundancy and opt to pursue direct appointment within the three month retention period.
3. The Department will make the excess employee forcibly redundant if the employee has not left the service, or been directly appointed, 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 that period, the excess employee will receive a payment calculated using the methodology described in section 6.1 of this policy.

## **4. Voluntary redundancy**

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

### **4.1 Approval**

The Director-General of the Department is 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.

### **4.2 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 payment 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 the 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*.

### **4.3 Re-employment or re-engagement in the NSW public sector**

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 engaged in contracting to a public sector agency.

#### **4.3.1 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 – i.e. the sum calculated on years of service and the additional payment of up to eight weeks - but excludes pay in lieu of notice.

#### **4.3.2 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 or engagement asks the prospective employee or contractor questions regarding any previous public sector redundancy, retrenchment or termination payments. This must be done before any recommendation for permanent, short term temporary, long term temporary, 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.

### **5. The retention period**

Excess employees who decline the voluntary redundancy offer are entitled to a three month retention period where they will be considered for direct appointment. During the retention period, excess employees receive their normal salary while being considered for direct appointment within the Department. Direct appointment means permanent placement in a funded position in the Department.

#### **5.1 Scope of this period**

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

The period runs for three calendar months and will not be extended by the Department. In exceptional circumstances only, the Department may seek approval from the Public Service Commission to extend the retention period.

#### **5.2 Redeployment/direct appointment within this period**

The purpose of the retention period is to allow the employee to pursue redeployment via a direct appointment to a permanent position in the school administrative and support staff in the Department.

During this period, excess employees will be provided with nominated transfer status and priority access to direct appointment at the same classification within the Department in accordance with the Department's staffing procedures for school administrative and support staff.

### **5.2.1 Temporary appointment during this period**

During this period an excess employee may choose to accept a temporary placement.

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

### **5.3 Case management assistance**

The Department will appoint case managers who will be responsible for:

- a) undertaking the process of identifying and advising employees of suitable vacancies;
- b) ensuring excess employees are properly informed about their options and entitlements; and
- c) ensuring excess employees have access to career transition assistance, where required.

The Department will nominate at least one case manager and where appropriate will appoint a dedicated case manager(s).

The Department will provide career transition counselling and skills where required.

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

If an excess employee is placed in a position at a lower classification, they are entitled to three calendar month's salary maintenance at their former classification.

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

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

An excess employee is made forcibly redundant, by the Department, 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; and
- c) the excess employee has exhausted their three month retention period.

### **6.1 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 and more	16 weeks	20 weeks
<i>Plus</i>		
Additional payment	4 weeks	5 weeks

### **6.2 Re-employment or re-engagement in the NSW Public Sector**

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 4.3 of this policy.

## **7. Template letter for declaring an employee excess**

### **7. Template letter for declaring an employee excess**

[Employee's address]

Dear [Employees'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 the Department's policy on *Managing Excess School Administrative and Support Staff Employees* for your convenience.

Please notice that 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 right or form part of any legally enforceable employment contract of any public sector employee.

As per the Policy, you must choose whether to:

- a) accept an offer of voluntary redundancy, **or**
- b) pursue redeployment in the Department 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:

<b>Length of service</b>	<b>Additional payment</b>
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

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 Department 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 Department 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 Department ; and
- 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; and

- 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 6.1 of this policy.

### **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 salary classification and are placed in such a position, you will be entitled to three calendar month's salary maintenance at your former classification.

## **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 Department's 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. Department's Excess Employees policy for SAS Staff
2. Voluntary redundancy entitlements
3. Voluntary Redundancy: Superannuation Implications (D2011\_013)
4. 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 the Department of Education and Communities 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 Department of Education and Communities. 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 Department of Education and Communities *Managing Excess Employees in the School Administrative and Support Staff 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]