

LEAVE/SALARIES COMPOSITE MANUAL**FOR****PUBLIC SERVICE****AMENDMENT NO. 30****30(27/11/14)**

Where a number appears at the bottom of an amended page [e.g. 30(27/11/14) – amendment number, date] an alteration has been made or new section included. The amendments as indicated reflect the provisions of Policy Directives/Guidelines/Information Bulletins:

- PD2014_042 – Managing Misconduct

The Manuals and complete amendments are available on the Internet at

<http://www.health.nsw.gov.au/policies/manuals/index.asp>

If you choose to print the amendment, make sure you print it double sided.

If you are missing any amendments please email cgrm@doh.health.nsw.gov.au They can be emailed to you in an electronic version.

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APPOINTEES UNDER 21 YEARS OF AGE

Unless otherwise indicated, salary rates in awards/agreements refer only to persons aged 21 and over.

STAFF ON LOAN**Public Service Association/Professional Officers Association**

State Health has been delegated authority to approve the loan of officers to the above organisations for up to 6 months.

Recoupment of salaries and on-costs should be arranged in accordance with Treasurer's Direction 542.03.

PSA Provident Fund

As a general rule duties that need to be performed by the Fund's Trustees should be carried out in other than core time for those staff working under flexible working hours or out of working hours for all other staff. On those occasions when this is not possible, any time when would otherwise have been at work should be charged against the Association.

During such periods, the trustees should be placed on loan to the Association - where such periods are of a short duration (i.e. less than day) the absences may be aggregated and debited at, say, monthly intervals.

Recoupment of salaries should be arranged as under the previous heading.

SALARY PAYMENT ON COMMENCEMENT

Staff paid at an annual salary rate who commence duty on the Monday of a pay week and work each day up to an including the pay day are paid 4/5 of their weekly salary.

REDUCED PAY - WHEN TO TAKE EFFECT

Where leave is granted with reduced pay, such reduced pay is to take effect from the next working day after that upon which leave with pay at the higher rate expires. If pay at the higher rate ceases on a half day or a quarter day, pay at the reduced rate takes effect immediately for the balance of the day.

STAFF TRANSFERS AND APPOINTMENTS - NOTIFICATION OF

It is essential that all salaries clerks receive official notification from an authorised delegate before attempting to effect any entries to the computer payroll system.

Where the strict compliance with these instructions may cause hardship to individual staff members on appointment or transfer, direct contact should be made with Human Resources to resolve the difficulties.

AWARDS AND AGREEMENTS**Display**

An employer shall exhibit awards made under the Act which apply to those classifications of staff which he/she employs.

Each area shall make available for perusal at the pay office, a folder containing copies of those industrial awards, agreements and determination which are applicable.

Payment

Where a variation in salary, allowances or conditions of employment arises from a new or varied Award, no action is to be taken by areas to effect the variation until State Health has been authorised to do so.

APPOINTMENTS

Initial Payment

The supervising officer is to note on the application for employment forms the date on which the staff member commenced duty.

The Salaries Section is to make payment from the commencement date to the first pay day either by manual or computer means. No days are to be held in hand.

Appointment Schedules

One copy of an appointment schedule will be prepared in the general office/Personnel Branch by the Salaries Clerk or Personnel Unit Clerk.

The Office Manager will check the schedule and certify that the salary rates, deductions etc. are correct.

The Office Manager will draw a line under the last entry on the schedule, initial the line and then submit the schedule to the appropriate delegate.

The schedule will then be approved by the delegate in respect of staff employed under his/her delegation. Staff not covered by this delegation should be covered by the necessary approval (refer Delegations Manual) which must be attached to the schedule.

Approved schedules are to be retained for inspection by Auditor-General and State Health Inspectors. Schedules are to be destroyed 12 months after the inspection.

Appointment schedules must be prepared fortnightly.

Salary Cards/Leave Cards

When salary cards are prepared for new appointees (or when additional cards are created) the name of the administrative area etc. should be written or stamped on the card. This will assist future Leave/Salary clerks in constructing a leave history on cessation/resignation etc, if that person works in other areas during their employment and salary cards are transferred to different offices.

Where an employee moves to another **Department** the leave card should be balanced before it is forwarded.

Hospay

The Staff Action Report includes a list of all new employees appointed in the pay period. This should be checked back to the Appointment Schedule and signed. Employee Details Record (EDR) should be checked back to the Employee Base Data form to ensure that employee details have been correctly up-dated. The EDR should be initialled.

Micropay

The Appointment Schedule should be checked against the Micropay output data for each new employee with the checking officer noting the Appointment Schedule.

HEALTH EXECUTIVE SERVICE – NOTIONAL SALARY (PD2010_051)

PD2010_051 rescinds PD2009_075.

PURPOSE

This policy advises that the calculation of notional salary for the Senior Executive Service (SES) and Health Executive Service (HES) has been updated.

The policy also directs Health Services to refer to the Department of Premier and Cabinet's website for the annual update of the notional salary.

MANDATORY REQUIREMENTS

In order to comply with this policy Chief Executives must ensure that line managers and payroll/HR personnel implement the contents of this policy directive and note the new notional salary applies from 1 July 2010.

The notional salary calculation is set by the Department of Premier and Cabinet annually in June/July. The updated calculation is issued by circular and can be accessed from the Department of Premier and Cabinet web site <http://www.dpc.nsw.gov.au/announcements>

Chief Executives must ensure the annual notional salary circular is obtained from the Department of Premier and Cabinet and disseminated to appropriate managers, payroll/HR personnel.

IMPLEMENTATION

The notional salary for the SES and HES is used for three purposes:

- for calculation of payments of accrued leave for SES/HES officers on separation;
- for non-SES/HES officers relieving in SES/HES positions (Higher Duties Allowance); and
- the cashing out of leave for SES/HES officers.

In accordance with Department of Premier and Cabinet Circular - [C2010-24 Senior Executive Service – Notional Salary](#), notional salary has been reviewed. As of 1 July 2010, notional salary is defined as 'the total remuneration package less the employers required superannuation contribution under the *Superannuation Guarantee (Administration) Act 1992* (Cth)'.

As a result of the updated calculation formula to notional salary, rates will vary between salary packages. Please refer to the Department of Premier and Cabinet circular for guidelines on calculating notional salary for individual salary packages.

Higher Duties Allowances for non-SES/HES officers relieving in SES/HES positions should normally be set at the minimum of the range for the position. Only in exceptional circumstances are Higher Duties Allowances to be paid above the minimum of the SES/HES remuneration range (see below for further detail).

The Director-General, Department of Health exercises the employer functions on behalf of the Government of New South Wales in respect of executives in the Senior Executive Service and the Health Executive Service.

Health Executive Service – Delegation S213 (15.16.10 of the Combined Delegations Manual), Health Executive Service – Approval of the Director-General or Deputy Director-General, Health System Support is required for payment of higher duties remuneration above .3 of the remuneration range for the level.

Senior Executive Service - Delegation S176 (16.7 of the Combined Delegations Manual), Salaries Higher Duties Allowances and Acting Arrangement SES Arrangements – Approval of the Deputy Director-General, Health System Support is required for the payment of higher duties remuneration above 0.3 of the remuneration range for the level.

Visit Department of Premier and Cabinet circular web site:
<http://www.dpc.nsw.gov.au/announcements>

MANAGING MISCONDUCT (PD2014_042)

PD2014_042 rescinds PD2005_095.

PURPOSE

This Policy Directive sets out the requirements for managing potential and/or substantiated misconduct by staff of the NSW Health Service and by visiting practitioners. Further guidance and support in managing misconduct are provided by non-mandatory Information Sheets, including flowcharts, checklists and templates, which are available online on the NSW Health intranet site.

MANDATORY REQUIREMENTS

- The protection of an organisation's patients and clients, including the children for whom it is responsible, is to be the primary consideration when managing and making decisions related to potential and substantiated misconduct.
- Potential misconduct must be treated seriously and an initial review of any apparent or potential misconduct must take place without delay.
- Where an initial review indicates there is a credible allegation or possibility of misconduct, or that the matter involves a child-related allegation, charge or conviction, further action to pursue the matter in accordance with this policy should take place in a timely manner consistent with the requirements of procedural fairness.
- Any ongoing risks related to potential or substantiated misconduct must be identified, assessed, managed, and regularly reviewed throughout the management process, including any requirements arising from the Service Check Register policy.
- Those involved in a potential misconduct process have both the right to confidentiality and the responsibility for maintaining confidentiality, subject always to the overriding need to be able properly to undertake any inquiries or investigation that may be necessary, and to take the action required by this Policy Directive.

- A person who is subject of a misconduct process must be given adequate opportunity to respond to any allegations, adverse findings, and proposed disciplinary action, prior to any final decision being made.
- A person who is subject of a misconduct process must be afforded the right to a support person being present at any meetings. Other support may also need to be offered to all affected persons, where appropriate.
- Any findings made must be based on relevant available information that is established 'on the balance of probabilities'.
- Any action to be taken as a response to a misconduct finding must be proportionate to the nature of the misconduct, after consideration of any extenuating circumstances, previous work performance and history, and any identified ongoing risks.
- A termination of employment in NSW Health Service following a finding of misconduct will apply to all roles or multiple assignments undertaken as an employee in the NSW Health Service unless the person can show cause as to why this should not occur. NSW Health organisations must provide dismissed staff access to the show cause mechanism outlined in Section 9.3 of the following Procedures.
- Where the appointment of a visiting practitioner is terminated following a finding of misconduct, the relevant Health organisation must notify any other Health organisation(s) where the visiting practitioner also holds an appointment contract to allow them to assess and manage any local risks.
- Any required internal or external notifications concerning potential or substantiated misconduct (such as to registration authorities) must be made without delay in accordance with the relevant statutory and/or policy provisions.
- Appropriate records of all stages of the process (including the initial review and any investigation) and outcomes must be kept and stored securely.

IMPLEMENTATION

This Policy Directive applies to all staff of the NSW Health Service and to visiting practitioners. It does not apply to staff employed in the NSW Health Executive Service, contractors who are not visiting practitioners, or to agency staff, students, volunteers or researchers who are not staff employed in the NSW Health Service. However, where it is decided to conduct an investigation into alleged misconduct by any person in these categories, this Policy Directive may nevertheless be used to guide the process.

Any complaints or concerns related to the clinical performance, practice or outcomes of a health practitioner or other health service provider (as defined under the *Health Practitioner Regulation National Law (NSW)*) must be managed in line with the NSW Health policy on managing a complaint or concern about a clinician.

The following staff have key responsibilities in relation to this Policy Directive:

Chief Executives are required to:

- Ensure that this Policy Directive is communicated to, and complied with by staff involved in managing potential or substantiated misconduct.

Workforce Directorates/Human Resources Departments/Internal Audit Units/Governance or Professional Conduct and Standards units are required to:

- Ensure provision of information and advice as necessary to support effective implementation of this policy.

Supervisors/Managers are required to:

- Comply with this Policy Directive in dealing with all cases of potential and substantiated misconduct.

1. BACKGROUND

3.1 About this document

These Procedures outline the requirements for managing potential or substantiated misconduct of staff of the NSW Health Service. Information Sheets have also been developed to provide guidance and support in meeting the requirements of this Policy Directive. Links to Information Sheets have been provided throughout the Procedures, and a complete list is available on the Ministry of Health's intranet site at <http://internal.health.nsw.gov.au/jobs/conduct/index-conduct.html>.

A summary flowchart of the overall process for managing potential misconduct is provided at [Information Sheet 1](#). Suggested timelines are at [Information Sheet 2](#). The rights and responsibilities of all parties involved in managing misconduct (including the need to maintain appropriate confidentiality throughout the process) are outlined in [Information Sheet 3](#).

1.2 Key definitions

Misconduct – includes:

- Behaviour or conduct which seriously or repeatedly breaches expected standards, as identified in relevant legislation (such as the [Health Services Act 1997](#) or the [Health Practitioner Regulation National Law \(NSW\)](#)), registration standards or codes/guidelines approved by a National Health Practitioner Board or NSW Health policies (such as the Code of Conduct).¹
- Refusal to carry out a lawful and reasonable direction given by a line manager or another member of staff authorised to give the direction.
- Reportable (ie child-related) conduct as defined under the [Ombudsman Act 1974](#) (including allegations relating to conduct outside the workplace).
- Corrupt conduct as defined under the [Independent Commission Against Corruption Act 1988](#)
- Serious wrongdoing that could be the subject of a public interest disclosure under the [Public Interest Disclosures Act 1994](#), ie relating to corrupt conduct, maladministration, serious and substantial waste, or failure to deal appropriately with Government Information.
- Criminal charges or convictions that have an adverse impact on the workplace or the role or performance of the staff member (including such offences committed outside the workplace and/or work hours, or prior to appointment to NSW Health).
- For staff of the Ambulance Service of NSW, misconduct as defined under Part 4 of the [Health Services Regulation 2013](#)
- Making vexatious allegations, or knowingly making false or misleading public interest disclosures.

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¹ Note: Complaints or concerns about the clinical performance, practice or outcomes of a health practitioner or other health service provider must be managed under the current NSW Health policy on [managing a complaint or concern about a clinician](#).

- A failure to comply or cooperate with the processes for investigating or managing misconduct set out in this Policy Directive.

NSW Health organisation - For the purposes of this policy directive, any public health organisation as defined under the *Health Services Act 1997*, the Ambulance Service of NSW, Health Infrastructure, HealthShare NSW, NSW Health Pathology, any other administrative unit of the Health Administration Corporation, and Albury-Wodonga Health in respect of staff who are employed in the NSW Health Service.

NSW Health Service - All persons employed under Chapter 9, Part 1 of the [Health Services Act 1997](#).

Staff member - For the purposes of this policy directive, any person who is employed in the NSW Health Service, or engaged in the NSW public health system as a visiting practitioner.

2. INITIAL REVIEW AND RESPONSE

3.2 Purpose of an initial review

A staff misconduct issue may arise or be identified from a number of sources, such as: internally or externally raised allegations; complaints or concerns; managers' or colleagues' observations; notifications including self-disclosure by a staff member; inquiries or investigations; or other workplace processes.

There must be an initial review of any allegation or concern about potential misconduct which is raised without delay ([Information Sheet 4](#)). An initial review seeks to gather all readily available information that may assist in clarifying an allegation or concern in order to:

- Identify any immediate risks to the safety and welfare of patients and/or staff (including any complainant) that need to be managed immediately.
- Determine, as far as practical, the credibility, nature and seriousness of the matter.
- Determine whether the matter should be managed under this policy or another policy (eg grievance etc) ([Information Sheet 5](#)).
- Identify and consult all relevant policy directives and their process requirements ([Information Sheet 5](#)).
- Identify any immediate internal and external notification requirements ([Information Sheet 6](#)), including the NSW Health [Service Check Register](#). All allegations that involve possible criminal conduct must be reported to the NSW Police.

2.2 Determining further action

Where an initial review indicates that the matter does not involve a misconduct issue (eg is assessed as a low level, low risk grievance or Code of Conduct issue, a performance issue etc), this outcome is to be clearly documented and the provisions of this Policy Directive are no longer applicable. Any further action appropriate to the circumstances should be taken in accordance with any other relevant policies ([Information Sheet 5](#)).

Where an initial review indicates that an allegation is credible or there is an indication of apparent misconduct, or that the matter involves a child-related allegation, charge or conviction, appropriate action must be taken to address the matter in accordance with this Policy Directive (and, as appropriate, the current NSW Health policy on [child-related allegations, charges and convictions](#)).

Such action must be taken irrespective of whether the matter is being investigated by an external regulatory or investigative body (such as the Police and/or Community Services), and irrespective of the outcome of any such external proceeding. However, consultation with any external regulatory or investigative bodies must take place to ensure that any external investigations are not compromised.

In circumstances involving serious criminal allegations or child-related allegations, discussions should occur with NSW Police and/or Community Services at an early stage, which may result in a decision to defer any investigation by the NSW Health organisation pending the resolution of the criminal or child protection proceedings. Where this occurs the organisation must still undertake a risk assessment (see Section 3) to determine whether any immediate action is required to manage risks. This will normally involve a consideration of suspension of the staff member from duty or other available strategies in accordance with Section 3 and 4 of this document.

Where a matter relates to the clinical performance, practice or outcomes of a health practitioner or other health service provider, it must be assessed and managed in accordance with the current NSW Health policy on [managing a complaint or concern about a clinician](#).

Where a matter relates to conduct outside the workplace, its relevance to the workplace must be assessed to determine if any action is required. (However, specific requirements apply to child-related matters outside the workplace - see the current NSW Health policy on [child-related allegations, charges and convictions](#).)

An investigation into an allegation or apparent incident of misconduct should only occur where there is uncertainty about the relevant facts ([Information Sheet 4](#)). Where the facts are clear and uncontested, findings arising from the initial review can at that stage be provided to the decision-maker, who must either accept or reject them, and then decide what action should be taken in response to the findings. A staff member subject to an adverse finding in such circumstances must be provided with an opportunity to respond to such a finding, as well as to any proposed disciplinary action (refer to 7.5.2 for further information).

Appropriate documentation about an allegation or incident of potential misconduct, the initial review, and any recommendations for further action, or a decision not to proceed further, must be kept.

2.3 Advising the staff member

A staff member who is the subject of an initial review regarding potential misconduct should be informed that an issue has been raised about him or her as soon as credible details indicating potential misconduct have been identified, and it is deemed safe and appropriate to do so ([Information Sheet 7](#)). Any verbal advice should be confirmed in writing.

3. MANAGING RISKS

3.3 General

Where managing potential misconduct needs to involve more than just an initial review, a risk assessment must be conducted and a risk management strategy put in place as soon as possible. The purpose of a risk assessment is not to determine whether misconduct took place, but purely to assess whether there are any significant ongoing risks in the workplace that require managing ([Information Sheet 8](#)). The need to continue with any immediate risk response put in place at the time of the initial review should also be assessed as part of the risk assessment.

A suggested risk assessment template is available at [Information Sheet 9](#).

Any action to manage the identified risks must be communicated to the staff member who is to be subject to that action in writing ([Information Sheet 7](#)) and include advice of any creation of a record in the NSW Health [Service Check Register](#). It may also be necessary to manage communications to other affected staff, patients or others.

Appropriate support should be offered to a staff member who is subject to risk management action, and may also need to be provided to other affected staff/patients/other parties.

Any notification requirements must be attended to without delay.

The position of a staff member must not be permanently filled while that staff member is suspended or on interim work arrangements as a risk management measure.

3.2 Options to manage risks

Action to manage risks arising from a risk assessment must be specific and proportionate to the circumstances. Where risk management action is necessary, consideration must be given to appropriate and available administrative action by way of alternative interim work arrangements.

Suspension from duty is a last resort risk management strategy (see Section 4).

See also Section 4.3 regarding payment of shift-penalties and other allowances while undertaking alternative duties or during suspension on pay.

3.3 Ongoing review

While a potential misconduct matter is ongoing, any risk management measures must be reviewed and any risks reassessed, at a minimum every 30 days, or when new information, relevant to the risk management strategy in place, comes to light. Where the review results in a change in risk management measures, any relevant NSW Health [Service Check Register](#) record must also be reviewed and amended as appropriate.

3.4 Requests for review of risk management measures

A staff member subject to risk management action may request a review of the risk management measures by application in writing to the relevant manager or person who conducted the risk assessment, on the grounds that:

- The risks have not been identified or assessed appropriately or
- The risks have changed or no longer exist.

4. SUSPENSION OF STAFF

4.1 General

Suspension of a staff member from duty can only occur as a risk management strategy where:

- A risk assessment has been conducted.
- A potential risk is posed by the staff member remaining at his or her current work; and
- The potential risk cannot be appropriately managed in any other way.

In addition, Section 120A(1) of the [Health Services Act 1997](#) outlines specific circumstances in which a staff member who is subject to actions taken by an external body can be suspended. Whether suspension is appropriate in these circumstances will depend on:

- 1) Whether the staff member can continue to perform the role for which he or she was employed, having regard to the following circumstances:
 - (a) Suspension of the registration of a staff member as a registered health practitioner by a health professional council under s150 of the *Health Practitioner Regulation National Law (NSW)* - the staff member cannot practise as a health practitioner.
 - (b) Conditions imposed on the registration of a staff member as a registered health practitioner imposed by a health professional council under s 150 of the *Health Practitioner Regulation National Law (NSW)* – the staff member may not provide some or all of the services which he or she was employed to provide, or cannot do so without adjustment to working arrangements.
 - (c) An interim prohibition order by the Health Care Complaints Commission during an investigation into a staff member as an unregistered health practitioner prohibiting the provision of health services or specified health services by that staff member – the staff member may not provide some or all of the services which he or she was employed to provide.
 - (d) An interim prohibition order by the Health Care Complaints Commission during an investigation into a staff member as an unregistered health practitioner that places conditions on the provision of health services – the staff member may not be able to provide all the services he or she was employed to provide, or cannot do so without adjustment to working arrangements.
 - (e) Charged with a serious criminal offence and is remanded in custody or has bail conditions imposed that prevent or restrict the ability to present for work – the staff member cannot fulfil the terms of his or her employment.
 - (f) Charge of a serious criminal offence (other than in the circumstances in (e) above) – a risk assessment must be conducted to determine whether it is appropriate for the staff member to continue to provide the services he or she was employed to provide.
- 2) Whether alternative interim work arrangements are appropriate, available and can be safely provided without adverse impact on the operational efficiency and budgetary constraints of the NSW Health organisation.

4.2 Whether suspension under s120A of the Health Services Act 1997 should be with or without pay

Where a staff member is suspended, the payment of salary at the applicable ordinary time rate (ie without shift penalties and other allowances, but refer to 4.3 regarding reimbursement in certain circumstances) should usually continue. Suspension may be without pay in the circumstances set out in Section 120A(1) of the *Health Services Act 1997* if the Secretary of the Ministry of Health, or the Chief Executive of the relevant NSW Health organisation (acting under his or her delegated employer function), so directs.

A staff member who is suspended without pay must be allowed to access any paid annual or long service leave entitlements accrued prior to the suspension. While accessing such leave entitlements, his or her employment will remain suspended.

4.3 Final decisions regarding salary which has been withheld during suspension without pay

Where a staff member is suspended due to action taken against the staff member by an external body under s120A(1) of the *Health Services Act 1997*, and the staff member's salary has been withheld during that action (under s120A(2)), and the outcome of the external body action is one of the following:

- (a) The staff member's registration is suspended or cancelled by the Civil and Administrative Tribunal under Section 149C of the [Health Practitioner Regulation National Law \(NSW\)](#).
- (b) Conditions are imposed by the Tribunal on the registration of the staff member as a registered health practitioner under Section 149A (1) (b) of the *Health Practitioner Regulation National Law* that, in the opinion of the Secretary of the Ministry of Health, or the Chief Executive of the relevant NSW Health organisation (acting under his or her delegated employer function), are inconsistent with any of the inherent requirements of the terms of employment of the staff member.
- (c) A prohibition order is made by the Health Care Complaints Commission in respect of the staff member as an unregistered health practitioner under Section 41A of the [Health Care Complaints Act 1993](#) that prohibits the staff member from providing health services or specified health services.
- (d) A prohibition order is made by the Health Care Complaints Commission in respect of the member of staff under Section 41A of that Act that places conditions on the provision of health services or specified health services by the staff member that, in the opinion of the Secretary of the Ministry of Health, or the Chief Executive of the relevant NSW Health organisation (acting under his or her delegated employer function), are inconsistent with any of the inherent requirements of the terms of employment of the staff member, or
- (e) The person is convicted of a serious criminal offence.

the Act provides that the staff member's salary is to be forfeited to the State, unless the Secretary of the NSW Ministry of Health, or the Chief Executive of the relevant NSW Health organisation (acting under his or her delegated employer function), directs otherwise (s120A(3)).

Conversely, where the action against the staff member by the external body does not result in any of the final actions in (a)-(d) above being taken against the staff member, the Act provides that any salary withheld is to be paid to the staff member, unless the Secretary of the NSW Ministry of Health, or the Chief Executive of the relevant NSW Health organisation (acting under his or her delegated employer function), directs that the salary is to be forfeited to the State (s120A(4)).

Where withheld salary is paid to the staff member, it should include any relevant allowances and shift penalties (calculated as outlined in Section 4.3 of these Procedures). If the staff member had accessed any paid annual or long service leave while suspended without pay, this leave should be re-credited to him or her.

There may be circumstances where it is not appropriate to provide public money to a staff member for a job that he or she did not, and could not, perform, particularly where the Health organisation has incurred an additional expense to provide the services during the staff member's period of suspension. In these circumstances the Secretary of the NSW Ministry of Health, or the Chief Executive of the relevant NSW Health organisation (acting under his or her delegated employer function), may, in accordance with the Act, direct that the withheld salary is to be forfeited to the State. Relevant considerations may include:

- The extent to which the conduct of the staff member contributed to the issue in the first place.
- Whether the staff member has complied with statutory duties to report certain criminal conduct and disciplinary matters.

- Where a risk assessment suggests that the continued employment of the staff member poses an unacceptable risk to the Health organisation.
- The length of the period the staff member was unable to meet the inherent requirements of his or her employment.

4.4 Reimbursement of shift penalties and other allowances following suspension on pay or alternative duties

Where a staff member is engaged as a shift worker on a permanent or regular basis, or has undertaken shift work regularly in the previous 3 months, and where

- The staff member is suspended or allocated alternative duties as a risk management strategy pending the outcome of an investigation and/or decision-making process in relation to a misconduct allegation against him or her, and
- The suspension or alternative duties result in a loss of shift penalties and/or other work related allowances, and
- No adverse finding is subsequently made against the staff member,

the staff member is to be reimbursed for the loss of shift penalties and/or work related other allowances. The reimbursement is based on the average of any shift penalties and/or other work related allowances for the preceding 6 months or, if the period of shift work is less than 6 months, the average for the period worked.

4.5 Suspension of visiting practitioners

The [Visiting Medical Officer Determinations](#) provide that an organisation may suspend the appointment of a visiting medical officer where it is considered necessary in the interests of the hospital to which the visiting medical officer is appointed. The suspension of any visiting practitioner is without pay. Note that the [Health Services Act 1997](#) provides for an appeal mechanism for visiting practitioners whose appointment is suspended.

As visiting practitioner appointments are made under statutory powers and with statutory powers of appeal against suspension, it is important to be able to demonstrate procedural fairness in reaching any decision to suspend (which would usually involve providing notice to the visiting medical officer of the possibility of suspension and of reasons, and an opportunity to respond).

Further advice can be sought from each NSW Health organisation's medical administration.

5. INVESTIGATION

5.1 The purpose of an investigation

An investigation is a formal process of collecting and analysing all available relevant information to ascertain facts in order to make findings. An investigation precedes, and is separate from, any final decision by a decision-maker about whether to accept or not accept findings, and about whether and what further action (disciplinary or other) is required.

The purpose of an investigation is to determine whether:

- The alleged or suspected misconduct has occurred and, if so, to put forward findings to that effect.
- The substantiated conduct breached expected standards, or relevant policies or legislation.
- There are any extenuating circumstances or other contributing factors that may need to be considered.

An investigation need only occur into potential misconduct where there is uncertainty about the relevant facts. Even where no investigation is necessary, the decision-making process set out in Sections 7 and 8 of these Procedures should be followed. The requirements of any additional relevant policies identified during the initial review must also be complied with ([Information Sheet 5](#)).

Any investigation must be completed as expeditiously as possible without compromising procedural fairness.

If a matter has been referred to an external regulatory or investigative body, ongoing liaison with that body must occur to coordinate, as appropriate, the timing and conduct of any internal investigation with any action being undertaken by the external body (see also Section 2.2 re serious criminal allegations and child-related allegations).

A flowchart of the investigation process is provided at [Information Sheet 10](#). The following publications also provide guidance on conducting internal investigations:

- NSW Ombudsman: [Investigating Complaints - A manual for Investigators](#)
- ICAC's Fact-Finder: A Guide to Conducting Internal Investigations - search for 'Fact finder' at <http://www.icac.nsw.gov.au/publications-and-resources/publications-search>.

5.2 Selecting investigators

Investigators must have suitable skills and experience, an understanding of the investigation process, and, if an external investigator, no direct involvement with or interest in the matter under investigation.

In most cases, an investigation can be conducted by someone internal to the NSW Health organisation, supported by local HR, internal audit, governance, or professional conduct and standards units, as necessary.

External investigators may be used, for example, where a Health organisation considers that there is no one available within the organisation or elsewhere in NSW Health with the appropriate skills, or where very senior executive staff are involved. A government-wide panel of pre-qualified service providers is available and can be accessed through NSW Government ProcurePoint at <https://www.procurepoint.nsw.gov.au/performance-and-management-services-scheme>, although [persons not on this panel can also be used](#).

External investigators must sign a contract (a standard services/consultancy contract is available at <http://internal.health.nsw.gov.au/legal/goods.html>), as well as a declaration that they understand the expectations for the investigation and have received information about any relevant NSW Health policies. Appropriate checks must also be conducted to confirm the capacity of an external investigator to carry out the investigation appropriately.

The decision-maker should not be involved in any investigation.

5.3 Advice to a staff member who is subject to a misconduct process

Written advice must be provided to the staff member about the allegations against him or her and about the investigation process. The advice must contain sufficient information about the allegations to allow the staff member to provide a considered response ([Information Sheet 7](#)).

5.4 Interviews

The investigator must put the substance of the allegations and any key relevant evidence to the staff member subject to the allegations as part of the interview process. In order to do this, it is usually best to interview any complainants and/or witnesses first to gain as much detail about the alleged misconduct as possible.

An investigator may decide to accept receipt of information in a written statement instead of, or in addition to, an interview, although an interview is usually preferable, particularly where additional detail is required or to explore issues in greater detail.

Reasonable notice of an interview must be given in writing (usually 48 hours). All persons to be interviewed must be advised that they may have a support person of their choosing present, and that the reasons for the interview and its content must remain confidential.

The support person does not represent the staff member nor advocate or make representations on behalf of that person.

Records of interviews should be taken and kept. (Note that under the [Surveillance Devices Act 2007](#), electronic/tape recordings can only be made with the agreement of all parties to the interview). Persons interviewed should be provided with a copy of a summary or record of interview for review and signature as soon as possible. See also Section 6.8 regarding disputes over interview records.

6. ISSUES ARISING DURING INITIAL REVIEW, INVESTIGATION OR DECISION-MAKING PROCESSES

6.1 Unreasonable conduct by complainants

Complainants may demonstrate unreasonable persistence, demands or arguments, lack of cooperation, aggression etc.

- Refer to the NSW Ombudsman publication [Managing Unreasonable Complainant Conduct](#) for guidance in managing complainants.
- Any aggression or threats of violence by staff are to be managed as a breach of the NSW Health [Code of Conduct](#).

6.2 Frivolous, vexatious or misconceived allegations/concerns

If at any point in the process it becomes apparent that an allegation of, or concern about, misconduct is frivolous, vexatious, misconceived or otherwise lacking in substance:

- The process must stop.
- This must be communicated to the decision-maker for assessment.
- The decision to conclude the process must be recorded with reasons.
- If the staff member subject to the allegation or enquiry has already been notified, he or she must be advised as soon as possible that allegations or concerns were not supported (it may also be appropriate to provide an apology).
- Vexatious allegations amount to misconduct. If a complainant is a staff member, such an allegation must be separately managed in line with this policy directive.

6.3 When a staff member does not cooperate

All staff members are expected to cooperate in any process to manage potential misconduct.

- If a staff member fails or refuses to attend an interview or provide a written statement within the timeframe advised, any reasons for the failure put forward or otherwise identified must be considered, any reasonable accommodation made as required, and the staff member advised of a final date for the interview/written statement.
- If the staff member continues to refuse to attend an interview/provide a written statement without reasonable grounds, he or she is to be directed in writing to attend an interview or provide a written statement by a specific date and advised in writing that a refusal may constitute a breach of the NSW Health [Code of Conduct](#) with potential disciplinary consequences, and that the investigation will continue in any case and a decision will be made based on available information.
- If the staff member attends an interview but refuses to engage or to provide relevant information sought by the interviewer, he or she must be advised that the content of the interview will nevertheless be recorded, and that the investigation will continue and a decision will be made based on available information. This advice is to be confirmed in writing following the interview.

6.4 When a staff member is on approved leave during an investigation

It may be appropriate to recall the person from leave to be interviewed or seek a written statement from him or her where a timely completion of the investigation is necessary.

6.5 When a staff member is on sick leave/workers compensation leave during an investigation

Consideration must be given to whether the medical condition of a staff member reasonably prevents him or her from taking part in an interview or providing a written statement.

If the staff member is on workers compensation leave, any return-to-work restrictions in place must be considered.

If the staff member is on sick leave due to a non-work related injury or illness, the Health organisation should rely on the available medical advice from the employee's treating doctor in the first instance to determine the staff member's ability to participate in the investigation. Where there are ongoing concerns or a lack of clarity over the staff member's prognosis, action may include seeking the staff member's consent to discuss their prognosis with their treating doctor, or, if the staff member does not consent to this, referring them for a further medical assessment (the process is set out in the current NSW public sector [procedures for managing non-work related injuries and health conditions](#)).

If the staff member is not able to attend an interview, but is able to provide, or arrange for the provision of, a written statement, this should be formally sought on the basis that a timely completion of the investigation is necessary. In these circumstances, the staff member should be advised of the deadline for the provision of the written statement, and that the investigation will continue in any case, and a decision will be made based on available information.

6.6 Where the staff member resigns prior to completion of a misconduct management process

The process must still be completed, including making findings and decisions about any action that would have been taken against the staff member had he or she still been in the position, and all relevant notifications.

The management process must be fair to the former staff member (including the timely completion of any investigation and providing the former staff member with an opportunity to respond to any allegations or adverse findings).

An entry into the Service Check Register may have to be made or amended – see the current NSW Health policy on [Service Check Register](#).

6.7 Delays in completing the management process

If the completion of the process is delayed beyond the recommended 12 weeks ([Information Sheet 2](#)) or any timeframe previously advised, all key parties must be advised of this in writing.

6.8 Disputes over interview records

Any issues about the content of the record of interview are to be discussed and resolved if possible, and the record altered to reflect any agreed changes.

If the issues cannot be resolved, the interviewee is to be asked to submit a statement giving reasons for not signing the record, the investigator must record reasons for not agreeing to the requested changes, and both statements must be appended to the interview record.

6.9 Complaints about the investigation/investigator

Complaints about the investigation or the investigator are to be referred for review to the manager responsible for the process and assessed without delay to ensure continued integrity of the process.

7. MAKING FINDINGS

7.1 Options for findings

Generally, the findings arising from an investigation or, in appropriate circumstances, an initial review, fall into one of the following:

- Misconduct is substantiated
- Misconduct is partially substantiated (eg part of an allegation is substantiated)
- Misconduct is not substantiated (no evidence that misconduct has occurred, or evidence that it did not)
- Misconduct is not substantiated due to insufficient or inconclusive information (ie not able to make a finding).

Note: Specific requirements apply to findings that can be made for child-related allegations that are notifiable to the Ombudsman (refer to current NSW Health policy on [child related allegations, charges and convictions](#)).

The strength, sufficiency, relevance and reliability of any information must be carefully assessed to determine whether it can support a finding, and where clarification is required, more information should be gathered.

7.2 Standard of proof

Findings of misconduct must be proved to the civil standard, that is, “on the balance of probabilities”. In other words, based on available evidence, it must be more probable that misconduct has occurred than that it has not.

In addition, consistent with the “Briginshaw v Briginshaw principle”, the more serious the potential misconduct, and therefore the more serious the consequences for the staff member, the stronger the evidence must be to support an adverse finding.

7.3 Investigation findings and investigation report

Where an investigation has been conducted, the person conducting the investigation should provide a report setting out findings arising from the investigation and the facts supporting those findings to the decision-maker ([Information Sheet 11](#)).

The investigation report should not contain information that is not relevant to the conduct under investigation. Where new allegations arise during an investigation, these must be assessed: allegations or concerns not closely related to the investigation, or any counter-allegations, must be managed separately in line with this Policy Directive. Where appropriate, an investigator should include in a report any material which may set out mitigating factors or be otherwise exculpatory in respect of the staff member subject to the investigation.

All supporting documentation should be available to be examined by the decision-maker.

7.4 Findings where no investigation has taken place

As set out in Section 2.2, an investigation is only necessary where there is uncertainty about the facts. Where an initial review determines that the facts are clear and/or uncontested, findings arising out the initial review should be set out together with the supporting facts in a report which should be provided to the decision-maker.

7.5 Final decisions about findings

7.5.1 The role of the decision-maker

The decision-maker should not have any direct conflict of interest involving the complaint. He or she must act in an objective and impartial manner, and have regard to procedural fairness requirements and risk management.

It is the role of the decision-maker to:

- Accept or reject findings arising from the investigation, or the initial review. The decision-maker may accept some but not all of the findings. Any decision to reject a finding, and the reason for it, must be documented.
It is also open to the decision-maker to ask that the person or persons who conducted the investigation make further enquiries, or otherwise to initiate or undertake further enquiries, where he or she is concerned that more information is needed to support findings.
- Make decisions about any action to be taken by the Health organisation as a response to the findings (see Section 8).

7.5.2 Seeking a response to adverse findings

An adverse finding is a finding that is unfavourable to the staff member subject to a misconduct process, ie supports the allegation or apparent incident of misconduct. Adverse findings do not include inconclusive findings.

Where the decision-maker is proposing to support an adverse finding against a staff member, the staff member must be so advised and given an opportunity to provide any additional information, or raise any concerns about an investigation process or the proposed findings to the attention of the decision-maker.

In order to be able to provide a considered response, the staff member has a right to access relevant information that has been taken into consideration by the decision-maker in making an adverse finding. The material should be sufficient to enable the staff member to understand fully any alleged misconduct, but need not include all information in the possession of the decision-maker, particularly where the interests of other members of staff may need to be protected or the material is not relevant to the findings.

In certain circumstances (eg [public interest disclosures](#), in respect of confidential information about third parties, or where there may be a potential risk to the wellbeing of the staff member or others) it may be appropriate to withhold some information. What information is withheld and for what reason should be appropriately recorded.

A response from the staff member should be required within a reasonable time period (usually two calendar weeks unless otherwise agreed).

Where the staff member's response provides additional information that has not been raised before and may materially affect the findings, the findings should be reviewed accordingly. In some instances further investigative action may need to take place.

The staff member must also be provided with an opportunity to make submissions about any proposed disciplinary action. The response to proposed disciplinary action may be sought at the same time as the response to proposed adverse findings (after considering what may be appropriate action in line with Section 8). However, where the staff member's response affects the findings, the proposed action will need to be reviewed accordingly, and the staff member must be given an opportunity to respond to any revised proposed disciplinary action.

8. MAKING DECISIONS ABOUT ACTION TO BE TAKEN

8.1 Considering an appropriate response to findings

The decision-maker must form a view of the appropriate outcome of the process based on the material available. In deciding what action is appropriate the following must be considered:

- As the paramount consideration, the protection of a NSW Health organisation's patients and clients and of children for whom it is responsible. In particular, Section 119 of the [Health Services Act 1997](#) specifies this as the paramount consideration in relation to determining whether to take disciplinary action against a member of staff in respect of serious sex or violence offences.
- The health, safety and well-being of the organisation's staff.
- The seriousness of the misconduct, and the extent to which it constitutes a breach of any relevant legislation, registration standard or the Code of Conduct or any other NSW Health or Health organisation policies.
- Any penalties prescribed by legislation or other relevant policy directives (eg the [hand hygiene policy](#), the policy on [misuse of NSW Health communication systems](#)).
- Any action taken by external regulatory bodies in relation to the staff member (eg deregistration etc).

- Whether the misconduct involved a pattern of behaviour or was an isolated incident.
- The staff member's length of service and previous work history, including the period of time since any previous conduct issues (this may involve a review of the [Service Check Register](#)).

Where a NSW Health organisation becomes aware of similar substantiated misconduct by the staff member elsewhere in the NSW Health Service, further information is to be sought from the relevant Health organisation and considered by the decision-maker in determining the appropriate action to be taken (eg a pattern of behaviour may be shown). The information should only be used in determining the appropriate response to the current substantiated misconduct, not to weigh the balance of probability during an investigation.

- Any factors affecting the staff member's behaviour. Where information obtained during the initial review or investigation suggests an underlying health issue may have caused or contributed to the conduct, it may be appropriate to refer the staff member to a medical assessment. For further information, refer to the current NSW public sector [procedures for managing non-work related injuries and health conditions](#). Note also that employers have statutory notification requirements in relation to potential impairment of a health practitioner under the [Health Practitioner Regulation National Law \(NSW\)](#).
- Any matters raised by the staff member about the findings or about the penalty or action that should be taken in response to the misconduct (see Section 8.3 following).
- The impact of the conduct on the organisation and other staff.
- The potential impact that any action may have on the staff member's personal circumstances and professional reputation.

8.2 Options for action in response to findings of misconduct

The following options exist for a decision-maker (refer also to [Information Sheet 12](#)):

- No further action – relevant where conduct did not seriously breach expected standards, or misconduct occurred but no further action is warranted because of mitigating circumstances.
- Remedial (ie non-disciplinary corrective) managerial action – may be relevant where findings of misconduct were made but not considered to warrant disciplinary action, or in conjunction with disciplinary action, or can be appropriate where allegations have not been substantiated as misconduct but the staff member's conduct nevertheless needs to be addressed (eg low level breach of the Code of Conduct, performance issue, other policy requirements – refer to [Information Sheet 5](#)).
- Disciplinary action, which can take the following form:
 - A formal warning, clearly stating the improved standard of conduct that is required within a given timeframe and the possible consequences of failing to reach that standard, and indicating any assistance available to help the staff member meet the expectations.
 - An annulment of appointment, where a staff member is on probation.
 - For staff of the Ambulance Service of NSW only, reduction of the staff member's classification or position.
 - Dismissal from the NSW Health Service, or termination of a visiting practitioner's appointment. Termination of employment must be approved by the Chief Executive, who must be independently satisfied that this action is warranted. (See also Section 9.3 regarding other action arising from a termination of employment).

Note that some other NSW Health policy directives (such as those dealing with [hand hygiene](#), and [misuse of NSW Health communication systems](#)) also contain provisions for disciplinary action.

Note also that specific provisions exist under the [Health Services Act 1997](#) in relation to a member of staff (Section 118) or a visiting practitioner (Section 100) who has been convicted of a serious sex or violence offence.

- Addressing systems/organisational issues – these may be appropriate even where allegations have not been substantiated or findings are inconclusive.

Any action proposed must be proportionate to the seriousness of the conduct and any identified ongoing risks, after consideration of any mitigating circumstances. In some instances, more than one of the above responses may be appropriate.

8.3 Seeking a response from a staff member regarding proposed disciplinary action

Any disciplinary action proposed by a decision-maker in response to a staff member's misconduct must be communicated to the staff member in writing. The staff member must be given an opportunity to make submissions to the decision-maker in relation to the proposed disciplinary action before a final decision about it is taken.

The decision-maker can seek a response to proposed adverse findings and proposed action at the same time (see also Section 7.5.2).

A reasonable period of time (usually two calendar weeks, unless otherwise agreed) must be allowed for a response. Any such response must be considered by the decision-maker before a final decision is made about the action to be taken.

9. IMPLEMENTING DECISIONS AND FINALISING THE PROCESS

9.1 Advice about the outcome

At the completion of the process a final risk assessment must be conducted regardless of the outcome to identify any issues requiring ongoing management.

All persons involved must be advised of the outcome of the process in so far as it relates to them, having regard to the confidentiality rights of other people involved in the matter. (Further guidance is provided by the NSW Ombudsman publication [Managing information arising out of an investigation.](#)) It may also be necessary to offer appropriate support (such as the employee assistance program) to affected persons.

The person subject to the misconduct process must be advised of any disciplinary or remedial action the NSW Health organisation will take (including its effective date), or any other outcome of the process (including any issues that will be referred to the relevant line manager for local management). He or she must also be advised of any final notifications made (including the NSW Health [Service Check Register](#)). (See also Section 9.3 regarding action arising from termination of employment or appointment.)

Where allegations or concerns were not substantiated, there should be a discussion with the staff member involved about any support he or she may require to continue with or resume his or her role in the organisation.

9.2 Visiting practitioner appeals

Visiting practitioners have a right of appeal regarding certain decisions against them. These are detailed in Part 4 of the [Health Services Act 1997](#). Further advice can be sought from each NSW Health organisation's medical administration.

9.3 Action arising from termination of employment or appointment

Where a staff member's appointment is terminated in one part of the NSW Health Service following a finding of misconduct, the termination will apply to any other employment across the NSW Health Service. All other NSW Health organisations where the staff member holds employment must be notified of the termination.

However, a process is available to staff members to 'show cause' as to why the termination should not apply to their other employment in the NSW Health Service. The process is outlined in [Information Sheet 13](#) (flow chart) and [Information Sheet 14](#) (checklist), including advice to be provided to the staff member. Any decision made by a Health organisation about a show cause application must be endorsed by the Ministry of Health's Director, Workplace Relations before implementation.

Where the contract of a visiting practitioner with one Health organisation is terminated following a finding of misconduct, any other Health organisation(s) where the visiting practitioner holds a contract must be advised of the termination to allow them to assess and manage any risks arising from the finding(s) for the other organisation. (See also current NSW Health policy on the [Service Check Register](#).)

9.4 Finalising the process

Once any investigation and all decisions about findings and further action are finalised, any relevant final internal and external notification requirements as outlined in legislation and relevant policies must be attended to, including the NSW Health [Service Check Register](#) ([Information Sheet 6](#)).

Appropriate records of all stages of the process (including the initial review and any interviews) and outcomes must be kept. All documentation must be managed in line with State Records NSW requirements for keeping personnel records ([General Retention and Disposal Authority GA28](#)) and kept on a dedicated and confidential file, separate to a staff member's personnel file ([Information Sheet 15](#)).

**RESTRUCTURING POLICY AND PROCEDURES – NSW MINISTRY OF HEALTH
(PD2013_042)**

PD2013_042 rescinds PD2011_050.

PURPOSE

This policy sets out the procedures that apply in a restructure of a Division, Branch or Unit in the Ministry of Health and defines the responsibilities of managers and employees involved in the restructure.

The Ministry of Health is committed to an ongoing process of quality improvement to achieve best practice in all of the Ministry's functional areas. Organisational restructuring is a necessary component of this commitment.

MANDATORY REQUIREMENTS

When it is necessary to implement a new structure in a Division, Branch or Unit, the procedures attached to this policy apply.

The restructuring procedures include the following principles:

- Restructuring proposals should reflect the broad objectives of Government policy to maximise the Ministry's effectiveness.
- Employees will be consulted early in the restructuring process and before finalising a restructuring proposal.
- Union representatives may participate in consultations on behalf of individuals or groups of members.
- Principles of merit, equal opportunity, transparency and fairness will apply in developing and implementing restructures.
- Managers, employees and their representative organisations will work cooperatively to minimise disruption to individuals and the work of the area affected, as far as possible.
- Consultation and implementation should take place within appropriate timeframes, depending on the context and extent of the restructure.
- Directors and Managers are responsible for developing and implementing structures.
- The Human Resources Unit of Workplace Relations Branch is responsible for processing approved structural proposals, providing management and employees with advice on grading and structures and the administrative action associated with training, transfer, redeployment and voluntary redundancies.

IMPLEMENTATION**MANAGERIAL RESPONSIBILITIES**

In any restructure, managers have the following responsibilities:

- To develop restructuring proposals objectively.
- To comply with these restructuring procedures.
- To actively consult employees on options and proposals and to be flexible and receptive to suggestions, wherever possible.
- Respect the confidentiality of information that employees provide regarding their personal or employment circumstances.

EMPLOYEE RESPONSIBILITIES

In any restructure, employees have the following responsibilities:

- To attend and actively participate in consultative meetings or discussions held by managers regarding the restructure.
- To comply with these restructuring procedures.
- To actively pursue development or redeployment opportunities.
- When declared excess, to actively participate in identifying appropriate positions for priority interviews.

1. BACKGROUND

1.1 About this document

This document sets out the procedures that apply to restructures in the Ministry of Health. They apply to a restructure of a Division, Branch or Unit.

1.2 Key definitions

The following definitions apply in this document:

<i>Restructure</i>	Organisational change that affects a Division, Branch or Unit and results in changes to staffing. These changes may include the creation and deletion of positions, changes to the duties or grading of several positions, or employees becoming excess.
<i>Major Restructure</i>	Where a significant number of staff in a Division or Branch are affected or which is expected to result in Excess Employees.
<i>Minor Restructure</i>	Where only a few positions within the Division, Branch or Unit are affected and which will not result in excess employees.
<i>Affected Employee</i>	A permanent employee, whose position has been deleted, altered or moved as a result of the organisational change and who will become excess if not placed in a position in the new structure.
<i>Excess Employee</i>	A permanent employee who has been declared excess when they no longer have a substantive position as defined in the Department of Premier and Cabinet Memorandum M2011-11 Managing Excess Employees. http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/2011/m2011-11_changes_to_the_management_of_excess_employees
<i>Priority Assessment</i>	The process by which excess or affected employees are assessed for suitability for redeployment to a position before it is advertised and independent of applicants who otherwise apply. See Section 6.4 of Department of Premier and Cabinet Case Management and Redeployment Guidelines http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0020/125381/Case_Management_and_Redeployment_Guidelines-D2011_009_v1.0.pdf
<i>Redeployment</i>	Means permanent placement in a funded position.

1.3 Legal and legislative framework

- *Department of Premier and Cabinet, Managing Excess Employees in the NSW Government Service*, Memorandum M2011-11 Managing Excess Employees
http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/2011/m2011-11_changes_to_the_management_of_excess_employees
- *Public Sector Employment and Management Act 2002*
- *Public Sector Employment and Management Regulation, 2009*
- *Grievance - Effective Workplace Resolution, PD2010_007*
http://www.health.nsw.gov.au/policies/pd/2010/PD2010_007.html
- *Department of Premier & Cabinet, Personnel Handbook.*

2. GENERAL MATTERS

2.1 Principles

In a major restructure the Director or Manager is required to liaise with the Associate Director, Human Resources (HR) so that implementation processes will be coordinated. This is particularly important where there are complex or multiple restructures occurring across the Ministry.

In a minor restructure the Director or Manager, should advise HR about the nature of consultation with employees and the union(s), including any areas of concern that have not been resolved prior to implementation proceeding. HR will manage the HR administration and policy process requirements to implement the restructure.

If the restructure is complex, implementation may need to be staged. Positions are generally filled by a top down approach.

Employees who are declared excess will be managed according to Memorandum *M2011-11 Managing Excess Employees*.

2.2 Approval and Position Descriptions

The Associate Director, HR will endorse and the Director General (or delegate) will approve the new structure. Approval will only be granted following consultation with relevant employees and unions.

Where a new position is proposed or a position is substantially changed, the Director/Manager must have a new position description prepared and evaluated using the Mercer job evaluation methodology. The position description should then be submitted to Associate Director HR for consideration and endorsement.

2.3 Temporary Employees

Special arrangements apply to Ministry Temporary Employees in restructures.

Temporary employees (up to max clerk grade 12) with more than 2 years continuous service may be considered for permanent appointment to a vacant position at grade (provided the interests of permanent employees are given priority).

Temporary employees (up to max clerk grade 12) with 12 months continuous service may apply for internal temporary positions at grade (provided the interests of permanent employees are given priority).

All temporary employees may apply for positions advertised externally.

2.4 Consultation and Advice to Employees

Consultation between management and employees and the relevant union(s) must occur before structures are varied and approved.

In a major restructure, a Consultation Committee may be established.

Consultation must be genuine, transparent and consider any issues raised.

3. PROCEDURES FOR FILLING POSITIONS

Every effort should be made to place current employees in the new structure through the procedures below.

3.1 Stage One – Direct Appointments

Where there are none, or only minor changes to a position and no change in the classification or grading, the substantive incumbent of the position may be directly appointed to the new position, subject to satisfactory performance.

A position will not be considered to have changed simply because it has moved to another Division, Branch or Unit, has been renamed, or has moved to another geographical location. The significance of a change to the position will be determined by assessing the specific capabilities (knowledge, skill and ability) needed to do the job.

If there are more vacant suitable positions than affected employees within a grade or level, affected employees who meet the specific capabilities of a vacant position in the new structure may be directly appointed.

Such appointments can be made where there is differential between current salary and the position of (as a guide) 5% or one grade.

The Director/Manager of the Division or Branch will determine direct appointments, in consultation with HR.

3.2 Stage Two – Lateral Transfers (Appointments on Grade)

Where there are more affected employees than vacant positions within a grade in the new structure, an internal priority assessment process will occur.

Affected employees at the same grade and classification as the vacant position and who have the required specific capabilities for the vacant position must be considered for permanent appointment.

The priority assessment process is different from merit selection. Where more than one affected employee is seeking redeployment to the same vacancy, selection is by competitive merit selection between those employees.

The Director or their delegate will convene a panel to consider the affected employees against vacant positions at their grade and classification. The panel should include a minimum of two members whose grade must be higher than the level of the vacant position. The panel will decide on the merit process to be consistently applied to all affected employees. (See section 5, *Public Sector Employment and Management Regulation 2009*).

<http://www.legislation.nsw.gov.au/viewtop/inforce/subordleg+428+2009+cd+0+N/?dq=Regulations%20under%20Public%20Sector%20Employment%20and%20Management%20Act%202002%20No%2043>.

A Human Resources representative will have access to all the documentation associated with the assessment process and be present during the assessment process to provide advice in relation to meeting the particular requirements of priority assessments.

The Convenor must provide feedback to the unsuccessful employees within five working days of the assessment.

3.3 Stage Three – Internal and External Recruitment Action

Vacant positions not filled through the procedures set in Stage One or Stage Two may be opened as promotional opportunities through internal merit selection, provided that the Director General (or delegate) is satisfied that excess or affected employees suitable for the vacant positions have been considered. The Director/Manager and Human Resources must consider the potential to employ excess/affected staff, given that a number of restructures may be occurring at the same time.

If there are no suitable internal applicants, vacant positions will be externally advertised on JobsNSW at <http://www.jobs.nsw.gov.au/> and, if appropriate, other internet job sites. Approval to advertise externally must be endorsed by the Associate Director HR.

Employees wishing to apply for positions advertised in JobsNSW and other Internet job sites will be required to submit an application in the usual manner.

3.4 Stage Four – Excess Employees

Employees will be declared ‘excess’ when all the positions they can reasonably expect to be appointed to within the new structure are filled. The Associate Director, HR will determine the date an employee is declared ‘excess’ and the employee will receive a letter notifying them of their status and options.

Excess employees may be matched to and have access to and priority assessments for positions that appear on the Mobility Candidate Report issued by the Public Service Commission in accordance with Section 6.3 of the *Case Management and Redeployment Guidelines*.

http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0020/125381/Case_Management_and_Redeployment_Guidelines-D2011_009_v1.0.pdf

Employees who are declared excess remain the responsibility of their former Division or Branch for meeting salary and training costs, allocating temporary work and identifying redeployment opportunities during the retention period.

For further details on excess employees, refer to Department of Premier and Cabinet *M2011-11, Excess Employees*. http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/2011/m2011-11_changes_to_the_management_of_excess_employees

3.5 Appeals

Where there is any departure from the above procedures, the matter may be referred to the Associate Director HR for consideration and any further action if appropriate.

If resolution is not initiated by the Associate Director HR within five working days of receipt of the appeal, employees may lodge a grievance in accordance with the Grievance - Effective Workplace Resolution, PD2010_007 http://www.health.nsw.gov.au/policies/pd/2010/PD2010_007.html.

Current Government policy on redeployment and voluntary redundancy is available using the following link

http://www.dpc.nsw.gov.au/publications/memos_and_circulars/ministerial_memoranda/2011/m2011-11_changes_to_the_management_of_excess_employees

SALARY SACRIFICE FOR SUPERANNUATION - NSW HEALTH - CENTRAL OFFICE (GL2005_021)

Following agreement between the Public Sector Management Office and the Public Service Association the following awards were varied by consent on 25 August 1998 to allow for salary sacrifice for superannuation:

- Crown Employees (Public Sector - Salaries June 1997) Award;
- Crown Employees (Senior Officers) Award; and
- Crown Employees (Wages Staff) Rates of Pay Award.

The Premier's Department issued Circular 98-70 "Salary Sacrifice for Superannuation" which advised that the NSW Government had now approved of optional salary sacrifice for superannuation for all non-SES staff throughout the NSW public sector **subject** to agreement between the employee and the employee's Department or agency.

This Circular outlines the guidelines that will apply regarding the implementation and administration of salary sacrifice for superannuation for Department of Health personnel.

Management must ensure that all employees are informed of the new provisions for salary sacrifice. To assist an Information Sheet has been prepared (Appendix A). **Arrangements will be made for the Information Sheet to be attached to each employee's pay advice as soon as possible.**

Employees are strongly advised to seek independent professional financial advice before entering into salary sacrifice for superannuation arrangements.

Enquiries in regard to this circular should be directed to telephone number (02) 9391 9803.

<i>Salary Sacrifice for Superannuation - Information for Employees</i>
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What is salary sacrifice for superannuation?

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

Am I eligible?

Following variation of the relevant award, salary sacrifice arrangements will be available to all non-Senior Executive staff whose employment contract will be for periods in excess of six months. Salary sacrifice is at the election of the employee, but is subject to the agreement of the Department.

Why would anyone choose to salary sacrifice?

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

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

What fund do I choose?

You can have salary sacrifice contributions made to First State Superannuation Scheme (FSSS) or any complying superannuation scheme that the Department **agrees to, excluding State Superannuation Scheme (SSS) or State Authorities Super Scheme (SASS) as these are preserved benefit funds.** Salary Sacrifices for superannuation may only be made to one complying fund. If your superannuation guarantee contribution is currently directed to FSSS you can have salary sacrifice contributions made to either FSSS or any one complying superannuation scheme. However, if you have directed your superannuation guarantee contributions to a non-FSSS fund and you wish to salary sacrifice for superannuation you are obliged to have the salary sacrifice for superannuation contributions paid into the same fund.

Two lists of complying funds have been developed, ie the "A" list which currently comprises FSSS Health Employees Superannuation Trust Australia (HESTA) and Private Healthcare Employee Superannuation Fund (PHESF) and a "B" list which will comprise of all other complying funds to which employees wish to contribute.

But there are costs?

Yes. The superannuation funds charge administration and management fees, independent professional financial advisers may impose a fee and in some circumstances employers will impose administrative charges (currently \$50) for example, where employees wish to make repeated changes to their arrangements or sacrifice to a "B" list fund.

How much of my salary may I sacrifice for superannuation?

Up to 50% (IB2004/45) of the salary on which your after-tax contributions to SSS or SASS are based ie “superannuable salary”, or your current award salary, whichever is the lesser.

Will this affect my SSS or SASS contributions or other entitlements?

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

What happens to my other employment benefits?

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

Does my employer still need to make superannuation guarantee contributions?

Yes! All employers must comply with the superannuation guarantee requirements, which require employer contributions of 9% of salary as from 1 July 2003. Your salary sacrifice will not reduce those contributions by employers.

Are there any rules or restrictions?

Yes. Any salary sacrifice for superannuation arrangements can only be made with the agreement of the Corporation.

And don't forget that.....

Apart from special circumstances as prescribed by your fund (Refer to Clause 7.2 of GL2005_021, as varied from time to time) additional contributions, once made, will generally be preserved (locked away) until your retirement. Thus salary sacrifice for superannuation is a significant decision. ***You are encouraged to treat it as seriously as other significant financial matters.***

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

Cancellation is always available following one month's notice. Each public sector agency will have local arrangements regarding salary sacrifice for superannuation. If employees are intending to transfer to another agency they should ascertain whether salary sacrifice for superannuation is available at your new agency and what administrative arrangements apply.

Further Information:

For further information/clarification on salary sacrifice for superannuation, refer to Department of Health GL2005_021 or contact Juliette Sharman, telephone number (02) 9391 9803.

SALARY SACRIFICE FOR SUPERANNUATION - ISSUES TO CONSIDER

The Department of Health has asked me in my capacity as an independent superannuation consultant and a licensed securities dealer to highlight issues for Health employees to consider in deciding whether to utilise salary sacrifice superannuation.

You can have salary sacrifice contributions made to First State Superannuation Scheme (FSSS) or any complying superannuation scheme that the Corporation **agrees to, excluding State Superannuation Scheme (SSS) or State Authorities Super Scheme (SASS) as these are preserved benefit funds. Despite the cost involved, it is desirable always to seek independent financial advice to confirm the wisdom of any action you may take.** The following issues are relevant to making that decision:

1. TAXABLE INCOME

Salary sacrifice for super can be very advantageous for all staff including relatively low income earners wanting to save more money for retirement. Indeed, for all full time wage earners, superannuation tax rates are more advantageous than normal personal PAYE tax rates.

The biggest tax savings emanate from taxable income in excess of \$38,000 per year where the PAYE income tax rates of either 44.5 per cent or 48.5 per cent apply. These compare with the superannuation tax rate of 15 per cent (or up to 30 per cent for high income earners where the surcharge applies).

When seeking advice, make sure that any salary sacrifice superannuation proposed offers substantial tax advantages, allowing for any lump sum tax that may be payable on the benefits.

2. EXISTING SUPERANNUATION BENEFITS

Salary sacrifice superannuation is particularly attractive for taxpayers needing to build up their assets for retirement. Any money directed to additional superannuation will be tied up until retirement after the designated preservation ages. The minimum preservation age is 55. For younger employees, this minimum age is now 60.

For those with large superannuation benefits already, it is essential to check that any additional salary sacrifice superannuation will not result in benefits in excess of their Reasonable Benefit Limit (RBL) above which penalty tax rates apply.

3. FIRST STATE SUPER (FSSS) MEMBERS

FSSS does not require members to make any contributions out of post-tax dollars to their fund. Additional salary sacrifice superannuation contributions thus pose no special problems for FSSS members. They are particularly attractive to FSSS members already making voluntary contributions out of after-tax income.

4. STATE AUTHORITIES SUPERANNUATION SCHEME (SASS) MEMBERS

SASS allows members to vary their contribution rate between 1 and 9 per cent of their superannuation salary. However, to gain the maximum employer subsidy from the scheme, SASS requires an average member contribution rate of 6 per cent (6 basic points) per year.

Even though the member contributions must be paid out of after-tax income, SASS members need to ensure that they have gained the maximum employer benefit available to them from SASS before considering salary sacrifice contributions to another fund.

Except for SASS members who have already accumulated benefits equal to or close to the maximum employer benefit of 180 basic points or who have already contributed at a higher average rate than 6 per cent, it will rarely be advantageous to reduce member contribution to SASS in order to fund pre-tax salary sacrifice contributions to another fund.

5. STATE SUPERANNUATION SCHEME (SSS) MEMBERS

Unlike SASS members, SSS members can not vary the level of their post-tax member contributions other than when they have the opportunity to abandon additional units. The important issue for SSS members to consider is whether it may be advantageous to abandon additional units when the opportunity arises in order to fund pre-tax salary sacrifice super contributions to another fund.

This can be an attractive option, especially for employees wanting to work until their normal SSS retirement age (60 except for females who opted for age 55). Any units abandoned can be purchased with a lump sum cash payment at or after these normal retirement ages.

Daryl Dixon
Writer and Consultant
March 1999

Disclaimer: This paper provides a summary of issues only and should not be relied as substitute for professional or other advice.

APPENDIX B

**NEW SOUTH WALES
DEPARTMENT OF HEALTH**

**SALARY PACKAGING OF
SUPERANNUATION**

EMPLOYER GUIDELINES

SALARY SACRIFICE FOR SUPERANNUATION

1. KEY FEATURES

The key features of the salary sacrifice arrangements can be summarised as follows:

- In the NSW Health System, irrespective of the employee's current superannuation scheme and following variation of the relevant award, salary sacrifice arrangements will be available to all non-SES staff whose employment contract will be in excess of 6 months. Salary sacrifice is at the election of the employee, but subject to the agreement of the Department (the employer).
- Salary sacrifice arrangements must be formalised by an agreement between the employee and the employee's organisation.
- Employees who elect to enter into salary sacrifice arrangements may direct superannuation contributions to be made to either the First State Superannuation Scheme (FSSS), Health Employees Superannuation Trust Australia (HESTA), Private Healthcare Employee Superannuation Fund (PHESF) or a private sector complying superannuation fund, with the agreement of the Department. It should be noted that the aforementioned funds have been agreed between the Department and the relevant union.
- The majority of employers (including the NSW Health) to whom salary sacrifice arrangements may apply will not be subject to federal income tax or a State tax equivalent regime. For such employers, the cost of remunerating an employee by way of salary and by way of superannuation contribution is the same.
- Whilst the amount of salary to be sacrificed for superannuation is at the option of the employee, an employee who does elect to sacrifice will be restricted to sacrificing a maximum of 50% (IB 2004/45) of his or her currently applicable superannuable salary or award salary whichever is the lesser.
- Salary sacrifice for superannuation may give rise to certain immediate taxation benefits for employees. However, superannuation benefits may be subject to tax when paid from the fund, the result of which may be to reduce or eliminate the ultimate taxation benefits to be derived from salary sacrifice. In addition, the superannuation benefits generated through such sacrifice will be subject to "preservation" (refer 7.2). Accordingly, the individual employee concerned can only assess the relative merits of sacrificing current salary for superannuation contributions in light of their own circumstances.

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

- Salary sacrifice for superannuation will not affect the calculation of allowances, penalty rates, overtime, payment for unused leave entitlements or an employee's leave loading. Further, the salary sacrifice arrangements cannot be used to satisfy the requirement for compulsory employer contributions required to the First State Superannuation Fund (or any other scheme if the employee has directed that the Service pay superannuation guarantee contributions to that other scheme) pursuant to the superannuation guarantee legislation requirements.
- Member benefits and contributions in the defined benefit schemes (State Superannuation Scheme, State Authorities Superannuation Scheme and State Authorities Non-contributory Superannuation Scheme) are based on the "salary" of members. Salary sacrificed for superannuation has no effect on benefits or member contributions, because it is designated an "approved employment benefit" and included in the definition of "salary" for those schemes. For this reason, member contributions required under those schemes cannot be satisfied by salary sacrificed superannuation contributions.

2. ELIGIBILITY

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

- permanent full-time;
- part-time ie those employees who will be employed on an ongoing basis; and
- temporary or casual employees employed for periods in excess of 6 months.

Salary sacrifice **is not available** to casual employees or temporary employees employed for periods of 6 months or less.

3. QUANTUM OF SACRIFICE/CONTRIBUTION

3.1 Maximum Salary Sacrifice

It has been determined that the level of non-SES staff salary sacrifice for superannuation should be limited to 50% (IB2004/45) of award salary or “superannuable salary”, whichever is the lesser. For example, a part time employee working 50% of standard award hours can sacrifice up to 50% (IB2004/45) of the salary actually paid. “Superannuable” salary is the salary as last notified to State Super. Because salary sacrifice for superannuation is classified as an “approved employment benefit” it will not reduce the superannuable salary.

Any change in an employee’s salary would not result in a change to superannuable salary until that change is notified to State Super and has taken effect. Thus, even though an increase in salary may make it financially more feasible for an employee to sacrifice a greater amount of salary, the amount of the sacrifice will continue to be limited to 50% (IB2004/45) of the superannuable salary that applied before the increase in salary. If the salary becomes less than the superannuable salary, the award variation provides that the employee will only be able to sacrifice 50% of that lesser salary.

In the case of officers employed under the Crown Employees (Senior Officers) Award, the 50% limit includes any existing salary packaging arrangements.

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

3.2 Determining the Amount of Employer Contributions Relative to Salary Sacrificed

As a general proposition, the contributions made by the Service should equal the amount of salary elected to be sacrificed by the employee. Thus, if an employee were to elect to sacrifice \$1,000 per annum of salary to superannuation, contributions of \$1,000 per annum would be made by the Service on behalf of that employee. These contributions would be additional to the contributions normally made by the Service before the salary sacrifice occurred.

As the majority of public sector employers, including NSW Health, making superannuation contributions pursuant to the salary sacrifice arrangements are exempt from Federal income tax, they are not affected by the Commonwealth’s age-based limits on the amount of tax deductible superannuation contributions.

4. FUNDS TO WHICH CONTRIBUTIONS MAY BE MADE

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

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

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

It has been agreed that an “A” and “B” list of funds would be developed. The “A” list comprises of those funds agreed between the HAC and the relevant unions. Whilst the list currently includes FSS, HESTA and PHESF it may be varied in future but it is agreed that it will be limited to no more than 5-6 funds.

An employee who elects to salary sacrifice for superannuation has the option, subject to the following, of contributing to one of the following funds:

“A” list funds

- First State Superannuation Scheme (FSSS) (HAC nominated fund); and
- Health Employees Superannuation Trustee Australia (HESTA) union nominated fund
- Private Health Care Employees Superannuation Trustee (PHESF) union nominated fund or

“B” list funds

- Any other private sector complying superannuation fund.

5. ADMINISTRATIVE ARRANGEMENTS

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

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

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

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

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

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

Employees are responsible:

- for completing the variation/election form and certifying that they have obtained independent financial advice or opted **not to** obtain such advice (refer Appendix C). The variation/election to sacrifice salary for superannuation must not exceed fifty (50) percent of the salary paid under the salaries/wages clause in the relevant award or fifty (50) percent of the currently applicable “superannuable salary” whichever is the lesser. “Superannuable salary” means the employee’s salary as notified from time to time to the New South Wales public sector superannuation trustee corporations.
- for forwarding that form and where necessary providing evidence that the fund (if other than an “A” list fund) is a complying fund in terms of the superannuation legislation to the Human Resources or Payroll section of their organisation.
- for forwarding any cancellation advice to the Human Resources or Payroll section of their organisation (refer Appendix D).
- for ensuring that if they are below the *superannuation contribution* surcharge (currently a maximum of \$92,111) threshold that they have notified the scheme trustees of their tax file number so as to avoid or reduce their surcharge liability.

Employers are responsible:

- for ensuring that the quantum of salary elected to be sacrificed as superannuation contributions is not more than 50% of the employee’s “superannuable salary” or award salary, whichever is the lesser. For example, if the employee’s “superannuable salary” is \$40,000, and this is less than the employee’s award salary, the Service should ensure that the amount elected to be sacrificed does not exceed \$12,000 (ie. 50% of \$40,000). However, if the employee’s award salary in this instance was \$35,000, the Service should ensure that the sacrifice amount does not exceed \$10,500 (i.e. 50% of \$35,000), being the lesser of superannuable salary and award salary.

for ensuring that, if the employee has stipulated a fund other than FSSS/HESTA/PHESEF for his or her salary sacrifice contributions, evidence is provided stating that the fund is a complying fund in accordance with the superannuation legislation.

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

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

1. For an employee paid fortnightly - fortnightly salary and superannuation contributions would be calculated as follows:

Gross Cash Salary	=	<u>\$36,000</u> 52.17857 x 2
	=	\$1,379.88 per fortnight
Superannuation Contribution	=	<u>\$4,000</u> 52.17857 x 2
	=	\$153.32 per fortnight
	=	\$153.32 per fortnight

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

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

6. ADMINISTRATIVE CHARGES

No administrative charge is to be levied on employees who commence salary sacrifice to an “A” list fund or on an employee who, after the date of varying the award, cancels his or her “B” list post tax contributions and elects to salary sacrifice to an “A” list fund.

No administrative charge is to be levied on employees who, as at the date of varying the award, pay post-tax dollars to a “B” list fund and wish to transfer to pre tax contributions to the same “B” list fund. An administrative charge of \$50.00 is to be levied on employees who after the date of varying the award, elect to salary sacrifice to a “B” list funds.

Employees will be permitted to vary an existing salary sacrifice for superannuation election once per year (the 12 month period being the anniversary of the payday the deductions commenced) without incurring an administrative charge. Requests to further vary the election during the 12 month period will incur an administrative charge of \$50.00 per variation.

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

Cancellation of salary sacrifice contributions may be made at any time, provided one month’s notice is given, without an administrative charge being applied. In cases of pressing personal circumstances and where practicable, the notice period may be waived. Whilst the first commencement/cancellation of a salary sacrifice arrangement will be free of the administrative charge, if the salary sacrifice arrangement is resumed and again cancelled in the same year, an administrative charge of \$50.00 will apply for each variation.

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

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

7. TAXATION AND REGULATORY ISSUES

7.1 Taxation Benefits of Salary Sacrifice for Superannuation

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

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

It is important to recognise that superannuation benefits may also be subject to tax when they are paid out from the superannuation fund. This tax upon exit from the fund could reduce (and in some cases eliminate) the ultimate tax advantage of salary sacrifice. ***In some cases where the total benefits are in excess of the members Reasonable Benefit Limit (RBL), penalty tax rates can apply.*** For this reason, **employees should be strongly encouraged to seek financial planning advice prior to entering into the salary sacrifice arrangements.**

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

- b) Superannuation contributions surcharge - certain superannuation contributions, including contributions made pursuant to salary sacrifice arrangements, will be subject to an extra tax in addition to the 15% tax noted in (a) above. The imposition of this additional tax, known as the “superannuation contribution surcharge”, is dependent upon the salary of the individual in respect of whom the contributions are made.

The surcharge is payable if the individual’s ‘adjusted taxable income’ for the financial year is greater than the ‘surcharge threshold’ for that year. An individual’s ‘adjusted taxable income’ is the sum of that individual’s taxable income for the financial year plus the individual’s employer superannuation contributions for the year, including any salary sacrifice contributions. Certain eligible termination payments and lump sum leave payments on termination of employment are not included in the ‘adjusted taxable income’.

Liability to the surcharge will not arise if the individual’s adjusted taxable income is less than the threshold amount (being \$75,856 for the 1998/99 financial year, indexed annually in accordance with movements in Average Weekly Ordinary Time Earnings). The rate of surcharge is 15% if the individual’s adjusted taxable income exceeds an upper threshold amount (being \$92,111 for the 1998/99 financial year, indexed annually as above). The rate of surcharge will be between 0% and 15% if the individual’s adjusted taxable income is between the threshold amount and the upper threshold amount.

Note: To avoid the surcharge, individuals below the surcharge threshold must also have notified the scheme trustees of their tax file number.

7.2 Preservation of Salary Sacrifice Contributions

Superannuation benefits arising from contributions made pursuant to the salary sacrifice arrangements will be “preserved” benefits. Preserved benefits can generally only be accessed by an individual upon

attaining 55 years of age and retiring from gainful employment. Other circumstances under which preserved benefits may be accessed include death, permanent incapacity, financial hardship, and permanent departure from Australia. Whilst preserved benefits generally cannot be accessed by the individual, they can be transferred to another complying superannuation fund or a roll over institution such as an approved deposit fund, if the employee resigns.

Whilst preserved benefits can currently be accessed upon retirement having attained the age of 55 years, that position is to change from 1 July 1999. From that date, the age at which an individual can access preserved benefits upon retirement is to be increased for people born after 1 July 1960. For persons born between 1 July 1960 and 30 June 1964, the relevant age will be between 55 and 60 depending on the individual's birthdate. For persons born after 1 July 1964, the relevant age at which preserved benefits can be accessed will be 60.

Accordingly, whilst the salary sacrifice for superannuation contribution arrangements may result in certain taxation benefits for employees, as mentioned above, such taxation benefits are obtained at the expense of immediate access to the benefit accumulating as a result of those contributions. *Employers should take steps to ensure that employees are aware of the preservation implications of any salary sacrifice decision they may make.*

7.3 Tax Collection Responsibilities/Other Taxes and Imposts

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

- a) *Pay as You Earn (PAYE) deduction and remittance* - following an election by an employee to sacrifice salary for superannuation contributions, the PAYE amount deducted from an employee's salary and remitted to the ATO **should be based upon the employee's post-sacrifice salary**. As mentioned above, the employee's elected salary is recalculated having regard to that employee's elected salary sacrifice. The employee's annual salary per pay period is determined by reference to that recalculated annual salary. It is that recalculated annual salary per pay period upon which PAYE deductions and remittances should thereafter be based. There should be no taxation deductions or remittances from superannuation contributions pursuant to the salary sacrifice arrangements.
- b) *Payroll Tax* - employer contributions to a superannuation fund have been subject to payroll tax in NSW from 1 July 1996. As contributions made to superannuation funds pursuant to the salary sacrifice arrangements will constitute employer contributions, those contributions will be subject to NSW payroll tax.
- c) *Workers Compensation premiums* - workers compensation entitlements of non-SES staff should not be reduced by any salary sacrifice to superannuation that they may make. Accordingly, workers compensation premiums payable by employers should be based upon the employees' pre-sacrifice remuneration.

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

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

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

In order to ensure that non-SES staff are not disadvantaged by any salary sacrifice election through a reduction in employer contributions which would otherwise have been required to satisfy superannuation guarantee requirements, awards have been varied specifically to ensure that there is no impact on an employer’s compulsory contributions in respect of an employee, notwithstanding the fact that the employee may salary sacrifice for superannuation. This means that where salary sacrifice reduces an employer’s superannuation guarantee requirements in respect of a particular employee, the employer will make additional employer contributions over and above superannuation guarantee requirements, quite apart from the contributions which the employer would make as a result of the salary sacrifice agreement. However, if an employer were obliged to calculate and pay a superannuation guarantee shortfall, that calculation and payment should be based upon the post-sacrifice salary.

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

The defined benefits of members of the State Superannuation Scheme (SSS), State Authorities Superannuation Scheme (SASS) and State Authorities Non-Contributory Superannuation Scheme (SANCS) are based upon the “salary” of those members. ‘Salary’ for this purpose is defined in the relevant Acts of Parliament which govern the defined benefit schemes to include ‘approved employment benefits’. Salary sacrifice for superannuation of up to 50% of superannuable salary or 50% of award salary whichever is the lesser has been designated by the Premier and the Treasurer as an ‘approved employment benefit’ and will therefore continue to be included in the employee’s superannuable salary. Accordingly, the defined benefits of members of these schemes will not be affected by any decision of the member to sacrifice salary for superannuation contributions.

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

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

In addition, salary sacrifice arrangements cannot be applied in satisfaction of the required member contributions for members of the defined benefits schemes. Contributions pursuant to salary sacrifice arrangements constitute ‘employer contributions’ and as such will not satisfy the requirements under the relevant Acts for member contributions to be made to the relevant defined benefits schemes. Such member contributions must continue to be made from post tax salary of the member.

- b) In providing salary information to State Super in relation to employees who are members of the defined benefit schemes, employers should ensure that salary sacrifice contributions are included in ‘salary’. It is therefore important for employers to have regard to the limitations that apply to salary sacrifice for superannuation so that they do not inadvertently increase the superannuable salary above what it would have been without salary sacrifice, as such an increase would result in increased costs for them.

- c) Employees who receive compulsory contributions in FSSS will continue to receive the same amount of employer contributions after salary sacrifice as before. The definition of 'salary or wages' in the FSSS legislation is considered broad enough to allow salary sacrifice contributions to superannuation to be included in that definition.

APPENDIX C

SALARY SACRIFICE FOR SUPERANNUATION ELECTION AND VARIATION FORM

Employee Name: _____

Payroll Number: _____

Current Super Scheme: _____

Super No: _____

<p>1. Base (Annual) Salary \$</p> <p>2. Superannuable Salary \$</p> <p>3. Salary Sacrifice for Superannuation \$ (The amount sacrificed for superannuation contributions must not exceed 50% of "superannuable salary" or award salary whichever is the lesser.)</p> <p>2. Adjusted Base (Annual) Salary (1 - 3) \$</p> <p>3. Superannuation fund to which contributions are to be made: _____</p> <p>PART A - DECLARATION BY EMPLOYEE:</p> <p>I,....., hereby certify that I have obtained independent financial advice in relation to this salary sacrifice election or I have not obtained financial advice but I fully understand the implications of my election.</p> <p>I understand that superannuation benefits derived from salary sacrifice contributions will constitute "preserved" benefits. As such, the benefits generally will not be able to be accessed by me until retirement from the workforce after having attained the requisite age (currently 55).</p> <p>Further, I understand that any benefit that may be generated in the nominated superannuation fund by my salary sacrifice contributions is dependent on factors (eg. Fund earnings rates, changes to taxation legislation and charges) beyond the control of my employer and my employer can in no way guarantee the benefit to be derived from my salary sacrifice superannuation contributions.</p> <p>I also understand that this election will remain in force until I cancel it or make a new election. It will not automatically be amended for changes to my salary, nor will it be amended automatically should there be any changes to the tax regime as it applies to superannuation or salary sacrifice arrangements generally.</p> <p>Signed (signature of employee)</p> <p>Witness Date</p> <p>Part B - AUTHORITY TO DEDUCT ADMINISTRATIVE CHARGE (WHERE APPLICABLE)</p> <p>In addition, I hereby authorise the Payroll Officer to deduct the \$50.00 Administrative Charge from my salary from the next available payday.</p> <p>Signed (signature of employee)</p> <p>Witness..... Date</p>	<p><i>Employer Use Only</i></p>
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APPENDIX D

CANCELLATION OF ELECTION FOR SALARY SACRIFICE FOR SUPERANNUATION

PART A B REQUEST FOR CANCELLATION

To the Payroll Manager:

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

In addition (and where applicable), I hereby authorise the Payroll Officer to deduct the \$50.00 Administrative Charge from my salary from the next available payday.

Signed (signature of employer).....

WitnessedDate:

PART B - AUTHORITY TO DEDUCT ADMINISTRATIVE CHARGE (where applicable)

Signed (signature of employer)

WitnessedDate:

Received by Pay Office

Pay Office Action Completed

FRINGE BENEFITS TAX (99/62)

This circular applies to all employees of the NSW Health system, including the Department of Health, the Ambulance Service of NSW and Independent 2nd, 3rd and 4th Schedule Organisations under the *Health Services Act 1997*.

Premier's Department has issued Circular 99-29, the purpose of which was to alert employees to the changes to fringe benefits tax (FBT) arrangements. To assist agencies **that have not already alerted employees to the implication of the changes**, the Premier's Department has provided an information sheet for distribution to employees (Attachment 1). Premier's Department has indicated that where appropriate, translation into relevant ethnic languages should be arranged.

Where necessary, the Health Service will need to copy the information sheet for distribution to employees.

Enquiries in regard to this Circular should be directed to the Human Resources Department of the Hospital/Health Service. Only Human Resources staff should contact the Department directly.



Premier's Department
New South Wales

Public Sector Management Office

Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000
GPO Box 5341
Sydney NSW 2001

Telephone: (02) 9228 5555
Facsimile: (02) 9228 4421
File: PSM/1086

CIRCULAR NO. 99- 29

FRINGE BENEFITS TAX
(Circular to all Chief Executives)

The purpose of this Circular is to alert employees to changes to fringe benefits tax (FBT) arrangements.

Recent changes to FBT require employers to collate and distribute certain fringe benefits on a per employee basis. Where the taxable value of the benefits for an employee exceeds \$1,000 for the fringe benefits year (1 April to 31 March) the "grossed up" value is to be shown on the employee's next Group Certificate. The "grossed up" value is currently the taxable value of the benefits times 1.94175. This factor allows for the income tax that would have been paid had the employee received cash salary.

The Australian Taxation Office has advised that these changes improve the equity of the tax and social security systems. Previously, employees with access to salary packaging could avoid certain surcharges, levies and other obligations and/or gain access to Government benefits provided for low income earners.

Employers are still liable for payment of FBT. No additional income tax is payable by employees. However, the amount shown on the Group Certificate, known as the "Reportable Fringe Benefits Amount", will be used to determine an employee's:

- deductions and rebates for personal superannuation contributions;
- liability to superannuation, medicare levy and termination payment surcharges;
- entitlement to income tested government benefits and concessions; and
- obligations under the child support and higher education contribution schemes.

The changes are effective from 1 April 1999. Therefore, Group Certificates for the 1999/2000 income year will be affected.

To assist those Departments and agencies that have not already alerted employees to the implications of the changes, an information sheet for distribution to employees is attached. Where appropriate, translation into relevant ethnic languages should be arranged.

To facilitate the management of these changed procedures, the Treasury has provided training and information sessions to FBT and payroll personnel within agencies forming part of the State employer under the legislation. Further technical details concerning FBT will be the subject of future Treasury Circulars.

Any enquiries on the employee relations aspects of these changes to FBT can be directed to your Public Sector Management Office, Employee Relations Division, Client Contact Officer.



C. Gellatly
Director-General

31 MAY 1999

Issued: May 1999
Contact: Doug Cowell
Telephone: (02) 9228 3575
Email: cowell.d@premiers.nsw.gov.au



Attachment 1

FRINGE BENEFITS TAX

What are the recent changes to FBT and how do they affect employees ?

Effective from 1 April 1999, employers are required to distribute certain fringe benefits on an individual employee basis and record the "grossed up" value on employee's Group Certificates where the aggregate taxable value exceeds \$1,000. The amount on Group Certificates is known as the "Reportable Fringe Benefits Amount".

Are these benefits mainly related to salary packaging arrangements ?

While they apply to salary packaging arrangements they also apply to various other employment related benefits received by those without a "package".

Any benefits provided to an employee's spouse or child must also be allocated to the employee.

What is the purpose of these changes ?

It is said that the changes improve the equity of the tax and social security systems for everyone. Previously, employees with access to salary packaging could avoid surcharges, levies and other obligations and/or gain access to Government benefits provided for low income earners.

What particular benefits are "reportable fringe benefits" ?

Reportable fringe benefits include: private use of vehicles, housing, HECS and some training fees, relocation costs on transfer, telephone rental, home security systems, salary packaging arrangements, concessional travel and other expenses.

Some items are excluded from group certificate reporting, such as, meal entertainment and hire of entertainment facilities, car parking where the car space is leased or owned by the employer, remote area housing expenses, freight costs for food in remote areas and occasional remote area travel.

How will my employer apportion each employee's share of a shared benefit, such as a pooled car ?

Log books and other records will need to be maintained to ensure an equitable distribution of fringe benefits. Agencies will develop mechanisms and systems for tracking fringe benefits on a per employee basis.

What is the "grossed up" value ?

The total fringe benefits received will be multiplied by a factor (currently 1.94175) to allow for the income tax that would have been paid had the employee received cash salary.

Do I have to pay more income tax as a result of these changes ?

No – employers are still liable for FBT.

Then how am I affected ?

The Reportable Fringe Benefits Amount will be used for determining your:

- deductions and rebates for personal superannuation contributions;
- liability to superannuation, medicare levy and termination payment surcharges;
- entitlement to income tested government benefits and concessions; and
- obligations under the child support and higher education contribution schemes.

Are Group Certificates for the 1998/99 income year affected ?

No – the Reportable Fringe Benefits Amount will be shown for the first time on 1999/2000 Group Certificates.

How do I find out more about these changes ?

You should contact the Australian Taxation Office or consult your tax advisor for advice on your personal circumstances.

MOBILITY OF SUPERANNUATION (99/93)

On 1 October 1999 a new system of mobility of superannuation entitlements came into effect for employees who have transferred or will transfer employment between the NSW State public sector, local government sector, and electricity distribution sector.

A copy of Premier's Circular 99-59, outlining the provisions is attached for your information and distribution to Health Service personnel.

Enquiries should be directed to Health Service Human Resource personnel in the first instance. Only Health Service Human Resources personnel should contact the Department directly.

CIRCULAR NO. 99-59

(Circular to all Chief Executives)

Mobility of superannuation for employees transferring employment between the NSW public sector, local government sector and electricity distribution sector

On 1 October 1999 a new system of mobility of superannuation entitlements came into effect for employees who have transferred or will transfer employment between the NSW State public sector, local government sector, and electricity distribution sector.

Employer and employee associations in the local government and electricity distribution sectors established by Trust Deed the Local Government Superannuation Scheme (LGSS) and Energy Industries Superannuation Scheme (EISS) respectively in mid 1997. To date, employees who were transferred from the public sector superannuation schemes to LGSS or EISS in the period from 1 July 1997 have not been able to recommence their membership entitlements in the State public sector defined benefit superannuation schemes (SSS, SASS, SANCS) upon securing new employment with a public sector employer.

Such employees have only had the option of deferring accrued benefits in LGSS or EISS, and entering the First State Superannuation Scheme or another accumulation-style scheme as applicable schemes for new employees in the public sector.

By contrast, the new arrangements that took effect on 1 October 1999 will allow for mobility of accrued benefits and contributory rights between LGSS, EISS and the State public sector schemes for any employees who have or will transfer employment directly between the three employment sectors. An information paper is attached outlining the changes in more detail.

For further information or to make an application to exercise a transfer option, the following contacts are available:

- Staff transferring employment into the public sector should call the State Superannuation Corporation's Advisory Service on Freecall 1300 130 095 for (SASS members) or Freecall 1300 130 096 (for SSS members).
- Staff transferring employment into the local government or electricity distribution sectors should call Future-Plus Member Services on Freecall 1300 369 901.

Please bring this matter to the attention of appropriate agencies and staff in your administration.

C. Gellatly
Director-General

Issued: Public Sector Management Office, on behalf of The Treasury

Contact: Con Papas, The Treasury

Telephone: (02) 9228 3136 E-Mail: papasc@mail.treasury.nsw.gov.au

Date: 1/10/99

INFORMATION PAPER

Mobility of superannuation for employees transferring employment between the NSW public sector, local government sector and electricity distribution sector

Statutory and trust deed superannuation scheme changes which have occurred

On 1 October 1999 a new system of mobility of accrued benefits in Local Government Superannuation Scheme, the Energy Industries Superannuation Scheme, and the State public sector defined benefit superannuation schemes (SSS, SASS and SANCS) came into effect for employees who have transferred or will transfer employment between the NSW public sector, NSW local government sector, and/or the NSW electricity distribution sector.

The new arrangements are provided for under:

- the Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Amendment Regulation 1999,
- the Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Amendment Regulation 1999, and
- associated amendments to the Trust Deeds of the Local Government Superannuation Scheme (LGSS) and the Energy Industries Superannuation Scheme (EISS), which have been approved by the Trustees of those Schemes and consented to by the Treasurer.

How mobility will operate for employees transferring into the State public sector

Local government and electricity distribution sector employees who were members of SSS, SASS or SANCS up to 1 July 1997, and who have been transferred by instruments under the *Superannuation Administration Act 1996* to LGSS or EISS on or after that date, will have some form of accrued benefits in the equivalent divisions of LGSS or EISS.

- Employees who remain employed in these sectors will have ongoing entitlements to accrue benefits in LGSS or EISS, as specified by the Trust Deeds for those schemes.
- On taking up new employment in the NSW public sector, these employees are able to transfer their accrued benefit and contributory entitlements to the equivalent membership in SSS, SASS, or SANCS (**the transferee scheme**).

- **The process of mobility may be initiated by the employee by making an application to exercise a transfer option.** The application must be made in an approved manner to the trustee of the transferee scheme (in this case the SAS Trustee Corporation as trustee of SSS, SASS and SANCS) when the employee takes up their new public sector position.
- **Such an application to exercise a transfer option is required to be made within 3 months of the person's transfer of employment to the public sector** (i.e. within 3 months of commencing in their new position in the State public sector). This requirement is consistent with the normal defined benefit scheme membership continuity rules applying to employees who move between positions in the public sector.

Please note that hard copies of this Circular which have been distributed to public employers on 1 October 1999 contained an error: the correct requirement, as stated here, is for employees who are eligible to transfer to make their application within 3 months of commencing their new employment in the State public sector, NOT within 3 months of ceasing their previous employment in the local government or electricity sector as was erroneously stated in the hard copies distributed to public employers.

- **Upon receipt of the application, the trustee of the transferor scheme will be required to determine the employee's accrued benefit in the transferor scheme** (in this case the relevant division of LGSS or EISS) based on an actuarial assessment of that employee's rights under the rules of the transferor scheme. Cash equivalent to the value of the employee's accrued benefit in the transferor scheme will then be transferred to the trustee of the transferee scheme.
- **Upon transfer of the cash amount, the trustee of the transferee scheme must establish the employee as a member of the transferee scheme** (in this case SSS, SASS or SANCS), and determine their contributory and accrual rights in accordance with actuarial advice on their entitlements under the rules of the transferee scheme with the assumption, inter alia, that no break in service in relation to that scheme has occurred.

Subsequent transfers of employment between the three sectors

- **A subsequent transfer of employment in the reverse direction will be treated in the same manner** (i.e. from a State public sector employer to a local government employer or electricity distribution sector employer) as an earlier transfer into the public sector.
- In this case SSS, SASS or SANCS will be treated as the transferor scheme, and LGSS or EISS will be treated as the transferee scheme, as appropriate.
- **Reciprocal arrangements between the Trust Deeds of LGSS and EISS will similarly allow transfers of scheme entitlements directly between LGSS and EISS** when employees transfer employment directly between the local government and electricity distribution sectors, or vice versa.
- **Employees who have been employed in any combination of the State public sector, local government sector, or electricity distribution sector will be able to transfer** their accrued benefits and contributory entitlements with each transfer of employment between the sectors. Provided there is no break in employment in any of the three sectors greater than the maximum periods provided for under the rules of the relevant superannuation schemes, the transfer of employee superannuation entitlements will be possible irrespective of the order of employment with each employer in these sectors.

Treatment of employees who have transferred employment prior to 1 October 1999

A number of employees have already transferred their employment from the local government or electricity distribution sectors to the State public sector prior to these new arrangements taking effect. Such employees will have similar rights to re-establish their membership in the public sector defined benefit superannuation schemes.

- Such employees will have deferred their accrued benefits in LGSS or EISS upon terminating their employment in those sectors, and will currently be members of the First State Superannuation Scheme or another accumulation scheme where their new State public sector employer will be contributing at the SGC rate (along with any employee contributions made into that account).
- **Such members may make an application to the trustee of the transferee scheme to exercise a transfer option** (in this case SAS Trustee Corporation as trustee of SSS, SASS and SANCS) effecting their transfer from Divisions B, C or D of LGSS or EISS directly into the equivalent public sector scheme.
- **The application in this case is required to be made within 12 months from 1 October 1999** if the employee wishes to take advantage of these new mobility arrangements.
- As with employees who may exercise transfer options with changes of employment to occur in the future, **employees who have already transferred employment prior to 1 October will be established by SAS Trustee Corporation in the transferee scheme** according to actuarial advice, with entitlements and contribution options based on the assumption, inter alia, that no break in service has occurred in relation to that scheme.
- **The employee may also be permitted to pay cash amounts into and/or transfer into the defined benefit scheme any voluntary employee contributions which they have made into an accumulation-style scheme in respect of their employment by a public sector employer during the interim period to the date of their election to transfer.** These employee payments will be credited as employee contributions in the particular defined benefit scheme. Such transfers of assets will only be possible to the extent permitted under existing legislation and Trust Deed provisions for the respective defined benefit schemes.
- **The trustee of the transferee scheme has discretion to extend the period allowed for exercise of a transfer option for a further 12 months beyond the expiry of the initial period of 12 months from 1 October 1999.** It is envisaged that such extension may be considered by the trustee in specific cases where it is evident that the member has not been provided with adequate notice of their transfer options or of the fixed exercise period for those options which they are entitled to under these arrangements.

Upon the SAS Trustee Corporation establishing the employee as a member in a public sector defined benefit scheme, and the payment of any employee contributions into that scheme, **the new employer will be required to pay into the scheme the appropriate employer contribution, if any.** Where appropriate, SGC payments made by the employer into an accumulation-style scheme in regard to the interim period where that employee was not re-established in the public sector defined benefit schemes can be transferred and credited into the defined benefit scheme employer account for that employee for the purpose of making compulsory employer contributions.

- The normal superannuation benefit funding requirements for Budget sector and non-Budget sector public agencies participating in SSS, SASS and SANCS, as determined in the regular actuarial reviews by the Treasury, will apply to public sector employers involved in these transfers of member entitlements.

For further information or to make an application to exercise a transfer option:

Staff transferring employment into the NSW State public sector should call the State Superannuation Corporation's Advisory Service on Freecall 1300 130 095 (for SASS members) or Freecall 1300 130 096 (for SSS members).

Staff transferring employment into the local government or electricity distribution sectors should call Future-Plus Member Services on Freecall 1300 369 901.

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