Government of South Australia

Department of Treasury and Finance

Targeted Voluntary Separation Packages (TVSPs)

FREQUENTLY ASKED QUESTIONS

(To be read in conjunction with the Guidelines applying to TVSPs)

These Frequently Asked Questions do not apply to Voluntary Separation Packages (VSPs) for employees covered by the *South Australian Public Sector Wages Parity Enterprise Agreement: Weekly Paid 2015.* Officers in affected agencies should refer directly to this instrument and seek advice as necessary, to ensure compliance.

The Information in this document is not a substitute for specialist industrial/employee relations, legal or other advice.

SECTION ONE:

1. How long will TVSPs remain available?

TVSPs will be available, as determined by the South Australian Government from time-to-time, subject to the terms and conditions reflecting Government policy.

From 1 July 2014, the maximum financial value of the payment made with a TVSP reduced to a maximum of 52 weeks' pay (calculated pursuant to the Guidelines).

2. Can any public sector employee get a TVSP if they want one?

No. Offers of TVSPs will be targeted to eligible employees, as defined, in the Guidelines and relevant industrial instruments.

3. Which employee groups are eligible for TVSPs?

Subject to specific exceptions, offers of a TVSP will only be made to employees who are declared as being excess to requirements of the agency they are employed in as a consequence of the abolition of the substantive position, duties or role they were employed in.

The scheme does <u>not</u> apply to casual employees or employees with no right to ongoing employment in the South Australian Public Sector.

Executive employees* are not eligible for a TVSP. If their employment is terminated as a result of organisational change, they will be eligible for a termination payment pursuant to relevant legislation and/or their contract.

*TVSPs may be offered to the small number of executive employees employed under the *Government Management and Employment Act 1985* on a 'tenured' basis.

4. Will all employees be offered a TVSP if their assigned role becomes redundant?

No. Chief executives, agency head and delegates will seek to transfer certain employees to other positions/roles or duties within the agency or another agency in the South Australian Public Sector.

Public sector employees, whose substantive position, role or duties is/are abolished and thus become excess to the requirements of an agency, will be provided with reasonable opportunities to undertake training/skills development to assist them to secure alternative substantive employment in the South Australian Public Sector.

Whilst the question of whether a position, role or duties is/are abolished and likewise, an employee is excess to requirements – and assuming obligations as to consultation have been met - the decision as to whether to abolish positions, roles or duties and to declare an employee(s) as excess as a consequence, is one at the discretion of a chief executive, agency head or delegate. Similarly, the decision to offer a TVSP to an excess employee is at the complete discretion of a chief executive, agency head or delegate.

Particular requirements apply to agencies and employees, covered by the *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2014* (WPEA Salaried) and/or the provisions of *the Commissioner for Public Sector Employment (CPSE) Determination 7: Management of Excess Employees – Redeployment, Retraining and Redundancy* (Determination 7). These include the requirement that a chief executive, agency head or delegate make an offer of a TVSP to eligible employees declared as excess to the requirements of an agency if they have not been successful in securing employment in an alternative, substantive position, role or duties in the South Australian Public Sector on an ongoing basis within the first 3 months of being declared as excess (the date of the written notice declaring them as excess to requirements). Chief executives, agency heads and delegates – and officers in Human Resource sections in agencies - should refer directly to these instruments to ensure compliance. See also Section 2.

5. How much notice will employees have to consider an offer of a TVSP?

Employees should be given at least 3 weeks to consider a formal offer of a TVSP, unless this period is waived in writing by the employee.

6. Are employees required to accept a TVSP offer?

No. TVSPs are a voluntary agreement between a chief executive, agency head or delegate on behalf of the Crown and an employee. There is no compulsion for an employee to accept an offer of a TVSP, nor to respond to an invitation to express interest in receiving an offer.

Employees considering an offer of a TVSP are urged to seek independent personal, financial, taxation and superannuation advice specific to their circumstances, at their personal expense. Employees who are members of employee associations may seek advice from officials of that organisation.

7. If I decline an offer of a TVSP, will I get another chance?

If an employee declines an offer of a TVSP, a chief executive, agency head or delegate *may* make a subsequent offer, but is not compelled to do so.

8. What payments are made to employees who accept a TVSP?

From 1 July 2014, payments made with a TVSP are based on the date an employee separates/their employment is terminated upon resignation and 'years of service' as follows:

- a minimum payment of 10 weeks' pay, plus 2 weeks' pay for each completed 'year of service' (as defined), up to a maximum payment of 52 weeks' pay.
- Specific additional conditions apply to employees who are employed on behalf of the Crown by a chief executive/agency head of a public sector agency as a Nurse or Midwife. When Nurses or Midwives accept an offer of a TVSP within the first three months of being declared excess, they will be paid a lump sum payment of $15,000 plus a TVSP.

Step-down in quantum

If an employee, having been declared as excess to the requirements of an agency, declines an invitation to express interest in receiving an offer of a TVSP or a formal offer of a TVSP within the first 3 months following them being declare as excess to the requirements of the agency, then the quantum of any payment included as a term of any future invitation to express interest or offer of a TVSP (and thus the payment that would be made following acceptance of an offer of a TVSP) will be reduced:

- if the employee is excess to requirements upon being formally declared for more than 3 months and up to 6 months – a 50% reduction in the quantum of the payment made with any TVSP in comparison to the amount that would have applied to a TVSP entered within 3 months of the employee being declared as excess; or
- if the employee is excess to requirements upon being formally declared for more than 6 months and up to 9 months – a 75% reduction in the quantum of the payment made with any TVSP in comparison to the amount that would have applied to a TVSP entered within 3 months of the employee being declared as excess.

The critical date for determining the applicability of the 'step-down' in quantum of the payment made with a TVSP will be the date on which an excess employee indicates in writing their interest in being made a formal offer of a TVSP. For example, an employee lodges an expression of interest in receiving an offer of a TVSP after 2.5 months of being declared as excess and receives a formal offer of a TVSP and then separates/their employment terminates upon their resignation, say, 4 months following them being declared as excess. The employee is entitled to a TVSP payment calculated at 100% - i.e. without a step down.

An offer of a TVSP is not available to an employee who expresses interest in receiving an offer of a TVSP 9 months or more after being formally declared as excess to the requirements of an agency.

Unless a specific exception applies in respect of a particular agency/business unit within an agency, these step-down arrangements will apply for all public sector employees who are offered a TVSP after being declared excess from 1 July 2015.

Part-time service or Leave without Pay

The payment made as part of a TVSP will be calculated to take account of any period of part-time employment by an employee of one calendar month or more, and/or any period of leave without pay, during an employee's 'years of service' (as defined).

9. Will service in another Agency count towards a TVSP payment?

Please refer to the comprehensive definition of 'Years of Service' found under Part 4 in the TVSP Guidelines, including the treatment of employment in other employment within or outside of the South Australian Public Sector.

10. Can an employee with an outstanding worker's compensation claim be offered a TVSP?

All employment-related matters/claims/proceedings, including outstanding claims that an employee has suffered a compensable injury or disability, must be finalised before an employee can enter an agreement with a representative of the Crown for a TVSP.

11. Can employees who separate/whose employment terminates upon resignation as part of a TVSP be re-employed in the public sector?

Employees who receive a TVSP and as a condition resign their employment in the South Australian Public Sector, are not entitled to seek employment or be employed in the South

Australian Public Sector (as broadly defined in the Guidelines) for a period that coincides with the number of weeks of the payment to them as part of the TVSP, from the effective date of their separation/their employment terminates; unless they repay to the Crown a sum equivalent to the number of weeks' pay or part of a week remaining in the nominal period by reference to the number of weeks' remuneration paid to them upon termination.

For example, a full-time employee with 10 years unbroken completed years of service would be offered a TVSP (at 100%) equivalent to 30 weeks pay. The employment exclusion period for this employee would then be 30 weeks from the date the employee terminates by resignation.

For an employee whose TVSP payment is capped at 52 weeks' pay, the employment exclusion period would be 52 weeks.

Restrictions also apply to these persons being contracted by the South Australian Public Sector/Government, directly or through a third party.

Please refer to the Conditions applying to acceptance of TVSPs under Part 3 in the TVSP Guidelines.

12. What tax applies to TVSP payments?

TVSPs are being offered in response to savings initiatives on the part of the Government. An offer of a TVSP will only be made where a substantive position, duties or role is/are abolished as part of organisational change, resulting in an employee(s) becoming excess to the requirements of an agency and the employee being declared as excess.

On this basis, subject to a number of standard conditions being met, separation payments will be taxed as genuine redundancy payments.

The tax free component of genuine redundancy payments is indexed each income year, with information published by the Australian Taxation Office in May/June of each year.

It is important to note that the eventual tax liability payable by a participating employee in respect of the TVSP payment will depend on the personal and historical circumstances of the employee and all taxation issues will be between individuals and the Commissioner of Taxation. The South Australian Government and public sector agencies will bear no responsibility for any taxation issues arising from the payment of a TVSP.

<u>Employees considering an offer of a TVSP should obtain independent taxation/financial advice specific to their personal circumstances, at their personal expense.</u>

13. Where can further information about the TVSPs be obtained?

Guidelines and supporting information on TVSPs will be available at www.treasury.sa.gov.au

Fact Sheets are also available at www.supersa.sa.gov.au. Specific enquiries regarding superannuation should be directed to the numbers advised on the Fact Sheets.

Specific queries regarding TVSPs in your agency should be directed to officers in the Human Resources section of the agency employees are employed or work in.

SECTION TWO:

Information related to the particular requirements that apply to agencies and employees covered by the *South Australian Public Sector Wages parity Enterprise Agreement: Salaried 2014* and/or CPSE Determination 7: Management of Excess Employees – Redeployment, Retraining and Redundancy*.*

Q: What happens if I don't accept express interest in or accept the offer of a TVSP offer in the first three months of being declared excess to requirements?

A: A decision to not express interest in receiving an offer of a TVSP or to accept an offer of a TVSP effectively signals to the chief executive, agency head or delegate in the relevant agency that you desire the opportunity to seek to secure alternative substantive employment in the South Australian Public Sector on an ongoing basis; including with reasonable training and other skills development as appropriate. No further invitations to express interest or offers of a TVSP will be made unless you indicate at your own initiative to the chief executive, agency head or delegate in the relevant agency you now desire to be offered a TVSP and the chief executive, agency head or delegate decides then to offer you a TVSP.

Where an employee declared excess to requirements of an agency indicates a preference to seek to secure alternative substantive employment in the South Australian Public Sector on an ongoing basis and declines the invitation to express interest in receiving an offer of a TVSP or declines an offer of a TVSP within the first 3 months after being declared as excess (receiving written notification), the quantum of any payment included as part of a further offer of a TVSP will be reduced as set out in the answer to Question 8.

Other Relevant sources

- *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2014 Appendix A*
- Commissioner for Public Sector Employment: Determination 7: Management of Excess Employees – Redeployment, Retraining and Redundancy
- *Public Sector Act 2009*
- *Public Sector Regulations 2010*
- *Fair Work Act 1994*