

**Directive 22/16***Supersedes:3/15***Voluntary Medical Retirement (VMR Scheme)****Commission Chief Executive Directive**

This text box does not form part of the directive

Under the [Human Rights Act 2019](#) decision makers have an obligation to act and make decisions in a way that is compatible with human rights, and when making a decision under this directive, to give proper consideration to human rights.

**1. Purpose**

To establish the conditions and entitlements of permanent public service employees under a voluntary medical retirement scheme.

**2. Effective date**

16 September 2016

**3. Legislative provisions**

Sections 53(baa), 53(c) and 136 of the *Public Service Act 2008* (PSA)

**4. Application**

This directive only applies to persons employed in the agencies listed on the Directives website as participating agencies. The VMR Scheme only applies to permanent public service employees.

Where a permanent public service employee of a participating agency holds more than one public service role, the application of the directive is extended to their employing agency (including a non-participating agency) but only in respect of that employee.

**5. Previous references**

Directives 5/13, 9/14 and 16/14

**6. Related information**

While this directive sets out the voluntary medical retirement process, the Commission Chief Executive Guideline on Mental or Physical Incapacity provides guidance on the implementation of the involuntary ill-health retirement provisions in Chapter 5, Part 7 of the PSA.



## 7. Obligations of participating agencies

- 7.1 Participating agencies are to communicate the VMR Scheme to their employees and publish procedures to guide managers and employees about the process.

## 8. Managing illness or injury impacting upon the performance of duties

- 8.1 The Queensland Government is committed to supporting public service employees who experience illness or injury to maintain their employment, including, where appropriate, through the application of reasonable adjustment.
- 8.2 The directive provides a scheme for managing situations where reasonable adjustment measures have been considered and the employee cannot continue to perform the duties of their substantive role or other roles for which they are reasonably qualified due to injury or ill-health.
- 8.3 The processes under this directive should be implemented with appropriate sensitivity and respect in accordance with the management and employment principles of the PSA.
- 8.4 Voluntary medical retirement is not an alternative to performance or conduct management obligations under section 26 of the PSA.
- 8.5 An employee subject to a current disciplinary process cannot apply for or be offered a VMR package.

## 9. Relationship with PSA – mental or physical incapacity

- 9.1 Voluntary medical retirement is a distinct and separate process from an independent medical assessment and subsequent decision under Chapter 5, Part 7 of the PSA.
- 9.2 The PSA allows a chief executive to effectively and appropriately manage employees where their attendance and/or performance may be affected by mental or physical illness. This includes a direction to attend an independent medical assessment.
- 9.3 An employee cannot apply for a voluntary retirement package after the employee has been directed in writing to attend an independent medical assessment, unless invited to do so by the chief executive or the chief executive has made a decision under section 178 of the PSA to continue an employee's employment with or without reasonable adjustment.
- 9.4 Where a chief executive makes a decision not to offer a voluntary medical retirement package or an employee declines an offer under clause 11.3, the chief executive should consider what action, if any, should be taken under Chapter 5, Part 7 of the PSA.

## 10. VMR application

- 10.1 A public service employee may initiate an application for a voluntary medical package where they have medical evidence that they have an injury or illness that prevents (or is reasonably likely to prevent) them from continuing in or returning to their substantive role or other roles for which they are reasonably qualified.

- 10.2 An agency representative may suggest to an employee that they consider

seeking medical advice to determine whether they should apply to retire under this directive.

10.3 The medical evidence must address:

- (a) the employee's illness or injury including the short-term and long-term prospects for rehabilitation or reasonable adjustment; and
- (b) the impact on the employee's ability to safely and effectively perform their current or other roles for which they are reasonably qualified.

10.4 The employee must provide medical evidence which the chief executive considers sufficient to decide the employee's VMR application and is to include one specialist medical opinion.

10.5 The employee is responsible for meeting the costs associated with obtaining the medical evidence and any additional information requested by the chief executive.

10.6 The chief executive may request the provision of independent medical advice and the department will be responsible for the associated cost.

10.7 An application under clause 10.1 must also state whether the employee holds more than one public service role. If so, the application must state the role titles, enclose a copy of the role description for all roles and must address the impact of the injury or illness on all roles. Where multiple roles exist, clause 12 applies.

## 11. VMR application – factors to consider and process

11.1 In considering an application under clause 10.1, the chief executive must have regard to:

- (a) the medical evidence, including the likely prospects of rehabilitation;
- (b) the ability to implement reasonable adjustment to support the continued employment of the employee; and
- (c) the availability of other roles within the agency to which the employee may be transferred or redeployed.

11.2 Following a consideration of the factors set out in clause 11.1, a VMR application must be approved where the chief executive considers that the medical evidence sufficiently supports the application.

11.3 Where the chief executive supports an application under clause 10.1, a letter of offer outlining the voluntary medical retirement package must be sent to the employee. The letter of offer must:

- (a) provide the employee with two weeks to advise of their decision. Where no decision is advised within two weeks, the employee is deemed to have declined the offer, unless an extension is agreed to by the chief executive. Any extension under this clause must be reasonable and take into account the interests of the employer and employee in achieving an early resolution;
- (b) nominate a proposed separation date, however this date can be amended by mutual agreement. A nominated separation date should reflect that the agency has medical evidence that the employee cannot continue in their role and that achieving an early resolution is in the interests of the employer and the employee; and
- (c) attach a copy of this directive.

- 11.4 Where the chief executive does not support an application under clause 10.1, the employee must be provided with reasons in writing.
- 11.5 Where a current public service employee is dissatisfied with the decision not to approve a VMR application, the employee may have a right of appeal under the PSA, provided the employee has reasonably used the department's complaints process prior to lodging the appeal.

## 12. Employees with multiple roles

- 12.1 Where an employee holds multiple roles that are:
  - (a) substantially the same, and/or
  - (b) the nature of the illness or injury is such that it impacts on the employee's ability to continue in more than one / all of the roles,an application under clause 10.1 must be made simultaneously in relation to all relevant permanent roles.
- 12.2 Where an employee holds multiple roles within an agency the chief executive must consider the factors in clause 11.1 in relation to each role.
- 12.3 Where an employee holds a role in more than one participating agency the chief executives of the employee's agencies must:
  - (a) consult with each other about any offer, including any transfer opportunities to maintain employment
  - (b) consider the application to retire in respect of the roles in their agency.
- 12.4 Where an employee holds multiple roles including a role in a non-participating agency:
  - (a) the chief executive of the participating agency must consult with the chief executive(s) of the other agency(ies) about any offer, including any transfer opportunities to maintain employment
  - (b) the chief executive(s) is/are responsible for determining whether any offer of a voluntary medical retirement package is contingent upon the employee separating from all public service roles.
- 12.5 Where an employee who holds multiple roles, and as a result of clauses 12.3 or 12.4, is transferred such that their full-time equivalency equals or exceeds that of their combined roles, a voluntary medical retirement package may not be offered.
- 12.6 Where an employee who holds multiple roles, and as a result of clauses 12.3 or 12.4, is offered an increase to their full-time equivalency in one role, such that it equals or exceeds that of the combined roles, a voluntary medical retirement package may not be offered.

## 13. Voluntary medical retirement package

A voluntary medical retirement package comprises the following:

- (a) accrued recreation leave;
- (b) accrued long service leave for employees who have worked for at least five (5) years, on the basis of 1.3 weeks for each year of continuous service and a proportionate amount for an incomplete year of service;

- (c) a severance payment of two weeks full-time pay per full-time equivalent year of service and a proportionate amount for an incomplete year of service paid at the employee's substantive appointed level. The minimum payment is four weeks pay, and the maximum is 52 weeks.

13.2 A voluntary medical retirement package for employees working on a part-time basis (as at the date of proposed separation) is to be calculated on a pro-rata basis.

## 14. Taxation and disability payments

14.1 Employees are responsible for seeking their own advice in relation to financial and taxation issues and superannuation entitlements associated with accepting a voluntary medical retirement package, including the type and number of medical reports necessary to meet Australian Tax Office requirements for employment termination payments.

14.2 An employee receiving a VMR package may not necessarily be eligible for a disability payment under a superannuation scheme or a disability pension as different requirements must be met (for example, a Total and Permanent Disability Payment under the Queensland Government Superannuation Fund).

## 15. Re-engagement

15.1 A person who accepts a voluntary medical retirement package under this directive may be re-engaged as a consultant, contractor, or employee in a Queensland Government entity provided that:

- (a) the person provides medical evidence that clearly and unambiguously states that the person's current condition would not affect their ability to safely and effectively perform the proposed role and re-engagement would not pose a risk of worsening or aggravating an existing injury or illness, including the injury or illness for which the person accepted a voluntary medical retirement package;
- (b) the employing agency has completed a risk assessment that supports re-engagement;
- (c) the person repays the severance payment, where they are liable for repayment, as if it were a severance payment under the directive relating to early retirement, retrenchment and redundancy; and
- (d) any other matters the chief executive considers relevant are satisfied.

15.2 The employee must provide medical evidence which the chief executive considers sufficient to decide the application for re-engagement and is to include at least one specialist medical opinion.

15.3 The employee is responsible for meeting the costs associated with obtaining the medical evidence and any additional information requested by the chief executive.

15.4 The chief executive may request the provision of independent medical advice and the department will be responsible for the associated cost.

15.5 Where a chief executive has made a decision under clause 10 that an employee with multiple part-time roles is not required to separate from all roles to receive a voluntary medical retirement package, the employee may continue in their existing role (or substantially similar role) but may not otherwise be engaged as a consultant, contractor, or employee in a Queensland Government entity, unless the requirements of re-engagement as set out in clause 15 are met.

15.6 A chief executive is responsible for determining if a role is substantially similar, having regard to whether the role uses the same skill sets as the existing role and whether it is or is not impacted on by the injury or illness which led to the voluntary medical retirement under clause 10.

## 16. Reporting

16.1 A chief executive must provide information about the implementation of this directive as requested by the Commission Chief Executive of the Public Service Commission.

## 17. Transitional arrangements

17.1 A person who retired under superseded directive 03/15 may be re-engaged as a consultant, contractor, or employee in a Queensland Government entity on the conditions set out in this directive.

17.2 An application lodged by an employee under the superseded directive must still be decided under that directive.

17.3 Where an employee has made an application to a participating agency, and the participating agency withdraws from the scheme, the application must be decided under this directive.

## 18. Definitions

**Multiple roles** means multiple part-time roles or a combination of part-time and casual roles, provided that at least one role is a permanent role.

**Service**, for the purposes of determining the separation payment, means any period of service that has been recognised for the purposes of calculating long service leave. This includes the current period of employment and any previous periods of service recognised in accordance with the directive relating to recognition of previous service and employment. Where an employee has previously received a severance payment<sup>1</sup>, any recognised service to that date will not count towards service when determining a separation payment under this directive.

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<sup>1</sup> Including, but not limited to severance payments received for redundancy, retrenchment or voluntary separation program.