

**REPORT**

and

**DETERMINATIONS**

of

**THE LOCAL GOVERNMENT REMUNERATION**  
**TRIBUNAL**

under

**SECTIONS 239 AND 241**

of the

**LOCAL GOVERNMENT ACT 1993**

**18 APRIL 1996**

The Honourable Mr E T Page MP  
Minister for Local Government  
Level 2, 151 Macquarie Street  
SYDNEY NSW 2000

Dear Minister

Pursuant to section 244 of the Local Government Act 1993, I wish to advise that Determinations have been made in accordance with sections 239 and 241 of the Act.

The Determinations and a Report thereon are forwarded for publication in accordance with section 245 of the Act.

Yours faithfully  
Local Government Remuneration Tribunal

(The Honourable Charles L Cullen Q.C.).

**INTRODUCTION:**

In accordance with s239 and s241 of the Local Government Act 1993, (the Act) the Tribunal is required to report to the Minister for Local Government the categorisation of councils and the fees to be paid during the year 1996-97 to Councillors and Mayors.

In its Report of 1st May 1995, the Tribunal determined categories and fees for the year 1995-96. After the tabling of the Report, many councils passed resolutions in the exercise of their statutory discretion pursuant to s248 and s249 to fix fees in excess of the minima determined by the Tribunal for such period. An analysis of the resolutions was made by the Tribunal as a result of a direction by the Minister of 21st May 1995. In its Report of 1 September 1995 to the Minister, the Tribunal concluded:

***“Under the circumstances outlined above, it is the view of the Tribunal that no variation of the Determinations made on 1 May 1995 is warranted at the present time. The Tribunal however will take into account the matters raised by councillors and the public in regard to resolutions of councils concerning fees for the purposes of determining categories and fees for 1996/1997. In relation to alleged anomalies arising from either particular categorisation or individual fees, these do not come within the Ministerial direction and would have to be considered as special cases arising for urgent consideration. Otherwise, all the material accumulated by the Tribunal will be used to re-assess not only the categories for the 1996/1997 period, but also the validity of the minima and maxima. This will necessarily require the Tribunal to take into account the actions taken by the councils in their present task of determining their fees and also what, if any, changes occur after 9 September, 1995. The question of the appropriate fees to be paid to councillors (including mayors) is a very important one and should involve input from the community. The fees are determined on the basis that councils are performing in accordance with the Council’s Charter (s.8 of the 1993 Act). The commitment of candidates for election on 9 September, 1995 to such a Charter is a matter for each community to assess”.***

Subsequently, on 9 September 1995 elections were held for Councillors and Mayors to whom the resolutions of the outgoing councils applied.

During October 1995, councils were advised of the Tribunal's proposal to review categories and fees for 1996-1997 (Appendix A). Mayors and other interested persons or groups were invited to provide the Tribunal with written submissions with the option for hearings before the Tribunal, if sought.

In general, the councils adopted and supported the written submissions of the Local Government and Shires Associations of New South Wales (Associations). These submissions were supplemented by the President of the Local Government Association Mr Peter Wood, the President of the Shires Association, Mr John Wearne and the Associations' Director of Industrial Relations and Employment Division, Mr David Gibson at a hearing held by the Tribunal on 19 March 1996.

In addition to the Associations' submission the Tribunal also received 38 individual submissions for re-categorisation and/or fee increases. These were from:

1. Camden Council
2. Murray Shire Council
3. Lachlan Shire Council
4. Dubbo City Council
5. Nambucca Shire Council
6. Cabonne Shire Council
7. Baulkham Hills Shire Council
8. Shoalhaven Shire Council
9. Lake Macquarie City Council
10. Lismore City Council
11. Campbelltown City Council
12. Wollongong City Council

13. Armidale City Council
14. Hornsby Shire Council
15. Wyong Shire Council
16. Willoughby Shire Council
17. Marrickville shire Council
18. Botany Shire Council
19. Hawkesbury Shire Council
20. Sutherland Shire Council
21. Gilgandra Shire Council
22. Eurobodalla Shire Council
23. Maitland Shire Council
24. Burwood Council
25. Blue Mountains City Council
26. Canterbury City Council
27. Gosford City Council
28. Blacktown City Council
29. Penrith City Council
30. Fairfield City Council
31. Warren Shire Council
32. Tweed Shire Council
33. Newcastle City Council
34. Parry Shire Council
35. Parramatta City Council
36. Glen Innes Municipal Council
37. Moree Plains Shire Council
38. Sydney City Council

**REPORT:****1) Categories**

The basis upon which categories were fixed for the purposes of determining fees for Councillors and Mayors was set out in the Report of 1 May 1995. In particular, attention was drawn to the statutory requirement of the Tribunal to determine categories according to the following matters:

- the size of areas
- the physical terrain of areas
- the population of areas and the distribution of the population
- the nature and volume of business dealt with by each council
- the nature and extent of the development of areas
- the diversity of committees served
- the regional, national and international significance of the council
- such matters as the Remuneration Tribunal considers relevant to the provision of efficient and effective local government
- such other matters as may be prescribed by the regulations.

It is apparent that the discretion of the Tribunal is directed to additional matters rather than to declining to take into account any of the prescribed matters. As was stated in the Report of 1 May 1995 (P 55).

***“It must be stressed that the categorisation of councils by the Tribunal is dependent upon the material supplied by each council in relation to the area which it administers and the manner in which it operates as a corporate body in accordance with its responsibilities under the 1993 Act.”***

***“Because of the limited material supplied by many councils, particularly suburban councils, if a review is sought, the Tribunal is prepared to receive such material concerning the matters outlined in s.240(1) of the 1993 Act for consideration in the 1996 Report and Determinations.”***

The Associations contended that more emphasis should be given to the size of councils as was the practice in the Australian Classification of Local Governments (Australian Publishing Service, 1 September 1994). Details were also given of categorisation by means of area, population, revenue and value of buildings approved for councils. It was pressed that, ....***“The significance of these differences highlights the need for a wide range between the minimum and maximum fees....”***

Despite the attractiveness of a classification system based on quantifiable matters, the Tribunal considered this issue in its Report of 22 April 1994 (pp.9-10). It was stated:

***“...the central purpose of the categorisation by the Tribunal is an attempt to determine the requirements imposed on councillors, in particular the extent of the responsibility and accountability of office and the time involved at meetings and travelling to such meetings. In other words, categorisation is the basis upon which parameters of fees can be determined for each category to allow for the varying impact of the relevant matters to be considered.....”***

***“It has only to be stated that if councils are categorised in accordance with each of the matters listed in s240(1) the categories would substantially differ in accordance with each of the matters. It seems that the grades and the groupings which have been established pursuant to the Local Government Senior Officers Award, by the New South Wales Grants Commission and the Australian Classification of Local Government do, in effect, take into account in broad terms some at least of the most important matters such as area, size, physical terrain, population density, development and the nature and volume of business.”***

It seems inevitable that if the approach supported by the Associations were adopted, it would almost certainly require a wider range between the minimum and maximum fees. Rather than adopt such a course, the Tribunal has constructed a table of fees for each category whose maximum fees equals or overlaps the minimum fees for the next highest category. For example, a Mayor of a Category 2 council with significant delegations and resultant activity can receive a fee of \$20,000 per annum which is \$5000 in excess of a Category 1 Mayor who confines his activities to essential functions because of other personal commitments.

### 1a) The Applications for Re-Categorisation

Each of the applications for re-categorisation was fully considered on the basis of the information provided to the Tribunal by the councils, and interested persons, in accordance with the provisions of the Act and the procedure which was adopted by the Tribunal in exercising its functions.

It needs to be stated that the Tribunal, in determining the categories in 1994 and 1995, gave close attention to both the written material and the oral submissions which were put to it at the hearings. In a number of the applications for re-categorisation no new material was provided and in others the material was inadequate to justify any change in categorisation. Some applications were, in effect, for increases in fees for Mayors. While there were no specific applications for different categories for Mayors and Councillors, this aspect must necessarily arise. The Associations, as the Tribunal understands their submissions, do not support such a proposal. The Tribunal confirms its view expressed in the Report of 1 May 1995 (p 70).

***“The mayor is chairman of a council of some 7 to 15 councillors supported by a staff headed by a General Manager. A council has the capacity to delegate such of its functions to the mayor as it decides in accordance with the 1993 Act. This delegation appeared to vary from council to council but inevitably it has to be observed that the greater the delegation to the mayor the less the performance of council members. However, this differs only in degree from that of each councillor.”***

Accordingly, the Tribunal assessed the weight of the applications for re-categorisation on the basis of the council as a whole and not restricted to the individual effort of the Mayor.

Six Category 1 councils sought re-categorisation as Special Category 2. These councils were those for which the Tribunal felt, based on the material supplied by the councils, the maximum fee for Category 1 would be appropriate.

If these councils were removed from Category 1 it would be necessary to revise the maximum fee for Category 1, perhaps to the minimum fee for Special Category 2. Furthermore, even if these councils were re-categorised it could not be anticipated that the fees would be increased as their relativity with the Special Category 2 councils, on the Tribunal's estimation, would still fall in the lower section of the Special Category 2 scale of fees.

The Tribunal is still of the view, at this stage, that these councils are correctly categorised and that the maximum fees available to them, which allow them to progress significantly into the Special Category 2 scale, are still appropriate. The Tribunal does not consider that a sufficient case has been made out to permit them to progress to the maxima of Special Category 2 of \$15,000 for Councillors and \$40,000 for Mayors as was found to be appropriate for Newcastle City Council and Wollongong City Council.

The Tribunal also received numerous submissions from other councils seeking a review of their particular categorisation. Each of these submissions was assessed on its merits and of these, the Tribunal considered the following councils presented sufficient justification for the re-categorisation sought.

1. Cabonne Shire Council from Category 5 to Category 4
2. Parry Shire Council from Category 5 to Category 4
3. Baulkham Hills Shire Council from Category 2 to Category 1

In granting the applications of these councils, it should be stated that it is in the expectation of the Tribunal that the fees fixed within the higher category will be at the lower end of the scale for 1996/1997.

## 2) Review of Fees

The task undertaken by the Tribunal on this occasion is complicated by the evolvement of local government under the 1993 Act and the recent election of new councils. The Tribunal does not set fees for Councillors and Mayors for particular councils but determines categories, “***...for the purpose of enabling the Remuneration Tribunal to determine the maximum and minimum amounts of fees to be paid to mayors and councillors...in each of the categories so determined.***” (S.239(2)). The Tribunal has adopted the practice of wage fixation tribunals in fixing minimum award rates, of determining a minimum fee for councils which are performing basic local government activities. This minimum fee may be low for some councils but high for others. However, this is a common feature of minimum award rates because of the averaging factor. To the statutory base of fees determined by the Tribunal as minima councils may add an additional quantum of fees for demonstrable additional contributions to the local community in similar fashion to wage increases based on increased productivity and efficiency.

It is the range of discretion available to councils in fixing fees in excess of the minima which is presently the major source of contention. The Associations have pressed for an increase in the maxima. The Tribunal appreciates the time and effort put into the preparation of their submissions, the preparedness of the Presidents of the Associations to make available the results of their surveys and to frankly discuss with the Tribunal their concepts of the role of local government. It is also apparent from discussions and the views put by many individual councils that local government operation in New South Wales is under-going a significant change in large part from the implementation of the aims of the 1993 Act.

## 2a) The Applications for Increased Fees

The Associations submitted that surveys conducted by them indicated that Councillors and Mayors spend on average 22 hours per week and 46 hours per week, respectively on council activities. Based on the level of responsibility, time and commitment to office the Associations supported significant increases in fees which would result in the following percentage increases -

	Councillors		Mayors	
	Minimum	Maximum	Minimum	Maximum
	%	%	%	%
C5	0	50	0	100
C4	0	60	100	66
C3	50	50	100	100
C2	50	50	100	100
C1	33	60	100	50
S3	0	0	0	40
S2	50	66	75	25
S1				

The Associations again pressed the comparison with the base salary of a member of Parliament. This concept was considered in the Report of 1 May 1995 (pp 69-72) where it was stated, inter alia, that, ***"...local government representation has not progressed to the status of an independent career. This is borne out by the fact that the overwhelming majority of local government representatives are engaged in other employment activities, either full-time or part-time."*** (p70)

In addition the wide diversity of councils, their activities and scope of operation make such comparisons difficult. Furthermore, it is considered that there has been insufficient time to determine any significant changes in the performance of Councils generally since the 1995 Determinations.

The newly elected councils have only been operating for some six months and there appears still to be some uncertainty in many councils as to the distinction in the roles of the Mayor and General Manager. It is apparent from the material received by the Tribunal that, in many cases, the General Manager has been delegated substantial powers which appear to transgress upon the policy making functions of the council and Mayor:

Section 335 prescribes the functions of General Manager:

- 335 (1) The general manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council.
- (2) The general manager has the following particular functions:
- the day-to-day management of the council
  - to exercise such of the functions of the council as are delegated by the council to the general manager
  - to appoint staff in accordance with an organisation structure and resources approved by the Council
  - to direct and dismiss staff
  - to implement the council's equal employment opportunity management plan.
- (3) The general manager has such other functions as may be conferred or imposed on the general manager by or under this or any other Act.

It was a matter of note that the investigations conducted by the Tribunal in 1994 and 1995 and the material supplied for present purposes that some General Managers have apparently been delegated, and exercise, powers which are significantly wider than "day to day management". It is also apparent that some Mayors and Councillors involve themselves personally in matters of day to day management. This has a significant impact

on the time that they expend on council related affairs. As was stated in the Report of 1 May 1995 (page 72),

***“Fundamentally, the Tribunal is looking to the performance of the governing body of the council. It is to the effectiveness of the governing body in relation to the functions detailed elsewhere in this Determination that attention has been concentrated in determining the value of the input of members of such governing bodies. It seems clear that the value of the decision making of that body is not necessarily enhanced by increasing the number of its members. In fact, the opposite could very well be the case.”***

Reference was made in some instances to the remuneration of General Managers as a factor to be considered in determining fees for Councillors and Mayors. However, the Tribunal does not accept that any such comparisons are valid. In any case, no concrete details of the employment terms of General Managers were made available or the basis upon which they were settled.

The question of full-time Mayors was again raised by the Associations. In a survey conducted by the Associations, 8 Mayors claimed to be full-time (from 52 responses) and 20 considered that the position should be full-time.

During the 1995 investigation, the Tribunal ascertained that some Mayors who claimed to be full-time were engaged in other remunerative activities. This raised the issue as to what constituted a full-time Mayor. For example, is there the expectation, in similar fashion to a General Manager, that the Mayor would be expected to be in attendance during normal business hours? However, in view of the small number of Mayors affected by the claim it is not considered appropriate at this stage to make a general Determination to provide for special cases even if such provision in individual cases was warranted.

The measure used by the Tribunal is an evaluation of the duties performed, bearing in mind that the times and length of time involved can vary substantially between individual Mayors

depending upon their capabilities, their willingness to perform such duties and the time they are prepared to make available to council activities. Some indeed, are prepared to devote their whole time to such activities.

As was the case in the 1994 and 1995 investigation by the Tribunal the Sydney City Council presented a detailed informative exposition of the operation of the Council since the Report of 1 May 1995. The Council as the sole Council in Special Category 1 suggested that a specific fee be set for Councillors and the Lord Mayor instead of the range of fees determined on 1 May 1995. This is a matter to which the Tribunal gave attention in that Determination when the fees were set on the basis of the information provided and in accordance with the 1993 Act.

The fees adopted by the Council after the Determination were in conformity with the 1993 Act and the rationale used in the determinations of the Tribunal. The maximum fee for 1995-1996 for the Lord Mayor was determined by the particular functions of the Lord Mayor at that time and the adoption of such fee by the Council was a proper exercise of discretion. The fee adopted by Council resolution for Councillors was also in accordance with the duties of the Councillors *vis a vis* the delegations to the Lord Mayor at that time.

The only practical change, therefore, would be an increase in the minimum annual fee from \$15,000 to \$17,000. This is a matter the Tribunal is reluctant to effect at this time until it reviews the position of Special Category 2 in view of the anomaly caused by the fees resolutions of Newcastle City Council and Wollongong City Council.

The proposals for a separate fee for Deputy Mayors was raised again. At present section 249(5) of the Act provides that:

***“A council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor’s annual fee.”***

The fees for Mayors have been determined in accordance with these provisions. As the Tribunal has no power to determine such fees, it would be necessary to amend s.249(1) by adding "and deputy Mayor after "mayor" and deleting s.249(5).

However, the Tribunal, at this stage, has insufficient evidence to substantiate the claim. It necessarily implies a continuous additional responsibility of a particular Councillor whether the Mayor is available or not. The Tribunal suggests that, if Minister consider it appropriate to do so, attention might be given to the amendment of the Act by the deletion of the words "The amount of the fee so paid must be deducted from the mayor's annual fee." from s.249(5).

### **CONCLUSIONS:**

The Tribunal since its establishment on 9 February 1994, has attempted to lay down the basis for a fee structure which can be adapted for any significant movements in local government functions and responsibilities. Once the structure has been reasonably established then, if appropriate, decisions can be made as to the need, for example, for full-time mayors. It is difficult at the present time to consider full-time positions for local government as a whole. There are presently 177 councils and 17 county councils the majority of whom, on present performances, could not be conceived as requiring a Mayor on a full-time basis. In addition, the movement towards the development of local government as a professional career necessarily carries with it the loss of the concept of voluntary service to the community. Such contributions are greatly valued by the persons to whom the matter was raised during the investigations by the Tribunal, not only in New South Wales but also overseas.

The background of the payment of fees is dealt with in the Report of 22 April 1994 (pp.29-31). The Associations have drawn attention to added responsibilities being placed upon local government, such as welfare and the environment . These matters have, however, not been dealt with in detail nor has evidence, as yet, been gathered for presentation to the Tribunal to support the claims.

Under all the circumstances, the Tribunal has decided not to alter the fees set by the Determinations on 1 May 1995.

It is proposed for the next Report to consider resolutions passed by the new councils in regard to fees and allowances for the next year and to direct attention in particular, to the desirability of categorising Mayors differently from Councillors if the delegations from the council significantly alter the balance of the duties and responsibilities of Councillors and Mayor. A further matter for consideration will be the extent of delegation to the General Managers, the manner in which councils generally have adapted to the requirements of the Act and the extension of local government activities.

Local Government Remuneration Tribunal

(The Honourable Charles L Cullen Q.C.)

Dated:

**DETERMINATION OF CATEGORIES OF COUNCILS AND COUNTY COUNCILS FOR  
1996/97**

S1 (1 Council)	Sydney
S2 (2 Councils)	Newcastle Wollongong
S3	County Councils
1. (15 Councils)	Bankstown Baulkham Hills Blacktown Campbelltown Fairfield Gosford Lake Macquarie Liverpool North Sydney Parramatta Penrith South Sydney Sutherland Warringah Wyong
2. (28 Councils)	Ashfield Auburn Blue Mountains Botany Burwood Canterbury Concord Drummoyne Hawkesbury Holroyd Hornsby Hunters Hill Hurstville Kogarah

2. (Continued)

Ku ring Gai  
Lane Cove  
Leichhardt  
Manly  
Marrickville  
Mosman  
Pittwater  
Randwick  
Rockdale  
Ryde  
Strathfield  
Waverley  
Willoughby  
Woollahra

3. (31 Councils)

Albury  
Armidale  
Ballina  
Bathurst  
Bega Valley  
Broken Hill  
Byron  
Camden  
Cessnock  
Coffs Harbour  
Dubbo  
Eurobodalla  
Goulburn  
Grafton  
Gt Lakes  
Greater Taree  
Griffith  
Hastings  
Kempsey  
Lismore  
Maitland  
Orange  
Pt Stephens  
Queanbeyan  
Shellharbour  
Shoalhaven  
Tamworth  
Tweed Heads  
Wagga Wagga  
Wingecarribee  
Wollondilly

## 4. (32 Councils)

Bellingen  
 Cabonne  
 Casino  
 Cobar  
 Cooma-Monaro  
 Cootamundra  
 Cowra  
 Deniliquin  
 Dumaresq  
 Forbes  
 Glen Innes  
 Greater Lithgow  
 Gunnedah  
 Inverell  
 Kiama  
 Leeton  
 Maclean  
 Moree Plains  
 Mudgee  
 Muswellbrook  
 Nambucca  
 Narrabri  
 Narrandera  
 Parkes  
 Parry  
 Richmond River  
 Singleton  
 Tumut  
 Walgett  
 Wellington  
 Wentworth  
 Young

## 5. (68 Councils)

Balranald  
 Barraba  
 Berrigen  
 Bingara  
 Bland  
 Blayney  
 Bogan  
 Bombala  
 Boorowa  
 Bourke  
 Brewarrina

## 5. (Continued)

Carrathool  
Central Darling  
Conargo  
Coolah  
Coolamon  
Coonabarabran  
Coonamble  
Copmanhurst  
Corowa  
Crookwell  
Culcairn  
Dungog  
Evans  
Gilgandra  
Gloucester  
Gundagai  
Gunning  
Guyra  
Harden  
Hay  
Holbrook  
Hume  
Jerilderie  
Junee  
Kyogle  
Lachlan  
Lockhart  
Manilla  
Merriwa  
Mulwaree  
Murray  
Murrumbidgee  
Murrurundi  
Narromine  
Nundle  
Nymboida  
Oberon  
Quirindi  
Rylstone  
Scone  
Severn  
Snowy River

5. (Continued)

19

Tallaganda  
Temora  
Tenterfield  
Tumbarumba  
Ulmurra  
Uralla  
Urana  
Wakool  
Walcha  
Warren  
Weddin  
Windouran  
Yallaroi  
Yarralumla  
Yass

**TOTAL COUNCILS                      177**

Local Government Remuneration Tribunal

(The Honourable Charles L Cullen Q.C.)

Dated:

## DETERMINATION OF ANNUAL REMUNERATION FEES FOR COUNCILLORS AND MAYORS

Pursuant to s.241 of the Local Government Act 1993, the annual fees to be paid in each of the categories determined under s.234 to councillors, mayors, members and chairpersons of county councils during the period 1 July 1996 to 30 June 1997 are determined as follows:

	Councillor/Member Annual Fee			Mayor/Chairperson Additional Fee*		
	Minimum		Maximum	Minimum		Maximum
Category 5	5,000	-	5,000	5,000	-	7,500
Category 4	5,000	-	6,000	5,000	-	12,000
Category 3	5,000	-	10,000	10,000	-	20,000
Category 2	5,000	-	10,000	10,000	-	20,000
Category 1	7,500	-	12,500	15,000	-	30,000
S3	1,000	-	3,000	2,000	-	5,000
S2	10,000	-	15,000	20,000	-	40,000
S1	15,000	-	20,000	50,000	-	75,000

\*This fee must be paid in addition to the fee paid to the mayor/chairperson as a councillor/member (s.249(2)).

Local Government Remuneration Tribunal

(The Honourable Charles L Cullen Q.C.)

Dated: