

# **LGNSW Submission- Councillor Superannuation Discussion Paper**

May 2020

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## **Opening**

Local Government NSW (**LGNSW**) is the peak body for Local Government in NSW which represents the interests of general-purpose councils and associate members in our State.

LGNSW is registered as an industrial organisation of employers under the *Industrial Relations Act 1996* (NSW) and separately under the *Fair Work (Registered Organisations) Act 2009* (Cth).

We thank the Office of Local Government for the opportunity to provide a written submission in response to the Discussion Paper issued in March 2020.

This is a draft submission awaiting endorsement by the LGNSW Board and any revisions will be provided in due course.

## **Local Government Remuneration Tribunal**

The Local Government Remuneration Tribunal (**Tribunal**) is required by legislation to give effect to the NSW State Government's *Public Sector Wages Policy* (**wages policy**) when determining the maximum and minimum fees to be paid to mayors and councillors.

Section 241 of the *Local Government Act 1993* ('LG Act') requires the Tribunal to determine the maximum and minimum amounts of fees to be paid during the following year to councillors (other than mayors) and mayors.

In its determination of 15 April 2019, the Tribunal awarded an increase of 2.5% in councillor and mayoral fees, considering key economic indicators and initiatives for Local Government reform.

LGNSW acknowledges the Tribunal's capacity to make determinations that would remunerate councillors and mayors adequately and fairly for sustained increases in workload and responsibility is currently hamstrung by the capped amount of 2.5 percent as per the wages policy.

## **Non-payment of superannuation to elected officials**

Councils in NSW are not required to make superannuation contributions equivalent to the Superannuation Guarantee on behalf of mayors and councillors. This is because fees paid by councils to mayors and councillors are not deemed salary, wages or ordinary time earnings for superannuation purposes. These circumstances are unsatisfactory. The time and commitment involved in performing the duties of an

elected local government official requires many councillors to forsake other activities that would attract income and employer superannuation contributions.

The position in NSW differs vastly to Victoria and Queensland where councils are required to make Superannuation Guarantee Contributions (**SGC**) on behalf of their councillors, in addition to the minimum fees payable.

In 2008, the Victorian Local Government Councillor Remuneration Review Panel handed down a recommendation that remuneration for councillors whose councils are not an Eligible Local Government Body (**ELGB**) should include a 9 percent payment equivalent to the application of the Superannuation Guarantee (currently 9.5 percent). As a result of this recommendation, elected members in Victoria were brought into line with community standards.

Section 226 of the Local Government Act 2009 (Qld) (the QLD LG Act) provides that:

(1) A local government (other than the Brisbane City Council) may, for its councillors—

(a) establish and amend a superannuation scheme; or

(b) take part in a superannuation scheme.

(2) If it does so, the local government may pay an amount from its operating fund to the superannuation scheme as a contribution for its councillors.

(3) However, the local government must not make contributions to the superannuation scheme—

(a) of more than the proportion of a salary that is payable by the local government for its standard permanent employees under this part; or

(b) for a person who is no longer a councillor.

(4) A councillor of the local government may enter into an arrangement with the local government under which—

(a) the councillor agrees to forgo a percentage or amount of the remuneration that the councillor is entitled to as a councillor; and

(b) the local government agrees to contribute the percentage or amount to the superannuation scheme for the councillor.

The QLD LG Act states that a Local Government may participate in a superannuation scheme for the benefit of its councillors by paying an amount from its operating fund to the superannuation scheme as a contribution for its councillors. The NSW LG Act contains no similar provision.

Currently NSW councils may resolve to allow councillors to sacrifice a portion of their fees into a complying superannuation fund on a pre-tax basis. This requires councils to pass a unanimous resolution to become an ELGB under section 14-45 (1) (e) of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (Tax Act). It is only where such a unanimous resolution is made that councillors are regarded as employees for the purposes of the Tax Act and SGC is payable (currently 9.5 percent). Where a

council has become an ELGB by way of resolution, the superannuation contribution is payable to the councillors is derived from the fees payable and is not an additional payment. It should be noted that this is entirely optional and reduces the 'take home' component of the fees for councillors who utilise this option. The inadequacy of current fees means that many councillors simply do not have the financial capacity to do so.

### **Adequate remuneration of elected officials**

In 2018, LGNSW engaged Mastertek Pty Ltd (**Mastertek**) to conduct an independent review of the remuneration paid to elected councillors and mayors. The review was conducted to assess the view of LGNSW that fees did not adequately reflect councillors' and mayors' increased statutory responsibilities, in addition to the time and nature of work undertaken on behalf of their communities.

Mastertek prepared a report analysing the findings (a copy of this report is attached and marked "**Attachment 1**"). We draw your attention to the key findings of the report which form the conclusions and recommendations.

### ***Clarification of the role***

A key consideration of the review was whether the roles of elected representatives are full-time roles and whether they should be remunerated as such.

An overwhelming 86.9% of respondents reported that the role has become more complex over time, highlighting the expansion of the role of a councillor. It is noted that this increasing complexity has a direct impact on the time requirements of the role.

The survey found that respondents spent an average of 45.6 hours per week fulfilling their duties as a councillor. In many cases the requirements of the role are in excess of the hours worked in a standard full-time position of 38 hours, according to the *Fair Work Act 2009* (Cth) definition. Whilst not advocating for the role of councillor to be considered full-time, the observation has been made that in many cases the role could be full-time comparable, and councils should have the ability to remunerate them as such where appropriate.

### ***Impact of Current Remuneration Arrangements***

Recognising the increased complexity of the role and time commitments associated, the next question addressed in the survey considered the impact of the current remuneration arrangements on the pool of individuals that are willing and able to stand for office.

The survey findings clearly indicate that those who do not have the appropriate financial circumstances are unable to undertake the equivalent of a full-time role

without reasonable recompense. 53.3% of respondents reported that since becoming a councillor their annual income has decreased.

When asked about their occupation, 1 in 5 councillors (20.3%) noted they are fully retired. Only 8.2% of all councillors receive no financial support other than the fees they receive from council.

The profile of a councillor in NSW currently reflects a pool of candidates which are largely retired, semi-retired or independently wealthy. An increase to the fees paid to elected representatives, through mandatory superannuation contributions will help improve the quality of candidates and broaden the pool of potential future councillors, to ensure better community representation.

Governance experts and practitioners alike recognise that governing bodies with members from diverse backgrounds can achieve superior results for their communities, they need to attract a diverse array of talented individuals to serve as mayors and councillors. Women and men in the middle of their careers, younger adults, and people who care for dependent others are examples of the talent pools from which local government draws relatively few elected leaders. To attract top talent, the Local Government sector should offer compensation, including superannuation, comparable to that available from the work activities mayors and councillors forgo in order to serve on councils.

### **Historical denial of superannuation guarantee payment to mayors and councillors**

LGNSW is of the view that it is appropriate to draw comparisons between the remuneration of councillors and State MPs. Both councillors and State MPs:

- undertake activities representing the interests of their constituents;
- attend State, Commonwealth and Local Government functions;
- participate in the activities of recognised political parties, including national State and regional conferences, branch meetings, electorate council meetings, executive meetings and committee meetings;
- are elected by their communities; and
- are accessible by the public to receive petitions, complaints and the like

It is due to the identified similarities between councillors and State MPs, that councillor remuneration is insufficient when measured against their skill, competence and training. There is a clear nexus between the roles and responsibilities of elected members in Local Government and NSW State MPs, and as such it is reasonable to expect the remuneration of these elected members be better aligned.

Despite the fact that NSW councillors, politicians and public servants are all subject to a 2.5% cap on increases in remuneration under the NSW Government's wages policy, only NSW politicians and public servants have received the benefit of mandatory superannuation contributions, in addition to a 2.5% increase in remuneration.

For NSW councillors who forgo paid employment to perform their duties as an elected official, not only does this result in a decrease of income, it also results in loss of superannuation, which can have a detrimental impact when they reach retirement age.

	Minimum Super Guarantee (%)	Increase to Super Guarantee from previous year	NSW Parliament Super Contribution	Federal Parliament Super Contribution*
1 July 2013 – 30 June 2014	9.25	+0.25%	12.5%	11.5%
1 July 2014 – 30 June 2015	9.50	+0.25%	12.5%	11.5%
1 July 2015 – 30 June 2016	9.50	n/a	12.5%	11.5%
1 July 2016 – 30 June 2017	9.50	n/a	12.5%	11.5%
1 July 2017 – 30 June 2018	9.50	n/a	12.5%	11.5%
1 July 2018 – 30 June 2019	9.50	n/a	12.5%	11.5%
1 July 2019 – 30 June 2020	9.50	n/a	12.5%	11.5%
1 July 2020 – 30 June 2021	9.50	n/a	n/a	n/a
1 July 2021 – 30 June 2022	10.00	+0.5%	n/a	n/a
1 July 2022 – 30 June 2023	10.50	+0.5%	n/a	n/a
1 July 2023 – 30 June 2024	11.00	+0.5%	n/a	n/a

1 July 2024 – 30 June 2025	11.50	+0.5%	n/a	n/a
1 July 2025 – 30 June 2026	12.00	+0.5%	n/a	n/a

\*Superannuation contribution rates for Federal MPs are 11.5% for the first 18 years of service and 5.75% thereafter

In July 2021, the Superannuation Guarantee will increase by a further 0.5 percent to 10 percent. NSW State MPs will continue to receive a mandatory superannuation contribution which is 2.5 percent above the legislated minimum, in addition to a wage increase of 2.5 percent. With anticipated annual increases of 0.5 percent from July 2021 onwards, failure to mandate compulsory superannuation for NSW councillors now will only see them fall further behind NSW politicians and public servants with respect to remuneration.

### **Women and superannuation**

It is well documented that gender-based difference in workforce participation and caring responsibilities impact on women's ability to access paid work more than men. Despite the increased workforce participation of women in Australia, there is still a significant disparity between the retirement incomes of men and women.

The Australian Bureau of Statistics notes that superannuation balances for women approaching retirement are 37 percent lower than men. The average superannuation balance for women approaching retirement was \$196,000, in comparison to men with \$310,000.<sup>1</sup>

Research by the Association of Superannuation Funds of Australia (ASFA) indicates that the average superannuation balance for women in 2016 was approximately 40% less than for men. Younger women experience greater gaps in their superannuation contributions as they are more likely to be establishing their family around this point in time. During this period women will experience lower or no superannuation contributions as a direct result of reducing their paid work.

Whilst graduate employment rates for women are high, their salaries are lower in comparison to their male counterparts. These factors have significant long-term impact on women's superannuation balances from which they cannot recover.

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<sup>1</sup> Australian Bureau of Statistics, 2018, *Gender Indicators, Australia*, cat no. 4125.0



If this younger cohort aspire to participate in local government, they are already playing 'catch-up' to their male counterparts and face further disadvantage once elected, given that NSW councils are not required to make superannuation contributions.

We note the observation made by the Office of Local Government that male mayors and councillors would primarily benefit in the short term, given the current make-up of elected officials in NSW. Rather than focusing upon individuals who are currently in office, the purpose and benefits of mandating superannuation contributions for mayors and councillors is to attract candidates over the longer term.

LGNSW recognises that lack of access to superannuation is not the only variable which impacts upon the participation of women in local government. However, this is particularly significant where mayoral and councillor fees are the primary source of income for female mayors and councillors.

Whilst the 2016-17 local government elections saw the highest percentage of female mayors, the actual number of women, the actual number of women who stood for election dropped by three percent.<sup>2</sup>

This further illustrates that measures need to be taken to remove barriers to women's participation in local government. Requiring the compulsory payment of superannuation to mayors and councillors would help bridge the superannuation gender gap and assist in attracting more women as candidates for local government.

### **Should councils be required to make superannuation contributions for the mayor and councillors?**

To enhance local government's capacity to attract talented individuals as elected leaders, legislative changes should be introduced, mandating that councils contribute to complying superannuation funds on behalf of mayors and councillors. These compulsory contributions should be additional to fees already paid to mayors and councillors, and should be calculated as if mayors' and councillors' fees were deemed ordinary time earnings for the purpose of the *Superannuation Guarantee (Administration) Act 1992*. By strengthening local government's ability to recruit diverse, talented elected officials, such legislative changes would provide significant benefits to NSW communities.

The Federal Government's growing responsibility in relation to the age pension and superannuation policy has resulted in a shift in community attitudes regarding superannuation. As such, payment of Superannuation Guarantee Contributions (SGC)

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<sup>2</sup> Office of Local Government, *NSW Candidate and Councillor Diversity Report 2017*

has become a community standard. We see no reason why elected members in NSW should be treated differently in this regard.

Remuneration offered to councillors in NSW has fallen significantly in comparison to the remuneration of elected representatives in other states. The absence of legislation requiring the payment of SGC to councillors further demonstrates this.

Proposed changes requiring mandatory payment of SGC will ensure that all councillors, irrespective of whether or not their council is an ELGB, receive superannuation contributions. These changes are critical to strengthening local government's ability to recruit diverse and talented individuals.

LGNSW acknowledges the submissions made by individual councils with respect to their feedback regarding the Discussion Paper. We thank the Office of Local Government for the opportunity to provide a submission in response to the Discussion Paper.

### **Recommendation**

We recommend that the *Local Government Act 1993* (NSW) is amended, requiring councils to pay an amount equivalent to the superannuation guarantee into a complying superannuation fund nominated by the mayor and councillors in addition to the payment of the mayors' and councillors' fees.

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