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 CBRC Dec No. 2989  
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	Paper No.: <b>5412T1426C</b>	
	Date: <i>31/10/12</i>	
	Member: <i>Mr Palaszczuk</i>	
<input type="checkbox"/> Tabled	<input type="checkbox"/> Tabled, by leave	
<input type="checkbox"/> Incorporated, by leave	<input type="checkbox"/> Remainder incorporated, by leave	
Clerk at the Table: <i>[Signature]</i>		

CONFIDENTIAL

CABINET BUDGET REVIEW COMMITTEE

DECISION

Brisbane, 17 June 2010

Decision No.: 2989, (Submission No.: 3931)

TITLE: Variation to “no additional cost to Government” principle for salary sacrificing arrangements as a result of the Queensland Health Payroll Implementation

COMMITTEE decided:

1. To approve a variation to the salary sacrificing principles set out in the Cabinet Budget Review Committee Decision No. 2305 (17 December 2007) for the Fringe Benefits Tax (FBT) incurred as a direct result of the “no financial disadvantage” definition for under or over payment relating to the implementation of the Queensland Health payroll system.
2. To approve that this variation is specific to the implementation of the Queensland Health payroll system and time limited to the 2009-10 and 2010-11 FBT years.
3. To note that validation processes will be in place to ensure that the variation is applied only in circumstances arising as a direct consequence of the implementation of the Queensland Health payroll system.

CIRCULATION: Implementation Responsibility  
 Department of Health and copy to the Deputy Premier and Minister for Health  
Departmental Records  
 Department of the Premier and Cabinet  
 Treasury Department  
Perusal and Return  
 All other Committee Members

*[Signature]*

Acting Cabinet Secretary



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SECURITY CLASSIFICATION "C"

SUBMISSION TO CABINET BUDGET REVIEW

**COVER SHEET**

**TITLE**

Variation to "no additional cost to Government" principle for salary sacrificing arrangements as a result of the Queensland Health Payroll Implementation

**MINISTER**

Deputy Premier and Minister for Health

**OBJECTIVE**

That the Cabinet Budget Review Committee (CBRC) approve a variation to the salary sacrificing principles set out in CBRC Decision No. 2305 for the Fringe Benefits Tax (FBT) incurred as a direct result of the "no financial disadvantage" definition for under or over payment relating to the implementation of the Queensland Health payroll system.

**SUMMARY**

Queensland Health has given a broad commitment that employees will incur no financial disadvantage as a consequence of implementing the Queensland Health Payroll system. Specifically, Queensland Health has committed to compensating employees for all financial costs or penalties that are attributable to a pay error in the new payroll system occurring from the pay period commencing 8 March 2010 until the date Queensland Health and Health Unions have agreed is the date when the payroll system is stabilised and functioning adequately.

Consultation has taken place with Union representatives to define "no financial disadvantage". The draft definition contains a provision that is contrary to CBRC Decision No. 2305 from 17 December 2007 in relation to additional FBT arising from salary packaging arrangements.

**OPTIONS**

Option 1 – Not to approve a variation to CBRC Decision No. 2305. In effect Queensland Health would recoup the cost of fringe benefits tax related to items incurred by employees who have salary sacrificed beyond the FBT exemption cap due to the implementation of the Queensland Health payroll system. This option is within the provisions of the Certified Enterprise Bargaining Agreements and individual employee Participation Agreements. However, it would be in conflict with the commitment by Queensland Health to unions regarding "no financial disadvantage."

Option 2 – Approve a variation to CBRC Decision No. 2305. In effect Queensland Health **would not** recoup the cost of fringe benefits tax related to items incurred by employees who have salary sacrificed beyond the FBT exemption cap due to the implementation of the Queensland Health payroll system for the 2009-10 and 2010-11 FBT years only. This option is consistent with the broad commitment of “no financial disadvantage” given to unions.

Option 2 is the preferred option.

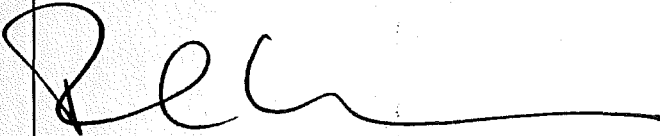
#### RESULTS OF CONSULTATION

- **Is there agreement? YES. See paragraph 24 of body of submission.**

#### RECOMMENDATIONS

That the Cabinet Budget Review Committee:

1. approve a variation to the salary sacrificing principles set out in CBRC Decision No. 2305 for the FBT incurred as a direct result of the “no financial disadvantage” definition for under or over payment relating to the implementation of the Queensland Health payroll system;
2. approve that this variation is specific to the implementation of the Queensland Health payroll system and time limited to the 2009-10 and 2010-11 FBT years; and
3. note that validation processes will be in place to ensure that the variation is applied only in circumstances arising as a direct consequence of the implementation of the Queensland Health payroll system.



PAUL LUCAS MP  
Deputy Premier  
Minister for Health

16 / 6 / 2010

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**BODY OF SUBMISSION**

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**OBJECTIVE**

1. That Cabinet approve a variation to the salary sacrificing principles set out in CBRC Decision No. 2305 for the Fringe Benefits Tax (FBT) incurred as a direct result of the "no financial disadvantage" definition for under or over payment relating to the implementation of the Queensland Health payroll system.

**BACKGROUND**

- **Context**

2. As a result of the implementation of the Queensland Health payroll system, some staff have experienced either under payment or over payment with regards to hours worked. A general commitment has been made to effected staff that they will not be financially disadvantaged as a result the system implementation.
3. Discussions have occurred, under the auspice of the Queensland Industrial Relations Commission, with Union representatives to define what is meant by "no financial disadvantage" (**Attachment 1**).
4. Included in this definition is the FBT incurred on items directly related to the under or over payment of staff as a result of the Queensland Health payroll system implementation.
5. Under the provisions of the *Fringe Benefits Tax Assessment Act 1986*, Queensland Health is able to claim a capped FBT exemption in relation to those employees whose work is exclusively performed in, or in connection with, a public hospital. This concession is not available to all work areas of Queensland Health.
6. Through the Queensland Health certified Enterprise Bargaining Agreements and related Participation Agreements signed by employees, staff working in areas eligible for the FBT concession are able to combine salary sacrifice and non-salary sacrifice fringe benefits up to a grossed up taxable value of \$17,000. Where the value of these benefits exceed this limit, the employee is liable to remit the value of the FBT paid on the exceeding balance to Queensland Health, ensuring that the salary sacrificing arrangements have resulted in no additional cost to Government.
7. The majority of items included in the "no financial disadvantage" definition (**Attachment 1**) are non-salary sacrifice fringe benefits which could, where individual salary sacrifice arrangements are not modified, put some employees beyond the \$17,000 limit and therefore subject to remitting FBT to Queensland Health.

8. Non-salary sacrifice fringe benefits take precedence over salary sacrifice benefits against the exemption cap, therefore any additional FBT incurred will be as a result of salary sacrifice benefits exceeding the limit.
9. The recoupment of FBT from employees is only relevant to those employees participating in the salary sacrificing arrangements..
10. The Queensland Health payroll system commenced on 8 March 2010. The 2009-10 FBT year ended on 31 March 2010. Therefore, fringe benefits received by salary sacrificing employees, would be impacted by a period of 23 days or one pay period and seven days of the next pay period under the new payroll system for the 2009-10 FBT year. The recognition date for fringe benefits under the "no financial disadvantage" definition will be the date at which a reimbursement is made or agreement entered into which is likely to be outside of the 2009-10 FBT year. The recommended variation covers both the 2009-10 and 2010-11 FBT years, though applicability in 2009-10 is unlikely, except to the extent that an employee was able to salary sacrifice to the \$17,000 limit due to under payment.

• **Previous Consideration by Cabinet**

11. Decision No. 2305, dated 17 December 2007, provided a fundamental principle that there must be no additional cost to Government arising from salary sacrificing arrangements.

**URGENCY**

12. The "no financial disadvantage" definition agreed between Queensland Health and the Unions is required to be issued before the end of financial year to provide staff with some certainty, particularly around income tax matters also included in the definition.

**ISSUES**

13. Varying treatment of FBT incurred on items directly related to the under or over payment of staff as a result of the Queensland Health payroll implementation, where staff are salary sacrificing is contrary to a previous CBRC decision.
14. If the variation is approved, it must be specific to the implementation of the Queensland Health Payroll system and limited to 2009-10 and 2010-11 FBT years.
15. Compliance with the CBRC Decision No. 2305, specifically with staff accessing the FBT exemption cap, has been the subject of numerous discussions and debates with both staff and Unions. Any variation provided must be specific and time limited to avoid future challenges to the decision principles.
16. Those Queensland Health employees who are eligible to access the FBT exemption cap and are salary sacrificing are advantaged over other public sector workers who cannot access this taxation benefit.

17. It is possible that employees accessing the FBT exemption cap could modify their salary sacrifice arrangements and remain within the cap as the FBT year is from 1 April 2010 until 31 March 2011.

#### OPTIONS

18. Option 1 – Not to approve a variation to CBRC Decision No. 2305. In effect, Queensland Health would recoup the cost of fringe benefits tax related to items incurred by employees who have salary sacrificed beyond the FBT exemption cap due to the implementation of the Queensland Health payroll system. This option is within the provisions of the Certified Enterprise Bargaining Agreements and individual employee Participation Agreements. However, it would be in conflict with the commitment by Queensland Health to unions regarding “no financial disadvantage”.
19. Option 2 – Approve a variation to CBRC Decision No. 2305. In effect, Queensland Health **would not** recoup the cost of fringe benefits tax related to items incurred by employees who have salary sacrificed beyond the FBT exemption cap due to the implementation of the Queensland Health payroll system for the 2009-10 and 2010-11 FBT years only. This option is consistent with the broad commitment of “no financial disadvantage” given to unions.
20. Option 2 is the preferred option.

#### CONSULTATION

- **Community**

21. A broad commitment to “no financial disadvantage” as a consequence of the implementation of the Queensland Health payroll system has been provided by Queensland Health to its staff.
22. Union consultation regarding the definition of “no financial disadvantage” has occurred at the direction of the Queensland Industrial Relations Commission.

- **Government**

23. Queensland Treasury acknowledges the position of Queensland Health on this issue and notes that the financial impact at this stage cannot be assessed.

#### RESULTS OF CONSULTATION

24. Both Queensland Health and Union representatives agree that upholding the principles of CBRC Decision No. 2305 in relation salary sacrificing staff exceeding the FBT exemption cap is contrary to the “no financial disadvantage” commitment given by Queensland Health. In the Queensland Industrial Relations Commission the Unions drew attention to the fact that the recoupment of FBT from salary sacrificing employees is a Queensland Government policy and can therefore be removed by Queensland Government.

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**RURAL/REGIONAL IMPACT STATEMENT**

25. Not applicable.

**EMPLOYMENT AND SKILLS DEVELOPMENT IMPACT STATEMENT**

26. Not applicable.

**CLIMATE CHANGE IMPACT STATEMENT**

27. Not applicable.

**FINANCIAL CONSIDERATIONS**

28. The approval of option 2 above will result in additional costs being incurred by Queensland Health. This includes FBT resulting from the under or over payment of staff. Queensland Health will seek to treat these benefits to the extent allowed by the *Fringe Benefits Tax Assessment Act 1986* as minor fringe benefits – therefore exempt.
29. The provision of a variation to the CBRC Decision No. 2305 principle will prevent Queensland Health from recouping the value of FBT from employees that it would otherwise be entitled to under the Certified Enterprise Bargaining Agreements and Participation Agreements.

**IMPLEMENTATION**

30. Not applicable.

**PUBLIC PRESENTATION**

31. The approval of a variation to CBRC Decision No. 2305 will be included in the “no financial disadvantage” definition to be distributed to Queensland Health staff.
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**ADDENDUM**

**CONSULTATION DETAILS**

**Title of Cabinet Submission:** Variation to “no additional cost to Government” principle for salary sacrificing arrangements as a result of the Queensland Health Payroll Implementation

<b>DEPARTMENT</b>	<b>OFFICER</b>	<b>DATE</b>
Queensland Treasury	Jeanette Miller Janelle Thurlby	10 June 2010
Department of the Premier and Cabinet	Bruce Visser	June 2010



**LIST OF ATTACHMENTS**

**ATTACHMENT 1:** Draft definition of “no financial disadvantage”

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### Queensland Health: Commitment to 'No Financial Disadvantage'

#### Preamble:

Queensland Health introduced a new payroll system which commenced from 08 March 2010.

Queensland Health acknowledges that a number of its employees have incurred some financial disadvantage as a result of pay errors associated with the new payroll system.

Queensland Health accepts that there should be no financial disadvantage incurred as a result of pay errors associated with the new payroll system.

#### Queensland Health Commitment – No Financial Disadvantage

Queensland Health is committed to ensuring no employee is financially disadvantaged because of any issues associated with the new payroll system.

Specifically, Queensland Health commits to paying employees for all financial costs or penalties that are attributable to a pay error. Queensland Health will pay costs and penalties including, but not limited to the following:

- bank and financial institution charges
- additional interest charged arising from the inability to meet a repayment caused by a pay error
- council rates or utility discounts forgone (i.e. gas, water, electricity, telephone/communications)
- Lost interest earnings caused by a pay error
- Tax agent fees – where an amendment to the lodgement of a 2010 income tax return is necessary due to a pay error

In addition, Queensland Health will seek clarification on the following issues:

- *Reimbursement for additional tax paid should back payment of wages be paid in subsequent tax period resulting in a higher overall tax rate payable by the employee than if received in the year of earnings - subject to ATO advice*
- *Any tax associated with age based superannuation limits - subject to ATO advice*
- *FBT – Queensland Health will seek the government's position regarding current policy for the payment of FBT liabilities by employees who exceed their FBT exemption caps as a result of a pay error.*

#### Validation of claims

In all cases, Queensland Health will take appropriate steps to validate each claim. Employees will be required to supply documentation as evidence of the cost or penalty. Queensland

Health may require an employee to provide additional evidence or information in support of a claim and any cost associated with this request will be met by Queensland Health.

Any dispute about a claim will be dealt with in accordance with agreement dispute settlement procedures.

### **Operation**

*The no financial disadvantage principles set out in this document will apply to costs or penalties incurred from the pay period commencing 8 March 2010. The parties agree to meet under the guidance of the commission prior to 31 July 2010 to review the ongoing application of this document.*

DRAFT