

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

29 APRIL 1998

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 section 239 of the Local Government Act 1993 (the 1993 Act) the Local Government Remuneration Tribunal is required to determine each year the maximum and minimum amounts of fee payable during the following year to councillors and mayors. The categories must be examined at least once every three years.

Prior to the September 1995 Local Government elections, the Tribunal made two Reports, on 22 April 1994 and 1 May 1995. In the former Report it was noted that the determinations were necessarily of an interim nature which would need review because the Tribunal had only three months to examine the matter. This was regarded by the Tribunal as the first stage in determining categories and fees for the first time. Pending the 1995 determinations the option was left to councils to continue existing remuneration arrangements.

It is to be noted that before the Tribunal's determinations there was large reliance, particularly in relation to mayors, placed upon the reimbursement of expenses and the provision of facilities. These have been expressly continued in the 1993 Act (Section 252). No evidence has been given to the Tribunal that there has been any reduction in such payments and provisions. In fact the evidence is to the contrary.

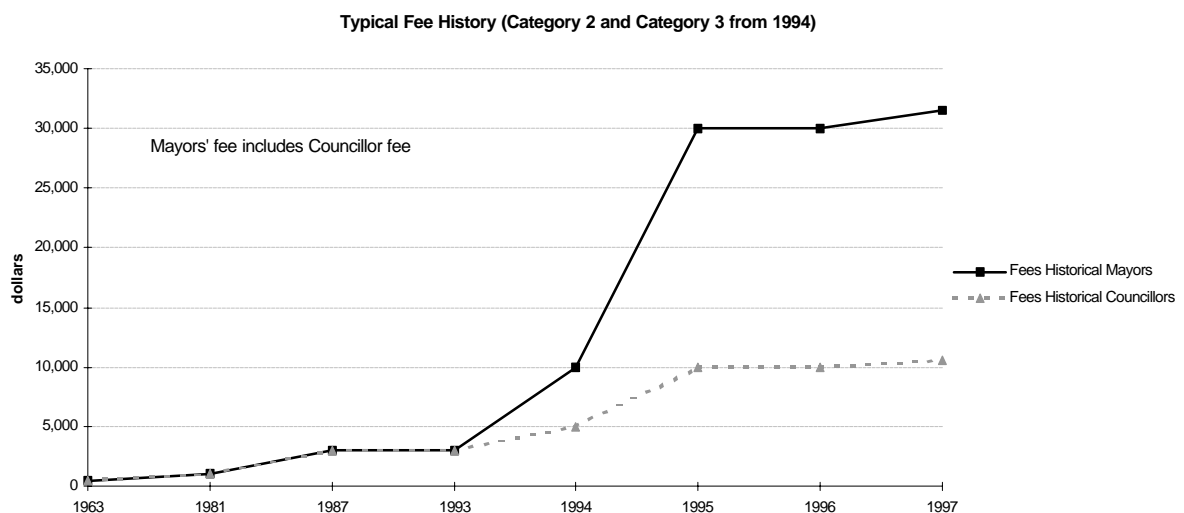
It is important to stress, in view of the arguments that salaries should be paid, that the Act directs the Tribunal to determine fees (Section 241). The history of fees and allowances was discussed in the 1995 report (page 64). There is nothing to indicate

that the concept of fees should be identified with salaries consistent with the concept of full-time employment.

It is to be observed also that until 1994 the level of fees payable was the same for all councils, regardless of size. The 1993 Act addressed this issue by provision for the determination of different categories based upon the factors set out in Section 240.

The second stage of the Tribunal's deliberations is contained in the Report of 1 May 1995 which, after a detailed inquiry, set out the basis for determinations. These categories and fees were in operation at the time of September 1995 election. Persons seeking election at that time were aware of the basis of remuneration for the office for which they offered themselves for election.

Some minor category adjustments were made in 1996. However, in 1997 the Tribunal decided to review the 1995 determinations to take into account any changes occurring after the 1995 elections. The 1997 inquiry constituted what the Tribunal considered was the third stage of the determination process. The changes effected in remuneration since the establishment of the Tribunal are illustrated by the following graph:



The Present Review

Although the tribunal is not required to deal with categorisation more frequently than three years, it was indicated that for the 1998-99 review the Tribunal proposed to examine in particular the emerging role of Category 1 councils as recognised regional centres.

All councils were notified of the impending inquiry into categories and fees for 1998-99. The councils were invited to submit written submissions and if required, the opportunity to address the Tribunal.

In total 30 written submissions were received, largely concerned with applications for recategorisation. In addition, the Lord Mayors of Category S2 councils and mayors and/or general managers of Category 1 and Category 2 councils were interviewed by the Tribunal.

There was no consensus view concerning the general level of fees. Rather, the views varied as would be expected in the particular circumstances of each council.

The issue debated concentrated particularly on the mayoral role and the manner in which mayors perceived their representation and ceremonial functions. Some mayors still adhered to the concept of the 1919 Act and expressed a lack of confidence in the ability of a general manager to manage the affairs of the council as efficiently as was the case pursuant to the 1919 Act. It was generally accepted, however, that the 1993 Act had altered the power sharing arrangements within local government although the change had caused some difficulty of adjustment for some mayors.

The Local Government and Shires Association (the Associations) again made a general submission to the Tribunal. Essentially the submission covered matters previously raised for the Tribunal's consideration, for example, a global claim for \$100,000 for full time mayors without regard to the mayoral fee payable as a councillor, the category of council, or any contractual terms, and general increase for councillors and mayors ranging from 42% to 153% for maximum fees and 20% to 166% for minimum fees.

These claims were dealt with and dismissed by the Tribunal in its 1996 and 1997 Reports. As the Associations have not provided any new material to support these claims the Tribunal does not propose to consider them further in this Report.

In written submissions, some councils sought no change while others sought increases in fees either directly or by re-categorisation. Two councils raised again the categorisation structure. This matter was dealt with in the 1997 Report and it is not proposed to consider it again in the present inquiry based as it is on the same material.

A Major issue raised for consideration on this occasion was the emerging role of regional problems particularly in regard to large councils. The Tribunal received extensive written and oral submissions from Category 1 councils and Category S2 councils. Warringah Council, for example, emphasized that the emergence of regional problems was raising issues wider than local or parochial issues.

In essence, the case presented by Category 1 councils was, in effect, to merge Category 1 and Category S2 and adopt the Category S2 fee structure.

Newcastle and Wollongong councils emphasized that the distinctive features which had led to their special position as Category S2 had continued and indeed extended since 1994 and provided details of the developments which have occurred since that time.

A number of other councils also sought re-categorization and/or an increase in fees by supporting the Associations' claims.

Categorisation

Pursuant to Section 239 of the 1993 Act the Tribunal is bound to determine categories at least once every 3 years.

Since its formation in February 1994, the Tribunal has dealt with the issue of categorisation annually because of general submissions put to the Tribunal by the Associations and by a number of individual councils because of alleged anomalies.

The Category 1 councils have raised the important question of increasing demands placed upon councils related to regional issues. This may well affect their relativities with other councils and the weight to be given to population growth in determining categories.

Recategorisation claims are generally based upon comparison with an individual council or councils in a higher category. Often the claim is based upon a claim for an increase in fees rather than an incorrect categorisation.

On the experience since 1994, it seems to the Tribunal that a general review of Categories should only be required on a three year basis subject, of course, to a discretion to deal with individual cases warranting urgent attention. It may well be the case that such a general review be made in the year preceding council elections so that aspirants are aware of the categories and the level of fees for their term of office.

The statutory requirement for the Tribunal to report to the Parliament by 1 May each year may raise expectations of annual adjustments, whether by an increase in fees or by recategorisation. Changes in activities and performance of a council on an annual basis also presents fee assessment problems. These problems are greater for categories as a whole particularly when many councils do not respond to requests for information. The fees have to be determined, not for individual councils but for the categories embracing all councils contained in each Category. The Tribunal therefore has to assume that there have been no changes effected by councils who supply no information.

Despite the statements in earlier Reports concerning the method adopted by the Tribunal for determining fees, the Associations made a claim of the same nature as previously. For example in Category 5, the increases sought for the maximum amounted to 90 per cent for councillors and 153 per cent for mayors. In the case of Category 2 and Category 3 councils, increases of 90 per cent for councillors and 138

per cent for mayors were sought. These claims, of course, were in addition to the \$100,000 sought for full-time mayors.

Each council has the capacity within the fees scale to grant its councillors and mayors increases. So far as generalised increases are concerned, these will depend upon the adjustments of the fee determined in 1997, based upon proven significant changes in performance and/or activities of councils in each Category.

Consideration of claims

After consideration of the submissions of Category 1 and Category S2 councils the Tribunal has decided that the Category S2 councils have made out a case to maintain the distinction between Category 1 and Category S2 at this stage.

The distinctive features of Category S2 councils are set out in the 1995 Report (pp41-3). The changes occurring in the features since that time were detailed in oral submissions to the Tribunal and supplemented by written submissions.

Particular features stressed were the civil and ceremonial functions of the Lord Mayors in the Hunter and Illawarra regions, the impact of industry decisions concerning operations in the area and participation in regional task forces with employers, business and government in relation to employment and economic problem solving.

While the Tribunal considers that annual review of categories are not appropriate, because of the practice of the Tribunal to deal with individual applications for recategorisation in the past, it is proposed to deal with re-categorisation claims on this occasion.

Willoughby submitted detailed material concerning its application for re-categorisation to Category 1 based particularly on developments since 1994. In brief, the Council covers an area of 23 sq kms of the mid North Shore including the Central Business District of Chatswood, the major retail and commercial centre of the Northern Suburbs, the St Leonards Commercial Centre and two industrial areas – Artarmon and East Chatswood.

There is a diverse mix of housing ranging from high rise residential, medium and low density housing and several areas of conservation and heritage significance including the protection, preservation and restoration of inner city bushland and the foreshore of middle Harbour and Lane Cove River. Apart from its regional retail centre, a number of Federal and State Government Departments and major companies' headquarters or regional offices are located in the area.

Chatswood is a major transport node for the North Shore with a rail, bus and car interchange servicing the transport requirements of the region. Complex and significant applications are dealt with in addition to the normal residential development/building applications and requires balancing the needs of retail, commercial and industrial businesses with residential demands. The city attracts some 59,000 people who work in the commercial/retail centres of Chatswood and

St Leonards. There is a working day population in excess of 100,000. The range of community services caters for a significant non-English speaking residential population.

The Tribunal considers that Willoughby is entitled to Category 1 status.

Hawkesbury, Blue Mountains and Hornsby have also sought re-classification as Category 1. The material submitted establishes that the councils have similar problems to deal with which warrants the same classification. The Tribunal has considered their activities and performance and the significance of any changes, which have occurred since the 1997 report when they were last classified as Category 2. The Tribunal considers that such activities and performance are consistent with their present classification as Category 2.

Hustville and Canterbury have submitted a case for classification as Category 1. While they have established a basis for the payment of maximum fees in their classification, the Tribunal has decided that they are not sufficiently distinguishable from other suburban councils in Category 2 to warrant ranking as Category 1 councils.

Kiama and Maclean sought a change in the category structure. As indicated, the Tribunal does not propose to deal with this issue but it may be raised in the 1999 inquiry for further consideration.

Warren seeks Category 4 for its mayor. This issue has not been raised by any other council or the Associations and would be most effectively dealt with when the category structure is re-examined in 1999.

The applications by Kyogle and Murray for re-categorisation to Category 4 have been considered in detail. On the information supplied, the councils have become involved in additional activities. However, it should be stated that some such changes were taken into account for the Category as a whole in 1997 when an increase in fees was granted. Their basic activities still fall within the description of small rural councils (see 1995 Report, pp 25-26).

It appears to the Tribunal that at this stage the councils are still correctly categorised as Category 5.

General Comments

In view of the nature of comments from some councils and the representation of the Associations, it is necessary to repeat that there is an onus on councils to support with facts the justification for the fees set by them in accordance with the discretion granted to them by the 1993 Act.

The Tribunal, in its present task, is doing more than acting in the public interest to ascertain the parameters for decisions so made. These council decisions necessarily affect the public. The 1993 Act gives councils a discretion which is required to be exercised openly and responsibly.

It is an essential element of the 1993 Act that there is proper communication between the community and the council and that the council operates in a democratic and open manner. Particularly is this so, in order to maintain the confidence of the community in the sensitive area of quantum of councillors' fees.

The proposal for a separate fee for deputy mayors was raised once again without regard to the fact that Section 249(5) of the Act does not make provision for such a determination to be made by the Tribunal.

County Councils

The Lower Clarence County Council sought re-categorisation to Category 5 on the basis that such re-categorisation would reflect the increased level of operations. There were no submissions from other councils in Category S2 to support this claim.

The rationale for the categorisation of county councils and the fee structure is determined on the material and evidence supplied to the Tribunal and reviewed in 1997. A description of the councils falling within Category 5 is set out in the 1995 Report (pp 25-26). The functions of such councils are clearly distinguishable from the functions of Lower Clarence County Council.

As the Tribunal is bound to determine categories for the purpose of fixation of fees pursuant to the 1993 Act, it is not open to the Tribunal to fix fees specifically for Lower Clarence County Council without redrafting the Category structure.

On the information supplied to the Tribunal no case has been made out to change the Category structure without report to a much wider inquiry covering county councils as a whole. It is to be noted that no other county council, other than Mid Coast Water, sought any change.

Mid Coast Water County Council sought a review of the present scale of fees to take into account the substantial range of responsibilities vested in members of Mid Coast Water. On the material supplied it is difficult to differentiate Mid Coast from other water supply county councils on the basis of an alleged anomaly. The difference between county councils are specifically catered for by the provision of a scale of fees from the minimum to the maximum, depending upon a differing range of responsibilities and performance of such county councils.

The fees for county councils were last determined in the 1997 Report and there has been no significant evidence to indicate that any change since 1 May 1997 warrants an increase in fees on this occasion.

Conclusion

For the reasons outlined above it is the view of the Tribunal, except for the council which has made out a significant case for re-categorisation, that no variation of the Determinations made on 30 April 1997 should be made in the present circumstances.

The Tribunal has expressed the view that variation in categories should be considered in periods less than 3 years only in special cases.

As to fees, experience has shown that demonstration of extra duties and responsibilities arising from corporate responsibilities under the Act undertaken by councillors and mayors takes some time and varies from council to council within each Category. As occurred in 1996, the Tribunal will take into account the matters raised by councils during the present inquiry for the purpose of determining fees for 1999/2000 prior to the 1999 Local Government election. In the 1997 Report it was stated (p.24):

“In determining the quantum of increases the Tribunal has had regard to Average Weekly Earnings and Consumer Price Index movements not on the basis of adjustments of the fees but as relevant economic indicators in addition to demonstrated changes in councils’ operations. These change can only be determined from examination of individual councils, not from generalised statements.”

The Tribunal has adopted a similar approach as part of this review.

Because of the detailed inquiry held in 1997 whereby the fees determined in 1995 were adjusted for changes in councils’ activities since that time, the Tribunal has decided that on this occasion the fees should not be altered. However, but that the Tribunal will review the situation in 1999 based on all changes since 1 May 1997.

Local Government Remuneration Tribunal

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

Dated

DETERMINATION OF CATEGORIES OF COUNCILS AND COUNTY COUNCILS FOR 1997/98

Category S1 (1 Council)	Sydney
Category S2 (2 Councils)	Newcastle Wollongong
Category S3	County Councils

Category 1. (16 Councils)

Bankstown	North Sydney
Baulkham Hills	Parramatta
Blacktown	Penrith
Campbelltown	South Sydney
Fairfield	Sutherland
Gosford	Warringah
Lake Macquarie	Willoughby
Liverpool	Wyong

Category 2. (27 Councils)

Ashfield	Ku ring Gai
Auburn	Lane Cove
Blue Mountains	Leichhardt
Botany	Manly
Burwood	Marrickville
Canterbury	Mosman
Concord	Pittwater
Drummoyne	Randwick
Hawkesbury	Rockdale
Holroyd	Ryde
Hornsby	Strathfield
Hunters Hill	Waverley
Hurstville	Woollahra
Kogarah	

Category 3. (31 Councils)

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

4. (33 Councils)

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

Category 5. (67 Councils)

Balranald	Evans	Nymboida
Barraba	Gilgandra	Oberon
Berrigen	Gloucester	Quirindi
Bingara	Gundagai	Rylstone
Bland	Gunning	Scone
Blayney	Guyra	Severn
Bogan	Harden	Tallaganda
Bombala	Hay	Temora
Boorowa	Holbrook	Tenterfield
Bourke	Hume	Tumbarumba
Brewarrina	Jerilderie	Ulmurra
Carrathool	Junee	Uralla
Central Darling	Kyogle	Urana
Conargo	Lachlan	Wakool
Coolah	Lockhart	Walcha
Coolamon	Manilla	Warren
Coonabarabran	Merriwa	Weddin
Coonamble	Mulwaree	Windouran
Copmanhurst	Murray	Yallaro
Corowa	Murrumbidgee	Yarralumla
Crookwell	Murrurundi	Yass
Culcairn	Narromine	
Dungog	Nundle	

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 1998 to 30 June 1999 are determined as follows:

	Councillor/Member Annual Fee		Mayor/Chairperson Additional Fee*	
	Minimum	Maximum	Minimum	Maximum
Category 5	5,000	- 5,250	5,000	- 7,900
Category 4	5,000	- 6,300	5,000	- 12,600
Category 3	5,000	- 10,500	10,000	- 21,000
Category 2	5,000	- 10,500	10,000	- 21,000
Category 1	7,500	- 13,150	15,000	- 31,500
S3	1,000	- 3,150	2,000	- 5,250
S2	10,000	- 15,750	20,000	- 42,000
S1	15,000	- 21,000	50,000	- 78,750

*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: