

REPORT
and
DETERMINATIONS
of
THE LOCAL GOVERNMENT REMUNERATION
TRIBUNAL
under
SECTIONS 239 AND 241
of the
LOCAL GOVERNMENT ACT 1993

22 APRIL 1994

PREFACE

The Local Government Remuneration Tribunal was established pursuant to the *Local Government Act 1993 (the 1993 Act)* on 9th February 1994. Its inaugural meeting was held on 23rd February 1994. Section 241 of *the 1993 Act* requires the Tribunal to report, not later than the 1st May 1994, a determination of categories pursuant to s.239 and the maximum and minimum amounts of fees to be paid during 1994/95 to councillors (other than mayors), members of county councils and mayors. It was apparent to the Tribunal that to comply with the statutory requirements it would not be possible to engage in a detailed examination of each council.

The concept of fixing individual council fees rather than setting parameters was raised during the course of the Tribunal's enquiries. Consideration may need to be given to an amendment of *the 1993 Act* to grant the Tribunal power to determine individual council fees in excess of the minima. This power could be exercisable if any council so elected or pursuant to a direction from the Minister if issues arose as to the fixation of fees by any council under ss.248 & 249 and to enable the review of the policy of any council concerning the payment of expenses or provision of facilities under s.252.

As indicated in the contents of the Report, it is essential that councillors and mayors understand the distinctively new role which they are required to perform pursuant to *the 1993 Act*. Much of the material supplied in submissions to the Tribunal relied substantially upon the performance of activities which are no longer relevant; particularly so in relation to mayors. Consequently, it is important for councils, when considering the quantum of fees, to have regard to this new role. For these reasons it is advisable that councils re-assess their policies in regard to determining allowances and expenses.

ii.

Because of the limited material and time available to formulate the present determination it necessarily must be regarded as an interim determination which will need to be reviewed after a full investigation. The fees determined in this Report operate only until the 30th June 1995. From that time it is necessary for the Tribunal to again determine the fees to be paid for the ensuing twelve months. This new determination will involve a review of the action taken by councils in regard to fees and expenses during the year 1st July 1994 to 30th June 1995, based upon the determination made in this Report.

While it has been possible to determine a minimum base for fees, it was decided, in effect, to retain a "status quo" situation in regard to maximum fees until a proper investigation can be completed. The adoption of such a course does not imply that the claims as to payment of a scale of fees has been rejected. Rather, it is designed to enable councils to differentiate between remuneration for fees and for expenses and to reformulate their claims. Until the next determination is made, the option has been left for councils to continue existing remuneration arrangements in relation to mayors and members of county councils (other than electricity authorities). This appeared to the Tribunal to be an equitable arrangement in the concluding period of councils' term of office. The Tribunal is currently preparing a programme of meetings and hearings at various locations throughout the State to be held during the remainder of this year.

I wish to record my appreciation of the assistance given to me by the assessors - Mr. Garry Payne, Director-General, Department of Local Government and Co-operatives and Ms. Diane Edwards, a former councillor of Ballina Shire Council. Their views and recommendations, based on their experience in local government and on the material and submissions made available to the Tribunal,

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were of great assistance in enabling the determination of the matters to be completed within a very limited time scale.

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1. The Local Government Act 1993.

The purposes of the *Local Government Act* (1993) (*the 1993 Act*) are stated in Section 7:

- (a) to provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales;
- (b) to regulate the relationships between the people and bodies comprising the system of local government in New South Wales;
- (c) to encourage and assist the effective participation of local communities in the affairs of local government;
- (d) to give councils:
 - the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and further needs of local communities and of the wider public
 - the responsibility for administering some regulatory systems under this Act
 - a role in the management, improvement and development of the resources of their areas;
- (e) to require councils to have regard to the protection of the environment in carrying out their responsibilities.

Section 8 spells out the Councils' Charter in a set of principles to guide councils in carrying out their functions. The first and prominent principle is "to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively".

The role of councillors is set out in s.232. In summary, the role is composed of two parts; firstly, to direct and control the affairs of the council in accordance with the Act (s.232(1)) and secondly, as an elected person, to represent the interests of residents and ratepayers and provide leadership and guidance to the community (s.232(2)).

Chapter 11 describes the organisation structure of councils. It is to be noted that it is the council which must determine such structure and determine the positions within the organisation structure which are senior staff positions and the resources to be allocated towards the employment of staff (s.332(1)).

Section 334 requires the council to appoint a general manager to be generally responsible for the efficient and effective operation of the council's organisation and to ensure the implementation of decisions of council (s.335(1)). The general manager is required to undertake the day-to-day management of the council and to exercise any functions delegated to him by council (s.335(2)).

As to the manner in which councils operate, s.355 prescribes:

A function of a council may, subject to this Chapter, be exercised:

- (a) by the council by means of the councillors or employees, by its agents or contractors, by financial provision, by the provision of goods, equipment, services, amenities or facilities or by any other means; or

- (b) by a committee of the council; or
- (c) partly or jointly by the council and another person or persons; or
- (d) by two or more councils jointly; or
- (e) by a delegate of the council.

However, there are express statutory functions which are preserved to the council and cannot be delegated such as the making of a rate or a charge, the fixing of a fee and the borrowing of money. In regard to the functions exercised other than the full council, these are exercised on behalf of the council to implement decisions of the council. These statutory functions are of particular importance to the role of mayor because of the removal of the status of chief executive officer prescribed in the *Local Government Act 1919 (the 1919 Act)*. (s.87(2))

As a guide to the type of functions exercised by councils Schedule 1 Form 5 of the Special Supplement (p.3474) gives some indication of the variety of functions and activities performed by councils in New South Wales for which annual estimates of income and expenditure have to be prepared. These are:

- administration
- public order and safety
- health
- community services and education
- housing and community amenities
- water supplies
- sewerage and drainage services
- recreation and culture
- fuel and energy
- mining, manufacturing and construction

- transport and communication
- economic affairs.

In considering these activities, it is necessary to draw attention to the Councils Charter which is s.8 of *the 1993 Act* and to refer to Chapter 4, that is s.9 *et seq.*, in relation to how the community may influence what a council does.

The provisions summarised above are key parts of *the 1993 Act*. This Act arose from an extensive review of *the 1919 Act* which culminated in the release by the Department of Local Government in July 1990 of the White Paper "*Functions and Powers for Local Government for the 21st Century*". (Hansard, 27 November 1992, p.54). Extensive consultations and meetings were held to ensure that there was full opportunity for input by all interested persons. In the Second Reading Speech of 27 November 1992 (Hansard, p.88) the Minister said:

Councillors will, as the governing body, hold all the powers of the council, and will be responsible for the making of policies.

The roles given to councillors attempt to balance the ultimate accountability of the councillors to their electors with their responsibility to oversee the proper, effective, fair and efficient operation of the council in its provision of services and facilities, and its regulatory activities. As a member of the council, the councillor's role will be to participate in making decisions on resource allocation, in policy development, and in the review of the council's performance. As an elected person the councillor will represent the interests of residents and ratepayers, provide community leadership and guidance and facilitate communication between the community and the council.

The role of the mayor emphasises that person's role in chairing meetings and the carrying out of the civic and ceremonial functions of the mayoral office. The mayor will, of course, also have the other functions of a councillor. Any other functions allocated to the mayor will need to be given by specific resolution of council.

Functions of the mayor as a councillor are prescribed by s.226. Essentially, the mayor is concerned in the exercise of the policy-making functions of the governing body of the council between meetings and such other functions in relation

to council business as the council may determine, and to carry out the usual functions of presiding at meetings of the council and performing civic and ceremonial functions. The mayor is bound by the policies determined by council and must act accordingly. He has no separate power to deal with day-to-day management or other matters expressly delegated by the council to the General Manager or other persons.

2. Local Government Remuneration Tribunal.

The Local Government Remuneration Tribunal (the Tribunal) was set up under Chapter 9, Part 2, Division 4 of *the 1993 Act*. It is the first of its kind in Australia. *The 1993 Act* implements wide-ranging reforms of local government and was introduced in response to concerns regarding the performance of elected and appointed members of councils. The Tribunal is required to deal specifically with the remuneration of such elected persons. Its role is to determine categories for councils, county councils (other than electricity authorities) and mayoral offices and to place each council, county council and mayoral office into one of these categories. It also is required to determine the minimum and maximum annual amounts of fees to be paid to councillors (other than mayors), members of county councils (other than electricity authorities) and mayors. There are approximately 2,000 such persons in New South Wales, all of whom will be directly affected by the Tribunal's determinations (s.239).

The reforms in the local government area have to be viewed in the context of changes in Australia arising from reforms being initiated by the Commonwealth government with the concurrence of the major political parties. These changes relate in particular to micro-economic reforms particularly in the industrial relations area.

The 1993 Act specifies that the Tribunal is to determine annual fees rather than "allowances". The term "annual fee" is not defined in the Act. Such fees are payable by councils or county councils (other than electricity authorities) monthly in arrears (ss.248 & 249). Section 252 specifies that councils must adopt a policy with regard to the payment of expenses or the provision of facilities to mayors, deputy mayors or councillors in the discharge of their duties. Expenses can only be paid, or facilities provided, in the discharge of the duties of civic office. It should be noted that councils and not the Tribunal are responsible for establishing the manner by which such facilities are provided and expenses paid.

Council duty includes the attendance at any pre-arranged meetings of council or any of the committees or attendance at conferences and social functions, either within or without the council area on behalf of the council. Prior authorisation or a direction by council is required.

Allowance is a generic term for any payment for which any member of council may be eligible. This refers in essence to recompense for authorised expenditure incurred in the conduct of council business.

3. Previous arrangements concerning allowances.

The 1919 Act provided for the payment of an allowance to mayors and councillors (s.29).

s.29(1) The Council may pay to its mayor or president an allowance in any mayoral or presidential term.

...

(4) Allowances under this section shall be for the expenses of the mayor or president in connection with his office, and shall not be used for payments to or on behalf of aldermen or councillors.

This allowance was based on payment for attendance at meetings at the rate of \$60.00 per meeting. Expenses incurred by members of councils were paid pursuant to Ordinance 3.

As to the payment of fees to members of councils, s.29A prescribed:

- (1) except as provided by this section, the council shall pay a member of the council for each day on which he -
 - (a) attends a meeting of the council or a meeting of any committee of the council;
 - (b) carries out an inspection within the area in compliance with a resolution of the council; or
 - (c) undertakes business of the council outside the area in compliance with resolution of the council,

such fee, not exceeding \$60 (or, where some other amount is prescribed above that amount) as the council may determine.

- (2) The fees paid or payable pursuant to s.1 to any member of the council shall not exceed \$3,000 (or, where some other amount is prescribed such other amount) in the aggregate for any period of 12 months from the second Saturday in September in any year.

These payments applied to all councils.

As to the payment of allowances to mayors, s.29 prescribes:

Mayors and presidents. (1) The council may pay to its mayor or president an allowance in any mayoral or presidential term.

(2) **Method of payment.** Any allowance to the mayor or president shall be payable to him by monthly instalments from the commencement of his office until it becomes vacant, or, where so resolved by the council, may be paid in any other manner.

(3) During such time as the mayor or president is prevented by absence illness or otherwise from performing any duty of his office the council may grant to the deputy-mayor or deputy-president (if any) such allowance for his expenses as the council may in the circumstances determine, and any such allowance to the deputy-mayor or deputy-president shall be deducted from the corresponding allowance to the mayor or president.

(4) Allowances under this section shall be for the expenses of the mayor or president in connection with his office, and shall not be used for payments to or on behalf of aldermen or councillors.

(5) In respect of an area to which section 25A applies, the allowance payable by the council to its mayor or president for the year immediately following an ordinary election shall be fixed at the first meeting of the council held after that election and for any other year shall be fixed at the first meeting of the council held in that year.

4. Interim arrangements concerning allowances.

Until the Tribunal's first determination is made, councillors, mayors and county councillors are to be paid at a rate not exceeding the rate under *the 1919 Act*. This interim arrangement is established under Clause 14 of the Local Government (Savings and Transitional) Regulation of *the 1993 Act*.

Clause 14 states:

- (1) Until the Remuneration Tribunal determines the annual fees payable to councillors the fees payable to a councillor of a council must not exceed the fees payable under s.29A of the old Act to a member of the council immediately before 1 July 1993.
- (2) Until the Remuneration Tribunal determines the annual fees payable to mayors, the fees payable to a mayor of a council must not exceed the allowance payable under s.29 of the old Act to the mayor or president of the council immediately before 1 July 1993.

5. Categorisation of councils.

Councils were first graded in 1979 into 18 grades (reduced to 17 in 1982) for the purpose of determining the rates of pay of senior officers. As this grading determines the rate of pay of the senior officers, it necessarily reflects the value of the work and responsibility of such officers and indirectly is some guide to the scale of operations of the council. These grades are contained in Schedule 1 of the Local Government Senior Officers Award: (221 IG 1028).

The Department of Local Government since 1990 has published comparative information on councils annually based on the categorisation established by the New South Wales Local Government Grants Commission. The broad categorisations are Sydney Division, non-metropolitan but predominantly urban, coastal councils and rural councils or councils with significant rural areas. The sub-categorisations are basically related to population. The matters to be taken into account by *the 1993 Act* are broader and in some cases offsetting. For example, the largest area may have the smallest population and vice versa.

However, 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. The variation within each category is to be determined by resolution of each council to cater for its particular circumstances. The latter will, of course, be subject to public scrutiny and to that of the Tribunal in particular for its Determination for the ensuing twelve months (s.241).

It has only to be stated that if councils are categorised in accordance with each of the matters listed in s.240(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.

The Local Government Senior Officers Award grouped the councils into grades. These grades were first constructed in 1979 following the making of the first Award: (221 IG 1028). As the purpose was to rationalise the rates of pay of senior officers, the gradings in the first instance, at least, were influenced by Council expenditure which previously formed the basis for determination of senior officers' salaries.

Most of the councils graded 17 (the highest grade) were proclaimed Cities pursuant to s.11 of *the 1919 Act*. The basis for such classification is stated in s.11 of *the 1919 Act*.

s.11 Proclamation of cities. (1) The cities proclaimed before the commencement of this Act are continued as cities under this Act.

(2) The government may proclaim as a city a municipality which

(a) has a population of at least 25,000 persons and which is an independent centre of population and is not a suburb, whether residential, industrial, commercial or maritime, of any other municipality or centre of population;

(b) has a population of at least 150,000 persons, and which has a distinct character and entity as a centre of population; or

(c) does not comply with paragraph (a) or (b), but in relation to which the Governor is, having regard to the circumstances of the case, of the opinion that it is in the interests of the residents of the municipality to do so.

....

Other city councils, however, are graded below Grade 17, namely, Albury, Armidale, Broken Hill, Campbelltown, Cessnock, Dubbo, Goulburn, Grafton, Greater Cessnock, Greater Lithgow, Lismore, Liverpool, Maitland, Orange, Parramatta, Queanbeyan and Tamworth. The gradings for cities were extremely wide, ranging from 9 to 16. Sydney suburban councils other than cities, except for Hunters Hill, were graded between Grades 9 - 15. If the group of councils described as large towns plus rural are considered as a group, their gradings range from 7 to 15. The final group consist of small towns and rural councils. Their gradings in the Award are generally 8 or less.

For the purposes of the NSW Local Government Grants Commission, councils were categorised into four categories. In comparing this categorisation with the grades discussed above, it is noted that the councils graded 17, in accordance with the Senior Officers Award, are included in the categories 1.1, 1.2, 1.3 and 2.1 of the NSW Local Government Grant Commission groupings.

The Structure Classification System of the draft document of the Australian Classification of Local Governments December 1993 categorises councils in accordance with three factors - population, population density and the nature of surrounding local governments. It also primarily categorised the land use distinction between urban and rural. It noted that rural councils have the commonality of a dominant interest in rural issues, even with the towns contained in the local government area. Population density was the classic method of distinguishing urban from rural areas.

6. Special features of councils : Submissions.

The special characteristics of the City of Sydney were detailed in a submission of the Lord Mayor. It was stated to be the seat of Government and the focus for the judiciary of the State's Legal System; the centre for the major financial and commercial institutions of the State and the financial centre of the Pacific; the cultural and entertainment centre of the State and a mirror of Australian culture and tradition; the gateway to Australia for overseas tourists and visitors and the main centre for tourism in Australia; the focus for the major civic, ceremonial and religious activities of the City, New South Wales and Australia; sustains and encourages residential development in selected areas so that a vibrant, attractive and lively city centre can flourish; a multipurpose centre specialising in higher order retailing serving the needs of visitors, workers and residents of the city, metropolis and State; the hub for major domestic passenger and freight services - road, rail and air; a principal centre of intellectual activity, media and communications as well as a catalyst to promote Australia's intellectual development; a major centre for the professions and through its Universities an educational centre of excellence; a principal centre for the provision of higher order, specialised medical services; and a centre for port operations, in association with Port Botany and the home base for the Royal Australian Navy.

The City of Newcastle and the City of Wollongong also were stated to have significant regional influences which tend to distinguish them from other large councils. The involvement, particularly of the "Lord Mayor" status of the mayor in civic service activities, was claimed to be of wider significance. These councils had large industrial bases, and significant port facilities with international significance.

Sydney councillors were stated to be mainly involved during the business week. This factor erodes their income earning capacity in their normal occupations. The point was made also that with a council of seven councillors the workload is correspondingly larger. Comparisons were made with salaries paid to executive positions in private and public sectors and other non-executive positions. Emphasis was placed on the performance of the Lord Mayor's unique civic and ceremonial role. Indeed much of the submissions related to the performance of the ceremonial role and representation thereby on a large number of organisations. It is to be noted also that s.87(5) of *the 1919 Act* prescribes:

The Lord Mayor of the City of Sydney shall, during his mayoralty, be ex officio a justice of the peace for the State and shall preside at all municipal proceedings, and shall have precedence in the city and in all other places on all occasions next after members of the Legislative Assembly.

The Local Government and Shires Associations of NSW conducted a survey of councils using 12 benchmark local government authorities, namely, Bourke, Wollongong, Concord, Dubbo, Wingecarribee, Lismore, Sutherland, Evans, Leichhardt, Manly, Bankstown and Parkes. A questionnaire was distributed to 64 councils randomly selected from the metropolitan, provincial and rural areas. It was stated that a representative sample of 33% of all NSW councils were covered by the survey. Consultants were engaged to develop a sizing methodology based on the seven factors contained in s.240 (i) of *the 1993 Act*. Weightings for each of the seven factors and degrees within each factor were developed and a summary outline was presented. Based on a points range, eight categories were suggested. This consisted of a special category for Sydney City Council, a separate category for Newcastle and Wollongong and six other categories. A schedule was also constructed whereby councils were categorised according to population and expenditure. The Tribunal also had the benefit of brief supporting oral submissions from representatives of the Association.

Other written submissions in regard to the category of particular councils were made by Blue Mountains, Broken Hill, Gosford, Junee, Lake Macquarie, Singleton, Willoughby, Mulwaree, Wagga Wagga and Evans/Webb Associates Pty Ltd.

It has not been possible to consider in detail the particular matters for each of the 177 councils. There appears to be a general conception that each council is "unique". This may very well be the case because of the widely varying features of each area, the constitution of each council, the efficiency of the management and the relationship between the general manager and the mayor and/or council. But experience has shown that from the classifications which have been made for particular purposes there emerges sufficient commonality overall to classify councils in broad groups. When such broad classifications are made it is possible to cross-check them to some extent in accordance with matters which are capable of measurement, for example, population, expenditure (as a rough measure of business transacted), the size and terrain of the areas and other particular distinguishable features. This procedure has been attempted in determining the categories. Some reliance was placed on the classifications referred to earlier and adjustments made on the limited information available in relation to the s.240(1) matters for appropriate separation into categories.

7. The categories.

There can be no issue with the submission of the Sydney City Council and to additional information supplied on request that, because of its unique characteristics, its use by the large non-resident population, its functions and the area administered by the council, the council should be placed in a special category of its own. It is proposed to establish a Special Category S1.

Two other councils have somewhat similar features to those of Sydney, namely, Newcastle and Wollongong. As stated in the submission of the Local Government and Shires Associations of New South Wales, these councils have large industrial bases, port facilities and international trade significance. The special nature of the cities of Sydney, Newcastle and Wollongong were considered in *In Re Wollongong City Council Conciliation Committee* (1976) AR 620. This case dealt with an application by the Wollongong City Council for the establishment of a separate conciliation committee based upon the precedent of the constitution of separate committees for the City of Sydney and the City of Newcastle. Although Watson J. declined to grant the application he said, inter alia:

There are some special aspects relating to the City of Wollongong which are fully recognised and which may distinguish the position from other cities and large municipalities.

His Honour observed finally:

There is no reason, however, why the matter should not be reviewed at some stage on further application if the need for an establishment award is shown and one obtained, or circumstances arise in the negotiation of new agreements which suggest that an establishment committee such as that applying in Newcastle should preferably be constituted.
(p.622)

Based on the material before it and the submissions of the Local Government and Shires Associations of New South Wales on behalf of the City of Wollongong, a case has been made out for it to be categorised, with Newcastle, as a Special Category S2.

It is proposed also to establish a Special Category S3 to include the county councils (other than electricity authorities) pending further investigation.

The grouping of the remaining councils has been based on the history of classifications, the material submitted to the Tribunal and enquiries made during the preparation of the Report. Special features which are relevant to the new role of councillors and mayors pursuant to *the 1993 Act* were also taken into account.

The list of councils in accordance with their categories is as follows:

Category

S1 (1 Council)	Sydney
S2 (2 Councils)	Newcastle Wollongong
S3	County Councils (other than Electricity Authorities)
1. (20 Councils)	Baulkham Hills Bankstown Blacktown Blue Mountains Campbelltown Canterbury Fairfield Gosford Hornsby Lake Macquarie Liverpool North Sydney

Parramatta
Penrith
Randwick
Shoalhaven
South Sydney
Sutherland
Warringah
Wyong

2. (18 Councils)

Ashfield
Auburn
Botany
Hawkesbury
Holroyd
Hurstville
Kogarah
Ku-ring-gai
Leichhardt
Manly
Marrickville
Pittwater
Rockdale
Ryde
Waverley
Willoughby
Wollondilly
Woolahra

3. (34 Councils)

Albury

Armidale
Ballina
Bathurst
Bega Valley
Broken Hill
Byron
Burwood
Camden
Cessnock
Coffs Harbour
Concord
Drummoyne
Dubbo
Eurobodalla
Goulburn
Grafton
Great Lakes
Greater Taree
Hastings
Hunters Hill
Kempsey
Lane Cove
Lismore
Maitland
Mosman
Orange
Port Stephens
Queanbeyan
Shellharbour

Strathfield
Tamworth
Tweed Heads
Wagga Wagga

4. (30 Councils)

Bellingen
Casino
Cobar
Cooma Monaro
Cootamundra
Cowra
Deniliquin
Forbes
Glen Innes
Greater Lithgow
Griffith
Gunnedah
Inverell
Kiama
Leeton
Macleay
Moree Plains
Mudgee
Muswellbrook
Nambucca
Narrabri
Narrandera
Parkes
Richmond River

Singleton
Tumut
Wellington
Wentworth
Wingecarribee
Young

5. (72 Councils)

Balranald
Barraba
Berrigan
Bingara
Bland
Blayney
Bogan
Bombala
Boorowra
Bourke
Brewarrina
Cabonne
Carrathool
Central Darling
Conargo
Coolamon
Coolah
Coonabarabran
Coonamble
Copmanhurst
Corowa
Crookwell

Culcaim
Dumaresq
Dungog
Evans
Gilgandra
Gloucester
Gundagai
Gunning
Guyra
Harden
Hay
Holbrook
Hume
Jerilderie
Jonee
Kyogle
Lachlan
Lockhart
Manilla
Merriwa
Mulwaree
Murray
Murrumbidgee
Murrurundi
Narromine
Nundle
Nymboida
Oberon
Parry

Quirindi
Rylstone
Scone
Severn
Snowy River
Tallaganda
Temora
Tenterfield
Tumbarumba
Ulmarra
Uralla
Urana
Wakool
Walcha
Walgett
Warren
Weddin
Windouran
Yallaroi
Yarralumla
Yass

TOTAL COUNCILS

177

8. Annual Fees : Submissions.

The report of the consultants to the Local Government and Shires Associations of New South Wales detailed remuneration of alleged comparable positions. These were:

Chairmen and directors of non-corporatised statutory authorities, commissions and boards, non-executive chairmen and directors of public companies, mayors and councillors in Queensland, and remuneration of NSW members of parliament.

Comparable data was also cited in respect of fees paid to mayors and councillors in Canada and New Zealand.

A number of submissions were also received by the Tribunal providing descriptions of the activities of councils and detailed accounts of individual councillors' activities. The former in large part complemented the survey carried out for the Local Government and Shires Association of New South Wales. The submissions as to the quantum of fees, however, differed significantly and ranged from comparisons with emoluments of other alleged comparable persons such as parliamentarians and board members to non-payment to councillors.

Submissions, briefly summarised below, made to support these differing views were, for example, that councillors do not need to have any qualifying level of expertise in management, local government law, planning law or practice or other disciplines relevant to council activities; the election process does not ensure competence in any specific matter; the collective responsibility of council is decision-making by a majority vote; the benefit of a flat fee per annum ensures that the fee system is predictable so far as budget is concerned, is open to the public and provides a form of equity amongst councillors; the volume of business, to a large extent, is reflective of delegation of decision-making powers; thousands of

committed members of the community do voluntary work because they enjoy it, it brings them satisfaction and leads thousands of them to enter local government; communities would not function properly without this type of voluntary commitment from residents; there is no provision to allow a councillor to refuse payment pursuant to s.248 of *the 1993 Act* and some councillors have never accepted payment; on the other hand, many of the very people needed in local government cannot, and will not, be attracted under the present remuneration arrangements; in accordance with the practice concerning boards of directors, the proper principle to adopt is total pay of all directors equals that of the chief executive of the organisation.

Details were provided as to hours spent on council business and expenses incurred. The time devoted to council business was stated to be up to 50 hours per week. Extra payment for Deputy Mayors was also claimed. Issues were raised as to accountability if a "full wage" was awarded in contrast to those who viewed the work of a councillor as part-time and voluntary community service. The view that present remuneration arrangements discouraged people from nominating for election to council arose from a number of sources.

Of the fifty-two submissions received, apart from Sydney and the Associations, only three councils and two individuals opposed fees and/or an increase in fees. Of those who formulated suggested fees, these ranged from a minimum of \$4,000.00 (other than the submissions which recommended not having any minimum or leaving it at the current maximum - \$3,000.00) to \$30,000.00 for councillors and \$12,000.00 to \$75,000.00 (other than for Sydney) for mayors. Some suggested "per meeting" fees.

9. Factors affecting the function of Councillors.

There is a wide diversity of areas falling within the control of councils. In many cases, the area of the council is in inverse ratio to the population. In some areas, problems arising from the physical terrain are transferred to county councils, for example, flood control. Other areas such as those covering the Great Dividing Range have particular physical terrain difficulties in the provision of normal local government services. In the larger areas, there necessarily arises significantly greater travelling times for councillors to attend council meetings and perform other authorised functions.

(See: **Maps - New South Wales Local Government Areas** pp.49 - 51)

10. The role of Councillors.

Division 3 - The councillors

232. (1) The role of a councillor is, as a member of the governing body of the council:

- to direct and control the affairs of the council in accordance with this Act
- to participate in the optimum allocation of the council's resources for the benefit of the area
- to play a key role in the creation and review of the council's policies and objectives and criteria relating to the exercise of the council's regulatory functions
- to review the performance of the council and its delivery of services, and the management plans and revenue policies of the council.

(2) The role of the councillor is, as an elected person:

- to represent the interests of the residents and ratepayers
- to provide leadership and guidance to the community

- to facilitate communication between the community and the council.

In assessing the responsibilities and duties of councillors it should be noted that:

Councils are multi-purpose corporations which have a democratically elected governing body and the opportunity to provide a range of services and facilities to the particular area of the state for which they have responsibility. (Second Reading Speech, 27 November 1992, p.10388).

In the Second Reading Speech, the Minister also said:

This Bill places local government in the context of public sector accountability and public sector performance management. It is important to recognise that the relationships between elected people and appointed officials need to be regularised and modernised in local government as they have been in the other levels of government. The communities' demand for better performance by elected people and by appointed officials is ever increasing. The local government sector needs to be able to organise its structures to best respond to community aspirations. Rigid and immovable organisation structures, which have been imposed for many years by the system of statutory certified positions, are gone. The deliberate freeing up of the organisation structure of councils is a crucial reform in this legislative package, and over the next ten years it will bring a variety of organisational structures into existence at the local government level which will better enable councils to serve the community.

The Tribunal is required by *the 1993 Act* to perform its functions before 1 May 1994. This necessarily involves the need to make what may appear to be ad hoc decisions for the year commencing 1 July 1994 pending detailed examination of the position of individual councils. The problem has been overcome by taking a general approach to what is a transition period from *the 1919 Act*, with its statutory regulated duties of senior council staff and the executive role of the mayor, to the enterprise type operation envisaged in *the 1993 Act*. It may well be that, in the future, in order to properly implement the functions envisaged by *the 1993 Act*, consideration will need to be given to the number of councillors in the determination of the fees

payable to each of the councillors. However, this is a matter for consideration in the future. What is under consideration now is the determination of the proper fees to be paid under present circumstances. Such consideration must necessarily have regard to present payments and the rationale for such payments pending a more detailed examination for the 1995-96 year.

There are few, if any, guidelines to assist the Tribunal in its task. There is a history of payments to councillors and mayors of widely varying amounts in the form of allowances. The difficulty of using such material is distinguishing, particularly in the case of mayors, the amount representing payment for attendances and/or services and the reimbursement of expenses incurred in the performance of council duties. Section 29(4) of *the 1919 Act* provided that allowances to mayors and presidents "shall be for the expenses of the mayor or president in connection with his office, and shall not be used for payments to or on behalf of aldermen or councillors".

In New Zealand there are some parallels to be drawn but there are significant differences. In the New Zealand legislation population is the basis upon which the relativities are maintained. The criteria on which such maximum rates are established include the requirements of the position concerned, the populations of the regions or districts, the need to achieve and maintain relativities and such other criteria as the Minister considers relevant. (NZ Local Government Act 1974).

In the United Kingdom, local government matters are administered by the Department of the Environment. A new system of allowances for councillors was introduced by the Local Authorities (Members' Allowances) Regulations 1991 (SI 1991 No. 351) of the Local Government and Housing Act 1989. In a circular issued by the Department on 19 April 1991 it was stated:

This legislation introduces a new system of allowances for councillors. The introduction of the new system has three main effects:

- (a) it gives each council greater freedom, within an overall ceiling on remuneration, for each council to adopt a system of allowances suited to their own circumstances.
- (b) it ends the apparent incentive to multiply the number of days on which councillors undertake approved duties;
- (c) it restricts the ability of councils to pay allowances in respect of party political activities.

The United Kingdom scheme for a basic allowance for all councillors is akin to the minimum amounts of fees to be determined under *the 1993 Act*, namely fees are determined in recognition of the time spent in attending council meetings and other authorised attendances on behalf of the council. However, incidental expenditure incurred by such attendances are required to be dealt with separately pursuant to sections 252, 253 and 254 of *the 1993 Act*.

The attendance money and special responsibility allowances of the United Kingdom scheme are distinguishable from *the 1993 Act* in that they are designed to provide additional allowances for particular councillors. *The 1993 Act* prescribes that the annual fee paid, if different from the minimum fee, shall be the same for each councillor (s.248(3)). Nevertheless, the effects of *the 1993 Act* concerning fees and allowances are not dissimilar from the United Kingdom system.

Under *the 1993 Act* the major factor in determining the maximum fee for each category of councils is necessarily based on the differing levels of responsibility and accountability imposed on councillors arising from the scope of activities of each category of councils. Councillors are not only responsible for council policies but are accountable to the local community for such policies and their implementation by the general manager and senior staff appointed by the council. They are expected, in

particular, to take the initiative in such matters as developing policy in regard to the environment as it affects citizens in the council area and adjoining areas. These expectations arise whether it is a small rural council or a large city council. They have become of increasing significance in recent years.

11. The History of Allowances.

Local Government elected officials have traditionally been seen as civic-minded citizens providing a voluntary service to the community. The *Local Government Act, 1919* reflected this philosophy. Accordingly, while it authorised payment of reasonable allowances to members of councils towards out-of-pocket expenses, it did not authorise any other payment. Only expenses, relating to conveyance and subsistence in travelling to and from meetings or committees of council, inspections and certain conferences, were covered. Receipt of any other payments could make the recipient subject to a special disqualification within the meaning of *the Act* and liable to ouster proceedings and heavy penalties.

By 1950, however, the concept of local government as a purely voluntary service was being questioned. This followed the 1948 introduction in England of legislation establishing a "financial loss" allowance compensating elected officials for loss of earnings as well as expenses which the member would not otherwise have incurred. At the Local Government Association of N.S.W. Conference in that year a resolution was carried that *the Local Government Act, 1919* be amended to provide for the refund of any loss incurred by way of salary, wages, professional fees, or the like sustained by elected officials. The 1954 Conference carried a resolution to the effect that the Association was not opposed to the payment of loss of earnings or other reasonable losses properly incurred provided that expenses in relation to loss of earnings did not exceed £3 a day. A limit of £250 was recommended on the amount which could be received in any one year.

Some expressed the view that, while the service given should remain voluntary, it was inappropriate for local government officials to be required to forego both income and any out-of-pocket expenses that were not specified in *the Act*. Others considered that elected local government officials should be paid in the same way that elected officials in other spheres of government were paid. The Shires Association of N.S.W. remained opposed to recoupment.

None of these recommendations were adopted by the Government until 1963 when the *Local Government (Payment of Fees) Amendment Act* was introduced. Two methods of paying the allowances were considered:

- a fee for attending to council business, ie, meetings, inspections, etc;
- the recoupment of earnings lost by attending to council business and any additional expenses other than travelling, etc.

The first method was favoured as the second was viewed as giving rise to anomalies. Also, payment by fee did not prejudice the voluntary nature of local government. Certain objections were raised on the basis that the payment of fees would eventually lead to the establishment of a career local government politician.

The Act authorised the payment of allowances to a maximum of £3 per meeting and £250 per year, in keeping with the Local Government Association Conference resolution in the previous decade. In his Second Reading Speech, the then Minister for Local Government and Minister for Highways, Mr Hills, stated that the Government considered that these allowances did not involve the payment of salaries but the

"recoupment of persons who are out of pocket because of their services on council business". (Hansard, p 4545, 28 August, 1963.)

Moreover, the Minister clearly indicated that the provisions were not to be mandatory but were to be at the discretion of individual councils.

In 1981 allowances were increased to a maximum of \$1,000 per year, with a maximum per meeting of \$30. The previous maximum of \$500 (£250) was considered inadequate.

Following a review by the Department of Local Government in 1987, the Government increased the maximum payable for each meeting to \$60 with a ceiling of \$3,000 per year.

Section 29(1) of *the 1919 Act* authorised payment of an allowance to a mayor or president by the Council. Unlike councillor's allowances, however, there was no statutory limit because mayoral and presidential allowances related to actual expenses. The Act required that the amount be fixed at the first meeting of the council after the election and thereafter, until the next election, at the first meeting each year.

12. Current Fees for Councillors.

Section 248(1) of *the 1993 Act* provides that:

A council must pay each councillor an annual fee.

Pursuant to *the 1919 Act*, councillors are currently paid \$60 per council meeting with an annual ceiling of \$3,000. If this fee was adjusted in terms of the

Consumer Price Index increase from 1987 to 1993, this would amount to an overall increase of 35.47%. The maximum annual fee payable would, therefore, be \$4,068 to maintain its real value.

A survey conducted by the Tribunal concerning allowances and expenses resulted in a response by 148 of the 177 councils. The responses indicated an unexplained wide diversity in allowances and expenses paid to councillors and mayors, meetings attended and the number of councillors.

13. Factors to be taken into account in assessing the fees.

In the absence of some detail as to the functions and responsibilities of their positions, it is not considered that any weight can be given to the fees paid to Chairmen and directors of statutory authorities and local government representatives in other states and countries. Nor is the comparison with politicians valid on the basis that councils are local government and that the mayor is the "political head". Councils are not statute-making bodies. Their constitution, powers, authorities, duties and functions are determined in accordance with *the 1993 Act*.

As discussed earlier in this report, the community interest role of councillors and mayors in New South Wales is now a predominant feature. As stated in the Second Reading Speech, communities are demanding better service by councillors and staff. Councillors and mayors are elected on the basis of being representative of groups of people within a local area arising from participation in community activities. They are not called upon to provide management expertise but are expected to develop policies in accordance with the views of the local community in regard to essentially local issues. The implementation and administration of those policies is a matter for the general manager and his staff.

As indicated previously, it is not considered that there is any remuneration relationship between that of a skilled administrator appointed as general manager, and an elected councillor or mayor. The actual quantum of time which is obligatory is linked to the performance of formal council business and authorised delegations on behalf of the council. This activity may be inside or outside normal working hours. The material available seems to indicate that many attendances, while they may be expected, are not obligatory. The extent of involvement of the council in community activities, either as a council or by delegation, is to some extent dependent on community expectations. Apart from participation in activities in which the council has a role, for which reimbursement for out-of-pocket expenses is authorised by council resolution, further participation in community activities is largely a matter of personal choice or conscience. It is apparent from the material available that the extent of committee activity and other community service varies widely between councils as does the number of councillors who participate. However, *the 1993 Act* recognises that the role of a councillor is not only to represent the interests of the community but also to provide leadership and guidance and facilitate communication between the community and the council (s.232(2)). Formal council meetings are held usually once or twice per month mostly in the evening for urban councils and during the day for rural councils but there are wide variations. In brief, the main responsibility of councillors is concerned with policy making or dealing with other major issues. The implementation and administration of policy and council decisions is the function of the general manager. Electorate duties involving consultation with ratepayers enable councillors through the council to inform the general manager of the effectiveness or otherwise of his implementation of such policies.

Pursuant to *the 1993 Act*, mayors and councillors do not have any executive functions and thereby could not be expected to be engaged full-time on council duties. Submissions were made that some councillors spent considerable time

each day on issues of individual concern, despite the fact that it is not the role of a councillor to intervene in management matters other than to refer them to the general manager or other appropriate senior officer. The latter are responsible through the general manager as a whole for the efficient operation of the council. However, there is a significant degree of community activity associated with the role of councillor or mayor. This community participation may apply to the council as a whole or by delegation to the mayor or to individual councillors.

The nature of many community service activities do not attract remuneration e.g. volunteer bush fire brigades. The volunteer aspects of community service was considered in *In re Volunteer Fire Brigade Employees (No. 1)* 1963 AR 41. The evidence summarised therein indicates the motives of persons who do not expect remuneration for services to the community. Some payments were made but as Watson, J. observed:

These payments are made in consideration of their continued interest in the brigade and their attendance at drills and fires and are part and parcel of the job.

This observation was made in the circumstance where the voluntary workers were opposing any payment as in the case of some submissions made to the Tribunal. The rationale for the concept of voluntary activity has to be considered in regard to the role of councillors. It is necessary to observe that the time spent on voluntary community involvement does not *ipso facto* become income earning because a person is elected a councillor; participation in many community activities and membership of community organisations are not only optional but often notional.

As observed above, councillors are elected and are not appointed on the basis of experience and qualifications as is the case with general managers and other senior staff. The management of council affairs is vested in the general manager

with the assistance of his senior officers and staff. Much of the work of councils is concerned with the maintenance and supply of services. There is also some regulatory function but this is not comparable, as some submitted, with the legislative function of Parliament. In essence, councillors' overall role is to seek to balance the interests of the community against those of the individual. The guidance and/or control of such policy matters is to be administered by the general manager. It is the latter's responsibility to ensure that, in exercising delegated council authority, an agenda is produced for council meetings to enable appropriate policies to be determined. It is the responsibility of the mayor to ensure that the agenda is effectively dealt with within the times set for council meetings.

Accordingly, apart from reports to council of the progress of policy implementation, it is a matter of managerial style as to the detail of the matters which are to be referred to council for consideration. The policy of the council is determined by a majority vote and the latter binds the whole council. Voting on questions of policy is therefore the primary function of councillors. The amount of time which they spend informing themselves, if needed, on such questions is a matter of both individual choice and personal commitment to the position of councillor.

14. The Minimum Fee for Councillors.

There has been insufficient time available to the Tribunal, because of the statutory requirement to determine the fee before 1 May 1994, to consider in detail the requirements placed upon individual councillors in their functions at council meetings, the time taken to prepare for such meetings and in their pastoral role in the community for the various categories of councils.

At this stage it is not possible to depart from the position that the same minimum fee should be payable for all councils. It is consistent with the concept that there is an ascertainable minimum level of responsibility and accountability common to all councillors which should be appropriately remunerated.

If such level of remuneration cannot be financed by a council then it raises the issue of the viability of such council, either as to the number of councillors or as to its independent operation. The principle of an annual fee has apparently been adopted by *the 1993 Act* on the basis that it is not considered appropriate that a monetary penalty be imposed upon councillors who fail in their duty to act properly in accordance with the obligations arising from election to a council. Rather it is to point out that councillors are required to attend to their duties and obligations diligently and, for discharging that function, will be equitably compensated. It is a matter for the electors to take appropriate action if they fail to do so. It is noted that s.37 of *the 1919 Act* concerning disqualification from office for non-attendance has not been repeated in *the 1993 Act*.

There should be established some common fundamental minimum requirements of responsibility and accountability to the community for which monetary recompense is justified in the public interest. Although election to a council is not based on any particular requirement as to qualifications and experience they are obviously helpful. Councillors are not expected to be qualified to manage the enterprise but must engage competent staff to perform such executive functions. In other words, they are elected as representatives of the community and not appointed on the basis of managerial qualifications.

The fees are being set in the environment of average weekly earnings for full-time adults of (NSW November 1993) \$655.70 per week, or \$34,000 per annum. The fees pursuant to *the 1993 Act* have wider implications which the Tribunal

considers should be appropriately recognised. The quantum determined is greater than that sought by the Associations for rural councils which equates approximately with the adjustment of the statutory ceiling of \$3,000 per annum of *the 1919 Act* for cost of living increases. However, the latter was based on payment for attendance at individual council meetings.

Bearing in mind all the circumstances, including notice that a detailed investigation will be carried out for determination of the fees for 1995/96, as an interim measure consistent with council budgetary considerations, the minimum fee for a councillor for 1994/95 for all categories shall be \$5,000. This fee shall apply to all councils other than county councils. The fee is determined, not on the basis of recompense for expenditure incurred but having regard in particular to the time spent attending prescribed meetings and other activities whereby councillors are obliged by council resolution to forego other remuneration opportunities. The fee is determined independently of payments made pursuant to ss.252, 253 and 254.

15. The Maximum Fee for Councillors.

The determination of the maximum fee for councillors includes detailed consideration of all the factors constituting the basis for categorisation of councils. The responsibility for a council to determine a fee in excess of the minimum is expressly placed by *the 1993 Act* upon each council. The rationale and basis for such payments must be determined at council meetings and is therefore, open to public view.

As in the case of the minimum fee, it necessarily has to be based upon averaging. In other words, in any particular council, the more productive councillors will receive the same fee as the less productive. This factor needs to be taken into

account by a council in the exercise of its discretion to determine a fee higher than the minimum.

For the reasons discussed in determining the minimum fee for councils for 1994/95 the maximum fee for all councils, as an interim measure, shall be formally determined as \$5,000 per annum pending further detailed investigation. In making this Determination it should not be concluded that the claims for increased remuneration for councillors in accordance with a progressive scale has been rejected. To the contrary, such a scale has not been formulated in this Determination because there was insufficient time to enable many interested persons to fully consider the implications of *the 1993 Act* in regard to the role of councillors and the form of remuneration therein prescribed and to put forward informed submissions.

16. The Functions of the Mayor.

Section 87 of *the 1919 Act*, prescribes:

Powers of mayor or president. (1) The mayor or president shall preside at all meetings of the council at which he is present.

(2) The mayor or president shall be the chief executive officer of the council, and in particular may, unless otherwise directed by or under this Act or by resolution of the council -

(a) carry on the regular services and operations of the council within the sums voted by the council for expenditure thereon, and in accordance with the resolutions of the council;

(b) control and direct the servants of the council;

(c) suspend any servant of the council, and appoint some person to carry on the work until the next meeting of the council;

(d) authorise the payment of the salaries and wages of the servants of the council within the sums voted by the council for expenditure thereon;

(e) authorise any work which in his opinion is urgent, at a cost not exceeding \$2,000 or such other limit beyond that amount as the council may determine, and shall ensure that the account for any work so authorised is submitted for payment by the council in the same way as other accounts for goods and services against the council;

(f) at any meeting of the council, remove or cause the removal of any member of the council who after warning is guilty of disorder, and at the same or any subsequent meeting exclude or remove such member unless he apologise without reservation.

Sub-sections (3) (4) and (5) deal with the more general powers of the mayor in addition to these express powers.

Pursuant to such duties there is provision for payment to mayors -

29. Mayors and presidents. (1) The council may pay to its mayor or president an allowance in any mayoral or presidential term.

(2) **Method of payment.** Any allowance to the mayor or president shall be payable to him by monthly instalments from the commencement of his office until it becomes vacant, or, where so resolved by the council, may be paid in any other manner.

...

(4) Allowances under this section shall be for the expenses of the mayor or president in connection with his office, and shall not be used for payments to or on behalf of aldermen or councillors.

...

The constitution of councils and their management pursuant to *the 1993 Act* are markedly different from *the 1919 Act*. Chapter 9 Part 2 constitutes councils as body corporates (ss.219 & 220). The governing body of a council is constituted by elected representatives called councillors (s.222). The role of such governing body is to direct and control the affairs of the council in accordance with

the Act (s.223). An area must have a mayor who is elected in accordance with this Division (s.225).

The role of the mayor is:

- to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council
- to exercise such other functions of the council as the council determines
- to preside at meetings of the council
- to carry out the civic and ceremonial functions of the mayoral office (s.226).

A council must determine:

- an organisation structure
- those positions within the organisation structure that are senior staff positions
- the resources to be allocated towards the employment of staff (s.332(1)).

...

A council must appoint a person to be its general manager. The person must not be a body corporate (s.334(1)).

(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 (s.335).

17. Mayoral Fee.

Local government has operated pursuant to the tradition of voluntary service. It was not until recent years that any payment of a fee was seriously contended. In 1987, the first serious steps were taken to provide recompense in some concrete way for the services so rendered. The contribution of mayors has been a matter of particular concern because of the extra time devoted to the management of councils' affairs. It has been customary for some time for mayors to be paid an allowance in recognition of expenses incurred in connection with his office pursuant to s.29 of *the 1919 Act*.

Order No. 2 Clause 7 of the Local Government Ordinances prescribed that:

The council shall each year before electing a mayor or president determine whether or not it shall grant an allowance to him. If the council determined to grant such an allowance, it shall, before electing the mayor or president, fix the same.

The practice developed in some councils whereby the role of mayor became effectively full time. Thus allowances paid to mayors have varied widely in accordance with local practice. *The 1993 Act* recognises the need for more consistency in the remuneration of mayors. It makes a distinction between annual fees and the reimbursement for expenses incurred in the performance of council business.

The criteria upon which the determination of mayoral fees and allowances is based include those applicable to fees for councillors. Any policy regarding reimbursement must be determined at an open meeting of council.

The 1993 Act sets out the responsibilities of a mayor. These are concerned principally with the chairing of meetings and providing civic leadership. Additional functions may be given to the mayor subject to specific resolutions of council. The mayoral allowances presently paid vary widely without any apparent common factor.

A survey carried out as part of a research project by students at the University of New South Wales provided to the Department of Local Government and Co-operatives entitled "Mayoral Remuneration" (Policy Workshop - SLSP 5003) concluded that there was no correlation between the determination of mayoral allowances by local councils and a number of variables common to all local government areas. It found that current practice did not take into account specific functions, scope, accountability and performance measures relating to the office of mayor. It concluded that there appeared to be a high degree of subjective decision making involved and that there was a wide range of mayoral allowances with no particular relation to any of the matters as outlined in s.240(1) of *the 1993 Act*.

The determination of some benchmark is not easy because of wide diversity in the determination of individual mayoral allowances. There may be, of course, any number of specific factors such as the particular history of the council, the personalities involved and the manner in which the work was performed. It may well be that the mayors in particular councils have either consciously or sub-consciously become directly involved in the day-to-day management of the council. No doubt this would have depended to some extent, at least, upon the capacity of the town clerk. It is to be noted, in particular, that under *the 1919 Act* the mayor was the chief

executive of the council (s.26) and the role of the town clerk was prescribed in Ordinance No. 4 Clause 12 of *the 1919 Act* as:

The clerk shall be the chief administrative servant of the council, and shall (subject to any direction given by the council, or mayor, or president) advise as to their duties and exercise general control over all other servants of the council.

The respective roles of the mayor and the general manager pursuant to *the 1993 Act* differ significantly from the former roles of the mayor and the town clerk.

Pursuant to *the 1993 Act*, except in regard to questions of council policy, the general manager is now responsible for the day-to-day management of the council. This necessarily has a significant effect upon the role previously performed by the mayor in certain councils. If the statutory role of the mayor is to be properly evaluated it has to be taken into account that, although the mayor is required to act as *delegate of the council during periods between meetings*, this does not envisage a "hands on" management function. However, the general manager is accountable to the mayor between council meetings for the implementation of council policy and the mayor is the reference point for the general manager and other persons if questions of policy arise which need attention before the next council meeting.

The mayoral allowances which are presently being paid do not provide a proper guide to the determination of annual fees on the criteria established by *the 1993 Act*. They are widely disparate in quantum which reduces the effectiveness of averaging. There has been no time available to investigate the rationale of the existing rates. They merely represent the allowances which have been determined by councils in the past - not on the basis required by *the 1993 Act*. As this Determination will take effect from 1 July 1994 the impact of any changes needs to be borne in mind. Nevertheless, it is essential to recognise that the fees to be paid pursuant to *the 1993 Act* relate to the role of the mayor pursuant to the 1993 Act and not to any

rationale of the past in relation to particular allowances because of the manner in which the role of mayor was performed. The mayoral fees have to be determined as such and cannot be considered to be a salary nor to bear any relation to that of the salary package of the general manager. It is recompense for the time, energy and skill applied as Chairman of council meetings, acting as delegate of the council between such meetings and performing public functions as delegate of the Council. The day-to-day management of the council performed in accordance with council policy is now the function of the general manager.

Some of the allowances presently paid do not appear consistent with these criteria. The payments are at a level which requires examination as to the basis for such payments. It may well be that they include repayment for expenses incurred without formal council approval or for attendance at functions without authorisation by council or indeed from a misunderstanding of s.29 of *the 1919 Act*. It may well be that particular councils will need to carefully reconsider the statutory functions of the mayor in order to justify in open council the basis upon which payments are justified.

The annual fee determined as a minimum for a mayoral annual fee for 1994/95 shall be \$5,000. This annual fee payable to the mayor must be paid in addition to the fee paid to the mayor as a councillor (s.249(2)). This fee has been determined as \$5,000 to apply to all categories for 1994/95. (Although a case was pressed by some councils for the determination of a fee for Deputy Mayor and Chairpersons of Committees, *the 1993 Act* does not confer such power on the Tribunal).

Councils are required to consider afresh, in accordance with *the 1993 Act*, whether there are any proper grounds for a higher annual fee for the mayor. The special features of the area, council's proposed expense policies, new management structures and the degree of delegation of council business to the mayor have to be

considered. As an interim measure, pending the next Determination, the Tribunal considers that it would be equitable for mayors who are in receipt of an allowance in excess of the fee of \$5,000 to continue to receive the allowance currently paid pursuant to Clause 14(2) of the Local Government Act 1993 - Regulation in lieu of such fee, subject to any necessary adjustment which may arise from councils' duty to determine an expenses policy.

18. County Councils (other than Electricity Authorities).

The county councils concerned in this Report are county councils involved in the conduct of abattoirs, eradication of noxious plants, water supply and flood control.

The separate functions of the county councils are grouped as follows:

Purpose - Abattoir

Blayney (Abattoir) County Council
Cudgong (Abattoir) County Council

Eradication of Noxious Plants

Castlereagh-Macquarie County Council
Central Murray County Council
Central Northern County Council
Far North Coast County Council
Far North-Western Slopes County Council
Hawkesbury River County Council
Mid-Western County Council
New England Tablelands County Council
Southern Slopes County Council
Upper Hunter County Council
Upper Macquarie County Council

Water Supply

Central Tablelands County Council
Lower Clarence County Council
Northern Riverina County Council (and electricity supply)
Oxley County Council
Rous County Council
Southern Riverina County Council (and electricity supply)

Flood Control

Clarence River County Council (including eradication of aquatic pests)
Richmond River County Council

It is to be noted that between two and six councils constitute each of the county councils involved in the functions indicated above.

19. Categorisation of County Councils (other than Electricity Authorities).

On the information presently available there is no basis upon which it can be found that the rate of pay should differ according to such categories regarding function. The gradings for purposes of the senior officers' rates of pay provide no assistance. Accordingly, these county councils have been placed in Special Category S3.

20. The role of Councillors of County Councils (other than Electricity Authorities).

The 1993 Act prescribes:

Section 390. (1): A county council must have a governing body elected by its constituent councils.

Section 391. (1) The chairperson of a county council is the person elected to the office of chairperson by the members of the county council from among their number.

The members of county councils are delegate councillors of the constituent councils.

Section 395. (1) A county council must employ a general manager.

(2) The general manager of a county council has the same functions in relation to the county council as the general manager of a council has in relation to the council.

Section 396. A county council is required to meet at least 4 times each year.

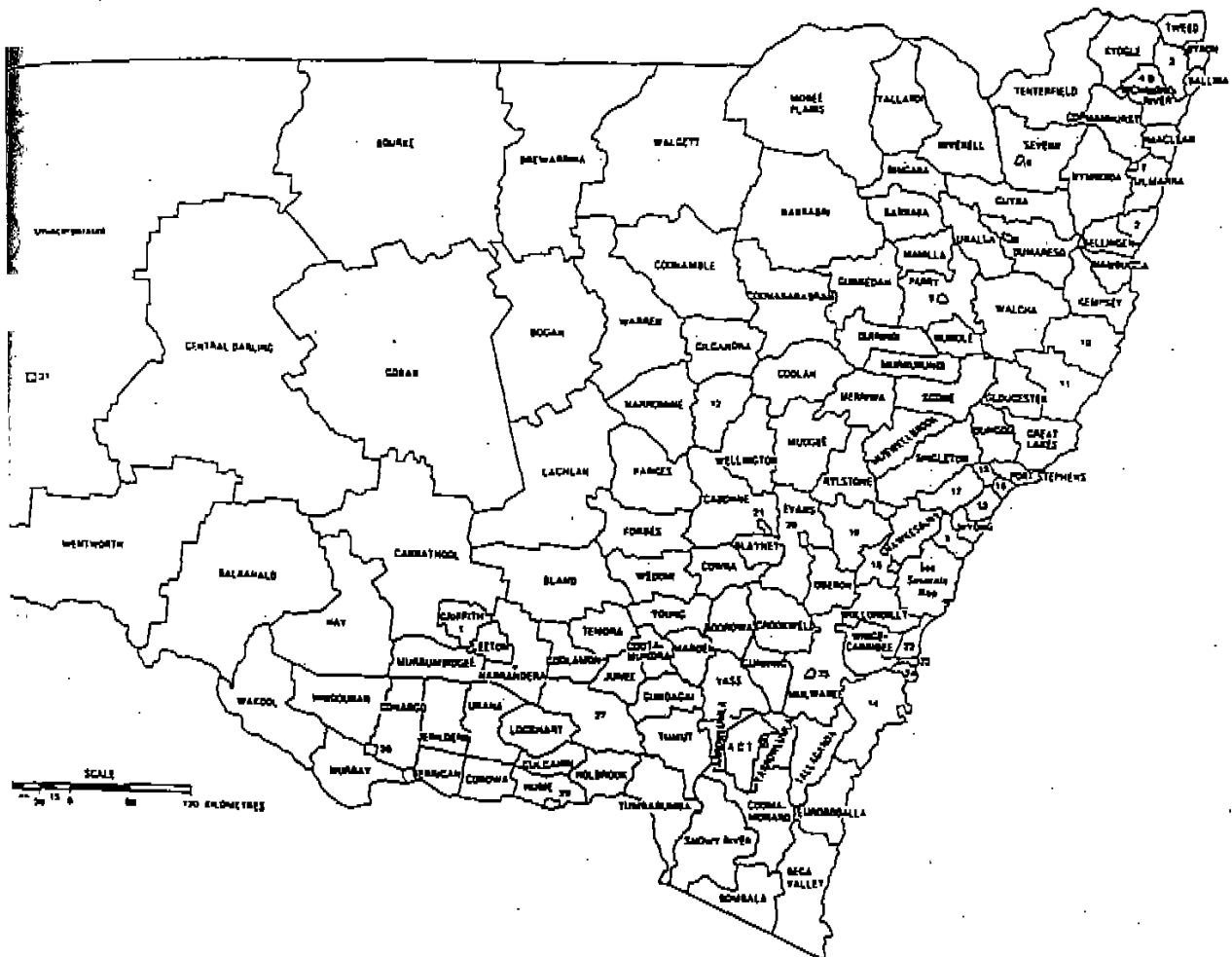
21. The fees for Councillors of County Councils (other than Electricity Authorities).

The assessment of a proper fee has to have regard to the fact that the delegate councillors of county councils have to perform their normal council functions for which they are receive a fee. Their role as delegates of their respective councils is bestowed upon them by resolution of their respective councils. Accordingly, they could be reimbursed for any expenditure involved in attending such county council meetings as required. Their major functions are the formation of policy directly in accord with the particular function carried out by each county council. It is also an important point to remember that the delegation is from the constituent council as is the representation. The delegate is accountable to such constituent council. This differs from the primary role of a councillor as representative of the electors. The roles of the county council and the chairperson are essentially concerned with general policy which is given effect to by the general manager. It seems that the attendance at meetings of the county council in addition to the time involved in preparation for such meeting forms the essential basis of the additional functions carried out by such members. On the assumption that no fee is payable by the

council to such delegates, an annual fee of \$1,000 should be determined as a minimum. This amount is determined on the basis of the additional activities imposed upon the council delegates. On the same basis as for councils, the maximum annual fee shall also be \$1,000 pending the next Determination.

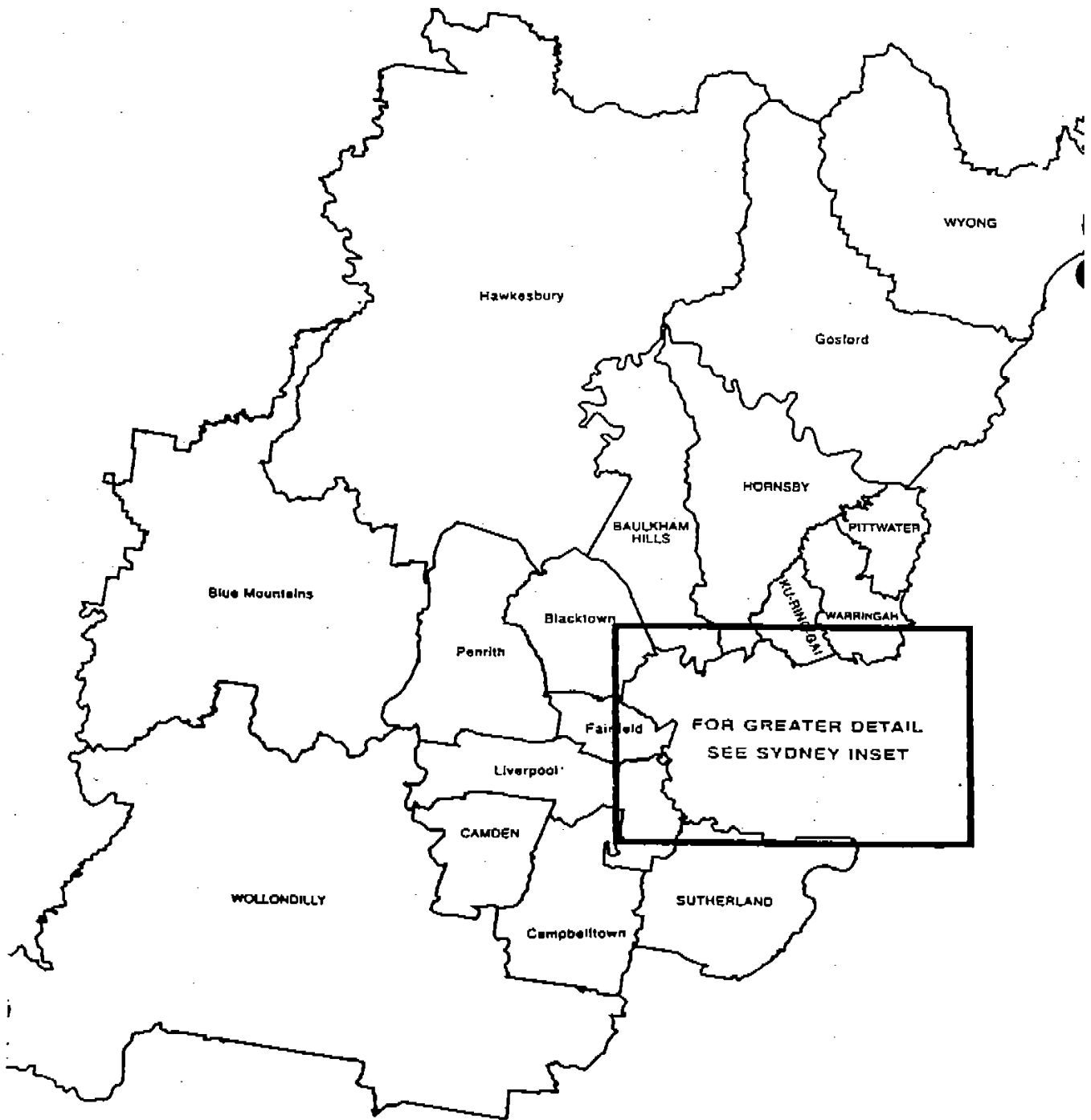
As for the fee for the chairperson of a county council, because of the additional duties required of him particularly as delegate of the county council between meetings of the county council, it is considered that a similar nexus to that between councillors and mayors should be established between the fee payable to members of county councils and the chairperson. However, the Tribunal has no power to make a Determination for chairpersons.

22. Maps -
NEW SOUTH WALES LOCAL GOVERNMENT AREAS



- | | | | | |
|--|---|---|---|---|
| <p> CITY OF GRIFFITH
 CITY OF COFFS HARBOUR
 CITY OF LEMORE
 CASINO
 CITY OF GOSFORD
 CITY OF GLEN INNES
 CITY OF GRAFTON </p> | <p> 8. CITY OF ARMIDALE
 9. CITY OF TAMWORTH
 10. HASTINGS
 11. CITY OF GREATER TAREE
 12. CITY OF DUBBO
 13. CITY OF LAKE MACQUARIE
 14. CITY OF SHOALHAVEN </p> | <p> 15. CITY OF MAITLAND
 16. CITY OF NEWCASTLE
 17. CITY OF CESSNOCK
 18. CITY OF BLUE MOUNTAINS
 19. CITY OF GREATER LITHGOW
 20. CITY OF BATHURST
 21. CITY OF ORANGE </p> | <p> 22. CITY OF WOLLONGONG
 23. SHELLHARBOUR
 24. KIAMA
 25. CITY OF GOULBURN
 26. DELETED
 27. CITY OF WAGGA WAGGA
 28. DENILQUIN </p> | <p> 29. CITY OF ALBURY
 30. CITY OF QUEANBEY
 31. CITY OF BROKEN B </p> |
|--|---|---|---|---|

'DNEY, NEWCASTLE & WOLLONGONG LOCAL GOVERNMENT AREA





INTERIM DETERMINATION OF CATEGORIES OF COUNCILS AND COUNTY COUNCILS

Pursuant to s.239 of the Local Government Act 1993 the following categories of councils and county councils are determined for the year 1 July 1994 to 30 June 1995.

Category

S1 (1 Council)	Sydney
S2 (2 Councils)	Newcastle Wollongong
S3	County Councils (other than Electricity Authorities)
1. (20 Councils)	Baulkham Hills Bankstown Blacktown Blue Mountains Campbelltown Canterbury Fairfield Gosford Hornsby Lake Macquarie Liverpool North Sydney Parramatta Penrith

Randwick
Shoalhaven
South Sydney
Sutherland
Warringah
Wyong

2. (18 Councils)

Ashfield
Auburn
Botany
Hawkesbury
Holroyd
Hurstville
Kogarah
Ku-ring-gai
Leichhardt
Manly
Marrickville
Pittwater
Rockdale
Ryde
Waverley
Willoughby
Wollondilly
Woollahra

3. (34 Councils)

Albury
Armidale
Ballina

Bathurst
Bega Valley
Broken Hill
Byron
Burwood
Camden
Cessnock
Coffs Harbour
Concord
Drummoyne
Dubbo
Eurobodalla
Goulburn
Grafton
Great Lakes
Greater Taree
Hastings
Hunters Hill
Kempsey
Lane Cove
Lismore
Maitland
Mosman
Orange
Port Stephens
Queanbeyan
Shellharbour
Strathfield
Tamworth

Tweed Heads
Wagga Wagga

4. (30 Councils)

Bellingen
Casino
Cobar
Cooma Monaro
Cootamundra
Cowra
Deniliquin
Forbes
Glen Innes
Greater Lithgow
Griffith
Gunnedah
Inverell
Kiama
Leeton
Macleay
Moree Plains
Mudgee
Muswellbrook
Nambucca
Narrabri
Narrandera
Parkes
Richmond River
Singleton
Tumut

Wellington
Wentworth
Wingecarribee
Young

5. (72 Councils)

Balranald
Barraba
Berrigan
Bingara
Bland
Blayney
Bogan
Bombala
Boorowra
Bourke
Brewarrina
Cabonne
Carrathool
Central Darling
Conargo
Coolamon
Coolah
Coonabarabran
Coonamble
Copmanhurst
Corowa
Crookwell
Culcaim
Dumaresq

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
Parry
Quirindi
Rylstone

Scone
Severn
Snowy River
Tallaganda
Temora
Tenterfield
Tumbarumba
Ulmarra
Uralla
Urana
Wakool
Walcha
Walgett
Warren
Weddin
Windouran
Yallaro
Yarralumla
Yass

TOTAL COUNCILS 177

Local Government Remuneration Tribunal



(The Honourable Mr. Justice C.L.Cullen)

Dated: 22 April 1994

INTERIM DETERMINATION OF ANNUAL REMUNERATION FEES FOR COUNCILLORS (OTHER THAN MAYORS), MEMBERS OF COUNTY COUNCILS AND MAYORS

Pursuant to s.241 of the Local Government Act 1993 the interim annual fees to be paid in each of the categories determined under s.239 to councillors (other than mayors), members of county councils and mayors during the period 1 July 1994 to 30 June 1995 are determined as follows:

Annual fee for councillor: \$5,000

Figure represents both interim minimum and maximum fee payable in each of the categories for the prescribed period pending further Determination.

Annual fee for mayor: \$5,000

Granted in addition to fee payable to councillors and represents both interim minimum and maximum fee payable for the prescribed period pending further Determination.

Any mayor currently in receipt of an allowance pursuant to Clause 14(2) of the Local Government Act 1993 - Regulation greater than the prescribed interim fee of \$5,000 may continue to be paid such fee in lieu of the interim fee subject to any necessary adjustment arising from a council resolution pursuant to s.252, until the next Determination.

Annual fee for members of County Councils
(other than Electricity Authorities):

\$1,000

Includes chairperson and represents both interim minimum and maximum fee payable for the prescribed period pending further Determination.

Any member currently in receipt of an allowance greater than the prescribed minimum fee of \$1,000 may continue to be paid such fee in lieu of the interim fee subject to any necessary adjustment arising from a council resolution pursuant to s.252, until the next Determination.

NOTE: Payment of expenses and provision of facilities are provided for by resolution of individual Councils pursuant to s.252 of the Local Government Act 1993.

Local Government Remuneration Tribunal



(The Honourable Mr. Justice C.L.Cullen)

Dated: 22 April 1994