SA Health

Policy

Right of Return (Temporary mobility of non-executive employees)

MAL COPY WHEN PRINTED

Version 5.0

Approval date: 06 November 2024

PDS Reference No: D0329

Government of South Australia
SA Health

1. Name of policy

Right of Return (Temporary Mobility of Non-Executive Employees)

2. Policy statement

This policy provides the mandatory requirements and considerations to enable the mobility of employees for temporary opportunities (including by means of transfer, made available or an employment contract) across SA Health and the SA public sector.

3. Applicability

This policy applies to all employees of SA Health; that is all employees of the Department for Health and Wellbeing (DHW), Local Health Networks (LHNs) including state-wide services aligned with those Networks and SA Ambulance Service (SAAS).

Out of Scope

SA Health discrete projects are exempt from this policy, for the purposes of:

- Employees who have accepted term roles in a SA Health discrete project cannot be required to make an election.
- The SA Health discrete project will not be required to take responsibility for an employee's ongoing employment.

This policy does not contemplate employees seeking employment opportunities external to the SA public sector.

4. Policy principles

SA Health's approach to the right of return (temporary mobility of non-executive employees) is underpinned by the following principles:

- We promote SA Health as an employer of choice, by enabling employee mobility across the health portfolio and the greater public sector.
- We support temporary mobility and acknowledge the opportunities for both the employee and SA Health.
- We will support employees who are offered a temporary position (either within SA Health or across the public sector), and ensure they are aware of their rights and responsibilities.
- We will ensure the Right of Return Arrangements are understood by all parties.
- We recognise that professional development, support for career development opportunities, and mobility and flexibility are key elements to enhance employee commitment, morale, and a highly skilled, responsive workforce.
- We are committed to promoting a positive workplace culture where employees feel valued.

5. Policy requirements

Temporary Opportunities

When an ongoing employee, or employee on a term/temporary employment contract is offered a temporary opportunity either within SA Health or with another SA public sector agency, the home agency must:

INFORMAL COPY WHEN PRINTED

- Not refuse or impede the employee from temporary separation to undertake the temporary opportunity, whether promotional or otherwise (including SA Health discrete projects).
- Determine options to support and backfill their absence.
- Ensure the manager of the home business unit, or home agency clearly outlines the Right of Return Arrangements with the employee.

The ongoing employee, or employee on a term/temporary employment contract who accepted a temporary opportunity either within SA Health or with another public sector agency must:

- At the earliest convenience, liaise with both their manager in the home business unit or home agency and the receiving business unit or receiving agency to negotiate an appropriate release date.
- Give notice of at least the minimum requirement, being two weeks, unless otherwise negotiated.

Right of Return

- A right of return to same or similar employment in the home business unit, or home agency at the substantive remuneration level must be given to an employee, whether ongoing or on a term/temporary employment contract who accepts a temporary opportunity either within SA Health or with another public sector agency.
- For an existing ongoing employee who accepts a temporary opportunity, the Right of Return Arrangements must be maintained for up to two years when they transfer:
    - Temporarily to another public sector agency
    - To a term contract within SA Health (under the *Health Care Act 2008* or *Public Sector Act 2009*)
    - To another temporary contract in another SA public sector agency for a period shorter than their original contract, or
    - To a SA public sector agency under a different Act.
- The employee must be made aware that on return to their home business unit, or home agency, the employee need only be assigned duties appropriate to their skills, abilities, and substantive remuneration level.
- Offers of temporary employment must reference right of return provisions for employees where they hold ongoing employment status.
- A right of return and any subsequent extensions must only extend up to the duration of the home agency employment contract.
- Right of return arrangements for temporary or ongoing employees who take up alternative work within SA Health must be managed the same as those who transfer to a temporary role in another public sector agency. Where an employee has no right of return, consultation must occur before their return date between all parties.
- Managers must not act outside of their scope of authority in relation to determine a right of return, such as determining that an employee becomes substantive in another home business unit outside of their area of responsibility.
- A receiving business unit (where within SA Health), and the employee must notify the home business unit, or home agency in writing, (or in some other form approved by the home business unit or home agency) before the event or as soon as practicable, if:
    - The employee ceases to be employed by the receiving business unit or receiving agency

INFORMAL COPY WHEN PRINTED

- The term of engagement of the employee by the receiving business unit or receiving agency is extended
- The basis of engagement of the employee by the receiving business unit, or receiving agency is changed, or
- There is any other change in the employee's circumstances that might affect the employee's return to the home business unit, or home agency.

> The home business unit or home agency must ensure there is regular communication with the employee to maintain connection and an updated status of their return.

Continuous absences of two years or more

Where an employee has been absent from the home business unit or home agency for two years or more, to take up one or more consecutive opportunities (including for SA Health discrete projects), the home business unit, or home agency must:

> Consult with the employee where a bonafide operational requirement to fill the role has been determined and that an alternative reporting relationship and duties will be established on the employee's return to the home business unit.
  - This must be approved by a delegate in the employee's home business unit/home agency in which an employee may have a right of return who has the authority to create or fill a role.

> Upon determination that a right of return will be to another receiving agency or business unit, the home business unit or home agency manager must work with the receiving business workforce unit (and in accordance with HR delegations) to:
  - Create a role or use an existing role at the employee's substantive remuneration level to transfer the incumbent to the business unit or agency.
  - Ensure the employee's substantive employment to which they will have a right of return is evidenced and must be monitored on the receiving manager's staff establishment report.

Election

When a bonafide operational requirement is identified for the return of the employee and after a two-year period of absence, the home business unit/home agency must:

> With approval from the respective workforce director, by notice in writing, request the employee to make an election to return to the employment of the home business unit, or home agency on or before a specified date, or a date agreed to.
  - If the employee does not make an election within a period (of at least 28 days) allowed in the notice or does not return in accordance with an election, the employee must assume ongoing employment with the receiving business unit, or receiving agency, at their substantive remuneration level.
  - If the employee makes an election within the period allowed in the notice to return, the temporary opportunity must end on the date specified or agreed to by the receiving business unit, or receiving agency with the result that the employee returns then to the employment of the home business unit, or home agency.
  - If the home business unit, or home agency does not notify the employee in writing that they are required to make an election, then the employee must maintain their right of return at the conclusion of their employment, unless otherwise negotiated.

INFORMAL COPY WHEN PRINTED

Grievance Process

In instances where an employee is aggrieved by an administrative decision, they must be offered the opportunity to seek a resolution informally by way of conciliation, before escalating as per below:

- *Public Sector Act 2009*, refer to the SA Health Guideline: Internal Review, in particular section 59 of the PS Act, and section 27 of the PS Regulations.
- *Health Care Act 2008*, refer to section 3-1-3 Administrative Decisions Grievance Procedure of the SA Health (Health Care Act) HR Manual.

6. Mandatory related documents

The following documents must be complied with under this Policy, to the extent that they are relevant:

- Commissioners Determination 1 - Merit, Engagement, Assignment of Duties and Transfer of Non-Executive Employees
- *Health Care Act 2008*
- Local Human Resource Instruments of Delegation and Schedule of Authorisations
- *Public Sector Act 2009*
- *Public Sector Act Regulations 2010*

7. Supporting documents

- Commissioner for Public Sector Employment Guideline: Review of Employment Decisions
- Right of Return Agreement Form
- SA Health (Health Care Act) Human Resources Manual (Health Care Act 2008 employees only)

8. Definitions

- **Bonafide operational requirement:** may include but is not limited to, the employee holds a highly specialised skill set, or there are difficulties attracting and retaining employees due to uniqueness of the role, or imminent outsourcing of services to non-government sector.
- **Delegate:** 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.
- **Discrete projects:** a project proclaimed by the Chief Executive, that has a defined period of operation, or is funded for a limited term only.
- **Fallback:** employment arrangements (duties, location, reporting relationship) that will apply to a returning employee at the conclusion of a temporary contract. in another home business unit.
- **Home agency:** for the purpose of this policy, SA Health.
- **Home business unit:** the work unit, directorate, division, hospital, health service within SA Health where the employee is employed on an ongoing, term or casual basis.
- **Receiving agency:** the public sector agency offering the term or casual employment to the existing SA Health employee.
- **Receiving business unit:** the work unit, directorate, division, hospital, health service within SA Health where the SA Health employee is temporarily transferring to.
- **Right of return:** 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:** per section 4 of the *Public Sector Regulations*, an employee's substantive remuneration level is –

INFORMAL COPY WHEN PRINTED

(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.

- **Statewide services:** Statewide Clinical Support Services, Prison Health, SA Dental Service, BreastScreen SA and any other state-wide services that fall under the governance of the Local Health Networks.
- **Temporary transfer:** the movement of a public sector employee to take up term or casual employment with another home business unit or different public sector agency (not ongoing in nature).
- **Term employment:** an employment period which is temporary and limited to a specific period (not ongoing in nature).

9. Compliance

This policy is binding on those to whom it applies or relates. Implementation at a local level may be subject to audit/assessment. The Domain Custodian must work towards the establishment of systems which demonstrate compliance with this policy, in accordance with the requirements of the Risk Management, Integrated Compliance and Internal Audit Policy.

Any instance of non-compliance with this policy must be reported to the Domain Custodian for the Employment, Work Health and Safety Policy Domain and the Domain Custodian for the Risk, Compliance and Audit Policy Domain.

10. Document ownership

Policy owner: Domain Custodian for the Employment, Work Health and Safety Policy Domain.

Title: Right of Return (Temporary Mobility of Non-Executive Employees) Policy

Objective reference number: A6131219

Review date: 06/11/2029

Contact for enquiries: health.workforceservicespolicy@sa.gov.au

11. Document history

Version	Date approved	Approved by	Amendment notes
1.0	28/10/2013	Portfolio Executive	Original Version
2.0	13/02/2015	Group Director, Workforce, System Performance and Service Delivery	RAH Project added as a discrete project until 2019
3.0	28/07/2015	Group Director, Workforce, System Performance and Service Delivery	Backfill arrangements relating to discrete projects added
4.0	15/08/2016	Executive Director, People and Culture, System	Clarify right of return provisions for term roles up to 12 months.

INFORMAL COPY WHEN PRINTED

		Performance and Service Delivery	Addition to 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.
5.0	06/11/2024	Deputy Chief Executive, DHW	Reviewed and updated to align with the Policy Framework

INFORMAL COPY WHEN PRINTED