

**Report to General Manager**

Attachments:

1. Draft Submission

SUBJECT: Councillor Superannuation - Draft Submission**AUTHOR:** Jenny Gleeson, Manager Integrated Planning and Special Projects**ENDORSED BY:** Margaret Palmer, Director Corporate Services**EXECUTIVE SUMMARY:**

The Office of Local Government (OLG) issued a Discussion Paper on 3 March 2020 seeking the views of councils and their communities, on whether councillors should receive superannuation payments.

The Discussion Paper was prompted by concerns raised by the local government sector that the ineligibility of councillors to receive superannuation payments is inequitable and is a deterrent to more women and younger people standing as candidates at council elections. Under the *Commonwealth Superannuation Guarantee (Administration) Act 1993*, councils across Australia are not required to make superannuation contributions in relation to the fees they pay to Mayor and Councillors. This is because Mayor and Councillors are elected to a civic office in a council and are not employees of the council. This has been addressed with varying approaches through the relevant Local Government legislation or Councillor remuneration arrangements in different states.

The Discussion Paper seeks views on four options:

1. *maintain the status quo* - mayors and councillors can continue to voluntarily contribute a portion of their fees to a complying superannuation fund of their choice.
2. *mandate the current voluntary situation* - amend the *Local Government Act 1993* (the Act) to make it compulsory for councils to pay a portion of the mayors' and councillors' fees equivalent to the superannuation guarantee amount into a complying superannuation fund nominated by the mayor and councillor.
3. *mandate compulsory payment of superannuation guarantee in addition to fees* - amend the Act to make it compulsory for 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 mayor's and councillors' fees. This option is based on the Victorian model.
4. *mandate compulsory payment of superannuation guarantee in addition to fees* - amend the Act to allow councils to voluntarily 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 means that the payment of councillor superannuation in addition to their fee would be at each council's discretion, allowing the council to consider its resources and the local community's views. This option is based on the Queensland model.

A draft submission has been prepared for Council's consideration (Attachment 1). Submissions close 8 May 2020. Attachment 1 recommends support for Option 3, requiring councils by legislative amendment to pay superannuation in addition to the mayor and councillor fees, as it removes inequity and gives increased recognition to the contributions of elected officials, as well as makes running for elected office more appealing to women and younger people.

FINANCIAL IMPLICATIONS:

The Mayor and Councillor fees are determined annually by the Local Government Remuneration Tribunal. Sections 248 and 249 of the NSW *Local Government Act 1993* require councils to fix and pay an annual fee based on the Tribunal's determination.

North Sydney Council is currently classified as "Metropolitan Small". The maximum fees for 2019/20 are: Mayor \$44,230 (Section 249(2) of the *Local Government Act 1993* requires this fee to be paid in addition to the fee paid to the Mayor as a Councillor); and Councillors \$20,280 each (x 10, inclusive of the Mayor). This is a significant reduction on pre-2017 Councillor remuneration when North Sydney was classified as "Metropolitan Centre".

The estimated annual cost (based on 2020/21 remuneration) of paying the 9.5% superannuation guarantee, in addition to current councillor fees, is \$24,057.

It should be noted that any changes to Councillor superannuation arrangements will take in the order of 12 months to implement and are therefore unlikely to occur until post COVID-19.

RECOMMENDATION:

- 1. THAT** the submission to the Councillor Superannuation Discussion Paper, based on Attachment 1, be endorsed by Council for forwarding to the NSW Office for Local Government.
 - 2. THAT** the General Manager be authorised to finalise the submission, including support for Option 3.
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LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

Direction: 5. Our Civic Leadership

Outcome: 5.1 Council leads the strategic direction of North Sydney

BACKGROUND

The Office of Local Government (OLG) issued a Discussion Paper on 3 March 2020 seeking the views of councils and their local communities, on whether councillors should receive superannuation payments. Submissions close 8 May 2020.

The Discussion Paper was prompted by concerns raised by the local government sector that the ineligibility of councillors to receive superannuation payments is inequitable and is a deterrent to more women and younger people standing as candidates at council elections. Under the *Commonwealth Superannuation Guarantee (Administration) Act 1993*, councils across Australia are not required to make superannuation contributions in relation to the fees paid to mayors and councillors. This is because mayors and councillors are elected to a civic office in a council and are not employees of the council.

The Discussion Paper seeks views on four options:

1. *maintain the status quo* - mayors and councillors can continue to voluntarily contribute a portion of their fees to a complying superannuation fund of their choice.
2. *mandate the current voluntary situation* - amend the *Local Government Act 1993* (the Act) to make it compulsory for councils to pay a portion of the mayors' and councillors' fees equivalent to the superannuation guarantee amount into a complying superannuation fund nominated by the mayor and councillor.
3. *mandate compulsory payment of superannuation guarantee in addition to fees* - amend the Act to make it compulsory for 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 mayor's and councillors' fees. This option is based on the Victorian model.
4. *mandate compulsory payment of superannuation guarantee in addition to fees* - amend the Act to allow councils to voluntarily 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 means that the payment of councillor superannuation in addition to their fee would be at each council's discretion, allowing the council to consider its resources and the local community's views. This option is based on the Queensland model.

The following views by Local Government NSW (LGNSW) are noted: "Currently, councils may resolve to allow councillors to sacrifice a portion of their fees into complying superannuation funds, on a pre-tax basis. However, this is optional. Councillors who utilise this option reduce the 'take home' component of their fees. 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"¹.

CONSULTATION REQUIREMENTS

Community engagement by Council is not required. This report responds to the OLG's call for feedback on the Discussion Paper, noting that the consultation is also open to the general community. As stated on page 8 of the Discussion Paper, "it is important that the community is consulted and support shown by them before changes are made".

Council promoted the opportunity to make a submission via its website and to Precinct Committees.

SUSTAINABILITY STATEMENT

The sustainability implications are of a minor nature and did not warrant a detailed assessment.

DETAIL

A draft submission has been prepared for Council's consideration (Attachment 1). The submission responds to the four 'key questions to consider' outlined in the Discussion Paper.

Option 3 is the recommended preferred option, requiring NSW councils by legislative amendment to pay the superannuation guarantee in addition to the annual mayor and councillor fees.

1. Reasons for Change to Existing Arrangement

The reasons given in the Discussion Paper as to why superannuation contributions should be mandated in addition to the mayors' and councillors' fees are:

- adequate remuneration of mayors and councillors for the performance of their duties;
- addressing the historic anomaly where mayors and councillors have been denied the benefit of superannuation guarantee payments generally enjoyed by the wider workforce; and
- encouraging more women and young people to stand as candidates for election to councils.

Regarding the last reason, the Discussion Paper refers to major local government stakeholders² wanting to increase the number of females represented on councils, noting 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".

¹ Local Government NSW, LGNSW submission to the Local Government Remuneration Tribunal, January 2018

² Local Government NSW (LGNSW), Women for Election Australia, Australian Local Government Women's Association and the Country Women's Association of NSW.

The following is also noted:

- (i) Women retire with half the superannuation of men, due to the following gender-based differences in Australian labour force participation:
 - (a) women take more time out of the workplace to raise a family;
 - (b) more women than men return to part time work to accommodate family responsibilities; and
 - (c) the gender pay gap equates to salary discrepancies and contributes to less superannuation savings for women working full time.
- (ii) 91% of councils have less than 50% female councillors³.

Payment of the superannuation guarantee for mayors and councillors could be an equity measure to address disparities in men's and women's superannuation balances. LGNSW, in its January 2018 submission to the Tribunal concerning remuneration, noted that "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".⁴

Attachment 1 acknowledges and supports the above reasons for the consideration of payment of the superannuation guarantee in encouraging more women to stand as candidates at council elections.

Further, regarding encouragement of young people to stand as candidates at council elections, the following is noted:

- (i) 50% all candidates and councillors were aged 50-69. This is around twice the representation of the NSW population in this age range;
- (ii) Two-thirds of mayors were aged 50-69;
- (iii) Within the Sydney metropolitan area, 37.5% of mayors were 50-59 compared to the rest of NSW, where 40.4% were 60-69; and
- (iv) 60-69 was the most over-represented age range on councils at nearly three times the NSW population of that age.⁵

LGNSW, in its January 2018 submission to the Tribunal concerning remuneration, noted that "the time and commitment involved in performing the duties of an elected local government official require many councillors to forsake other activities that would attract income and employer superannuation contributions. Governance experts and practitioners alike recognise that governing bodies with members from diverse backgrounds can achieve superior results for their communities. If councils are to meet the rapidly changing expectations of NSW 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."

3 OLG Candidate and Councillor Diversity Report 2017

4 Local Government NSW, LGNSW submission to the Local Government Remuneration Tribunal, January 2018

5 OLG Candidate and Councillor Diversity Report 2017

Attachment 1 supports the above reasons to encourage young people to stand as candidates at council elections.

2. Analysis of the Options

This section examines the different options detailed in the Discussion Paper.

2.1 Options 1 and 2 - Superannuation as Portion of Mayor and Councillor Fees

Options 1 and 2 are similar, in that with or without a legislative obligation, a portion of the mayor and councillor fees equivalent to the superannuation guarantee is paid into a complying superannuation fund nominated by the mayor and councillors. The difference that superannuation contributions are voluntary under Option 1, whereas under Option 2 they are required by legislation.

2.1 Option 3 and 4 - Superannuation in Addition to Mayor and Councillor Fees

Options 3 and 4 are similar in that under legislative amendment, an amount equivalent to the superannuation guarantee would be paid into a complying superannuation fund nominated by the mayor and councillors, in addition to the payment of the mayor's and councillors' fees.

Option 3 is based on the current Victorian model, requiring the addition of the equivalent of the superannuation guarantee to the mayor and councillor allowances. Option 4 is based on the current Queensland model, in which it is understood payment of the superannuation contribution in addition to mayor and councillors fees is optional. Both options require a supporting amendment to exempt the additional payment from section 242A of the Act.

2.3 Considerations

The Discussion Paper (pages 12-13) notes that the following matters would need to be addressed and the impacts noted if NSW councils were to make superannuation contributions on behalf of mayors and councillors in addition to the payment of their fees:

- Councils could, under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the Commonwealth *Taxation Administration Act 1953* (TAA), resolve that mayors and councillors are subject to Pay As You Go (PAYG) withholding.
 - A resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA will take mayors and councillors out of section 12(9A) of the Commonwealth *Superannuation Guarantee (Administration) Act 1993* (SG Act), which recognises that they are not employees of the council, and instead brings them within section 12(10) of the SG Act: *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) of the SG Act deems the mayor and councillors to be employees and the council to be their employer for the purposes of the SG Act. This means the council will be obliged to make superannuation guarantee contributions 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. Income tax would be payable on earnings if the mayor and councillors are to be deemed as an employee.
 - In addition, a resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the
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TAA, means mayors and councillors will also be treated as employees for a range of other taxation purposes, such as:

- 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;
 - 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 Councillors Expenses and Facilities Policy adopted under section 252 of the LGA; and
 - 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.
- However, it is also unclear 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 LGA where it would require a council to make a superannuation guarantee contribution in respect of the fees paid to councillors and the mayor that, together with their fees, exceeding the maximum amount determined by the Local Government Remuneration Tribunal.
 - It is 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 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 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 could be that if a council has to make superannuation guarantee contributions on behalf of the mayor and councillors in addition to their fees, the Tribunal may be obliged (section 242A) to make a determination to reduce the mayor's and councillors' fees, in order to ensure that the fee and superannuation contribution do not result in an increase exceeding the 2.5% public sector wages cap.
 - A supporting amendment would therefore be required to exempt the additional payment from section 242A of the NSW *Local Government Act 1993*.

3. Recommendation

Option 3 is the preferred option for the following reasons:

- Removes inequity/gives increased recognition of the contributions of elected officials;
- Gives consistency across NSW councils due to being prescribed by legislation i.e. will be applied by all, not just those who volunteer to pay the payment (i.e. Option 4);
- Increases the appeal of running for office by women and young people, which will in turn shift the average demographic make-up of candidates and councillors;
- Councillors are financially better off than under Option 1 or 2; and
- The difference in expenditure between Options 3/4 and Options 1/2 are considered negligible as demonstrated by the modelling in Section 2, based on Council's current remuneration classification.

It is also noted that before any decision by the NSW Government to introduce any option concerning the payment of superannuation guarantee to mayors and councillors, the community needs to be effectively consulted. The Discussion Paper was released in early March 2020, and since that time the world-wide COVID-19 pandemic has caused major disruption. Attachment 1 notes that because of this it is reasonable to assume that the general public is not widely aware

of the opportunity feedback and therefore the timeframe for submissions by the general public should be extended, and increased promotion and awareness of the proposal be undertaken by the OLG.

It is therefore recommended that:

- a) the submission to the Councillor Superannuation Discussion Paper, included at Attachment 1, be endorsed by Council and forwarded to the NSW Office for Local Government.
 - b) the General Manager be delegated authority to incorporate any amendments or additions by the Council.
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**Submission by North Sydney Council
to the Office of Local Government regarding
Councillor Superannuation**

North Sydney Council (Council) welcomes the NSW Office of Local Government's (OLG) Discussion Paper on Councillor Superannuation and appreciates the opportunity to make this submission. Council's submission responds to the key questions raised in the Discussion Paper.

Responses to Key Questions to Consider

1. Should councils be required to make superannuation contributions for the Mayor and Councillors?

Council considers that councils should be required to make compulsory superannuation contributions for the Mayor and Councillors. Reasons are provided further below in the submission.

1.1 Are NSW Mayors and Councillors adequately remunerated?

This submission does not respond to this question in detail, however for context it is noted that Council has for the past three years contested re-classification the Local Government Remuneration Tribunal's, from Metropolitan Centre to Metropolitan Small commencing 2017. Council's most recent submission to the Tribunal argues that the North Sydney LGA includes all the facilities and characteristics of Metropolitan Medium councils inclusive of the overall sphere of economic influence, the scale of council operations and the extent of regional servicing. Aside from residential population, Council meets the criteria to Metropolitan Medium. North Sydney has the third largest CBD in NSW and its population doubles during the work week, therefore it is servicing a Metropolitan Medium size population. Council called on the Tribunal to make a determination in accordance with Section 242A of the *Local Government Act 1993*.

2. Should contributions be made as a portion of Mayors' and Councillors' fees or in addition to them?

In accordance with Option 3, Council considers that superannuation contributions should be made in addition to the Mayor's and Councillors' fees, for the reasons raised in the Discussion Paper:

- Removes inequity - gives adequate remuneration for the performance of their duties/ increased recognition of their contribution;

- Encourages more women and young people to stand as candidates for council elections by:
 - reduce the disparity between men's and women's superannuation balances - may encourage women to take on more work for sufficient remuneration; and
 - Increases the appeal of running for office by women and young people, in turn shifting the average age candidates and councillors, thus making the elected body more representative of the community it serves.

Changing legislation alone will not achieve the desired results of increased diversity in candidates and councillors. A dedicated marketing campaign by the NSW Government is needed to increase awareness of the opportunities to run for office and the conditions and benefits available to those elected.

3. Which is your preferred option?

North Sydney Council prefers Option 3:

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.

Under this option the financial impact to councils depends on their classification by the Local Government Remuneration Tribunal.

In addition to the above stated reasons, Option 3 is the preferred option because:

- Mayor and Councillors are financially better off than under Option 1 or 2, as superannuation is based in addition to their fees, not taken out of their fees;
- The financial impact between the options is considered negligible, based on Council's own modelling of the options in accordance with the Tribunal's 2019/20 remuneration determination; and
- Gives equity and consistency across NSW councils due to being prescribed by legislation i.e. will be applied by all, compared to Option 4 i.e. is not just applicable to those councils who volunteer to make the payment.

4. Do you have an alternative suggested option?

No.

5. Other Feedback

5.1 Clarification Required

The Discussion Paper confirms that the cost of paying the superannuation guarantee for Mayors and Councillors needs to be met by councils out of its existing budget, just as the current fees paid to Mayors and Councillors are met by Council's budget.

Clarification is required whether consideration must be given to what services and infrastructure are to be reduced or forgone to fund the annual increase in remuneration for elected representatives under Option 4. Will councils need to overtly state their decision to voluntarily pay the superannuation guarantee in addition to the mayor and councillor fees in the publicly exhibited draft Operational Plan and Budget etc.

5.1 Consultation Timing

The Discussion Paper, released on 3 March 2020, calls for feedback from councils and the general community. Before any decision by the NSW Government to introduce any option concerning the payment of superannuation guarantee to Mayors and Councillors, the community needs to be effectively consulted. Given the world-wide COVID-19 pandemic it is reasonable to assume that the general public is not widely aware of this call for feedback and therefore it is recommended that the timeframe for submissions by the general public be extended, and further promotion and awareness of the proposal undertaken by the OLG.

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