

## Non-Standard Remuneration or Conditions of Employment

**Summary** This Policy Directive is to advise that public health organisations are not permitted to provide staff employed in the NSW Health Service with over-award ('nonstandard') remuneration or conditions of employment (including by the way of the settlement of claims or litigation) without written approval from the Health Secretary or authorised delegate.

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**Applies to** Ministry of Health, Public Health Units, Local Health Districts, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, NSW Health Pathology, Public Health System Support Division, Cancer Institute, NSW Ambulance Service, Public Hospitals

**Distributed to** Ministry of Health, Public Health System, NSW Ambulance Service

**Audience** All staff employed in the NSW Health Service

### Secretary, NSW Health

This Policy Directive may be varied, withdrawn or replaced at any time.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

## NON-STANDARD REMUNERATION OR CONDITIONS OF EMPLOYMENT

### PURPOSE

The purpose of this Policy Directive is to advise that health organisations are not permitted to provide staff employed in the NSW Health Service with over-award ('non-standard') remuneration or conditions of employment (including by way of the settlements of claims or litigation) without written approval from the Health Secretary or delegate.

### MANDATORY REQUIREMENTS

All health organisations are required to comply with this Policy Directive.

### IMPLEMENTATION

Chief Executives are required to ensure that this Policy Directive is communicated to and implemented by all staff involved with the setting of remuneration and conditions of employment.

### REVISION HISTORY

Version	Approved by	Amendment notes
October 2018 (PD2018_040)	Director, Industrial Relations and Workplace Change	Rescinds PD2014_006.
March 2014 (PD2014_006)	Deputy Director General Governance, Workforce & Corporate	Rescinds PD2005_334.
January 2005 (PD2005_334)	Deputy Director General Governance, Workforce & Corporate	Health Service Boards/CEO's/Other Employees Are Not Permitted to Offer Over-Award Salaries- changes to conditions

### ATTACHMENTS

1. Non-Standard Remuneration or Conditions of Employment: Procedures.

## Non-Standard Remuneration or Conditions of Employment



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## 1 BACKGROUND

### 1.1 About this document

This Policy Directive provides that health organisations are not permitted to provide staff employed in the NSW Health Service with over-award ('non-standard') remuneration or conditions of employment (including by way of the settlement of claims or litigation) without written approval from the Health Secretary or delegate.

### 1.2 Key definitions

**NSW Health Service** consists of those persons who are employed under Chapter 9, Part 1 of the *Health Services Act 1997* by the Government of New South Wales in the service of the Crown.

**Health organisation**, for the purposes of this Policy Directive, consists of any local health district, statutory health corporation, the Ambulance Service of NSW, Health Infrastructure, any entity under NSW Health Pathology and any entity under the Public Health System Support Division.

## 2 REMUNERATION ARRANGEMENTS FOR THE NSW HEALTH SERVICE

Section 116A of the *Health Services Act 1997* provides that:

*The Health Secretary may fix the salary, wages and conditions of employment of staff employed [in the public health system] in so far as they are not fixed by or under any other law.*

Consistent with s116A, paragraph 3.14.1 of the *Accounts and Audit Determination for Public Health Organisations* requires public health organisations to ensure that salary and wage terms and conditions conform strictly with the relevant industrial instrument or Determination of the Health Secretary, and are not exceeded without the specific approval of the Health Secretary or delegate.

Depending on the facts of the matter, the provision of unauthorised terms and conditions of employment may constitute misconduct, or "corrupt conduct" within the meaning of the *Independent Commission Against Corruption Act 1988*.

Should a health organisation seek recovery of overpayments and/or removal of over-award conditions from an employee or former employee on the basis that they were not made in accordance with s116A of the *Health Services Act*, that person may have a claim for damages against the organisation and/or the member of staff who offered the above award arrangements outside their authority. In certain circumstances, the Chief Executive or other member of staff who has acted outside the authority of s116A may be personally liable.

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### **3 APPROVAL FOR NON-STANDARD REMUNERATION OR CONDITIONS OF EMPLOYMENT**

Health organisations are able to request the making of a Determination for non-standard terms and conditions of employment. All such requests need to be supported by the relevant Chief Executive, and address:

- Recruitment and retention considerations
- Budgetary implications, including the availability of sufficient funds within existing budgetary allocations
- The potential for approval to the requested non-standard arrangements to lead to pressure to flow-on the same or similar arrangements to other staff in the health organisation or more broadly in the NSW Health Service.

Such requests should be marked to the attention of the Workplace Relations Branch, Ministry of Health.

### **4 SETTLEMENT OF CLAIMS AND LITIGATION**

Where claims have been filed with the Industrial Relations Commission or another tribunal, such as the NSW Civil and Administrative Tribunal, Health organisations are permitted to settle them provided that any settlement does not exceed the statutory limits that could be awarded by the tribunal if the applicant's claim were successful. Any such arrangements must be authorised by the relevant Chief Executive and cannot be delegated below this level.

Where a proposed settlement exceeds the amount that would be awarded, the prior written approval of the Health Secretary or delegate needs to be obtained.

Where any proceeding has potential system wide implications there should be adherence to the Significant Legal Matters and Management of Legal Services Policy Directive [PD2017\_003].

### **5 ENQUIRIES**

Enquiries concerning this Policy Directive should be directed in the first instance to relevant human resources personnel within the health organisation.