



Bc 2/11/09

**OFFICE OF THE HON JULIA GILLARD MP  
DEPUTY PRIME MINISTER**

Parliament House  
Canberra ACT 2600

*Level*  
*Grants for good*  
*J*

Mr Greg Mundy  
Chief Executive Officer  
Aged and Community Services Australia  
Level 1, 36 Albert Road  
SOUTH MELBOURNE VIC 3205

Dear Mr Mundy

Thank you for your letter of 20 October 2009, co-signed by Mr Rod Young, Chief Executive Officer, Aged Care Association Australia, to the Hon Julia Gillard MP, Minister for Employment and Workplace Relations, concerning salary sacrifice arrangements under the *Fair Work Act 2009* (FW Act). The Minister has asked me to reply on her behalf.

The Government recognises the potential for salary sacrifice arrangements to provide significant benefit to employers and employees. Under the FW Act, the ability to enter into such arrangements will continue.

The Government does not consider that the FW Act precludes salary sacrifice arrangements that cause an employee to be paid less than their minimum wage, provided that the value of the benefit received in lieu of salary is at least of the same or greater value to the employee as the salary foregone and the arrangement is approved as required by the FW Act.

The effect of entering into a salary sacrifice arrangement is not to reduce an employee's minimum wage, but merely to reduce the amount of money an employer is obliged to pay directly to the employee (see paragraph 1290 of the Explanatory Memorandum to the Fair Work Bill).

Section 324 of the FW Act deals with deductions from salary and provides that employees can authorise deductions from their salary in accordance with the relevant terms of a modern award or enterprise agreement. Alternatively, provided the deduction is principally for the employee's benefit, the necessary authorisation can be provided in writing by the employee even if the applicable instrument contains no terms dealing with deductions.

A legislative note to section 324 of the FW Act makes clear that this provision contemplates salary sacrifice as a form of deduction to which the section applies.

I also note the concern raised in your letter that the Australian Industrial Relations Commission (the AIRC) may not include terms allowing salary sacrifice arrangements in the modern awards to cover nursing, aged care and home care. I understand that, in a recent statement, the AIRC did not rule out including salary sacrifice arrangements but indicated that further evidence as to the benefits of such arrangements would be necessary to justify their inclusion in modern awards as safety net provisions.

If the AIRC does not include salary sacrifice provisions in modern awards, it is the Government's view that salary sacrifice arrangements will still be possible. This is because section 324 of the FW Act will continue to provide a means for employers to whom a modern award applies to put in place salary sacrifice arrangements that are beneficial to their employees and to which the employees agree.

Thank you for bringing your concerns to the Minister's attention.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Lampe', written in a cursive style.

**Amanda Lampe**  
**Chief of Staff**

cc Rod Young, CEO, Aged Care Association Australia

**29 OCT 2009**