



COMPENSABLE MEDICAL REDEPLOYMENT IN THE ACTPS

POLICY FOR
REDEPLOYMENT OF
EMPLOYEES ON
COMPENSABLE MEDICAL
GROUNDS

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BACKGROUND

PURPOSE OF THIS POLICY

1. As an employer, the ACT Government has a range of responsibilities when managing employees who have a medical condition which impacts on their capacity to undertake their usual work ('the employee'). These responsibilities are established in legislation, enterprise agreements and policy. This Policy is intended to facilitate effective work rehabilitation for employees who have sustained a work-related injury/illness by providing guidance for Rehabilitation Case Managers (RCM), Human Resources (HR) Directors, HR teams and managers.

WHO DOES THIS POLICY APPLY TO?

2. This Policy applies to employees who, due to an injury/illness that is the subject of an accepted workers' compensation claim under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act), are not able to return to their pre-injury role.
3. Probationary officers, temporary employees and casual temporary employees should be aware that if they are unable to perform the substantial duties of their position, and medical evidence is available to support this preposition, their employment may be ended under s70(4)(b); s110(3)(a); or s111(3) of the *Public Sector Management Act 1994* (PSM Act). In the event of this occurring, the ACT Government, led by the Workplace Safety and Industrial Relations Group (WSIR), will assist the employee to find suitable alternative employment, however the medical redeployment process outlined in this Policy will not apply.
4. This Policy applies to all ACT Government directorates and Public Sector bodies in relation to employees covered for workers' compensation under the SRC Act and whose work rehabilitation is managed through the Workplace Safety and Industrial Relations Group (WSIR). It contains a set of whole-of-government instructions issued by the head of service under the PSM Act which binds all officers engaged under that Act.
5. If, at any time during the course of their redeployment, an employee's entitlement to benefits under the SRC Act ceases, the management of their redeployment should be undertaken in line with the whole of Government '[Medical redeployment in the ACTPS](#)' Policy, which sets out the process for redeployment of employees with a non-compensable medical condition.

CONSIDERATIONS

6. It is important to ensure any decisions concerning accommodating the needs of any employee who cannot perform the full requirements of their role are based on quality evidence, procedural fairness and sound decision-making. The Enterprise Agreements and SRC Act set out a range of provisions related to the assessment of an employee's medical capacity to undertake work.
7. To provide the best opportunity for the employee to recover and work to full capacity, WSIR, with support from a Workplace Rehabilitation Provider (WRP) if required, will

coordinate the development and implementation of an individual, tailored rehabilitation program for the injured employee.

8. At any point during an employee's work rehabilitation it may be agreed, based on available evidence, that the most appropriate goal is for the employee to return to work in a different role to their pre-injury role.
9. Where the work rehabilitation goal for an employee is that they return to work in a different role to their pre-injury role, the director-general (or delegate) should consider whether the employee should be declared as incapacitated (see paragraph 13 below) based on the available medical evidence.

TRANSFER ARRANGED BETWEEN EMPLOYEE AND THEIR DIRECTORATE

10. It is always open to directorates to identify a suitable position for an employee at any time. An employee may be temporarily or permanently transferred to a suitable vacant position at the same classification level under ss 100, 108 or 109 of the PSM Act.

TOTAL AND PERMANENT INCAPACITY TO WORK

11. When an assessment arranged under s36 or s57 of the SRC Act, or relevant clause of the relevant Enterprise Agreement, identifies that an employee is totally and permanently incapacitated and is unable to perform any type of work in the ACTPS, the employee is not suitable for medical redeployment.
12. The director-general (or delegate) should declare the employee incapacitated for their nominal role and may declare them unattached from their substantive position (under s115 of the PSM Act) if they:
 - a. are satisfied with the quality of medical evidence determining the employee has total and permanent incapacity; and
 - b. have provided the employee with an opportunity to respond and provide further information in relation to their condition; and
 - c. have considered such information provided by the employee; and
 - d. based on all information are satisfied that the employee has a total and permanent incapacity to work.
13. If the director-general (or delegate) declares the employee as incapacitated on the basis that they are totally and permanently incapacitated for work, they must provide the employee with information about the Total Permanent Disability (TPD) process. If the employee wishes to proceed with Invalidity Retirement and is a member of the Public Sector Superannuation Scheme (PSS) or the Commonwealth Superannuation Scheme (CSS), the Injury Management Team (IMT) within WSIR can partner with the employee's directorate to progress an application for an invalidity retirement certificate. An employee who is a member of any other superannuation fund (including PSSap) will need to engage directly with their fund or other income protection insurance provider and progress any applications for TPD.

REDEPLOYING EMPLOYEES DECLARED AS INCAPACITATED

14. The term 'incapacitated' has a particular meaning in the context of the PSM Act. It defines 'incapacitated' as:

'an officer is incapacitated if the officer is unable to exercise functions appropriate to the officer's classification because of physical or mental incapacity'.
15. An employee may be declared incapacitated based on medical advice received from an assessment conducted under s36 or s57 of the SRC Act, or under the relevant Enterprise Agreement, while still maintaining some capacity for work. For this to occur, the director-general (or delegate) must be satisfied, based on the available medical evidence, that the employee meets the definition of "incapacitated" as defined in the PSM Act.
16. In declaring the employee incapacitated the director-general (or delegate) must first discuss this with the employee and subsequently provide them with notification in writing.
17. The director-general (or delegate) must also consult with the RCM in the IMT regarding any decision to declare an employee incapacitated.
18. If an employee is declared incapacitated, the head of service and relevant director-general (or delegate) have a range of responsibilities related to that employee's redeployment.
19. If the medical evidence reflects that the employee has reduced capacity and will only be suitable for work in a lower classification, they should be provided with further information about making an application for voluntary reduction of classification (see paragraph 31 below). This should be undertaken by their employing Directorate, in consultation with the RCM.
20. It is important to note that the employee remains entitled to workers' compensation payments, pursuant to the provision of the SRC Act, regardless of any change in classification. The employee is also still required to attend regular reviews with their nominated treating practitioner, and obtain medical certificates advising of their capacity to work. Likewise, the employee is required to comply with all obligations under the SRC Act, including engaging in any approved work rehabilitation program.

DECLARING THE OFFICER UNATTACHED

21. If the director-general (or delegate) declares the employee to be meet the definition of 'incapacitated', the employee may be declared unattached from their substantive position (under s115 of the PSM Act). This allows the directorate to manage and fill the vacancy appropriately.
22. If the director-general (or delegate) intends to make the employee unattached, they must first discuss this with the employee, and then advise the employee in writing the date which they will become unattached. The position occupied by the employee then becomes vacant on that day.

REDEPLOYMENT ON COMPENSABLE MEDICAL GROUNDS

23. In these circumstances the employee's employment and all conditions of service remain unaffected. Unattachment is an internal process which severs the link between an employee and a particular position, but the employment relationship remains in place.

FINDING A SUITABLE VACANT OFFICE WITHIN THE EMPLOYEE'S ADMINISTRATIVE UNIT

24. The RCM is responsible for facilitating actions to develop the employee's agreed work rehabilitation goal. This will include a transferrable skills or vocational assessment, with consideration of the work level standards, and will be done in consultation with the employee, nominated treating practitioner and other treatment providers, and WRP.
25. Regardless of whether an employee is declared unattached, if they are declared to be incapacitated and requiring redeployment, the relevant director-general (or delegate) must take reasonable steps to find a suitable vacant position within the employee's administrative unit for which the employee is eligible. The RCM can provide advice about potential suitability of a role, based on evidence gathered throughout the work rehabilitation process.
26. Six months is considered a reasonable period for the director-general (or delegate) to seek a vacant position within the administrative unit. This timeframe may be decreased if the available evidence 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 that is within the employee's medical capacity at the relevant classification/s.
27. In determining the suitability of a vacant position, consideration must be given to the employee's skill set and likely medical 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.

REDEPLOYING THE EMPLOYEE TO A SUITABLE VACANT OFFICE WITHIN THE EMPLOYEE'S ADMINISTRATIVE UNIT

28. In accordance with s122 of the PSM Act, if the director-general, or delegate, finds a suitable vacant position for the employee they must:
 - a. offer the position to the employee, in writing; and
 - b. if the employee consents to be transferred, transfer the officer to the position; and
 - c. if the employee does not consent to be transferred, refer the employee to the head of service.
29. The following template letters are available to assist with section 122 of the PSM Act:
 - a. Letter to officer offering a suitable vacant position – s122(2)(b)(i);
 - b. Letter to officer confirming the officer's transfer – s122(2)(b)(ii); and

- c. Letter to officer advising redeployment has been referred to head of service – s122(b)(iii) or s122(2)(c).
- 30. In accordance with clause E13 of the Enterprise Agreements (transfer of medically unfit staff), 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.
- 31. An employee is not precluded from providing informed consent to transfer to a lower classification in line with s80 of the *Public Sector Management Standards 2016* (PSM Standards). 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. This includes the employee acknowledging that any ongoing wage 'top ups' provided through their workers' compensation claim are reliant on their ongoing access to entitlements under the SRC Act, and require a relationship between their accepted condition and any reduction in earnings. Consultation with the RCM must occur prior to affecting a voluntary reduction in classification.
- 32. In accordance with s122(c) of the PSM Act, if the director-general, or delegate, does not identify a suitable vacant position for the employee, they must refer the employee to the head of service for identification of a suitable vacant position across the Service. This includes employees who, as a result of an assessment under s36 or s57 of the SRC Act, or relevant clause of the relevant Enterprise Agreement, have been found to be totally and permanently incapacitated but who do not wish to voluntarily seek invalidity retirement.
- 33. While this list does not intend to limit the information provided to the head of service as part of a referral under s122 of the PSM Act, such referrals must include:
 - a. advice on the employee's current work capacity, based on medical evidence related to their illness/injury. This must include the medical evidence upon which the decision to declare the employee 'incapacitated' for their substantive position was based;
 - b. evidence that there would be limited, or no, opportunity for significant improvement in their work capacity through short-term work-based rehabilitation, including medical reports, medical certificates, 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, including details of why reasonable adjustments were not able to be made;

- d. 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;
 - e. copies of the correspondence with the employee related to their medical examination and the declaration that the employee is incapacitated;
 - f. copy of a vocational or transferrable skills assessment report (not older than 12 months), or other independent information accurately reflecting the employee's work capacity, skills and capabilities sufficient to inform decision-making about suitable alternate positions, along with the employee's current résumé;
 - g. advice on the type of position and classification level that was being sought for the employee within their administrative unit; and
 - h. 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).
34. The directorate should complete the [medical redeployment form](#) located on the Employment Portal and attach with their referral to the head of service.
35. All head of service referrals should be sent to the ACTPS Redeployment inbox at ACTPS_Redeployment@act.gov.au.
36. The RCM will be able to assist with the preparation of information to be provided to head of service.
37. If insufficient information is provided to support the referral, the head of service may request additional information prior to progressing the referral.
38. 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.
39. In considering the suitability of a vacant position, consideration must be given to the employee's skill set and likely medical 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.
- a. In accordance with the 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.
40. The process by which the head of service will manage employees referred for redeployment on medical grounds is provided at **Attachment A**.

41. While the referral is with the head of service, the referring Directorate should continue efforts to identify suitable vacant positions that become available in their Directorate for the employee.

REFERRAL BACK TO THE DIRECTOR-GENERAL

42. 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 s122(4) of the PSM Act the employee may be referred back to the director-general. In these circumstances, under section 123(2), the director-general (or delegate) 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 medical capacity with a lower classification; or
 - ii. declaring, in consultation with the head of service, the officer to be an unattached officer of a lower classification; or
 - b. subject to the restrictions in s124, retire the officer from the Service.
43. To ensure procedural fairness, the director-general (or delegate) must invite the employee to provide any further comments or information for consideration before making a decision under section 123(2).
44. The director-general (or delegate) must also engage with the RCM and advise on any decision to be made under section 123(2).
45. 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 41 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.
46. It is important to note that a reduction in classification or a medical retirement will not affect the employee's access to entitlements, nor their obligations, under the SRC Act.
47. Under section 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.
48. A decision by the director-general under s123(2) PSM Act 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 ACT Civil and Administrative Tribunal 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).

REDEPLOYMENT ON COMPENSABLE MEDICAL GROUNDS

49. Where a decision is being considered under section 123 of the PSM Act, the officer may make a written request that the head of service retire the officer from the service under section 31 of the PSM Standards.
50. To assist with the application of s122(4) and s123 of the PSM Act, a set of example template letters have been drafted to provide guidance for directors-general (or delegates) on formally communicating decisions with employees throughout the process. Those letters can be found at this link: [Communication guidance materials](#)

LEGISLATIVE REFERENCE:

51. The relevant legislation, policy and employment arrangements underlying this Policy are:
- a. *Disability Discrimination Act 1992 (Cwlth)*
 - b. *Discrimination Act 1991 (ACT)*
 - c. *Work Health and Safety Act 2011 (WHS Act)*
 - d. *Public Sector Management Act 1994 (PSM Act)*
 - e. *Public Sector Management Standards 2016 (PSM Standards)*
 - f. ACTPS Work Health and Safety Policy Statement
 - g. ACTPS Reasonable Adjustment Policy
 - h. Enterprise Agreements
 - i. *Safety, Rehabilitation and Compensation Act 1988 (Cwlth)*
 - j. *Fair Work Act 2009 (Cwlth)*
 - k. *Human Right Act 2005 (ACT)*

REVIEW

This policy is due for review 3 years from the last issued or reviewed date, or earlier where there are changes that affect the operation of the Policy.

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APPROVAL

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On behalf of the Head of Service
16 March 2021

ATTACHMENT A - HEAD OF SERVICE PROCESS FOR MANAGING REFERRALS

1. Workforce Capability and Governance (WCAG) receives the head of service referral in writing from the director-general.
2. WCAG forwards the referral and case documentation provided by the director-general to Workplace Safety and Industrial Relations Division (WSIR), Chief Minister, Treasury and Economic Development Directorate (CMTEDD) for review of the:
 - a. appropriateness of referral; and
 - b. completeness of information provided.
3. WCAG actions the referral to head of service or, if on advice from WSIR further information is required from the Directorate to enable the head of service to exercise their functions, WCAG informs the director-general of the additional information required before the referral can progress. Where WSIR identifies that further information is required, the RCM will coordinate the gathering of such information.
4. If the referral is appropriate, approximate suitable work level and employment type for the employee is identified by WSIR, based on the information provided.
5. WSIR provides Shared Services (SS) with the recommended classification/s and work location/s.
6. When recruitment requests are received by SS, any positions that match the parameters set out by WSIR are forwarded to WSIR.
7. WSIR 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 medical redeployee;
 - b. considering the employee's skill set as determined in the vocational (or similar) assessment;
 - c. considering the employee's likely medical 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.

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

REDEPLOYMENT ON COMPENSABLE MEDICAL GROUNDS

- a. WSIR will seek the employee's consent to the transfer and will arrange for the head of service to offer the role to the employee in writing; and
 - b. WSIR will:
 - i. advise WCAG of employee's agreement, and recommend the transfer; or
 - ii. advise WCAG and the director-general (or delegate) if the employee declines the offer.
9. If the employee consents to the transfer:
 - a. WSIR will consult with the hiring manager regarding the support available to the work area and employee following the transfer;
 - b. WCAG 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 employee declines the transfer, WSIR will advise WCAG and consult with the directorate about whether declining the transfer demonstrates a failure to comply with any approved work rehabilitation program.
11. If the position is assessed by WSIR as not suitable, WSIR will advise SS and advertising will proceed as requested.
12. Any assistance with accommodating reasonable adjustments for the employee will be coordinated by WSIR. Funding for reasonable adjustments will be negotiated by WSIR and may be sought through the workers' compensation claim.
13. WSIR will continue to liaise with the employee and work area to coordinate the employee's work rehabilitation in line with the agreed work rehabilitation program.
14. The employee, work area or RCM can request the transfer is reviewed before the end of the agreed timeframe (noting that allowing a period of 3 – 6 months within for the employee to demonstrate they are able to fulfil all requirements of the position is recommended) if they can provide evidence to WCAG that the employee is not meeting the inherent requirements of the position due to their medical capacity. WCAG will then engage with WSIR to review the transfer. Performance management issues that are unrelated to the employee's medical condition will not be considered in this process.
15. If, after a reasonable period (in most cases 6 months, though this may vary depending on individual circumstances), 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 B: KEY LEGISLATIVE PROVISIONS

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*
 - (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.*

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- (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.*

For the purpose of this section the following definition of ‘incapacitated’ is 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.*



Chief Minister, Treasury and Economic
Development Directorate

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