



**Ian Robertson**  
**Secretary**  
**Development and Environmental Professionals**  
**Dear Mr. Robertson**

As you are aware, LGS is following up on concerns related to the calculation of salary for certain categories of Local Government Super members and the determination of superannuation contributions required and superannuation benefits payable. The potentially relevant individuals are employees who are employed under an award or industrial agreement and members of the Retirement Scheme or the Defined Benefit Scheme. The questions concern the limb of the definition of salary relating to the value of the private use component of a motor vehicle provided by the member's employer.

At a recent trustee board meeting, the board instructed management to conduct an investigation into the matter. To that end, the board also instructed management to write to all potentially relevant employers reminding them of certain provisions of the trust deed and schedules, of their obligation to provide correct information and correct contributions to the trustee and of their exposure to liability should they fail to do so. In the schedule to this letter, I have set out some potentially relevant provisions of the trust deed and schedules.

The trustee aims to conduct its investigation in a considered and thorough fashion, taking into account new information as it comes to light and revising and refining its plans accordingly. The trustee also appreciates the importance of the support your organisation and other participating employers provide to the fund.

In this context, and as is usual at this time of the year, the trustee will shortly be writing to your superannuation liaison officer seeking salary information about each Retirement Scheme member employed by your organisation. In addition to seeking the usual information (concerning salary, date of change to number of hours worked, and salary ratio), the trustee will also be seeking further information, given the questions raised about the private use component of an employer-provided motor vehicle. I would be grateful if you would ask your superannuation liaison officer to carefully consider all aspects of the trustee's information requirements, when received, and to provide a comprehensive response.

Yours sincerely

David Smith  
**Chief Executive Officer**  
Local Government Super  
Email: [dsmith@lgsuper.com.au](mailto:dsmith@lgsuper.com.au)

## Schedule

The trust deed and schedules are available on our website (<https://www.lgsuper.com.au/about-us/corporate-governance>).

### **Provisions concerning salary and valuation**

The relevant definition of salary under the Retirement Scheme is (Schedule 2, rule 1.2.1):

*For the purposes of these Rules, Salary, in relation to a Contributor (other than an Executive Officer or a Contributor on an individual contract (including an individual on an award regulated contract)) who is a Contributor employed under an award or registered industrial agreement means the sum of:*

- (a) *the monetary remuneration payable to the Contributor in the Contributor's capacity as Contributor, as reported to the Trustee from time to time by the Contributor's Employer (excluding any allowances or Leave Payments); plus*
- (b) *the amount of any allowances (including shift allowances) actually paid during the 12 months immediately preceding the date on which the Salary is calculated and which are taken to be 'ordinary time earnings' for the purposes of the Superannuation Guarantee Charge Acts; plus*
- (c) *the amount of any weekly workers' compensation payments which are to be taken as 'ordinary time earnings' for the purposes of the Superannuation Guarantee Charge Acts; plus*
- (d) ***the value of the 'private use' component of a motor vehicle provided by the Contributor's Employer (if any); plus***
- (e) *the value of any child care facilities provided by the Contributor's Employer; plus*
- (f) *the amount of any voluntary employer (salary sacrifice) superannuation contributions; plus*
- (g) *the value of any other salary sacrifice arrangements and any associated fringe benefits tax payable on such other arrangements.*

Rule 1.2.1(d) has been highlighted because it is the limb of the definition of salary that is relevant to the questions raised. Rule 1.2.1 has been in these terms since 2003, before which time the private use of a motor vehicle was irrelevant to calculating salary for superannuation purposes.

An important point is that the value of the private use component of a motor vehicle provided by an employer is determined in accordance with rule 1.2.6, which says that, in rule 1.2:

**value or amount** *means the amount or value specified by the Employer as forming part of the Contributor's total remuneration package, and if not specified by the Employer in the case of a benefit that requires a value, the value of the arrangement or contribution referred to for fringe benefits tax purposes*

This definition of 'value' in rule 1.2.6 involves two elements: flexibility for the employer (and employee), combined with a default valuation approach. To elaborate, the employer can specify a value of the private use component of a motor vehicle as forming part of the employee's total remuneration package. If the employer does so, the employer would appear to be free to select (subject to the employee's agreement) an appropriate method for arriving at that value. It may even be possible for the employer and employee to agree to the specification of a nil value. However, if the employer does not specify a value of the private use component of a motor vehicle as forming part of the employee's total remuneration package, the default valuation approach applies. The default valuation approach is the FBT



approach (although it is acknowledged that the FBT rules may, themselves, leave scope for choice between different methods of valuation).

The counterparts to rules 1.2.1(d) and 1.2.6 of the Retirement Scheme are:

- rules 1.2.1(d) and 1.2.6 of the Non-Contributory Scheme;<sup>1</sup> and
- rules 1.3.1(d) and 1.3.3 of the Defined Benefit Scheme.

***Other potentially relevant provisions***

In addition to the rules identified above (concerning salary and valuation), the following provisions of the trust deed are also potentially relevant to the questions raised.

Paragraph (a) of clause 6.8 (Superannuation Law) provides:

*The Trustee may do all things considered by it as necessary or convenient to comply with any provision of Superannuation Law and without limitation the Trustee may:*

- (a) *require Employers, Beneficiaries, dependants of Beneficiaries or other persons entitled to a Benefit or making Contributions to the Fund to provide such information as the Trustee may require in order to satisfy it that any provision of Superannuation Law or this Fund is complied with, to determine whether any Tax is payable or to calculate any Benefit; ...*

Clause 7.2 (Provision of information) provides:

*Subject to sub-clause 7.7, the Trustee shall provide Employers and Beneficiaries with such information in relation to the Fund as is required by Superannuation Law or as the Trustee otherwise determines.*

Clause 7.7 (Confidentiality) provides:

*Subject to this Deed, the Trustee shall not be required to disclose to any person other than the Minister or Employer any information relating to a present or former Employer or Beneficiary unless that disclosure:*

- (a) *is reasonably necessary or convenient for the purpose of obtaining advice by the Trustee in relation to any matter pertaining to the Fund or is required by an insurer for the purpose of effecting or maintaining any insurance policy;*
- (b) *is required by law;*
- (c) *is authorised by the person in respect of whom the information relates;*
- (d) *is to a Beneficiary or a person who has an interest in a Member's entitlement in a Division and is of information relating to that Division of the Fund of which the person is a Beneficiary or under which the Beneficiary is or was a Beneficiary so long as the information does not include information relating to Benefits of other Beneficiaries or personal information pertaining to other Beneficiaries of the Fund.*

*Before disclosing any information, the Trustee may require that the consent of persons about whom the information relates is obtained and that the person to whom the information is provided gives such undertakings as to the use of the information or confidentiality of the information as the Trustee may require.*

Clause 9.5 (Information provided to Trustee) provides:

*The Trustee shall be entitled to rely upon information provided to it by an Employer or Beneficiary or any other person acting at the request of or on behalf of an Employer or Beneficiary. The*

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<sup>1</sup> The benefit under the Non-Contributory Scheme is only ever available in conjunction with Retirement Scheme benefits or Defined Benefit Scheme benefits; Non-Contributory Scheme benefits are not available on a stand-alone basis.

*Trustee shall be indemnified by the Employer or Beneficiary who provided the information or at whose request or on whose behalf the information was provided in relation to any loss, damage or expense incurred by the Trustee arising as a result of any such information proving to be incorrect or misleading.*

Clause 11.3 (Late Contributions) provides:

*The Trustee may charge collection costs and interest at a reasonable rate as determined from time to time by the Trustee on any amount not paid by an Employer on or before the Due Date.*

Finally, clause 1.1 (Definitions) provides:

**Due Date** means any date for payment of contributions agreed to between the Trustee and the Employer and otherwise fourteen days after the end of the month in which salary or wages the subject of contributions to the Fund were paid to the Employee;

This does not purport to be an exhaustive listing of all of the potentially relevant provisions. However, they are provisions which may be, or become, potentially relevant.

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