

## Salary Packaging and Sacrificing to Superannuation - Removal of 50% Limitation

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**Functional Sub group** Personnel/Workforce - Salaries  
Personnel/Workforce - Conditions of employment

**Summary** Removal of restriction on salary for salary packaging and salary sacrificing.

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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

**Audience** All staff

**Distributed to** Public Health System, Health Associations Unions, NSW Ambulance Service, NSW Department of Health, Public Health Units, Public Hospitals

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## **REMOVAL OF 50% LIMITATION ON EMPLOYEES' SALARY WHICH CAN USED FOR SALARY PACKAGING AND SALARY SACRIFICING TO SUPERANNUATION PURPOSES**

Until now, Health Service awards have contained a 50% limitation on an employee's salary that could be utilised for the purposes of salary packaging or salary sacrificing to superannuation, or for a combination of both. This limitation applied throughout public sector agencies, and was a condition for the introduction of salary packaging and salary sacrificing to superannuation schemes in NSW Health.

Premier's Department has recently reviewed this policy and has decided to remove the 50% limitation on salary for both salary packaging and salary sacrificing to superannuation. The effect of this decision is that the amount of salary that can be utilised for either or both of these two schemes is now unrestricted. Premier's Department Circular 2006-08 refers.

It has been decided to extend the same benefit to employees in Health Services. To facilitate this change, the Health Awards were formally varied by Commissioner McLeay on 15 August 2006, with the consent of the unions, so as to remove the 50% restriction from the salary packaging and salary sacrificing to superannuation clauses. The variations took effect on and from 15 August 2006, which means that Health Services can now proceed with the new policy. The Health Awards so varied are shown in Schedule 'A'. A sample variation, using the Health Employees Conditions of Employment (State) Award by way of illustration is attached as Schedule 'B', for the information of Health Services. Individual variations to each award have been integrated into the awards shown on the Department's website.

While technically this means that employees can package/sacrifice up to 100% of salary, individual employees will need to take into account any pre-tax and post-tax payroll deductions prior to determining the amount of their available salary to be packaged/sacrificed. Such payroll deductions may include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees and private health fund membership fees.

In Circular 2006-08, Premier's Department allows casual employees access to salary sacrifice to superannuation, subject to Department or Agency convenience. Casual employees in NSW Health have been excluded from both the salary packaging and salary sacrificing schemes because of the limitations and administrative difficulties, and the short-term nature of casual engagements under certain Health Awards. Because of these impracticalities, it has been decided to continue excluding casual employees from both schemes.

Any inquiries concerning the new policy are to be directed to the relevant human resource personnel in area health services. Only human resource personnel from area health services are to contact the Department.

Robyn Kruk  
**Director-General**

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*Title: Removal of 50% Limitation on Employees' Salary Which Can Used for Salary Packaging and Salary Sacrificing to Superannuation Purposes*

## SCHEDULE A

Health Employees Conditions of Employment (State) Award

Public Hospital (Professional and Associated Staff) Conditions of Employment (State) Award

Hospital Scientists (State) Award

Public Hospital (Medical Officers) Award

Public Hospital (Medical Superintendents) Award

Public Hospital Career Medical Officers (State) Award

Health Professional and Medical Salaries (State) Award

Public Hospital Nurses' (State) Award

Staff Specialists (State) Award

Operational Ambulance Officers (State) Award

Ambulance Service of NSW Administrative and Clerical Employees Award

Ambulance Service of NSW Superintendents/Operational Managers (State) Award

Public Health Service Employees Skilled Trades (State) Award (Incorporating the Ambulance Service of NSW Skilled Trades)

## SCHEDULE B

### HEALTH EMPLOYEES CONDITIONS OF EMPLOYMENT (STATE) AWARD

1. **Delete the existing Clause 44. Salary Sacrifice to Superannuation, and replace it with the following new Clause 44. Salary Sacrifice to Superannuation**

#### **44. Salary Sacrifice to Superannuation**

- (i) Notwithstanding the salaries as varied from time to time, prescribed in the awards identified in Clause 49. Area, Incidence and Duration, of this award, an employee may elect, subject to the agreement of the employee's employer, to sacrifice a part or all of the salary payable under the relevant award to additional employer superannuation contributions. Such election must be made prior to the commencement of the period of service to which the earnings relate. The amount sacrificed together with any salary packaging arrangements under Clause 45. Salary Packaging, of this award may be made up to one hundred (100) per cent of the salary payable under the relevant salaries clause, or up to one hundred (100) per cent of the currently applicable superannuable salary, whichever is the lesser.

In this clause, 'superannuable salary' means the employee's salary as notified from time to time to the New South Wales public sector superannuation trustee corporations.

- (ii) Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be packaged. Such payroll deductions may include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees and private health fund membership fees.
- (iii) Where the employee has elected to sacrifice a part or all of the available payable salary to additional employer superannuation contributions:
  - (a) The employee shall be provided with a copy of the signed agreement. The salary sacrifice agreement shall be terminated at any time at the employee's election and shall cease upon termination of the employee's services with the employer.
  - (b) Subject to Australian taxation law, the amount of salary sacrificed will reduce the salary subject to appropriate PAYE taxation deductions by the amount sacrificed; and
  - (c) Any allowance, penalty rate, overtime, payment for unused leave entitlements, weekly workers' compensation, or other payment, other than any payment for leave taken in service, to which an employee is

entitled under the relevant award or any applicable award, act, or statute which is expressed to be determined by reference to an employee's salary, shall be calculated by reference to the salary which would have applied to the employee under the salaries clause of the relevant award in the absence of any salary sacrifice to superannuation made under this award.

- (iv) The employee may elect to have the specified amount of payable salary which is sacrificed to additional employer superannuation contributions:
  - (a) paid into the superannuation scheme established under the First State Superannuation Act 1992 as optional employer contributions; or
  - (b) subject to the employer's agreement, paid into a private sector complying superannuation scheme as employer superannuation contributions.
- (v) Where an employee elects to salary sacrifice in terms of subclause (iv) above, the employer will pay the sacrificed amount into the relevant superannuation fund.
- (vi) Where the employee is a member of a superannuation scheme established under:
  - (a) the Police Regulation (Superannuation) Act, 1906;
  - (b) the Superannuation Act, 1916;
  - (c) the State Authorities Superannuation Act, 1987;
  - (d) the State Authorities Non-contributory Superannuation Act, 1987; or
  - (e) the First State Superannuation Act, 1992.

The employee's employer must ensure that the amount of any additional employer superannuation contributions specified in subclause (i) above is included in the employee's superannuable salary which is notified to the New South Wales public sector superannuation trustee corporations.

- (vii) Where, prior to electing to sacrifice a part or all of their salary to superannuation, an employee had entered into an agreement with their employer to have superannuation contributions made to a superannuation fund other than a fund established under legislation listed in subclause (vi) above, the employer will continue to base contributions to that fund on the salary payable under the relevant salaries award to the same extent as applied before the employee sacrificed that amount of salary to superannuation. This clause applies even though the superannuation contributions made by the employer may be in excess of the superannuation guarantee requirements after the salary sacrifice is implemented.

**2. Delete the existing Clause 45. Salary Packaging, and replace it with the following new Clause 45. Salary Packaging**

**Clause 45. Salary Packaging**

1. By agreement with their employer, employees may elect to package part or all of their salary in accordance with this clause, to obtain a range of benefits as set out in the NSW Health Services Salary Packaging Policy and Procedure Manual, as amended from time to time. Such election must be made prior to the commencement of the period of service to which the earnings relate. Where an employee also elects to salary sacrifice to superannuation under this award, the combined amount of salary packaging/sacrificing may be up to 100 per cent of salary.

Any salary packaging above the fringe benefit exemption cap will attract fringe benefits tax as described in paragraph 4 below.

2. Where an employee elects to package an amount of salary:
  - a) Subject to Australian taxation law, the packaged amount of salary will reduce the salary subject to PAYE taxation deductions by that packaged amount.
  - b) Any allowance, penalty rate, overtime payment, payment for unused leave entitlements, weekly workers' compensation, or other payment other than any payment for leave taken in service, to which an employee is entitled under this award or statute which is expressed to be determined by reference to an employee's salary, shall be calculated by reference to the salary which would have applied to the employee under the relevant salaries award in the absence of any salary packaging or salary sacrificing made under this award.
  - c) 'Salary' for the purpose of this clause, for superannuation purposes, and for the calculation of award entitlements, shall mean the award salary as specified in the appropriate salaries award, and which shall include 'approved employment benefits' which refer to fringe benefit savings, administration costs, and the value of packaged benefits.
3. Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of available salary to be packaged. Such payroll deductions may include but are not limited to superannuation payments, HECS payments, child support payments, judgement debtor/garnishee orders, union fees, and private health fund membership fees.
4. The salary packaging scheme utilises a fringe benefit taxation exemption status conferred on public hospitals and area health services, which provides for a fringe benefit tax exemption cap of \$17,000 per annum. The maximum amount of fringe benefits-free tax savings that can be achieved under the scheme is where the value of benefits when grossed-up, equal the fringe benefits exemption cap of \$17,000. Where the grossed-up value exceeds the cap, the

employer is liable to pay fringe benefits tax on the amount in excess of \$17,000, but will pass this cost on to the employee. The employer's share of savings, the combined administration cost, and the value of the package benefits, are deducted from pre-tax dollars.

5. The parties agree that the application of the fringe benefits tax exemption status conferred on public hospitals and area health services is subject to prevailing Australian taxation laws.
6. If an employee wishes to withdraw from the salary packaging scheme, the employee may only do so in accordance with the required period of notice as set out in the Salary Packaging Policy and Procedure Manual.
7. Where an employee ceases to salary package, arrangements will be made to convert the agreed package amount to salary. Any costs associated with the conversion will be borne by the employee, and the employer shall not be liable to make up any salary lost as a consequence of the employee's decision to convert to salary.
8. Employees accepting the offer to salary package do so voluntarily. Employees are advised to seek independent financial advice and counselling to apprise them of the implications of salary packaging on their individual personal financial situations.
9. The employer and the employee shall comply with the procedures set out in the NSW Health Services Salary Packaging Policy and Procedure Manual as amended from time to time.