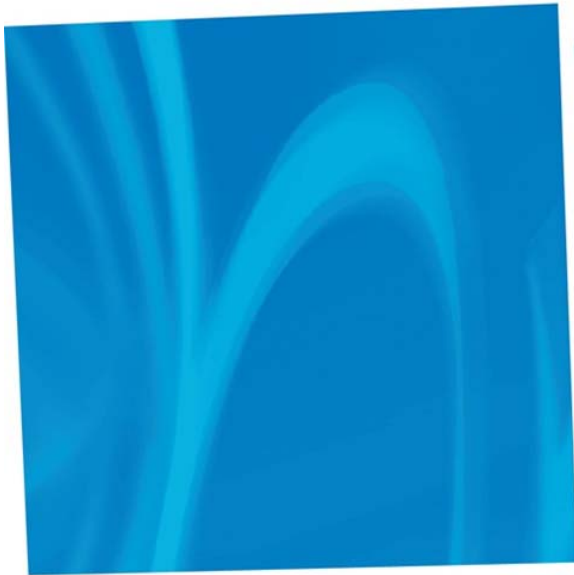


# Human Resources

## Management of Excess Teaching Service



# MANAGEMENT OF EXCESS

## TEACHING SERVICE

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An excess staff situation arises where a school has a greater number of employees than is necessary as identified in the school's preferred staffing profile. An excess staff situation may also arise due to technological change, changes to educational programs or other changes in work methods, or changes in the nature, extent or organisation of the functions of the school.

An excess staff situation may occur where funding within the Student Resource Package (SRP) is insufficient to cover the salaries of all employees at the school. The workforce plan should be used to determine whether the school is likely to have an excess staff situation. Where a salary deficit is indicated in the SRP Management Report (i.e. there are insufficient funds available to meet salary commitments) the principal should develop a deficit management strategy with the aim of eliminating the deficit in the shortest possible time.

To avoid the need to identify employees as excess, principals may put in place a range of alternative strategies, consistent with the workforce plan, such as the reorganisation of duties of employees within the school, investigating any possible reductions in time fractions, approving leave applications, or by negotiating the temporary transfer of an employee to another school.

Unless specifically indicated, the procedures in this document apply to all employees in schools.

The processes describe the arrangements for the management and resolution of excess staff situations in schools.

These processes do not apply to the following categories of employees:

- fixed-term employees, other than in exceptional cases
- casual employees
- school council employees (employed under section 2.3 of the *Education and Training Reform Act 2006*)
- employees in the Principal Class
- employees currently in the probationary period of their employment.

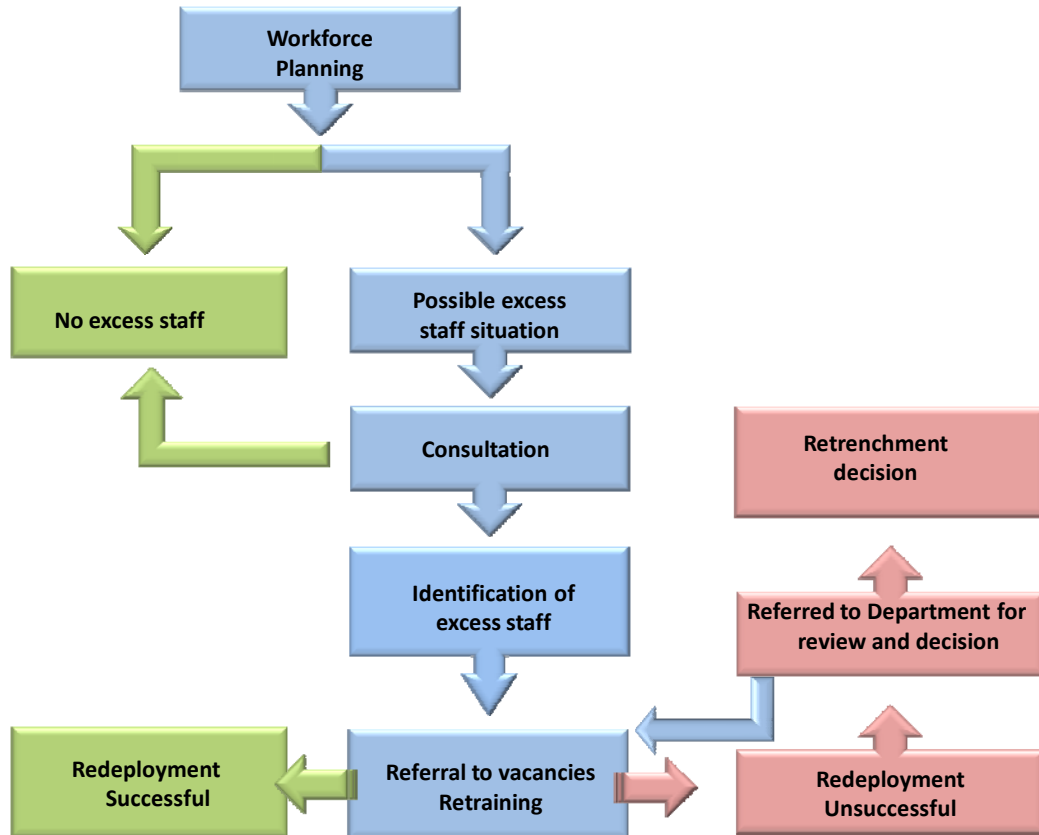
The responsibility for the identification of excess staff and the management of these employees rests with the principal. The responsibility for the identification of employees who may be subject to retrenchment rests with the Department.

In the management of excess staff situations principals must ensure:

- fair treatment of affected employees

- that the process is not used as a substitute for the procedures for managing unsatisfactory performance or the discipline procedures.

The school excess staff process is illustrated below:



## CONSULTATION

Where there is likely to be an excess staff situation the principal must keep all employees fully informed throughout the process and consult with the appropriate union(s). For the purposes of these procedures, appropriate union(s) means the Australian Education Union, the Community and Public Sector Union or the United Voice (formerly the Liquor Hospitality and Miscellaneous Union depending on the category of employee affected).

The purpose of the consultation is, where possible, to resolve potential excess staff situations without the need to identify employees excess to the requirements of the school. During this consultation phase the principal must:

**Step 1.** Provide the union sub branch with the following details at least one week before the commencement of discussions:

- the reasons an employee is likely to be excess
- the school's workforce plan, including details of the school's preferred staffing profile
- the details of the employee(s) likely to be affected
- where changes in the staffing structure are proposed the projected student enrolments, the number and classification of employees affected and the number and classification of the employees expected to be required for the performance of any continuing function of the employer.

To avoid any disputes over the date the details were provided to the union sub branch, principals should keep a record of the date the details were provided.

The [School Level Consultation](#) pro-forma should be completed (Part A where the sub-branch is notified as set out above, or Part B where the appropriate union(s) does not have a sub-branch at the school.) and forwarded to the Department.

Where there is no sub-branch at the school the Department will notify the appropriate union(s) on behalf of the principal.

**Step 2.** Discuss the situation with the union sub branch and attempt to reach agreement. The discussions should concentrate on the management of the excess staff situation and can cover any issues related to the strategy for managing the potential excess staff situation, but must include:

- the number of employees likely to be excess
- the measures that could be taken to remove or reduce the incidence of employees becoming excess
- retraining strategies to assist effected employees with further employment opportunities
- the redeployment prospects for the employees concerned. It is important that realistic advice about the redeployment prospects of the affected employees is given.

The discussions should take place over a reasonable time period which takes account of the particular situation and the need to proceed as quickly as possible.

**Step 3.** Consider any representations of the union sub branch which should be given the opportunity to put its views on any proposed changes to the staffing structure of an affected work area before any decisions are finalised. Where the representations are rejected reasons for rejection should be provided.

**Note** Where there is no sub branch at the school the appropriate union(s) may request to be involved in Steps 2 and 3. Where this does not occur the school's agreed consultative arrangements should be used to satisfy the requirements of Steps 2 and 3.

## IDENTIFICATION

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Once the necessary consultation and discussions have been completed and the excess situation remains unresolved, the process for the identification of an excess employee (s) may commence.

The declaration of employees as excess to workplace requirements is a process to facilitate redeployment to other vacancies and should not be used as a substitute for dealing with unsatisfactory performance or misconduct issues. This does not however preclude an employee who is the subject of unsatisfactory performance or misconduct processes from being declared excess for genuine excess reasons. Where this occurs any procedures that are underway should continue.

Where the identification of an employee as excess requires a selection to be made between two or more employees, the selection must be made as far as practicable on objectively assessed grounds related to the suitability for the program determined for the school, or by reference to relative efficiency if there is more than one employee suitable for the program as determined.

The following procedures should be used to identify the excess employee:

- (a) The principal, after appropriate consultation, will determine the curriculum or work areas in which there may be employees excess to the requirements of the school.
- (b) The principal shall convene meetings of employees from such curriculum areas or work areas to seek volunteers to be identified as excess.
- (c) Where insufficient volunteers are forthcoming the principal shall provide an opportunity for employees in such curriculum areas or work areas to provide reasons in writing why they should not be considered for declaration as excess.
- (d) The principal shall take into account the overall curriculum needs or work needs of the school, the submissions from individual employees in accordance with (c) above and consult with the union sub branch, or where there is no sub branch at the school the appropriate union(s), before declaring as excess those employees whose declaration would cause the least disruption to the program at the school.

- (e) The principal shall make every effort to ensure that an employee is not identified as excess to workplace requirements where there are compelling personal compassionate grounds pertaining to that employee or where the employee has been compulsorily redeployed within the previous two years.

The principal should not discriminate against any employee on the basis of any of the following reasons:

- part-time employment or resumption from leave
- temporary absence from work because of illness or injury
- trade union membership or participation in union activities outside working hours, or with the employer's consent during working hours
- non-membership of a trade union or association that has applied to be a registered union under the *Fair Work Regulations 2009 (Registered Organisations)*
- seeking office as, or acting or having acted in the capacity of, a representative of employees
- the filing of a complaint, or the participation in proceedings, against the employer
- age, breastfeeding, carer status, disability, employment activity, gender identity, industrial activity, lawful sexual activity, marital status, parental status, physical features, political belief or activity, pregnancy, race (including colour, nationality, ethnicity and ethnic origin), religious belief or activity, sex, sexual orientation, or personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.
- absence from work during maternity or other parental absence.

Once the process of identification has been completed the principal must advise:

- the employee(s) identified as excess
- the Department of the names of employee(s) identified as excess
- the union sub branch, or where there is no sub branch at the school the Department, of the names of employee(s) identified as excess.

The above advice must be in writing and issued without delay.

The [Identification of Excess Employee](#) pro forma should be used to notify the Department of the name of any employee identified as excess. Where there is no sub-branch at the school the Department will notify the appropriate union(s) on behalf of the principal.

Once an employee has been identified the principal should encourage the employee, if he or she has not already done so, to enter a resume on Recruitment Online and set up the Job Search Agent facility to identify suitable advertised vacancies to which the employee may wish to be referred to maximise opportunities for redeployment.

## GAINFUL EMPLOYMENT

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The principal has an obligation to ensure that excess employees have regular programmed duties prior to redeployment. This includes but is not limited to rostered teaching duties, team teaching, replacement classes, extras and supervisory duties.

Employees identified as excess to workplace requirements will continue to be charged to the school.

The principal must continue to take all reasonable steps, consistent with the interests of the efficient administration of the school, to refer an excess employee to a vacancy of equal or lower classification and range. Equally, an excess employee must make all reasonable efforts to assist their own redeployment.

During the redeployment period a school should continue to give the excess employee first consideration for placement opportunities as they arise in the school.

## RETRAINING

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Retraining of excess employees may enhance their redeployment prospects. This may take the form of on-the-job training but could include, in some cases, the undertaking of a short course to provide new skills or update existing ones.

The focus of retraining should be to enhance the redeployment prospects of the employee.

## REDEPLOYMENT

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### *Referral process*

Where the principal becomes aware of a vacancy in a school through advertisement on Recruitment Online, or otherwise, the principal should consult with any excess employees about suitable vacancies. To easily identify advertised (posted) vacancies to which excess employees may be considered for referral, the excess employee and the principal should create search criteria using the Job Search Agent facility to enable notification by email of suitable vacancies. It is expected that the principal and excess employee will consult regarding the identification of suitable vacancies.

The principal can refer an excess employee to an advertised vacancy up until the closing date of applications for that vacancy. Excess employees may be referred to any position at or below their classification level provided that, with the exception of classroom teacher, an excess employee cannot be referred to a position at a salary range at their classification level that is higher than the employee's salary range. Excess classroom teachers may be referred to any classroom teacher position irrespective of whether the position is advertised as *classroom teacher*, *classroom teacher accomplished* or *classroom teacher expert*.

Where the principal determines that it is appropriate to refer an excess employee to a vacancy, the principal should use the Recruitment Online Excess Referral process to arrange for the employee to be considered. This process will generate an email from the principal to the excess employee. The principal should print a copy of this email prior to forwarding it to the excess employee to retain on the employee's personnel file. Where the employee accepts the referral an email from the excess employee will be generated to the base school principal and the Recruiter named in the Job Opening (vacancy). The excess employee will also receive an email advising how to submit a resume and to respond to the selection criteria should they wish to do so. An excess employee is strongly encouraged to provide a response to the selection criteria through Recruitment Online. Copies of referral emails should be retained on the employee's personnel file.

An excess employee referred to a vacancy after the closing date cannot be considered for that vacancy as a redeployee, unless the principal of the school with the vacancy elects to do so. In this situation the excess employee should be considered as a late applicant for the vacancy provided the selection process has not commenced.

Employees with excess status who apply for, or are referred to, [exempt vacancies](#) will be considered in the merit-based selection process in competition with all other applicants.

Where an employee refuses to agree to be referred to a position the principal should print a copy of the refusal email, note the reason where one is given on the refusal email and keep this as part of the employee's personnel file. The principal should not continue with the referral in these circumstances.

### *Consideration of referred staff*

**An excess employee who is referred to an advertised vacancy must be considered in isolation from and not in competition with other applicants. The excess employee must be considered solely on the basis of whether he or she satisfies the selection criteria of the position immediately or could do so within a reasonable period. A reasonable period will vary, but it is generally accepted as being a period of three months. In some circumstances, it may be reasonable to allow a period of up to six months.**

Where an excess employee does not provide a response to the selection criteria, the principal must assess the person's suitability against the selection criteria using whatever information is available. The excess employee is not required to submit information, but may choose to submit a written statement regarding suitability or a curriculum vitae. In assessing the employee's suitability the principal must consider any information provided by the employee and may invite the employee for a formal interview or informal discussion.

The principal may seek comments from referees nominated by the employee (if any). The principal may wish to contact persons other than nominated referees to assist in assessing the employee's ability, capacity and suitability for a position provided that the employee is advised of these extended inquiries prior to contacting a person(s) not nominated as a referee. In such instances the employee is to be informed of the name of any person whom the principal intends to contact and provided with an opportunity to comment.

If more than one excess employee is referred to the same vacancy the principal should conduct a merit selection process to determine the most suitable excess employee. The selection process should be consistent with the requirements set out in the [Recruitment in Schools Guide](#) including the establishment of a panel.

There is no requirement to compile a written report where the excess employee is considered suitable except where more than one excess employee is being considered. In this case a report indicating the preferred ranking of excess employees as assessed against the selection criteria must be prepared.

**Where an excess employee is found suitable for a vacancy the employee should be offered the position as advertised and given ten working days to accept or reject the offer. During this period, the position cannot be offered to another individual.**

Where an excess employee(s) is considered unsuitable, a written report is required to be prepared which identifies the reasons the employee is considered unsuitable for the position specifically addressing the selection criteria. The excess employee(s) must be advised in writing of the outcome of the referral and provided with a copy of the report. A copy of this documentation must also be provided to the employee's current principal. The original copy of the report must be retained at the school in the event of a grievance being lodged with the Merit Protection Boards.

After the referred applicant(s) has been notified of his or her unsuitability, the selection process may continue **but the position must not be offered to another individual** until the time period for lodging grievances has elapsed (fourteen days) or any grievance has been resolved.

### **Redeployment**

An excess employee who is found suitable for a vacancy of longer than twelve months duration (or in the case of a parental absence (family leave) replacement where the replacement continues beyond twelve months) must be offered redeployment to the position as advertised and given ten working days to accept or reject the offer. If the excess employee accepts the offer, he or she will be permanently transferred to that school and cease to be an excess employee.

An employee who accepts redeployment to a vacancy at or below their classification level is permanently transferred to that position on the same terms and conditions that would have applied had that transfer not been a redeployment. Salary on redeployment to a lower classified position (including redeployment to a lower salary range within the same classification) is determined in accordance with the salary on regrade policy that would have applied had that transfer not been a redeployment.

An excess leading teacher whose salary is reduced on redeployment shall receive an allowance equal to the amount required to maintain the salary received by the leading teacher

immediately prior to redeployment until twelve months following the date the leading teacher was identified as excess irrespective of that person's tenure as a leading teacher.

Where an excess employee's temporary placement at a particular school extends beyond twelve months, as a result of an advertised vacancy or otherwise, the excess employee must be offered redeployment to the position and given ten working days to accept or reject the offer. If the excess employee accepts the offer, he or she will be permanently transferred to that school and cease to be an excess employee and the position does not need to be advertised.

On the permanent transfer of an excess employee the principal of the school where the employee was identified in excess will inform the employee in writing, and the Schools Recruitment Unit via email at [Schools.Recruitment@edumail.vic.gov.au](mailto:Schools.Recruitment@edumail.vic.gov.au) that the employee is no longer identified as an excess employee.

### *Temporary placement*

An excess employee who is found suitable for a vacancy of twelve months or less duration must be offered temporary placement to the position as advertised and given ten working days to accept or reject the offer. At the conclusion of the temporary placement the excess employee will return to his or her original school unless he or she has been placed into another vacancy.

During this temporary placement the employee will continue to be identified as an excess employee and may be referred to other vacancies, including those commencing in the following year. The principal of the base school will continue to be responsible for referring the excess employee to suitable vacancies that may result in redeployment to another school. However the school where the excess employee has been temporarily placed will need to carry out any referrals through the Recruitment Online Excess panel on behalf of the base school principal.

Should an excess employee who is accepted for temporary placement at another school not be available to take up the position due to an absence of leave expected to be for longer than six weeks the temporary placement shall not proceed and the employee shall remain at the base school.

Should an excess employee who is temporarily placed at another school take up the position and subsequently commence a period of leave that is expected to be six weeks or longer the temporary placement may be cancelled by the principal with the vacancy and the employee return to the base school.

Where an excess employee accepts temporary placement in a position of twelve months or less duration at or below his or her current salary range and/or classification, he or she maintains his or her salary for the duration of the temporary placement. The salary of an employee cannot be temporarily reduced as a result of temporary placement.

## Reimbursement of expenses

An excess employee who is required to travel in order to attend an interview as part of the redeployment process will have reasonable and necessary expenses reimbursed.

An excess employee who is redeployed to a different locality may be entitled to reasonable costs associated with the relocation in accordance with a [Ministerial Order](#).

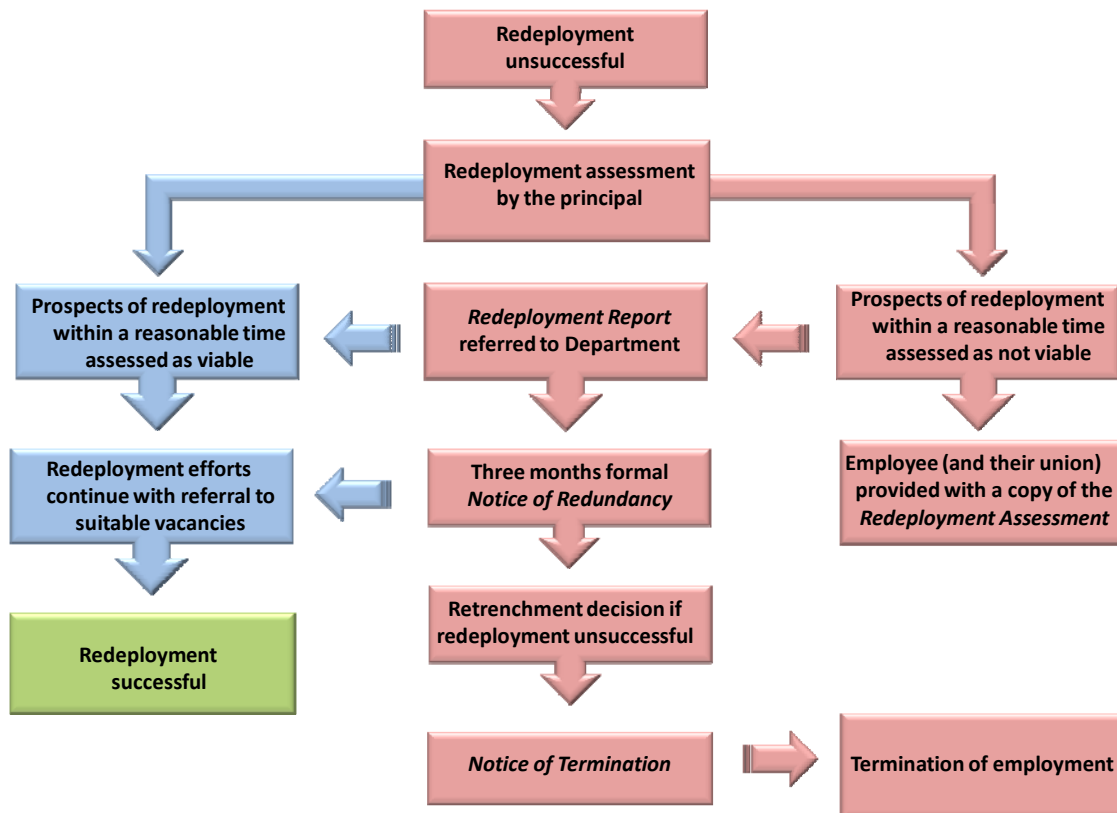
## RETRENCHMENT

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All reasonable efforts must be made to redeploy excess employees to suitable alternative positions. Where a principal forms the view that it is unlikely that an excess employee will be redeployed to a suitable position, other action, including retrenchment, may be considered.

Retrenchment will not be considered unless the employee has been named as excess to the requirements of the school for a period of more than twelve months for a teacher or more than three months for an education support class employee and all reasonable efforts have been made to redeploy the excess employee to an alternative position and other options, such as retraining, properly considered.

The retrenchment process can be illustrated as follows:



Retrenchment cannot occur without the prior approval of the Secretary (or nominee). If retrenchment is being considered an assessment of the employee's redeployment prospects must be undertaken by the principal. This *Redeployment Assessment* should consider factors such as the redeployment efforts which have been made (including any retraining), the likelihood of a suitable vacancy arising within a reasonable period and the employee's participation in the redeployment process.

If the principal concludes that redeployment is not viable the principal must provide a copy of the *Redeployment Assessment* to the employee and, if requested by the employee, the employee's union. In this circumstance the principal must provide the Department\* with a *Redeployment Report* that includes:

- a copy of the *Redeployment Assessment*
- details regarding the redeployment efforts which have been made including any retraining
- the name of the employee's union (if nominated by the employee)
- recommended action.

\* *The Redeployment Report should be forwarded to the General Manager Human Resources.*

Prior to considering retrenchment action the Secretary (or nominee) must be satisfied that all reasonable efforts have been made to redeploy an employee to suitable alternative positions. As part of the Secretary's (or nominee's) consideration the employee will be invited to make any comments or provide relevant information within fourteen days from the date the employee receives a letter from the Secretary (or nominee) to this effect.

### **Notice of redundancy**

Where the Secretary (or nominee) is satisfied that the school based procedures have been followed and that it is likely that the employee will be excess to the requirements of the Teaching Service, the employee will be issued with a *Notice of Redundancy* indicating that a further period of three months (the formal notice period) will be provided to enable the employee to seek redeployment. The union(s) with coverage of the category of employee will be informed that a *Notice of Redundancy* is to be issued. At the employee's request, the employee's union will be provided with a copy of the *Notice of Redundancy*.

Where the Secretary (or nominee) proposes to retrench an employee, the Secretary (or nominee) will notify the employee in writing, no earlier than two weeks before the expiration of the formal notice period, of the action the Secretary (or nominee) proposes to take and advise the employee that he or she has fourteen days to make any comments to the Secretary (or nominee) on the proposed action.

In order to avoid the involuntary retrenchment of an employee, other employees in the school will be invited to volunteer for retrenchment. A volunteer who elects to accept such an invitation may be accepted for retrenchment, but only where the taking up by the volunteer of such retrenchment would facilitate the employee who would otherwise have been retrenched

ceasing to be an excess employee. Where a volunteer who satisfies this requirement is not accepted for retrenchment the excess employee cannot be retrenched.

### **Notice of termination**

After considering any comments received from the employee and should the employee continue to be in excess and no volunteer is identified the Secretary (or nominee) may decide to proceed with any proposed termination action.

The Secretary (or nominee) will advise the principal and the excess employee in writing of his or her decision and the employee may be retrenched following a further minimum one month's formal *Notice of Termination*.

### **Entitlements on retrenchment**

An employee who is retrenched shall be entitled to receive any targeted separation package in accordance with public sector policy applicable from time to time and payment of accrued leave entitlements.

## **GRIEVANCES**

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An employee, or the union on an employee's behalf, may lodge a grievance in relation to:

- being identified as an excess employee; or
- being assessed as unsuitable for redeployment to an advertised position, or
- being identified for retrenchment.

Grievances in relation to the identification of an employee must be lodged with the principal within five working days of the employee being notified in writing by the principal that he or she has been named as excess.

Every effort must be made to resolve the grievance at the school level. If the grievance is not resolved at the school level within two working days of the grievance being lodged with the principal, the employee may apply to the [Merit Protection Boards](#) for determination.

Grievances in relation to an excess employee being assessed as unsuitable for redeployment to an advertised vacancy may be lodged directly with the Merit Protection Boards within fourteen calendar days of the employee being notified that they have been assessed as unsuitable.

Grievances in relation to being identified for retrenchment must be lodged with the General Manager, Human Resources within five working days of the employee being notified in writing of the decision. The General Manager, Human Resources shall review the decision and attempt to resolve the grievance.

Every reasonable effort must be made to resolve the grievance to the satisfaction of the parties. If the grievance is not resolved within five working days of the grievance being lodged with the General Manager, Human Resources, the employee may apply to the Merit Protection Boards for determination.

Nothing in these procedures precludes a grievance from being pursued in accordance with the provisions of the *Fair Work Act 2009* or any relevant agreement or award made under that Act.

### **FURTHER ASSISTANCE**

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For advice or assistance on any matters related to the management of excess, principals may contact the Schools Recruitment Unit on 1800 641 943.