

Welcome to the latest LGsuper update for employers. This issue we take a look at more frequent salary updates, how the contribution remittance process is going and why TFNs are more important than ever from 1 July 2007. We also update you on salary sacrifice contributions for councillors and some other changes taking place from 1 July 2007.

Update member salaries any time!

From 1 July 2007, changes to member salaries can be reported to LGsuper in any pay period, with contributions remittances adjusted to match the new salary details straight away. Under current rules, changes to salaries only take place from the next 1 January or 1 July.

We have been asked by several employers to allow additional permanent and temporary components of salary within the definition of salary for superannuation purposes. These permanent components of salary could include leading hand allowance or regional allowances, while temporary components could be higher duties allowance. This is possible for all members of the Accumulation Benefits Fund because the LGsuper trust deed can be amended to reflect this definition of salary, and it should make remitting contributions easier through payroll software.

But what about members of the Defined Benefits Fund? Because benefits in this fund are calculated based on a multiple of final average salary, the inclusion of various allowances on an ad hoc basis is not suitable. Payroll software must allow for a field to input 'salary for superannuation purposes' so the standard 6% member (or 7.05882% for salary sacrifice) and 12% employer contribution can be calculated and remitted. So, the salary for Defined Benefits Fund members will continue to be the same as the current definition (see pages 4–5 for more details). You should note Clause 70 (b) on page 5.

LGsuper has become aware of some employers restructuring salary packages to include the previously excluded value of a motor vehicle within the salary for superannuation purposes. This is clearly not allowed under the trust deed.

For equity reasons, if you would like to remit contributions for Defined Benefits Fund members on amounts above the salary for superannuation purposes calculations, these additional contributions are to be remitted as employer supplementary contributions. These amounts will be placed in a separate accumulation account and grow with investment returns.

You should let your payroll software provider know about this change to superannuation salary as soon as possible.

Update on contribution remittances

The administration of contribution remittances on a payroll basis is improving, but continues to be a slow process. The planned rollout of the new employer online system has been significantly delayed, due to many employers still experiencing difficulties submitting contribution data files to LGsuper in the correct and required format. This has resulted in a great deal of manual work by LGsuper staff to adjust submitted data into the required format, which in turn delays processing to member accounts.

The format required by LGsuper in order to load contributions onto our administration system can be downloaded from the publications and forms area in the employer section of www.lgsuper.org. If you are still experiencing problems providing data files please contact your payroll software provider.

When we eventually start rolling out the new employer online system, we will be offering a training package to staff who will be using the system. We will keep you up to date with how things are progressing.

Common questions

Can I submit paper contribution remittance advices instead of electronic files?

No, you cannot. We will only accept electronic data files.

When do I need to remit data and contributions by?

You need to provide electronic data files and payment within 14 days of the end of each pay period. You must remit the data and payment for all contributions (member and employer) at the same time, at the end of each pay period. Payment delays will result in lost investment returns for members.

Why tax file numbers are more important than ever

The Australian Government will make providing tax file numbers to superannuation funds for new employees compulsory when an employee completes a TFN declaration form from 1 July 2007. As such, you will be required to provide a TFN for every new member (generally within 14 days of their completing the form) before we can set up their account. The ATO is responsible for enforcing this requirement.

So what does this mean for you? TFNs for new employees should be included in contribution files from 1 July 2007 or should be manually added during the contribution load process.

The new TFN requirements are being introduced because there will be new limits on the amount of before-tax (employer and salary sacrifice contributions) and after-tax (personal member contributions) that the government will need to track for the first time.

Under the new legislation, LGsuper will be unable to accept after-tax contributions for members that we do not hold a TFN for (including the 6% standard member contribution). What's more, before-tax contributions and contributions above the limits will be taxed at 46.5%, so it's in members best interests to provide their TFN to LGsuper if they haven't already done so.

So what is LGsuper doing to collect TFNs? So far, we've written to over 1000 members that are contributing 6% standard member

contributions and have not provided their TFN. While we have had a good response to our mailout, we will be contacting employers shortly to ask for their assistance with collecting TFNs for these remaining members.

The ATO will also be writing to members and providing super funds with member TFNs where they are confident they have data for the correct person. Where the ATO isn't so sure, they will be writing to the member to ask them to contact their super fund and provide their TFN.

Other changes from 1 July 2007

The simpler super changes introduced by the Australian Government will mean:

- > Employer ETPs will no longer be able to be rolled over into a super fund unless included in existing employment contracts at 9 May 2006 and paid before 1 July 2012.
- > Before-tax contributions (employer contributions and salary sacrifice) will be capped at \$50,000 p.a. for members. This limit will be indexed in line with AWOTE in \$5000 increments in future years.

Members currently aged 50 or over between 1 July 2007 and 30 June 2012 will have a higher transitional limit of \$100,000 p.a. If a member turns 50 during that period they will have the higher limit from the financial year they turn 50.

We would also like to take this opportunity to remind you that superannuation is not payable on the payment of any unused leave entitlements on termination of employment.

Update on salary sacrifice for councillors

The LGAQ has recently advised LGsuper that the ATO has re-issued its ruling that only councils that have declared themselves an "eligible local governing body" can enter into effective salary sacrifice arrangements with their councillors. It would appear that the ATO has not addressed any of the legal arguments forwarded under the LGAQ letters. It is our understanding that the LGAQ is continuing to pursue this matter. That said, LGsuper urges caution on this issue until the outcome is definitively finalised.

LGsuper will continue to process council contributions for their councillors as per the advice provided by councils (i.e. either after tax contributions or employer contributions where salary sacrificed). LGsuper is not responsible for ensuring the declaration of an eligible local governing body exists.

The LGAQ has advised that it will let LGsuper know the outcome when this matter is resolved. If you have any questions on salary sacrifice and councillors please contact the LGAQ on (07) 3000 2222.

Disclaimer

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Salary definitions

These definitions are provided to assist you in understanding what is a salary for superannuation purposes. Why not print these pages and keep them handy?

“salary” - in relation to a permanent employee, means the payment (whether called salary or wages) made by the Employer to the Member in respect of his or her employment by way of fixed remuneration including:-

- (a) any allowance that is a permanent addition to that payment; and
- (b) any non-cash entitlement which is part of a packaging arrangement and which may, at the election of the employee, be taken in cash; and
- (c) an amount which is the subject of a salary sacrifice arrangement referred to in clause 59.

The term does not include:

- (a) an amount excluded from salary under clause 70(b) ;
- (b) the value of contributions made by Employers as prescribed by the Act for which the Employer is not entitled to be reimbursed by the Member under the Act, the value of contributions made by Employers for non-permanent employees to avoid liability for the superannuation guarantee charge, or an amount paid by an Employer for the superannuation guarantee charge;
- (c) any additional remuneration paid while acting in a higher classification;
- (d) overtime, bonuses, or any allowance paid to the Member from time to time which is not a permanent addition to the fixed remuneration applicable to his or her classification.

Clause 59 of the Trust Deed states the following:-

Requirements for salary package with no member contributions

- (a) This clause applies where, as part of the terms of employment between an Employer and a Member relating to remuneration, the Employer and the Member have agreed that the Member is not required to reimburse the Employer under section 1183 of the Act.
- (b) Where this clause applies:-
 - (i) there is a “salary sacrifice arrangement”; and
 - (ii) subclauses (c) (i) and (d) to (g) apply to all Members; and
 - (iii) subclauses (c) (ii) and (iii) and (h) to (j) apply to defined benefit Members (only).
- (c) Where this clause applies, the Employer must advise the Board in writing:-
 - (i) that this clause applies; and
 - (ii) for a defined benefit Member, of the amount of the Member’s salary for the purposes of subclause (h); and
 - (iii) for a defined benefit Member, that it agrees to pay the additional contribution mentioned in either of subclauses (h) and (i).
- (d) The Employer must also advise the Board in writing of the date of commencement and, where applicable, the date of termination, of each salary sacrifice arrangement.
- (e) If an Employer complies with subclause (c) and, where relevant, pays the additional contribution under either of subclauses (h) and (i), the Board will recognise the salary sacrifice arrangement (from the date notified under subclause (d)) and:-
 - (i) the salary notified under subclause (c) (ii) will be the Member’s salary for the purpose of calculating benefits; and
 - (ii) the whole of the contribution received in respect of the Member must be treated as an Employer contribution (with no part being treated as a member contribution), for the purposes of Superannuation Law.
- (f) If an Employer does not comply with subclause (c), the Board will not recognise the salary sacrifice arrangement.

- (g) The Board will cease to recognise a salary sacrifice arrangement with effect from a date notified under subclause (d).
- (h) For a defined benefit Member to whom this clause applies, but subject to subclause (i), the Employer must pay an additional contribution to the Board calculated as follows:-
 - (i) for a standard permanent employee, 1.05882% of the Member's salary; and
 - (ii) for a special permanent employee, 0.88235% of the Member's salary.
- (i) Despite subclause (h), if the income tax payable by the Board in respect of Employer contributions made in respect of any defined benefit Member is greater than 15%, the additional contribution payable in respect of that Member must be increased in proportion to the additional tax, so that the total contribution less income tax is the same as if the income tax were 15% (and the additional contribution were that payable under subclause (h)).
- (j) In addition, if by reason of an Employer failing to comply with subclause (c) the Board is assessed to any tax, additional tax or penalty which:-
 - (i) would have been offset by the additional contribution under subclause (h) or subclause (i); or
 - (ii) would not have been assessed, if the Employer had complied with subclause (c), the Employer must indemnify the Board in respect of the tax or penalty.

Clause 70(b) and 70(c) of the Trust Deed states the following:-

Advice of Contributions and Payment of Contributions

- (b) In advising of salary under subclause (a), an Employer must not advise a change in salary, as compared to the salary advised for the preceding period, to the extent that the change would be a result of :-
 - (i) the inclusion in a remuneration package of entitlements that were not previously part of the member's salary for the purposes of this deed, but were nevertheless previously enjoyed by the Member, so that there is no substantial change in the Member's overall salary and entitlements; or
 - (ii) a decision by the member to substitute salary for a portion of a remuneration package that was not previously part of the member's salary for the purposes of this deed; or
 - (iii) a decision by the member to substitute a non-salary entitlement for portion of the value that was previously the member's salary for the purposes of this deed, and any such change must be disregarded for all purposes of this deed
- (c) If an Employer contravenes subclause (b):-
 - (i) if the contravention is discovered before payment of any benefit to the Member (other than a temporary disablement benefit), the Board may make all adjustments which are necessary to place the Member in the position that he or she would have been in if the contravention had not occurred, and:-
 - (A) any amount overpaid by the Employer must be refunded to the Employer; and
 - (B) any amount underpaid by the Employer must be paid by the Employer to the Board on demand and, if not so paid, is recoverable pursuant to the Act as an unpaid contribution,
 - (ii) if the contravention is discovered after payment of a benefit to the Member (other than a temporary disablement benefit), the Employer must:-
 - (a) pay to the Board on demand the amount of any benefit overpaid to the Member by reason of the contravention;
 - (b) pay to the Member the amount of any benefit underpaid by the Board to the Member by reason of the contravention;
 - (c) indemnify the Board against any claim made against it by the Member by through or in connection with the contravention.