

Superannuation Retrenchment Benefits

Employees who accept an offer of voluntary redundancy may be entitled to be paid a superannuation benefit as a result of the termination of their employment.

The Government's Policy on Managing Excess Employees provides that, in certain circumstances, excess employees may receive a voluntary redundancy payment.

Employees who accept an offer of voluntary redundancy may be entitled to be paid a superannuation benefit as a result of the termination of their employment.

Some superannuation schemes provide specific redundancy (retrenchment) benefits to eligible members. Employees will only be entitled to be paid a superannuation **retrenchment** benefit if the reason stated by their employer for their termination of employment comes within the meaning of retrenchment in the schemes' rules.

A Judgment handed down in the NSW Supreme Court, for example, found that a former employee who accepted voluntary redundancy was not entitled to a retrenchment benefit from the State Superannuation Scheme because the reason stated by the employer for his termination of employment was not consistent with any of the grounds defined for retrenchment in the *Superannuation Act 1916*.

Under the *Superannuation Act 1916*, the *State Authorities Superannuation Act 1987* and the *State Authorities Non-contributory Superannuation Act 1987*, a member is taken to be retrenched where the service is **expressed by the employer**:

1. to be compulsorily terminated by the employer on the grounds that the:
 - employer no longer requires the contributor's (or employee's) services and, on termination of the contributor's service, does not propose to fill the contributor's position; or
 - work that the contributor was engaged to perform has been completed; or
 - amount of work that the employer requires to be performed has diminished and, because of that fact, it has become necessary to reduce the number of employees employed by the employer; or
2. terminated as a result of the acceptance of an offer by the contributor of terms of retrenchment made on one of the above grounds (i.e. voluntary redundancy).

These Acts govern the State Superannuation Scheme (SSS), the State Authorities Superannuation Scheme (SASS) and the State Authorities Non-contributory Superannuation Scheme (SANCS) respectively.

The Court Judgment also found that the words “expressed by the employer” require the employer to state the grounds for retrenchment in the offer of retrenchment or **contemporaneously** with the offer, for example in an Employment Separation Certificate. The requirement to express the grounds for retrenchment contemporaneously precludes an employer from stating the grounds for retrenchment after an employee has terminated employment.

Employers are advised, however, to state the grounds for retrenchment in the redundancy offer made to an employee. This will protect an employee's interests and ensure proper processes are implemented.

Employers making offers of voluntary redundancy to SSS, SASS and SANCS members should therefore take into consideration the requirements which must be met for employees' termination of employment to fall within the meaning of retrenchment in the legislation governing the schemes.

Philip Gaetjens
Secretary

Which agencies does this Circular apply to?

This Circular applies to Departments, Executive Agencies related to Departments, Separate Agencies.

Who needs to know about this Circular?

Secretaries, Senior Executives, Managers, Employees, Payroll, Industrial Relations, Human Resources.

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