



New South Wales

Aware Super Regulation 2023

under the

Aware Super Act 1992

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Aware Super Act 1992*.

DANIEL MOOKHEY, MLC
Treasurer

Explanatory note

The object of this regulation is to repeal and remake, with no significant amendments, the *Aware Super Regulation 2018*, which would otherwise be repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

This regulation prescribes the following—

- (a) certain payments and non-cash employment benefits provided by an employer as part of an employee's salary or wages for which employers must make superannuation contributions for employees,
- (b) employee salary contribution percentages on which the levels of compulsory employer superannuation contributions under the *Aware Super Act 1992* are based, and the periods in which the percentages apply, to add to those provided for in the Act,
- (c) an exemption for employers from the obligation to make superannuation contributions for certain employees in relation to specified kinds of employment,
- (d) other machinery and savings matters.

This regulation is made under the *Aware Super Act 1992*, including sections 4(1)(a), 8(2A) and (5) and 15, the general regulation-making power.

This regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely, matters of a machinery nature.

Contents

	Page
1 Name of regulation	3
2 Commencement	3
3 Definition	3
4 Payments and employment benefits included as salary or wages	3
5 Compulsory employer contributions—salary contribution percentage	4
6 Exempted employment	4
7 Repeal and savings	4

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1 Name of regulation

This regulation is the *Aware Super Regulation 2023*.

2 Commencement

This regulation commences on the day on which it is published on the NSW legislation website.

Note— This regulation repeals and replaces the *Aware Super Regulation 2018*, which would otherwise be repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definition

In this regulation—

the Act means the *Aware Super Act 1992*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this regulation.

4 Payments and employment benefits included as salary or wages

- (1) For the Act, section 4(1)(a)(iii), the following kinds of payment are prescribed—
 - (a) payments for maternity leave,
 - (b) payments for parental leave, other than payments required to be made under the *Paid Parental Leave Act 2010* of the Commonwealth,
 - (c) payments for adoption leave,
 - (d) weekly workers compensation payments.
- (2) The kind of payment prescribed by subsection (1)(d) does not include an amount by which the sum of the following exceeds an injured employee's ordinary salary or wages—
 - (a) the weekly workers compensation paid to the injured employee,
 - (b) the salary or wages, other than that compensation, paid to the employee while the employee is partially incapacitated.
- (3) For the Act, section 4(1)(a)(iv), an employment benefit is prescribed if—
 - (a) the benefit is a non-cash employment benefit, and
 - (b) the benefit is provided to an employee by an employer, and
 - (c) the employer, under an industrial award applicable to the employee, is required to make compulsory superannuation contributions in relation to the benefit.
- (4) In this section—

ordinary salary or wages, in relation to an injured employee, means the salary or wages the employee would probably have been earning except for the injury, assuming the employee had continued to be employed in the same or comparable employment.

weekly workers compensation payments, in relation to an employee, means weekly payments of compensation payable to the employee under the following because the employee is partially incapacitated for work through injury—

- (a) the *Workers Compensation Act 1987*,
- (b) the provisions of the *Workers' Compensation Act 1926* as applied by the *Workers Compensation Act 1987*.

5 Compulsory employer contributions—salary contribution percentage

For the Act, section 8(2A), the following periods and percentages are prescribed in addition to the periods and percentages in the Act, section 8(2), table—

Year starting on 1 July 2023	11
Year starting on 1 July 2024	11.5
Year starting on or after 1 July 2025	12

6 Exempted employment

For the Act, section 8(5), the following kinds of employment are prescribed—

- (a) employment as an election official under the *Electoral Act 2017*, but only if the person's appointment under that Act is limited to employment at a voting centre, including an early voting centre, for an election conducted under that Act,
- (b) employment as an electoral official under the *Local Government Act 1993*, but only if the person's appointment under that Act is limited to employment at a polling place or a pre-poll voting office for an election conducted under that Act,
- (c) employment in the Public Service to enable the NSW Education Standards Authority to exercise the Authority's functions.

7 Repeal and savings

- (1) The *Aware Super Regulation 2018* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Aware Super Regulation 2018*, had effect under that regulation continues to have effect under this regulation.