

14 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY A DECISION OF COUNCIL

OFFICER'S RECOMMENDATION

That Council accepts the following late item as new business for consideration: 14.1.1 Elected Member Superannuation.

14.1 ELECTED MEMBER SUPERANNUATION

Attachments:	Appendix 1 WALGA Elected Member Superannuation Policy Paper
Responsible Officer:	Steven Harding Chief Executive Officer
Author:	Joshua Brown Manager Governance, Risk and Procurement
Proposed Meeting Date:	28 October 2022
Location/Address:	N/A
Name of Applicant:	N/A
Author Disclosure of Interest:	Nil

REPORT PURPOSE

For Council to consider a policy response to a proposal from the WA Local Government Association to facilitate the payment of superannuation to elected members of Council.

BACKGROUND

The WA Local Government Association (WALGA), the peak industry body for the local government sector, has prepared a Draft Policy Proposal for the payment of superannuation to elected members of Council, which was released in September 2021, and is attached as **Appendix 1**. The Proposal recommended the payment of an amount equivalent to the superannuation guarantee into a nominated superannuation account. Since the release of the document, the Minister for Local Government has confirmed that the WA Government's Local Government Reforms will permit Councils to pay superannuation by a decision of Council.

In response to the Minister's position, the recent WALGA Mayors and Presidents' Forum carried the following motion:

That this meeting supports requesting WALGA to advocate for the Local Government reforms to include mandatory superannuation for elected members of Band 1 and Band 2 Councils and supports the optional payment of superannuation for Band 3 and 4 Councils.

The Association seeks Council's feedback on the proposal, requesting a position from Council on the question as to whether the payment of superannuation should be mandatory for Elected Members of Band 1 and 2 councils and optional for Bands 3 and 4. Feedback is sought by Wednesday, 2 November 2022.

ELECTED MEMBER SUPERANNUATION (Cont.)

COMMENTS/OPTIONS/DISCUSSIONS

There is an increasing movement across Australia towards the payment of superannuation to elected members of council. In Queensland, New South Wales and Victoria, superannuation (or an equivalent cash amount) is paid to councillors, either universally or by individual local government resolution.

It is expected that the reform announced by the WA Minister for Local Government will be introduced, which will enable individual local governments to determine by Council resolution whether to pay elected members superannuation. The disadvantage in this approach is that it provides an opportunity for the politicisation of the payment of superannuation to councillors. If it were a universal payment to Councillors – as it is for employees across Australia – the payment would be made automatically at the set rate and not subject to political debate.

Further issues are canvassed in the Draft Policy Proposal in **Appendix 1**.

STATUTORY IMPLICATIONS/REQUIREMENTS

No known statutory implications.

POLICY IMPLICATIONS

A Council decision on this matter will establish a policy position, which will remain in place until such time as it is revoked.

STRATEGIC COMMUNITY PLAN**5: Governance**

G1 Vibrant local democracy, forward-thinking civic leadership, and transparent stewardship of the community's assets and resources.

G1.1 Continued focus on good governance, transparency and community and stakeholder engagement in significant decisions, including place-based plans

RISK MANAGEMENT CONSIDERATIONS

Reputational – Insignificant

FINANCIAL IMPLICATIONS

There is no direct financial implications arising from a decision in this matter. However, the introduction of superannuation at a rate of 10.50% of the fees and allowances paid to Councillors would if currently in place, require an additional budget allocation of \$35,480.24 in the 2022/23 budget. Future amounts will be reduced by a reduction in the number of elected council members from 2023.

VOTING REQUIREMENTS

Simple Majority.

OFFICER'S RECOMMENDATION

Option 1

ELECTED MEMBER SUPERANNUATION (Cont.)

That Council supports the position carried at the WALGA Annual General Meeting that superannuation should be mandatory for Elected Members of Band 1 and Band 2 councils and optional for Band 3 and Band 4 councils.

OR

Option 2

That Council supports the universal payment of superannuation to elected members of council at a rate equivalent to the superannuation guarantee.

OR

Option 3

That Council does not support the payment of superannuation to elected members of council.

To: Band 1 and Band 2 Local Governments From: Tim Lane, Manager Association and Corporate Governance

Date: 7 October 2022

Subject: **Elected Member Superannuation**

IN BRIEF:

Operational Area:	Governance
Key Issues:	<ul style="list-style-type: none"> • A motion supporting compulsory superannuation for Elected Members in Band 1 and 2 Local Governments was supported at WALGA’s 2022 Annual General Meeting. • This follows the Minister’s proposal to amend legislation to enable Local Governments to pay superannuation to Elected Members if determined by Council. • WALGA distributed a draft policy proposal on this issue in 2021, and the paper is provided as an attachment.
Action Required:	Feedback to WALGA by 2 November on the position carried at the 2022 WALGA Annual General Meeting

Background

Payment of superannuation to Elected Members has recently been the subject of discussion in Local Government.

WALGA’s Policy Proposal

WALGA canvassed the Local Government sector on a proposal to facilitate the payment of superannuation in late 2021.

The Draft Policy Proposal (attached) outlined arguments for the payment of super to Elected Members as well as potential barriers and costs. The paper proposed a position in favour of legislative change that would require Local Governments to pay Elected Members an amount equivalent to the superannuation guarantee into a nominated superannuation account.

While the paper remains relevant, it should be noted that the maximum costs in the paper will be reduced due to the Minister’s reform to reduce the number of Council members based on population thresholds.

The paper concluded:

“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.”

Local Government sector feedback on the paper was mixed. Ultimately, WALGA's consultation process was superseded by the Minister's legislative reform proposals, announced in November 2021.

Minister's Reform Proposals

The Minister for Local Government, Hon John Carey MLA, announced a suite of legislative reform proposals on 10 November 2021.

Enabling Local Governments – by Council decision – to pay superannuation to Elected Members was among the Minister's proposals, and this proposal was supported by the sector through WALGA's State Council.

The Minister's legislative reform proposals will be legislated in 2023.

2022 WALGA Annual General Meeting

Following discussion at the Mayors and Presidents' Forum, held as part of the WALGA Convention on Sunday, 2 October, an item of Special Urgent Business was put forward to the Annual General Meeting the following day.

The motion, which was carried by the meeting, is as follows:

That this meeting supports requesting WALGA to advocate for the Local Government reforms to include mandatory superannuation for elected members of Band 1 and Band 2 Councils and supports the optional payment of superannuation for Band 3 and 4 Councils.

Consultation

To inform State Council deliberation, Council feedback is sought on the AGM motion. As noted above, the Minister's soon-to-be-legislated reforms will enable superannuation to be paid by Council determination; the AGM motion would mandate superannuation for Bands 1 and 2 Local Governments. Effectively, the AGM motion, if supported by the Minister, would not have any impact on Local Governments in Bands 3 and 4.

Feedback is sought on the following question:

Does Council support the position carried at the WALGA Annual General Meeting: that superannuation should be mandatory for Elected Members of Band 1 and Band 2 Councils and optional for Band 3 and Band 4 Councils?

To inform an item for the 7 December meeting of State Council, feedback is requested by **Wednesday, 2 November**. Local Governments will also be able to provide feedback through the November round of Zone meetings to be held 23 to 28 November.

For more information, please contact:

Tim Lane, (08) 9213 2029, tlane@walga.asn.au, or Tony Brown, (08) 9213 2051, tbrown@walga.asn.au



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.

Contacts

Tim Lane
Manager Strategy and Association
Governance
tlane@walga.asn.au

Tony Brown
Executive Manager Governance and
Organisational Services
tbrown@walga.asn.au

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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.”¹

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.”²

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

¹ 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)

² 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) determination³, 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.

³ 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 by **Friday, 29 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.