

# Section 97 of the *Mental Health Act 1986* – Reimbursement of claims for Super top-up and Salary Maintenance

Program management circular

## Key message

The Department reimburses Health Services for Super top-up and Salary maintenance for employees released under Section 97 of the *Mental Health Act 1986*.

## Purpose

To clarify the eligibility and submission process for the reimbursement of claims to the Department for super top-up and salary maintenance claims for staff released under Section 97 (s97) of the *Mental Health Act 1986*.

## Background

In 1995-1996, the management of public mental health services was transferred to the general health system from the Department. Permanent departmental employees working in mental health services at that time were made available to mainstreamed health services under s97. The process of transferring employees from Public Sector employment to public hospital employment included a range of provisions including the preservation of salary rates and employer contribution to superannuation.

Program Circular 5/1995 dated 13 November 1995, which is still effective, advised Health Services that a freeze on the use of s97 for employees employed within auspiced mental health services was in place. New positions could only be offered as hospital/agency positions under appropriate hospital/agency terms of employment. The circular also described the process required that allowed auspiced agencies to make offers of direct employment to s97 employees.

## Superannuation top-up

In July 1995 and December 1996, the Minister for Finance listed those Health Services along with other auspiced mental health services to which, under paragraph (c) of the definition of 'officer' in section 3(1) of the *State Superannuation Act 1988* ('the Act') applied. This instrument recognised that employees of the Department of Human Services, who were 'officers' under the Act, immediately before commencing employment with one of the listed auspiced agencies and; as a direct result of changes to the provision of mental health services were a class of persons to whom the Act applied whilst they remained continuously employed by one of the auspiced agencies.

The Department reimburses Health Services for the difference between the rate required under the Superannuation Guarantee Levy (9% in 2004/05) and the employer contribution rates for the Revised, New Scheme and SERBS for staff released under s97. The difference is referred to as Superannuation top-up.

## About program management circulars

The information provided in this circular is intended as general information.

## Further Information

Further Information can be obtained from the Manager, Budget Strategy and Policy, Mental Health Branch on (03) 9616 8153

## Claiming for Superannuation top-up reimbursement

The Department notionally makes an interim payment, on the basis of advice provided for the previous financial year, to Health Services for the current financial year. This payment is then reconciled against Health Services actual expenditure as claimed in the following financial year.

Health Services are able to claim for superannuation top-up in the prescribed format provided by the Department, for any employee previously funded and/or recognised as a former/existing s97 employees as at 1 July 2005.

Health Services cannot claim superannuation top-up for employees who are members of the prescribed superannuation schemes but not released under s97.

Health Services are able to claim Superannuation top-up for any newly appointed employee who has previously been funded and/or recognised as a s97 employee. This is conditional on the basis that the employee has been continuously employed by Health Services and meets the requirements under the Act as discussed above. The Health Service will be required to provide appropriate documentation to the Department in the first year of claim evidencing the employee's eligibility.

Payment of claims for reimbursement for prior year adjustments other than the preceding financial year is subject to availability of funds.

## Salary Maintenance

Some permanent Departmental employees working in mental health services at the time of mainstreaming were not able to be offered employment at their substantive positions and subsequently transferred to lower classified positions. Clauses in the agreement provided for the salary maintenance of these employees. The Department reimburses Health Services for this salary maintenance component.

## Claiming for Salary Maintenance

The Department reimburses Health Services retrospectively for the prior financial year.

Health Services are able to claim for the salary maintenance component in the prescribed format provided by the Department for any employee who were released under s97 and transferred to a lower classified position and remains subject to the clauses of the agreement.

Payment of claims for reimbursement of prior years other than the preceding financial year is subject to the availability of funds.

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