



# NURSES (PRIVATE SECTOR) SUPERANNUATION (STATE) AWARD

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## 2. TITLE

This award shall be known as the Nurses (Private Sector) Superannuation (State) Award.

## 3. DEFINITIONS

3.1 **"Approved fund"** means:

- (a) the Health Employees' Superannuation Trust Australia (H.E.S.T.A.);
- (b) the Private Healthcare Employees' Superannuation Fund (P.H.E.S.F.);
- (c) the National Healthcare Superannuation Fund (N.H.S.F.);
- (d) the Medprac Superannuation Scheme (Medprac);
- (e) the Australian Superannuation Savings Employment Trust (A.S.S.E.T.);
- (f) any superannuation fund as agreed between the Association and any employer(s), provided that the fund is a complying regulated fund and holds a Certificate of Compliance issued by the Australian Prudential Regulation Authority. Provided further that the Association shall not unreasonably withhold agreement unless it establishes good and proper reasons;
- (g) any superannuation fund operating within a place of employment prior to 8 July 1997, provided that the fund is a complying regulated fund, holds a Certificate of Compliance issued by the Australian Prudential Regulation Authority, and the Association agrees to the continued approval of that fund. Provided further that the Association shall not unreasonably withhold agreement unless it establishes good and proper reasons;
- (h) any superannuation fund nominated by the employee and approved by the employer in accordance with section 124 of the Industrial Relations Act 1996 ("the 1996 Act").

- (ii) **"Complying regulated fund"** means a superannuation fund that is regulated under the Superannuation Industry (Supervision) Act 1993 and has been issued with a Certificate of Compliance by the Australian Prudent Regulation Authority.
- (iii) **"Ordinary-time earnings"** means remuneration for an employee's weekly number of hours of work, excluding overtime hours, calculated at the ordinary-time rate of pay, including the following:
  - (a) Monday to Friday shift premiums for ordinary hours of work;
  - (b) Weekend shift premiums for ordinary hours of work;
  - (c) Public holiday loadings;
  - (d) Any percentage addition payable to casual employees for ordinary hours of work;
  - (e) Ordinary time award allowances (not including expense related allowances);
  - (f) Overaward payments for ordinary hours of work.
- (iv) **"Association"** means the New South Wales Nurses' Association.
- (v) **"Qualified employee"** means:
  - (i) A full-time or part-time employee who has completed at least four weeks service in the industry of nursing. Provided that once this period has elapsed, payments in accordance with clause 5, Contributions, shall be made for the entire period of service with the employer.
  - (ii) A casual employee who has earned in excess of \$2000.00 ordinary-time earnings during their employment with an employer in the course of any one year (1 July to 30 June). Provided further that any casual employee who is deemed to be a qualified employee prior to 8 July 1997 will continue to be qualified.

#### **4. SUPERANNUATION LEGISLATION**

The subject of superannuation is dealt with extensively by federal legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation (Resolution of Complaints) Act 1993*, and section 124 of the *Industrial Relations Act 1996* (NSW). This legislation, as varied from time to time, shall govern the superannuation rights and obligations of the parties.

#### **5. CONTRIBUTIONS**

- (i) The employer shall make, in respect of qualified employees, superannuation contributions of 3 % of ordinary-time earnings into an approved fund. Such contributions shall be remitted to the approved fund on a monthly basis. With respect to casual employees, contributions shall be remitted to the approved fund at the time of the employees receiving their annual group certificates.
- (ii) It is provided further that an employee may nominate one complying fund to which all award and statutory superannuation contributions in respect of him/her shall be paid, subject to employer approval of the fund nominated by the employee. Provided that the employer shall not unreasonably withhold agreement unless it establishes good and proper reasons for the withholding of agreement.
- (iii) Where no such nomination is made before any such contributions become payable, the said contribution referred to in subclause (i) of this clause will be paid to the approved fund for that place of employment.

#### **6. SALARY SACRIFICE TO SUPERANNUATION**

- (i) Salary Sacrifice to Superannuation means the obligation of making additional superannuation contributions by electing to sacrifice a portion of the gross earnings (pre tax dollars) under the parent awards. This will give the effect of reducing the taxable income by the amount for salary sacrifice.
- (ii) Salary sacrifice to superannuation shall be offered to employees by mutual agreement between the employee and employer.

- (iii) Such election must be made prior to the commencement of the period of service to which earnings relate.
- (iv) One change of a sacrificed amount will be permitted in an employee's anniversary year, which is 12 months from the date of commencement of employment, without incurring an administration charge (\$50.00). Changing from full-time to part-time or part-time to full-time employment will not be classified as a change of administration charge purposes.
- (v) The amount sacrificed must not exceed any relevant superannuation guarantee contribution limit.
- (vi) The sacrificed portion of salary reduces the salary subject to PAYG taxation deductions.
- (vii) Any allowances, penalty rate, overtime, payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any salary sacrifice to superannuation. Payment for leave taken whilst employed will be at the post-salary sacrificed amount
- (viii) Salary sacrifice arrangements can be cancelled by either the employer or employee at any time provided either party gives one month's notice. The employer has the right to withdraw from offering salary sacrifice to employees without notice if there is any alteration to relevant Australian Taxation legislation.
- (ix) Contributions payable by the employer in relation to the Superannuation Guarantee Legislation shall be calculated by reference to the salary which would have applied to the employee under the parent award in the absence of any salary sacrifice.
- (x) Employers will not use any amount that is salary sacrificed by an employee to negate contributions payable under the Superannuation Guarantee Legislation.
- (xi) The employee shall have the portion of payable salary that is sacrificed paid as additional employer superannuation contributions into the same superannuation fund that receives the employer's SGC contributions.
- (xii) Nothing in this clause shall affect the right of an employer to maintain alternate arrangements with respect to salary sacrifice for employees.

## 7. EXEMPTIONS

This award shall not apply to Employers who are subject to any of the following:

- (i) Private Hospital and Nursing Home Nurses' Superannuation (State) Award published 23 January 1998 (303 I.G. 214)
- (ii) *State Authorities Non-Contributory Superannuation Act 1987*;
- (iii) Employers of occupational health nurses working in the retail industry or in the metal trades industry, provided that the parties to this award may seek the question of the constitution of this exemption be relisted for consideration by the Industrial Relations Commission of New South Wales on reasonable notice.

## 8. GRIEVANCE PROCEDURE

Grievances and disputes shall be dealt with in the following manner:

- (i) The employee is to notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for discussions and state the remedy sought. This meeting shall take place within two working days of the issue arising (weekends and public holidays excepted).
- (ii) If agreement is not reached, the matter shall then be referred by either party to a higher authority (where this exists) no later than three working days after the meeting as specified in subclause (i) above of this clause (weekends and public holidays excepted). At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons (in writing or otherwise) for not implementing the proposed remedy.
- (iii) If the matter is still not settled within a reasonable period of time, it may be referred/notified to the Industrial Relations Commission of New South Wales.
- (iv) The employer may be represented by an industrial organization of employers and the employee(s) may be represented by an

organization of employees for the purposes of each step of the procedure.

## **9. AREA, INCIDENCE AND DURATION**

- (i) Subject to clause 7, Exemptions, this award shall apply to all persons employed as nurses in or in accordance with the profession of nursing in the State of New South Wales, excluding the County of Yancowinna.
- (ii) This award shall take effect on and from 8 July 1997 and remain in force for a period of 12 months.
- (iii) It shall take effect in respect of paragraph (c) of subclause (iii) of clause 3, Definitions, on 1 July 2000.
- (iv) Clause 6, Salary Sacrifice to Superannuation, shall take effect on the first pay period on or after 13 August 2001
- (v) The changes made to the award pursuant to the Award Review under section 19(6) of the Industrial Relations Act 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310.I.G 359) take effect on and from 12 December 2003.

This award remains in force until varied or rescinded, the period for which it was made already having expired.