Public Sector Industrial and Employee Relations

Level 25, 50 Ann Street Brisbane QLD 4000
Telephone 32474967 Facsimile 32295943

Circular No. C1-11
Date March 2011

Arrangements for salary packaging from 1 April 2011

The Queensland Government approved the introduction of salary packaging in the Queensland public sector on 28 October 1999, and implementation arrangements on 24 October 2000. On 2 May 2010 Government approved changes to the list of allowable items that may be packaged. The full list of approved benefit items is found at Attachment One. In addition, during 2010 a process to enter a new Standing Offer Arrangement (SOA No. QGCPO 250/10) was undertaken resulting in a panel arrangement of two providers. The providers as from 1 April 2011 are Remuneration Services (Qld) Pty Ltd (RemServ) and SmartSalary Pty Limited.

Queensland Health has reserved the right to choose either one (1) or two (2) providers at any time during the Arrangement. Accordingly, Queensland Health has chosen to utilise one (1) provider (RemServ).

Employees under the new Standing Offer Arrangement will be able to:

- salary package with one (1) provider per FBT year;
- request transition to another provider during the period 15 January through to 15 February each year; and
- transition to the other provider at the commencement of the FBT year (1 April).

The Queensland Government Chief Procurement Office at its entire discretion reserves the right under the new Standing Offer Arrangement to amend the transition period and transition start date.

Employees transferring and/or seconding to Queensland Health who have an existing salary packaging arrangement with the other provider (SmartSalary) will be required to transition at the time of transfer/secondment to the provider selected by Queensland Health.

Employees wishing to transition to another provider **must** repay any outstanding FBT liabilities prior to transition. Employees transferring and/or seconding to Queensland Health, in the instance where Queensland Health has elected to use one (1) provider, will be requested to repay any outstanding FBT liabilities prior to transition.

There is a requirement under the new Standing Offer Arrangement that all employees salary packaging at the commencement of the new Standing Offer Arrangement agree with amended Salary Packaging Participation Agreement Terms and Conditions.

What is Salary Packaging?

Salary packaging is an arrangement whereby future cash salary and wages are remodelled with the approval of the employer into a combination of cash and non-cash benefits to suit the employee's individual needs.

A legitimate salary packaging arrangement cannot be made retrospectively for salary or wages which have already been earned. Employees may obtain a benefit in net remuneration but it must be at no additional cost to the Government as the employer.

Provision to be in Certified Agreements

The Government's approval of the introduction of salary packaging in the Queensland public sector was on the basis that it would be delivered through wage bargaining where business cases had been approved by the Government as part of the wage bargaining approval process.

The Department of Justice and Attorney-General shall be consulted when an agency wishes to have a suitable clause inserted into a certified agreement or an award.

Salary Packaging Principles

The following principles for salary packaging were endorsed by the Government in 1999 and remain unchanged ***except for the financial advice requirements***.

• There is to be no cost to the Government either directly or indirectly. The fringe benefits tax (FBT) debts and recovery policy is found at Attachment Two.
• The costs for administering the package, including FBT, will be passed to employees as part of their salary package.
• There must be no additional increases in superannuation costs or to FBT payments made by the Government.
• Increases or variations in taxation that arise from salary packaging arrangements are

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passed to employees as part of their salary package.

• The Government ***strongly recommends*** that employees obtain independent financial advice before taking up a salary package.

• There will be no significant additional workload or other recurring costs to the Government.

• The salary packaging arrangements will be managed through contracted companies which would provide a bureau service. Bureau service providers are to be contracted through the appropriate State Purchasing Policy arrangement.

• The management and administrative costs charged by the bureau service are to be recovered from the participating employee.

Requirements of the Australian Taxation Office (ATO)

Currently the Australian Taxation Office does not have a limit on the percentage of income that can be packaged, but 50% is considered an appropriate maximum proportion. However, the Government has approved that there be no limit on the amount of salary that an employee may salary package to superannuation. (See NOTE at page 6)
Examples are included on page 6.

Bureau Service Providers

The bureau service providers are to:

• Copy and distribute documentation to employees explaining salary packaging.

• Conduct information sessions for employees in Brisbane and regional centres.

• Provide ongoing administration.

Liability

There are four main contractual relationships that need to be considered:

• Agency and participating employee.

• Agency and bureau service provider.

• Employee and bureau service provider.

• Employee and his/her financial adviser.

The participation agreement provides for the following:

• Indemnity of the agency against any claims by the employee arising from the salary packaging arrangement; and

• The employee's written or electronic authorisation for the agency to make the necessary deductions from salary.

The participation agreement between the agency and the employee allows the employee mobility across the service with minimal disruption to their remuneration arrangements.

A contract between the State of Queensland and the bureau service provider should provide for the following:

• An indemnity from the provider against all claims that the employee might make;

• The procedures and protocols to ensure a quality service; and

• A requirement that the provider would not act outside the scope of the agreed procedures and protocols.

Independent Financial Advice

These arrangements do not contain any mandatory requirement for independent financial advice. The Queensland Government therefore strongly recommends that employees obtain independent financial advice before entering into a packaging arrangement.
According to ATO guidelines, financial advice sought by employees in regard to salary packaging arrangements will be subject to FBT when the cost is included as part of a salary packaging arrangement.

Standing Offer Arrangement (SOA)

All agencies (other than Government-Owned Corporations) are required to use the bureau service provider/s contracted by the Queensland Government Chief Procurement Office under an SOA.
Government-Owned Corporations may at their discretion utilise the services of the contracted bureau service providers.

Participating employees will be required to recompense any administration fees as agreed in the SOA (or another contractual arrangement if the SOA is not used). These fees are exempt from FBT and may be included in the packaging arrangements.
The fees charged for administering the salary packaging payments made under the SOA will be deducted from the employee's salary packaged amount that has been distributed and/or transferred by the employer to the bureau service provider.

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Superannuation
Both mandatory and voluntary superannuation contributions made by way of salary packaging can only be made to QSuper. They may not be invested in any other fund. Superannuation payments are to be sent directly from the agency to QSuper. They are not to be paid through a bureau service provider's account.

Government Boards, Committees and Statutory Authorities
Remuneration of part-time members of government boards, committees and statutory authorities may be packaged in accordance with these principles and arrangements. Such arrangements are to be approved and documented to meet Australian Taxation Office requirements.

Further Enquiries
Please ensure when distributing this information within your agency that a contact officer from your agency is nominated for further enquiries.

Paul Casey
Executive Director

ATTACHMENT ONE
ALLOWABLE SALARY PACKAGING ITEMS

Note: The arrangements outlined in this attachment include amendments to take effect 1 July 2010

Subject to any future limitations by the Australian Taxation Office, an employee may package up to 50% of their salary into items other than superannuation. Superannuation may be packaged up to 100% of salary (excluding that portion of superannuation which is nominated as the 'employer contribution').

That is, an employee may choose to salary package in either of the following combinations:
• Any percentage of salary up to 100% sacrificed to superannuation only. (See NOTE at page 6)
• Up to 50% of salary packaged to other items, plus the remaining percentage, up to a total of 100% of salary, packaged to superannuation (eg, 20% to each laptop and novated car lease, plus 60% to superannuation) (See NOTE at page 6).

When entering into a salary packaging arrangement for the first time, or adding a new item/items to an already agreed packaging arrangement, the employee is ***strongly recommended*** to seek independent financial advice.

"Not subject to FBT" or "Otherwise Deductible" Package Items

- Superannuation
- Portable electronic devices - from 7:30pm on 13 May 2008 portable electronic devices primarily for use in the employee's employment. Only one item with substantially identical features is available per FBT year (excluding items purchased as a replacement for an existing device)
- Computer software primarily for use in the employee's employment and purchased with the portable electronic device
- Work Uniforms (ATO conditions apply)
- Professional association membership fees or subscriptions (work-related)
- Airport lounge membership
- Child care fees (at facilities that comply with ATO legislation regarding centres located on the employer's business premises, and as advised by the Treasury Department and the Queensland Government Chief Procurement Office)
- Electricity[1] (subject to maximum amounts for each 1 April to 31 March annual period and only applicable to those employees of specific agencies subject to a relevant ATO private ruling) which includes the Queensland Community Ambulance Charge levy
- Public transport costs[1] [2] (subject to threshold amounts for each 1 April to 31 March annual period and only applicable to those employees of specific agencies subject to a relevant ATO private ruling)
- Financial counselling fees [3] (ATO conditions apply)
- Disability/Income protection insurance premiums
- Professional development expenses [4] (related to the employee's current employment activities)
- Professional development travel expenses [4] (not including travel to and from work)
- In-House private health/fitness centre membership (at facilities that comply with ATO legislation regarding centres located on the employer's business premises, and as advised by the Treasury Department and the Queensland Government Chief Procurement Office)

- Royal Brisbane Women's Hospital Cycle Centre Fees (subject to satisfying ATO requirements)

"Part or Concessionally Taxed for FBT Purposes" Package Item

- Novated lease on a motor vehicle (private use)

"Full FBT Applied" Package Items

- HELP fees (previously known as HECS Fees)
- Private health insurance
- Private health/fitness centre memberships
- Private rental payments
- Own home mortgage payments
- Car parking
- Desktop computer (non-work related) including other peripherals (hard drive, printer, router and web cam)
- Computer software (non-work related)
- Portable electronic devices (non-work related)
- Personal loan repayments
- Aged and disabled care payments
- Savings/investment scheme (non-superannuation) contributions
- Insurance premiums (other than income protection insurance)
- House/contents insurance (on employee's principal place of residence)
- Child care fees (non employer owned)
- Private school fees
- Private travel
- Public transport costs[1] [2]
- Financial counselling fees [3] (ATO conditions apply)
- Club/association (non work-related) membership subscriptions
- Motor vehicle operating expenses
- Payments to utilities (private telephone, electricity[1], local government rates, etc)

[1] Access to the partial FBT exemption for electricity costs and/or public transport costs only applies to employees of those agencies subject to ATO Private Rulings Authorisation Numbers 90358 dated 27 February 2009, 76585 dated 21 September 2007, 77555 dated 31 October 2007 or any other ATO private ruling specific to the individual employer – ***Click Here*** to see full list of agencies covered by the above Private Rulings. Those employees not employed by agencies subject to an ATO Private Ruling can only salary package electricity costs and public transport costs with full FBT applied.

[2] The public transport concession provided for in the 3 specific rulings outlined in footnote 1 above only applies to transport provided by Queensland Rail and Brisbane City Council.

[3] Financial counselling/advice about salary packaging will attract full FBT.

[4] Professional Development Expenses and Professional Development Travel Expenses must be wholly deductible for income tax purposes in the year in which they were incurred as if the employee had sought to claim a personal deduction on their income tax return.

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NOTES:

Concessional Contributions Limits

Changes to federal legislation governing superannuation contributions effective 1 July 2009 provide for a concessional tax rate of 15% of superannuation contributions up to a maximum of $25,000 per year.

Transitional arrangements will apply to 2011-2012, allowing persons aged 50 or over to receive up to $50,000 of concessionally taxed employer contributions per year. A person who turns 50 during that period will be able to use the transitional arrangements. For example a person who turns 50 on 1 January 2011 will be able to receive $50,000 of concessionally taxed employer contributions in the 2010-2011 and 2011-12 financial years.

The transitional limit of $50,000 will not be indexed but the standard $25,000 limit will be indexed (in $5000 increments) in line with Average Weekly Ordinary Time Earnings

An employee who receives employer/salary sacrifice contributions in excess of the maximum limits will effectively be taxed on the excess contributions at the top marginal tax rate plus Medicare levy. The maximum $25,000 ($50,000 for employees 50 years and over) consists of the following:

- Employer contributions
- Salary packaged contributions made by the employee

In addition, excess contributions will also be counted towards the maximum limit applying to non-concessional (or personal) contributions, which is set at three times the standard limit for employer/salary packaged contributions. Excess non-concessional contributions will also be taxed at the top marginal tax rate plus Medicare levy.

Reportable Employer Super Contributions (RESC)

Where an employee enters into salary packaging for superannuation contributions, Commonwealth legislation requires the employer to show on the employee's payment summary the amount of the sacrificed superannuation. This amount is known as the Reportable Employer Super Contribution (RESC) and will be required to be included in your income tax return.

For the 2009–10 income year and all future years, your reportable super contributions will affect the income tests for some tax offsets, the Medicare levy surcharge, and certain government benefits and obligations. RESCs are not included in an employee's assessable income.

Depending on an individual's specific circumstances, the taxation impact of salary packaging arrangements may be affected and ***it is strongly recommended*** that independent financial advice is sought.

ATTACHMENT TWO
FRINGE BENEFITS TAX DEBTS AND RECOVERY POLICY

For the purposes of this Attachment:

"Non-salary packaged fringe benefits" means those benefits that the employer provides or occur through means **other** than via the arrangements administered by the external salary packaging bureau service provider. Non-salary packaged fringe benefits include, but are not limited to, home garaging of a pool car, private use of an employer-provided car, housing assistance, living away from home allowances, remote area holiday travel, private e-tolls and salary overpayment loan fringe benefits.

The following policy principles apply to all Queensland public sector agencies and employees except where otherwise expressly approved by the Queensland Government.

- Non-salary packaged fringe benefits have first priority over any general FBT exemption cap (e.g. $17,000 or $30,000 FBT exemption cap currently applicable to certain Queensland Health, Department of Emergency Services and Legal Aid Queensland employees) which can be applied to any taxable benefits, including non-salary packaged fringe benefits as it is Government policy that the salary packaging arrangements must involve no additional cost to agencies. The FBT concessions for "in-house" electricity and public transport applicable under a Private Binding Ruling to certain agencies are not included in the threshold caps referred to above.

- Any general FBT exemption cap and other FBT concessions are not employee entitlements. The general FBT exemption cap is a tax concession under the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) for limited categories of employers, not employees. Therefore, the manner of the application of this FBT concession is determined by the employer in accordance with the FBT legislation.

- Employees relying on the ongoing existence of and/or access to the FBT exemption cap as part of their salary packaging arrangements do so solely at their own risk. Employees will not be compensated for the permanent or temporary loss of access to the FBT exemption cap, regardless of the circumstances.

- Subject to this Policy, employees' FBT debts must not be waived, written off, forgiven, ignored or adjusted, or compensation paid by agencies to offset FBT debts, regardless of the circumstances. Employees incurring an FBT liability have incurred a debt due to the Crown, and as such **must** repay the full FBT amount outstanding within a reasonable timeframe as appropriate for the circumstances, or be subject to debt recovery action which could include the use of debt collection agencies, suspension/cancellation of salary packaging arrangements, and/or legal action if required.

- Due to the requirements of this Policy, the writing off an employee's FBT debt must only occur in very exceptional circumstances involving **ex-**Queensland public sector employees who are either deceased or who cannot be located, and, in the latter case only after:
  - proper steps have been taken to investigate the raising and non-recovery of the debt;
  - legal prosecution is unlikely to be successful or cost effective;
  - all reasonable steps have been taken to recover the debt including if necessary the use of debt collection agencies;
  - the debt is reasonably considered to be non-recoverable;

  - o the circumstances surrounding the loss are examined fully to ensure that satisfactory controls are put in place to limit similar occurrences in the future; and
  - o documentation regarding the debt is placed on the former employee's personal file to ensure the debt is reinstated and recovered in the event of re-employment in the future.

- There are **no** circumstances where it would be in accordance with this policy to write off an FBT debt for a **current employee**. As FBT replaces normal income tax (Pay As You Go) deductible had salary packaging not occurred, financial hardship is not considered a valid reason for write-off for a current employee (particularly given the potential substantial income tax savings achievable especially over the longer term of a salary packaging agreement).

- Employees **must** either pay the FBT immediately or negotiate reasonable repayment arrangements with the employer within a period of 28 days of receiving written advice of an FBT liability (including acknowledgement that the full amount outstanding becomes payable on or by the date of termination of employment). Failure to do so will result not only in debt recovery processes, but also in the cancellation/suspension of the employee's salary packaging arrangements after the required notice, until such time as the FBT debt is satisfied or an appropriate debt repayment arrangement is entered into.

- Some FBT debt recovery issues may involve the employee disputing departments' application of the FBT legislation. However, interpretation of the FBTAA and FBT treatment decisions are at the sole discretion of the employer. The employer is obliged to exercise due care and diligence in this respect, and respond to reasonable questions from employees regarding FBT calculations. Lengthy discussions or correspondence with an employee or the employee's representative regarding matters of FBT interpretation and treatment will not be entered into.

- Employees must raise any queries with respect to FBT with the employer (or the bureau service provider in case of salary packaged fringe benefits) as soon as possible, and must not unduly delay the FBT debt recovery process. The employer (or the bureau service provider as the case may be) is not obliged to respond to any further queries after 21st December following the end of the FBT year on 31 March in the same calendar year. Also, the employer is not obliged to amend its FBT information once the post-lodgement period for processing FBT return amendments has expired and it has been finalised with Queensland Treasury.

- It is not the employer's or the salary packaging bureau service provider's responsibility to inform individual employees regarding the FBT impact of any fringe benefit occurring or provided to them, nor to predict and/or advise employees of any emerging issues which may give rise to the existence of, or changes in the value of, taxable fringe benefits that may or may not affect an employee's salary packaging arrangements. This is because the FBT law is inherently very broad and subject to interpretation, and as a result there are developments unfolding from time to time in the ATO and the Courts.

- Entering into salary packaging arrangements is at the sole risk of the **employee**. Therefore it is **strongly** recommended that employees obtain independent financial advice.

- The employee must obtain and provide to the salary packaging bureau service provider, the employer, the Australian Taxation Office and/or any other relevant person or body all necessary declaration forms, receipts and supporting documentation and information reasonably required by the employer or required to be provided for the purposes of taxation legislation in respect of any benefits provided to the employee under the salary packaging arrangements *("required information")*.

- The employee is responsible for all costs, losses, outgoings and liabilities of every description including, without limitation, any penalties, or general interest charge payable under any taxation legislation suffered or incurred by the employer, arising out of any failure on the employee's part to provide any required information or for any inaccuracies or omissions in any required information provided by the employee.

The following additional points apply in relation to the 2011/12 FBT year and future years:

Under the terms of the Standing Offer Arrangement (SOA QGCPO 250/10), salary packaging bureau service providers will recover all employee FBT debts incurred. Agencies are required to invoice the full value of employee FBT debts to the salary packaging bureau service provider which will directly manage the employee debt recovery process. This will be effective commencing from any FBT debts incurred in respect of the 2011/12 FBT Year.

As part of the new Standing Offer Arrangement, employees are required to make arrangements with the bureau service provider to repay the total of any FBT liability outstanding to the bureau service provider.

Therefore, employees are subject to the salary packaging bureau service provider's debt recovery processes as part of their salary packaging arrangements. This could include the use of debt collection agencies, suspension/cancellation of salary packaging arrangements, and/or legal action. Employees are expected to either pay the FBT immediately or negotiate reasonable repayment arrangements with the salary packaging bureau service provider within a period of 28 days of receiving written advice of an FBT liability.

Failure to do so will result not only in the salary packaging bureau service provider commencing debt recovery processes, but also in the cancellation/suspension of the employee's salary packaging arrangements after the required notice, until such time as the FBT debt is satisfied or an appropriate debt repayment arrangement is entered into.

The Division of Public Sector Industrial and Employee Relations (PSIER) provides policy advice and consultancy and training services to Queensland Government departments and agencies. It is part of the Department of Justice and Attorney-General. Agency enquiries about this circular should be directed to Rob Gillespie on telephone 07 322 76293. For information about salary packaging go to either the Queensland Contract Directory website (http://qcd.govnet.qld.gov.au/Pages/Details.aspx?RecID=839) or the bureau service provider's websites at www.remserv.com.au (RemServ) or http://qld.smartsalary.com.au/ (SmartSalary).

Specific information about the electricity and public transport FBT exemptions can be found at RemServ In House (RemServ) or SmartSalary In House (SmartSalary).

- General enquiries about public sector industrial and employee relations matters should be directed to telephone 07 32474967. Specific enquiries about salary packaging should be directed to either of the bureau service providers on phone 1300 30 40 10 (RemServ) or phone 1300 476 278 (SmartSalary).
- Written enquiries should be addressed to:
  The Executive Director
  Public Sector Industrial and Employee Relations
  Department of Justice and Attorney-General
  GPO Box 69
  BRISBANE Q 4001

Copies of all current circulars issued by PSIER are available from the division's web site at www.justice.qld.gov.au/fair-and-safe-work/industrial-relations/queensland-government-employees