



**Government
of South Australia**

Department of Treasury
and Finance

GUIDELINE

Targeted Voluntary Separation Packages (TVSPs) (other than for weekly paid employees)

The content of this Guideline forms part of the terms and conditions of any TVSP entered into between an employing authority and an employee.

This Guidelines **does not apply** to Voluntary Separation Packages for employees covered by the *South Australian Public Sector Wages Parity Enterprise Agreement: Weekly Paid 2015*. Please refer to that Agreement and other documentation relevant to VSPs and weekly paid employees.

Date of Operation	1 July 2015
Date of Last Update	July 2017
Date from which particular requirements apply to employees covered by <i>WPEA Salaried 2014/CPSE Determination 7</i>	4 December 2014
Date from which reduction to employment exclusion period applies (i.e. to coincide with the number of weeks' pay (100% TVSP) paid to an employee).	24 May 2017

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SECTION 1: KEY POINTS

Cabinet has approved the offering/provision of TVSPs to employees employed on an ongoing basis who are or become excess to the requirements of a public sector agency as a consequence of organisational change and who are not transferred to other ongoing public sector employment in a substantive position/role or duties.

An offer of a TVSP can only be made to an employee who a chief executive, agency head of or delegate in an agency has declared is excess to the requirements of that agency because the substantive position/role or duties they are/were employed in has been, or is to be abolished.

Employees employed on a casual or fixed term basis with no right to employment on an ongoing basis in the South Australian public sector are not eligible for a TVSP.

Employees employed at the Executive level on a fixed term basis are not eligible for a TVSP (*see below). Any entitlements such employees have, exist in legislation (i.e. section 44 of the *Public Sector Act 2009*) and/or per a contract of employment.

A non-executive employee to whom an offer of a TVSP is made and who accepts such offer, will receive a payment, calculated at the rate of 10 weeks' pay, plus an additional 2 weeks' pay for each completed year of service, up to a maximum 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.

Particular requirements apply to agencies and employees covered by the *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2014* and/or Commissioner for Public Sector Employment (CPSE) Determination 7: Management of Excess Employees – Redeployment, Retraining and Redundancy.

Employees made an offer of a TVSP should be given at least 3 weeks to consider it. An employee may agree in writing to waive the 3 week consideration period.

Employees who accept a TVSP are not eligible to be re-employed in the South Australian public sector:

- **for a period coinciding with the number of weeks of the payment to them as part of the TVSP, from the effective date of the termination of their employment by resignation; unless**
- **the individual repays 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 the termination of their employment by resignation.**

Restrictions also apply to them deriving an income or payments by being contracted by the South Australian Government, directly or through a third party during the 'employment exclusion period'.

Officers in agencies must ensure internal recruitment and procurement processes identify former employees who may be ineligible for employment, or to provide services to the South Australian Government and public sector as a consequence of accepting a TVSP. A centralised database is in place within the Office for the Public Sector to record details of all employees who accept a TVSP and the effective date of their

termination by resignation. It is incumbent officers in agencies to provide information to the Office for the Public Sector so as the data base is properly populated. Further, when any chief executive/agency head or delegate is considering either making an offer or recommending the making of an offer of employment to a person who currently is not a public sector employee; or engaging an individual on a contract for services; to check this database.

An employee eligible for a TVSP is only entitled to payment of monies coinciding with their actual entitlement. Persons who accept a TVSP and the related payment of monies are liable to repay to the Crown any overpaid amount, regardless of how the overpayment was caused and regardless of any error/s in correspondence to the recipient of the TVSP and how such error/s were caused.

Payments to any executive employee who is not employed on a fixed term basis will be in accordance with the arrangements detailed above - as applying to non-executive employees.

These Guidelines form part of the terms and conditions of any contract entered between a chief executive, agency head or delegate on behalf of the Crown and an employee in the form of a TVSP.

These Guidelines do not apply to Voluntary Separation Packages 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.

SECTION 2: PROCESS FOR MAKING OFFERS OF TVSPS AND PAYMENTS ARISING

Scope

Offers of TVSPs will be made to employees employed in agencies of the South Australian public sector, as determined by the Government from time-to-time.

An offer of a TVSP can only be made to an employee who a chief executive, agency head of or delegate in an agency has declared is excess to the requirements of that agency because the substantive position/role or duties they are/were employed in has been, or is to be abolished.

A chief executive, agency head or delegate may invite expressions of interest from eligible employees interested in receiving an offer of a TVSP; or proceed directly to make a formal offer to an eligible employee.

Particular requirements 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. This includes the requirement that a chief executive, agency head or delegate make an offer of a TVSP to an employee declared as being excess (subject to exceptions) if the employee remains excess/has not been successful in gaining alternative, substantive employment in the South Australian public sector on an ongoing basis within the first 3 months of being declared excess (date of written notice of being declared as excess).

Invitation to an employee to express interest in receiving an offer of a TVSP

An expression of interest is a preliminary and distinct process from the making of a formal offer of a TVSP in writing.

An invitation from a chief executive, agency head or delegate to an employee to express interest in receiving an offer of a TVSP should:

- make it clear to the employee that by expressing an interest in receiving an offer of a TVSP, they are under no obligation to accept a formal offer of a TVSP should one be made;
- make it clear that an invitation to express interest in receiving an offer of a TVSP does not guarantee that an offer of a TVSP will be made, except where required in accordance with CPSE Determination 7;
- advise the employee that they may be formally offered a TVSP; irrespective of whether they have expressed interest in being made an offer;
- advise the employee that if they do not express interest in being offered a TVSP, they will continue to be managed in accordance with the Government's policies applying to excess employees; and
- encourage the employee to seek independent advice at their own expense (including in relation to superannuation entitlements).

Additionally, for 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:

- the requirement that an employee be offered a voluntary separation agreement will be satisfied upon the invitation to an excess employee to express an interest in receiving an offer of a TVSP;
- as indicated, subject to the exceptions set out in the CPSE Determination 7, a chief executive, agency head or delegate must invite an employee declared as excess to the requirements of the agency to express an interest in receiving an offer of a TVSP within the first 3 months of them being declared as excess (receiving written notice). If an employee submits an expression of interest in receiving the offer of a TVSP, the date the employment of the employee will terminate upon resignation after accepting a TVSP may be a matter of negotiation between the chief executive, agency head or delegate and employee. Ultimately, however, a chief executive, agency head or delegate, makes an offer of a TVSP on a 'take it or leave it' basis, including with respect to the effective date termination by resignation; and
- it must be clear in any written invitation to an employee to express interest in receiving an offer of a TVSP that no further invitation will be issued but that an expression of interest in receiving the offer of a TVSP can be submitted by the employee at any time within the first 9 months of them being formally declared as excess to the requirements of the agency.

Offer of a TVSP

A formal offer of a TVSP by a chief executive, agency head or delegate to an employee must:

- be made using the 'Formal TVSP Offer and Acceptance' *pro forma* provided in Appendix 2, which, *inter alia*, includes a clause requiring repayment of any amount paid to the employee they were not entitled to;
- include a copy of this Guideline given that its content forms part of the terms and conditions of a TVSP;
- provide for the separation/termination (resignation) of the employee to be effective on a date determined by the chief executive, agency head or delegate; or as otherwise agreed between the parties;
- make it clear to the employee that they are under no obligation to accept an offer of a TVSP and that if they do not accept an offer, they will continue to be managed in accordance with the Government's policies applying to excess employees;
- urge the employee to seek independent financial, legal and/or superannuation advice at their own expense, including as to superannuation entitlements;
- advise the employee they will be personally responsible for any taxation issues arising from acceptance of an offer of a TVSP; and
- make it clear to the employee that, if they accept an offer, they will be ineligible to be employed in or engaged by a public sector agency or derive an income from the public sector directly or indirectly during the relevant employment exclusion period, unless they repay the relevant proportion of the payment they received as part of the TVSP.

Chief executives, agency heads or delegates should ensure that employees are provided with not less than 3 weeks from the date they receive a formal offer of a TVSP to consider the offer, unless this period is waived in writing by an employee.

SECTION 3: PARAMETERS OF THE SCHEME

Participation

An offer of a TVSP can only be made to an employee employed on an ongoing basis who the chief executive, agency head of or delegate in an agency has declared is excess to the requirements of that agency because the substantive position/role or duties they are/were employed in has been, or is to be abolished. Abolition of positions/roles or duties is a core feature of voluntary separation schemes such as TVSP schemes *vis-a-vis* the criteria for genuine redundancy under Australian Taxation law. This is so irrespective of the source of funding for the payment made in a TVSP.

Employees employed on a casual basis, executive employees* and employees employed on a fixed term basis with no right to employment on an ongoing basis in the South Australian public sector are not eligible for a TVSP.

*Executive employees employed otherwise than on a fixed-term basis under the *Government Management and Employment Act 1985* are eligible for a TVSP, calculated on the same basis as applies to non-executive employees, up to the equivalent of their annual remuneration (i.e. a maximum payment of 52 weeks' pay).

Particular requirements apply to agencies and employees covered by the *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2014* and/or the provisions of CPSE Determination 7: Management of Excess Employees – Redeployment, Retraining and Redundancy. Officers in affected agencies should refer directly to these instruments and seek advice as necessary, to ensure compliance.

TVSPs must be managed and administered on a confidential basis, including invitations to employees to express interest in receiving an offer of a TVSP.

Calculation of the payment made with a TVSP

The calculation of the payment made with a TVSP is based on 'years of service' as follows:

- a minimum payment of 10 weeks' pay (as defined), plus 2 weeks' pay for each completed year of service, with 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.

Step-down in quantum

If an eligible employee 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 declared as excess to the requirements of the relevant 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 and has been so 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 and has been so 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 employees

For an employee who has worked on a part-time basis for any period of at least one calendar month at any stage during their 'years of service', the payment made with a TVSP is calculated in accordance with Appendix 3: Part-time service.

Conditions applying to acceptance of TVSPs

An offer and payment of a TVSP is conditional upon:

- (1) the employee resigning from all employment in the South Australian public sector;
- (2) the employee agreeing that he or she will not apply for, accept, engage or remain in any 'employment' or 'work' whatsoever (whether as an employee, trainee or apprentice) in the South Australian Public Sector or any office in or for the South Australian Government, whether remunerated or otherwise and whether temporary, casual, contract, ongoing or by appointment, within the 'employment exclusion period' (see Definitions) that applies for the employee;
- (3) the employee agreeing that he or she or any associated entity of him or her, will not enter any contract to provide services to a South Australian Public Sector agency or the South Australian Government within the 'employment exclusion period', whereby the employee is to personally perform all or a 'substantial part' (see Definitions) of the work to be

performed under that contract;

- (4) the employee agreeing that he or she will not provide services to a South Australian Public Sector agency or the South Australian Government within the 'employment exclusion period' as an employee or contractor of a labour hire agency or other body contracted to provide personnel to carry out work or to provide services for a South Australian Public Sector agency or the South Australian Government, that work or services being work or services that would normally be expected to be carried out by an employee of that South Australian Public Sector agency or South Australian Government;
- (5) the employee agreeing that he or she will not, within the 'employment exclusion period', perform the 'same or similar work functions' (see Definitions) for a third party, in respect of work required pursuant to a current 'arrangement' (see Definitions), or an extension of a current 'arrangement', or an 'arrangement' being negotiated at the time the employee received the TVSP, to be provided by that third party to a South Australian Public Sector agency or the South Australian Government. Nothing in this paragraph is intended to prevent the employee from accepting employment where he or she is to perform work or provide services to a body which receives funding from the South Australian Public Sector or South Australian Government to assist it in providing services to the community on a non-profit basis;
- (6) the employee having notified the agency of each and every compensable injury or disability;
- (7) the employee not suffering any compensable injury or disability between the date of the offer of the TVSP and the time at which the employee completes his or her final day of service as an employee in the South Australian Public Sector;
- (8) the employee not having any entitlement, and the employee or their dependant(s) not becoming entitled, to weekly payments in respect of a compensable injury or disability;
- (9) the employee not having any outstanding claims under the *Workers Rehabilitation and Compensation Act 1986* or *Return to Work Act 2014* and having finalised any claims;
- (10) the employee (or the employee's estate) repaying an amount equal to the weekly payments up to the amount paid as a TVSP payment, if any employee receives any subsequent weekly payments (following the date of their effective resignation from the South Australian Public Sector) in respect of a compensable injury or disability relating to the employee's employment in the South Australian Public Sector; and
- (11) the payment as part of the TVSP not exceeding the sum payable in accordance with the terms and conditions of the TVSPs, outlined above. Any amount paid in excess of the sum payable shall be repayable within seven (7) days of a demand and any sum incorrectly stated as being payable, shall be adjusted to accurately state the sum payable. The repayment shall be payable and the adjustment shall be made irrespective of the cause or nature of the error or omission.

A Chief Executive or other agency head or delegate will not employ, pursuant to a contract of employment or engage pursuant to a contract for services, any former employee that has separated with a voluntary separation package:

- **for a period coinciding with the number of weeks of the payment to them as part of the TVSP, from the effective date of the termination of their employment by resignation; unless**
- **the individual repays 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 the termination of their employment by resignation.**

Volunteers to Government

A person who resigns from employment in the South Australian public sector upon accepting a TVSP is not prohibited (at the discretion of the relevant chief executive, agency head or a delegate), within the 'employment exclusion period' immediately following their resignation, from:

- seeking to act or acting in a voluntary capacity in the following public sector agencies that administer or provide emergency services to the public, the:
 - SA Ambulance Service; or
 - Country Fire Service; or
 - SA Emergency Service; or
- seeking to act or acting in a voluntary capacity in any public/Government school;
- seeking to act or acting in a voluntary capacity in any public/Government incorporated hospital or health centre; or
- seeking to undertake or undertaking as a student a placement in any public sector agency where such placement forms an official part of the person's studies towards a recognised tertiary qualification.

The above does not extend to membership of, or appointment to, a South Australian Public Sector/Government board or committee (whether statutory or advisory or otherwise) and appointment to a court or tribunal.

Chief executives, agency heads or delegates have discretion as to whether to authorise any individual to act as a volunteer in a public sector/Government organisation and thus the above does not correlate to an unabridged, automatic right to every person to act as a volunteer post resignation.

Workers compensation (Workers Rehabilitation and Compensation Act 1986 or Return to Work Act 2014)

It is Government policy that no employee will be offered a TVSP until the finalisation of all of the employee's open or outstanding claims in respect of alleged compensable injury or disability. Where an employee sustains an injury or disability after receiving an offer of a TVSP and they claim such injury or disability is compensable, no payment under a TVSP will be paid, nor will other conditions of the TVSP become effective until finalisation of that claim/s.

Employees will be required to indicate to a chief executive, agency head or delegate, any injury or disability they claim to have arising in the workplace/in the course of their employment in the South Australian Public Sector, that is potentially the subject of a

claim that the injury or disability is compensable. Employees must be reminded of the conditions attached to acceptance of a TVSP, including the condition that an employee will not receive both weekly payments of income maintenance and a financial payment pursuant to a TVSP.

If a chief executive, agency head or delegate considers that an employee has an outstanding claim that that an injury or illness is compensable, they must ensure that such claim(s) is assessed and finalised prior to an offer of TVSP being made to the employee. Agencies seeking advice on this issue may contact the Human Resource section within the agency they are employed in; or the Office for the Public Sector within the Department of the Premier and Cabinet on 8226 2683.

It is essential that sufficient time be allowed for the proper investigation and determination of any claim.

In exceptional circumstances, a TVSP may be offered to an employee notwithstanding that determination of their entitlement to compensation has not been resolved. Any exceptions must be authorised by the chief executive or agency head or a delegate in the employing agency. Any such offer of a TVSP must be conditional upon the finalisation of any and all claims/matters relating to employment in the public sector. No agreement for a TVSP is possible until claim(s) have been finalised.

Under no circumstances is an employee to be offered a TVSP when he/she has an outstanding claim for compensation relating to an alleged workplace injury or disability.

Death of an employee

Where an employee who has accepted an offer of a TVSP dies before their employment ends, or before a TVSP payment is effected, payment of the TVSP payment should be made in the same manner as outstanding payments to the employee's estate for the value of accrued recreation and long service leave entitlements.

Employees made an invitation to express interest

Employees being invited to express an interest receiving an offer of a TVSP or being offered a TVSP are to be given a reasonable time (at least 3 weeks) to consider the invitation or offer.

Employees considering an invitation to express interest in receiving an offer of a TVSP or the offer of a TVSP are urged to seek independent professional personal and financial advice, at their own expense. Employees who are members of a registered industrial organisation may seek advice from officials of that organisation.

Employees who require further clarification of any aspect of a potential TVSP should contact their manager or an officer in the Human Resources section of the agency they are employed in.

Superannuation information

Information on superannuation benefits for TVSP recipients are outlined at Appendix 4. Employees should be strongly encouraged to seek comprehensive professional advice as to superannuation entitlements if considering an invitation to express interest in receiving a TVSP or an offer of TVSP.

Taxation

A payment made to an employee is a genuine redundancy payment if it satisfies all criteria set out in section 83-175 of the *Income Tax Assessment Act 1997* (ITAA 1997).

TVSP payments made in accordance with these Guidelines and the TVSP agreement (contract) will qualify as genuine redundancy payments, subject to a set of standard conditions being met (including age-based criteria).

Section 83-170 of the ITAA 1997 applies to determine the tax-free treatment of the genuine redundancy payment. This section places a limit on the amount of a genuine redundancy payment that is eligible for concessional tax treatment. The formula for working out the tax-free amount is:

$$\text{Base amount} + (\text{Service amount} \times \text{Years of Service (whole years)})$$

The base limit and service amount limit is indexed annually and published by the Australian Taxation Office (ATO) in May/June for the following tax year.

Section 83-165 of the ITAA 1997 states that any part of a genuine redundancy payment that is not tax-free under Subdivision 83 will normally be an employment termination payment.

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 participating employee. **Employees considering an invitation to express interest in receiving a TVSP or the offer of a TVSP should obtain independent taxation advice specific to their personal circumstances, at their expense.**

It is also important to note that all and any taxation liabilities arising from the payment as part of a TVSP are a matter between the employee and the ATO and the public sector bears no responsibility or liability.

SECTION 4: DEFINITIONS

Executive

An 'executive' for the purposes of this Guideline means any employee who is employed in a role with the classification types EL, EX, MLS or SAES and/or who is otherwise legislatively or contractually defined as an executive.

South Australian public sector

For the purposes of this determination 'South Australian public sector' means –

- (a) a Minister; or
- (b) a chief executive of an administrative unit; or
- (c) an administrative unit; or
- (d) an employing authority; or
- (e) any other agency or instrumentality of the Crown; or
- (f) a body corporate —
 - (i) comprised of persons, or with a governing body comprised of persons, a majority of whom are appointed by the Governor, a Minister or an agency or instrumentality of the Crown; or
 - (ii) subject to control or direction by a Minister; or
- (g) a person or body declared under subsection (3) to be a public sector agency; or
- (h) a subsidiary of a Minister or a person or body referred to in a preceding paragraph,

but does not include

- i. a person or body declared under an Act not to be part of the Crown or not to be an agency or instrumentality of the Crown; or
- ii. a person or body declared under subsection (3) of the *Public Sector Act 2009* not to be a public sector agency.

Salary sacrifice agreement

For the purposes of the TVSP scheme, a 'salary sacrifice agreement' is a formal agreement between the employee and the employing agency relating to certain salary sacrifice arrangements. Employees should note from the definition of weeks' pay that the TVSP payment is calculated as if the employee had not been subject to a salary sacrifice agreement.

Subsequent employment and services

Arrangement

'Arrangement' includes any contract or purchasing arrangement, whether or not that contract or purchasing arrangement is legally binding.

Associated Entity

'Associated entity' for the purposes of the TVSP scheme means:

- any partnership of which the recipient of a TVSP payment is a member; and/or
- any private company in which he or she is a shareholder or office bearer; and/or
- any private company which acts as the trustee of a trust under which he or she is a beneficiary or is included amongst the class of potential beneficiaries.

Employment

'Employment' has its usual legal meaning and in addition, for the purposes of the TVSP scheme, 'employ' and 'employment' includes membership of, or appointment to, a board or committee (whether statutory or advisory or otherwise) and appointment to a court or tribunal.

Employment Exclusion Period

For the purposes of the TVSP scheme, the 'employment exclusion period' is a period, immediately following the effective date of an employee's resignation, that coincides with the number of weeks' pay (based on 100% TVSP) paid to the employee at the time of/in conjunction with their termination by resignation.

Excess to requirements

For the purposes of the TVSP scheme, an employee is excess to requirements when they are formally declared to be excess to requirements by a chief executive, agency head or delegate.

Same or similar work functions

'Same or similar work functions' means a position, role, duties or function within the same broad occupational group or profession, or involving the performance of or responsibility for a function similar to that performed by the employee in a previous position, or the utilisation of specific skills and knowledge used in a previous position, role or duties.

Substantial part

'Substantial part' includes work, services, duties or tasks that, regardless of the time taken to perform or deliver, are important to the South Australian public sector and/or Government.

A Week's pay

Full time employee

Where an employee has worked on a full time basis for the 12 months prior to separation/termination, a 'week's pay' for the purpose of calculating a payment as part of a TVSP means gross ordinary time earnings for the 12 months prior to resignation, converted to a weekly rate. This means the employee's actual earnings for the

previous 12 months, excluding leave loading and payments for overtime and payments of attraction or retention or higher duties allowances.

Payments received for performing duties under a mixed functions/additional duties arrangement are to be included in the calculation of a week's pay. Payments made as attraction or retention allowances are not to be included in the calculation of a week's pay.

Allowances which relate to skills, conditions of work (e.g. shift allowance, tradesperson allowance, dirt money or tool allowance) are also included in the calculation of a week's pay, but a locality allowance and/or camping allowance (however described) and/or reimbursement of actual expenses incurred by employees (e.g. accommodation, travel, child-care, relocation or telephone) are not to be included.

A 'week's pay' is not the employee's wage at the time of resignation/termination, nor the salary at the time of resignation converted to a weekly rate.

Part-time employee

As per full time employees, except that where an employee has worked part-time for any period during the 12 months prior to separation/termination, a 'week's pay' for the purposes of calculating a TVSP payment means their full-time equivalent gross ordinary time earnings.

Workers compensation/payments or compensation for compensable injury or disability

Where an employee has been receiving weekly payments for a compensable workplace injury or disability during the 12 months prior to ending their employment, in calculating gross ordinary time earnings, the payment as part of a TVSP is based on 100% of gross ordinary time earnings that would have been payable to the employee but for their eligibility for weekly payments.

Leave without pay

For the purpose of determining a week's pay in calculating a TVSP payment for employees who have been on leave without pay (for reasons other than employment in another South Australian public sector agency, i.e. parental leave or leave without pay to work in a non-South Australian Public Sector agency) for all or part of the 12 month period preceding the date of effective separation/termination, the agency shall calculate the gross ordinary time earnings as if the employee had been on duty and eligible to be remunerated.

Salary sacrifice

Where an employee, during any period in the 12 months prior to the effective date of separation/termination, was subject to a salary sacrifice agreement, the calculation of a week's pay will be as if the employee had not been subject to a salary sacrifice agreement.

Years of service

'Years of service' for the purpose of calculating the payment as part of a TVSP is the period of an employee's continuous employment in the South Australian public sector up to the effective date of separation/termination, expressed in calendar years or parts thereof.

Where an employee has had more than one period of employment in the South Australian public sector, only the continuous period of employment from the most

recent engagement to the effective date of separation/termination is 'years of service' and relevant for the purpose of calculating the payment as part of a TVSP. Historic service does not count as 'years of service' and is not relevant for TVSP purposes, regardless of the reason for the termination of previous periods of employment/break(s) in service, except where:

- an employee who, prior to the introduction of maternity/parental leave, was required to resign from the public sector as a result of pregnancy or the birth of a child; or
- an employee resigned from one South Australian public sector agency and had a break of service of less than three months' duration before taking up employment in the same or another South Australian Public Sector agency.

Periods of absence from duty treated as leave without pay do not cause a break in service for other purposes, but do not count towards 'years of service' for the purpose of calculating a payment as part of a TVSP, regardless of the reason for such leave.

Notwithstanding that prior service with some other non-South Australian public sector organisations is recognised for certain purposes, it is not relevant as to the calculation of 'years of service' in respect of a payment made as part of a TVSP, subject to the exceptions that follow.

Employees who were absent from employment in the South Australian public sector due to National Service between 1965 and 1972 will have that service/period recognised as 'years of service' for the purpose of calculating a payment as part of a TVSP.

Commonwealth service for ex-Commonwealth employees of the Repatriation General Hospital (RGH), who were employees of RGH at the time of the transfer of the hospital from the Commonwealth to the State (9 March 1995), will be recognised, for the purpose of calculating a payment as part of a TVSP.

Employment in an organisation outside the South Australian public sector will count as 'years of service' for the purposes of calculating a payment as part of a TVSP where that service resulted from:

- Corporate Affairs powers having been transferred to the Commonwealth Government and the employee having been then employed in the South Australian Public Sector consequent on the provisions of the *Corporations (South Australia) Act 1990* (Part 13 Transitional);
- the privatisation of the Electricity Trust of South Australia and the employee having returned to employment in the South Australian Public Sector pursuant to the provisions of the *Electricity Corporations (Restructuring and Disposal) Act 1999* (Part 4 Staff);
- consequent to the various functions of state health professional regulatory entities becoming the responsibility of the Australian Health Practitioner Regulation Agency (AHPRA) and the employee having returned to employment in the South Australian Public Sector pursuant to the provisions of the *Health Practitioner Regulation National Law (South Australia) Act 2010* (Division 3 – Section 37 – Staff); and
- employment in an antecedent Animal and Plant Control Board, abolished upon the formation of Natural Resource Management Boards consequent on the provisions of the *Natural Resources Management Act 2004*, will count as service for the purpose of calculating a payment as part of a TVSP.

Provided, in all of the above circumstances, that there was no interruption as between the employment in the organisation outside the South Australian public sector and employment in the South Australian public sector.

APPENDIX 1: CRITERIA FOR MAKING OFFERS OF TVSP TO AN EMPLOYEE

The following criteria applies when chief executives, agency heads or delegates are considering offering a TVSP to an employee(s):

1. An offer of a TVSP can only be made to an employee employed on an ongoing basis who the chief executive, agency head of or delegate in an agency has declared is excess to the requirements of that agency because the substantive position/role or duties they are/were employed in has been, or is to be abolished. This is so, regardless of the source of funding for payments made with TVSPs.
2. Whilst it is a question of fact as to whether an employee is or will become excess to the requirements of an agency, the decision as to whether to abolish positions/roles or duties such that employees become excess and if so, to formally declare them as excess, is one for the discretion of a chief executive, agency head or delegate in an agency of the South Australian public sector.

Particular requirements apply to agencies and employees covered by the South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2014 and/or Commissioner for Public Sector Employment (CPSE) Determination 7: Management of Excess Employees – Redeployment, Retraining and Redundancy.

3. The decision to accept an offer of a TVSP is solely one for employees.
4. Employees employed on a casual basis or those employed subject to fixed term contracts, including executive employees (save for a small number of executive employees not employed on this basis) and who have no right to employment on an ongoing basis in the South Australian public sector are not eligible for a TVSP and are not to receive offers.
5. Offers of a TVSP may be made to eligible employees (and employees may accept offers) on a conditional basis, making it clear that a TVSP will only be payable when any and all claims of compensable injury or disability by the employee, or other employment-related matters/claims/proceedings, have been finalised.
6. Chief executives, agency heads or delegates may not amend the terms and conditions of a TVSP i.e. to exempt employees from conditions of acceptance of a TVSP offer or to veto or substitute any of the criteria outlined in these Guidelines and other supporting information.

APPENDIX 2: OFFER LETTER

[Page deliberately blank – Chief Executives will issue offers directly to employees]

APPENDIX 3: PART-TIME SERVICE

The following outlines how to calculate a TVSP for employees with periods of part-time service:

Where an employee has worked on a part-time basis for any period of at least one calendar month at any stage during their 'years of service', the rate of their TVSP is adjusted so as to take into account their periods of part-time service, as represented in the following formula:

Formula

$$[10 + (2 \times \text{YFTES})] \times \text{WP}$$

YFTES = Years of Full-time Equivalent Service = service converted to the equivalent of fulltime service, then count completed years = $\text{YS} \times \text{PTA}$.

PTA = Part-time adjustment, which means the part-time and full-time periods of eligible service of an employee calculated in accordance with the relationship between actual hours worked and normal full-time hours, over the period of eligible service.

YS = Years of Service.

WP = Weeks' Pay = gross ordinary time earnings converted to full-time equivalent rate.

APPENDIX 4: SUPERANNUATION

Superannuation resignation entitlements for TVSP recipients

In addition to the payment made as part of a TVSP, an employee is entitled to a superannuation resignation entitlement if aged under 55 or a superannuation retirement entitlement if aged over 55. The superannuation resignation entitlement payable to the employee depends on the superannuation scheme of which the employee is a member. That is, the defined benefit schemes ('Pension' Scheme and Lump Sum Scheme) or the Triple S Scheme. Where employees are members of other schemes, contact needs to be made directly with the relevant superannuation scheme.

Pension Scheme

An employee aged under 55 is entitled to either:

1. a lump sum entitlement equal to the sum of:
 - (a) the Member Account;
plus
 - (b) an employer financed entitlement equal to the lesser of two and a half times the balance of the Member Account or, two and a half times the balance that would have constituted the Member Account, if the member had contributed to the scheme at their standard contribution rate throughout their contributory membership.

A component of the lump sum, equivalent to the Commonwealth's Superannuation Guarantee from 1 July 1992 to the date of ceasing service, will be subject to preservation. The preserved component can either remain in the Pension Scheme or be rolled over to another complying superannuation scheme.

The balance of the lump sum entitlement can be taken immediately in cash (less tax) or be rolled over to another complying superannuation scheme.

This is option (a) in the 'Acceptance of TVSP Offer'. The entitlement is determined in accordance with Section 39A (3a) of the *Superannuation Act 1988*.

Or

2. an immediately payable pension (with commutation rights) for members who have attained the age of 45. The immediate payable pension is based on the actuarial value of the preserved pension that would normally be payable at the age of 55.

This is option (b) in the 'Acceptance of TVSP Offer'. The entitlement is determined in accordance with Section 39A (3g) of the *Superannuation Act 1988* (SA).

Employees can elect to accept an offer of a TVSP and preserve their superannuation entitlements if they are under the age of 55. They are under no obligation to accept the superannuation resignation entitlement (i.e. a lump sum), or the actuarially determined immediately payable pension.

This is option (g) (i) in the 'Acceptance of TVSP Offer'. The entitlement will be determined in accordance with Section 39(1) (b) of the *Superannuation Act 1988*.

Employees over age 55 years may access their normal superannuation retirement entitlement.

This is option (f) in the 'Acceptance of TVSP Offer'.

Lump Sum Scheme

An employee aged under 55 is entitled to either:

1. a lump sum entitlement equal to the sum of:
 - (a) the Member Account;
plus
 - (b) an employer financed entitlement equal to the lesser of twice the balance of the Member Account or, twice the balance that would have constituted the Member Account, if the member had contributed to the scheme at the rate of 6% of their salary throughout their contributory membership.

A component of the lump sum, equivalent to the Commonwealth's Superannuation Guarantee from 1 July 1992 to the date of ceasing service, will be subject to preservation. The preserved component can either remain in the Lump Sum Scheme or be rolled over to another complying superannuation scheme.

The balance of the lump sum entitlement can be taken immediately in cash (less tax) or be rolled over to another complying superannuation scheme.

This is option (c) in the 'Acceptance of TVSP Offer'. The entitlement is determined in accordance with Section 28A of the *Superannuation Act 1988*.

Or

2. a lump sum entitlement equal to the sum of:
 - (a) the Member Account; plus
 - (b) an employer financed entitlement equal to the lesser of twice the balance of the Member Account or, twice the balance

that would have constituted the Member Account if the member had contributed at the rate of 6% of their salary throughout their contributory membership; plus

- (c) an employer financed entitlement equal to the years of membership after 30 June 1992 multiplied by 3.4% multiplied by final annual salary.

This entitlement is subject to preservation to a minimum of age 55, cannot be taken immediately in cash, and must be rolled over to another complying superannuation scheme.

This is option (d) in the 'Acceptance of TVSP Offer'. The entitlement is determined in accordance with Section 28(5) of the *Superannuation Act 1988*.

Employees can elect to accept a TVSP and preserve their superannuation entitlements if they are under the age of 55. They are under no obligation to accept the superannuation resignation entitlements.

This is option (g) (ii) in the 'Acceptance of TVSP Offer'. The entitlement will be determined in accordance with Section 28 of the *Superannuation Act 1988*.

Employees over age 55 years may access their normal superannuation retirement entitlement.

This is option (f) in the 'Acceptance of TVSP Offer'.

Triple S Scheme

An employee aged under 55 is entitled to a lump sum entitlement equal to the sum of:

- (a) the Member Account (if applicable),
plus
- (b) the Employer Account,
plus
- (c) Rollover Account (if applicable),
plus
- (d) Co-contribution Account (if applicable).

The Member Account and Rollover Account can be taken immediately in cash (less tax), preserved in the scheme or be rolled over to another complying superannuation scheme. If part or all of the Rollover Account is subject to preservation as a result of the fund from which it came, then that part cannot be taken in cash.

The Employer Account and Co-contribution Account must be preserved in the scheme or be rolled over to another complying superannuation scheme, where it will also be preserved to a minimum of age 55.

This is option (e) in the 'Acceptance of TVSP Offer'. The entitlement is determined in accordance with Regulation 55 of the *Southern State Superannuation Regulations 2009*.

Employees over age 55 receive their normal superannuation retirement entitlement.

This is option (f) in the 'Acceptance of TVSP Offer'.

Employees can elect to accept a TVSP and preserve their superannuation entitlements if they are under 55. They are under no obligation to take payment of their Member Account and Rollover Account.

This is option (g) (iii) in the 'Acceptance of TVSP Offer'. The entitlement will be determined in accordance with Regulation 55 of the *Southern State Superannuation Regulations 2009*.

If you are a member of the Pension Scheme, Lump Sum Scheme or Triple S Scheme and intend to advise Super SA separately regarding your superannuation entitlement, this is option (h) in the 'Acceptance of TVSP Offer'.

Superannuation information

Superannuation details are only available on an individual employee basis. To enable employees to obtain indicative quotes regarding their circumstances they should contact Super SA on:

Triple S Scheme members please call 1300 369 315 or 8207 2094; and

Lump Sum or Pension scheme members please call 1300 364 941.

Superannuation entitlements as described above are optional. Employees can accept a TVSP, resign and preserve their existing superannuation entitlements.

Employees are encouraged to deal directly with Super SA to ensure all of their superannuation issues are arranged specifically in accordance with their requirements.

Superannuation entitlements will be payable in accordance with the instructions of the employee as soon as practical after the employee resigns.

If you elect to receive all or part of your entitlement in cash (i.e. paid directly to you), you are required to provide Proof of Identity documents before payment can be made. For more information, see the Proof of Identity Fact sheet on the Super SA website, www.supersa.sa.gov.au, or alternatively please feel free to contact Super SA.