

Deductions for Rent Directive

The *Government Sector Employment Regulation 2014* (the Regulation) enables the Industrial Relations Secretary to direct deductions for rent for employee housing.

This Circular applies to Public Service agencies under Schedule 1 of the *Government Sector Employment Act 2013*. Other NSW Public Sector agencies are encouraged to adopt these provisions.

I, Philip Gaetjens, as the Industrial Relations Secretary direct pursuant to clause 8(1) of the *Government Sector Employment Regulation 2014* that where a Public Service employee is allowed to use, for residential purposes, any premises belonging to the Government, a fair and reasonable sum as rent for the premises is to be deducted from the salary of the employee.

In giving this Direction, under clause 8(2) of the *Government Sector Employment Regulation 2014* I specify that Agency Heads are to fix the amount of rent to be deducted in accordance with the following:

Agency Heads must charge full market rent for such employer-provided housing apart from certain exceptional circumstances as detailed in this Direction.

Provisions of clause 8(3) of the *Government Sector Employment Regulation 2014* for premises managed by the Teacher Housing Authority remain unaffected by this Direction.

Principles of managing employee housing

Agency Heads may approve the provision of employee housing:

- when such assistance is essential to the continuation of priority government services and the employee cannot obtain private accommodation which is of a reasonable standard, in a reasonable location and at a reasonable rent; or
- when the special duties to be performed require the employee to live on-site or close to the work site.

Agency Heads must charge full market rent for employee housing, unless special circumstances exist that justify reduced rentals, or less than market rates are specified in an existing award or agreement.

Agency Heads are obliged to ensure that their agency pays fringe benefits tax on the difference between the reduced rental rate and the full market rate when special circumstances result in the use of reduced rental rates.

Agency Heads are required to assess and set rental rates for their agency's employee housing annually in line with market rates using rental benchmarks. In addition, Agency Heads are required to obtain rental assessments from a registered real estate valuer once every five years.

In managing employee housing, Agency Heads must continue to comply with existing asset maintenance requirements.

With the aim of bringing all housing arrangements in line with the Direction, Agency Heads should ensure that housing and rent arrangements are set out in existing awards or agreements, and any new claims from employees or unions for housing and rent assistance, are included in any relevant negotiations for new awards or enterprise agreements.

Rental income derived from employee housing may be kept by agencies and used directly for the maintenance of their employee housing or treated as general revenue.

Special circumstances that justify charging less than market rent

Agency Heads may approve charging less than market rates for employee housing in the special circumstances outlined below. However, they should consult with other public agencies operating in a particular location, to ensure their decisions have regard to the level of rent paid by Public Service employees generally in the location.

The rates below represent minimum payment levels. In some cases a higher rate may be more appropriate depending on the particular circumstances of the rental situation.

- *Remote locality:* 80% of full market rent may be charged in remote or isolated locations where agencies have difficulty attracting employees.
- *Shortage of rental accommodation:* 50% of full market rent may be charged where market rents are high due to the scarcity of rental accommodation.
- *Essential occupation:* 50% of full market rent may also be charged where occupation of the residence is essential to performance of duties required.
- *Essential occupation and high rentals:* 30% of full market rent may be charged where the occupation of the residence is essential to performance of the duties to be performed and the full market rent would be unreasonably high.
- *Special cases:* 30% of full market rent may also be charged where it is necessary to protect cost-effective working arrangements and/or recognises the particular difficulties faced by low income employees.

For audit purposes, accessible records must be kept for each case where a less than market rate rental is charged, on the special circumstances that justify the reduction in rent.

Procedures to be followed

To determine market-rate rentals for employee residential housing Agency Heads must assess (and adjust if necessary) market rents for their properties on an annual basis by utilising either:

- benchmark market rentals for individual localities, as provided by a registered real estate valuer; or
- "Housing Indexation Figures" provided by the Australian Taxation Office for assessing fringe benefits tax.

Agency requirements for annual reporting and total asset management planning and reporting are not affected by this Direction and where currently in place, must be continued.

Where properties are provided for rent, Agency Heads must develop and maintain agency employee housing manuals covering, as appropriate to the agency, the following points:

- eligibility guidelines;
- assessment of rents and rental reviews;
- tenancy agreement;
- tenancing to members of the public;
- vacancy/movement of tenants;
- salary deductions for rentals;
- rates, rate rebates and excess water charges;
- repairs and maintenance;
- capital improvements;
- fringe benefit tax; and
- purchase and disposal of houses.

Philip Gaetjens
Secretary

Which agencies does this Circular apply to?

This Circular applies to Public Service agencies under Schedule 1 of the Government Sector Employment Act 2013
Other NSW Public Sector agencies are encouraged to adopt these provisions.

Who needs to know about this Circular?

Secretaries, Senior Executives, Managers, Employees, Payroll, Industrial Relations, Human Resources.

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This Circular updates the section on delegation powers for the deduction of rent in Premier's Memorandum 1994-10, Employee Housing Policy issued by the NSW Department of Premier and Cabinet.

NSW Treasury website: www.treasury.nsw.gov.au