

Policy Directive: compliance is mandatory

Release of non-executive employees for temporary roles Policy Directive

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Summary The Release of Non-Executive Employees for Temporary Roles Policy Directive outlines the management responsibilities, processes and standards for releasing non-executive employees for temporary roles across SA Health and the wider public sector.

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 Does this policy amend or update an existing policy? *Y v3.0*
 Does this policy replace an existing policy? *N*

Applies to *All SA Health Portfolio*

Staff impacted All staff, Management, Administration, All Clinical, Medical, Nursing, Allied Health, Emergency, Dental, Mental Health, Pathology, SA Ambulance Service, Other.

EPAS compatible *NA*

Registered with Divisional Policy *Yes*
Contact Officer

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2.0	13/02/2014	31/07/2015	RAH Project added as a discrete project until 2019
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4.0	5/12/16	Current	Clarify right of return provisions for term roles up to 12 months. Addition - right of return provisions regarding backfilling role on an ongoing basis. EPLIS, Donate Life SA and Transforming Health added as discrete Projects to 1 July 2017, 1 July 2018 and 30 June 2018 respectively.



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SA Health

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Date	Version	Who approved New/Revised Version	Reason for Change
15/08/2016	V4	Executive Director, People and Culture, System Performance and Service Delivery	<ul style="list-style-type: none"> Clarify right of return provisions for term roles up to 12 months. Addition - right of return provisions regarding backfilling role on an ongoing basis. EPLIS, Donate Life SA and Transforming Health added as discrete Projects to 1 July 2017, 1 July 2018 and 30 June 2018 respectively.
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13/02/2015	V.2	Group Director, Workforce, System Performance & Service Delivery	<ul style="list-style-type: none"> RAH Project added as a discrete project until 2019
28/10/2013	V.1	Portfolio Executive.	<ul style="list-style-type: none"> Original version.

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Release of non-executive employees for temporary roles Policy Directive

1. Objective

The objective of this policy directive is to ensure:

- Compliance with the principles outlined within the *Public Sector Act 2009* (PS Act) and the *Public Sector Regulations 2010* (Regulations) regarding movement of employees across the SA public sector.
- That all levels of management are aware of the requirement to release employees for term roles within SA Health and across the public sector.
- Right of Return arrangements are determined in accordance with this Policy Directive prior to the commencement of the term contract and prior to approval of any subsequent extension of a term contract.
- Managers are aware of the requirement to release employees for term roles in line with this Policy Directive.
- Managers are aware of the requirement to ensure systems are in place to maintain service continuity in the most cost effective and efficient way.

2. Scope

This policy directive applies across the SA Health Portfolio.

3. Principles

SA Health is committed to promoting an employer of choice brand by enabling staff to be released for temporary placement opportunities.

SA Health recognises that professional development, support for individual career development opportunities, mobility and flexibility are key elements of the *Public Sector Act 2009* and *Public Sector Regulations 2010* that enhance employee commitment, morale and a highly skilled, responsive workforce.

4. Detail

4.1 Release of employees

When an ongoing or temporary employee has won, or is offered term employment in another role (either within SA Health or across the wider public sector), the employer has no right to refuse or impede the employee from leaving to undertake such duties, whether the term employment is promotional or otherwise.

Matters subject to negotiation between all parties will include establishing an appropriate commencement/release date which is reasonable, and determining the Right of Return arrangements that will apply in line with this Policy Directive.

An extension of term employment beyond the initial date originally agreed in a *Right of Return Agreement* will require renegotiation and approval by the appropriate delegate. Any subsequent *Right of Return Agreement* must align with this Policy Directive.

4.2 Right of Return

Where an existing ongoing or term employee is offered term employment or consecutive term roles in another service group or agency, the employee holds an automatic Right of Return to employment in the home service group or agency at their substantive remuneration level.

A Right of Return to the home service group or agency is limited to a maximum period of two (2) years. Exemptions from this rule will only apply to those areas listed at section 4.5.2 of this Policy Directive and will only apply to SA Health employees.

A Manager in the home service group or agency may call upon an employee who has been absent for more than two (2) years (or other shorter or longer period, as agreed prior to the transfer), to make an election as to whether to return to employment to the home service group or agency. This provision can only be applied where it is based upon genuine bona-fide operational requirements and reasonableness, e.g. highly specialised skill set, difficulties with attracting and retaining employee due to uniqueness of the role, imminent outsourcing of services to non-government sector.

Managers must carefully consider Right of Return arrangements that are to apply prior to forwarding to the authorising officer (delegate) for approval. An outline of the proposed strategy for managing the resultant vacancy, within the approved budget and Full Time Equivalent (FTE) allocation, should also be forwarded to the delegate in support of the Right of Return arrangements.

The following principles are to be adhered to when preparing a *Right of Return Agreement* and will apply with regards to intra-agency and inter-agency transfers.

Right of Return approvals must minimise the likelihood of any excess unattached staff at the conclusion of a term role.

4.3 Term roles up to 2 years

An employee who has been absent from their former duties for a period of up to two (2) years, will have an automatic Right of Return to the former home service group and not necessarily to the same duties undertaken prior to commencing the term role.

At the end of the term employment, the employee need only be assigned duties appropriate to their skills, abilities and substantive remuneration level.

A Level 2 delegate may determine that the employee's role will be backfilled on an ongoing basis. The delegate, noting SA Health's requirement to minimise its excess workforce, will be responsible for:

- ensuring the employee is aware that their role may be filled on an ongoing basis;
- managing the employee by providing duties commensurate with the employee's substantive remuneration level upon their return;
- managing the employee's ongoing liability; and
- sourcing a suitable ongoing role within the service group should the employee return.

Note: An employee cannot be deemed unattached or declared excess to requirements where their substantive role has been permanently backfilled.

4.4 Over 2 years

Where an employee has continuous absences of two (2) years or more from a home service group or agency, to take up one (1) or more consecutive contract roles, this may result in an employee losing their Right of Return to their home service group, or the agency for inter-agency transfers.

Consultation must occur between the relevant home and host Human Resources Consultant where a request for absence from the home service group is sought beyond a total continuous period of more than two (2) years.

A Manager in the home service group or agency may call upon an employee who has been absent for more than two (2) years (or other shorter or longer period, as agreed prior to the transfer), to make an election as to whether to return to employment in the home service group or agency. This provision can only be applied where it is based upon genuine bona-fide operational requirements and reasonableness, e.g. highly specialised skill set, difficulties with attracting and retaining employee due to uniqueness of the role, imminent outsourcing of services to non-government sector.

Alternatives to the standard Right of Return arrangements as outlined at 4.2 to 4.5 in this Policy Directive may only be negotiated by the relevant Manager(s) in consultation with the employee and the local Human Resources Consultant. Variation from these principles should only be contemplated in *extenuating* or *special circumstances* (as defined). Any changes to the standard arrangements must be clarified in writing, agreed by all parties and approved by the relevant delegate(s).

4.5 Exemptions

The following categories are exempt from the Right of Return duration principles outlined at 4.2 to 4.5 of this Policy Directive. This exemption only applies to SA Health employees.

The exempt categories listed below do not extend to other employees acting/relieving an employee temporarily employed in the three (3) exempt categories listed (i.e. those in the 'the acting chain').

4.5.1 Parental leave

An employee returning to work after parental leave is entitled to the position that they held immediately before commencing parental leave, or, in the case of an employee who was transferred to a safe job, to the position to which they held immediately before the transfer.

If the duties undertaken by the employee no longer exist but there are other similar roles available which the employee is qualified for, and is capable of performing, the employee is entitled to a role comparable in status and conditions to that of the employee's former role.

4.5.2 Discrete projects sanctioned by the Department for Health and Ageing (DHA)

An SA Health employee transferred to a discrete project established by the Department for Health and Ageing (DHA) that has a defined period of operation, or, is funded for a limited term only, will be exempt from the 'two (2) year maximum limitation rule' as outlined at section 4.2 of this Policy Directive.

Employees who have accepted term roles within the following exempt projects cannot be required to make an election. This means that the host project will not be required to take on ongoing responsibility for that employee's ongoing status.

Discrete projects currently sanctioned by DHA are:

- Enterprise Patient Administration System (EPAS).
- new Royal Adelaide Hospital (nRAH).
- Obesity Prevention and Lifestyle (OPAL).
- Enterprise Pathology Laboratory Information System (EPLIS).
- Donate Life SA (DLSA)
- Transforming Health (TH).

This exemption will not apply to other projects across SA Health which extend beyond the two (2) year maximum.

Clarification can be sought from SA Health Workforce Operations with regard to any other approved sanctioned discrete projects.

An SA Health employee backfilling another SA Health employee who has transferred to a discrete project will not be exempt from the 'two (2) year maximum limitation rule'.

An exemption request for any new sanctioned discrete projects must be approved by the DHA Executive Director, People and Culture.

4.5.3 Health units employing less than 100 FTE

Unless agreed otherwise, a Health unit in a remote or regional location employing less than 100 FTE employees is exempt from the requirement to take on the employee's substantive employment at the conclusion of a term contract if a contract term has exceeded two (2) years.

4.6 Right of Return Agreement

A Right of Return Agreement should be utilised to clarify the conditions that will apply at the conclusion of an employee's term employment regardless of whether the transfer is within or outside of SA Health.

The *Right of Return Agreement* must specify:

- what service group the employee will be employed upon their return; and
- the length of the absence (generally limited to a maximum of two (2) years).

A *Right of Return Agreement* and any vacancy management proposals to backfill a vacancy must take into account the employee's return date to the duties or service group at the conclusion of the term contract to ensure the headcount and budget is not exceeded.

Preparation of a *Right of Return Agreement* is the responsibility of the employee and their Manager.

Managers are to refer Right of Return documentation to the appropriate delegate for approval in accordance with their local Human Resource Instrument of Delegations and Schedule of Authorisations.

An employee has an automatic Right of Return to the home service group in the absence of a *Right of Return Agreement*.

A Right of Return does not exist for a temporary employee whose term employment in the host unit is longer than the employment term in the home service group.

Organisational restructuring during the period of an employee's absence may result in an employee losing their Right of Return to their former duties or service group regardless of any express commitment contained within the *Right of Return Agreement*.

Unplaced or unattached staff will be the financial and administrative responsibility of the home service group. Where a return to former duties is not possible, the home service group will be responsible for identifying and assigning alternative duties until such time as funded employment, appropriate to the employee's skills, abilities and substantive remuneration level can be secured.

Queries regarding Right of Return provisions should be directed to the local Human Resources Consultant.

4.7 Conditions on Right of Return

The following conditions apply to a Right of Return of an employee who temporarily transfers to another role, either within SA Health or to another SA public sector agency.

SA Health manages fallback arrangements for ongoing or term employees who take up alternative employment for term or casual contracts within SA Health (intra-agency transfer) in a manner similar to inter-agency transfers (employees who transfer across public sector agencies).

An employee may not exercise a Right of Return to their home agency earlier than the end of the term employment unless agreed by the home agency.

If there is a change in the employment of the employee whilst they are located with the host service group or agency, the host service group or agency must inform the home service group of the change(s).

It must be noted that a Manager cannot determine that an employee becomes substantive in another service group outside of their portfolio/area of responsibility.

Consultation must first take place between all parties concerned, i.e. substantive Executive Director (or equivalent) and host Executive Director (or equivalent), in consultation with the employee and the local Human Resources Consultant prior to a determination being made with regard to an employee's fallback arrangements.

4.8 Requirement for an Election by the Employee

Unless otherwise agreed between the service groups:

- If an employee has been absent from the home service group or agency for a period of more than two (2) years (or other period as agreed between the home and host service group or agency) as a result of term employment, or extensions thereof, the delegate within the home service group or agency may, where there is a bona-fide organisational reason for doing so, require the employee, by written notice, to make an election as to whether they wish to return to the home service group or agency.
- The home service group or agency delegate should inform the host service group or agency and the employee that they require such

election to be made. Advice from the home local Human Resources Consultant must be sought prior to requesting an election.

- If an employee does not make an election within 28 days of receiving written notice or if they elect not to return, the Right of Return responsibility will be transferred to the host service group.
- Should the employee not make an election, or elect not to return to employment in the home service group or agency, the host service group or agency must be notified that they are now responsible for the employee's Right of Return.
- If the home service group or agency delegate does not notify the employee in writing that they are required to make an election to return to the home service group or agency, then the employee will maintain their Right of Return and may return at the conclusion of their term employment, unless otherwise negotiated.

The exercise of a Right of Return for employees transferring between agencies is regulated by section 9 of the *Public Sector Act 2009* and section 6 of the *Public Sector Regulations 2010* and various Determinations of the Commissioner for Public Sector Employment.

4.9 Grievance Resolution

Public Sector Act employees aggrieved and directly affected by a management decision may apply for review of the decision by the Department for Health and Ageing in accordance with the *Public Sector Act 2009, Section 59*, and *Public Sector Regulations 2010, Sections 27 and 27*.

Health Care Act employees dissatisfied with a decision shall first discuss the grievance with their Manager and between them attempt to resolve the matter. The employee may seek the help of their local Human Resources Consultant, union representative or another appropriate person in attempting to resolve the grievance.

If the grievance cannot be resolved or if the employee is not satisfied with the proposed settlement or decision, they may submit the matter in writing to the Chief Executive Officer (or delegate) for decision. Refer to Part 3 *Grievances and Disputes* in the SA Health (Health Care Act) Human Resources Manual.

Note: The terms and conditions of employment for *Health Care Act* employees whose employment is covered by the South Australian Wages Parity Enterprise Agreement: Salaried 2014 will, effective 1 July 2016, be governed by Part 7 of the *Public Sector Act* and Commissioner for Public Sector Determinations. The SA Health Human Resources Manual will no longer apply.

5. Roles and Responsibilities

This Policy Directive is issued under the delegated authority of the Chief Executive, SA Health.

The following are responsible for ensuring this Policy Directive is administered within SA Health:

- The Executive Director, People and Culture is responsible for management and review of this Policy Directive.
- Managers across SA Health are responsible for facilitating the release of employees and enabling a Right of Return to employees in line with this Policy Directive and applicable legislation.

- Managers must monitor the temporary employment arrangements of their staff ensuring FTE caps and budgets are not exceeded through enactment of this Policy Directive.
- Managers are responsible for managing Right of Return commitments and vacancy management, and for communicating/negotiating with employees and the host Manager.
- Managers must ensure Right of Return documentation is completed in accord with this Policy Directive for approval by the appropriate delegate.
- Managers are responsible for ensuring all documentation is signed and placed in the employee's Personal file.
- The delegate, determined by the Chief Executive/Chief Executive Officer as the Delegate, is responsible for approving Right of Return documentation.
- Human Resource Consultants are responsible providing advice and consultancy and promoting this Policy Directive.
- Employees and Managers are responsible for complying with and initiating Right of Return administrative processes.

6. Reporting

Managers may be required to report on Right of Return arrangements that apply within their area of responsibility.











7. EPAS

N/A.

8. Exemption

N/A.

9. National Safety and Quality Health Service Standards

									
National Standard 1 Governance for Safety and Quality in Health Care	National Standard 2 Partnering with Consumers	National Standard 3 Preventing & Controlling Healthcare associated infections	National Standard 4 Medication Safety	National Standard 5 Patient Identification & Procedure Matching	National Standard 6 Clinical Handover	National Standard 7 Blood and Blood Products	National Standard 8 Preventing & Managing Pressure Injuries	National Standard 9 Recognising & Responding to Clinical Deterioration	National Standard 10 Preventing Falls & Harm from Falls
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10. Risk Management

N/A.

11. Evaluation

This Policy Directive will be evaluated to ensure FTE caps and budgets are not exceeded.

12. Definitions

In the context of this document:

- **agency** means an administrative unit under the *Public Sector Act 2009*. For the purposes of this Policy Directive, SA Health is considered an Agency.
- **delegate** means a duly authorised officer able to approve a *Right of Return Agreement* in accordance with the local Human Resource Instrument of Delegations and Schedule of Authorisations as approved by the Chief Executive SA Health, Chief Executive Officer or Executive Director as applicable. In the absence of any clear delegation, the delegate will, as a minimum, be an employee classified at executive level (Director, or Executive Director) or equivalent.
- **employer of choice** means a term used to describe a public or private employer whose practices, policies, benefits and overall work conditions have enabled it to successfully attract and retain talent because employees choose to work there.
- **extenuating, exceptional or special circumstances** means any circumstance not ordinarily contemplated or experienced and beyond the control or otherwise expected which accounts for an irregular way of doing something.
- **fallback** means employment arrangements (duties, location) that will apply to a returning employee at the conclusion of a temporary contract in another service group. The negotiated fallback arrangements are to be outlined within the *Right of Return Agreement*.
- **home group** means the public sector agency or service group where the employee is substantively employed and who maintains the employee's Right of Return.
- **home service group** means the work unit, directorate, division, hospital, health service, SA Ambulance or Statewide Clinical Support Services where the employee is employed on an ongoing, term or casual basis. For the purposes of this Policy Directive, the service group may be either the *home* or *host* employing entity.
- **host** or **receiving agency** means the public sector agency or service group offering the term or casual employment to the existing public sector employee.
- **inter-agency transfer** or **external transfer** means the movement of an employee from SA Health to another public sector agency and/or *vice versa*.
- **intra-agency transfer** or **internal transfer** means the movement of an employee between units, directorates, divisions or health units/hospitals within SA Health. An intra-agency transfer includes transfer of an employee between the Department for Health and Ageing (DHA) and Health Networks including SA Ambulance Service, Statewide Clinical Support Services and/or *vice versa*.

- **right of return** means the rights afforded to an employee to return to duties commensurate with their substantive remuneration level as undertaken prior to a temporary transfer.
- **substantive remuneration level** (as per section 4 of the Public Sector Regulations) means:

An employee's substantive remuneration level is-

- (a) if the employee is currently a term employee or casual employee of a public sector agency but has a right of return to duties as an ongoing employee of a public sector agency (whether the same or different agency) - the remuneration level applicable to the employee as an ongoing employee under the right of return;
 - (b) if the employee is currently a term or casual employee of a public sector agency but has a right of return to duties as a term employee of a public sector agency (whether the same or a different agency) - the remuneration level applicable to the employee as a term employee under the right of return.
 - (c) in any other case – the remuneration level currently applicable to the employee.
- **temporary transfer** means the movement of a public sector employee to take up term or casual employment with another service group or public sector agency which is temporary and which allows for a Right of Return entitlement.
 - **term employment** means an employment period which is temporary and limited to a specified period, i.e. not ongoing in nature.
 - **unattached employee** means a substantive employee whose position is not retained in the new structure or whose position has significantly changed.

13. Associated Policy Directives / Policy Guidelines

- Commissioner for Public Sector Employment Guideline: *Review of Employment Decisions*.

14. References, Resources and Related Documents

- *Public Sector Act 2009*.
- *Public Sector Act Regulations 2010*.
- Determination 1 – Determination of the Commissioner for Public Sector Employment - Merit, Engagement, Assignment of Duties and Transfer of Non-Executive Employees.
- DHA/Local Health Network/Statewide Clinical Support Services/SA Ambulance Service Human Resource Instruments of Delegation and Schedule of Authorisations (however so titled).
- SA Health (Health Care Act) Human Resources Manual.



Right of return agreement (non-executive employees)

Right of return for non-executive employees who accept a term contract of employment pursuant to Section 9 of the *Public Sector Act 2009* and in accordance with the *SA Health: Release of non-executive employees for temporary roles Policy Directive*.
Please forward a signed copy of this agreement and the relevant transfer advice form to your HR Data Input Team for relevant payroll processing.

Note: This form will need to be resubmitted, along with the relevant transfer advice form, should an employee's temporary transfer be extended.

This *right of return agreement* will apply to an existing ongoing, or term, SA Health employee who accepts a term contract with another service group within SA Health or another SA public sector agency. This agreement details the right of return arrangements which will apply, subject to the following:

- You may not exercise the right of return earlier than the end of the period of the term contract unless as agreed by the *home* service group/agency.
- Should an extension of the term contract be requested, then a new right of return agreement along with your local area transfer advice form, will need to be negotiated and approved by the appropriate delegate.
- In the event that your substantive role ceases to exist, the home service group/agency will ensure you are advised.
- If you have been absent from the home service group/agency for a consecutive period of more than two (2) years as a result of one (1) or more consecutive term contracts, the home service group/agency, by notice in writing, will require you to make an election to return to the home service group/agency.
- If you do not make an election within 28 days of receiving the written notice or if you elect not to return, you will lose the Right of Return to the home service group/agency and the host service group/agency in which you are employed at the time will become your substantive service group/home agency.
- A further right of return agreement may be negotiated with the home service group/agency to postpone, for a specified period, your return, however this must be negotiated within 28 days of receiving written notice or you may lose the right of return to the home service group/agency.
- If you return to the home service group/agency, either by making an election or at the end of the contract, you will be assigned duties which may be different to the duties you performed prior to commencing the term contract.
- If you are a temporary (term) employee, then a right of return only applies if the term contract you are accepting with another service group/agency is shorter than the one in which you are currently employed.

Employee Details

Title	<input type="checkbox"/> Ms	<input type="checkbox"/> Mrs	<input type="checkbox"/> Miss	<input type="checkbox"/> Mr	<input type="checkbox"/> Dr	<input type="checkbox"/> Prof	<input type="checkbox"/> Other:
Employee Name				Employee No			
Position Title				Substantive Classification			
DHA/LHN/Health Service				Branch/Unit			
Manager				DHA/LHN/Health Service			

Agreement

It is agreed between the parties that:

- 1) Original term commencement date (if absence from the employee's substantive role is continuous) (date).
- 2) The new term contract will commence on (date) and conclude (date).
- 3) The employee is entitled to a Right of Return on (date), being the conclusion of the stated term of the contract in the (DHA/LHN/Health Service/Agency name) and as such, is entitled to a Right of Return to duties commensurate with the employee's skills, abilities and substantive remuneration level.

Approval

This *Right of Return Agreement* is between an employee and the appropriate delegate of the employee's substantive DHA/LHN/Health Service.

Employee Signature			
Name		Employee ID	
Signature		Date	
Delegate*			
Name		Position Title	
DHA LHN/Health Service		Location	
Signature		Delegation Level	
Date			

***Note:** Refer to your local area Human Resource Instrument of Delegations and Schedule of Authorisations to ensure that the delegate has authority to approve this right of return agreement.

Please forward a copy of the approved *right of return agreement*, along with the local area "transfer advice form" to your relevant HR Data Input Team for appropriate payroll processing. Please also ensure that a copy of this Agreement is forwarded to the local area Human Resources unit for placement in the employee's personal file.