

## Salary Sacrifice for Superannuation - Reviewed Guidelines

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**Summary** Salary sacrifice for superannuation - updated review of employee and employer information guidelines to replace original guidelines issued 6 April 1999 under GL2005\_058 (circular 99/26).

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**Applies to** Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations - Non Declared, Affiliated Health Organisations - Declared, Public Health System Support Division, Community Health Centres, Dental Schools and Clinics, NSW Ambulance Service, Public Health Units, Public Hospitals

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## **SALARY SACRIFICE FOR SUPERANNUATION REVIEWED GUIDELINES FOR THE INFORMATION OF EMPLOYEES AND EMPLOYERS**

This Guideline replaces Guideline GL2005\_058 titled 'Salary Sacrifice for Superannuation' issued 6 April 2005.

Information guidelines for both employees and employers were incorporated as Appendices A and B, respectively, in GL2005\_058 to assist with the implementation of the newly-introduced salary sacrifice for superannuation scheme. The guidelines reflected the NSW Government policy initiative to introduce salary sacrifice for superannuation to non-SES staff throughout the NSW public sector.

In the intervening period, changes have occurred in the tax treatment of superannuation, and with the assistance of external taxation consultants (Deloitte Touche Tohmatsu Ltd), the guidelines have been reviewed and updated to reflect these changes. The updated guidelines also reflect policy changes announced by Premier's Department to remove certain administrative restrictions from the scheme. One was the removal of the 50% limit on salary to enable unrestricted access to salary sacrificing and salary packaging, or for a combination of both (previously advised via Information Bulletin IB2006\_034). The other, subject to department or agency convenience, was the lifting of the restriction that prevented casual employees from accessing the scheme.

The current provisions bar casual and temporary employees employed for periods of six months or less from accessing the scheme. However, having subsequently canvassed Area Health Services, it is now possible to offer salary sacrifice for superannuation to casual and temporary employees. This will be done by the employee nominating a percentage of their earnings for each engagement as the amount to be deducted for salary sacrifice for superannuation. Paragraph 5 of Appendix A, and paragraph 3.2 of Appendix B of the revised guidelines refer.

Employees are strongly advised to obtain their own independent financial advice before making a decision to salary sacrifice for superannuation. Human resources, financial and payroll staff associated with salary packaging/sacrificing in Health Services should refrain from offering advice to employees on their personal financial situations, and instead confine advice to the factual and procedural matters as outlined in these guidelines.

The revised guidelines have been circulated to the health unions, and the HSU, NSW Nurses' Association, and ASMOF have expressed agreement with the document.

Any inquiries concerning this Guideline should be directed to the relevant Human Resources personnel in your Area Health Service. Only Human Resources personnel from Area Health Services should contact the Department.

Professor Debora Picone AM  
**Director-General**

## Salary Sacrifice for Superannuation Information for Employees

### 1. What is salary sacrifice for superannuation?

It is the option of making additional superannuation contributions in gross or pre-tax dollars to approved complying superannuation funds.

### 2. Am I eligible?

Salary sacrifice for superannuation arrangements are available to all non-Senior Executive staff, including temporary employees and casual employees. Salary sacrifice is at the election of the employee, but is subject to the agreement of the Director-General NSW Department of Health or delegate.

### 3. Why would anyone choose to salary sacrifice?

Depending upon your personal circumstances, there may be taxation benefits. For example, salary sacrifice reduces PAYG tax and the superannuation contributions are taxed concessionaly - that is, the tax on superannuation may be less than your marginal tax rate. This may change over time if the rules change.

It is expected that people who are thinking about retirement, who have entered the workforce later in life, or who have had career breaks or leave without pay will find salary sacrifice for superannuation attractive. *However, you are strongly advised to seek independent professional financial advice.*

### 4. What fund do I choose?

You can have salary sacrifice contributions made to First State Superannuation Scheme (FSSS) or any complying superannuation scheme that the NSW Department of Health agrees to, excluding State Superannuation Scheme (SSS) or State Authorities Super Scheme (SASS) as these are preserved benefit funds. Payments may only be made to one fund, not multiple funds, and employers may impose administrative charges in some circumstances. In the public health system this means that if your employer currently directs your superannuation guarantee contribution to FSSS you can have salary sacrifice contributions made to FSSS or any complying superannuation scheme. However, if you have instructed your employer to direct your superannuation guarantee contributions to a non-FSSS fund and you wish to salary sacrifice for superannuation, you are obliged to have the salary sacrifice for superannuation contributions paid into the same fund.

### 5. How much of my salary can I sacrifice for superannuation?

The amount of salary which can be salary sacrificed is unrestricted. However, employees will need to take into account any pre-tax and post-tax payroll deductions including employee superannuation contributions, HECS payments, union fees, health fund premiums, maintenance orders, judgement debtor/garnishee orders, etc before determining the availability of salary that could be sacrificed.

In the case of casual and temporary employees, the employee will nominate a percentage of their earnings for each engagement as the amount to be salary sacrificed for superannuation.

Employees should be aware of their individual contribution caps (see below).

### 6. What is my individual contribution cap?

An individual has a cap on the amount of concessional contributions that benefit from the concessional tax treatment in the superannuation fund (i.e. taxed at 15%). Concessional contributions include contributions made by your employer and salary sacrifice contributions. The cap for the year ended 30 June 2008 is \$50,000. If this cap is exceeded, the contributions in excess of the cap will be taxed a further 31.5% (in addition to the 15%). Indexation of this cap is calculated yearly however the cap only increases when the indexed amount is greater than \$5,000.

Commencing from the year ending 30 June 2008, there is a five year transitional cap of \$100,000 per person per year for individuals who are aged 50 and over in the particular year.

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**Title: Salary Sacrifice for Superannuation – Reviewed Guidelines**

**7. If I contribute to the State Authorities Super Scheme (SASS) or State Superannuation Scheme (SSS) can I salary sacrifice my compulsory personal contributions?**

Yes. An employee contributing to the SASS or SSS has 3 options to the way they make their compulsory personal contributions to the SASS or SSS. These are:

- from before-tax salary as a salary sacrifice contribution
- from after-tax salary
- combination of both before-tax and after-tax

**8. Will this affect my State Super Scheme (SSS) or State Authorities Super Scheme (SASS) contributions or other entitlements?**

No. Salary sacrifice has been deemed an 'approved employment benefit' for these superannuation schemes so that your after-tax contributions to SSS or SASS and your benefits are not reduced.

**9. What happens to my other employment benefits?**

They are not affected. Overtime, shift penalties or other allowances including annual leave loading, will be paid on the same basis as before you sacrificed salary for superannuation.

**10. Does my employer still need to make superannuation guarantee contributions?**

Yes. All employers must comply with the superannuation guarantee requirements, which require employer contributions of 9% of salary.

The salary sacrifice arrangements cannot be used to satisfy the requirement for compulsory employer contributions required to the First State Superannuation Fund (or any other scheme if the employee has directed that the current employer pay superannuation guarantee contributions to that other scheme) pursuant to the superannuation guarantee legislation requirements.

**11. Are there any rules or restrictions?**

Yes. Any salary sacrifice for superannuation arrangements can only be made with the agreement of the Director-General, NSW Department of Health or delegate.

**12. Are there costs?**

Yes. The superannuation funds charge administration and management fees, and independent professional financial advisers may impose a fee and in some circumstances. Employers will impose administrative charges for example where employees wish to make repeated changes to their arrangements.

**13. And don't forget that...**

Apart from special circumstances as prescribed by your fund (Refer to Clause 7.2 'Preservation of Salary Sacrifice Contributions' in Appendix B of these guidelines as varied from time to time), additional contributions, once made, will generally be preserved (locked away) until your retirement. Thus salary sacrifice for superannuation is a significant decision. *You are encouraged to treat it as seriously as other significant financial matters.*

**14. Can I stop my salary sacrifice or transfer it if I move to another agency?**

Cancellation is always available following one month's notice. Each public sector agency, outside of the NSW Health System will have a local arrangement regarding salary sacrifice for superannuation, and if salary sacrifice for superannuation is available at your new agency, mobility provisions should facilitate transferring arrangements subject to administrative costs.

**15. Salary Sacrifice for Superannuation – Issues to Consider**

The foregoing provides a summary only and is not to be substituted for professional or other financial advice.

Employees are strongly advised to seek their own independent financial advice before deciding that salary sacrifice for superannuation is the right choice in their circumstances.

**16. Further Information:**

For further information/clarification on salary sacrifice for superannuation, contact your organisation's Human Resources Department or Payroll Administrator.

**APPENDIX B**

*SALARY SACRIFICING FOR  
SUPERANNUATION*

*EMPLOYER GUIDELINES*

## INDEX

1.	Key Features .....	Page 6
2.	Eligibility .....	Page 7
3.	Quantum of Sacrifice/Contribution .....	Page 7
3.1	Maximum Salary Sacrifice .....	Page 7
3.2	Determining the Amount of Employer Contributions Relative to Salary Sacrificed .....	Page 7
3.3	Individual contribution caps .....	Page 7
4.	Funds to Which Contributions May be Made .....	Page 7
5.	Administrative Arrangements .....	Page 8
6.	Administrative Charges .....	Page 10
7.	Taxation and Regulatory Issues .....	Page 10
7.1	Taxation Benefits of Salary Sacrifice For Superannuation .....	Page 10
7.2	Preservation of Salary Sacrifice Contribution .....	Page 11
7.3	Tax Collection Responsibilities/Other Taxes and Imposts .....	Page 11
7.4	Other Superannuation Entitlements of Employees Entitlements under Superannuation Guarantee Provisions .....	Page 12
7.5	Other Superannuation Entitlements of Employees Entitlements under Defined Benefits Schemes .....	Page 12
	APPENDIX C Salary Sacrifice for Superannuation Election and Variation Form .....	Page 14
	APPENDIX D Cancellation of Election for Salary Sacrifice for Superannuation .....	Page 15

## SALARY SACRIFICE FOR SUPERANNUATION

### 1. KEY FEATURES

The key features of the salary sacrifice arrangements can be summarised as follows: In the NSW Health System, irrespective of the employee's current superannuation scheme and following variation of the relevant award, salary sacrifice arrangements are available to all non-SES staff including casual and temporary employees. Salary sacrifice is at the election of the employee, but subject to the agreement of the Director-General, NSW Department of Health, or delegate.

Salary sacrifice arrangements must be formalised by an agreement between the employee and the employee's organisation.

Employees who elect to enter into salary sacrifice arrangements may direct superannuation contributions to be made to either the First State Superannuation Scheme (FSSS), Health Employees Superannuation Trust Australia (HESTA), Private Healthcare Employee Superannuation Fund (PHESF) or a private sector complying superannuation fund, with the agreement of the Director-General, NSW Department of Health, or delegate. It should be noted that the aforementioned funds have been agreed between the NSW Department of Health and the relevant unions.

The majority of employers (including the NSW Health System) to whom salary sacrifice arrangements may apply, will not be subject to federal income tax or a state tax equivalent regime. For such employers, the cost of remunerating an employee by way of salary and by way of superannuation contribution is the same.

The amount of salary which can be salary sacrificed is unrestricted. Refer to section 3.1 for further details and considerations in this regard.

Salary sacrifice for superannuation may give rise to certain immediate taxation benefits for employees. However, superannuation benefits may be subject to tax when paid from the fund if before age 60, the result of which may be to reduce or eliminate the ultimate taxation benefits to be derived from salary sacrifice. In addition, the superannuation benefits generated through such sacrifice will be subject to 'preservation' (refer 7.2). Accordingly, the individual employee concerned can only assess the relative merits of sacrificing current salary for superannuation contributions in light of their own circumstances.

*Employees are strongly encouraged but are not compelled to obtain independent financial advice prior to making a decision to sacrifice salary for superannuation contributions (see Employee's Declaration at Appendix C).*

Salary sacrifice for superannuation will not affect the calculation of award entitlements such as allowances, penalty rates, overtime, payment for unused leave entitlements or an employee's leave loading. Further, the salary sacrifice arrangements cannot be used to satisfy the requirement for compulsory employer contributions required to the First State Superannuation Fund (or any other scheme if the employee has directed that the current employer pay superannuation guarantee contributions to that other scheme) pursuant to the superannuation guarantee legislation requirements.

Member benefits and contributions in the defined benefit schemes (State Superannuation Scheme, State Authorities Superannuation Scheme and State Authorities Non-contributory Superannuation Scheme) are based on the 'salary' of members. Salary sacrificed for superannuation has no effect on benefits or member contributions, because it is designated an 'approved employment benefit' and included in the definition of 'salary' for those schemes.

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**Title: Salary Sacrifice for Superannuation – Reviewed Guidelines**

## **2. ELIGIBILITY**

Following consultation with applicable Unions it has been agreed that salary sacrifice will be available to the following classifications of employees:

- permanent full-time
- part-time ie. those employees who are employed on an ongoing basis
- temporary and casual employees (refer paragraph 3.2 below)

## **3. QUANTUM OF SACRIFICE/CONTRIBUTION**

### **3.1 Maximum Salary Sacrifice**

The amount of salary which can be salary sacrificed is unrestricted. However, employees will need to take into account any pre-tax and post-tax payroll deductions including employee superannuation contributions, HECS payments, union fees, health fund premiums, maintenance orders, judgement debtor/garnishee orders, etc before determining the availability of salary that could be sacrificed.

However, employees should be aware of their individual contribution caps (see section 3.4).

Although salary sacrifice for superannuation reduces the base salary received by the employee, it has no effect on allowances, penalty rates, overtime, leave loading, etc. All calculations are based on the salary that would apply in the absence of salary sacrifice arrangements.

### **3.2 Casual and Temporary Employees**

Casual and temporary employees may salary sacrifice superannuation contributions. The amount to be salary sacrificed will be nominated by the employee as a percentage of their earnings for each engagement.

### **3.3 Individual contribution caps**

An individual has a cap on the amount of concessional contributions that benefit from the concessional tax treatment in the superannuation fund (i.e. taxed at 15%). Concessional contributions include contributions made by the employer and salary sacrifice contributions. The cap for the year ended 30 June 2008 is \$50,000. If this cap is exceeded, the contributions in excess of the cap will be taxed a further 31.5% (in addition to the 15%). Indexation of this cap is calculated yearly however the cap only increases when the indexed amount is greater than \$5,000.

Commencing from the year ending 30 June 2008 there is a five year transitional cap of \$100,000 per person per year for individuals who are aged 50 and over in the particular year.

## **4. FUNDS TO WHICH CONTRIBUTIONS MAY BE MADE**

Employees who wish to make contributions to a fund other than FSSS, HESTA or PHESF may do so. However, evidence must be provided that the fund is a complying fund in terms of the superannuation legislation.

Employees who are eligible for full membership of FSSS (ie. for whom their employer would have to make compulsory contributions pursuant to the superannuation guarantee provisions), are currently able to direct their employer to make superannuation guarantee contributions referable to them to any complying superannuation scheme other than FSSS. Employees who have elected to have their superannuation guarantee contributions paid to a non-FSSS fund will be obliged to have any salary sacrifice contributions paid into the same fund. If full members have not directed their employer to make compulsory superannuation contributions to another complying superannuation fund, then they would be bound by this policy regarding available funds for salary sacrifice contributions.

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**Title: Salary Sacrifice for Superannuation – Reviewed Guidelines**

Contributions to multiple funds are not permitted pursuant to the salary sacrifice for superannuation arrangements. Therefore, an employee may only direct salary sacrifice superannuation contributions to one fund.

## **5. ADMINISTRATIVE ARRANGEMENTS**

It is the primary responsibility of the employee, in determining whether to salary sacrifice for superannuation, to assess the implications of such a decision on his or her financial circumstances. Therefore, employees should seek independent financial advice.

Employers should ensure that employees wishing to salary sacrifice for superannuation or wishing to vary their existing arrangements complete the employee declaration (Appendix C) which also incorporates the payroll deduction form authorising the service to deduct any administrative charge due where necessary.

For a valid salary sacrifice for superannuation to exist, the salary sacrifice agreement between the employer and the employee must be made before the services to which the income relates are performed. Therefore, an election made by an employee will only have effect in relation to income derived by the employee after the election has been made.

Accordingly, a salary sacrifice election should only be implemented from the period of service commencing after the election has been received in the human resources/payroll section. For example, if an employee is paid fortnightly in arrears (eg on each alternate Wednesday), an election received by the employer on the Tuesday of the first week of that cycle should not be given effect to in relation to salary payments for that fortnight, but rather should only be given effect for salary payments made in respect of the next commencing fortnightly cycle.

Any election made by an employee is valid only in relation to the employer. Within the NSW Health System, employees may transfer their salary sacrifice for superannuation arrangements in accordance with normal mobility arrangements to another health service or to the Department of Health.

Employees transferring to other State Government Departments may not necessarily be allowed to transfer their salary sacrifice for superannuation arrangements. The decision as to whether such transfer arrangements will be accepted rests with each employing Department.

*Employees are responsible:*

- for completing the variation/election form and certifying that they have obtained independent financial advice or opted not to obtain such advice (refer Appendix C).
- for forwarding that form and where necessary providing evidence that the fund is a complying fund in terms of the superannuation legislation to the Human Resources or Payroll section of their organisation.
- for forwarding any cancellation advice to the Human Resources or Payroll section of their organisation (refer Appendix D).
- ensuring that they have considered any pre-tax and post-tax payroll deductions including employee superannuation contributions, HECS payments, union fees, health fund premiums, maintenance orders, judgement debtor/garnishee orders, etc before determining the availability of salary for sacrificing purposes.

*Employers are responsible:*

- for ensuring that the employee has taken into account any pre-tax and post-tax payroll deductions including employee superannuation contributions, HECS payments, union fees, health fund premiums, maintenance orders, judgement debtor/garnishee orders, etc before determining the availability of salary for sacrificing purposes.

**Title: Salary Sacrifice for Superannuation – Reviewed Guidelines**

- for ensuring that the fund nominated by the employee is a complying fund in accordance with the superannuation legislation.
- for making salary payments and superannuation contributions in a timely manner in accordance with the election received. The Department has determined that deductions for salary sacrifice for superannuation must commence within one month from the date the employee submits the completed application form and any other required documentation.
- for ensuring superannuation contributions pursuant to salary sacrifice arrangements are forwarded at the same time that routine superannuation deductions are forwarded.
- for ensuring the election notice is based upon yearly salary or wages and the amount elected to be sacrificed as superannuation by the employee represents a yearly sum i.e. in dollars (\$), or for casual and temporary employees, a percentage (%) of earnings. In determining the employee’s cash salary after the election, the employer should simply deduct the yearly salary sacrifice amount from the employee’s yearly base salary or wage. The amount remaining after this deduction will be the yearly base salary reported on the employee’s pay slip. To determine the employee’s cash salary per pay period, the employer should simply apply the formula below to the yearly base salary or wages.

For example, an employee with a base salary of \$40,000 per annum elects to sacrifice a yearly sum of \$4,000 to superannuation. The employee’s annual cash salary after election will be \$36,000, and would be paid as follows:

For an employee paid fortnightly B fortnightly salary and superannuation contributions would be calculated as follows:

Gross Cash Salary	=	$\frac{\$36,000 \times 2}{52.17857}$
	=	\$1,379.88 per fortnight
Superannuation Contribution	=	$\frac{\$4,000 \times 2}{52.17857}$
	=	\$153.32 per fortnight

- For ensuring that the reduction in fortnightly salary does not affect the calculation of penalty rates, overtime, leave loading, unused leave entitlements and other award entitlements.
- For ensuring that any salary sacrifice contributions which are forwarded to a superannuation fund are correctly identified. For example, salary sacrifice contributions forwarded to FSSS should be identified as ‘optional employer’ or ‘pre-tax’ contributions. If contributions are forwarded to a private sector complying superannuation fund, they should simply be identified as ‘employer’ contributions.
- For ensuring that employees are informed of their superannuation contributions made pursuant to salary sacrifice arrangements. Accordingly, the employee’s payslip must include notification of the employer’s (ie Employer) superannuation contribution pursuant to salary sacrifice arrangements under the heading ‘additional employer superannuation contributions’. As such, the employee’s payslip would include the employee’s gross cash salary (after sacrifice), tax deducted and remitted in relation to that gross cash salary, and net cash salary, and would also include the additional employer superannuation contributions as a separate component which is ‘non-taxable’ to the employee. Both payroll systems have the capacity for fortnightly reporting of the employee’s contributions. It should be noted that such reporting is unrelated to the Employer group certificate obligations.

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**Title: Salary Sacrifice for Superannuation – Reviewed Guidelines**

- For ensuring that employees are aware that any taxation benefits in relation to salary sacrifice for superannuation are based upon existing taxation legislation, continuation of such taxation benefits may be impacted by any future legislative changes.
- For ensuring that employees are aware that whilst the salary sacrifice for superannuation contribution arrangements may result in certain taxation benefits for employees, such taxation benefits are obtained at the expense of immediate access to the benefit accumulating as a result of those contributions ie. the preservation implications of any salary sacrifice decision they may make.

## **6. ADMINISTRATIVE CHARGES**

Employees will be permitted to vary an existing salary sacrifice for superannuation election once per year (the 12 month period being the anniversary of the payday the deductions commenced) without incurring an administrative charge. Requests to further vary the election during the 12 month period may incur an administrative charge per variation.

No administrative charge will be levied where an employee transfers from full-time to part-time or vice versa and elects to vary his/her election.

Cancellation of salary sacrifice contributions may be made at any time, provided one month's notice is given, without an administrative charge being applied. In cases of pressing personal circumstances and where practicable, the notice period may be waived. Whilst the first commencement/cancellation of a salary sacrifice arrangement will be free of the administrative charge, if the salary sacrifice arrangement is resumed and again cancelled in the same year, an administrative charge may apply for each variation.

Employers should ensure that requests for elections to be cancelled are processed within one month from the date the cessation notice (Appendix D) is received by the pay office.

When an employee tenders his/her resignation they may request the salary sacrifice contribution not be deducted from their final salary and/or termination payment. No administrative charge will be levied in this circumstance.

## **7. TAXATION AND REGULATORY ISSUES**

### **7.1 Taxation Benefits of Salary Sacrifice for Superannuation**

Salary sacrifice for superannuation may result in certain taxation benefits to an employee arising as a result of the current concessional taxation treatment afforded to superannuation. Specifically, remuneration taken in the form of salary is fully taxable to the employee, the quantum of tax being dependent on the employee's marginal rate of tax. Salary sacrificing will reduce the employee's taxable income, and accordingly will reduce the employee's liability to income tax. Any amount of salary sacrificed to superannuation is subject to tax as follows:

- Taxation upon entry to the superannuation fund - a superannuation contribution resulting from a salary sacrifice arrangement is treated for taxation purposes as an 'employer contribution'. Accordingly, the contribution will be subject to tax in the hands of the superannuation fund at the rate of 15%. The contribution tax paid by the superannuation fund would, as a matter of course, be charged to the relevant member's accumulation account within the superannuation fund. In other words, ignoring administration charges, which would be charged to the account, the superannuation contribution resulting from salary sacrifice will, after deduction of tax, be 85% of the amount contributed. This amount will then earn investment earnings in the fund, with these earnings also being taxed at 15%, rather than at the employee's marginal rate of tax, as would happen if the employee invested the money after it had been paid as salary.

It is important to recognise that superannuation benefits may also be subject to tax when they are paid out from the superannuation fund. This tax upon exit from the fund could

**Title: Salary Sacrifice for Superannuation – Reviewed Guidelines**

reduce (and in some cases eliminate) the ultimate tax advantage of salary sacrifice. It is noted that *from 1 July 2007* superannuation benefits are tax free when taken by the member after age 60. For members under age 60 receiving a superannuation benefit they may be subject to tax.

*Employees therefore are strongly encouraged to seek financial advice prior to entering into salary sacrifice arrangements.*

As the taxation benefits noted above in relation to salary sacrifice for superannuation are based upon existing taxation legislation, continuation of such taxation benefits may be impacted by any future legislative changes. Employers should clearly indicate this fact to employees.

## 7.2 Preservation of Salary Sacrifice Contributions

Superannuation benefits arising from contributions made pursuant to the salary sacrifice arrangements will be ‘preserved’ benefits. Preserved benefits can generally only be accessed by an individual upon attaining their preservation age (see below) and retiring from gainful employment. Other circumstances under which preserved benefits may be accessed include death, permanent incapacity, financial hardship, and permanent departure from Australia. Whilst preserved benefits generally cannot be accessed by the individual, they can be transferred to another complying superannuation fund or a rollover institution such as an approved deposit fund, if the employee resigns.

A member’s preservation age is:

<b>For a person born:</b>	<b>Age</b>
before 1 July 1960	55
during the year 1 July 1960 to 30 June 1961	56
during the year 1 July 1961 to 30 June 1962	57
during the year 1 July 1962 to 30 June 1963	58
during the year 1 July 1963 to 30 June 1964	59
after 30 June 1964	60

Accordingly, whilst the salary sacrifice for superannuation contribution arrangements may result in certain taxation benefits for employees as mentioned above, such taxation benefits are obtained at the expense of immediate access to the benefit accumulating as a result of those contributions.

*Employers should take steps to ensure that employees are aware of the preservation implications of any salary sacrifice decision they may make.*

## 7.3 Tax Collection Responsibilities/Other Taxes and Imposts

The following matters should be noted in relation to employers’ tax collection responsibilities and in relation to other taxes and imposts applicable to employers due to their status as employers:

- *Pay as You Go (PAYG) deduction and remittance* - following an election by an employee to sacrifice salary for superannuation contributions, the PAYG amount deducted from an employee’s salary and remitted to the ATO should be based upon the employee’s post-sacrifice salary. As mentioned above, the employee’s elected salary is recalculated having regard to that employee’s elected salary sacrifice. The employee’s annual salary per pay period is determined by reference to that recalculated annual salary. It is that recalculated annual salary per pay period upon which PAYG deductions and remittances should thereafter be based. There should be no taxation deductions or remittances from superannuation contributions pursuant to the salary sacrifice arrangements.

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**Title: Salary Sacrifice for Superannuation – Reviewed Guidelines**

- *Payroll Tax* - employer contributions to a superannuation fund have been subject to payroll tax in NSW from 1 July 1996. As contributions made to superannuation funds pursuant to the salary sacrifice arrangements will constitute employer contributions, those contributions will be subject to NSW payroll tax.
- *Workers Compensation premiums* - workers compensation entitlements of non-SES staff should not be reduced by any salary sacrifice to superannuation that they may make. Accordingly, workers compensation premiums payable by employers should be based upon the employee's pre-sacrifice remuneration.

#### **7.4 Other Superannuation Entitlements of Employees - Entitlements Under the Superannuation Guarantee Provisions**

Employer contributions to satisfy superannuation guarantee requirements are, in general terms, a function of the cash salary of relevant employees. Prima facie, then, a reduction in cash salary resulting from an employee's salary sacrifice election will reduce the employer contributions required to be made to satisfy the superannuation guarantee provisions.

Further, salary sacrifice contributions constitute 'employer contributions'. In assessing an employer's satisfaction of its superannuation guarantee requirements, regard is only had to the amount of employer contributions made by the relevant employer. In other words, no distinction is drawn between contributions made pursuant to salary sacrifice arrangements and contributions made otherwise. Prima facie then, contributions made pursuant to salary sacrifice arrangements may reduce or eliminate the requirements for other employer contributions to be made to satisfy superannuation guarantee requirements.

In order to ensure that staff are not disadvantaged by any salary sacrifice election through a reduction in employer contributions which would otherwise have been required to satisfy superannuation guarantee requirements, the awards ensure that there is no impact on an employer's compulsory contributions in respect of an employee, notwithstanding the fact that the employee may salary sacrifice for superannuation.

This means that regardless of the amount an employee salary sacrifices, this amount in no way, diminishes the amount of salary the employer uses to base the calculation of the minimum superannuation guarantee contributions.

#### **7.5 Other Superannuation Entitlements of Employees - Entitlements Under Defined Benefit Schemes**

The defined benefits of members of the State Superannuation Scheme (SSS), State Authorities Superannuation Scheme (SASS) and State Authorities Non-Contributory Superannuation Scheme (SANCS) are based upon the 'salary' of those members. 'Salary' for this purpose is defined in the relevant Acts of Parliament which govern the defined benefit schemes to include 'approved employment benefits'. Salary sacrifice for superannuation has been designated by the Premier and the Treasurer as an 'approved employment benefit' and will therefore continue to be included in the employee's superannuable salary. Accordingly, the defined benefits of members of these schemes will not be affected by any decision of the member to sacrifice salary for superannuation contributions.

The following additional matters in relation to members in the defined benefits schemes should also be noted:

- Required member contributions to the defined benefits schemes are calculated by reference to 'salary' as defined in the relevant Act, which is inclusive of 'approved employment benefits'. By virtue of the designation of salary sacrifice for superannuation as an 'approved employment benefit', required member contributions to the defined benefits schemes should be calculated on the pre-sacrifice remuneration of the member.

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***Title: Salary Sacrifice for Superannuation – Reviewed Guidelines***

- In addition, salary sacrifice arrangements cannot be applied in satisfaction of the required member contributions for members of the defined benefits schemes. Contributions pursuant to salary sacrifice arrangements constitute 'employer contributions' and as such will not satisfy the requirements under the relevant Acts for member contributions to be made to the relevant defined benefits schemes. Such member contributions must continue to be made from post tax salary of the member.
- In providing salary information to State Super in relation to employees who are members of the defined benefit schemes, Employers should ensure that salary sacrifice contributions are included in 'salary'. It is therefore important for employers to have regard to the limitations that apply to salary sacrifice for superannuation so that they do not inadvertently increase the superannuable salary above what it would have been without salary sacrifice, as such an increase would result in increased costs for them.
- Employees who receive compulsory contributions in FSSS will continue to receive the same amount of employer contributions after salary sacrifice as before. The definition of 'salary or wages' in the FSSS legislation is considered broad enough to allow salary sacrifice contributions to superannuation to be included in that definition.

**APPENDIX C**

**SALARY SACRIFICE FOR SUPERANNUATION ELECTION AND VARIATION FORM**

Employee Name: .....Payroll Number .....

Employer Use Only:

\$

- 1. Base Salary .....
- 2. Superannuable Salary .....
- 3. Salary Sacrifice for Superannuation .....
- 4. Adjusted Base Salary (1-3) .....

Superannuation fund to which contributions are to be made:

.....

**DECLARATION BY THE EMPLOYEE:**

I, .....hereby certify that I have obtained independent financial advice in relation to this salary sacrifice election, or I have not obtained financial advice, but I fully understand the implications of my election.

I understand that superannuation benefits derived from salary sacrifice contributions will constitute 'preserved' benefits. As such, the benefits generally will not be able to be accessed by me until retirement from the workforce after having attained the requisite preservation age.

Further, I understand that any benefit that may be generated in the nominated superannuation fund by my salary sacrifice contributions is dependent on factors (eg. fund earnings rates and charges) beyond the control of my employer and my employer can in no way guarantee the benefit to be derived from my salary sacrifice for superannuation contributions.

I also understand that this election will remain in force until I cancel it or make a new election. It will not automatically be amended for changes to my salary, nor will it be amended automatically should there be any changes to the tax regime as it applies to superannuation or salary sacrifice arrangements generally.

In addition, (and where applicable) I hereby authorise the Payroll Administrator to deduct the appropriate administrative charge from my salary from the next available pay day ie. the same pay day the salary sacrifice for superannuation commences.

SIGNED (Signature of Employee):.....

WITNESS (Signature)..... Date .....

**APPENDIX D**

**CANCELLATION OF ELECTION FOR SALARY SACRIFICE FOR SUPERANNUATION**

To the Payroll Administrator:

Employee Name .....

Payroll Number .....

I request you to cancel my election for salary sacrifice for superannuation from the next available payday (or within one month from the date of this authority being received).

In addition, I hereby authorise the Payroll Administrator to deduct the appropriate administrative charge (**if applicable**) from my salary from the next available payday.

Signed (signature of employee) .....

Witness (signature) .....Date .....