

Welcome to the latest LGsuper update for employers. Your assistance in circulating this update to Councillors and relevant Council staff (e.g. Payroll / Finance officers) would be appreciated.

If you any queries on this matter, please call either Barbara Matthews or Renate Thommen on (07) 3244 4300.

Change to SG obligations from 1 July 2008

Summary of impact on LGsuper contributions

Employers must ensure they meet the minimum Superannuation Guarantee obligation to pay 9% of Ordinary Time Earnings as from 1 July 2008.

Attached is a copy of advice received from LGsuper's actuary on the impact of changes for LGsuper members and employers which provides details of the new requirements and how they apply to LGsuper. A summary of actuary recommendations is provided below:-

A Accumulation Fund members

Class 3 and 4 members

SG 9% contributions are already calculated on OTE.

Class 1 members

Employers pay 12% of superannuation salary.

To ensure SG obligations are met, employers will need to confirm that this is not less than 9% of OTE. Therefore the following calculation will need to be carried out quarterly:

$$(OTE \times 9\%) - (Super Salary \times 12\%)$$

If the result is greater than zero, then the additional amount must be paid.

B Defined Benefit members

Employers pay 12% of superannuation salary.

However, the Board's Actuary certifies that the resulting minimum benefits are only sufficient to meet the SG requirements, up to the superannuation salary. **The current definition of super salary will remain the same.**

To ensure SG obligations are met, employers will need to make the following calculation:

$$(OTE - Super Salary) \times 9\%$$

Note – this is different from Accumulation Fund members.

This additional amount will have to be paid as an **additional accumulation contribution** (SG or Employer Supplementary). It cannot be added to the standard 12% contribution.

Options

1. Do 2 calculations – A for Accumulation members and B for Defined benefit members. This may be administratively difficult but have lower contribution costs.
2. Do calculation B for all members. This may be administratively simpler, but may have increased contribution costs.

Councillor superannuation

The ATO provided the LGAQ with written advice dated 13 August 2007, following a meeting between representatives from the ATO, LGAQ, LGsuper and Pine Rivers Shire Council, that the following applies in relation to councillors. Relevant extracts from this advice are provided below:-

"We confirmed . . . that local government councillors are not common law employees."

This is a critical point to establish as a basis for the issues we discussed. As such, council is:

1. Not required to make superannuation contributions for the benefit of the councillors in accordance with the **Superannuation Guarantee (Administration) Act 1992 (SGAA)** ;
2. Not required to withhold under the pay as you go withholding system from payments made to Councillors; and
3. Not subject to the **Fringe Benefits Tax Assessment Act 1986** in respect of benefits provided to Councillors,

unless the councillors have made a unanimous resolution under section 446-5 of Schedule 1 to the **Taxation Administration Act 1953 (TAA)** to the effect that the remuneration of councillors be subject to pay as you go withholding."

NOTE:- The ATO advised at this meeting that, to the best of its recollection, no Queensland council had properly formalised a making of a unanimous resolution that the remuneration of its councillors be subject to pay as you go withholding.

The ATO advice goes further on to add the following:-

"Tax consequences for councillors of contributions made by council

As discussed at our meeting, the Tax Office is of the view that councillors can enter an arrangement to effectively sacrifice amounts of their remuneration before they are taken to derive those amounts. To be effective, these salary sacrifice arrangements would be required to meet the same requirements as salary sacrifice arrangements for employees. This means that the councillor must agree to forego part of his or her remuneration before they have earned the entitlement to receive that amount.

If an effective sacrifice arrangement is entered into by the councillors in return for contributions made to a superannuation fund for their benefit, contributions made by the council will not be taken to have been derived by the councillors and will therefore not be assessable income of the councillors under section 6-5 of the **Income Tax Assessment Act 1997 (ITAA 1997)**. As well, they will not be taken to be a benefit that is allowed, given or granted to the councillors and therefore will not be assessable under section 15-2 of the **ITAA 1997**."

Given this clarification, councillors have the following options available to themselves:-

Scenario	Suggestion	Restrictions	Eligible for LGsuper membership
Councillor wants to claim a tax deduction for any contributions made toward superannuation. Councillor does <u>not</u> want to receive up to 12% Council support.	Consult their tax advisor to ensure that they are eligible to claim tax deductions (i.e. that they satisfy the self employed rule). If a councillor only generates income from Council remuneration, they <u>should</u> satisfy this requirement.		NO. LGsuper cannot enrol councillors for which there has been no previous Council contribution and where the Councillor is not a current LGsuper Member.
Councillor wants to claim a tax deduction for contributions made toward superannuation. Councillor also	Consult tax advisor to ensure the councillor remains eligible to claim tax deductions (refer above). N.B Receiving employer support may jeopardise tax deduction.	Please refer to note 1 below for detailed description of operation.	YES. LGsuper can enrol councillors where there is Council contribution. LGsuper can also

wants to receive up to 12% Council support.	Also there is a requirement for a councillor to either make a contribution from after-tax earned income OR can forego remuneration before they have earned income (i.e. salary sacrifice) to be eligible for any employer support.		handle tax deductible contributions where the councillor has clearly <u>advised</u> that it is their intention to claim tax deductions <u>at the commencement of such contributions</u> being made.
Councillor does not want / is not eligible to claim tax deductions for contributions made toward superannuation. Councillor does <u>not</u> want to receive up to 12% Council support.	Councillor does not need to contribute any monies toward superannuation nor is the Council required to pay any contributions toward superannuation.	N.A.	N.A.
Councillor does not want / is not eligible to claim tax deductions for contributions made toward superannuation. Councillor does want to receive up to 12% Council support.	Councillor can either make up to 6% of contribution from after-tax earned income OR can forego remuneration before they have earned income (i.e. salary sacrifice) up to 6% income toward superannuation. Council contribution is up to 12%, where the councillor elects for 6%. Councillor can make additional contributions (either after earned or salary sacrificed) but no further employer support beyond 12% Council.	Please refer to note 1 below for detailed description of operation.	YES. LGsuper can enrol councillors where there is Council contribution.

NOTE 1:-

Council can only make a contribution (of up to 12%) where the councillor makes a contribution equivalent to 50% of the Council contribution (e.g. Council contribution of 12% requires councillor contribution of 6%). The councillor's contribution would be deducted from their remuneration payable under Section 250AK.

Councillor contribution would be classified as an “after tax” contribution when remitted by Council to LGsuper. Councillor could then claim a tax deduction for the contribution subject to their eligibility to claim such deductions.

Alternatively, the Councillor contribution could be classified as a salary sacrifice contribution when remitted by Council to LGsuper. The Councillor could not then claim a tax deduction but the amount of Council remuneration the Councillor would have to declare as income for tax purposes would not include the Councillor’s contribution.

Note, if the Councillor’s contribution is salary sacrificed, the maximum salary sacrifice contribution that a Councillor can make to superannuation is 50% of their remuneration as per Section 238A of the LGA.

Further, the Tax Act limits the total of Council contributions, salary sacrifice contributions and contributions for which the Councillor has claimed a tax deduction to \$50,000pa for persons under age 50, and, \$100,000pa for persons over age 50. This higher limit for persons over age 50 ceases on 30 June 2012.

Employer online contribution rollout

We appreciate your patience to date concerning the rollout of the new employer online system. The main cause for the delay was the change in operating system by our supplier half way through the project which put things back by 9 to 12 months. It has

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been a very challenging time from the Board’s perspective too over this period.

The majority of Council’s are remitting their contribution files in the correct format. Thank-you for implementing required changes to format via your payroll systems. For the Councils that we continue to have difficulties with, we will be in contact with payroll officers to discuss correct procedures for file formats. All of the payroll software providers have advised that users can meet Board required formats providing the Council correctly sets up the payroll software program.

We anticipate beginning to roll out LGsuper’s employer online system, initially to surrounding Councils of Brisbane CBD, late May 2008. A program of visitation by Board staff will be circularised early in the financial year.

LGsuper takes this opportunity to remind employers that the LGsuper Trust Deed requires contributions to be remitted within 2 weeks of the end of the pay period.

If employers need to calculate SG only contributions on a monthly cycle (i.e. to calculate \$450 / month eligibility criteria) then contributions for SG only members may be remitted with the final pay period contribution for that month. The majority of employers are paying within 2-3 days of each pay cycle; however, there are a few employers who are not meeting the 2 week requirement.