

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

**30 APRIL 1997**

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.)

**Report of the Local Government Remuneration Tribunal  
Under Sections 239 and 241 of the Local  
Government Act 1993**

**Introduction:**

The Local Government Remuneration Tribunal was set up under Chapter 9, Part 2, Division 4 of the Local Government Act 1993. This Act implemented wide ranging reform of Local Government and was introduced in response to concerns regarding the performance of elected members of Councils. The Tribunal is required to determine categories for Councils, County Councils and Mayoral offices and to determine thereby the minimum and maximum fees to be paid to Councillors and members of County Councils and chairpersons of County Councils and Mayors.

The Tribunal has the assistance of two assessors, Mr Garry Payne, Director-General, Department of Local Government and Ms Maggie Deahm, a former Councillor of Blue Mountains City Council, pursuant of S.236 of the 1993 Act and the Executive Officer, Mr Emanuel Sklavounos.

**Background:**

On 22 April 1994, the Tribunal made its first Report and Determinations. The statutory requirement that the Tribunal make its first report within three months of its establishment in February 1994 precluded the Tribunal from carrying out a full investigation into the role and functions of local government elected representatives.

The need for a detailed investigation was brought about by the lack of information on a wide range of issues relating to the matters dealt with by Councils and the manner in which Councillors and Mayors carried out their duties. This was particularly the case in relation to their new statutory roles and functions.

The review required an extensive consultation process with a wide range of elected and appointed local government representatives and other interested individuals and groups. The report of 1 May 1995 indicates the extent of the hearings which were held throughout New South Wales and overseas.

In the course of the 1995 Report, the basis of categorisation in the interim determinations was discussed at length with Councils and the Local Government and Shire Associations as part of the Tribunal's inquiries. This categorisation was put at issue in the 1995 inquiry and the analysis of the contentions of the Councils and associations is detailed in the Report (21ff)

This Report enabled Councils, in the exercise of their statutory discretion pursuant to sections 248 and 249, to fix fees in excess of the minima determined by the Tribunal for the ensuing 12-month period. These Councils were, of course, elected in September 1991 pursuant to the Local Government Act 1919 and had been operating for most of their term of office pursuant to that Act. They were entitled to receive remuneration of \$60 per meeting attended, with a maximum of \$3,000 per annum. There was also provision for an allowance for the Mayor for expenditures incurred on Council business. However, no additional fee was payable. The fee paid to the Mayor was the same as other Councillors.

It is of importance to note an extract from the Report of 1 May 1995:

*"The minimum fees determined provide the statutory minimum payment for councillors and mayors. They are based on an assessment of an average council in each category. As with any averaging, the fees may be generous for some councils but modest for others. The maximum fees provide the necessary ambit of discretion to enable each council to assess its performance compared with other councils in its category. Such discretion enables each council to determine whether its performance as a whole compared with the other councils justifies a payment in excess of the minimum to its councillors and/or mayor. It is conceivable that because of significant delegations by councils to the mayor, this situation may warrant a fee greater than the minimum for the mayor, but not for councillors. The reverse situation could also apply. Any council decision granting fees to the mayor and/or councillors above the minimum will, of course, need to be reassessed in the following year's determination by the Tribunal". (p.19)*

As a basis for their resolutions to set fees, many Councils provided details of the additional duties and responsibilities of Mayors and Councillors. Other factors mentioned were the sound financial position of Councils, the additional time now necessarily devoted to Council business, and in some instances the setting of maximum fees did not represent a significant, if any, increase in the cost of remuneration already received by Mayors and Councillors.

In October 1995 the Tribunal commenced its annual review for the 1996/97 period. Councils were advised of the Tribunal's proposal to review categories and fees for the 1996-1997 period. The Report of this inquiry was issued on 18 April 1996.

It was decided by the Tribunal that, with the exception of three Councils, on the information provided, Councils were correctly categorised and that the maximum fees available to them enabled them to progress appropriately. It is to be noted that the fee structure enables Councils in each category to fix fees higher than the minimum fees for the next higher category. The minimum and maximum fees for each category were not increased at that time because:

*"... it is considered that there has been insufficient time to determine any significant changes in the performance of councils generally since the 1995 Determinations.*

*"The newly-elected councils have only been operating for some six months and there appears still to be some uncertainty in many councils as to the distinction in the roles of the Mayor and General Manager. It is apparent from the material received by the Tribunal that, in many cases, the General Manager has been delegated substantial powers which appear to transgress upon the policy making functions of the council and Mayor". (pp.9-10)*

*"It is proposed for the next Report to consider resolutions passed by the new councils in regard to fees and allowances for the next year and to direct attention in particular, to the desirability of categorising Mayors differently from Councillors, if the delegations from the council significantly alter the balance of the duties and responsibilities of Councillors and Mayors. A further matter for consideration will be the extent of delegation to the General Managers, the manner in which councils generally have adapted to the requirements of the Act and the extension of local government activities." (p.14)*

### **1997 Review:**

In October 1996 the Tribunal wrote to all Mayors and Chairpersons of County Councils advising that the 1997/98 annual review had commenced and inviting submissions in respect of fees. The Tribunal also requested details of resolutions passed by Councils in respect of fees for Councillors and Mayors for the 1996/97 year (Appendix 1).

The Tribunal received over 70 responses from Councils, thirty two of which made specific submissions on the issues under review. Most of these submissions dealt with increasing fees for Councillors or Mayors either through a quantum increase in the existing minimum and maximum rates or through recategorisation of the Council.

The Tribunal also received a detailed submission from the Local Government and Shires Associations. The Associations submitted to the Tribunal that Councils should be categorised using the Australian Classification of Local Government (ACLG) criteria. Examples of greater responsibilities devolved to Councils was also submitted as grounds for increasing fees. The Associations also sought recognition of full time mayors and recommended, based in part on a comparison with the current remuneration received by a Member of Parliament, that full time mayors should receive remuneration of up to \$100,000pa.

In respect of Mayors and Councillors generally the Associations submitted that, based on increases in responsibilities and time commitment to their office increases of up to 167 percent on the current levels were appropriate.

The Tribunal met with the Associations and a representative group of Mayors and with other individual Mayors who sought to put their own personal case. In addition, the Tribunal visited a number of selected Councils to gain up-to-date knowledge of the manner in which each Council performed its functions, involving inspections of current projects. It gave the Tribunal the opportunity to observe the manner in which such Mayors and General Managers were working together as a team.

**Report:**

The resolutions passed by the newly-elected Councils are in conformity with the views expressed by a number of Mayors personally. What was sought, in effect, was recategorisation. Indeed, it is categorisation which, pursuant to section 239(2) of the 1993 Act, underpins the determination of maximum and minimum amounts of fees to be paid. It is not surprising, therefore, that the Associations paid particular attention again to the form of categorisation.

Present Councillors were elected in September 1995. Resolutions were passed, particularly in category 1, 2, and 3 Councils adopting the maximum fee. This appears to the Tribunal to be based upon their view that the 1993 Act imposed upon many Councils more onerous duties and responsibilities than in the past. It is evident to the Tribunal, on its investigations for the 1997-1998 period, that there is movement towards Mayors, Councillors, General Managers and staff working in accordance with the new structure.

The role of the General Managers in relation to management and advice to Councils has been productive of greater efficiency and has allowed Mayors to concentrate on the representation aspects rather than the daily operational aspects of Councils' functions. It is not surprising, therefore, to find that some Mayors concentrate on promotional matters, and significant pre-development applications. It is in regard to these particular activities that the Mayors claim they become involved for a significant part of their time, in addition to their role as Councillors.

The extent of delegation to the Mayors in regard to changes in policy or development of new policies is a matter for each Council. It becomes of particular importance if these issues arise between Council meetings.

The Local Government and Shires Associations have again submitted that Councils should be categorised using the ACLG criteria, that is, by size (population) and by type (rural or urban). They have also relied upon the growth of responsibilities placed on Councils particularly in the welfare areas. It was stated by the Associations that 121 Councils had indicated their endorsement of the Associations' submissions. A list of issues confronting local government was also submitted by the Associations.

The weight to be given to the impact of these issues on 177 Councils of varying size and type provides some difficulties in the absence of detailed information. Analysis of business papers and other material from individual Councils made available to the Tribunal would indicate that the impact is widely variable, although it is apparent that planning, environment and waste management problems are increasing and will continue to do so.

As a base for the formation of a fee structure, the Associations have again drawn attention to comparisons with elected members of Parliament. These matters have been discussed in the earlier Reports, but it is necessary to make some further comment because of the continued representations for such recognition.

The submissions put in relation to such a comparison with parliamentarians appear to be generally based on community functions. Such functions, for an elected Councillor are set out in section 232(2) of the 1993 Act. The other role of a Councillor is as a member of the Council (s.232(1)).

It needs to be remembered that in most cases the Mayor is elected by Councillors for a year-by-year term. It is not a situation where career progression is available, as in Parliament, to ministerial level or progression from a smaller to a larger Council, as occurs, for example, with local government staff.

It is clear that the range of matters dealt with in formulating and adopting policies by individual Councils is distinguishable from the application of policy to the formulation of statutes and their progress through Parliament which affect every person in the State. Parliamentarians are not confined to their local area and administration of one statute. In addition, the Tribunal necessarily has to have regard to the fact that in New South Wales, membership of a Council is essentially a part-time operation retaining the elements of voluntary community service which has been, and still is, an important feature of life in this State. Councils bring together a miscellany of persons with current employment experience in addition to local knowledge as active members of the community. As indicated in the 1995 report, a common feature has been the involvement of candidates for election in voluntary local organisations, often as elected representatives of such organisations. It should be added, however, that consideration was given in previous Reports to the intrusion into Councillors' and Mayors' leisure and family life because of their involvement in local affairs. This involvement varied widely between individual Councillors. The diaries of some Councillors indicated a commitment to offer personal assistance at any time, it appears, on any issue.

Emphasis was placed on the increase in responsibility of Mayors. If Mayors who addressed the Tribunal are correct, they are assuming more of Councils' responsibility, particularly in regard to major development projects. It would seem that, accordingly, in some Councils the Councillors assume a secondary role. If this is a true reflection generally of Mayoral responsibility, then a case could be made out for an increase in fees for Mayors and a reduction for Councillors. As to the extent of any such increase, the time taken to perform this additional work depends on work commitments of Mayors. The great majority have other employment or engage in business or professional activities, either full time or part time. For example, the Lord Mayor of Sydney receives a significant fee as a member of SOCOG while others, such as the Mayor of Concord, engage in additional wider local government activities as elected representatives of the Associations or as members of County Councils for which they receive additional remuneration.

Council meetings are held at times convenient to Councillors which they determine. These times differ, particularly between rural and urban areas. Some Council activities require absence from work commitments, which no doubt discourages some persons from seeking election. Employed persons need necessarily to arrange to attend to Council matters in their free time or obtain time off from their employment. In the case of self-employed persons, it necessarily means that they have to arrange for others to do the work which they cannot perform because of their Council obligations. Certainly it is inconvenient and sometimes costly for such Councillors and Mayors, but the fee, as indicated in the earlier Reports, is based upon the concept of providing some recompense for giving up other income-earning opportunities. In addition, they are recompensed for expenses properly incurred in performing their duties.

Matters which were raised in the course of the Tribunal's inquiries related to the pooling of resources of Councils and the trend to cooperation between Councils; the significant progress made in quality improvement programs and developments to improve quality of life and the social well-being of residents in Council areas; and problems arising from urban consolidation programs, management of stormwater drainage, contaminated sites, and waste management.

Any quantitative assessment is of course difficult to make because of the wide variations in Councils throughout the State. There appears to be no issue that Councils have had imposed upon them new responsibilities arising from state and federal policy initiatives. The effect on individual Councils will, of course, vary particularly in regard to small Councils who may find it difficult to obtain the expertise and finance resources to implement such policies.

It is difficult also for individual Councils to directly compare their operations with the performance of other Councils. However, in the provision of services, particularly in relation to the planning of land management and infrastructure, co-operation with neighbouring Councils is a necessary and integral part of the success of such management. There is a long history of success for example, in joint operations through County Councils in weed eradication, flood mitigation, and bushfire control.

The ACLG is a classification system based on a small number of key variables to group Councils. The system uses population, population density, population growth and location to identify 22 categories of local government in Australia.

The categorisation or grading of Councils in New South Wales has been in operation since 1979. The Tribunal's 1994 Report deals, *inter alia*, with the Structure Classification System of the draft document of the Australian Classification of Local Governments, December 1993. (p.11).

The Tribunal decided not to adopt a large number of categories of Council for the purpose of determining fees. It decided that a small number of more broadly based categories was more appropriate for the purposes of the 1993 Act.

The rationale for that decision was affirmed in the 1995 Report (p21). The Report gives details of the basis of the categorisation. Analysis of the reasons given by Councils seeking recategorisation does not reveal any significant defect of the categorisation system as proposed in 1994. Indeed the Associations group the 22 categories of the ACLG into 8 categories for the purpose of determining fees. The major point of distinction relates to the use of categories for the setting of fees. The Associations take as a starting point the salary and allowances of an elected Member of Parliament. Calculations are made on a declining percentage of an MP's salary to produce a table of fees which, for the smallest Council is 19.7 per cent of such salary for a Councillor and 25.8 per cent for a Mayor. The key to the table is the adoption of the concept of comparability of some Mayors with Members of Parliament.

In addition, it is proposed that a full-time Mayor receive a maximum of \$100,000 per annum. It was submitted, firstly, that a full-time Mayor is a person elected to office, whose primary role is that of Mayor, and secondly that engagement in other remunerative activity is not relevant.

As indicated earlier (p8), the actual practice in New South Wales in the past and to the present day is that few Councillors claim to be full-time Mayors. In addition, as the majority of Councils are in categories 4 and 5 there is small likelihood of such a situation changing significantly. There is no issue that the demands of Mayoral office require Councillors, who are elected to that position, to have their time prevailed upon by Council officers and the electorate. This has always been the case.

It can be assumed that no persons would elect to stand for such office unless they could manage the time to effectively perform such duties. Councillors can elect to perform such duties substantially at the times of their election. It was submitted by the Associations that:

***"There would be no requirement to attend council during normal business hours, just as there is not a requirement in most general managers contracts, but rather a requirement to spend the hours necessary to get the job done."***

This statement does not appear to conform with the experience encountered by the Tribunal in relation to the hours of attendance of General Managers and s353 of the 1993 Act. But it highlights the freedom which Mayors have in relation to the hours which they devote to and which they give to perform their functions of Mayor. There is also the limitation which may be placed by Mayors on the time or times which they are prepared to devote to Council duties and the extent of delegation of Mayoral functions to deputy Mayors and/or other Councillors. Because of public expectation this was stated to be difficult to achieve. It is to be noted that, for the convenience of all Councillors, including the Mayor, the hours of attendance at Council meetings are determined by the Council. At the same time, it is recognised that many meetings to which Councillors may be called upon to attend are held during other hours. The extent of such involvement depends on each individual Councillor's willingness and ability to participate.

It was submitted by the Associations that engagement in other remunerative activities is not relevant to the fee payable to a full-time Mayor. As stated in the 1994 Report:

***"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".(p.41)***

And further;

***"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." (p.44)***

The fee for Mayors, therefore, is an additional fee for the work performed in addition to that as a Councillor. In addition to these two fees, a Mayor also, subject to Council resolution, is entitled to an allowance for expenditures properly incurred in the performance of the duties as Mayor. The range of maximum and minimum fee for Mayors recognises the different input of Mayors at each individual Council, depending upon requirements and availability of the Mayor.

As with the performance of any type of activity, there will be a variation in the capacity and ability of Mayors, depending upon individual circumstances. The present structure allows for this factor to be taken into account by the Council in passing a resolution as to the fee to be paid to the Mayor.

It is the view of the Tribunal that other fees received by a Councillor and Mayor are relevant factors to be taken into account in the fixation of a fee pursuant to the 1993 Act. It was for this very reason, which has been reiterated in the Report, that the common practice is for the work to be performed on a part-time basis except in a small minority of cases where individuals have elected to forego other employment opportunities to spend all their available time expressly with the Council. That such time is a necessary function of the duties pursuant to the 1993 Act is of course a moot point. A full-time position could very well deter many persons unable or unwilling to interrupt their careers from standing for election.

As indicated previously, the Tribunal does not accept the validity of a comparison of the functions of MPs and Mayors. Not only is the importance of the parliamentary functions of elected Members of Parliament overlooked in this argument, but also the fact that the Mayor has the support of the General Manager who acts in an advisory and management role for the Council and the Mayor in relation to the business activities of the Council, a deputy Mayor if elected by Council, and 7 to 15 Councillors in regard to community representation.

Although the submission was put that there was the expectation of the public that the Mayor and Mayor alone should attend functions, this overlooks the responsibility of individual Councillors to act on behalf of the Council, as required, in performing such duties (s.232(2)). It is, therefore, a matter of election by the Mayor to delegate to Councillor(s) some of these extra responsibilities. It is to be remembered that the Mayor receives a fee for performing such functions as a Councillor in addition to those he receives as a Mayor.

**The Fees Structure:**

The procedure adopted by the Tribunal has been to determine initially the fees payable to the Lord Mayor of Sydney and the Councillors of Sydney City Council. The Associations have made no submission as to the appropriate fee in regard to the Sydney City Council and the impact of such fee on the fees structure.

The minimum fees determined by the Tribunal are mandatory for Councils pursuant to section 248(1) and (4) of the 1993 Act. The maximum fee, so determined, grants to each Council the discretion to grant its Councillors and Mayor a fee in excess of the minimum rate. It should be expected that the Councils would take into account the various activities and obligations of the members of the Council and other economic movements which may have an influence, such as Average Weekly Earnings.

In its decision not to set specific fees for each category as sought by the Associations, the Tribunal based its view on the existence of widely different views expressed by Councillors ranging from those supporting the concept of local government as a full time career to those who regard such representation as essentially a voluntary commitment to community service. The majority adopted the concept of part-time service, although their views differed as to the quantum, if any, of payment for such service. This range of views has important consequences, particularly in regard to the fees for Mayors who may, and in fact do, change in the course of the term of Councils who elect them. The setting of a common fee for each category would necessarily involve an averaging procedure which would operate to the detriment of the more efficient Councils and remove the discretion presently available to Councils to determine fees appropriate to their Council within the range provided by the 1993 Act.

In rural areas, some concern has been expressed by Councils as to the high level of the statutory minimum rate of fees. At the other end of the scale, concern has been directed rather to the maximum rate and resort has been made to the concept of obtaining recategorisation as a means of increasing the fees. In fact, the present form of the fee structure provides for some overlapping between categories to cater for possible anomalies arising from categorisation. Councils adopting the maximum fee for their category progress into the lower range of the next highest category. What is sought, of course, by recategorisation, is the right to raise fees up to the maximum of the higher category. Such Councils are not concerned with the statutory minimum rate of pay, but the right to exercise their discretion to increase further the fees available to them at the present time. A change in category extends the discretion power of Councils to increase fees. Baulkham Hills Council and Cabonne Shire Council, for example, were recategorised by the Tribunal from 1 July 1996 and immediately voted themselves increases in fees for both the Mayor and Councillors to the maximum of their respective new categories despite the expectation of the Tribunal stated in the 1996 Report (p8) that the fees would be fixed in the lower end of the scale.

It needs to be observed that the recompense presently available to Councils has significantly changed since the introduction of the 1993 Act. Prior to this Act, Mayors received no fees except as Councillors and Councillors were restricted to a maximum of \$3,000 per annum. The position concerning recompense for authorised expenses incurred in the transaction of Council business has not significantly changed.

Accordingly, Mayors now have available to them a fee as a Councillor, an additional fee as a Mayor, and the payment of expenses and the provisions of facilities. Councillors are paid equally regardless of their attendance at Council meetings and/or their activities on Council. Fixation of a fee needs necessarily to take such factors into account because Councillors receive the same monetary recognition for whatever hours they spend engaged on Council duties. These hours vary widely from Councillor to Councillor.

Nineteen Councils were recategorised in 1995 and three Councils in 1996. It may well be that if the delegations by the Councillors to the Mayor between Council meetings are extensive, then it would need consideration whether the category for Mayor should differ from the category for Councillors. No submissions were put on this aspect. However, it is the view of the Tribunal that the more a Council delegates to its Mayor, to warrant the maximum fee, the fees of Councillors should be discounted proportionately unless other special reasons exist. If the Mayor is engaged individually on new developments and proposed changes in policy for such developments, for example, then the Councillors themselves are necessarily performing a subordinate role in the operation of the Council.

### **The Quantum of Fees:**

In support of increased fees, a number of Councils have sought recategorisation, particularly in categories 1, 2 and 3. There were few individual submissions for increased fees from category 4 and category 5 Councils. Category 3 Councils were concerned with proper recognition of the multi-purpose factor of rural Councils. One Council sought recategorisation to C1.

In the case of category 2 Councils, three sought recategorisation to category 1. Most category 1 Councils, sought categorisation to S2. In the latter case, it was submitted that consideration should be given to the extension of category S2 or to some other form of category. The joint submissions of Newcastle and Wollongong indicated their belief that they are comparable Councils in terms of category and the Lord Mayor's fee.

The Associations tendered written submissions concerning the claimed inadequate pay to Councillors and Mayors. Particular attention was drawn to the rural shires. It was claimed that insufficient weight was given to:

*"(a). the isolation of many rural councils leading to long travelling to and from conferences, meetings, discussions, etc on a regional and statewide basis. Lack of compensation for this lost productivity is felt not to be addressed by the present remuneration levels.*

*(b). the greater involvement by individual councillors as representatives to a wide range of committees and organisations.*

*(c). the range of activities with which council is involved is ever increasing, caused by Government policy, with less members of the general community volunteering their time, leading to councillors being more involved, attending more meetings and more travelling."*

Detailed submissions were also made in relation to claimed increased responsibilities of all Councils. It was stated that in the welfare area, the last 20 years has led to a significant increase in local government involvement in social planning, community development, and community service. Other areas of increased responsibilities included:

**Social Planning** - through the development of community facilities plans and the involvement in the planning processes of specific human service programs. For example, a 1994 survey indicated that 56 per cent of Councils have in place Community Facilities Contribution Plans and 14 per cent were intending to complete one pursuant to s.94 of the Environment Planning and Assessment Act 1979.

**Local Human Services** - It was claimed that local government had extensive involvement in the provision and/or support of local human services and the results of a survey conducted by the Associations in 1994 was referred to. It was stated that Councillors were responsible for policy determination, financing decisions, and consultation across a wide and complex array of human services and that greater attention needs now to be paid to the needs of children across all of Council's service and regulatory functions.

Reference was made to the decreased level of Commonwealth funding to both local government centres and to parents using the centres.

**Environment** - As to the environment, it was stated Councils are now required under section 428(c) of the 1993 Act to include in the annual report a report as to the state of the environment in the area. This has led to a more informed community questioning the environmental impact of Councils' decisions. While Councils have always been answerable to the community, there is now more awareness and controversy about decisions affecting the environment. In the area of waste management, local government is increasingly being required to regulate waste-generating premises, to enforce waste regulations and, where necessary, issue penalties. The Waste Minimisation and Management Act 1995 has placed a high level of responsibility on Councils and Councillors. It was claimed that the trend in waste management was symptomatic of a general trend towards devolution of responsibility to Councils.

**Disability Discrimination Act 1992** - it was stated that since the implementation of the Disability Discrimination Act 1992 (DDA), Councils are required to play a leadership role in encouraging developers to adhere to the principles and intent of the DDA when approving development and building applications. Councils sponsoring disability services which come under the Disability Services Act (DSA) have had to become familiar with the Act and disability service standards in order to comply and receive ongoing funding for services.

It has become necessary for Councils sponsoring Home and Community Care (HACC) projects to be familiar with the requirements of the national service standards. All services have had to implement policy and procedures to comply with the national service standards. Councils are now responsible for implementing local planning policies that contribute to the State Government's urban consolidation objectives. Councils also need to prepare information on the status of infrastructure on Aboriginal villages, reserves and missions; negotiate with local Aboriginal communities; prepare plans for infrastructure and service changes. Through the COAG process, Councils have been asked to take a more active role, not as a contractor but also as a service provider.

It was also claimed that in the June 1996 regulations now require Councils to provide information in the annual report on the "programs ... to promote services and access to services for residents and other users of those services".

In the area of development approval, it was claimed that the criteria by which Councillors must decide the suitability of development are more complex and varied. In addition, the more general responsibility for planning rests on Councillors, with increasing moves towards regional planning and more proactive strategic planning. The recent issue of urban consolidation presented Councils with a complex dilemma of balancing the views of the community with the attention on the achievement of consolidation goals.

On 10 April 1996 the Associations submitted a summary of issues. These are matters which have been raised in the course of hearings and discussions but highlight the increasing involvement of Councils both individually and collectively in matters wider than the usually perceived role of supplying basic local services. These emerging issues will increasingly involve the attention of Mayors and Councillors whereby each Council will have a role in the development of new policies in association with the new management structure.

The effect of such issues on individual Councils has been relied on by Councils in their submissions and discussions with the Tribunal in the course of the Tribunal's investigations since February 1994.

Attention was also directed to the liability of Councillors to pay a surcharge pursuant to Division 2 of Part 5 of Chapter 13 of the 1993 Act. It is to be noted, however, that liability for surcharge existed in the 1919 Act. In addition, the Associations gave a detailed response to the Ombudsman's Annual Report 1995/1996 concerning Councils. In this regard, it should be made clear that the Tribunal is not relying on the findings of the Ombudsman, but, to the contrary, on its own investigations and inquiries and the material supplied by a considerable number of Councils individually.

While the Tribunal is prepared to accept the continuing trend of these developments in local government, the question of the impact of such changes on individual Councils and the manner in which they seek to implement the changes varies widely, depending on individual Councils and upon their size and financial ability to implement expanding or new policies. At the top end of the scale, Councils such as Campbelltown have developed the ability and, through proactive financial and management operations, have been able to generate sufficient resources to develop and progress significant welfare, recreational and other community services in their rapidly developing areas.

The support from the General Manager and Council staff pursuant to the new management structure was quite evident during discussions concerning Council projects. The balance of the role of the Mayor and the General Manager in Councils examined in detail by the Tribunal indicates the manner in which a developing Council can cope with the demands not only from the residents, but also from major developers and industrialists seeking to locate in the area. The directors of the various departments of the Council are co-ordinated by the General Manager. The services supplied by the General Manager are statutory duties. In exercising their responsibilities of determining policy, Councils seek the guidance they need from the General Manager and other Council staff.

While they do not need to become experts in the various operational aspects of local government, they need to understand the implications of the impact of such policies on residents and the financial responsibilities which may arise. For example, the extent of their involvement in social welfare aspects, which were referred to in detail in the submissions of the Associations, depends in large part upon the manner in which Councils are able to finance such services.

It should be stated at the outset that the Tribunal considers the performance of the Council in relation to its statutory duties as a relevant matter in determining the categories and fees to be paid to Mayors and Councillors. It is to be noted also that s.435(1) of the 1993 Act prescribes liability to a surcharge not only on Councillors but also on the General Manager and other members of staff. Because of this potential liability, s.376 of the 1993 Act states that the General Manager is entitled to attend, although not to vote at, a meeting of the Council or of a committee of the Council.

As to the submission put in relation to the rural Councils, the lack of financial resources clearly restricts their opportunities to participate in the major issues relied upon by the Associations.

Rural regional Councils were equated with suburban Councils, not only because of the wider diversity of activities in which they were engaged, but also because of the tyranny of distance involved in attending to their Council responsibilities. The latter, in fact was relied upon by the Associations to support their case for increased fees. Because of the problems of travel in

rural areas, meetings generally are held during the day. This particularly affects Councillors engaged in rural activities when they have to leave their properties to attend.

All the factors detailed above were taken into account in the determination of the categories and the fees payable in accordance with such categories.

### **Applications for Recategorisation:**

There were no applications from categories S1 and S2 Councils.

In the case of Category 1, Bankstown, Blacktown, Fairfield, Gosford, Parramatta, Campbelltown, Penrith, Sutherland, Warringah and Wyong sought recategorisation as special category S2. In most cases, the Councils had adopted the maximum fee for the Mayor and Councillors. The rationale for the category S2 was referred to in the 1994 Report. This categorisation was based upon both S2 Councils' recognised wide regional importance, their industrial base, which was of national significance, their port facilities and their considerable facilities in relation to education and health. The progress made in revitalising both cities through the development of their management plans was outstanding.

The extent of the changes in most of the Category 1 Councils is also notable and provision has been made for such developments in the structure of the fees. The maximum fee for both Mayor and Councillor overlaps the minimum fee for such positions in Category S2. The Tribunal does not agree that the development of these Councils, commendable as it is, as yet equates to that of Newcastle and Wollongong, particularly in regard to regional importance and impact on surrounding areas, so as to justify the maximum fee of Category S2.

For the same reason, the applications by Burwood, Canterbury, Blue Mountains, Hornsby, Hurstville, Kogarah, Marrickville, Mosman, Pittwater, similarly, while exhibiting changes in the level of commitment of Mayors and Councillors the overlapping fee structure enables the fees to progress partially into the Category 1 structure. A Category 3 Council, Shoalhaven, also sought recategorisation to Category 1. It is the Tribunal's view that the present categorisation is still correct but will remain under review.

Moree Plains sought recategorisation to Category 3 and Snowy River to Category 4. These Councils have adopted the maximum fees allowable in their respective categories and, by the structure of the fees available to them, in fact are able to proceed, by adopting the maximum, to the lower area of the next high classification. In the case of Moree Plains the Tribunal has examined the arguments put forward by the Council very carefully but does not consider that it should be recategorised on this occasion.

Snowy River Council was, however, able to demonstrate clearly the unique issues confronting it particularly in relation to the development of Jindabyne. It now embraces typical functions of category 4 Councils. There has been a significant increase in corporate planning, major development issues, recreation, sporting and tourist facilities with accompanying increases in permanent, semi permanent and transient populations. For this reason the Tribunal considers that Snowy River Council should be recategorised to Category 4.

### **Conclusion:**

Following the appointment of the Tribunal in February 1994, as required by the 1993 Act, a Report necessarily of an interim nature was made and interim determinations fixed pending a thorough investigation. The results of this investigation by the Tribunal were published in a Report to the Minister on 1 May 1995. This Report led to some significant changes to the interim categorisation and interim fees. Further adjustments were made in relation to some categories in the 1996 Report. In September 1995, new Councils were elected and their fees were based on the 1995/96 Determinations. An investigation of the resolutions of the incoming Councils in relation to fees indicated that the fees adopted for Mayors and Councillors covered the range from minima to maxima.

The adoption of the maximum rate was concentrated in the larger Councils and the adoption of the minimum rates was concentrated in the smaller rural Councils. By September 1996, the majority of category 1, 2, and 3 Councils, had determined to pay the maximum rate of fees.

It is reasonable to assume that this was related to increases in responsibility of Councils arising from the operation of the 1993 Act and in consonance with movements in economic indicators and the increased responsibilities referred to above.

It is evident from the submissions made and the discussions with various Councils, Mayors, Councillors, General Managers and staff that the new structure of Councils is working satisfactorily and that the role of the General Manager in managing and advising Councils has been productive. It has allowed the Mayors to concentrate on representation aspects rather than operational aspects of local government. It is not surprising, therefore, to find that many Mayors engage themselves on promotional matters, including discussions before development applications are made. It is in regard particularly to this activity that the Mayors claim that a significant part of their time is required, in addition to their role as Councillor.

The extent of delegation to the Mayor by a Council to commit the Council to consideration of changes in policy is a matter for each individual Council, particularly when discussions occur between Council meetings. But heed has to be taken of the provisions of the 1993 Act, that the Council cannot delegate the management functions of the General Manager. However, it needs to be stated that emphasis was placed by Councillors on the time taken to fulfill representation functions which were claimed to have increased following the introduction of the 1993 Act.

It was largely in regard to the promotional aspects of Councils that the Associations pressed for political recognition. It was emphasised that political decisions needed to be made which distinguished the responsibilities of the elected representatives from those of the General Manager and staff. It was for this reason that the Associations pressed for parity with the remuneration of Members of Parliament. The comparisons, however, relied largely upon a comparison between the representation factor of local government representatives and Members of Parliament. But as indicated in early reports, little weight was placed on their distinctive parliamentary functions apart from their local representation duties.

It is difficult to conceive local government representation as a career. The functions are limited to the Council area and there is no progression, for example, compared with local government staff who may progress to larger Councils. It is also difficult to compare a meeting of Council with a parliamentary session. As indicated elsewhere in this report, the functions of Councils are limited pursuant to the 1993 Act. The Tribunal must also necessarily have regard to the fact that in New South Wales, a Councillor's duties are presently performed as a part-time operation, still retaining the elements of voluntary community services which has been, and still is, an important feature of life in this State. Indeed, some Councils object to the requirement of the 1993 Act to provide for fees.

The election of a Council brings together a miscellany of persons, usually with current employment experience in addition to local knowledge as active members of the community. As indicated in the 1995 report, a common feature has been the involvement of candidates for election in voluntary local organisations, often as elected representatives of such organisations.

However, it needs to be said, as in the 1995 Report, that there is a significant intrusion into the leisure and family life by involvement in local government affairs to an extent greater than that of voluntary organisations.

The Tribunal met with the Associations and a representative group of Mayors and with other individual Mayors who sought to put their own personal case. The major thrust of the submissions put to the Tribunal were related to an alleged increase in the responsibility of Mayors. Emphasis was placed on the delegated powers of Mayors to engage in discussions concerning major development projects. This method of delegation necessarily places the Councillors in a secondary role of considering and endorsing Mayors' recommendations. However, it has to be stated that this degree of delegation varied widely between Councils and was influenced to a significant degree by the role which the General Manager played in each individual Council.

The time given to this work by Mayors is dependent on the private work commitments. The majority of Mayors have full-time employment and others are engaged in activities on a part-time basis. For example, the Lord Mayor of Sydney is a member of SOCOG. Others engage in wider local government activities as elected representatives of the Local Government and

Shires Associations. Council meetings are held at times convenient to Councillors and these times differ, particularly between rural and urban Councils. Some activities necessarily require absence from work commitments, which no doubt discourages some persons from seeking election. However, employed persons who are elected commonly arrange their free time and, if necessary, obtain time off work to attend to Council responsibilities.

Certainly it is inconvenient and sometimes costly to Councillors to perform their functions, but the fee determined by the Tribunal is based upon the concept of providing some recompense for the giving up of other employment opportunities, plus recompense for expenses incurred in the course of Councillors performing their statutory duties.

The fees determined have to be set as common fees equally applicable to all Councillors, and this necessitates an averaging procedure whereby active Councillors may in fact be underpaid and less active Councillors overpaid for performing the duties required of the Council as a whole.

In determining the quantum of increase the Tribunal has had regard to Average Weekly Earnings and Consumer Price Index movements not as a basis for adjustment of the fee but as relevant economic indicators in addition to demonstrated changes in Councils' operations. These changes can only be determined from examination of individual Councils not from generalised statements.

The Tribunal's Determinations are based on examination of all the material gathered from Councils and discussions and inspections in evaluating the submissions. It is possible to determine a trend emerging from implementation of the 1993 Act of increasing efficiency and effectiveness of those Councils who have supplied evidence.

Business papers have indicated increasing attention to major developments in addition to the usual basic services supplied by Councils to their local communities. It is apparent that because of the greater resources of larger Councils, these developments are occurring more rapidly.

**Fees For Councillors and Mayors:**

The determination of fees for each Category presents some difficulties in that, as in the case of all Councillors of a particular Council, the same fee structure is applicable to all the Councils within each category. The value of the services of Councillors and Mayors is dependent upon an averaging factor for all the Councils in each category. These fees have to be set in the light of the material presented to the Tribunal. Some Councils have provided no information or assistance to the Tribunal in determining the appropriate fee apart from merely supporting the general submission of the Association.

As indicated in this report, the existence of full-time Mayors as a general proposition is not applicable to New South Wales Councils. The situation since the 1996 Report has not changed. It must be made clear that the rates are determined on the basis generally that the duties performed are on a part-time basis and that Councillors and Mayors have access to other remuneration. The creation of the concept of "full-time" implies an executive function which is incompatible with the 1993 Act and could confuse the distinction in role of the Mayor and General Manager and a commitment to the position to the exclusion of other employment without approval of the Council which is responsible for the delegations which govern the activities of the Mayor. Accordingly, the Tribunal declines to determine such a fee. What appears to be sought in effect, is the payment of a full-time fee for Mayors who devote long hours to their office.

It is proposed on this occasion not to vary the minima but to increase the maxima to bring into account trends of Average Weekly Earnings, and the Consumer Price Index in assessing changes in the responsibilities and scope of operation of Councils. Regard also must necessarily be paid to the public interest and the state of the economy of New South Wales in the provision of such public services.

The Tribunal does not propose to enforce upon Councils, who oppose any fee being paid, a higher rate on this occasion. It is left to each individual Council to elect to increase fees still open to it within the range taking into account the reasons for any increases since 1995. The maximum fee is not a statutory-imposed fee, but is a fee to which Councils may aspire from their contribution to the community which they represent. Particular attention was given to the increased responsibilities of Mayors on this occasion. But it is to be noted that the Mayor obtains the benefit from both the increase in Councillors' fees and the increase in the additional fee payable to Mayors.

These fees are being set in an environment of a short history of operation of a modern local government statute. It succeeds a long period of stability pursuant to a 1919 statute, albeit much amended. But until the 1993 Act was proclaimed, local government representation was, in effect, an honorary service. Indeed all such service, regardless of the size or type of Council was treated as of equal value. The emoluments were the same for representatives of the smallest rural Council and the Sydney City Council. Many present day Councillors still retain the view that the responsibilities and representative functions are the same regardless of the size of the Council.

The Tribunal's task has been to evaluate the services rendered pursuant to the new structure of statutory corporate bodies. Within the local government area widely differing beliefs are held ranging from those who still strongly adhere to voluntary community service to those who seek the commercial value of full-time service or equivalent. Such service necessarily involves the public interest in that the payment of such fees is an additional cost to ratepayers. This Report has referred briefly to the manner in which the Tribunal has attempted to blend the differing views.

The adoption of a gradual process of assessing the changing value of the input of Councillors and Mayors was necessarily involved because of the lack of specific information, apart from generalisations concerning the operation of some Councils and the impact of the 1993 Act on the local government structure. The effects on Councillors and Mayors are now emerging and recognition of such changes can be effected best on an annual basis.

The Tribunal proposes to continue such annual reviews of fees based upon the categories presently determined. On this occasion, rather than change the category structure, general increases of maximum fees give individual Councils the opportunity to increase fees for 1997/98 under their existing Category. However, for the 1998/99 Determination, the Tribunal proposes to examine in particular the emerging role of Category 1 Councils as recognised regional centres and their relativity with the Category S2 Councils.

The effect of these increases in fees is to give Councils a wider discretion to resolve to pay the fees appropriate to the operation of each Council. It is to be remembered that these fees for each category are based on the averaging process, which is necessarily involved because of the variations in the activities of individual Councillors and Mayors and Councils as a whole.

### **Local Government Remuneration Tribunal**

(The Honourable Charles L Cullen Q.C.)

Dated:

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

<b>Category S1 (1 Council)</b>	Sydney
<b>Category S2 (2 Councils)</b>	Newcastle Wollongong
<b>Category S3</b>	County Councils

**Category 1. (15 Councils)**

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

**Category 2. (28 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	Willoughby
Kogarah	Woollahra

**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	Yallaroi
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 1997 to 30 June 1998 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: