



# REDEPLOYMENT DUE TO LOSS OF ELIGIBLE PERSON STATUS

POLICY FOR REDEPLOYMENT OF  
EMPLOYEES WHO ARE NO LONGER  
ELIGIBLE PERSONS UNDER THE  
MEANING OF THE *PUBLIC SECTOR  
MANAGEMENT ACT 1994 (ACT)*

PREPARED BY:

WORKFORCE CAPABILITY AND GOVERNANCE, CMTEDD

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# BACKGROUND

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### Purpose of this Policy

1. As an employer, the ACT Government has a range of responsibilities when managing employees who lose their status as an eligible employee as defined in the *Public Sector Management Act 1994* (PSM Act). These responsibilities are established in legislation and policy. This Policy is intended to assist Human Resources (HR) Executives, HR teams and senior directors in exercising these functions.

### Who does this document apply to?

2. This Policy applies to employees who lose their status as an eligible employee; however, should not be applied to employees who may have lost their eligible employee status due medical injury or illness. Employees who lose their eligibility due to a health condition that is not the subject of a worker's compensation claim should be managed through the Medical Redeployment Policy, which is available on the [Employment Portal](#).
3. Employees who lose their eligibility through acts or omissions that constitute misconduct at work should have the misconduct process applied to them.
4. Whilst the redeployment processes under s 122 of the PSM Act are only applicable to confirmed permanent officers in the ACTPS, the policy also provides guidance for dealing with temporary employees and officers on probation who lose their status as an eligible person. The term 'employee' in this policy denotes officers, temporary employees and officers on probation, but is also used for consistency throughout the policy, including s 122 redeployment processes that are only applicable to confirmed officers.
5. This Policy applies to all ACT Government Directorates and Public Sector bodies in relation to employees covered by an Enterprise Agreement. It contains a set of whole-of-government instructions issued by the Head of Service under the PSM Act which binds all employees engaged under that Act.

### Overview

6. The PSM Act (ss 122-123) provides a process to attempt redeployment of an employee who is either incapacitated or ineligible for their office, noting that excess officer situations are dealt with in accordance with the relevant Enterprise Agreement provisions, and are set out in the [Excess Officer Policy](#).

7. Under the PSM Act, an ineligible officer is ineligible for an office if the officer ceases to be an eligible person for the office.
8. The PSM Act requires that to be engaged, appointed, seconded or employed in the ACTPS and remain in employment, an employee must meet the requirements of being an eligible person. The PSM Act Dictionary defines an eligible person as:

eligible person, for appointment, engagement or employment as a public servant, means is a person who:

- '(a) satisfies any of the following:*
- (i) is an Australian citizen;*
  - (ii) is a permanent resident of Australia;*
  - (iii) holds a visa that permits the person to work in the service; and*
- (b) is capable of—*
- (i) upholding the public sector values; and*
  - (ii) exercising each function that the person is, or will be, employed to exercise, in accordance with the best practice principle; and*
  - (iii) acting consistently with section 9 (Public sector conduct); and*
- (c) holds all qualifications required to lawfully exercise every function that the person is, or will be, appointed, engaged or employed to exercise.'*

In addition, the term qualification is also defined in the PSM Act Dictionary as including:

- a) an academic qualification;*
  - b) an apprenticeship;*
  - c) a licence;*
  - d) membership of a professional body;*
  - e) a registration;*
  - f) a security clearance.*
9. In applying the merit and equity principle in s 27(2)(c) of the PSM Act, the Head of Service must ensure that the person selected is an eligible person.
  10. The mandatory and desirable qualifications are outlined in the applicable work level standards, the relevant position description, the Enterprise Agreement or the Public Sector Management Standards 2016 (PSM Standards). It is also a requirement under s 7(2) of the PSM Standards that advertisements outline what is required to be an eligible person for selection, including any supporting evidence required.
  11. Where qualifications are mandatory for a specific position due to operational requirements, employees should be appointed, employed or engaged against positions that have mandatory qualifications. Directorates and agencies are encouraged to keep records of employees with temporary visa arrangements or who require mandatory qualifications and to record this information on the HR system. The Head of Service

may seek reassurance from directorates and agencies that these records are appropriately monitored and maintained.

### Overall Redeployment Process

12. This Policy steps through a series of incremental steps, potentially culminating in an employee being retired from the Service. Broadly, the steps include:
  - a. initial consideration of whether reasonable adjustment will allow the employee to continue to work;
  - b. following this, attempts to redeploy the employee either within the directorate or if unsuccessful, within the ACTPS; and finally
  - c. where unsuccessful, transferring the employee to a lower classification or retiring them from the Service.
13. A flow chart representing the overall process is included at Attachment A.

## Loss of eligibility

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### Employee obligations to maintain eligibility

14. The employee has an obligation to maintain their capacity and ability to perform the role they were employed to do.
15. The employee must take all reasonable steps to ensure they remain an eligible employee, which means they are responsible for ensuring they hold a valid visa or current qualifications or registration relevant to their role.
16. An employee should be aware that failure to maintain their eligibility for their position may lead to retirement under the ACTPS process for managing employees who lose eligibility. While an employee will have the legislative process and procedural fairness rules applied to them during their redeployment, if they do not hold transferrable skills at their current classification level, they may not be able to be redeployed into a suitable vacant position.

### Warning employee of possible loss of eligibility

17. Division 3.2 of the PSM Standards sets out the requirements for when an employee loses or is believed to have lost eligibility for their position.
18. An employee must provide written notification to the Head of Service (or delegate) if they become aware that they have lost eligibility for their position (s 29 PSM Standards).

19. If the delegate believes that an employee is no longer an eligible person for their position, in accordance with s 30 of the PSM Standards, they must in writing:
- tell the employee why it is believed that they are no longer an eligible person;
  - if appropriate, ask the employee for supporting evidence to show that the employee is still an eligible person;
  - tell the employee that if they are no longer an eligible person –
    - for an SES member - their Statutory Employment Terms (SETS) will be changed or their employment will be ended; or
    - for an officer - they will be taken to be ineligible under Part 6 of the PSM Act; or
    - for an employee – their employment may be ended;
  - tell the employee that giving false supporting evidence or failure to disclose information about their change in circumstances relating to their eligible person status may constitute misconduct; and
  - tell the employee that their employment may be ended if they provide false supporting evidence.

### Issuing the employee a lawful and reasonable direction

20. If the delegate is aware that the employee has lost or is likely to lose their qualifications, including licensing or registration that is essential in their role, they may consider providing the employee with a written direction to maintain or renew their qualifications. The delegate should take into account the particular circumstances of the employee, but may provide a direction to the employee that they take all reasonable steps to become re-eligible for their position and set a reasonable timeframe for completion of this direction. It may be appropriate in these circumstances to work with the licensing or registration body to ensure the timeframes set are reasonable and attainable.
21. Under s 9(1)(c)(ii) of the PSM Act, an employee must comply with any lawful and reasonable direction in the course of their employment. Depending upon the individual circumstances, a wilful breach of a reasonable direction to maintain qualifications including licensing or registration, may be considered misconduct and dealt with under the provisions of H6 Misconduct and Discipline under the relevant Enterprise Agreement. If an employee is having difficulty renewing registration with a professional body because they are not performing at a satisfactory level, for example where they are struggling to complete required learning modules to a satisfactory standard, the delegate should consider also managing them under the underperformance process set out in H4 of the relevant Enterprise Agreement.

### Loss etc of working with vulnerable people registration

22. The *Working with Vulnerable People (Background Checking) Act 2011* ('WWVP Act') requires people who provide or engage in certain regulated activities and/or services for vulnerable people to have a background check and be registered. Further information can be found in the [Working with Vulnerable People Background Checking Policy](#).
23. Under the WWVP Act, an employee may not hold the appropriate working with vulnerable people registration under the following circumstances:
  - a. the employee has been refused registration;
  - b. a condition has been imposed on the employee's registration that prevents them exercising the functions of their position;
  - c. the employee's registration has been suspended;
  - d. the employee's registration is cancelled or has expired; or
  - e. the employee surrenders their registration.
24. If, having fulfilled their obligations under s 30 of the PSM Standards to provide written warning to the employee, the delegate is satisfied that the employee does not hold a working with vulnerable people registration and this is required to exercise the function of their position, there are additional provisions available under s 32 of the PSM Standards for managing these employees.
25. Directorates will assess the duty statement of the position with a view to taking the following actions:
  - a. If the duties of the position allow, a change in duty statement or functions so that the employee is no longer in a WWVP identified position and registration is not required;
  - b. a transfer, either internally or another directorate, to a position that does not require registration;
  - c. for a temporary employee or an officer on probation – end the employment or appointment (if the appointment has not been confirmed);
  - d. for a confirmed officer – redeployment under s 122 of the PSM Act. Where a suitable position is not found or accepted by the confirmed officer, action to retire the officer on the basis that the person is no longer qualified to perform their duties under s 123 of the PSM Act; and
  - e. if the conditions of s 32(2) of the PSM Standards are satisfied the employee can be suspended with or without pay whilst the preceding actions are taken.
26. Section 32(2) of the PSM Standards provides for periods of suspension from employment with or without pay in the following circumstances:

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- a. where WWVP registration has been suspended, an employee may be suspended with or without pay until the day the WWVP suspension ends and becomes either unconditionally registered or registered subject to a condition that does not prevent the employee from performing their duties; or
- b. for a confirmed officer – until the date the officer is either transferred (through either ss 100, 108, 109 or 122 of the PSM Act) or had their classification reduced or is retired (s 123 PSM Act).

### Insufficient or false supporting evidence of eligible person status

27. If an employee has been employed in anticipation of the provision of evidence of their eligibility for their position and they are unable to provide the evidence within a reasonable time frame or the evidence does not show that they are an eligible person for the position, the Head of Service must end their employment (s 28 PSM Standards).
28. If the Head of Service becomes aware that an employee provided false supporting evidence in relation to their employment and the employee is not an eligible person for their position, the Head of Service must end their employment (s 27 PSM Standards).

## Pre-Redeployment Considerations

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29. It is important to ensure any decisions in relation to accommodating the needs of any employee who cannot perform the full requirements of their role are based on evidence, procedural fairness and sound decision-making.
30. The ACTPS recognises that consultation and employee participation in decisions that affect them is essential to the successful management of change in the public sector. Clause G1 of the relevant Enterprise Agreement provides a requirement to undertake effective consultation with employees and their union representative on workplaces matters. An employee should be offered the opportunity to have a union representative or support person during any discussions about their possible loss of eligible persons status.
31. In order to provide the best opportunity for the employee to be redeployed, a series of cascading steps should be undertaken prior to considering the employee for redeployment. These are:
  - a. document the duties and performance expectations of the position;
  - b. if appropriate, assess whether the employee is able to regain their eligible person status within a reasonable timeframe;

- c. assess the relevance of the proportion of duties that cannot be performed; and
- d. assess reasonable adjustments that may be carried out.

### Document the duties of the position

- 32. It is important to reach a common understanding of the requirements of the role with the employee as their work capacity will be assessed against this. The delegate and employee should discuss and document the performance expectations of the position.

### Assess the relevance of the duties which cannot be performed

- 33. The directorate is required to make an assessment of whether the employee's loss of eligible person status significantly affects the performance of their work. In other words, could a job redesign and re-allocation of tasks be to allow the employee to continue to perform the role?

### Transfer by consent

- 34. It is encouraged and always open to directorates to jointly identify a suitable position for an employee, rather than proceed to the latter parts of this process.
- 35. At any time, an employee may be temporarily or permanently transferred to a suitable vacant position at the same classification level under ss 92, 100, 108 or 109 of the PSM Act.

### Temporary employees

- 36. Where the Head of Service is satisfied that a temporary employee is no longer an eligible person, they may end the employee's employment in accordance with s 30(c)(iii) of the PSM Standards. However, if appropriate in the employee's particular circumstances, job redesign and transfer by consent remain available as options for the directorate to consider, unless the employee does not hold a valid visa.

## Redeploying permanent officers declared as ineligible

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- 37. After the delegate has undertaken the pre-referral steps outlined above, if they are satisfied on reasonable grounds that the employee is ineligible for their position the Head of Service and directors-general have a range of responsibilities related to the redeployment of that employee.

38. The delegate should advise the employee in writing that they have been determined to be ineligible for their position, outline the reasons for this decision and advise that the redeployment process under s 122 of the PSM Act will commence.
39. To ensure the employee makes informed decisions, the employee should be provided with information about the redeployment process in the ACTPS and the possible implications that can arise from the process.
40. The employee should also be reminded that the Employee Assistance Program is available to them which can provide support and counselling for a broad range of personal and work-related issues, including financial counselling, career assistance and vocational counselling.
41. An employee who is declared ineligible may, at any time, make a written request under s 23(2) of the PSM Standards that the Head of Service reduce their classification by either transferring them to an office with a lower classification or declaring them to be an unattached officer with a lower classification.
42. Directorates must continue to keep in touch with the employee during the process, including after they have been declared as ineligible. The [\*Staying in Touch Policy\*](#) provides guidance around the responsibilities and options for directorates to ensure employees maintaining a connection to work whilst they are on a period of extended leave from the workplace.
43. In addition, an employee may request, in writing, the Head of Service to retire the employee from the service (s 31(2) PSM Standards).

### **Step 1 – Finding a suitable vacant office within the employee’s administrative unit**

44. After the employee has been formally determined ineligible and requiring redeployment, the relevant director-general (or delegate) must take reasonable steps to find a vacant position for which the employee is eligible.
  - a. Eligibility for redeployment is assessed according to the employee’s skills and work experience. A thorough vocational or transferrable skills assessment provided by an external Workplace Consultant may be required to help inform what sort of position an employee would be suitable for. Funding for such an assessment is the responsibility of the employee’s substantive business/administrative unit.
  - b. Six months is considered a reasonable period for the director-general (or delegate) to seek a vacant position, although this may be decreased if a vocational assessment (or other documentary evidence providing sufficient details) finds the employee has very limited transferrable skills relevant to other work in that administrative unit or there is significantly limited work available in the administrative unit at the equivalent classification.

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45. In determining the suitability of a vacant position, consideration must be given to the employee's skill set and capacity to fulfil the requirements of the position, including with the addition of reasonable adjustments and allowing a period of 3 – 6 months for the employee to demonstrate they are able to fulfil the requirements of the position.

### Step 2 – Redeploying the employee to a suitable vacant office within the employee's administrative unit

46. In accordance with s 122 of the PSM Act, if the director-general, or delegate, finds a suitable vacant position for the employee they must:
- offer the position to the employee, in writing; and
  - if the employee consents to be transferred, transfer the officer to the position; and
  - if the employee does not consent to be transferred, refer the employee to the Head of Service.
47. In accordance with s 122 of the PSM Act, if the director-general, or delegate, does not identify a suitable vacant position for the employee, or the employee does not consent to transferring into a suitable vacant position, they must refer the employee to the Head of Service. For further information on the referral to the Head of Service, please see Step 4.

### Step 3 – Voluntary reduction in classification

48. In accordance with Enterprise Agreements, the classification of a suitable vacant position means a classification at either the same substantive level or an alternative equivalent classification in another classification stream where the maximum pay does not exceed the top increment of the officer's current classification by more than 10%. For clarity this does not allow for the transfer of an officer within the same classification stream e.g. a SOGB to transfer to a SOGA.
49. An employee is not precluded from providing informed consent to transfer to a lower classification in line with s 80 of the PSM Standards and under subclause L14.1 of the relevant Enterprise Agreement. If a transfer to a lower classification is being considered it is vital to ensure the employee is aware of the implications of such a transfer and that there is documented evidence of their informed consent to the transfer.

### Step 4 - Employees referred to the Head of Service

50. Section 122 of the PSM Act provides for the referral of an employee by a director-general to the Head of Service, if a suitable vacant position cannot be identified for the employee within their administrative unit or if the employee does not consent to be transferred to a position which is identified.

51. While this list does not intend to limit the information provided to the Head of Service as part of a referral under s 122 of the PSM Act, such referrals must include:
  - a. advice on the employee's current work capacity, including the evidence upon which the decision to declare the employee 'ineligible' for their substantive position was based;
  - b. evidence that there is no further opportunity for the employee to continue working in their substantive position, through reasonable adjustments, evidence of work trials undertaken, and outcomes obtained, etc.;
  - c. a list of the vacant positions that were considered for the employee by the director-general and reasons they were deemed not to be suitable;
52. evidence or confirmation that the workplace has recently maintained adequate and consistent engagement with the employee, and information about the employee's readiness for transfer into any suitable vacancy;
  - a. copies of the correspondence with the employee related to their loss of eligible person status;
  - b. if relevant, copy of a vocational assessment or transferrable skills report (not older than 9 to 12 months), or other independent assessment accurately reflecting the employee's current work capacity, skills and capabilities sufficient to inform decision-making about suitable alternative positions, along with the employee's current résumé;
  - c. advice on the type of position and classification level that was being sought for the employee within their administrative unit; and
  - d. details of any position offered to the employee, and to which they did not consent to be transferred, including details of why they did not consent to the transfer (if known).
53. The delegate should complete the [ineligible Person Referral form](#) and attach with their referral to the Head of Service.
54. If insufficient information is provided to support the referral, the Head of Service may request additional information prior to progressing the referral.
55. If during the redeployment process, it is identified that there are performance issues with the employee, the redeployment process must be suspended whilst the directorate manages and resolve any concerns before the redeployment process can continue.
56. If a referral is accepted, the Head of Service is required to take reasonable steps to find a vacant position in the Service that the officer is eligible for.

57. In considering the suitability of a vacant position, consideration must be given to the employee's skill set and ability to fulfil the requirements of the position, including with the addition of reasonable adjustments and allowing a period of 3 – 6 months for the employee to demonstrate they are able to fulfil the requirements of the position.
58. The process by which the Head of Service will manage employees referred for redeployment is provided at **Attachment B**.

### **Step 5 – Referral back to the director-general**

59. If the employee is not able to be redeployed by the Head of Service, or the Head of Service considers that it is not reasonable to redeploy the employee given the circumstances, under s 122(4) of the PSM Act the employee may be referred back to the director-general. In these circumstances, under s 123(2), the director-general may (with written notice to the employee):
  - a. reduce the officer's classification by:
    - i. transferring the officer to a suitable vacant office consistent with the employee's stated skillset with a lower classification; or
    - ii. declaring, in consultation with the Head of Service (or delegate), the officer to be an unattached officer of a lower classification; or
  - b. subject to the restrictions in s 124, retire the officer from the Service.
60. To ensure procedural fairness, the director-general should invite the employee to provide any further comments or information for consideration before making a decision under s 123(2).
61. If the employee does not agree to a reduction in classification or retirement, the delegate can proceed with either course of action. The date of effect of the action in paragraph 53 is a minimum of one month, otherwise where the employee agrees to a reduction in classification or retirement, the date of effect is the date agreed with the director-general.
62. Under s 42 of the PSM Standards, if the Head of Service gives an officer a notice of retirement, the notice must state the reasons for the retirement and that the officer may appeal the decision unless the officer has given prior written consent.
63. A decision by the director-general under s 123(2) to reduce the officer's classification or retire the officer from the Service is an appealable decision, with the officer able to apply to the ACAT for a review of the decision. An officer who has been retired may also be eligible to make an application for external consideration of the decision, including by making an unfair dismissal application or general protections involving dismissal application to the Fair Work Commission (under Parts 3-2 and 3-1 of the *Fair Work Act 2009* (Cth), respectively).

64. Where a decision is being considered under section 123 of the PSM Act, the employee may make a written request that the Head of Service retire the employee from the service under s 31 of the PSM Standards.

## Legislative References

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65. The relevant legislation, policy and employment arrangements underlying this operational guidance are:

- [ACTPS Enterprise Agreements](#)
- [Public Sector Management Act 1994 \(PSM Act\)](#)
- [Public Sector Management Standards 2016 \(PSM Standards\)](#)
- [Fair Work Act 2009 \(Cth\)](#)
- [Working with Vulnerable People Background Checking Policy](#)
- [Excess Officer Policy](#)

## FURTHER INFORMATION

66. The contact for further information is Executive Group Manager, Public Sector Workplace Relations, Workforce Capability and Governance, Chief Minister, Treasury and Economic Development Directorate (CMTEDD).

For information on COVID-19 vaccination-related redeployment matters, see the [ACTPS Framework for considering workplace COVID-19 vaccination requirements](#) on the Employment Portal.

## REVIEW

67. This policy will be reviewed in 3 years from the issue date.

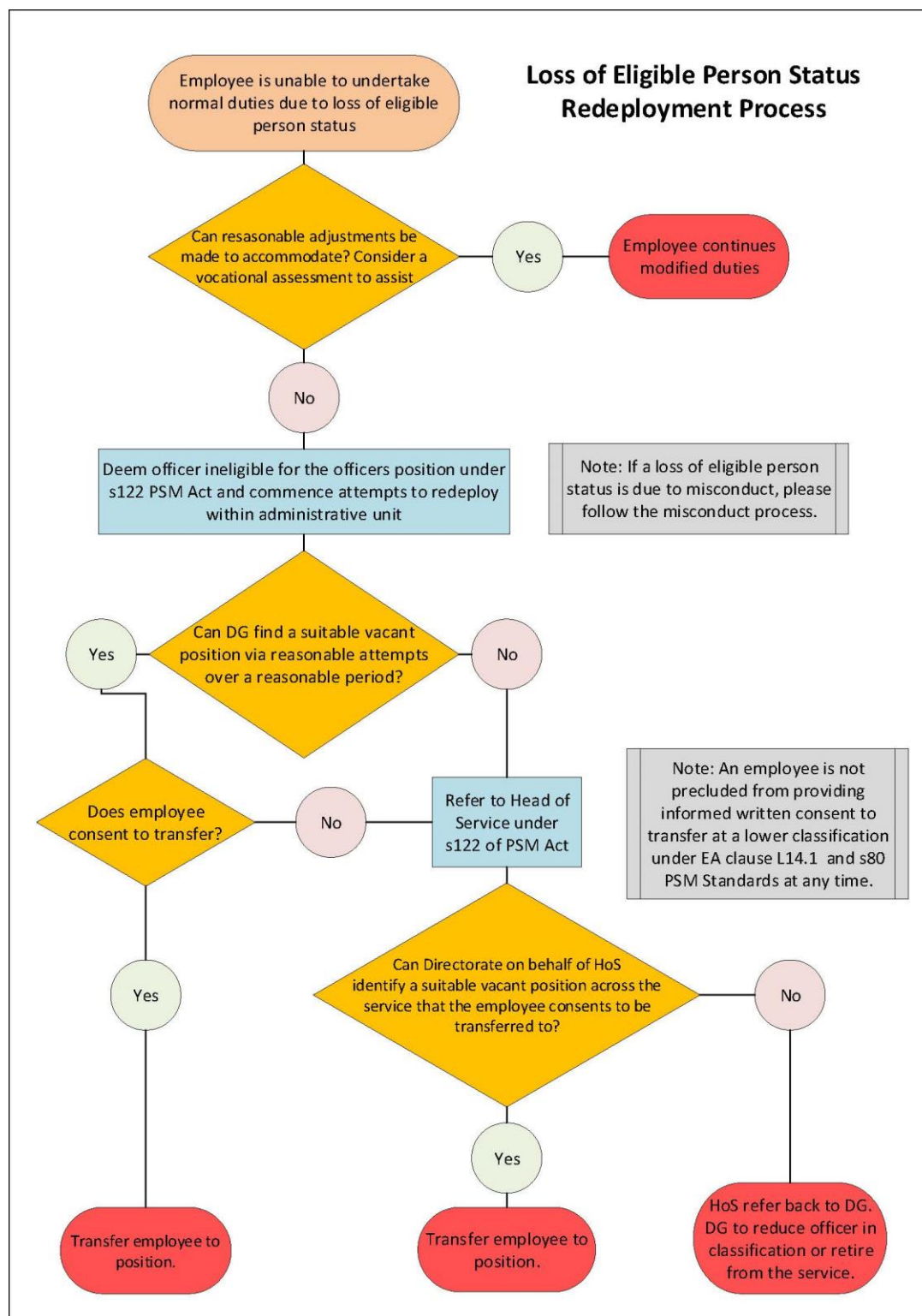
Document name: Redeployment due to loss of eligibility: Policy for redeployment of employees who are no longer eligible persons under the meaning of the <i>Public Sector Management Act 1994</i> (ACT)	Prepared by: Whole of Government Industrial Relations and Public Sector Employment, Workforce Capability and Governance Division, Chief Minister, Treasury and Economic Development Directorate
Version: 8/2021	Feedback to: Whole of Government Industrial Relations and Public Sector Employment
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## **APPROVAL**

Dr Damian West  
Deputy Director-General  
Workforce Capability and Governance Division  
Chief Minister, Treasury and Economic Development Directorate  
On behalf of the Head of Service  
8 April 2021

# Attachment A: Ineligible Officer Redeployment Process

## Flow Chart



## Attachment B - Head of Service Process for Managing Referrals

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1. Workforce Capability and Governance (WCAG) receives the Head of Service referral from the director-general.
2. WCAG conducts a review of the:
  - a. appropriateness of referral; and
  - b. completeness of information provided
3. WCAG actions the referral to Head of Service, or if further information is required from the directorate to enable to Head of Service to exercise their functions, WCAG informs the director-general of the additional information required before the referral can progress.
4. If the referral is appropriate, directorate receives confirmation from WCAG.
5. Approximate suitable work level and employment type for the employee is identified by directorate.
6. Directorate provides Shared Services (SS) with the recommended classification/s and work location/s. The employee is added to the redeployment register and the directorate will be responsible for managing the case.
7. When recruitment requests are received by SS, any positions that match the parameters set out by directorate are forwarded to directorate.
8. Directorate reviews recruitment requests forwarded from SS and considers the suitability of the vacant position for the employee by:
  - a. contacting the hiring manager to clarify the inherent requirements of the position, and flagging that the position is being considered for a potential ineligible person redeployee;
  - b. considering the employee's skill set as determined in the vocational assessment;
  - c. considering the employee's likely capacity to fulfil the inherent requirements of the position with the addition of reasonable adjustments and allowing for a period of up to 6 months within which they are expected to be able to fulfil the inherent requirements of the position;
  - d. considering the training the employee may need in order to fulfil the inherent requirements of the position within 6 months.

In most circumstances, the Directorate will endeavour to provide a response to SS within 2 working days advising whether the position could be suitable for the employee.
9. If the position is assessed as suitable, and there is no actual or potentially excess officer identified for the position:

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- a. Directorate will seek the employee's consent to the transfer;
  - b. Directorate will advise WCAG of employee's agreement, and recommend the transfer;
  - c. WCAG, on behalf of the Head of Service, will offer the position to the employee in writing;
  - d. Directorate will consult with the hiring manager regarding the support available to the work area and employee following the transfer;
  - e. WCAG, on behalf of the Head of Service, will transfer the employee to the vacant position:
    - i. WCAG will advise the advertising work area and their HR/Corporate area of the transfer. Note: under s122 of the PSM Act, the advertising work area must accept the transfer; and
    - ii. WCAG will advise SS to close the recruitment job in the system and transfer the employee.
10. If the position is assessed by the directorate as not suitable, the directorate will advise SS within two working days of receiving the request and advertising will proceed as requested.
11. Any assistance with accommodating training or reasonable adjustments for the employee is managed by the original home directorate. Funding for training or reasonable adjustments will be negotiated by WCAG. Reasonable adjustments do not include salary top-ups.
12. WCAG will continue to liaise with the employee and work area to ascertain and evaluate whether the employee is meeting the requirements of the position within the agreed time frame, (noting that allowing a period of 3 – 6 months for the employee to demonstrate they are able to fulfil all requirements of the position is recommended). At the end of the agreed timeframe (3-6 months), WCAG will evaluate the employee's capacity and capability in their new position.
13. The employee or work area can request the transfer is reviewed before the end of the agreed time frame, if they can provide evidence to WCAG that the employee is not meeting the inherent requirements of the position. WCAG will then review the transfer.
14. If, after a reasonable period (in most cases 6 months), no suitable vacant position has been identified for the employee to which the employee consents to be transferred, the Head of Service refers the matter back to the director-general.

## Attachment C: Template letters and forms

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1. [Ineligible Officer Referral form](#) (required for attachment to HoS referrals)
2. [Communication Guidance Material - Loss of Eligibility Redeployment](#)

## Attachment D: Key Legislative Provisions

The key PSM Standard provisions are ss29-32:

**29 Notifying loss of eligibility**

*A public servant must tell the head of service, in writing, if the public servant becomes aware of no longer being an eligible person for the public servant's employment.*

**30 Head of service believes public servant no longer eligible person**

*If the head of service believes a public servant is no longer an eligible person for the public servant's employment, the head of service must, in writing—*

- (a) tell the public servant why the head of service believes the public servant is no longer an eligible person; and*
- (b) if appropriate, ask the public servant for supporting evidence to show the public servant is still an eligible person; and*
- (c) tell the public servant that if the public servant is no longer an eligible person—*
  - (i) for an SES member—*
    - (A) the SES member's SETs will be changed under the [Act](#), section 34 (Circumstances when SETs must be changed); or*
    - (B) the SES member's employment will be ended under the [Act](#), section 41 (Loss of eligibility); or*
  - (ii) for an officer—the officer will be taken to be ineligible under the [Act](#), part 6 (Redeployment, underperformance and end of employment of officers); or*
  - (iii) for an employee—the head of service may end the employee's employment; and*
- (d) tell the public servant that the following may be misconduct:*
  - (i) failing to disclose information about a change in the public servant's circumstances that affects whether the public servant is an eligible person;*
  - (ii) giving false supporting evidence; and*
- (e) tell the public servant that the public servant's employment may be ended if the public servant gives false supporting evidence.*

**31 Anticipated reduction in classification or retirement—officers**

- (1) This section applies if the [Act](#), section 123 applies to an officer.*
- (2) The officer may request, in writing, the head of service to retire the officer from the service.*

**32 Loss etc of working with vulnerable people registration**

- (1) This section applies if—*
  - (a) a public servant must be registered under the [Working with Vulnerable People \(Background Checking\) Act 2011](#) (the **WWVP Act**) because the public servant engages in a regulated activity in exercising the functions of the public servant's position; and*
  - (b) under the WWVP Act—*
    - (i) the public servant is refused registration; or*
    - (ii) a condition is imposed on the public servant's registration that prevents the public servant from exercising the functions of the public servant's position; or*
    - (iii) the public servant's registration is suspended; or*
    - (iv) the public servant's registration is cancelled; or*
    - (v) the public servant surrenders the public servant's registration.*
- (2) The head of service may suspend the public servant from work with or without pay until—*
  - (a) if the public servant's registration was suspended—the day the public servant's suspension ends and the public servant becomes—*
    - (i) unconditionally registered; or*
    - (ii) registered subject to a condition that does not prevent the exercise of the public servant's functions; or*

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- (b) for an SES member whose SETs are changed under the [Act](#), section 34 because the SES member is not an eligible person—the day the SETs are changed; or*
- (c) for an officer who is transferred under the [Act](#), section 122 (Redeployment) or section 123 (Reduction in classification or retirement) because of becoming an ineligible person—the day the officer is transferred.*
- (3) In this section:*  
**regulated activity**—see the [WWVP Act](#), section 8.

The key PSM Act provisions are s122/123:

### **122 Redeployment**

- (1) This section applies to a confirmed officer if the director-general of the officer's administrative unit is satisfied on reasonable grounds that the officer is—*
  - (a) incapacitated; or*
  - (b) ineligible for the officer's office; or*
  - (c) an excess officer.*
- (2) The director-general must—*
  - (a) take reasonable steps to find a vacant office that the officer is eligible for; and*
  - (b) if the director-general finds a suitable vacant office—*
    - (i) in writing, offer the office to the officer; and*
    - (ii) if the officer consents to be transferred—transfer the officer to the office; and*
    - (iii) if the officer does not consent to be transferred—refer the proposed redeployment to the head of service; and*
  - (c) if the director-general does not find a suitable vacant office—refer the proposed redeployment to the head of service.*
- (3) If the redeployment is referred to the head of service, the head of service must—*
  - (a) take reasonable steps to find a vacant office in the service that the officer is eligible for; and*
  - (b) if the head of service finds a suitable vacant office—*
    - (a) in writing, offer the office to the officer; and*
    - (b) if the officer consents to be transferred—transfer the officer to the office.*
- (4) If the head of service cannot find a suitable vacant office to which the officer consents to be transferred the head of service must, in writing, refer the unsuccessful redeployment to the director-general.*

### **123 Reduction in classification or retirement**

- (1) This section applies to an officer whose unsuccessful redeployment is referred to the director-general under section 122 (4).*
- (2) The director-general may, with written notice to the officer—*
  - (a) reduce the officer's classification by—*
    - (i) transferring the officer to an office with a lower classification; or*

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- (ii) declaring, in consultation with the head of service, the officer to be an unattached officer of a lower classification; or
  - (b) retire the officer from the service.
- (3) A decision under subsection (2) is an appellable decision.
- (4) If the officer agrees to a reduction in classification or retirement, the date of effect of the action is—
  - (a) for an incapacitated officer—a day agreed, in writing, between the officer and the director-general; or
  - (b) for an ineligible or an excess officer—any day after the day the notice was given that is agreed, in writing, between the officer and the director-general.
- (5) If the officer does not agree to a reduction in classification or retirement, the date of effect of the action is—
  - (a) if an industrial instrument applies to the officer and states a retention period for the circumstances—the day after the end of the retention period; or
  - (b) if paragraph (a) does not apply—the latest of the following:
    - (i) the day stated in the notice;
    - (ii) the day 1 month after the day the notice was given to the officer;
    - (iii) if the officer appeals, but then withdraws the appeal—the day the appeal is withdrawn;
    - (iv) if the officer appeals and the appeal upholds the giving of the notice—the day the appeal is decided.

15. For the purpose of these sections the following definitions of ‘incapacitated’ and ‘ineligible’ are in place.

**incapacitated**—an officer is **incapacitated** if the officer is unable to exercise functions appropriate to the officer’s classification because of physical or mental incapacity.

**ineligible**—an officer is **ineligible** for an office if the officer ceases to be an eligible person for the office.

16. The PSM Act Dictionary defines an eligible person as:

eligible person, for appointment, engagement or employment as a public servant, means is a person who:

- ‘(a) satisfies any of the following:
  - (i) is an Australian citizen;
  - (ii) is a permanent resident of Australia;
  - (iii) holds a visa that permits the person to work in the service; and
- (b) is capable of—
  - (i) upholding the public sector values; and
  - (ii) exercising each function that the person is, or will be, employed to exercise, in accordance with the best practice principle; and
  - (iii) acting consistently with section 9 (Public sector conduct); and
- (c) holds all qualifications required to lawfully exercise every function that the person is, or will be, appointed, engaged or employed to exercise.’



Chief Minister, Treasury and Economic  
Development Directorate

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