



# Superannuation for Elected Members

## **Draft Policy Proposal**

**September 2021**

## About WALGA

The WA Local Government Association (WALGA) is working for Local Government in Western Australia. As the peak industry body, WALGA advocates on behalf of 139 Western Australian Local Governments. As the united voice of Local Government in Western Australia, WALGA is an independent, membership-based organization representing and supporting the work and interests of Local Governments in Western Australia. WALGA provides an essential voice for 1,222 Elected Members, approximately 22,000 Local Government employees (16,500 Full Time Equivalent's) as well as over 2.67 million constituents of Local Governments in Western Australia.

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## Entitlement to Superannuation

Elected Members, like all workers, should be entitled to payment of superannuation. Payment of superannuation to Elected Members would address a historical anomaly that has seen Elected Members denied a benefit enjoyed by the broader workforce.

Given community expectations and the time commitment of serving on or leading a Council, many Elected Members are sacrificing opportunities for paid work to serve their community on Council.

As has been well documented through recent Inquiries into Local Government, “the role of a Councillor is challenging. Councillors are responsible for overseeing a complex business – that provides a broad range of functions, manages significant public assets, and employs in some cases hundreds of staff – all in a political and publicly accountable environment.”<sup>1</sup>

It is crucial to the functioning of Local Government that Elected Members are appropriately remunerated for their time and contribution.

Payment of superannuation to Elected Members aligns with the objective of the superannuation system, which is “to provide income in retirement to substitute or supplement the Age Pension.”<sup>2</sup>

In addition, it is hoped that payment of superannuation would lead to greater interest and more nominations to serve on Council from women and younger people, leading to greater representation on Councils by people from traditionally underrepresented demographics.

## Current Arrangements

Under current arrangements, Elected Members can voluntarily decide to have all or a portion of their allowances paid into a superannuation fund.

In addition, under the *Superannuation Guarantee (Administration) Act 1992* (Cth), Local Governments can unanimously resolve to be considered an ‘eligible local governing body’ through the *Taxation Administration Act 1953* (Cth).

As a consequence of such a resolution, Elected Members would then be treated similarly to employees and the Local Government would be required to make superannuation

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<sup>1</sup> WALGA (2019) *Final Submission: Select Committee into Local Government*. Page 35. [https://www.parliament.wa.gov.au/Parliament/commit.nsf/lulnquiryPublicSubmissions/DCCAD309ECAE29E04825848100171E77/\\$file/lo.lgi.150.190910.sub.walga.pdf](https://www.parliament.wa.gov.au/Parliament/commit.nsf/lulnquiryPublicSubmissions/DCCAD309ECAE29E04825848100171E77/$file/lo.lgi.150.190910.sub.walga.pdf)

<sup>2</sup> Australian Government: The Treasury (2021) *Superannuation Reforms*. <https://treasury.gov.au/superannuation-reforms>

contributions in addition to payment of allowances. However, a resolution of this nature also has significant implications: pay as you go (PAYG) tax would be required to be withheld for remission to the Australian Taxation Office (ATO), and Fringe Benefit Tax (FBT) would be applicable to all benefits provided to Elected Members. For these reasons, Local Governments in Australia typically do not pursue this course of action.

## Other Jurisdictions

Approaches in other jurisdictions are mixed, however the issue of superannuation entitlements for Elected Members has increasingly been the subject to public debate in other states of Australia.

In New South Wales, following a state-led discussion paper and consultation process, amendments to the Local Government Act have been put forward that would enable Councils to resolve to pay superannuation contributions from July 2022.

This mirrors the approach in Queensland where, under the state's Local Government Act, Councils may resolve to pay superannuation contributions to Elected Members.

Elected Members in Victoria are paid a cash loading equivalent to the superannuation guarantee, but this is not required to be paid into a superannuation fund.

No superannuation is paid in Tasmania, South Australia or the Northern Territory.

## Proposed Approach

The recommended advocacy approach is to propose that the *Local Government Act 1995* be amended to facilitate the payment of superannuation to Elected Members in addition to fees and allowances.

This approach avoids the problems associated with the current arrangements around the need to withhold income tax and pay fringe benefits tax.

A fundamental question relates to whether the proposed amendment to the Local Government Act should *require* Local Governments to pay superannuation, or whether the decision to pay superannuation should be a decision of Council.

Under the principle of general competence, Local Governments should be empowered to manage their own affairs and the case could be made that this ought to extend to the payment of superannuation to Elected Members. However, as the superannuation system is underpinned by its universality, and there is potential for payment of superannuation to

become a political debate around the Council table, a strong case can be made for the payment of superannuation to Elected Members to be a legislative requirement.

On balance, it is posited that, to achieve the objectives of the superannuation system and to avoid politicisation of the decision at a local level, payment of superannuation should be a universal entitlement for Elected Members and therefore a requirement of Local Governments contained in the Local Government Act.

*Feedback is sought from Members on this specific issue:*

*Should Local Governments be enabled or required to pay superannuation to Elected Members?*

*Why is that approach preferred?*

As is the case in other jurisdictions, the Salaries and Allowances Tribunal should not consider the payment of superannuation as part of their deliberative process. Specifically, payment of superannuation, equivalent to the superannuation guarantee, should be over and above the fees and allowances determined by the Salaries and Allowances Tribunal.

## Costs

There will be a cost associated with the payment of superannuation to Elected Members. These costs will be particularly noticeable in the first year when superannuation becomes payable.

The table below identifies the maximum possible cost of paying superannuation based on the current Salaries and Allowances Tribunal (SAT) determination<sup>3</sup>, and the current superannuation guarantee of ten percent.

The second column in the table identifies the maximum number of Elected Members currently elected to at least one Local Government in each SAT band in Western Australia. The third column then assumes that the maximum allowances are paid to all Councillors, the Mayor or President and the Deputy Mayor or Deputy President. From this, the maximum superannuation liability, based on the current SAT determination and the current superannuation guarantee of ten percent, per SAT band is calculated.

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<sup>3</sup> Salaries and Allowances Tribunal (2021) *Determination of the Salaries and Allowances Tribunal on Local Government Chief Executive Officers and Elected Members*, 8 April 2021. <https://www.wa.gov.au/sites/default/files/2021-04/Local%20Government%20Chief%20Executive%20Officers%20and%20Elected%20Members%20Determination%20No%201%20of%202021.pdf>

It is acknowledged that the actual liability for each Local Government is likely to be less than the maximum due to fewer Elected Members than the maximum listed in the second column, and / or paying less than the maximum allowances to Elected Members. In this way, the table below represents the **maximum** potential cost to Local Governments in each band.

Band	Maximum number of Elected Members (currently)	Maximum fees and allowances	Maximum Superannuation liability
1	15	\$603,199	\$60,320
2	13	\$389,101	\$38,910
3	11	\$235,208	\$23,521
4	11	\$139,653	\$13,965

While the costs are acknowledged, it is argued that on balance the benefits of paying superannuation to Elected Members as outlined in this paper outweigh the costs.

## Recommendation

**WALGA recommends to the Minister for Local Government:**

**That the *Local Government Act 1995* be amended to require Local Governments to pay Elected Members, into a nominated superannuation account, an amount equivalent to the superannuation guarantee determined with reference to fees and allowances paid to each Elected Member.**

## Process for Consultation

This paper has been prepared as a *Draft Policy Position Paper*. Feedback is sought from members in regards to the recommendation put forward by this paper.

Comments or submissions should be made to Tim Lane, Manager Strategy and Association Governance, at [tlane@walga.asn.au](mailto:tlane@walga.asn.au) by **Friday, 22 October**.

State Council's Governance Policy Team will meet in late October to consider member comments and submissions and provide guidance to inform a State Council agenda item, which will be considered at November Zone meetings and the 1 December meeting of State Council.

Following a State Council decision, advocacy will be undertaken with the Minister for Local Government.