Directive

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This Directive is not intended to legally bind the New South Wales Government, the Crown in right of New South Wales, its officers, employees or agents or have contractual effect or form part of any legally enforceable employment contract of any public sector employee

Managing Excess Employees

January 2012

Public Service Commission

(02) 9272 6100

Version 2.0

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1. Revision history

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

2. Introduction

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

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

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

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

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

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

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3. Application

3.1 Coverage

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

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

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

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

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

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

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

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

3.2 Previous policy

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

4. Declaring an employee excess

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

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

4.1 Options for excess employees

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

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

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

4.2 Voluntary redundancy

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

4.3 Notice of forced redundancy

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

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

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

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

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

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

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

5. Voluntary redundancy

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

5.1 Approval

Agency heads are responsible for approving the offer of voluntary redundancy to each excess employee. There is no requirement to gain ministerial approval. However, ministerial approval is still required for formal voluntary redundancy schemes associated with organisational change management. Refer to DPC *Agency Change Management Guidelines* (D2011_014) for more information.

5.2 Voluntary redundancy payments

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

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

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

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

For more information on voluntary redundancy, please refer to the supporting documents *Voluntary Redundancy: Superannuation Implications* (D2011_013) and Treasury Circular 12/01 - *Funding for Redundancy Payments*.

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

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

5.3.1 Obligations of employees

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

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

5.3.2 Obligations of employing agencies

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

Agencies must ensure that:

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

6. The retention period

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

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

6.1 Scope of the retention period

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

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

6.2 Redeployment within the retention period

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

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

For detailed guidelines on redeployment job matching and the priority assessment process, please refer to the supporting document *Case Management and Redeployment Guidelines* (D2011_009).

6.2.1 Temporary secondment or assignment within the retention period

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

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

6.3 Case management and career transition assistance

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

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

Under the *Case Management and Redeployment Guidelines* (D2011_009), excess employees who seek redeployment are entitled to priority access to redeployment opportunities within their own agency and across the Government Service (see section 6.2 of this policy). Agency case managers have a critical part to play in identifying possible job matches, via *jobs.nsw*, and assisting employees to demonstrate their suitability for vacancies.

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

6.4 Salary maintenance if placed in a lower graded position

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

7. Exit during the retention period and at forced redundancy

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

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

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

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

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

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

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

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

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

8. Template letter for declaring an employee excess

[Employee's address]

Dear [Employee's name]

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

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

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

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

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

Further information on these options is outlined below.

Option 1: Voluntary redundancy

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

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

The voluntary redundancy package comprises:

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

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

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

A schedule estimating the value of your entitlement is attached.

The conditions of acceptance are as follows:

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

Option 2: Redeployment

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

If you choose redeployment, you will be provided with:

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

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

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

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

Temporary secondments

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

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

Salary maintenance

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

Next Steps

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

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

Employee Assistance Program

[Insert details of agency EAPs program].

Further information

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

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

Yours faithfully

[Name]
[Position Title]

Enclosed:

1. Premier's Memorandum 2011-11 Managing Excess Employees
2. Case Management and Redeployment Guidelines (D2011_009)
3. Voluntary redundancy entitlements
4. Voluntary Redundancy: Superannuation Implications (D2011_013)
5. Excess Employee Voluntary Redundancy or Redeployment Acceptance Form

Excess Employee Voluntary Redundancy or Redeployment Acceptance Form

Name:	
Employee Number:	

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

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

OR

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

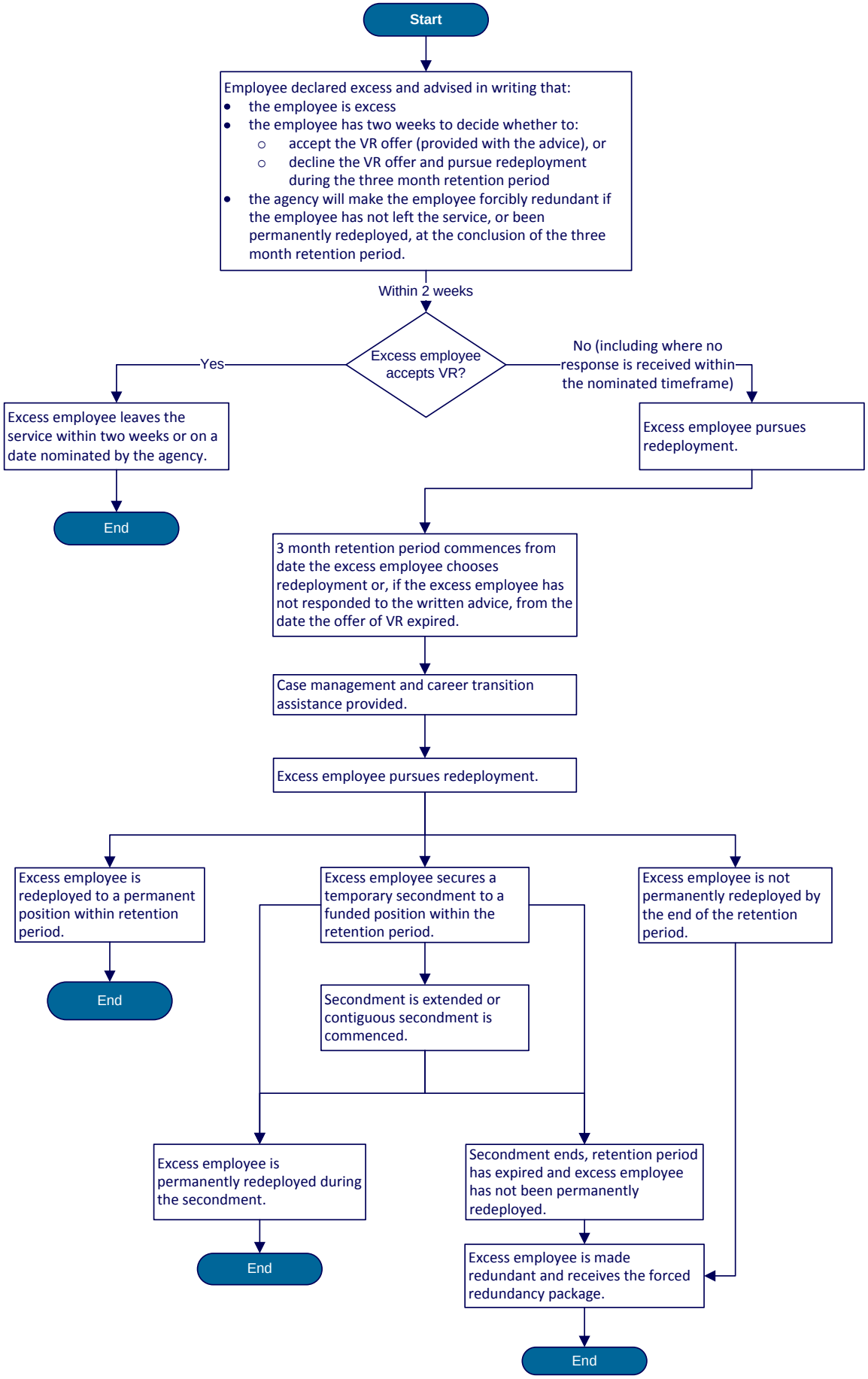
In choosing the option indicated above, I acknowledge that *the Managing Excess Employees Policy* does not legally bind the New South Wales Government, the Crown in right of New South Wales, its officers, employees or agents, or have contractual effect or form part of any legally enforceable employment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

Signature:	
Date:	
Name of current supervisor:	

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

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

9. Managing excess employees flowchart



10. Associated documents

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

- Agency Change Management Guidelines (D2011_014) (DPC)
- Case Management and Redeployment Guidelines (D2011_009) (DPC)
- Managing Excess Employees Advice to Agencies No 1 of 29 June 2011 Parental Leave (D2011_010) (DPC)
- Managing Excess Employees Advice to Agencies No 2 of 7 July 2011 Workers Compensation (D2011_011) (DPC)
- Managing Excess Employees Advice to Agencies No 3 of 1 September 2011 Agency Case Management and Redeployment Policies (D2011_021) (DPC)
- Voluntary Redundancy: Superannuation Implications (D2011_013) (DPC)
- Treasury Circular 12/01 - Funding for Redundancy Payments (Treasury)