

Salary Packaging Policy and Procedure Manual

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Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

SALARY PACKAGING POLICY AND PROCEDURE MANUAL

A final updated version of the Salary Packaging Policy and Procedure Manual covering the 'general' salary packaging scheme is enclosed for information and distribution throughout Health Services. This version dated 5 October 2007 replaces the original Policy and Procedure Manual dated 29 November 2001 that was issued to coincide with the original launch of the 'general' salary packaging scheme from 1 January 2002.

The updated Manual includes a number of changes to the original document that can be summarized as follows:

- Revised explanations of how salary packaging works, what is fringe benefit tax (FBT), and the public hospital status that allows salary packaging to be offered.
- Examples of savings calculations based on the personal income tax scales effective from 1 July 2007, and the reduced fringe benefit tax rate of 46.5% effective from 1 April 2006 are shown at pages 17-19. The grossed-up FBT exemption cap remains at \$17,000 per annum, but when expressed in net terms increases from \$8,755 to \$9,095 pa.
- Duplicated text has been removed from the document wherever possible.
- Some of the layout and sequencing has been re-ordered into a more logical format.
- The complete range of packaging benefits as approved to date by Premier's Department and Treasury appears in the packaging benefit menu at page 15.
- 'Meal entertainment' is included as a newly-approved FBT-exempt benefit item, with an accompanying set of business rules for the checking and administration of claims – see page 16.
- The 50% limitation on the amount of salary available for salary packaging purposes (and for salary sacrificing for superannuation) has been removed following a Premier's Department initiative and variations to the salary packaging clauses of health awards. The amount of salary that can be availed for these purposes is now unrestricted (earlier advice see IB2006_034).
- An explanatory paragraph is added to clarify the sequencing of deductions from salary for salary sacrifice for superannuation and salary packaging purposes.
- Changes to nomenclature to reflect legislative changes to the employment status of employees in the NSW Health Service.

Professor Debora Picone AM
Director-General

NSW HEALTH

**SALARY PACKAGING
POLICY AND PROCEDURE MANUAL**

5 October 2007

PD2007_076

**NSW HEALTH
SALARY PACKAGING SCHEME**

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NSW HEALTH SALARY PACKAGING

Introduction

This Policy and Procedure Manual replaces the original draft Salary Packaging Policy and Procedure Manual dated 29 November 2001.

This Manual provides information on the policies and guidelines applicable to the Salary Packaging Scheme (the scheme) introduced on 1 January 2002 for staff employed in the NSW Health Service following agreement reached with the relevant health unions. This Manual may be varied from time to time to reflect changes in policy and taxation law and guidelines.

Under the Fringe Benefit Tax ("FBT") legislation, where the employer is a public hospital or a government body and the duties of the employees are exclusively performed in or in connection with a public hospital, employees are able to be provided with fringe benefits which are exempt from FBT, up to a threshold of \$17,000 per annum ("the exemption threshold"). This threshold is applied to the grossed up taxable value of the benefits provided to each employee.

The scheme utilises the public hospital status of area health services under the FBT legislation and enables NSW Health employees to sacrifice pre tax salary in exchange for benefits which are FBT exempt, up to the exemption threshold of \$17,000 per annum. This arrangement results in a tax saving for the employee. This tax saving, together with the annual administrative fee charged to individual participants for administering their salary packaging arrangements, is shared on a 50/50 basis between employees and NSW Health.

A separate salary packaging scheme for Salaried Senior Medical Practitioners (SMPs) – now referred to as Staff Specialists - was introduced in January 2000, and operates parallel to this scheme along somewhat similar lines and with a similar range of benefits.

On 4 October 2007, the Department of Health approved of 'meal entertainment' being introduced as a new salary packaging benefit on the basis that this benefit and any future benefit made available for salary packaging, will be strictly on the basis of 50/50 sharing of the income tax saving between employee and employer. It should be noted the 50/50 sharing of income tax savings applies to staff specialists who wish to take up this benefit, even though the Australian Salaried Medical Officers' Federation (ASMOF) does not agree to this approach. Notwithstanding ASMOF's position, any request from a staff specialist to participate in accordance with the meal entertainment business rules at page 16 should be accepted.

What is Salary Packaging?

Salary packaging is a tax-effective means for an employee to sacrifice part or all of their future remuneration in exchange for what are known as 'non-cash benefits'. Non cash benefits can include mortgage repayments, residential rent payments, credit card payments, school fees, etc.

Salary packaging works by reducing the employee's gross salary by the cost of the benefit provided along with any associated costs, which in this instance would be the employer's share of the tax savings and the administration fee. The employee's remaining salary, after the deduction of all such costs, is paid to the employee in cash (ie. credited to the employee's bank account) and is subject to normal Pay-As-You-Go (PAYG) withholding tax.

The tax saving for the employee is achieved as a result of pre tax salary being sacrificed in exchange for benefits which are exempt from FBT or benefits that attract a lower amount of FBT than the amount of PAYG tax applicable to salary.

What is FBT ?

FBT is a tax payable by the employer on fringe benefits provided to its employees or their associates.

A fringe benefit is a benefit provided to an employee by an employer.

The Fringe Benefits Tax Assessment Act defines the type of benefits that can be provided and how the benefits are treated for FBT purposes.

The amount of FBT payable in respect of non-cash benefits will be determined according to whether the benefits attract full, concessional, or exempt category status for FBT purposes. The benefits menu appears at page 15 and an explanation of the FBT treatment starts at page 19.

In the case of employees of the NSW Health Service, the FBT exemption threshold available to public hospitals offers scope for the employee to sacrifice part or all of pre tax salary in exchange for fringe benefits without an FBT liability being incurred by the employer. Under the legislation, there is an exemption threshold set at \$17,000 which represents the grossed-up value of fringe benefits. The exemption threshold is explained in the paragraph titled 'Public Hospital Status' below, and the 'grossed-up value of fringe benefits' is defined in the glossary on page 6.

The current FBT rate is 46.5%, effective from 1 April 2006.

Public Hospital Status

Under changes to the Fringe Benefits Tax Assessment Act, it is possible for staff of the NSW Health Service to be provided with fringe benefits up to a value of \$17,000 per employee per salary packaging year free of FBT. The \$17,000 exemption threshold is based upon the grossed up taxable value of the benefits provided. In net terms, the exemption cap is \$9,095 per annum.

This means that the maximum dollar value of the benefit(s) that employees can 'package' without creating an FBT liability is \$9,095 per annum where the employer is unable to claim an input tax credit, such as residential rent or mortgage payments.

If the grossed up taxable value of fringe benefits provided to an employee exceeds \$17,000, the employee will be required to meet the cost of any FBT arising to the employer. The amount of FBT the employee is required to meet is calculated in accordance with NSW Premier's Department Circulars 2000-46 and 2006-18. This calculation is: - total taxable value of benefits multiplied by type 2 gross-up rate less exemption cap multiplied by FBT rate, eg. \$10,000 taxable value of benefits ($\$10,000 \times 1.86915 - \$17,000$) $\times 0.465 = \$786$. This additional cost will be charged to the employee's pre tax salary.

Who is eligible to access this scheme?

Permanent full time and part time employees, temporary employees employed for three months or more, and employees employed under specific grants or funds for periods in excess of 12 months who work in Divisions of the NSW Health Service that have Public Hospital status, are eligible to enter this scheme. Health executives employed in the Health Executive Service may also access this scheme. Casual employees are ineligible to join the scheme given the limitations of casual engagement.

Voluntary participation

Entry into the salary packaging scheme is voluntary. Employees who choose not to salary package continue receiving 100% of their salary in cash. Employees in the salary packaging scheme may exit at any time should their circumstances change, subject to meeting the required

period of notice and any payout obligations eg. under novated lease arrangements for a motor vehicle. Those choosing to join the scheme can select benefits from the menu at page 15 which are offered by the relevant Divisions of the NSW Health Service at any given time, which best suit their own individual financial situation.

It is strongly recommended that all employees seek independent financial advice before entering the scheme to ensure they have a proper understanding of the terms and conditions.

Advantages of Salary Packaging

The benefits from salary packaging for employees and employers are identified as follows:-

- increased after-tax pay for employees,
- employees and employers sharing on a 50/50 basis in the after-tax savings and in the scheme's administration costs,
- improved staff morale gained by employees enjoying access to packaged benefits,
- a higher attraction level and retention rate of key and valued employees.

Salary Sacrifice to Superannuation

Salary sacrificing to superannuation arrangements are administered separately from salary packaging schemes. The benefits derived from salary sacrifice to superannuation accrue to the employee, without any sharing of savings and administrative fees between employee and employer.

The amount of salary that an employee can devote to either salary sacrifice to superannuation or to salary packaging, or to a combination of both, is up to 100% of salary.

For salary sacrifice to superannuation provisions, refer to the salary sacrifice to superannuation clause in the relevant Health Service Awards.

'Double-Dipping'

Health Services are reminded that since the passage of the NSW Government's Public Sector Employment Legislation Amendment Act 2006 (PSELAA) on 17 March 2006, NSW Health employees are now employees of the NSW Health Service – Crown Authority and therefore, employees moving from one Health Service to another in the one FBT year are not to be regarded as being employed by two different employers, so they cannot access the \$17,000 pa FBT-free cap more than once in that year, ie. they cannot 'double-dip'.

Reference is made to the Chief Financial officer's letter of 19 October 2006, where Health Services were advised that they would need to implement a system to track health employees moving between Health Services within one FBT year to ensure that they do not access the FBT-free cap more than once per FBT year.

It was recommended as part of standard recruitment procedure, that a declaration be obtained from each new employee stating that he/she has not packaged the FBT-free cap with another Health Service in the current FBT year.

NSW HEALTH GLOSSARY OF TERMS

Benefit Item

An item of expenditure paid from pre-tax dollars, which the employee may include in their Salary Packaging.

Category A Benefit Items - FBT Exempt Benefits

These are benefit items that are specifically exempt from FBT or benefits that have a nil taxable value and do not create an FBT liability as a result of the “otherwise deductible rule”. For example, a laptop computer is specifically exempt from FBT. The reimbursement of education fees can have a taxable value of nil and not give rise to an FBT liability due to the otherwise deductible rule.

The otherwise deductible rule applies where, had the employee incurred the expense personally, without reimbursement by their employer, they would have been able to claim an income tax deduction for such expenditure in their personal income tax return. If such benefits are provided as part of the salary packaging arrangement, the employee cannot also claim a tax deduction in their personal income tax return - refer ‘Otherwise Deductible Items’ in this glossary (page 8).

As such benefits are either exempt or have a taxable value of nil, category A benefit Items will not be taken into account when calculating the grossed up taxable value of benefits for the purposes of the \$17,000 exemption threshold.

Category B Benefit Items - Concessionally Taxed Benefits

This refers to those benefit items which are subject to a rate of tax lower than 46.5% in consequence of being concessionally taxed for FBT purposes, for example, the provision of a motor vehicle for private use.

These benefits will be taken into account in calculating the grossed up taxable value of benefits for the purposes of the \$17,000 exemption threshold.

Category C Benefit Items – Fully Taxed Benefits

These are benefit items which attract the full fringe benefits tax.

These benefits will be taken into account in calculating the grossed up taxable value of benefits for the purposes of the \$17,000 FBT exemption threshold. There is no tax advantage for the employee in packaging category C items to the extent that they exceed the \$17,000 exemption threshold as the employee is required to account for any FBT arising on the excess amount to the employer. Exceeding the exemption threshold may even result in a disadvantage for the employee where the employee’s marginal tax rate is less than 46.5%.

Grossed-up taxable value of a fringe benefit

The term ‘grossed-up taxable value of a fringe benefit’ means the gross value of a benefit item on which the fringe benefit tax of 46.5% is applied. The \$17,000 fringe benefit exemption threshold is the maximum grossed-up amount of benefits that can be provided to an employee free of FBT as a consequence of the employer having public hospital status.

Fringe benefits exemption threshold

Each employee can received up to \$17,000 of grossed-up taxable benefits before the employer incurs a fringe benefits tax liability.

The grossed-up taxable value of a benefit is arrived at as follows:-

For benefits where the employer is not able to claim an input tax credit the value of the benefit is grossed up using 1.86915. For example, the employee can receive up to \$9,095 worth of taxable benefits without exceeding the \$17,000 exemption threshold, ($\$9,095.00 \times 1.86915 = \$16,999.92$).

Finance Lease

Refers to a legal document executed between the Financier and the employee participating in the Novated Lease of a Motor Vehicle. The Finance Lease sets out the terms and conditions upon which the finance is being provided for the lease of the motor vehicle.

Salary Packaging

'Salary Packaging' is where the employee sacrifices a part or all of pre tax salary in exchange for one or more benefits. Where not all of salary is packaged, the remaining salary, ie. the non-packaged amount is paid to the employee in cash (direct deposit to the employee's bank account).

Fringe Benefits Tax (FBT)

The Fringe Benefits Tax Assessment Act 1986 ("the Act") provides that all benefits which fall within the definition of 'fringe benefits' are subject to FBT. Under the Act the term 'benefit' is defined broadly but generally it applies to a benefit provided at any time during the year of tax in respect of the employment of the employee. A benefit that is considered an exempt benefit under the Act, is not subject to FBT.

Input Tax Credit

This applies where GST is charged on an item and the employer is entitled to claim a credit for the GST paid.

IT2509

Income Tax Ruling IT 2509 relates to the novated leasing of motor vehicles. This ruling along with Taxation Ruling TR 1999/15 sets out the Tax Commissioner's views in relation to the tax treatment of novated lease agreements.

ITAA

Refers to the Income Tax Assessment Acts 1936 and 1997.

Lease Rentals

Refers to the periodic lease payments made by the employer under the novated lease agreement.

Benefit Menu List

This lists the range of benefit items which an employee can salary package, which have been approved by Premier's Department and Treasury.

Approved Employment Benefits

Approved employment benefits refer to the fringe benefit saving, the administration cost, and the value of packaged benefit(s) which have been approved by Treasury as allowable benefits for superannuation purposes. This approval ensures that an employee's award salary is the 'superable salary' communicated to the Trustees of superannuation schemes.

Novated Lease

Under a novated lease, an employee leases a motor vehicle from the financier using a standard Finance Lease Agreement. A Deed of Novation is then entered into between the employee, the employer, and the financier in which the employee's obligation to pay the lease rentals under the Finance Lease is transferred to the employer for the term of the Deed of Novation.

Otherwise Deductible Items

Refers to those benefits for which an employee could otherwise claim a once only income tax deduction through their personal income tax return, eg. subscriptions to professional associations. An employee cannot claim a tax deduction in their income tax return for a benefit which has been salary packaged.

Package Year

Employees are required to review their salary packaging agreements at the commencement of each 'packaging year'. Irrespective of when an employee commences packaging, the "package year" commences on 1 April and concludes on 31 March the following year.

PAYG

PAYG is 'pay-as-you-go' withholding tax (income tax) that is withheld from an employee's salary each pay period and paid over to the Australian Taxation Office. The PAYG is offset against the employee's income tax liability via their personal income tax return.

Reconciliation of Benefits

A reconciliation of the employee's salary package will take place at the end of each package year or on termination. Any benefit entitlement not paid will be rolled over to the next package year unless the employee seeks reimbursement of the excess credit.

Reimbursement

Refers to repayment of benefit item amounts originally paid by the employee. The employer will pay the employee for the benefit item on receipt of original invoices and receipts.

Salary for Packaging Purposes

For the purpose of salary packaging, salary is an employee's substantive base award salary as at the date of commencement of each package year. As a general rule, salary does not include overtime, and higher duties allowances, etc. unless the award specifically prescribes it. Any increment or salary increase occurring during the package year is to be taken as a cash component of salary.

Salary Packaging Agreement

The salary packaging agreement between the employer and the employee specifies the terms and conditions upon which salary packaging is offered to the employee. The agreement confirms that the employee has read and understood the terms of the packaging agreement, how it can be terminated by either party, the selection of benefits and the amount packaged, the agreed administration fee, the authority to deduct from the employee's pay, and provision for a yearly review and confirmation of packaging intentions for the following packaging year. A pro-forma Salary Packaging Agreement appears at Appendix 1.

Salary Packaging Scheme

The Salary Packaging Scheme is the scheme being offered by NSW Health for eligible staff as defined in this Policy Manual.

Substantiation

The documentation required for Australian Taxation Office compliance purposes, which verifies the payment of a benefit item to a third party.

SALARY PACKAGING POLICY OVERVIEW

1. Overview

Salary Packaging is offered to permanent full time and part time employees, temporary employees employed for three months or more, and employees employed under specific grants or funds for periods in excess of 12 months who work in an Area Health Service Division or the Ambulance Service of NSW Division of the NSW Health Service. Casual employees are excluded from the scheme.

The scheme also applies to Health Executives employed in the Health Executive Service. Health Executives may access from the range of benefit items appearing at page 15. Note: Health Executives may not package multiple novated motor vehicle leases, and in that regard, are restricted to one novated lease under Health Department policy.

For the purpose of salary packaging, salary is an employee's substantive base salary as at the date of commencement of each package year, and excludes higher duties allowances. The substantive salary is the award salary. Some allowances may be included in award salary, but this will depend on the award.

Any increment or salary increase occurring during the package year is to be taken by the employee as a cash component of salary.

In the event of any liability to fringe benefit tax arising as a consequence of an employee salary packaging, the employer will pass on such costs to the employee. The FBT calculation is in accordance with NSW Premier's Department Circulars 2000-46 and 2006-18. This calculation is:- total taxable value of benefits multiplied by type 2 gross-up rate, less exemption cap, multiplied by FBT rate, eg. \$10,000 taxable value of benefits ($\$10,000 \times 1.86915 - \$17,000$) $\times 0.465 = \$786$. This additional cost will be charged to the employee's pre tax salary.

The scheme operates on a 50/50 share basis between employees and employers, in terms of both tax savings and administration costs. The administrative cost, the value of the benefit(s), and the employer's share of the tax savings, are deducted from pre-tax salary of the employee. This will result in an overall tax saving for the employee.

Each public health organisation will charge each participating employee an annual fee for administering their package which will be deducted on a pro rata basis for each period. The cost of the administration fee, including GST, will be shared equally by the public health organisation and the employee.

2. Administration Fees

The fees shown below are indicative and have had regard to existing fees and to fees charged commercially.

Administration Fee Description	Fee Per Annum
<i>(a) One benefit item packaged</i>	\$110
<i>(b) Two or more benefit items packaged</i>	\$305

Public health organisations which elect to outsource the administration of the salary packaging scheme can select from the list of approved providers which have been subject to a tendering process.

It is important to note that in all instances, the public health organisation will require the employee to sacrifice salary for the administration fee liability. In other words, the employer passes on the cost to the employee.

The range of benefits available to package at page 15 have been approved by the Treasury and Premier's Department for use within the NSW Health Service as 'approved employment benefits' for the purpose of salary for superannuation reporting purposes.

3. Salary for Salary Packaging and Sacrificing for Superannuation

'Salary' is defined in the salary packaging clauses of NSW Health Awards as being :-

- the award salary as expressed in the salaries clause of the award,
- the award salary as though the employee was not salary packaging, and
- salary as also including 'approved employment benefits' which encompass the benefits packaged, the packaging administration fee, and the employer's share of tax savings.

The purpose of these definitions is to protect the value of an employee's award salary for the calculation of award entitlements and for the annual notification of superable salary to the various superannuation funds, ie. as though salary is not diminished by virtue of either salary packaging or salary sacrificing to superannuation.

4. Salary Packaging and Salary Sacrifice for Superannuation – Sequence of Deductions

Where an employee decides to participate in both salary sacrifice for superannuation and salary packaging, the amount of salary to be used for salary sacrifice for superannuation is deducted first from the employee's pre-tax salary. (Note: Salary sacrifice for superannuation is administered separately from salary packaging. There is no 50/50 sharing of tax savings between the employer and the employee under salary sacrifice for superannuation).

The amount of salary to be used for salary packaging is then calculated on the salary after the amount for salary sacrificing for superannuation has been deducted. The value of the salary packaging benefit(s), the employer's 50% share of the savings, and the 50% share of the administration fee, is deducted from the employee's remaining salary.

5. Salary Packaging and Fringe Benefits Tax

Salary Packaging is an ATO acceptable practice in which pre tax salary is sacrificed before entitlement arises, with the approval of the employer, in exchange for benefits. Salary packaging will result in a tax saving for the employee if the benefits do not exceed the exemption threshold of \$17,000, or they are exempt benefits or they are concessional tax benefits and the concessional tax rate is less than the employee's marginal tax rate. As a result the employee will ultimately pay less tax as a consequence.

FBT was introduced in 1986 by the Federal Government to tax the value of benefits given by employers, associated entities or third parties under an arrangement with the employer, to employees and/or their associates. FBT ensures that tax is paid on benefits which are provided in place of, or in addition to, salary or wages of employees unless the benefit is exempt from FBT or is "otherwise deductible".

The Income Tax Assessment Acts (ITAA) and the Fringe Benefits Tax Assessment Act (FBTAA) 1986 essentially regulate and define the types of benefits employers can provide to their employees and the relevant tax payable on such benefits. These arrangements may change from time to time.

FBT is payable by employers and is assessed on the value of fringe benefits provided to employees or their associates (relatives). In the event of any liability to fringe benefit tax arising from an employee's salary package, the employer will pass on such costs to the employee by deducting this cost from their pre tax salary. The manner of calculating the FBT payable is explained in item 1. Overview on the previous page.

6. Moving to Another Employer

Employees should be aware that in the event they cease being members of staff of the NSW Health Service, and leave to take up employment either in a public sector organisation or in the private sector, that there is no carried-forward entitlement to the same range of benefit items, or to a continuation of the overall features of this Public Hospital based salary packaging scheme. Further, employees whose employment situation is altered by a transfer to another organisation within NSW Health which does not have Australian Taxation Office-endorsed FBT exempt tax status cannot continue to access this scheme.

7. Workers Compensation

Employees in the NSW Health Service are covered for workers compensation under the Treasury Managed Fund Scheme.

As a result of the statutory method of calculating workers compensation payments, the compensation payment amount may be less than the base salary used for salary packaging purposes. To continue salary packaging whilst receiving workers compensation payments, any shortfall will need to be made up through the employee's personal arrangements.

If an employee has insufficient salary to meet packaging commitments, then salary packaging may need to be suspended for the duration of the workers' compensation, and recommence once the employee returns to full time employment. Unilaterally suspending packaging may be inappropriate, and this needs to be considered on a case-by-case basis in consultation with the employee. The main consideration is whether the employee's workers' compensation payment is sufficient to service the amount packaged, and whether the individual will have sufficient cash to live on.

It is the responsibility of the employee to notify the employer where an employee's salary packaging arrangements will be affected as a result of an employee being off work due to a workers compensation claim.

8. Unpaid Leave

In most instances, approval of any period of leave without pay of more than five days will require the employee to cease salary packaging.

It is the responsibility of the employee to notify the package administrator when an employee's salary packaging arrangements will be affected as a result of the approval of leave on half pay or unpaid leave. Where possible, this notification should be provided prior to the commencement of the leave period to enable the necessary arrangements to be made by the employer.

On returning from unpaid leave, the employee and employer will need to reach agreement on an appropriate time for the employee to rejoin the salary packaging scheme.

9. Suspension Without Pay

In the event of an employee being suspended without pay, any salary packaging arrangements will cease until further notice.

With the approval of the employer, salary packaging can recommence once the employee returns to full time employment with the NSW Health Service.

10. Changing From Full Time Employment to Part Time Employment

Where an employee ceases full time employment and enters into a new agreement with the employer to work part time, the existing salary packaging arrangements will need to be re-negotiated from the commencement of part time employment.

Where an external salary package administrator is used, it is the employee's responsibility to notify the administrator of any change in employment status.

11. Financial Planning

It is strongly recommended that all employees intending to participate in salary packaging seek independent financial advice. This advice can be sought from the employee's existing financial adviser or accountant.

Financial advisers charge a fee for their service and this fee is payable by the employee and can be included as a benefit item in the package under "Financial Counselling" fees.

12. Changing the Agreed Salary Package

An employee may review and alter their salary packaging arrangements at the end of each package year (usually 31 March) at no extra cost. If an employee elects to change their packaging arrangements during the packaging year, they may incur an alteration fee.

In the event of an employee taking up a new position with the employer with an increased salary during the package year, the employee will receive any increase in salary as a cash component until the annual review date of the package. At the annual review date the employee has the option of including new benefit items and/or changing the amounts allocated to previous benefit items.

During the package year, changes to an existing salary package arrangement cannot be made as a consequence of an employee receiving a general pay rise, higher duties allowance or routine incremental advancement. Any pay increases have to be taken as cash.

The employer can initiate a review of and change the FBT provision being withheld from salary, at any time during the package year to accommodate a change in FBT liability.

13. Cessation of Employment or Change in Employment Circumstances

Upon becoming aware of a date for:

- Cessation of employment, for whatever reason; or
- Appointment to a position outside of the NSW Health System ; or
- Commencement of unpaid leave, suspension without pay, or transferring from full time employment to part time employment; or
- Commencing workers' compensation payments and choosing to cease salary packaging arrangements whilst receiving workers' compensation payments;

The employee must immediately notify the salary package administrator.

A pro forma *Cessation of Salary Packaging Form* is at appendix 4.

From the date of cessation of employment, the administrator will cease all benefit payments. It is necessary that the employee notifies the administrator upon identifying the last payment date. This permits the administrator to send final payments and determine any action to be taken with account balances. Any remaining balance can be paid as a lump sum towards an existing benefit item, or paid to the employee as salary and taxed accordingly.

14. Waiver

The action of an employer in paying benefit items from an employee's salary package to a third party does not in any way imply a transfer of responsibility or liability to the employer in relation to any agreement, understanding, obligation etc. between the employee and the third party.

15. Tax Categories of Benefits

The menu of benefit items available for salary packaging is shown on page 15, together with a notation as to the relevant tax category of each benefit item ie. otherwise deductible, exempt, concessional or full fringe benefits tax status.

There are four categories of benefits which are explained briefly here. A more detailed description commences at page 19 following the examples on savings :

16. 'Otherwise Deductible' Benefits, Not Subject to FBT (Category A)

Otherwise deductible items are items which an employee would usually claim as a tax deduction in their personal income tax return. There may be no financial advantage gained by packaging those items if the items can be claimed by the employee in their individual tax return.

An employee cannot legally claim tax deductions for these items if they have been salary packaged as the deductible element will have already been taken into account in calculating the taxable value of the benefit provided for FBT purposes. These benefits do not form part of the \$17,000 exemption threshold.

17. Exempt Benefits – (Category A)

Exempt benefit items do not attract fringe benefits tax. These benefits therefore are not factored in the \$17,000 per annum exemption threshold.

18. Concessionally Taxed Benefits (Category B)

These are benefit items which the FBT Act provides a concessional tax treatment. This concession is usually applied in determining the taxable value of the benefit and as a result the tax rate applied to the benefit is less than 46.5%. For example, the private use of a motor vehicle is concessionally taxed. Accordingly, they are the type of benefit items most commonly included in a salary package arrangement.

19. Full FBT Benefit Items (Category C)

These are items which attract the full FBT rate of 46.5%. While these benefits are normally subject to the FBT rate, they will be exempt from FBT if when packaged, they fall within the \$17,000 pa exemption cap.

MENU OF BENEFIT ITEMS (FBT categories shown in brackets)

1. Mobile phones provided predominantly for business use (Exempt)
2. Membership fees & subscriptions to professional associations (Otherwise deductible)
3. Financial counselling fees (Otherwise deductible)
4. Child care located on employer premises (Exempt)
5. Work related self-education expenses (Otherwise deductible)
6. Work related briefcases, tools of trade, protective clothing (Exempt)
7. Personal computers – notebook/laptop/PDA/ portable printer (Exempt)
8. Income protection insurance premiums (Otherwise deductible)
9. Relocation/Living-away-from-home expenses (Exempt)
10. Novated leased motor vehicle (private use) (Concessional) *
11. Car parking (Concessional but exempt if qualify for the exemption threshold)
12. Own home mortgage payments (Full)**
13. Home rental payments (Full/but Exempt if benefit 9 applies)**
14. Private health insurance (Full)
15. Child care – where not provided on employer's premises (Full)
16. Aged care expenses (Full)
17. Higher Education Loan Program (HELP) Fees (Full)
18. Personal loan repayments (Full)
19. Payment of utilities (Full)**
20. Private travel (Full/Concessional if home leave for temporary visitor/exempt for relocation)**
21. Insurance premiums (not Income Protection Insurance) eg. health, life, house and contents insurance, etc (Full)
22. Club or association membership subscriptions (non work-related) (Full)
23. Airport lounge membership (Exempt)
24. School fees (Full/exempt if temporary visitor conditions satisfied)**
25. Meals and entertainment (Full - but food and drink exempt for employees who qualify for exemption threshold).
26. Credit card payment (Full)
27. Associated education expenses (Full)
28. Post Graduate Education Loan Scheme (PELS) – (Loan principal = Full FBT; loan interest = otherwise deductible)
29. Savings investment schemes (other than superannuation) (Full)
30. Associated novated motor vehicle lease (Concessional) *
31. Motor vehicle repairs and running costs – (Exempt if provided in conjunction with car fringe benefit/Full)
32. Hire purchase agreements (Full)
33. Strata fees (Full)
34. Meal entertainment (Exempt) – refer business rules on the following page 16 for the administration of this benefit)

Note: * Benefit items 10 and 30 do not apply to members of the Health Executive Service. The provision of motor vehicles for use by members of the Health Executive Service is subject to NSW Department of Health policy.

** Benefit items 12,13,19,20 and 24 can attract concessional rates for remote areas and in other circumstances.

MEAL ENTERTAINMENT

Business Rules for the Administration of 'Meal Entertainment' for Salary Packaging

General Principles

This benefit is only available to NSW Health employees who come under the \$17,000 FBT exemption cap criteria and who meet NSW Health salary packaging eligibility rules. For those employees, this benefit is a fringe benefits tax exempt item which means the value of the amount to be packaged is not counted in the employee's \$17,000 per annum grossed-up fringe benefits tax exemption cap, nor is it included as a reportable fringe benefit amount in an employee's annual payment summary.

This benefit is part of superable salary.

Special Principles

- Meal entertainment is defined as *'the provision of entertainment by way of food and drink'*. It includes food and drink purchased at a restaurant or attendance at a social gathering or consumed with other forms of entertainment. The meals and drinks (including those of guests with the eligible employee) do not have to be related to employment with NSW Health.
- Accommodation or travel *'in connection with, or for the purpose of facilitating'* meal entertainment eg. taxi charges, overnight stay in the city to attend the function etc, are an allowable part of this benefit. Accommodation and/or travel costs for holidays or any other recreational purposes do not meet the criteria of *'in connection with'* and are not allowed.
- Claiming of expenditure on the provision of take away food and drink, food and drink consumed at home solely for the purpose of sustenance is not allowed.
- While meal entertainment includes alcoholic beverages and other drinks, NSW Health requires that they be consumed in conjunction with a meal.
- Invoices/receipts must identify the restaurant/café/function centre/caterer. Health Services need to be satisfied that the employee paid the account. A simple receipt without any details is not proof of meal entertainment.
- Food and drink provided during work time or overtime on the employer's premises, or while an employee is travelling as part of their employment duties, is not considered to be meal entertainment.
- Meal entertainment claims will be paid in arrears on production of detailed invoices/receipts (see above) for food and drink provided in a function room, hotel or restaurant (including restaurant chains), cafés and other appropriate settings, where eligible employees can entertain their family and/or friends.
- Meal entertainment can also be paid by way of an employee benefit card, subject to NSW Health arranging for a state-wide procurement contract in accordance with NSW Health policy. The card will be restricted for meal entertainment costs only. Documentation must also be detailed enough to clearly identify the benefit being obtained.
- A minimum invoice value of \$15 is required before an item can be claimed under meal entertainment.
- Due to the interaction of GST and FBT law, Health Services are not allowed to claim input tax credits for any expenditure on any form of entertainment. Systems must ensure that input tax credits are not claimed on any meal entertainment payments.

SAVINGS EXAMPLES

The following two examples illustrate the net remuneration benefit to an employee through salary packaging by comparing the results using the same benefit expenditure pre-tax and post-tax. Calculations are based on the tax rates applicable from 1 July 2007.

Example 1:

Salary = \$50,000 pa

Number of Benefits Packaged = 1 item

Value of Item(s) Packaged = \$9,095pa

Administrative Fee = \$110 pa (\$55 pa shared)

	<u>Without Packaging</u> \$ pa	<u>With Packaging</u> \$ pa
Gross salary	50,000	50,000
Benefit packaged		9,095
FBT payable	0	0
Employee's 50% share admin. fee	0	55
Health Service 50% share of saving	0	1,711
Taxable income	50,000	39,139
Income tax payable	10,350	7,092
Medicare levy	750	587
After tax income	38,900	31,461
Benefit payable w/out packaging	9,095	
Disposable income after benefit	29,805	31,461

Summary:

Employee saving

(difference between new and old disposable incomes after paying benefit)

(\$31,461 - \$29,805) = **\$1,656 pa**

Example 2:

Salary = \$78,000 pa

Number of Benefits Packaged = 2 items

Value of Item(s) Packaged = \$9,095 pa

Administrative Fee = \$305 pa (\$153 pa shared)

	<u>Without Packaging</u>	<u>With Packaging</u>
	\$ pa	\$ pa
Gross salary	78,000	78,000
Benefits packaged		9,095
Employee's 50% share admin. fee		153
Health Service 50% share of saving		1,907
Taxable income	78,000	66,845
Income tax	19,050	15,404
Medicare levy	1,170	1,003
After tax income	57,780	50,439
Benefit payable w/out packaging	9,095	
Disposable income after benefit	48,685	50,439

Summary:

Employee saving

(Difference between new and old disposable incomes after paying benefit)

(\$50,439 - \$48,685) = **\$1,754 pa**

SAVINGS TO EMPLOYEES

This table is indicative of the savings that employees on the following salaries can achieve by packaging one benefit item valued up to the maximum FBT exemption cap of \$9,095 pa and with an administration fee for one item of \$110 pa (\$55 pa shared).

Calculations are based on tax rates applicable from 1 July 2007.

Salary \$ pa	One benefit Item packaged at a value of \$9,095 pa	Saving to employee \$ pa
30,000	9,095	768
35,000	9,095	1,585
40,000	9,095	1,994
45,000	9,095	1,656
50,000	9,095	1,656
55,000	9,095	1,656
60,000	9,095	1,656
65,000	9,095	1,656
70,000	9,095	1,656
75,000	9,095	1,656
80,000	9,095	1,952
85,000	9,095	2,249
90,000	9,095	2,341
95,000	9,095	2,341
100,000	9,095	2,341

STATUS OF BENEFIT ITEMS UNDER FRINGE BENEFIT TAX RULES

1. ITEMS NOT SUBJECT TO FBT (Category A - Otherwise Deductible and Exempt Items)

The following benefit items can be either totally exempt from the payment of FBT or not subject to FBT because of the operation of the otherwise deductible rule. There may be no tax advantage gained by packaging the otherwise deductible items as an income tax deduction can be taken in the employee's personal income tax return. Where otherwise deductible benefits are included in a salary package, the employee cannot claim a deduction for such items on their personal income tax return.

The following otherwise deductible benefits may be selected for inclusion in an individual's salary package:

- *Membership Fees and Subscriptions to Professional Associations (work related);*
- *Financial Counselling Fees (not for the initial consultation but for subsequent consultations);*
- *Income Protection Insurance Premiums;*
- *Self-Education Expenses (work related).*

Membership Fees and Subscriptions to Professional Associations (work related)

These benefits must be strictly work related.

A professional association is defined as an organisation, the sole purpose of which is the enhancement of the interests of the members of a particular profession, trade or occupation.

Similarly, subscriptions to professional journals and publications that are directly related to employment may be salary packaged.

Costing: The actual cost of the membership or subscription.

Substantiation: The employer must obtain from an employee invoices/receipts and a Payment/Reimbursement Claim Form – refer pro forma at appendix 5.

Financial Counselling Fees

If an employee decides to seek independent financial advice, the cost of this service can be salary packaged. The otherwise deductible rule will apply provided it is not for the initial consultation. In the case of an initial consultation the cost is potentially subject to FBT depending on the exemption threshold.

Costing: Cost of the financial counselling.

Substantiation: The employer must obtain from an employee invoices/receipts for the expense and a Payment/Reimbursement Claim Form.

Income Protection Insurance Premiums

This is an insurance policy against loss of earnings as a result of sickness or accident for an employee and accordingly the premium payable would generally be deductible for normal income tax purposes in the employee's personal income tax return.

Costing: Cost of the insurance policy premiums.

Substantiation: The employer must obtain from an employee invoices/receipts for the expense and a Payment/Reimbursement Claim Form.

Self Education Expenses (work related)

Expenses (eg. course or tuition fees, text books, technical instruments and equipment) incurred by an employee attending a course at an educational institution or a work related conference, directly relevant to the activities by which the employee currently derives assessable income, are normally allowable as an income tax deduction. Higher Education Contribution Scheme ("HECS") payments are not otherwise deductible expenses.

Costing: Cost of course and tuition fees etc.

Substantiation: A payment/Reimbursement Claim Form substantiating business use will be required, along with invoices/receipts for expenses incurred.

2. EXEMPT ITEMS (NOT SUBJECT TO FBT)

- *Mobile Phones (where the phone is provided predominantly for business use),*
- *Personal Computers – notebook, laptop and PDA only;*
- *Portable printers designed for use with a notebook or laptop computer;*
- *Relocation / Living Away From Home Expenses.*

Mobile Phones (predominantly for business use)

An employee may choose mobile phone expenses as a benefit option.

The expense must relate only to mobile phones that are used predominantly for business use.

Costing: Cost of purchase, cost of all calls made and service charges.

Substantiation: A payment/Reimbursement Claim Form and invoices/receipts for the expense are required.

Personal Computers – (notebook, laptop, PDA, portable printer only)

An employee may elect to include the cost of a notebook or laptop computer, PDA or portable printer in their salary package. An employee can package only one laptop or notebook computer per year. This exemption does not extend to a desk top computer. The notebook, laptop, PDA or printer may be purchased up front or by hire purchase and the employee will be progressively reimbursed the purchase price of the computer from their salary package.

The notebook, laptop, PDA or printer may also be leased by the employee. Under this arrangement the cost of the lease would be included in the employee's package and the employer would pay the lease rentals.

The exemption does not apply if a laptop or notebook has already been packaged at any time in the current FBT year.

Costing: Purchase price or lease rentals of notebook, laptop, PDA or printer).

Substantiation: Receipted invoice from the supplier addressed to the employee with a full description of the item.

Copy of the lease agreement if the computer is leased.

Payment/Reimbursement Claim Form substantiating the costs of repairs/maintenance and software expenses, along with invoices/receipts for expenses incurred.

Relocation/Living Away From Home Expenses

Relocation applies when an employee permanently relocates to another location in order to perform his or her employment duties. The type of expenses which will be exempt fringe benefits under the 'Relocation' category are removal and storage of household effects, the cost of temporary accommodation, transport costs associated with a move of residence, connection fees to utilities, costs of selling the former home and the purchase of a new home (including statutory charges and commissions), and relocation air fares for the employee and family members.

Living away from home applies when an employee temporarily relocates to another location in order to perform the duties of employment for a specified period of time. The type of expenses which will be exempt from fringe benefits as a consequence of being considered 'Living-Away-From-Home' can include relocation air fares for the employee and family members, the removal and storage of household effects, cost of rent while living away from home. If these costs are subject to a contribution by NSW Health eg. as approved claims under the Transferred Officers Award, the amount of the benefit will be restricted to the net out-of-pocket expenses incurred by the employee.

3. PACKAGE ITEMS CONCESSIONALLY TAXED (Category B)

Concessionally taxed benefits are those benefits that are concessionally taxed in accordance with the FBT Act. An employee would not normally obtain a tax deduction for these items. Accordingly, they are the type of benefit items more commonly included in a salary package arrangement. An example would be the private use of a motor vehicle.

Motor Vehicle (for private use) by way of Novated Lease

This benefit will only be provided via a Novated Lease, which is described in more detail commencing at page 25.

Car Parking

For a car parking fringe benefit to exist, the employer must provide a car space to an employee, the car space must be owned or controlled by the employer, the employee's car must be parked there for more than four continuous hours per day, and there must be a commercial car park within a kilometre range charging more than the car parking threshold. Whilst this is a concessionally taxed benefit, the gross taxable value will not count towards the employees' \$17,000 exemption threshold.

If however the employee pays a fee to a third party parking provider which is then reimbursed by the employer, an expense payment benefit will exist which is fully subject to FBT and will count towards the \$17,000 exemption threshold.

Associate lease

If an employee proposes to set up such an arrangement with his or her employer the public health organisation should seek advice from the Department before proceeding.

4. PACKAGE ITEMS SUBJECT TO FULL FBT (Category C)

Items subject to full FBT are benefits that an employee cannot usually claim a tax deduction for in their personal income tax return and do not fall within the concessionally taxed items. These benefits attract the full FBT rate.

The advantage for employees salary packaging Category C items is derived from the \$17,000 exemption threshold.

Information on a selected number of these benefits is provided below:-

Own Home Mortgage Payments/Reimbursements

Employees may select a housing mortgage payment to a financial institution as a benefit option for any owner occupied non-income producing property. The employer makes a direct payment to an authorised third party (ie. financial institutions) or reimburses the employee for same. The principal and interest components of an own-home mortgage may be packaged separately or combined.

The loan agreement for the mortgage will remain between the employee and the financial institutions and no liability will be transferred to the employer. It is not necessary for the employee to be the sole party to a housing mortgage document for this option to be part of the salary package.

Substantiation and Method of Payment: Need to establish the employee's debt, ie. Mortgage repayment commitment. Payments to line of credit, equity and revolving lines of credit loans are acceptable for packaging without substantiating withdrawals, cash or otherwise.

Private Home Rental Payments/Reimbursements

Payments made to a real estate agent or landlord under a formal rental lease agreement for the provision of private on-going home rental accommodation used as the principal place of residence by the employee.

Substantiation and Method of Payment: Necessary to establish the employee's debt ie. lease and rental amount commitment. If not paying by reimbursement, normally the benefit will be provided by the employer making the payment to the real estate agent or landlord. Wherever possible this will be done by electronic funds transfer. Accordingly, bank account details of the agent or landlord need to be provided.

Tertiary Education Fees (including Higher Education Loan Program - HELP)

Payments may be made to a third party for current tertiary educational expenses incurred for the education of an immediate family member, or for the employee for non-work related education.

This benefit applies to tertiary institution term fees only, billed by the Institution, but does not cover books, uniforms, sporting equipment or other related expenses.

This option does not extend to payments to education funds or similar savings schemes that allow the accrual of monies in preparation for educational expenses.

The payment of HELP can be done as monthly or twice yearly lump sum amounts.

The payment of family member education fees and the Higher Education Loans which are not work related can be made from the package.

Substantiation: Receipts for this benefit are to be submitted before the expense is reimbursed.

Insurance Premiums (other than Income Protection Insurance) e.g. Health, Life, House and Contents, Vehicle, Boat, etc.

Actual payment of insurance premiums may be selected as a benefit item. Health insurance payments will only be made to registered health insurance companies. Employees may request payment of an existing policy or a new policy. It is usual for insurance rates to increase during a salary package year, therefore it is suggested that more of the total salary package is allocated to this item at the beginning of the package year to cover any increase.

Substantiation: Receipts for this benefit are to be submitted before the expense is reimbursed or regular payment details are to be provided to the employer for payment.

Club/Association Membership Subscriptions (non work related)

Payments may be made to a third party in relation to Membership Fees of private associations or clubs including sporting associations, e.g. Football Clubs, Golf Clubs, Handicraft Clubs.

Substantiation: An original invoice should be provided to the employer for a direct payment to be made to the club or association. If the payment has been made, a receipt must be submitted for reimbursement.

Personal Loan Repayments

Payments to a personal loan provided through a registered provider, such as a bank or building society are permitted to be paid through a salary package. Loans between family members, hire purchase, leases or lines of credit are not permitted under this arrangement.

Substantiation and Method of Payment: If not paying by reimbursement, normally the benefit will be provided by the employer making the payment to the moneylender by Electronic Funds Transfer directly into the loan account. Where this is not available other arrangements will be made.

Whichever payment method is used, evidence is required that the personal loan exists. This may be in the form of the loan agreement or a copy of the loan statement.

Meals and Entertainment Expenses

This covers the cost incurred by an employee for a meal and show (entertainment) for the employee, their partner and members of their immediate family. The employee must be the person who paid the account. This benefit does not apply to business-related meals and entertainment costs.

The cost of the food and drink consumed will be considered an exempt benefit and not included in the \$17,000 exemption threshold.

Substantiation: Receipts for this benefit are to be submitted before the expense is reimbursed or regular payment details are to be provided to the employer for payment.

Credit Cards

Credit cards supplied by financial institutions that offer a line of credit. Debit cards are not acceptable.

Statements must be produced by the employee and lodged with their salary packaging administrator, confirming the amount to be packaged and verifying that the card is maintained in credit.

Employees can seek payment either as soon as the statement is received or after the nominated payment is made to the financial institution. The packaging of a credit card is by repayment of the credit card balance, as opposed to being a reimbursement of individual items on the card statement.

'Double-dipping' is not permitted, i.e. an employee cannot pay for school fees with a credit card, package that amount under their credit card and also package school fees as a separate amount.

School Fees

Covers school expenses such as tuition fees, board and lodging, and excursion costs. School invoices and receipts must be produced when seeking to make a direct payment or reimbursement of fees or expenses.

Savings Investment Schemes (non-superannuation) Contributions

Savings investment schemes are bona fide medium term investment strategies which are offered by banks and other financial institutions under various marketing titles and strategies. Such schemes enable an employee to invest a nominated amount of their gross salary towards packaging a range of Australian-managed investments.

Investment schemes are a tangible item that is being purchased, whereas funds deducted from an employee's pay and put directly into a savings account is a direct deduction for savings which is subject to PAYG withholding. The savings/investment schemes are usually promoted with the following benefits; withdrawals at any time, the employee being able to select their own investment portfolio, plus a single stage tax on withdrawals.

A set amount is deducted from the employee's pay and paid directly to the company which acts as a funds manager to disburse monies into one or several investment schemes such as local and international shares, equity investment schemes, cash management accounts, property management funds etc.

Private Travel

Weekly rail, ferry, and bus tickets can be packaged under 'Private Travel'. Direct ticket purchase schemes which are offered under a NSW Government initiative can also be packaged under this benefit item.

Motor Vehicle Running Expenses (not associated with novated leases)

Acceptable expenses included under this benefit are fuel, registration fee, 'green' insurance slips, vehicle inspection slip, comprehensive insurance, services and repairs, new tyres, batteries – all of which are considered to be recurrent costs associated with motor vehicle running expenses.

Aged Care Expenses

Generally accepted as the costs associated with the care and accommodation of elderly persons.

Utilities

This covers the cost of gas, electricity, telephone rental and connection, water, sewerage and council rates.

SALARY PACKAGING NOVATED MOTOR VEHICLE LEASING

1. Overview

Employees should familiarise themselves with the terms and conditions applying to novated motor vehicle leases within their salary package options if this benefit is available in their public health organisation.

Each public health organisation provides detailed information on the novated leases used in that organisation. The following provides some guidelines on the operation of novated leases.

2. Understanding Novated Motor Vehicle Leasing:

(a) Deed of Novation/Lease arrangements

An employee leases a motor vehicle from the financier using a standard Finance Lease Agreement. A Deed of Novation is then entered into by the employee, the employer and the financier, under which the employee's obligation to pay the lease rental payments under the finance lease is transferred to the employer for the term of the deed of novation. Thereafter the employer pays the lease rental to the financier and the lease rental payments will be deducted from the employee's pre-tax salary as part of the salary package arrangement.

The Deed of Novation must comply with the Australian Taxation Office Guidelines in IT 2509 and Taxation Ruling TR 1999/15.

It is obligatory to use the pro forma Deed of Novation of Motor Vehicle Lease prepared by the Crown Solicitor as shown at Appendix 6.

If the employee leaves the employer's employment for whatever reason, the Deed of Novation terminates immediately and the employer no longer has an obligation to pay the lease rental. The obligation to pay the lease rental under the Finance Lease reverts to the employee. The employee retains use of the vehicle, as lessee, until the Finance Lease expires.

Upon ceasing employment with the employer an employee has the following options in relation to the motor vehicle:

- Continue standard lease payments to the financier;
- Re-finance with another form of borrowing;
- The employee may be able to transfer the novated lease to a new employer; or
- The financier may take back the vehicle and allow the employee to walk away from the transaction, subject to the payment of an early return fee.

In the event of termination of the lease by the employee with the financier, any fees, charges or costs associated with the termination of the lease is a cost borne by the employee.

Once the Deed of Novation has been entered into, the employer is the lessee of the motor vehicle and provides it to the employee as a car fringe benefit .

(b) Key features of a Novated Motor Vehicle Lease

The Novated Motor Vehicle Lease gives the employee the flexibility and choice normally enjoyed by a vehicle lessee under a standard lease.

The term of the lease is flexible and is usually set by the employee in association with the financier. Normal lease terms would range between two and four years.

The vehicle is registered and insured in the employee's name and the employee will pay the running cost associated with the vehicle from their salary package.

(c) Residual Value

At the expiration of the novated lease, employees will have the option of purchasing the vehicle at a residual value. The amount of residual value (payable by the employee at the expiry of the lease) will be set by the financier in conjunction with the employee, and represents a reasonable amount based on the term of the agreement, the amount of lease rental payments made, and the estimated market value of the motor vehicle at the expiration of the lease.

The amount of the lease rentals under the Deed of Novation will be expressed under a standard Finance Lease.

Payment of the residual value under the finance lease arrangement is the responsibility and liability of the employee.

(d) Taxation Treatment

Operating Expenses

All operating expenses such as fuel, service, maintenance, registration and insurance will be transacted through the employer and included in the employee's Salary Package.

The Australian Taxation Office's (ATO) Income Tax Ruling IT2509 and Taxation Ruling TR 1999/15 deal with the Income Tax and Fringe Benefits Tax consequences of a Novated Lease. In summary these are:-

- The provision of the vehicle to the employee for the employee's own private use will be subject to FBT;
- FBT will be calculated on the cost value of the vehicle under the "Statutory Formula method", as a result there is no FBT applied to the operating expenses paid by the employer in respect of the vehicle; and
- If the employee purchases the vehicle at the expiry of the lease at the residual value, an FBT liability will not arise if the residual value is less than the market value of the vehicle providing it can be demonstrated that the lease is an "arm's length" transaction, eg. a contract with a commercial leasing company. ATO Determination TD 95/63 refers.

(e) Calculation of FBT on Novated Leased Motor Vehicles

The taxable value of a car fringe benefit will be calculated using the statutory method (refer below). The appropriate FBT will be calculated and included in the employee's salary package.

(f) The Statutory Formula Method

This is the most common method used in determining FBT for motor vehicles. The taxable value of the car fringe benefit is a percentage of the leased car value. This percentage varies with the total distance travelled by the car during the FBT year (regardless of whether it is business or private travel). The greater the distance travelled the lower will be the taxable value. If the car is acquired or sold during the year the kilometres are annualised to calculate the distance that would have been travelled for the whole year.

The statutory percentages for the FBT year are:

Total kilometres travelled during the year	Statutory percentage
Less than 15,000	26%
15,000 to 24,999	20%
25,000 to 40,000	11%
Over 40,000	7%

$$\text{Taxable value} = A \times B \times C/D - E$$

Where: A = the lease value of the car
 B = the statutory percentage
 C = the number of days in the FBT year when the car was used or available for private use of the employee
 D = the number of days in the FBT year
 E = the employee contribution – this must be an after-tax contribution

Calculation of taxable value of Motor Vehicle where:

A = \$25,000
B = 20% (say 18,000 kilometres)
C = 365 days (no. of actual days the car was available to the employee throughout the FBT year – in this example the full year)
D = 365 days (ie. a full FBT year)
E = NIL

$$\text{Taxable value} = \$25,000 \times 20\% \times 365/365 - 0$$

$$\text{Taxable value} = \$5,000$$

Calculation of FBT on Motor Vehicle:

$$\text{FBT} = \text{Taxable value} \times \text{Gross-up factor} \times 46.5\%$$

$$\begin{aligned} \text{FBT} &= \$5,000 \times 2.0647 \times 46.5\% \\ &= \$4,800 \end{aligned}$$

Note: the higher gross-up rate has been used because an input tax credit will be claimed for the GST paid on the lease payments)

3. Motor Vehicle Policy

(a) Leasing requirements

All motor vehicles provided to employees under the salary packaging option shall be by way of Novated Leasing arrangements in accordance with the Australian Taxation Office Ruling IT2509 and any subsequent changes including TD 95/63 and Taxation Ruling TR1999/15, together with NSW Health's policy applying to Novated Leasing from time to time.

All employees and the motor vehicle financiers facilitating Novated Leasing must use the approved Deed of Novation at Appendix 6. No other agreement or documentation may be used.

The employee is responsible for securing their Novated Lease Finance from one of the motor vehicle financiers and arranging Comprehensive Insurance for the leased vehicle. For steps involved in an employee arranging a Novated Lease refer to the section on Procedures for Leasing a Motor Vehicle.

The employer will not act as a guarantor for any employee.

Under the Deed of Novation, (though the financial liability remains with the employee), the employer is the lessee of the motor vehicle and provides it to the employee for the use by that employee without restriction.

The employee retains possession of the vehicle until the expiry of the finance lease.

The employee shall immediately notify the employer upon disposal of the motor vehicle.

The employee shall be required to indemnify the employer for any financial loss incurred on the disposal of the motor vehicle.

Lease rentals will be paid from the employee's salary package by the employer.

(b) Motor vehicle restrictions

The salary packaging scheme administered by the employer or by an outsource administrator, is flexible in allowing an employee a choice of the type of vehicle to be included in the package.

However, employees are encouraged to consider Australian manufactured motor vehicles, if such a vehicle meets their needs.

Where the lease value of the motor vehicle is in excess of \$57,009 (as indexed each year), the motor vehicle is considered to be a luxury vehicle. The salary package of a luxury vehicle is generally considered not to be tax or cost effective.

The definition of a motor vehicle for salary packaging purposes does not include a motor cycle, a vehicle designed to carry more than 1 tonne, or a vehicle designed to carry more than nine passengers. Consequently, these vehicles cannot be packaged.

Depending on the financier chosen, leasing arrangements can be considered for both new and second-hand vehicles, including motor vehicles already owned or leased by the employee.

(c) Operating costs of motor vehicle

All operating costs such as insurance (Third Party and Comprehensive), registration, fuel, NRMA (or similar) membership and mechanical repairs and servicing shall be fully deductible from the individual employee's Salary Package. Any costs incurred by the employee additional to that provided for shall not be deducted from the Salary Package. Such costs shall be the responsibility of the employee. Employees should endeavour to cost the operating expenses of the motor vehicle as accurately as possible.

(d) Cessation of employment

In the event of an employee ceasing employment for whatever reason with the employer, the Deed of Novation immediately expires and the employer no longer has any obligation under the lease and the agreement. In addition, the obligation to pay the lease rentals under the Finance Lease and all costs revert to the employee.

The Cessation of Salary Packaging Form similar to the pro forma example at Appendix 4 will need to be completed and forwarded to the employer/administrator. It will be necessary for the employee to negotiate a new finance lease with the provider.

(e) Other issues

Costs relating to traffic fines or similar infringements are the responsibility of the employee and cannot form part of the operating costs of the motor vehicle.

4. Procedures for Leasing a Motor Vehicle

If an employee wishes to include a motor vehicle within the salary package the following steps should be followed:

(a) Selecting an Approved Motor Vehicle Financier

Motor vehicle financiers provide employees with “prime” finance (competitive pricing), the use of appropriate novated leasing documentation, and a customer service in terms of providing quotations, detailed explanation and liaison with motor vehicle trades, accountants and others.

The financiers have varying terms and conditions associated with motor vehicle leasing. The employee should contact at least two motor vehicle financiers to identify the financier which best suits their individual needs.

In obtaining and comparing lease quotations from financiers, employees should consider the following:

- The term intended to lease the vehicle;
- The residual value of the vehicle;
- The rate of interest to be charged;
- The monthly repayments which can be afforded;
- The penalty charged by the financiers for early repayment of the lease, or early withdrawal from the lease; and
- Other costs or obligations associated with leasing a motor vehicle (e.g. stamp duty).

(b) Obtain “in principle” approval from the financier

Having selected a financier, the employee should seek “in principle” approval from the financier for:

- Financing the contract value of the lease; and
- The estimated monthly repayments.

(c) Selecting the motor vehicle

The following should be considered when selecting a motor vehicle:

- Vehicle price (including on road costs);
- Fuel economy;

- Maintenance costs; and
- Residual value of the motor vehicle at the end of the lease.

(d) Purchasing the motor vehicle

Prior to entering into any contract of sale, the employee, or the motor vehicle trader, should contact the selected financier to obtain approval for the purchase of the vehicle and the preparation of the approved Deed of Novation.

The motor vehicle must be registered for private use.

Note: In accordance with Tax Ruling IT 2509 the employee is not permitted to have any equity in the leased motor vehicle. On this basis, the employee cannot reduce the purchase price of the motor vehicle intended for lease with either a cash payment or a “trade-in”.

(e) Securing the motor vehicle lease

Procedures may vary between financiers. Usually the Deed of Novation is forwarded to the employer for approval. Once approved, the employer will arrange for a fuel card to be issued and for the payment of the lease and operating costs through the Salary Package.

Depending upon the timing of the lease payment as required by the financier, the employee may be required to make the first lease payment and seek reimbursement from the employer once sufficient funds have been accumulated. No reimbursement can be made by the employer for payments made by the employee before the commencement date of their salary packaging agreement.

Employees considering purchasing an ex-State Government vehicle should be aware that the taxable value will be based on the original cost price of the vehicle and not on the amount paid for the vehicle. Therefore, the FBT will be higher than would normally be the case when purchasing a second-hand vehicle.

5. Motor Vehicle Operating Expenses

(a) Motor vehicle fuel charge card

A charge card is available under certain lease arrangements. This card can be used for the purchase of unleaded fuel, diesel, LPG, oils and lubricants, ie costs associated with the operation, repairs and maintenance to the vehicle.

Fuel and other items mentioned above which are purchased through the charge system will be paid from the employee's Salary Package. Fuel purchased with cash or other credit facilities will not be reimbursed through the package unless alternative arrangements are agreed to by the employer.

Access to the charge card will only be available to employees who have included an approved Novated Motor Vehicle Lease within their Salary Package.

Application for a card should be made to the employer at the time an employee registers their salary package information and instructions with the employer.

Each month the provider will invoice the employer for the motor vehicle operating expenses that have been purchased with the charge card. The employer will then make the payment directly to the provider from the salary package. This payment amount will then be shown on the employee's

next quarterly statement from the employer. Details of individual purchases are available through the employer's remote access report facility.

The employer will only be able to make payments for motor vehicle operating expenses in accordance with the amount that has been nominated within the salary package for these costs. If an employee exceeds the nominated amount within the motor vehicle operating expenses, then there will no longer be access to the credit facility and it will be necessary for the employee to immediately pay any outstanding amounts.

(b) Registration and Insurance

The motor vehicle should be registered for private use. Payments should be made for registration and insurance as required and then reimbursement sought from the employer.

(c) Repairs and Maintenance

Payment or reimbursement for repairs and maintenance expenditure can be made by the employer to the employee, subject to appropriate substantiation requirements or by use of the charge facility.

ADMINISTRATIVE GUIDELINES

Methods of Payment

The employer will pay packaged benefits to third parties (service providers) as agreed and on behalf of employees, using an Electronic Funds Transfer payment method for benefits requiring both regular payment (fortnightly, monthly or quarterly), or for irregular payments (eg. annually). Electronic Funds Transfer will be used for the reimbursement of paid accounts. Wherever possible, regular payments will be made by Electronic Funds Transfer.

The employer undertakes to make payments and reimbursements within a reasonable time frame after receiving an employee's reimbursement claim form, subject to the employee having sufficient package funds available to make the payment.

Employees who have current payroll deductions or arrangements with their bank or financial institution for the payment of items which they wish to include in their salary package, will be responsible for changing those arrangements with the financial institution.

Terms & Conditions

The employer will not extend credit on any payments for a benefit item. Employees will be unable to be reimbursed for any benefit payments they have made unless they have accumulated sufficient funds to cover the payment. Employees can however, incur the expense but hold their reimbursement claim until there are enough funds accumulated.

The employer will cease to pay any benefit when the total yearly allocation for that benefit has been expended. As a precaution, employees may wish to allocate additional money for a particular benefit to meet any increases in the cost of that benefit during the salary packaging year.

A reconciliation of the employee's salary package will be made at the conclusion of each salary package year. Any benefit entitlement not paid will be rolled over to the next package year unless the employee seeks reimbursement of the excess available by completing a reimbursement claim form.

Annual FBT Adjustment

At the conclusion of each FBT year (31 March), the employer conducts a reconciliation between the amount of FBT provision debited and the actual FBT liability incurred for each employee. The FBT liability is calculated in accordance with NSW Premier's Department Circulars 2000-46 and 2006-18. The calculation is:- total taxable value of benefits multiplied by type 2 gross-up rate, less exemption cap, multiplied by FBT rate, eg. \$10,000 taxable value of benefits ($\$10,000 \times 1.86915 - \$17,000$) $\times 0.465 = \$786$. This additional cost will be charged to the employee's pre tax salary.

Should there be a surplus balance in the employee's FBT account to what is required, the employer will transfer the surplus from the FBT account to the employee's package account.

If there are insufficient funds in the employee's FBT account to meet the FBT liability, then the following steps are followed :

1. If there are enough funds in the employee's package account to cover the entire shortfall, the appropriate amount will be transferred from the package account to the FBT account.
2. If there are insufficient funds in the employee's package account to meet the entire deficit in the FBT account, the available funds will be transferred from the package account. The

recovery of the remaining FBT deficit will be initiated in accordance with the employer's overpayment recovery procedure.

3. The employee will be notified of the FBT account deficit and of the appropriate course of action to be followed.
4. The FBT provision for the ensuing year will be automatically increased in line with the FBT liability for the past year, unless other arrangements are agreed between the employee and the employer.
5. Employees will be provided with all the pertinent information relating to their FBT account when reviewing their salary packaging arrangements for the following year.

Administration Costs

The following administration fees are indicative, and have had regard to existing fees and to fees charged commercially. The appropriate fee is determined by the number of benefits chosen by the employee:

Where one benefit only is packaged	\$110 per annum
Where two or more benefits are packaged	\$305 per annum

The administration cost is shared on a 50/50 basis between the employee and the employer. The fee is included in the salary package and deducted from gross salary in fortnightly instalments.

Responsibilities of the Employer

- (1) The employer is responsible for ensuring all forms are received from the employee and checked to ensure they are duly authorised and notated, together with any substantiating documents.
- (2) The employer is to ensure the package details are correct according to the information provided by the employee, and that packaging commences on the agreed date.
- (3) The employer also ensures that all periodic payments are organised for the agreed dates and to the correct institutions, and that arrangements for payment by other methods are understood and confirmed.
- (4) It is a condition of individual contracts either with the public health organisation which manages salary packaging in-house, or with an external administrator, that provided the employee has fulfilled all of his/her obligations concerning packaging requirements, that the responsibility for any costs or penalties arising from late payments will be apportioned to the public health organisation or the external administrator, respectively.

Responsibilities of the Employee

- (1) An employee who is interested in participating in Salary Packaging is strongly advised to obtain financial advice from an independent financial adviser experienced in salary packaging.
- (2) Before proceeding with salary packaging, the employee should carefully review all salary packaging options available.

- (3) If the employee chooses to proceed with salary packaging, the employee completes a Salary Packaging Information Form (see Appendix 3) indicating the payment details and instructions for the package items the employee has decided to include.
- (4) The employee then forwards this form to the employer along with the appropriate substantiation documentation.
- (5) The employee is responsible for providing proof of payment. It is important that forms are completed accurately and that appropriate substantiation documentation eg, rent receipts, bank statements etc, is provided to avoid delays in the commencement of packaging.
- (6) An incomplete Salary Packaging Information Form will be returned to the employee for completion.
- (7) Employees who are currently making payroll deductions or who have standing arrangements with their bank for the payment of items which they wish to include in their package, such as insurance premiums, must take the appropriate steps to change their current arrangements.
- (8) Any legally required post-tax commitments such as compulsory superannuation payments, HECS bills, child support payments, judgement debtor/garnishee orders etc. together with any post-tax payroll deductions such as private health fund membership, union fees etc., must be taken into account prior to determining the portion of salary to be packaged. The employee must provide details of such commitments at the time of entering into a salary packaging agreement.

SAMPLE SALARY PACKAGING AGREEMENT

This agreement is between the NSW Health Service (xxxxxxxx Division) (the employer), and(the employee). The employer and the employee have agreed to undertake salary packaging on the following terms and conditions :

Cash and Non-Cash Salary

1. For the purpose of salary packaging, salary is the employee's substantive base award salary excluding any higher duties allowances, as at the date of commencement of the salary packaging year. Any increment or other salary increase occurring during the package year is to be taken by the employee as a cash component of salary.
2. The employee may elect to package part or all of salary for salary packaging purposes up to a maximum grossed-up amount of \$17,000 pa which is the maximum fringe benefit exemption threshold. Any packaging of benefits which attract full fringe benefits tax and which exceeds the maximum fringe benefit exemption cap, will attract fringe benefit tax – see paragraph 5 below.
3. If the employee elects to package part of their salary, the remainder of the employee's salary will be paid as cash on the usual fortnightly basis by the employer.
4. The employee authorises the employer to reduce the employee's cash salary by the amount of salary to be packaged. The employee further authorises the employer to disperse the packaged component of salary, including any fringe benefits tax liability, to the packaging administrator.
5. The employee may elect to include one or more of the benefit items, provided that the total grossed-up value of the benefit items does not exceed \$17,000. The employee is liable to pay the fringe benefits tax on any benefit value in excess of the \$17,000 threshold. The amount of the FBT liability is calculated in accordance with NSW Premier's Department Circulars 2000-46 and 2006-18. The calculation is:- total taxable value of benefits multiplied by type 2 gross-up rate, less exemption cap, multiplied by FBT rate, eg. \$10,000 taxable value of benefits ($\$10,000 \times 1.86915 - \$17,000$) $\times 0.465 = \$786$. This additional cost will be charged to the employee's pre tax salary.
6. The employee must pay fringe benefits tax or reimburse the employer the amount of any liability for any tax, charge, duty, or other payment payable by the employer which arises out of or is connected with this agreement including any tax, charge duty or other payment which becomes payable as a result of the amendment, introduction or coming into effect of any legislation. The employer may deduct this amount from any remuneration payable to the employee.

Duration of the Agreement

This agreement will commence on the first pay period after the processing of all the necessary documentation by both parties.

Subject to any review as provided by this agreement, the agreement if executed prior to 1 April shall be reviewed on 1 April and thereafter every 12 months on 1 April in order to comply with FBT year reporting requirements.

Disclaimer

The employee releases and hereby indemnifies the employer from all actions, claims, demands and proceedings whatsoever which the employee or any other person has or may have against the employer arising out of or in respect of or in any way connected with any advice received by the employee from the employer, or any remuneration consultant in connection with this agreement, and all costs, damages, and expenses which the employer may incur in defending or settling such actions, claims, demands and proceedings.

Review of the Agreement

Towards the end of each package year, an employee may review the components of their salary packaging agreement and vary their package items for the next package year.

The employer may initiate a review of the employer's salary packaging agreement with the employee in the event of substantial change in circumstances, eg. change in working hours from full time to part-time.

Confidentiality & General Conditions

The terms of this agreement remain confidential between the employee and the employer, and relate only to the employee's salary package.

The employer is not liable for taxation or any other liabilities, judgements, penalties or outcomes suffered or incurred by the employee resulting from entering into this agreement.

The employee confirms that the package benefit items selected for their salary packaging are legitimate expense items, and that payments made under the salary packaging arrangements will only be used to pay these expenses.

If the employee ceases employment with the employer, this agreement will lapse.

The employee is under no obligation to participate in salary packaging. The employee may elect at any time to cease salary packaging by giving at least four weeks notice in writing.

Subject to any review permitted under this agreement, the employee agrees that the terms of this agreement cannot be varied or terminated without the specific written consent of the employer.

SAMPLE SALARY PACKAGING ACCEPTANCE FORM

I understand and accept the offer of salary packaging by theNSW Health Service (xxxx Division) on the terms and conditions detailed in this agreement.

Employee Surname and Given Names

Employee Signature

Employee Number

Date

Witness Surname and Given Names

Witness Signature

SAMPLE CESSATION OF SALARY PACKAGING

I wish to cease salary packaging and all related payments, to take effect from
..... /..... / (A minimum of four (4) weeks notice is required).

Reason for the cessation of salary packaging is : (please tick appropriate box)

Cessation of employment (Date)

Promotion/ Transfer to a new position (Date)

Finalisation of novated lease (Date)
(indicate odometer reading)

Other reason
.....

Employee Surname :

Given Names :

Serial Number :

Employee Signature :

Date :

SAMPLE PAYMENT/REIMBURSEMENT CLAIM FORM

Payment :

Please make the following direct payment(s) from my salary package. Note – for direct payments an original invoice must be attached to this form.

Benefit	To Be Paid To	Date Due	Amount

Reimbursement :

Please make the following reimbursement(s) from my salary package. Proof of payment by way of receipt must be attached to this form. Reimbursement is to be made by EFT to my bank account.

Benefit	Paid To	Date Paid	Receipt Amount

CLAIMANT'S SURNAME :
CLAIMANT'S GIVEN NAMES :
SERIAL NUMBER :
CLAIMANT'S SIGNATURE :

(“Lessor”)

and

(“Employer”)

and

(“Employee”)

DEED OF NOVATION OF MOTOR VEHICLE LEASE

I V KNIGHT
Crown Solicitor
60-70 Elizabeth Street
SYDNEY NSW 2000

DX 19 SYDNEY

Tel: 9224 5053
Fax: 9224 **5055**
Ref: PRE128.242

THIS DEED is made on the ___ day of _____ 200 .

BETWEEN: The party nominated as the Lessor in Part 1 of Schedule I (“Lessor”);

AND: The person nominated as the Employer in Part 2 of Schedule 1 (“Employer”);

AND: The person nominated as the Employee in Part 3 of Schedule 1 (“Employee”).

WHEREAS:

A. The Employee has leased the Motor Vehicle from the Lessor under the Lease.

B. The Employer employs the Employee and as part of the remuneration package which it provides to the Employee the Employer has agreed, with the consent of the Lessor and upon the terms and conditions of this Deed, to the rights and obligations of the Employee under the Lease being novated to the Employer.

C. The Lessor has consented to the discharge of the Employee from the Lease and to the novation of the Lease to the Employer and accordingly the parties to this Deed have agreed that with effect from the execution of this Deed the Employee’s rights and obligations under the Lease will be novated to the Employer.

NOW THIS DEED WITNESSES:

1. DEFINITIONS:

In this Deed unless the context otherwise requires:

“Business Day” means the day on which trading banks are open for general banking business in Sydney, New South Wales;

“First Novation Date” means the date of execution of this Deed.

“Lease” means the lease between the Lessor and the Employee attached in Schedule 2, the particulars of which are set out in Part 5 in Schedule 1;

“Motor Vehicle” means the Motor Vehicle specified in Part 4 in Schedule I;

“Second Novation Date” means the date on which the earlier of the Trigger Events occurs.

“*Trigger Event*” means any event listed in subclause 5.3.

2. NOVATION TO THE EMPLOYER

2.1 With effect on and from the First Novation Date the Employer will be substituted for the Employee under the Lease and thereby becomes the lessee instead of the Employee and all references in the Lease to the Employee in any capacity shall be read and construed as if they were references to the Employer; and

- 2.2 The Employer will be bound by and comply with the provisions of the Lease that bind the lessee and will enjoy all the rights and benefits of the lessee under the Lease.
- 2.3 On and from the First Novation Date up to but not including the Second Novation Date the Lessor releases the Employee from all the Employee's obligations under the Lease as novated to the Employer except in relation to payment of any rental or other amounts owed by the Employee to the Lessor as at the First Novation Date.

3. EMPLOYEE INDEMNITIES

- 3.1 The Employee indemnifies the Lessor from and against any loss, damage, cost or expense suffered or incurred by the Lessor arising out of or in connection with the lease of the Motor Vehicle to the Employee and/or the Employer as the case may be. In particular, the Employee indemnifies the Lessor from and against any loss, damage, cost or expense suffered or incurred by the Lessor as a result or consequence of the Employer not performing any obligation under the Lease as novated to the Employer.
- 3.2 The Employee indemnifies the Employer from and against any liability incurred by the Employer as a result of any action, demand, claim or proceeding against the Employer by the Lessor under or in respect of the Lease as novated to the Employer by this Deed which relates to loss of, or damage to, the Motor Vehicle whether before or after the First Novation Date.

4. ACKNOWLEDGEMENTS

- 4.1 The parties acknowledge that the Employee is not entitled to any rights of exclusive possession or other similar rights in relation to the Motor Vehicle under the Lease as novated to the Employer notwithstanding the Employer making the Motor Vehicle available for the use of the Employee or the Employee's associates (as defined in the Fringe Benefits Tax Assessment Act 1986).
- 4.2 The Employee acknowledges that:
- (i) in deciding whether to enter into this Deed, the Employee has not relied upon any advice or information provided by the Employer and has relied on his or her own enquiries and independent advice;
 - (ii) he or she has entered into this Deed of their own volition and understands the meaning and effect of this Deed;
 - (iii) no representation or assurance has been made or given by the Employer that the Employee will continue to be employed by the Employer for the term of the Lease;
 - (iv) the Employee will become personally liable for ongoing rent or lease payments and all the lessee obligations under the Lease on and from the Second Novation Date.

5. NOVATION OF LEASE BACK TO THE EMPLOYEE

- 5.1 On and from the happening of the earlier of any of the Trigger Events listed in subclause 5.3 the parties agree that, by operation of this clause, the Employee will be substituted as lessee for the Employer under the Lease as novated to the Employer by this Deed and all references in the Lease which by this Deed are read and construed as references to the Employer in any capacity shall be read and construed as if they were references to the Employee.
- 5.2 The Employee will be bound by and comply with the provisions of the Lease as novated to the Employer which were binding upon the Employer and the Employee will then also enjoy all the rights and benefits of the

Employer under the Lease as novated to the Employer.

5.3 For the purposes of subclause 5.1, a Trigger Event is the earlier of:

- (a) The last business day before the date of the expiry of the term of the Lease; or
- (b) The date upon which written notice is given by the Employer to the Lessor that:
 - (i) the Employee has ceased to be an employee of the Employer; or
 - (ii) the Employer has suspended the employment of the Employee; or
 - (iii) in the Employer's opinion, which is a matter for the absolute discretion of the Employer, the Employee has failed to take reasonable care of the Motor Vehicle; or
 - (iv) the Employer and the Employee have agreed that they wish the Lease to be novated to the employee; or
- (c) the Motor Vehicle is lost or stolen; or
- (d) the Motor Vehicle is so damaged that, in the opinion of the Lessor, its repair is uneconomical and the Lessor gives written notice to the Employer and the Employee of this opinion.

5.4 On and from the Second Novation Date the Lessor shall release the Employer from all the Employer's obligations under the Lease as novated to the Employer except in relation to payment of any rental or other amounts owed by the Employer to the Lessor as at that date.

6. COSTS AND STAMP DUTY

The costs of preparation, execution and stamping of this Deed are payable by the Employee.

7. NOTICES

7.1 All notices, requests, demands, consents or other communications ("notices") required to be given or served or given or served to or upon any party pursuant to or in connection with the Deed shall be in writing and shall be deemed to be duly given or made:

- (a) in the case of personal delivery, when delivered;
- (b) in the case of by letter, on the second Business Day following posting;
- (c) in the case of facsimile transmission, subject to cl.7.2, when despatched provided the machine of the sending party has produced a printed record or transmission to the party to which such notice is to be given or served if given or served at the address or facsimile number of such party as specified in this Deed.

7.2 A written notice includes a notice by facsimile transmission. The issuer of any notice by facsimile transmission shall forthwith confirm the same by letter but the failure of the addressee to receive such letter shall not prejudice the validity or effect of such notice. Any notice given by facsimile transmission on a day which is not a Business Day shall be deemed despatched on the next succeeding Business Day.

8. GOVERNING LAW

8.1 The Deed will be governed by the law of the State of New South Wales and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts of appeal from them.

9. SEVERABILITY

9.1 If any provision of this Deed is held invalid, unenforceable or illegal for any reason, this Deed will remain otherwise in full force apart from such provision which will be deemed to be deleted.

10. COUNTERPARTS

10.1 This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one Deed.

EXECUTED AS A DEED

SIGNED SEALED AND DELIVERED by)

THE LESSOR by its)
authorised officers as specified)
below:)

.....

Signature of Director

Signature of Witness

Full name of Director

Full name of Witness

Signature of Director/Company Secretary

Signature of Witness

Full name of Signatory

Full name of Witness

SIGNED SEALED AND DELIVERED by)
THE EMPLOYER by its)
authorised officer as specified)
below, for *and on behalf of the Crown in*)
right of the State of New South Wales)
~delete as appropriate])

Signature of Authorised Officer

Signature of Witness

Printed name of Authorised Officer

Printed name of Witness

SIGNED SEALED AND DELIVERED by)
THE EMPLOYEE)

Signature of Employee

Signature of Witness
