

# **Draft Submission to the Local Government Remuneration**

As at 31 January 2024

(filed in draft on 21 December 2023)



Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

## OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs **55,000 people**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



Local government in NSW looks after more than **\$177 billion** of community assets



NSW councils manage an estimated **4 million tonnes of waste** each year



Local government in NSW spends more than **\$2.2 billion** each year on caring for the environment



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**



NSW has more than **350 council-run libraries** that attract tens of millions of visits each year



NSW has more than **400 public swimming and ocean pools**

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# Opening

Local Government NSW (“LGNSW”) welcomes the opportunity to provide a submission to the Local Government Remuneration Tribunal (“Tribunal”) as part of the Tribunal’s 2024 review of the fees payable to Councillors and Mayors.

The primary purpose of this submission is to seek an increase in the fees payable to Councillors and Mayors of at least 10% to:

1. reverse the fee erosion which occurred under the NSW Public Sector Wages Policy;
2. mitigate economic pressures and the rising cost of living (CPI);
3. ensure that Councillors and Mayors receive fair and reasonable remuneration for the work they perform; and
4. address the historic undervaluation of the work performed by elected representatives in local government in New South Wales.

This submission is made pursuant to section 243(2)(b) of the *Local Government Act 1993*(NSW) (“Act”). The submission is informed by the policy positions of LGNSW and consultation with councils. Please note this submission is provided as a draft, pending endorsement by the LGNSW Board at its next meeting. We will advise of any amendments to the submission in due course.

## The Tribunal’s Recent Determinations

In its 2023 Determination, the Tribunal awarded an increase of 3% in the fees payable to Councillors and Mayors. Whilst this represented the highest permissible increase that the Tribunal was able to award (in 2023), it was less than the increase in the cost of living – in the twelve months to March 2023 the Consumer Price Index (“CPI”) rose 6.3%, down from 6.8% for the twelve months to February 2023. The Tribunal’s increase in 2023 was also significantly less than the 5.75% minimum increase in federal award rates of pay awarded by an Expert Panel of the Fair Work Commission (FWC) in its 2023 Minimum Wage Determination, and less than the 4.5% minimum increase in rates of pay under the *Local Government (State) Award* in 2023.

The 2023 Determination followed the Tribunal’s 2022, 2021 and 2020 Determinations which resulted in a 2% increase in the fees payable to Councillors and Mayors in 2022 and 2021, and no increase in 2020.

Increases in the fees payable to Councillors and Mayors since 2020 have, in the aggregate, been below increases in the cost of living (CPI). In the twelve months to March 2020 the CPI increased by 2.2%; in the twelve months to March 2021 the CPI increased by 1.1%; in the twelve months to March 2022 the CPI increased by 5.1%; and in the twelve months to March 2023 the CPI increased by 6.3%. This accounts for a 14.7% increase in the cost of living (CPI) from 2019 to 2023. By way of comparison, the fees payable to Councillors and Mayors increased by just 7% over the same period. The cost of living continues to rise at a rapid pace with the CPI increasing by 5.4% in the twelve months to September 2023.

In its 2023 Determination, the Tribunal also noted that the framework by which it is bound would benefit from comprehensive review. LGNSW shares the Tribunal's view that a comprehensive review is required, and we would welcome such a review. LGNSW has analysed economic and remuneration data from the last twelve months as it relates to chairs and directors of not-for-profit organisations and Qld local government representatives (discussed below). The analysis has identified a significant disparity between the fees payable to these categories of individuals and that which is paid to Councillors and Mayors in New South Wales. As such, the analysis reinforces the need for major reform, as Councillors and Mayors in New South Wales are paid significantly less than every other comparable category referred to in this submission.

## ***Industrial Relations Amendment Act 2023***

Section 242A of the Act requires the Tribunal, in making a determination, to:

*"give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under section 146C of the Industrial Relations Act 1996 when making or varying awards or orders relating to the conditions of employment of public sector employees."*

Previously, section 242A(1) of the Act constrained the Tribunal's capacity to set fair and reasonable fees for Councillors and Mayors by limiting increases in such fees to a prescribed maximum under the *Industrial Relations (Public Sector Conditions of Employment) Amendment Regulation 2022* ("**Regulation**") and NSW Public Sector Wages Policy ("**Wages Policy**").

On 1 December 2023 the *Industrial Relations Amendment Act 2023* ("**Amendment Act**") completed its passage through NSW State Parliament and was assented to on 5 December

2023. Significantly, the Amendment Act repealed section 146C of the *Industrial Relations Act 1996*(NSW)(“IR Act”).

Having regard to the words used in section 242A(1) of the Act, it follows that as the Industrial Relations Commission is no longer required to give effect to the Wages Policy, the Tribunal is also no longer constrained by the Wages Policy and can now award an increase in the fees payable to Councillors and Mayors that allows them to be appropriately remunerated.

## Economic Indices and Wage Data

### Economic Indices

As mentioned above, the CPI increased by 14.7% from March 2019 to March 2023. This sits in stark contrast to the 7% total increase awarded to Councillors and Mayors in the same time period. The cost of living continues to rise at a rapid pace with the CPI (Australia, All groups) increasing by 5.4% in the twelve months to September 2023. This alone evinces a real and cogent need to award an increase in the order of at least 10%.

Noting that the Tribunal’s 2024 Determination will operate from 1 July 2024, an increase of at least 10% will also operate to provide an appropriate increase based on the factors assessable over the 12 months to 30 June 2024.

This need is most appropriately considered adjacent to other economic indicators such as rising interest rates, and tremendous growth in the Wage Price Index (1.4% in the private sector in one quarter) which further shows that Councillors and Mayors are experiencing a rapid and real reduction in income in real terms.

### Annual Wage Review and State Wage Case

On 2 June 2023, an Expert Panel of the Fair Work Commission (“FWC”) awarded a 5.75% increase to the minimum rates of pay for Modern Awards and increased the National Minimum Wage by 5.75% to \$882.80 per week, effective from 1 July 2023 through its *Annual Wage Review*<sup>1</sup> decision.

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<sup>1</sup> [2023] FWCFB 3500.

For reference, the National Minimum Wage as an annual salary amounts to \$46,031. The National Minimum Wage is *higher* than the fees payable to all Councillors (excluding Mayors) across NSW. This is especially so in councils categorised as 'Rural' where the maximum fee payable is \$13,030. The highest possible fee which is payable to a Councillor (excluding Mayors) in NSW is \$43,440 which is payable only with respect to one Council (The City of Sydney) as the maximum fee payable. It is conceivable that many Councillors are not paid this fee, indicating that the wage disparity is in fact greater.

At paragraph 9 of the *Annual Wage Review*, the Full Bench of the FWC noted that:

*'In determining this amount, we have placed significant weight on the impact of the current rate of inflation on the ability of modern-award reliant employees, especially the low paid, to meet their basic financial needs. Inflation is reducing the real value of these employees' incomes and causing households financial stress.'*

Applying the FWC's reasoning to the matter of the fees payable to Councillors and Mayors indicates that any fee increase that is less than the rate of inflation will reduce the real value of the fees payable to Councillors and Mayors.

A Full Bench of the Industrial Relations Commission of New South Wales recently followed the decision of the FWC and adopted a 5.75% increase to the minimum rates of pay in relevant NSW State Awards which are not subject to negotiated increases through the *State Wage Case 2023*.<sup>2</sup>

## Market Comparability

The disparity between the fees payable to Councillors and Mayors in New South Wales (NSW) and their inter-state or not-for-profit counterparts is stark. We have distilled some of the statistics below to allow the Tribunal to compare the fees payable to Councillors and Mayors in New South Wales with the:

- Fees payable to chairs/directors of not-for-profit organisations (NFPs)
- Fees payable to Councillors and Mayors in Queensland (QLD)

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<sup>2</sup> [2023] NSWIRComm 1121

## Comparison of fees payable to Councillors and Mayors in New South Wales and fees payable to chairpersons/directors of not-for-profit organisations

The responsibilities and functions of Councillors and Mayors as prescribed in sections 226 and 232 of the Act are directly comparable to those of NFP board chairs and directors per Chapter 2D.1 of the *Corporations Act 2001*(Cth).

The 2023 Australian Board Remuneration Survey Report (“Australian Board Survey”)(attached) was relied upon to analyse data on NFP organisations and the fees payable to chairs and directors in various capacities. The Australian Board Survey has collected data from over 1,000 Boards based on a number of factors which allow for an effective comparison between Directors/Chairs and mayors and councillors in NSW.

In particular, LGNSW has extracted comparisons between NFP directors and councillors based on comparable full-time equivalent employee (FTE) counts and the total revenue of the organisation.

Position	Total FTE	Average Remuneration	Maximum Remuneration
Chair NFP	151-200	\$93,149.00	-
Mayor Hilltops Council	198	-	\$37,925.00
<b>Difference in the average remuneration paid to the Chairman of a NFP organisation and the maximum fee payable to the Mayor of Hilltops Council: \$55,224.00</b>			
Director NFP	151-200	\$48,357.00	-
Councillor Hilltops Council	198	-	\$17,680.00
<b>Difference in the average remuneration paid to a Director of a NFP organisation and the maximum fee payable to a Councillor of Hilltops Council: \$30,677.00</b>			

Position	Total Revenue	Average Remuneration	Maximum Remuneration
Chair NFP	40-80M	\$54,826	-
Mayor Mosman Council	59M	-	\$47,390



<b>Difference in the average remuneration paid to the Chair of a NFP organisation and the maximum fee payable to the Mayor of Mosman Council: \$7,436</b>			
<b>Director NFP</b>	40-80M	\$27,469	-
<b>Councillor Mosman Council</b>	59M	-	\$21,730
<b>Difference in the average remuneration paid to a Director of a NFP organisation and the maximum fee payable to a Councillor of Mosman Council: \$5,739</b>			

The above highlights the disparity in remuneration experienced by Councillors and Mayors in NSW when compared to average rates of pay for individuals performing like work. In actuality, the disparity may be even more acute than that which is provided for in this comparison, as the maximum remuneration for a particular category is not automatically applied and the figures used for Chairs and Directors of NFPs is averaged, indicating that the difference in real terms is likely to be far more significant.

#### **Comparison of fees payable to Councillors and Mayors in New South Wales and fees payable to Councillors and Mayors in Queensland**

Local Government in NSW and Qld are, by their nature, very alike. The Qld Remuneration Commission is required to consider factors including geographical and environmental terrain, population and LGA size (among others) to determine the appropriate category, and therefore the fees payable to mayors and councillors. This is provided for in Regulation 242 of the *Local Government Regulation 2012*(QLD).

These factors are effectively mirrored in section 240 of the NSW Act for the purpose of determining the categorisation of LGAs and in turn, allowing the relativity of the fees payable to be considered. The data comparing the NSW and Qld jurisdictions continue to disclose an unacceptable disparity; the roles and responsibilities of the elected officials, and the criteria required by the Act are almost identical, and yet mayors and councillors in Qld are in receipt of fees up to \$76,000 higher than their NSW counterparts.

LGNSW reaffirms its submission of previous years that this disparity serves only to frustrate the process of representative democracy at a local government level in NSW. Quality candidates who may otherwise have considered local office are at best, discouraged and at worst, disqualified from standing for election when the financial implications are properly considered.

Position	Total Revenue	Total FTE	Maximum Remuneration
Mayor Western Downs Regional Council	\$166.1M	564	\$141,294
Mayor Albury City Council	\$182M	543	\$64,390
<b>Difference in maximum fee payable to the Mayor of Western Downs Regional Council and the maximum fee payable to the Mayor of Albury City Council: \$76,904</b>			
Councillor Western Downs Regional Council	\$166.1M	564	\$75,061
Councillor Albury City Council	\$182M	543	\$26,070
<b>Difference in maximum fee payable to a Councillor of Lockhart Shire Council and the maximum fee payable to a Councillor of Albury City Council: \$48,991</b>			

Position	Total Revenue	Total FTE	Maximum Remuneration
Mayor Burke Shire Council	\$17.5M	54	\$114,801
Mayor Lockhart Shire Council	\$17M	53	\$28,430
<b>Difference in maximum fee payable to the Mayor of Burke Shire Council and the maximum fee payable to the Mayor of Lockhart Shire Council: \$86,371</b>			
Councillor Burke Shire Council	\$17.5M	54	\$57,400
Councillor Lockhart Shire Council	\$17M	53	\$13,030
<b>Difference in maximum fee payable to a Councillor of Burke Shire Council and the maximum fee payable to a Councillor of Lockhart Shire Council: \$44,370</b>			

There is no logical reason why Councillors and Mayors in New South Wales do not attract the same fees as their equivalents in Queensland. The criteria used by the respective Tribunals to make their assessments is almost identical, and the duties and responsibilities of each have a closely identifiable nexus.

# Increasing Workload of Councillors and Mayors

Many regional communities continue to suffer from the effects of disasters and crises which occurred in 2020/2021/2022 and 2023. In particular, Richmond Valley, Lismore, Upper Lachlan and Forbes are continuing to experience the aftershocks of major flooding in the area. These events have caused approximately 2.9 billion in damage to the community and have required councils in these regions to work cooperatively with the State government to administer disaster relief funds in ways which will most effectively restore these communities. Mayors and Councillors have been critical in assisting rebuilding efforts and in advocating disaster relief intervention. This represents a time commitment which would otherwise have not been required of elected representatives, and one for which they are not remunerated. Even more relevant is that in communities such as Lismore, categorised as a Regional Centre, a councillor can expect to receive between \$14,810 - \$26,070 annually. This is wholly inappropriate given the gravity of the situation being experienced by these communities, and the travel, time and communication required of elected representatives to assist in the rebuilding of their communities.

LGNSW accepts that individuals who stand for election for local government largely do so to serve their communities, and that local government ought not be a 'lucrative' career choice for those individuals. However, individuals should not be excluded from the democratic process on the basis of their financial position. A continuation of the current pattern of fee increases will see the continued and gradual erosion of local government in NSW, and an even more significant disparity between the demographics of individuals standing for election and those of the community they serve.

## Superannuation for Mayors and Councillors

Section 254B of the Act provides that superannuation contributions to councillors shall be made only in certain circumstances. Relevantly, sub-sections 254B(1) to (5) provide as follows:

- (1) *A council may make a payment (a "superannuation contribution payment") as a contribution to a superannuation account nominated by a councillor, starting from the financial year commencing 1 July 2022*

- (2) *The amount of a superannuation contribution payment is the amount the council would have been required to contribute under the Commonwealth superannuation legislation as superannuation if the councillor were an employee of the Council*
- (3) *A superannuation contribution payment is payable with, and at the same intervals as, the annual fee is payable to the councillor*
- (4) *A Council is not permitted to make a superannuation contribution payment –
  - a. *Unless the council has previously passed a resolution at an open meeting to make superannuation contribution payments to its councillors, or*
  - b. *If the councillor does not nominate a superannuation account for the payment before the end of the month to which the payment relates, or*
  - c. *To the extent the councillor has agreed in writing to forego or reduce the payment**
- (5) *The Remuneration Tribunal may not take superannuation payments into account in determining annual fees or other remuneration payable to a mayor or other councillor.*

It is clear that the payment of superannuation to Councillors and Mayors is not automatic; it is contingent on a resolution being passed by the council.

Importantly, sub-section 254B(5) of the Act prohibits the Tribunal from considering superannuation contribution payments or potential contribution increases flowing from these payments as part of the current review of the fees payable to Councillors and Mayors.

## **Conference Motions**

### **Deputy Mayors**

Arising out of the LGNSW Special Conference of March 2022, LGNSW wishes to draw the Tribunal's attention to the omission of Deputy Mayors from the Act, and by extension their inability to attract fees in connection with their role.

Deputy Mayors undertake significant responsibilities, including representing the Mayor in their absence, chairing committees, and playing a critical role in decision-making and advocacy. These duties demand extensive time, effort and expertise beyond what would otherwise be required of a councillor.

The Act provides at s 249(5) that:

*A Council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor's annual fee.*

LGNSW submits that this provision is inadequate for several reasons.

The Deputy Mayor does not attract a fee independent of the Mayor; time spent away by the Mayor is absorbed by the Deputy Mayor acting in that position. This also fails to recognise the elevated level of visibility and accountability of the Deputy Mayor, particularly in large communities where the Deputy Mayor is regularly required to act in place of the Mayor for community events and committee meetings.

This provision also fails to recognise the performance of these duties while the Mayor is present. This fails to account for situations wherein the Deputy Mayor may be required to fulfill the duties of the Mayor due to conflicting schedules, multiple engagements or where the workload of the Mayor is such that additional support is required.

On this basis, LGNSW submits that the position of Deputy Mayor ought to attract its own independent remuneration and be considered by the Tribunal as part of its Determination.

### **Removal of maximum and minimum fees**

LGNSW also brings the Tribunal's attention to the Policy Platform, which reflects the collective positions of local government on issues of importance and guiding LGNSW in its advocacy on behalf of the local government sector. In this regard, the Tribunal is advised that one such Policy Platform is to advocate for the repeal of section 241 of the Act, so that the Tribunal may determine the actual fees payable to Councillors and Mayors, as opposed to a minimum and maximum fee which then require each council to determine the actual fees and can lead to a politicising of the issue.

Determining the actual fees (and removal of the maximum and minimum fees) will create equity among councils in the state, particularly those which have been categorised in the same category. Presently, it is conceivable that neighbouring councils in the same category provide differing levels of remuneration to their Councillors and Mayors. The hypothetical nature of fee

increases in situations such as these are unnecessary, and equity can be achieved by the determination of a fixed fee applicable to each category identified by the Tribunal.

## Impacts of Low Remuneration

### Regional and Rural Councillors and Mayors

LGNSW wishes to again draw the Tribunal's attention to the remuneration which is payable to Councillors and Mayors of non-metropolitan councils in NSW. We accept that section 240 of the Act is prescriptive in the list of factors which may be considered, and that moreover the Tribunal is not considering the categorisation of councils for the purposes of its 2024 Annual Determination. However, the significant stressors facing regional and rural councils in NSW, in our view, ought to form a significant consideration for the Tribunal in its consideration of an appropriate fee increase, particularly in light of the repeal of section 146C of the IR Act.

It would be severely detrimental to the quality of candidature of local government if, by virtue of economic circumstance, only the wealthy or retired could plausibly stand for election. This does not engender a robust democratic process and disenfranchises already marginalised demographics from engaging in representative democracy at the local level. A fee increase of at least 10% will encourage participation from a broader range of people, who may not be retired, self-funded or otherwise independently wealthy.

Councillors and Mayors, much like the members of their communities, are similarly affected by the stressors outlined by the Fair Work Commission in the *Annual Wage Review*. It follows that similar consideration ought to be had for the financial health of Councillors and Mayors in a way that facilitates the ongoing service of their respective communities.

## Fee Increase - Quantum

For the reasons set out above, an increase in the fees payable to Councillors and Mayors of at least 10% for all categories is needed to:

1. reverse the fee erosion which occurred under the NSW Public Sector Wages Policy;
2. mitigate economic pressures and the rising cost of living (CPI);
3. ensure that Councillors and Mayors receive fair and reasonable remuneration for the work they perform; and

4. address the historic undervaluation of the work performed by elected representatives in local government in New South Wales.

## Conclusion

The existing fees payable to Councillors and Mayors are inadequate and fail to remunerate them for the responsibilities they undertake in serving their communities. The Tribunal is empowered, flowing from the repeal of section 146C of the IR Act, to award a substantial increase to the fees in its 2024 Determination. Based on economic data, a comparison with equivalent roles in the NFP sector and Qld local government sector and consideration of changes in the cost of living (CPI) and the Fair Work Commission's Annual Wage Review, a fee increase of at least 10% for all categories should be awarded.

An increase of this order will address the historic constraints placed on the Tribunal and allow for a fair increase which offsets the economic stressors currently being experienced by elected representatives across NSW. A fee increase of at least 10 percent will also serve to encourage greater participation in local government and will allow quality candidates from diverse economic, social, cultural and financial backgrounds to participate more freely in local government.