



Office of  
Local Government

# COUNCILLOR SUPERANNUATION

**Discussion paper**

**March 2020**

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## Minister's foreword

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Since becoming the Minister for Local Government, I have actively engaged with local councils across New South Wales. I am constantly impressed by the passion held by our mayors and councillors, and frequently find myself commenting on the incredible work ethic of many who continually deliver for their communities.

I am proud to be a part of a Government that is committed to supporting councils to deliver for their local communities. Since 2011 this Government has provided more than \$9 billion to local councils to deliver and improve local infrastructure, services and facilities for their communities. About half of this funding has gone to regional and rural communities which are struggling through one of the worst droughts on record and are recovering and rebuilding after the recent natural disasters. This funding boost has helped local councils provide the very things that make our communities tick – from local infrastructure to essential services and programs that unite local residents.

Under Commonwealth legislation, councils are not required to make superannuation contributions in relation to the fees they pay to mayors and councillors because they are not employees of councils. Recently I was pleased to host a workshop where the obstacles that deter women from nominating to be a councillor or mayor were identified, and the lack of superannuation payments was one of the barriers raised. It can also be said that this goes some way in deterring people under 35 from representing their community on their local council.

As you know, mayors and councillors currently receive a level of remuneration that is independently set by the Local Government Remuneration Tribunal based on the application of a range of criteria. It is currently possible for councils to make superannuation contributions on behalf of mayors and councillors on a pre-tax basis out of the fees they receive from the council as determined by the Tribunal.

However, the Government recognises that not everyone agrees with the current arrangements and acknowledges the calls for councils to be required to make superannuation contributions on behalf of mayors and councillors in addition to the payment of their fees. The purpose of this discussion paper is to encourage further discussion about this issue and assist the Government in better understanding the views of the local government sector and the broader community.

The discussion paper:

- provides information on the current system for setting councillor remuneration and the legislation governing superannuation contributions for elected officials
- sets out the arguments for and against the payment of superannuation contributions for mayors and councillors, and
- provides different options and legislative models.

I welcome your input into this conversation and look forward to hearing your views.

**The Hon Shelley Hancock MP**  
**Minister for Local Government**

# 1. Should mayors and councillors in NSW receive superannuation payments in addition to their fees?

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Reasons that mayors and councillors should receive superannuation payments in addition to their fees can be summarised as follows:

- it will ensure that mayors and councillors are adequately remunerated for the performance of their duties
- it will address a historic anomaly that has seen mayors and councillors denied the benefit of superannuation guarantee payments enjoyed by the broader workforce, and
- it is hoped it will encourage more women to stand as candidates for election to councils.

Each of these arguments are examined below.

## Are NSW mayors and councillors adequately remunerated?

In NSW, the remuneration received by mayors and councillors is independently set by an expert tribunal, the Local Government Remuneration Tribunal.

Under section 239 of the NSW *Local Government Act 1993* (the Act), the Tribunal is required to determine the categories of councils and mayoral offices and to place each council and mayoral office into one of those categories. The categories are to be determined at least once every 3 years.

To ensure that mayors and councillors receive remuneration that is commensurate with, and reflects their workload and responsibilities, the Tribunal is required to consider a range of criteria under section 240 of the Act in determining remuneration categories. These include:

- the size, physical terrain, population and the distribution of the population of each local government area
- the nature and volume of business dealt with by each council
- the nature and extent of the development of each local government area
- the diversity of the communities each council serves
- the regional, national and international significance of the council, and
- any other matters the Tribunal considers relevant to the provision of efficient and effective local government.

The Tribunal last undertook a significant review of the categories and the allocation of councils into each of the categories in 2017. The Tribunal has indicated that it will next consider the model, the criteria applicable to each group and the allocation of councils in detail in 2020.

Under section 241 of the Act, the Tribunal is required to determine, no later than 1 May in each year, for each of the categories determined under section 239, the maximum and minimum amount of fees to be paid to mayors and councillors of councils, as well as chairpersons and members of county councils.

As noted above, in determining the maximum and minimum fees payable in each of the categories, the Tribunal is required under section 242A(1) of the Act, to give effect to the same policies on increases in remuneration as the Industrial Relations Commission.

The current policy on wages is that public sector wages cannot increase by more than 2.5 per cent, and this includes the maximum and minimum fees payable to councillors and mayors and chairpersons and members of county councils.

However, the Tribunal is able to determine that a council can be placed into another existing or a new category with a higher range of fees without breaching the Government’s wage policy pursuant to section 242A(3) of the Act. This means that where, for whatever reason, the workload or responsibilities of the mayor and councillors increase, they may receive an increase in remuneration that reflects their increased workload even if that increase exceeds the 2.5% public sector wages cap.

The current remuneration levels for mayors and councillors in each category are set out below:

**Table 1: Minimum and maximum fees for NSW mayors and councillors**

Category		Councils in Category	Councillor/Member Annual Fee		Mayor/Chairperson Additional Fee*	
			Minimum	Maximum	Minimum	Maximum
General Purpose Councils – <b>Metropolitan</b>	Principal CBD	1	27,640	40,530	169,100	222,510
	Major CBD	1	18,430	34,140	39,160	110,310
	Metropolitan Large	8	18,430	30,410	39,160	88,600
	Metropolitan Medium	9	13,820	25,790	29,360	68,530
	Metropolitan Small	11	9,190	20,280	19,580	44,230
General Purpose Councils – <b>Non - metropolitan</b>	Regional City	2	18,430	32,040	39,160	99,800
	Regional Strategic Area	2	18,430	30,410	39,160	88,600
	Regional Rural	37	9,190	20,280	19,580	44,250
	Rural	57	9,190	12,160	9,780	26,530
<b>County Councils</b>	Water	4	1,820	10,140	3,920	16,660
	Other	6	1,820	6,060	3,920	11,060

- Mayors and county council chairpersons receive their fee **in addition to** the fee they receive as a councillor/member.

A comparison of average remuneration received by mayors and councillors in NSW with the remuneration received by their counterparts in other jurisdictions indicates that NSW councillors receive similar or higher levels of remuneration than their counterparts in other jurisdictions other than Queensland.

**Table 2: Interjurisdictional comparison of councillor remuneration (as paid at March 2020)**

Jurisdiction	Average	Lowest Fee	% NSW fee	Highest fee	% NSW fee
NSW	24,860	9,190		40,530	
QLD	141,066	53,049	577%	160,938	397%
VIC	27,999	8,833	96%	47,165	116%
TAS	23,372	9,546	104%	37,198	92%
WA	17,634	3,589	39%	31,678	78%
NT <sup>1</sup>	13,283	4,428	48%	22,137	55%
SA	16,215	6,500	71%	25,930	64%

**Table 3: Interjurisdictional comparison of mayors' remuneration (as paid at March 2020)**

Jurisdiction	Average	Lowest Fee	% NSW fee	Highest fee	% NSW fee
NSW	141,005	18,970		263,040	
QLD	185,824	106,100	1,030%	265,549	101%
VIC	131,877	62,884	331%	200,870	76%
TAS	58,430	23,863	125%	92,997	35%
WA	94,443	4,102	22%	184,784	70%
NT	73,856	24,619	130%	123,093	47%
SA	101,500	26,000	137%	177,000	67%

<sup>1</sup> NT's councillor and mayoral fees are based on the Councillor Member Allowances for July 2018-2019

## Have NSW mayors and councillors been denied a financial benefit received by other members of the workforce through the payment of the superannuation guarantee?

The superannuation guarantee was introduced in 1992-93, with compulsory contributions rising at regular intervals from 3 per cent of wages in that year to 9 per cent in 2002-03 and 9.5 per cent in 2013-14. The superannuation guarantee is scheduled to rise incrementally from 9.5 per cent of wages today to 12 per cent by July 2025.

While superannuation guarantee payments are made in addition to an employee's wages, as the Grattan Institute has demonstrated<sup>2</sup>, higher compulsory superannuation contributions are ultimately funded by lower wages. When the superannuation guarantee increases, this is wholly or mostly borne by workers who receive smaller pay rises and lower take-home pay. For example, when the superannuation guarantee increased by from 9 per cent to 9.25 per cent in 2013, the Fair Work Commission stated in its minimum wage decision that the proposed minimum wage increase was *"lower than it otherwise would have been in the absence of the Super Guarantee increase"*.

Given the evidence that superannuation guarantee payments are in effect paid for by workers through lower wages, it would be over simplifying the situation to assume that workers are receiving a 9.5% supplementary payment that is being denied to NSW mayors and councillors.

The last increase in the superannuation guarantee came into effect in 2013/14 when the contribution rate increased from 9.25% to 9.5%. A comparison of increases in average weekly earnings with increases in NSW mayors' and councillors' remuneration as determined by the Tribunal since then indicates that NSW mayors and councillors have, on average, enjoyed slightly higher increases in remuneration than the rest of the community.

**Table 4: Comparison of increases in average weekly earnings with increases in mayors' and councillors' remuneration**

Financial year	Average weekly ordinary time earnings Aust - annual average increase June to June each year	Councillor remuneration increase 1 July
1 July 2014 – 30 June 2015	2.3%	2.5%
1 July 2015 – 30 June 2016	2.0%	2.5%
1 July 2016 – 30 June 2017	2.2%	2.5%
1 July 2017 – 30 June 2018	1.8%	2.5%
1 July 2018 – 30 June 2019	2.7%	2.5%
1 July 2019 – 30 June 2020	3.1%	2.5%

<sup>2</sup> See John Daley and Brendan Coates (2018) [Money in retirement: More than enough](#). Grattan Institute. November 2018

Were councils to be required to make an additional payment on behalf of mayors and councillors equivalent to the superannuation guarantee amount (currently 9.5% of their fees) this would, in effect confer on mayors and councillors a 9.5% increase in their remuneration outside of the normal process for setting mayors' and councillors' remuneration by the Local Government Remuneration Tribunal.

This will not be a one-off increase. With the superannuation guarantee set to increase to 12% in the years up to 2025, this would see further increases to mayors' and councillors' remuneration over and above any increases approved by the Tribunal.

While the receipt of a 9.5% increase in their remuneration through the payment of the superannuation guarantee is likely to be widely supported by mayors and councillors, it is important that the community is consulted and support shown by them before changes are made.

At present it is not clear whether ratepayers would support seeing the revenue they contribute to their local councils being diverted from providing services and infrastructure to fund a 9.5% increase in remuneration for their elected representatives.

### **Will payment of the superannuation guarantee encourage more women to stand as candidates at council elections?**

Payment of the superannuation guarantee for mayors and councillors has been promoted as an equity measure to address disparities in men's and women's superannuation balances.

Research has demonstrated that the principal impediments to more women standing as candidates at local government elections are:

- lack of awareness of local government and the role of councils and councillors
- feeling unqualified
- balancing carer and work commitments
- the investment of time required to be an effective councillor, and
- perceptions of the culture of councils and councillor conduct.<sup>3</sup>

The payment of the superannuation guarantee would benefit male and female councillors alike. In the short term, male mayors and councillors will be the principal beneficiaries of any increase in remuneration through the receipt of an additional superannuation payment given that they currently comprise 69% of councillors in NSW<sup>4</sup>.

Major stakeholders promoting an increase in the number of females represented on councils including Local Government NSW, Women for Election Australia, Australian Local Government Women's Association and the Country Women's Association of NSW recently noted that *"a key barrier for women standing for election to local government can be the lack of access to superannuation, with women unwilling to take on more work with insufficient remuneration"*. The stakeholders also noted *"women tend to have far lower superannuation balances than men, often due to time out of the workforce caring for family members"*.

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<sup>3</sup> See Manion, Jo and Sumich, Mark (2013), [Influencing Change – Views of elected representatives on leadership, decision making and challenges for Local Government in NSW](#)

<sup>4</sup> See Office of Local Government (2019), [NSW Candidate and Councillor Diversity Report 2017](#)



## Will payment of the superannuation guarantee encourage younger people to stand as candidates at council elections?

Two separate studies undertaken by the University of Melbourne in 2014<sup>5</sup> and 2015<sup>6</sup> found that younger people tend not to be engaged by and are uninterested in superannuation or retirement planning. HECS repayments and saving to purchase a first home tend to be higher financial priorities for younger people than saving for retirement.

The average tenure of councillors is between one to two terms. More than three quarters (77%) of councillors elected at the 2012, 2016 and 2017 elections had served two terms or less. Assuming that councillors were to receive the superannuation guarantee of 9.5% with respect to their fees over one or two terms, as demonstrated by table 5, the value of the capital contributions made to their superannuation funds would, at retirement, represent a small proportion of their accumulated lifetime superannuation capital.

**Table 5: Comparison of superannuation contribution amounts that would be made on the maximum annual fee in each category of council at a rate of 9.5% over 1 term (4 years) and 2 terms (8 years).**

Category		Number of Councils in Category	Councillor/Member Maximum Annual Fee	4 years at 9.5%	8 years at 9.5%
General Purpose Councils – <b>Metropolitan</b>	Principal CBD	1	40,530	15,401	30,802
	Major CBD	1	34,140	12,973	25,946
	Metropolitan Large	8	30,410	11,556	23,112
	Metropolitan Medium	9	25,790	9,800	19,600
	Metropolitan Small	11	20,280	7,706	15,412
General Purpose Councils – <b>Non-metropolitan</b>	Regional City	2	32,040	12,175	24,350
	Regional Strategic Area	2	30,410	11,556	23,112
	Regional Rural	37	20,280	7,706	15,412
	Rural	57	12,160	4,621	9,242
<b>County Councils</b>	Water	4	10,140	3,853	7,706

<sup>5</sup> See Ali, Paul and Anderson, Malcolm and Clark, Martin and Ramsey, Ian and Shekhar, Chander (2014), [Superannuation Knowledge, Behaviour and Attitudes in Young Adults in Australia](#). CIFR Paper No. RP002/2014

<sup>6</sup> See Ali, Paul and Anderson, Malcolm and Clark, Martin and Ramsey, Ian and Shekhar, Chander (2015), [No Thought for Tomorrow: Young Australian Adults' Knowledge, Behaviour and Attitudes About Superannuation](#). Law and Financial Markets Review Vol. 9, No. 2, pages 90-105

	Other	6	6,060	2,303	4,606
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## How much will it cost and who will pay?

The cost of paying the superannuation guarantee for mayors and councillors will need to be met by each council out of its existing budget.

This cost will vary from council to council depending on what fees the mayor and councillors receive and how many councillors there are on the council. The table below sets out the average annual cost to councils in each remuneration category of paying the 9.5% superannuation guarantee for the mayor and each councillor based on the maximum annual fee payable in each category.

The total estimated annual cost of paying the 9.5% superannuation guarantee for mayors and councillors for the local government sector as whole is close to \$3 million (\$2,758,739).

**Table 6: Average annual cost to councils of making a 9.5% superannuation contribution for mayors and councillors**

Category		Councils in Category	Average annual cost of paying 9.5% superannuation contribution for mayors and councillors
General Purpose Councils – <b>Metropolitan</b>	Principal CBD	1	55,792
	Major CBD	1	55,886
	Metropolitan Large	8	45,973
	Metropolitan Medium	9	35,911
	Metropolitan Small	11	21,541
General Purpose Councils – <b>Non-metropolitan</b>	Regional City	2	46,007
	Regional Strategic Area	2	45,973
	Regional Rural	37	21,543
	Rural	57	11,762
<b>County Councils</b>	Water	4	9,289
	Other	6	5,081

## **2. Why are councils not required to make superannuation guarantee payments to mayors and councillors?**

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The Commonwealth *Superannuation Guarantee (Administration) Act 1993* (SG Act) imposes an obligation on an employer to pay the superannuation guarantee of 9.5% of an employee's earnings to a complying superannuation fund nominated by the employee.

The obligations under the SG Act do not extend to councils with respect to the fees they pay to mayors and councillors because they are not employees of the council for the purposes of that Act. Mayors and councillors are elected to a civic office in the council and the council is not their employer.

Section 12(9A) of the SG Act expressly excludes mayors and councillors across Australia from the definition of "employee" meaning that councils are not obliged to make superannuation guarantee payments to mayors and councillors under that Act. Section 12(9A) of the SG Act provides that, "*a person who holds office as a member of a local government council is not an employee of the council*".

Section 251 of the NSW Local Government Act also makes it clear that the payment of a fee to a mayor or councillor does not constitute the payment of a salary and mayors and councillors are not to be taken to be employees of councils because of the payment of the fee.

## **3. Can NSW councils make superannuation contributions on behalf of mayors and councillors as a component of their fees?**

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There is nothing currently preventing councils from making superannuation contributions on a voluntary basis on behalf of the mayor and councillors.

The Australian Tax Office has made a definitive ruling, (ATO ID 2007/205) that allows for mayors and councillors to redirect their annual fees into superannuation on a pre-tax basis.

In practical terms, there is nothing currently preventing mayors and councillors, who wish to make concessional contributions to their superannuation funds, from entering into an arrangement with their council under which they agree to forego part of their remuneration in exchange for the council making contributions to a complying superannuation fund on their behalf on a pre-tax basis.

Councils are also able to determine for themselves, by council resolution and/or within an appropriate council policy, if and how councillors may do this.

## 4. Can NSW councils make superannuation contributions on behalf of mayors and councillors *in addition to the payment of their fee?*

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It is open to councils under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the Commonwealth *Taxation Administration Act 1953* (TAA) to resolve that mayors and councillors are subject to Pay As You Go withholding. The resolution must be unanimous to be effective.

A resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA operates to take the mayor and councillors out of section 12(9A) of the SG Act, which recognises that they are not employees of the council, and brings them within section 12(10) of the SG Act which states that:

*A person covered by paragraph 12-45(1)(e) in Schedule 1 to the Taxation Administration Act 1953 (about members of local governing bodies subject to PAYG withholding) is an employee of the body mentioned in that paragraph.*

Section 12(1) effectively deems the mayor and councillors to be employees and the council to be their employer for the purposes of the SG Act. This will mean the council will be obliged to make superannuation guarantee contributions (currently 9.5% of the mayor's and councillors' fees) to complying superannuation funds in respect of fees paid to the mayor and councillors. These contributions would be paid in addition to the fees received by the mayor and councillors.

It should be noted however that a resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA will also result in mayors and councillors being treated as employees for a wide range of other taxation purposes. Among other things:

- the council will have to withhold amounts from the payment of fees to the mayor and councillors in accordance with section 12-45(1)(e) of Schedule 1 of the TAA
- the council will be subject to fringe benefits tax under the Commonwealth *Fringe Benefits Tax Assessment Act 1986* on the taxable value of expenses paid to and facilities provided to the mayor and councillors under the council's councillor expenses and facilities policy adopted under section 252 of the LGA, and
- the council will be obliged under Commonwealth *Child Support (Registration and Collection) Act 1988* to withhold payments from fees paid to the mayor and councillors for the purposes of making child support/maintenance/carer payments.

It is unclear however whether a resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA is permissible under sections 248(2) and 249(3) of the Act where it would have the consequence of requiring a council to make a superannuation guarantee contribution in respect of the fees paid to councillors and the mayor that, taken together with their fees, exceeds the maximum amount determined by the Local Government Remuneration Tribunal.

It is also unclear what impact section 242A of the Act would have in relation to a council's resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA. Section 242A of the Act places an obligation on the Local Government Remuneration Tribunal when determining the remuneration of mayors and councillors, to apply the same policies on increases in remuneration as those that the Industrial Relations Commission is required to apply under section 146C of the NSW *Industrial Relations Act 1996* when making or varying awards or orders relating to the conditions of employment of public sector employees.

It is possible that where a council is obliged to make superannuation guarantee contributions on behalf of the mayor and councillors in addition to their fee, the Tribunal may, in turn, be obliged under section 242A to make a determination reducing the mayor's and councillors' fees to ensure that the fee and superannuation contribution do not result in an increase that exceeds the 2.5% public sector wages cap.

## 5. What is the position in Queensland?

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Section 226 of the Queensland *Local Government Act 2009* gives councils the option to pay an amount into a complying superannuation fund on behalf of the mayor and councillors up to an amount payable with respect to employees of the council. The amount paid is in addition to the amount the mayor and councillor receive as a fee. Alternatively, councils may contribute a portion of the mayor's or councillors' fees to complying superannuation fund as is the case in NSW.

## 6. Options

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### **Option 1: Maintaining the status quo**

Under this option, councils will continue not to be obliged to make superannuation guarantee payments on behalf of the mayor and councillors. Mayors and councillors who wish to make concessional contributions to their superannuation funds can continue to enter into an arrangement with the council under which they agree to forego part of their fee in exchange for the council making contributions to a complying superannuation fund on their behalf on a pre-tax basis.

### **Option 2: Amending the NSW *Local Government Act 1993* to require councils to pay a portion of the mayor's and councillors' fees equivalent to the superannuation guarantee amount into a complying superannuation fund nominated by the mayor and councillors.**

Under this option, the Act would be amended to require councils to pay a proportion of the mayor's and councillors' fees equivalent to the superannuation guarantee amount into a complying superannuation fund nominated by the mayor and councillors.

### **Option 3: Amending the NSW *Local Government Act 1993* to require 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 mayor's and councillors' fees.**

Under this option, all councils will be required to pay an amount equivalent to the superannuation guarantee contribution payable with respect to the mayor's and councillors' fees, into a complying superannuation fund nominated by the mayor and councillors. The payment would be made in addition to the payment of the mayor's and councillors' fees.

A supporting amendment would be required to exempt the additional payment from section 242A of the Act.

### **Option 4: Amend the NSW *Local Government Act 1993* to give councils the option to pay an amount equivalent to the superannuation guarantee into a**

## **complying superannuation fund nominated by the mayor and councillors in addition to the mayor's and councillors' fees.**

This option is based on the Queensland model. Under this option, the payment of an additional superannuation contribution in addition to the mayor's and councillors' fees would be optional for councils. Councils would also have the option to make a superannuation contribution on behalf of the mayor and councillors as a portion of the mayor's or councillors' fees.

As with option 3, a supporting amendment would be required to exempt the additional payment from section 242A of the Act.

## **7. Have Your Say**

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We now want to hear from you.

### **Key questions to consider**

- **Should councils be required to make superannuation contributions for the mayor and councillors?**
- **Should contributions be made as a portion of mayors' and councillors' fees or in addition to them?**
- **Which is your preferred option?**
- **Do you have an alternative suggested option?**

Submissions may be made in writing by COB Friday 7 August 2020 to the following addresses.

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#### **Email:**

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Submissions should be labelled 'Councillor Superannuation Consultation' and marked to the attention of OLG's Council Governance Team.

### **Further information**

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