

DIRECTIVE 16/14

Supersedes: 9/14

Commission Chief Executive Directive: Voluntary Medical Retirement**1. Purpose:**

To establish a pilot scheme providing the conditions for and entitlements of public service employees who voluntarily retire for medical reasons.

2. Effective date:

5 December 2014

3. Legislative provisions:

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

4. Application:

This directive applies to permanent public service employees engaged under the PSA and employed in the following agencies (the participating agencies):

- Department of Communities, Child Safety and Disability Services
- Department of the Premier and Cabinet
- Department of Education, Training and Employment
- Department of Agriculture, Fisheries and Forestry
- Department of National Parks, Recreation, Sport and Racing
- Department of Environment and Heritage Protection
- Department of Transport and Main Roads
- Department of State Development, Infrastructure and Planning
- Department of Tourism, Major Events, Small Business and the Commonwealth Games
- Public Safety Business Agency
- Department of Housing and Public Works
- Department of Justice and Attorney-General
- Queensland Treasury and Trade

Where an employee to whom this directive applies holds more than one public service role, the application of this directive is extended to their additional employing agency(ies) if the employee is also employed by an agency not covered under this directive.

5. Related information:

Commission Chief Executive Guideline on Mental or Physical Incapacity.

DIRECTIVE:

6. Managing illness or injury impacting upon the performance of duties

- 6.1 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.
- 6.2 It is recognised, however, that this aim may not always be feasible, achievable or in the best interests of the employer or employee. This directive provides a framework for managing situations where an employee identifies that they cannot continue in their role because of illness or injury.
- 6.3 Processes under this directive should be implemented with appropriate sensitivity and respect.
- 6.4 Voluntary medical retirement is not an alternative to performance or conduct management.

7. Voluntary medical retirement request

- 7.1 A public service employee may apply for a voluntary medical retirement package in accordance with the provisions of this directive, where they have medical evidence certifying 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.
- 7.2 The medical evidence must address the employee's illness or injury, prospects for rehabilitation or adjustment and impact on the employee's ability to safely and effectively perform their current or other roles for which they are reasonably qualified.
- 7.3 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.
- 7.4 The chief executive may accept medical evidence from the employee's treating medical practitioner and/or may request that independent medical evidence be provided.
- 7.5 An application under clause 7.1 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 8 applies.
- 7.6 In considering an application under clause 6.1 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
 - (c) the availability of other roles within the agency to which the employee may be transferred or redeployed
 - (d) a report from the employee's direct supervisor on the employee's performance
 - (e) any other matters the chief executive considers relevant.
- 7.7 Where the chief executive supports an application under clause 7.1, 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. Unless an extension is agreed to by the chief executive, where no decision is advised within two weeks, the employee is deemed to have declined the offer

- (i) any extension under clause 7.7(a) must be reasonable and take into account the interests of the employer and employee in 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 an early resolution is in the interests of the employer and the employee
 - (c) attach a copy of this directive.
- 7.8 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.
- 7.9 Where the chief executive does not support an application under clause 7.1, written advice, including reasons, must be provided to the employee.

8. Employees with multiple roles

- 8.1 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 7.1 must be made simultaneously in relation to all relevant permanent roles.
- 8.2 Where an employee holds multiple roles within an agency the chief executive must consider the factors in clause 7.6 in relation to each role.
- 8.3 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.
- 8.4 Where an employee holds multiple roles including one in an agency not participating in this directive:
- (a) the chief executive of the employee's 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.
- 8.5 Where an employee who holds multiple roles, and as a result of clauses 8.3 or 8.4, 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.
- 8.6 Where an employee who holds multiple roles, and as a result of clauses 8.3 or 8.4, 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.

9. Voluntary medical retirement package

- 9.1 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.
- 9.2 A chief executive may, in consultation with the Commission Chief Executive of the Public Service Commission, offer an incentive payment as part of the voluntary medical retirement package.
- 9.3 A voluntary medical retirement package and any incentive payment for employees working on a part-time basis (as at the date of proposed separation) is to be calculated on a pro-rata basis.

10. Re-engagement

- 10.1 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 his or her 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
 - (d) any other matters the chief executive considers relevant.
- 10.2 The chief executive may accept medical evidence from the employee's treating medical practitioner and/or may request that independent medical evidence be provided.
- 10.3 Where a chief executive has made a decision under clause 8 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 10.1 are met.
- 10.4 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 7.

11. Relationship with Chapter 5, Part 7 of the *Public Service Act 2008*

- 11.1 Voluntary medical retirement under this directive is a distinct and separate process from a medical assessment and subsequent decision under Chapter 5, Part 7 of the PSA.

- 11.2 Notwithstanding clause 11.1, an employee may make an application under clause 7.1 of this directive, where a direction has been made under s175 of the PSA but prior to a decision being made under s178 of the PSA and to avoid any doubt, an employee is not eligible for a voluntary medical retirement package where a decision has been made under s178 of the PSA.
- 11.3 Where a chief executive makes a decision under this directive to not offer a voluntary medical retirement package or an employee declines an offer under clause 7.7 of this directive, the chief executive should consider what action, if any, should be taken under Chapter 5, Part 7 of the PSA.

12 Reporting

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

13 Transitional arrangements for the Department of Communities, Child Safety and Disability Services

- 13.1 A person who retired under the superseded directive may be re-engaged as a consultant, contractor, or employee in a Queensland Government entity on the conditions set out in this directive.
- 13.2 An application to retire by an employee lodged under the superseded directive that has not been decided when this directive takes effect shall be decided under this directive and the chief executive may decide to waive compliance with clause 7.6(d).

14 Definitions

Medical evidence means medical evidence that the chief executive considers provides sufficient information, including at least one specialist medical opinion to enable the chief executive to make a decision about the employee's application to retire or re-engagement.

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 payment¹, any recognised service to that date, will not count towards service when determining a separation payment under this directive.

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