

Consultative Committee Circular – 2/2006

To	Consultative Committee Members
From	Ann Byrne, Chief Executive Officer
Date	9 May 2006
Subject	Trust Deed Amendments



At the 2005 meeting I informed the Consultative Committee that the Board had given in principal approval for the implementation of the spouse contribution splitting Regulations. The necessary changes to the Trust Deed are enclosed in this circular.

An additional change is also required in relation to the contribution flexibility initiatives approved at that meeting, to specifically deal with the situation raised at the meeting where the 3% award contribution is negotiable as salary.

An overview of both changes is provided below.

Allens Arthur Robinson have prepared Deed of Amendment No.27 to effect these changes. It is provided as *Attachment 1*.

Deed of Amendment No.26, which was approved at the 21 October 2005 CC meeting, is also provided as *Attachment 2* for reference when considering the contribution flexibility initiatives already introduced.

Overview of the Changes

Splittable Contributions – Amendment Items 2 to 5

Background

The new SIS Regulations permit funds to allow members to make an election to split all *splittable* contributions made from 1 January 2006 with their spouse. The member may split up to 100% of their untaxed contributions and up to 85% of the taxed contributions received by the member the previous financial year. '*Splittable contributions*' are all contributions made to a regulated superannuation fund by either the employer or by employee but it excludes roll-overs, transfers, ETPs or sums that have already been split.

Without approval of the Deed Changes now proposed, members would have to wait until July 2007 before they could elect to split any of their contributions with their spouses. Approval now will embed that right for any splittable contribution received from 1 January 2006.

Restrictions

The Regulations do not allow splitting of an interest that is subject to a Family Law Act payment split or payment flag or in respect of contributions in relation to a defined benefit component of a defined benefit interest. However, members of the DBD will still be able to split their employer's contributions (or their own voluntary contributions) to Accumulation 1 (Accum 1) subject to the above exclusions.

The restrictions set out in the Regulations are as follows:

- contributions may only be split with a spouse (married or de facto and of opposite sex);
- the spouse must be under 65 years of age, and not have satisfied a condition of release other than attaining preservation age; and
- an election must in all cases be processed within 90 days of its acceptance by the fund.

Once split, the split contributions are vested in the spouse but the member retains the compounding interest earned on each split contribution until it is transferred to the Spouse's account.

Deed Changes

Item 3 inserts clause 32.11 which will allow eligible accumulation members to make an annual election to split up to the maximum percentage of splittable contributions made to their account in the previous financial year in favour of their spouse.

The changes set out in Item 2, are required to extend contribution splitting to all contributing members of Accumulation Super, be they Accum 2 contributors, DBD members receiving 3% employer contributions into Accum 1, or Accum 1 members on whose behalf employers are making SG Act contributions only.

Items 4 and 5 will allow the trustee to govern the administration of split contributions (that stay within the fund in a Spouse Account) in the same manner as all other benefits held by members who are not employees of participating institutions.

Member Contribution Flexibility – Amendment Item 1

Background

Schedule 2 of Deed of Amendment No 26, will become effective from 1 July 2006 and provides for necessary amendments to the Deed to allow member contribution flexibility in certain circumstances. It did not specifically deal with the situation where the member is able to take the 3% award contribution as salary, as an annual election or may be able to negotiate for that after having already elected to reduce their member contributions.

Deed Changes

Item 1 addresses the scenario where the 3% award contribution is negotiable - and notwithstanding any election the member may have already made in respect of their member contributions or with their employer with respect to the 3% award contribution, it requires the member to maintain the contribution level to the Defined Benefit Division (DBD) and Accumulation 2 (Accum 2) at a minimum of 17% in accordance with the minimum funding levels specified on the introduction of contribution flexibility.

Process for Approval

Rule 35 of the UniSuper Limited Constitution enables the Shareholders' Consultative Committee to proceed by way of circular resolution without the need also to convene a meeting in the usual sense.

The Constitution provides that effective consent is obtained when the requisite number of Committee members constituting a quorum for a meeting of the Committee, have responded and a simple majority is obtained.

Deed of Amendment No.27 incorporating the five listed amendments is recommended by the Board of UniSuper Limited for approval of the Consultative Committee.

You are requested to respond by the attached facsimile by close of business, Friday 26 May 2006.

A handwritten signature in black ink, appearing to read 'A. Byrne', is positioned below the main text.

Attachments

1. Deed of Amendment No. 27
2. Deed of Amendment No. 26
3. Circular Resolution Voting Facsimile Sheet