



No. 6 of 2018

**REPORT OF THE REMUNERATION TRIBUNAL**  
**ALLOWANCES FOR MEMBERS OF LOCAL GOVERNMENT COUNCILS**

**INTRODUCTION**

1. This Report concerns a Determination made by the Remuneration Tribunal (“the Tribunal”).
2. The Tribunal has made two Determinations which prescribe allowances to which persons elected or appointed as members of Councils established under legislation constituting Local Government are entitled to be paid.
3. The two Determinations are as follows.
  - Determination 6 of 2018 prescribes allowances payable to members of Councils constituted under the *Local Government Act 1999* (“the Act”).
  - Determination 7 of 2018 establishes allowances payable to members of the Adelaide City Council.
4. This Report is in respect of Determination 6 of 2018.
5. Determination 7 of 2018, which prescribes allowances payable to members of the Council of the City of Adelaide, is subject to a separate Report in relation to that Determination.

**BACKGROUND**

6. The Act and the *City of Adelaide Act 1998* direct the Tribunal to determine allowances payable in relation to the offices held by members of Councils on a 4 yearly basis.
7. The scheme of the legislation is that the allowances to which members of Councils will be entitled during a term of office should be determined prior to the periodic elections held under the *Local Government (Elections) Act 1999*. The date for the close of nominations for the conduct of such elections is 18 September 2018. The relevant provisions of the Act require the Tribunal to have made such a Determination 14 days before that date. The term of the offices for which the election is to be held is 4 years.
8. Clearly, the intention is to inform persons eligible for election who may be considering nomination to know what the allowance(s) payable in respect of an office(s) will be in the event they are elected. This certainty is reinforced by statutory provisions which index adjustments to the amounts of the allowances so determined by the Tribunal, during the term of office for which the election is held.

9. The establishment of the statutory scheme under which the Tribunal makes such a Determination occurred with the passage and enactment of the relevant legislation<sup>1</sup> which commenced operation on 14 January 2010.

## **NATURE OF THE ALLOWANCES**

10. It is appropriate to make some observations concerning the nature of the allowances contemplated by the Act.
11. By the provisions of section 76 of the Act, the nature of the Determination to be made by the Tribunal is to create an entitlement for members of Councils to be paid what is described as an allowance, in the nature of a fee, as defined by the *Remuneration Act 1990*. That definition is set out below:

*“remuneration includes—*

- (a) salary; and*
- (b) allowances; and*
- (c) expenses; and*
- (d) fees; and*
- (e) any other benefit of a pecuniary nature;”*

*(emphasis added to original)*

12. Clearly, the legislature has discretely identified the allowances of members of Council under subparagraph (d), as opposed to sub paragraph (b) of the definition of remuneration in that Act. Accordingly, it is appropriate to understand the purpose of that distinction when considering the nature of the allowances to be determined.
13. In the relevant context, in particular having regard to the provisions of section 76 of the Act as a whole and the functions of Councils, as prescribed by section 7 of the Act, the use of the word “fee” denotes a payment akin to that paid for counsel or advice provided in relation to the decisions and actions of Councils in the performance of their statutory responsibilities, including a representative function within that decision making process.
14. The provisions which govern the Tribunal’s determination of the relevant allowances are set out more extensively later in this report.
15. It is clear from those provisions that the legislature views the appropriate level of allowances as related to the scale of the undertakings of Councils and presumably the associated complexity and consequence of discharging the necessary functions of the various Councils.
16. This has been recognised by the Tribunal’s previous reviews by the grouping of Councils and the determination of commensurate allowances on a scale, having regard to the provisions of subparagraph (b) of subsection (3) of Section 76 of the Act.

## **THE NATURE OF THE ALLOWANCES AND THE ROLE OF ELECTED MEMBERS**

17. Local government bodies are fortunate to attract Council members from all walks of life. The rate of remuneration received for their efforts in the usual vocations of persons elected or appointed as Councillors would usually be higher than that reflected by the allowances which have been historically applicable under the Tribunal’s Determinations. Clearly, there is a significant component of public service by Council members for which the fee, described as an allowance, is paid. As subparagraph (c) of subsection (3) of section 76 of the Act makes clear, the allowance to be determined is not to be in the nature of an amount payable like a salary or, by analogy, a wage. The allowance is not the subject of statutory superannuation and the Tribunal has previously satisfied itself that it lacks jurisdiction to provide for such.

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<sup>1</sup> *Statutes Amendment (Council Allowances) Act 2009*

18. Prior to the first Determination of the relevant allowances by the Tribunal, Councils determined the allowances payable to their members and officers.
19. In the course of the Report in relation to the Tribunal's first Determination of the relevant allowances the following conclusion, among others, was stated:

*"6.3 Voluntary nature of work undertaken by council members*

*6.3.1 The Tribunal understands that the relevant local government legislation reinforces the notion that a council member is a voluntary role and is not paid employment. In addition, the allowances determined are not intended to amount to a salary and qualifications are not required to undertake the role of a council member."*

## **THE PREVIOUS DETERMINATIONS**

20. The first Determination made by the Tribunal was issued on 23 August 2010. A five level structure of annual allowances payable to elected members was established. Councils were classified within those levels, broadly in line with a composite, although not strictly formulaic, ranking of the area, population and revenue of Councils, having regard to the representative role of elected members accordingly.
21. On 28 July 2014, the Tribunal made two Determinations. On that occasion, the Tribunal considered it appropriate to make a separate Determination in respect of allowances payable to members of the Adelaide City Council. The five level structure was maintained for Councils other than the Adelaide City Council. However, the Tribunal subdivided Level 1 of the 5 level structure to create levels 1(a) and 1(b) with different levels of allowance.
22. Those Determinations and the accompanying Reports are available on the Tribunal's website.

## **2010 REVIEW OF ALLOWANCES**

23. The initial Report and Determination of the Tribunal was significantly formative of the framework of allowances currently operating under the Tribunal's Determination 7 of 2014, in respect of Councils constituted under the Act.
24. In 2010, the Tribunal received 65 written submissions, including 25 from Councils. Submissions were received from the Local Government Association, current and past members of Councils and members of the public. The Tribunal also conducted three sittings for the purposes of hearing oral submissions and independently sought information from the Local Government Association, the Office of State/Local Government Relations in the Department of Local Government, the South Australian Local Government Grants Commission, the Boards and Committees Unit of the Department of the Premier and Cabinet and the Australian Institute of Company Directors.
25. The 5 level structure provided annual allowances for a Councillor who is not a principal member (within the meaning of the Local Government Act or the Lord Mayor under the City of Adelaide Act), a Deputy Mayor, Deputy Chairperson or Presiding Member, for each of the 5 levels.
26. The 2010 Determination provided that the allowance payable to Principal Members of a Council, except the Lord Mayor of the City of Adelaide, would be four times the annual allowance for Councillors of that Council. For Deputy Mayors, Deputy Chairpersons or Presiding Members of one or more standing committees established by a Council, the annual allowance was determined as 1.25 times the annual allowance for Councillors of that Council.
27. For the Lord Mayor of the City of Adelaide the annual allowance was determined at 7 times the annual allowance for a member of that Council.
28. Additionally, a travel time payment was determined, which was applicable to members of non-metropolitan Councils.

## 2014 REVIEW OF ALLOWANCES

29. As already noted, in addition to making a discrete Determination in respect of the Adelaide City Council, in 2014, the Tribunal amended the structure determined in 2010 so as to create a subdivision of level 1 into levels 1(a) and 1(b).

## STATUTORY PROVISIONS

30. The principal provisions of the Act which direct the Tribunal's consideration for the purpose of the making of a Determination are set out in Section 76, in particular subsection (3) of that Section. The counterpart provisions of Section 24 of the *City of Adelaide Act 1998* are relevantly identical.
31. Having regard to the infrequency of the Tribunal's determination of the relevant allowances, it is informative to include the provisions of Part 5 of Chapter 5 of the Act, which are attached with this Report. Those provisions deal with various matters of a pecuniary nature attached to the entitlement of a person elected or appointed to office as a member of a Council constituted under the Act. However, it is convenient to reproduce the provisions of section 76 of the Act, which contain the provisions which direct the Tribunal's considerations for the purposes of the required Determination.

### 76—Allowances

- (1) *Subject to this section, a member of a council is entitled to the allowance determined by the Remuneration Tribunal in relation to the member's office and indexed in accordance with this section.*
- (2) *The Remuneration Tribunal must make determinations under this section on a 4 yearly basis before the designated day in relation to each set of periodic elections held under the Local Government (Elections) Act 1999.*
- (3) *The Remuneration Tribunal must, in making a determination under this section, have regard to the following:*
  - (a) *the role of members of council as members of the council's governing body and as representatives of their area;*
  - (b) *the size, population and revenue of the council, and any relevant economic, social, demographic and regional factors in the council area;*
  - (c) *the fact that an allowance under this section is not intended to amount to a salary for a member;*
  - (d) *the fact that an allowance under this section should reflect the nature of a member's office;*
  - (e) *the provisions of this Act providing for the reimbursement of expenses of members.*
- (4) *For the purposes of the proceedings before the Remuneration Tribunal but without derogating from the operation of subsection (3), the allowances to be determined under this section will be taken to be in the nature of a fee under the definition of **remuneration** in the Remuneration Act 1990.*
- (5) *Without limiting section 10 of the Remuneration Act 1990, the Remuneration Tribunal must—*
  - (a) *allow persons who are entitled to be enrolled on the voters roll for an area a reasonable opportunity to make submissions orally or in writing to the Tribunal in relation to a determination under this section that relates to the members of the council for that area; and*
  - (b) *allow the LGA a reasonable opportunity to make submissions orally or in writing to the Tribunal in relation to any determination under this section.*
- (6) *Nothing in subsection (5) requires the Remuneration Tribunal, for the purposes of making all determinations required under this section in any 4 year period, to hold more than 1 hearing to receive any oral submissions that persons may*

care to make (and the Tribunal is not required to hold any hearing if it appears to the Tribunal that no one is seeking to make oral submissions).

- (7) The rates of allowances may vary from office to office, and from council to council.
- (8) An allowance determined under this section will, in relation to the members of a particular council, be payable for the period—
  - (a) commencing on the conclusion of the relevant periodic election; and
  - (b) concluding at the time at which the last result of the next periodic election is certified by the returning officer under the Local Government (Elections) Act 1999 (including in respect of a member of the council for whom the conclusion of the next periodic election is, for other purposes, the last business day before the second Saturday of November of the year of the periodic election as a result of the operation of section 4(2)(a)).
- (9) An allowance determined under this section is to be adjusted on the first, second and third anniversaries of the relevant periodic elections to reflect changes in the Consumer Price Index under a scheme prescribed by the regulations.
- (10) Sections 17 and 19 of the Remuneration Act 1990 do not apply in relation to a determination under this section.
- (11) Subject to subsection (8), a member of a council who holds an office for part only of the period in respect of which an allowance is payable is entitled to the proportion of the allowance that the period for which the member held the office bears to the total period.
- (12) An allowance under this section is to be paid in accordance with any requirement set out in the regulations (unless the member declines to accept payment of an allowance).
- (13) Despite any other Act or law, the reasonable costs of the Remuneration Tribunal in making a determination under this section are to be paid by the LGA under an arrangement established by the Minister from time to time after consultation with the President of the LGA and the President of the Tribunal.
- (14) Regulations made for the purposes of this section may make different provision according to the offices or classes of council to which they are expressed to apply.
- (15) In this section—

**Consumer Price Index** means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics;

**designated day**, in relation to particular periodic elections, means the day that is 14 days before the day on which nominations close for those elections.

32. It will be observed from a reading of the attached provisions, the Act provides various supports for persons elected as a member of a Council, of which the allowances determined by the Tribunal form part. In this context, it is appropriate to recall that in addition to allowances previously determined to be payable on an annual basis, an entitlement to an allowance for time spent travelling by certain members of Councils in regional areas is a feature of the scheme in operation at the time of making the Determination to which this Report relates. Those entitlements in respect of time spent travelling by non-metropolitan Council members are dealt with more specifically elsewhere in this Report.
33. It was appropriate to have regard to all of the relevant statutory provisions which form Part 5 of Chapter 5 of the Act, and the Reports and Determinations made in 2010 and 2014 when considering the Determination to be made on this occasion. The actual level of support provided pursuant to sections 77,78,79 and 80 of the Act is not for the Tribunal to determine and is largely within the discretion of a Council, subject to the statutory governance of the matters dealt with by those provisions of the Act, including Regulations

made in accordance with the Act. In respect of these matters, it is assumed that such support will be that which is considered reasonable by Councils and that such support is relevantly provided or if not is a matter for Councils to resolve in accordance with their governance responsibilities.

## PROCEDURAL HISTORY

34. The combination of the provisions of subsection (5) of section 76 of the Act, above, and section 10 of the *Remuneration Act 1990*, set out below, impose procedural obligations upon the Tribunal in relation to the making of the relevant Determination.

*“10—Evidence and submissions*

- (1) The Tribunal is not bound by the rules of evidence but may inform itself in any manner it thinks fit.*
  - (2) Before the Tribunal makes a determination affecting the remuneration of a particular person, or persons of a particular class, the Tribunal must allow that person, or the persons of that class, a reasonable opportunity to make submissions orally or in writing to the Tribunal.*
  - (3) A person may appear before the Tribunal personally, or by counsel or other representative.*
  - (4) The Minister may intervene, personally or by counsel or other representative, in proceedings before the Tribunal for the purpose of introducing evidence, or making submissions, on any question relevant to the public interest.”*
35. On 29 May 2018, by letters, the Tribunal wrote to the following officers, notifying of its intention to review Local Government Council Allowances, inviting submissions from affected persons, with a closing date of 6 July 2018.
- The President of the Local Government Association of South Australia;
  - The CEOs of Local Government Councils;
  - The Minister for Local Government, as the Minister responsible for the Act and the *City of Adelaide Act 1998*; and
  - The Premier, as the Minister responsible for the Act.
36. In the week commencing 2 June 2018, the Tribunal placed public notices in *The Advertiser*, *The Messenger*, and in rural newspapers, calling for submissions in relation to the Determination to be made.
37. Additionally, a notice was placed on the Tribunal's public website. The notice advised that submissions must be received by the close of business on 6 July 2018. The Tribunal also posted guidelines for such submissions. Those guidelines encouraged the making of submissions which addressed the considerations to which the Tribunal is directed by subsection (3) of Section 76 of the Act. A copy of the text of the advertisements is shown below.



## REMUNERATION TRIBUNAL DETERMINATION OF ALLOWANCES FOR MEMBERS OF COUNCILS

Section 76 of the *Local Government Act 1999* (SA) and Section 24 of the *City of Adelaide Act 1998* (SA), require the Remuneration Tribunal to determine, on a four yearly basis, allowances for members of Local Government Councils.

The Remuneration Tribunal, in making its Determination, must have regard to:

- the role of members of council as members of the council's governing body and as representatives of the council's area;
- the size, population and revenue of the council, and any relevant economic, social, demographic and regional factors in the council area;
- such an allowance is not intended to amount to a salary for a member;
- such an allowance should reflect the nature of a member's office; and
- the Act's provisions to provide for reimbursement of members' expenses.

Councils, individual members of Councils, and interested associations are invited to make written submissions to the Tribunal outlining views they consider should be taken into account in the determination of the above allowances.

Persons who are entitled to be enrolled on the voters roll for a council area are also invited to make submissions, regarding Determinations relating to members of the council for that area.

Guidelines for the making of written submissions, and information about the current allowances, may be obtained by going to the Remuneration Tribunal website: [www.remtribunal.sa.gov.au](http://www.remtribunal.sa.gov.au)

Opportunities for oral submissions will be determined based on need. Persons interested in making an oral submission should contact the Executive Officer to register their interest in making an oral submission.

Submissions must be received by **5pm Friday, 6 July 2018** and can be forwarded to:

**The Executive Officer  
Remuneration Tribunal  
GPO Box 2343  
ADELAIDE SA 5001**

**Telephone: (08) 8429 5459**

Submissions may also be sent via email to [RemunerationTribunal@sa.gov.au](mailto:RemunerationTribunal@sa.gov.au)

The *Local Government Act 1999* (SA) and the *City of Adelaide Act 1998* (SA) are available at: [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au)

38. The guidelines published on the Tribunal's website are set out below:

### "Councils

*The Tribunal has determined that written submissions from councils should be submitted in accordance with the following format:*

- *Name of Council*
- *Size (number of elected members .etc)*
- *Population and Geographical Area*
- *Revenue and Expenditure*
- *Economic, Social and Demographic Factors*
- *Meetings (number of council and committee meetings held in last 12 months, number of councillors attending council and committee meetings).*
- *Amount of Allowance Deemed Appropriate (Submission may present justification for an adjustment, and may include comment on the appropriate allowance payable to the principal member of council).*
- *Any Other Relevant Factors (This may include comment on the current Determination, council groupings for the purpose of determining the level of allowance, and the council's capacity to pay)."*

### Associations / Individuals

Written submissions from associations and individual persons should be submitted in accordance with the following format:

- *Name of Association / Person Making Submission*
  - *Address of Association / Person Making Submission*
  - *Is the submission being made with relevance to the allowances being paid to councillors in general, or the allowances paid to members of a particular council?*
  - *Amount of Allowance Deemed Appropriate (Submission may present justification for an adjustment, and may include comment on the appropriate allowance payable to the principal member of council).*
  - *Any Other Relevant Factors and Comments (Comments should be limited to a maximum of 250 words)."*
39. The Tribunal is aware that, on 31 May 2018, the Local Government Association of South Australia informed members of Association of the Tribunal's enquiry for the purposes of the Determination. That information set out the Tribunal's criteria for the making of its Determination in accordance with the relevant provisions of section 76 of the Act.

### **NATURE OF THE TRIBUNAL'S FUNCTION**

40. It is appropriate to make two observations concerning the interaction of the relevant procedural provisions of the two Acts.
41. The first concerns the persons in respect of whom the Tribunal has responsibility to ensure an opportunity to make submissions and the nature of the opportunity to make such submissions which must be accorded to those persons.
42. The second concerns the nature of the Tribunal's powers and procedures. The combination of the relevant statutory provisions invokes the inquisitorial power of the Tribunal in relation to the manner of its procedure for the purposes of making the relevant Determination. This arises from the incorporation of the provisions of subsection (1) of Section 10 of the *Remuneration Act 1990*.
43. In the first instance, the effect of the combination of the statutory provisions is to extend a responsibility upon the Tribunal to provide an opportunity to different classes of persons. The first class of persons are those entitled to be enrolled on the voters roll for a Council election for an area, the second is the Local Government Association and the third is any person or class of persons whose remuneration may be affected.
44. In the second instance, the statutory directions and the procedural powers conferred upon the Tribunal impose an obligation to conduct an independent enquiry into the matters to be determined, informed by the submissions made by persons for whom the Tribunal is obliged to provide opportunities to make such submissions. It is therefore appropriate to understand this hybrid function as one of discrete independent enquiry, information and judgement, which pays due regard to submissions received.
45. In this context, it is relevant to note that since the initial Determination the number of submissions and the scope of the issues raised with the Tribunal has steadily declined. For the 2010 Determination a total of 65 written and 3 oral submissions were received including a submission from the Local Government Association. For the 2014 review the total number of submissions was 17. For the Tribunal's 2018 Determination, 19 submissions have been received of which 9 are made by Councils. Of the submissions made by Councils only 8 submissions propose a specific outcome of the Tribunal's Determination. 6 submissions made personally by elected members propose such specific outcomes. A submission by a resident's association proposes specific outcomes. 1 submission made by an individual does likewise. No submission was made by the Minister for Local Government.

## TRIBUNAL'S ENQUIRIES

46. To assist in its deliberations, the Tribunal, in accordance with section 10 of the *Remuneration Act 1990*, independently sought information from the following bodies:

- The Local Government Association of South Australia;
- The Local Government Grants Commission of South Australia;
- The Boards and Committees Unit of the Department of the Premier and Cabinet.

## OVERVIEW OF SUBMISSIONS

47. The Tribunal deals directly with the submissions received below. Before doing so, it is useful for an understanding of the Tribunal's consideration of the submissions received to set out a summary table.

48. Submissions made officially by Councils and submissions emanating from Council Officers:

Number	Institution	Current Council Grouping	Reclassification Sought	Submission (outcome sought)
1	City of Marion Council	Group 1B	No	Allowance to be maintained at the level of \$19,808
2	Port Augusta City Council	Group 2	Group 2 to Group 3	Reclassification of group from group 2 to 3
3	City of Tea Tree Gully	Group 1B	No	No increases to allowances for the next 4 years
4	Mid Murray Council	Group 3	No	No specific outcome sought
5	City of Norwood, Payneham and St Peters	Group 2	No	Should not be increased other than by CPI for the 4 year period.
6	District Council of Kimba	Group 5	Group 5 to Group 4	Group 5 be abolished and those councils rolled into Group 4; and Mayor Allowance increased to 5 times multiplier
7	District Council of Streaky Bay	Group 5	Group 5 to Group 4	Group 5 be abolished and those councils rolled into Group 4
8	District Council of Grant, Limestone Coast	Group 4	Group 4 to Group 3	Allowance should be increased with CPI, backdated from 2009
9	Adelaide Hills Council	Group 2	No	Majority view of council that allowance is insufficient; and Amount of time travel payment insufficient and changes to the terms of the time travel payment.
10	City of Onkaparinga	Group 1A	Group 1A to Separate Group	Potential reclassification from group 1A to separate group

49. Submissions made personally by elected members of Councils:

Number	Institution	Current Council Grouping	Reclassification Sought	Submission (outcome sought)
11	City of Port Lincoln Council	Group 3	No	Seeking variable amount of allowance based on number of council members, and Identified anomaly between Port Augusta and Port Lincoln
12	City of Burnside Council	Group 2	No	Presiding member allowances should be reduced
13	Not stated	N/A	No	Allowance should be adjusted according to CPI; and Time travel allowance inequity, kilometre brackets are too far apart
14	City of Charles Sturt	Group 1A	No	Inequity between the roles and allowances of presiding member and deputy presiding member. Seeking a sitting fee to rectify the inequity.
15	Not stated	N/A	No	Time Travel allowance inequity, kilometre brackets too far apart
16	City of Adelaide	Adelaide City	No	Lord Mayoral Allowance should be \$255,000. Councillor should be no less than \$45,000. 15% loading for ordinary member who is a chairman of a council committee.
17	City of Marion	Group 1B	No	No specific outcome sought. Raises issues in relation to conduct of members.

50. Submissions made by organisations other than councils:

Number	Institution	Current Council Grouping	Reclassification Sought	Submission (outcome sought)
18	Prospect Resident's Association	Group 2	No	Group 2 Allowance of \$15,900

51. Submissions made by members of the public:

Number	Institution	Current Council Grouping	Reclassification Sought	Submission (outcome sought)
19	Unknown	N/A	No	Allowances should be reduced

52. Using the numbers in the table above it is convenient to deal with some of the submissions in a summary fashion.

53. While the Tribunal has had regard to the content of submissions 4 and 17 they do not propose a specified outcome. Therefore, there are 17 submissions which specifically engage with proposed outcomes of the Tribunal's Determination.

54. Submissions 1, 3, 8 and 18, are inconsistent with the legislation. Moreover, some of the outcomes proposed by these submissions are impossible to give effect to, having regard to the statutory provisions which automatically index the allowances determined by the Tribunal. Namely, the outcomes proposed by submissions 1, 3 and 8.

55. Submission 14, which deals with anomalies due to payment of allowances when presiding members are absent and proposes a sitting fee to rectify that anomaly is considered a matter concerning the constitution and reconstitution of committees by Councils having regard to the circumstances and disposition of the membership of such committees.

56. The submission from an elected member of the City of Port Lincoln proposes that the annual allowances be determined as a multiple of the number of members of a Council, and that the allowance for the Mayor should be 5 rather than 4 times that of a councillor and questions the classification of the City of Port Augusta Council. The subject of the classification of the City of Port Augusta Council is dealt with more extensively below. The Tribunal has regard to the number of elected members generally, however is unable to identify a suitable methodology which would relate that factor to the relevant statutory considerations in a formulaic manner. The submission in relation to the multiple of the annual allowance for a Principal Member is not elaborated beyond the opinion and judgement of the author, by comparing the two roles. The Tribunal found the submission insufficient to justify a change to the longstanding multiple to apply to the structure of the allowances generally for the 66 Councils subject to the Determination or to the City of Port Lincoln individually.

57. Submission 19 proposes an unspecified general reduction in the level of allowances is comprised of one line of text. The submission lacks adequate exposition of the merit of such an outcome to be seriously contemplated.

58. Consequently, there remain 12 submissions to be considered which effectively propose specific outcomes as a result of the Tribunal's Determination.

59. Submissions 5,13 and 18 essentially propose that the existing level of allowances should not be varied except by the application of the relevant statutory provisions during the period of operation of the Tribunal's Determination. Therefore, there remain 9 submissions which propose outcomes which would result in increases in allowances other than by the statutory mechanism. Not all of those submissions propose an increase in allowances for all elected members of Councils.

60. Those 9 submissions can be divided into categories.

61. The first category is comprised of submissions for changes to the classification of Councils within the structure operating since 2014, including, significantly, the abolition of level 5 of the existing classification structure and the classification of the 18 Councils classified at that level in the structure by the 2014 Determination at level 4. The relevant submissions are submissions 2,6,7 and 8, of which submissions 6 and 7 concern the proposed abolition of level 5 and the reclassification of the relevant Councils at level 4.
62. The Adelaide Hills Council submission is that both the annual allowances and the time travel payment are generally insufficient. This submission is the subject of the Tribunal's conclusion below.
63. Submissions 2, 4 and 10 propose discrete movements of individual Councils, within the structure determined in 2014, one rising one level in the structure, one falling one level and one submission somewhat non specific in relation to a change of classification but implying the creation of a new and higher level of classification above the highest current level.
64. Submissions 12,13,14 and 15, propose changes to the travelling time payment.
65. Submission 17 deals with matters of conduct, which are addressed in paragraphs 76 and 77 below.

## **OVERVIEW OF SUBMISSIONS**

66. Viewed as a whole, the submissions are somewhat fragmentary in nature. That is not to suggest that the various submissions should be treated any less seriously.
67. Including the Adelaide City Council there are 67 Councils constituted under the relevant Local Government Acts. The number of officially endorsed submissions emanating from Councils suggests that there is limited interest by Councils in general changes to the current structure of the allowances and the level of those allowances. Likewise, the submissions received from elected members of Councils is indicative of such a conclusion. The various submissions of elected members, viewed overall, can be said to deal with a number of detailed considerations within the existing structure of the current framework of the allowances. Accordingly, the weight of the submissions would suggest, that changes to the level of the allowances, with the exception of those applicable at level 5, should be marginal if any.
68. Submissions subject to further reasoning are dealt with below.

### *Prospect Residents Association ("the Association")*

69. The Association filed a submission which addressed a number of aspects of the role of Councillor and Mayor. The submission supports the payment of an annual allowance of \$15,900 for members of Council subject to a "contract", including a requirement for attendance at 80% of meetings of Council.
70. The submission supports the classification of the Prospect City Council at level 2 within the existing 5 level classification structure.
71. With respect to the proposal in relation to attendance at meetings, in the Report accompanying the 2014 Determination the Tribunal included the following:
 

*"...the Tribunal considered whether it could attach terms and conditions to the payment (of the allowances) so that payment could be denied to a councillor who does not attend a meeting and who fails to submit an acceptable reason for not attending. In considering its options, the Tribunal sought the advice of the Crown Solicitor who advised the Tribunal does not have the jurisdictional powers to attach such a term or condition to the payment of an allowance"*
72. Some other significant issues addressed by the submission are also beyond the Tribunal's legal competence or, impractical for inclusion in the terms of a Determination of the requisite kind. For example, mandating a requirement to read all relevant

documentation in order to be eligible for receipt of an annual allowance determined by the Tribunal.

73. The Association also proposes the “contract” would include a requirement for some manner of specific reporting by Councillors to Councils on community contacts. How this would be enforced in relation to the entitlement to the allowances determined would also be highly problematic, even if within the Tribunal’s jurisdiction, which is considered most unlikely. Moreover, the submission seems to suggest that the Tribunal might somehow deal with the manner in which Councillors should perform their representative function and the sources of information upon which Councillors should deliberate and decide upon matters in accordance with their responsibilities.
74. The Tribunal considers such issues are best addressed by legislation, Councils themselves and competitive elections. The enforcement of the proposed conditions of a “contract” of this kind would be extremely problematic and the legislation does not contemplate the Tribunal indirectly exercising governance of the manner in which elected or appointed members of a Council perform their functions.
75. The role and functions of Councillors are defined and regulated extensively by the provisions of the Act made by the Parliament. The Tribunal must respect the prerogative of the legislature accordingly and with respect to the Association it is to that forum that these proposals are appropriately submitted.
76. Section 63(1) of the Act provides for the Governor to issue a Code of Conduct for members of Councils, which seems to be the means by which the legislature has chosen to address the manner of performance of the functions of a Councillor by elected members.
77. Notwithstanding that the Tribunal could make discrete provisions applicable to individual Councils we also think that any such conditional terms of a Determination would need to be the subject of wider consideration across Local Government and would likely lead to complex and conflicting views, at least in relation to how such concepts could be made operational, in the unlikely event that it was considered such terms would be within the jurisdiction and power of the Tribunal.
78. For all these reasons, the Tribunal has decided not to impose any further or discrete conditions on the entitlement to the annual allowances determined beyond those already existing under Determination 7 of 2014, either generally or in relation to the City of Prospect.

#### Port Augusta City Council - Classification

79. In 2016 the Tribunal received a letter from the Port Augusta City Council dated 30 November, enquiring if the Tribunal would consider a change to the classification of the Council within the 5 level classification structure.
80. The letter stated that Council had *“identified savings that could be made in regard to Elected Member allowances if Council were to be classified as a Group 3 Council, rather than the current Group 2 classification”*.
81. The Executive Officer of the Tribunal replied on behalf of the Tribunal, advising that a submission concerning the appropriate classification for members of the Council would be received and given due consideration for the purposes of making the Determination to which this report relates.
82. Subsequently, a further letter was received dated 25 June 2018. That letter was brief and referred to the letter of 2016 to the Tribunal and the Tribunal’s response. The letter thanked the Tribunal for the opportunity to provide feedback in relation to the Tribunal’s review for the purposes of the 2018 Determination. The letter specifically asked that the information in the exchange of correspondence referred to above *“could be reconsidered as part of the 2018 review process”*. No more extensive submission was received.

83. It is uncertain if the limited information provided to the Tribunal, concerning potential “savings”, can be understood as an official submission on behalf of the Council, seeking a change of classification from level 2 to level 3. Moreover, the letters were signed by Mr Lee Heron, Director – City & Cultural Services and not the Chief Executive of the Council. While not critical to consideration of the issue it would be more appropriate for an official communication of this kind to be made by the Chief Executive, either officially on behalf of the Council or, independently, as a submission on behalf of the Chief Executive.
84. No other submission was received from an elected member of the Council or an enrolled elector proposing a change to the classification of the allowances payable to elected members of the Council.
85. Critically, there is no submission which makes out the basis of a change to the classification of the Council by reference to the statutory criteria for the determination of the allowances under consideration, specifically, the matters to which section 76 of the Act and in particular subsection (3) thereof refer, to which the Tribunal must have regard to for the purposes of the relevant Determination.
86. The considerations set out above and the desirability of stability within the structure established, unless the merits of a change based on the relevant criteria which the Tribunal must have regard to are made out, or become clearly apparent, cause considerable doubt about the wisdom of making the change alluded to in the correspondence.
87. It is against this background that the Tribunal considered the classification of the Port Augusta City Council. While the Council ranks last in the order of Councils in the level 2 classification and the population and rate base have correlation with Councils in the upper order of level 3 the total operating revenue of the Council is significantly higher. This factor is one to which the Tribunal must have regard.
88. Arguably, inclusion of the Council in level 2 is marginal. However, that observation could also be made in respect of other Councils at the lower rungs of the various levels. In a system of classification of the kind under consideration, which requires the drawing of several lines of demarcation, this marginal feature of the classifications is, most likely, unavoidable.
89. Taking all of the above into account, on balance, the Tribunal decided against varying the classification of the Port Augusta City Council for the purposes of the Determination made. Given the limitations of the contents of the correspondence, together with the informality of the communication observed above, the Tribunal notes that “*identification of possible savings*” referred to is not a sufficient ground upon which to do so. Particularly as that is not a consideration to which the statute directs the Tribunal’s consideration.

#### District Council of Streaky Bay

90. The Tribunal received a detailed submission from the District Council of Streaky Bay which coherently and comprehensively addresses the relevant statutory criteria for the purposes of the Tribunal’s determination of the relevant allowances. The submission was concisely and informatively formatted in accordance with the Guidelines for submissions published on the Tribunal’s website.
91. The principal aspect of the submission was a proposal for the classification of the Council at level 4, rather than level 5 as currently determined. Council’s submission proposed the abolition of level 5 and that all Council’s currently in level 5 be incorporated within the level 4 classification.
92. In addition, the submission proposed that the Principal Member allowance should be 6 times the allowance for an elected member rather than 4 times. The latter factor being the current factor, which is the factor determined in 2010 and has been common to all Councils other than the City of Adelaide since the initial Determination.

93. The Tribunal gave careful consideration to the Council's submissions and the current money value of the annual allowance determined for level 5.
94. The ratio of population to geographic area was a notable feature of the information provided. This aspect of Local Government in regional South Australia is relevant to several Councils. In such circumstances, regard must be had to the necessary time spent travelling to and from meetings by elected members of Council in order to perform their function and the provision of a travelling time payment in the current Determination. The determination of the appropriate travelling time payment was informed by consideration of the information provided in the Council's submission.
95. The Tribunal accepted that part of the submission which asserts that, in large Council areas with small populations, the factors of distance and travelling time affect residents and ratepayers significantly. The frequency and intimacy of the relationship between elected members of Councils and constituents may give rise to greater intensity of interactions, in relation to the representative function of Council members. More so perhaps than might be the case in other Council areas without such characteristics.
96. In respect of the proposal that level five of the classification structure be abolished and all Councils currently classified at that level be classified at level 4, it is notable that there are currently 18 Councils classified within level 5. To act on the submission of the District Council of Streaky Bay and the submission immediately below, made personally by the an elected member of the District Council of Kimba, to abolish the level 5 classification would have significant impact beyond the immediate circumstances from which those two submissions emanate. The Tribunal considered such wholesale change to the classification structure in these circumstances would not be justified without the views of more of the Councils within level 5 of the classification structure which have not made submissions. The 5 level structure has operated since 2010, in the absence of any further submissions for change there must be some doubt about the level of support for the change proposed.
97. Having regard to the area, population and revenue of the District Council of Streaky Bay the Tribunal was not satisfied that reclassification of the Council would be appropriate. In relation to the role of an elected member the Tribunal was satisfied that there should be some variation of the level of allowances at level 5 and the travelling time allowance which is dealt with elsewhere in this report.

#### District Council of Kimba

98. The Tribunal received one other submission proposing general reclassification of Councils from level 5 to level 4, similarly by the abolition of level 5. That submission was provided on behalf of an elected member of the District Council of Kimba. The author stated that this submission had been the subject of consultation with similar sized and larger Councils. The views of those consulted are not detailed. Presumably, the Tribunal is to understand that those consulted are in accord or do not disagree with the submission. Given the extent and impact of the change proposed, the Tribunal is left to wonder why those concerned have not made a submission likewise.
99. The submission addresses the relevant statutory criteria and makes similar points to those of the submission of the District Council of Streaky Bay. Comments in respect of the latter submission, above, are likewise applicable in respect of those aspects of the submission under consideration.
100. The submission was taken into account for the purposes of consideration of the allowances to be determined in respect of the Councils currently classified at level 5 generally and the classification of the District Council of Kimba individually.
101. The Tribunal was not satisfied that it would be appropriate to abolish the level 5 classification for the reasons already stated above. The Tribunal was satisfied that it would be appropriate to vary the level of allowance at level 5.

102. The Tribunal was not satisfied that the area population and revenue of the District Council of Kimba justify a reclassification of the Council at level 4. As previously stated, the Tribunal addresses the role of an elected member of the Council having regard to the time spent travelling to perform that role elsewhere in this Report.

District Council of Grant

103. A formal official submission received from the District Council of Grant proposes the reclassification of the Council within the existing 5 level structure. The Council is currently classified at level 4, whereas, the submission proposes that the Council be classified at level 3. The submission is detailed and addresses the relevant statutory criteria. Considerable stress is placed on the extent of the Council area and the demands that distance and travel requirements place on the representative function of elected members of the Council.
104. Attention was drawn to the fact that the level of allowances to which elected members were entitled before 2010 was reduced by the Determination of the Tribunal of that year and that effect has continued in the history of the relative real value of the allowances payable to Councillors since.
105. Notably, the Council is responsible, for the operation of a major regional airport linking the South East of the State with Adelaide and Melbourne.
106. The submission concludes as follows:

*“Conclusion*

*The area and population of a council are not the only indicators of the relative commitment of an elected member towards their constituency. Their employment circumstances, sense of obligation, desire for involvement and level of commitment to community service are more likely to dictate the time and effort expended by an elected member rather than the size of the council. The above submission is intended to provide some insight into the potential time commitment and breadth of expertise required for an elected member of the Grant Council, both current and future.*

*The level of allowance has not sat well with longer serving members since the reduction in 2010 and may not be considered adequate by people considering nomination for the November Council elections. Local Government needs to make itself attractive to new intending members, particularly younger members. If we want to attract the best candidates, if we want people to make family sacrifices and if we want people to put business interests aside, it is important to appropriately compensate such people. Service as an elected member is akin to Board membership – it is no longer a voluntary role albeit making a positive contribution to the community remains the driving force.*

*A return to the allowance levels of November 2009 (adjusted annually for CPI) should be the starting point for consideration in the context of this submission. However, Council would argue that an elevation from Group 4 to Group 3 for the determination of the allowances would more appropriately recognise our relative size and strong synergies with other south-east regional councils including Naracoorte Lucindale, Tatiara and Wattle Range”*

107. It is appropriate to commence by reference to the Tribunal’s consideration of the submission concerning the sense of dissatisfaction with the consequences of the Determination made in 2010, which dominates the conclusion set out above. In essence, the proposition is that the Tribunal reached an erroneous conclusion in 2010 which has been effectively perpetuated since that time. Accordingly, it is proposed that the “starting point” for consideration of appropriate allowances is a return to the level of allowances of 2009, updated for CPI increases in the meantime. As previously observed, prior to the Tribunal’s initial Determination elected member allowances were determined by Councils.
108. The Tribunal considered that to adopt this “starting point” would conflict with the legislative policy that the relevant allowances should be independently determined by a

Tribunal with reference to the specified statutory criteria. To uphold this aspect of the submission for the reasons stated would not be coherent with the Tribunal's responsibility to make the requisite Determination by reference to those criteria. Rather, to do so would be to effectively determine the level of allowances on the basis that the allowances set by the Council in 2009 should be the dominant criteria. Nothing in the Act accords such weight to the allowances fixed by Councils in existence at the time the Act was made or at the time of the Tribunal's initial Determination. It would have been open to the legislature to include such a consideration as a part of the statutory direction to the Tribunal in relation to the criteria for that Determination to avoid the consequence complained of. That was not done and the outcome complained of was, therefore, always a possibility.

109. The Tribunal has considered the relevant statutory criteria in subsection (3) of Section 76 of the Act in relation to the submission of the Council. The considerations of area, population, revenue and representative function must be given the significant weight accorded by the statute for the purposes of judging the outcome proposed by the Council's submission. In relation to the first three of those considerations the Tribunal is unable to conclude that the District Council of Grant is wrongly classified within the existing 5 level structure. The Tribunal is unable to observe any extraordinary change in area, population, rates or operating revenue. In relation to the fourth consideration, the issues of distance and travel are matters to be approached with regard to the level of travelling time allowance rather than the classification of the Council within the 5 level structure prescribing the annual allowances. As previously noted that allowance is dealt with elsewhere.

#### City of Onkaparinga

110. The Council of the City of Onkaparinga Council provided a submission which addresses the statutory criteria. The submission makes reference to a number of factors which go to the annual allowances of elected members, including the following:

*“Elector Representation Review 2017*

*The City of Onkaparinga recently conducted a review of the composition of Council ward boundaries and number of Councillors. The review concluded in October 2017 with certification of the review received from the Electoral Commission in December 2017.*

*The below composition and structure will come into effect in November 2018.*

*The principal member of Council will be a Mayor elected by the community.*

*The elected body of Council will comprise the Mayor and twelve (12) ward councillors.*

*The Council area will be divided into six wards.*

*Each ward will be represented by two (2) ward councillors.*

*The wards will be identified as Mid Coast, Knox, Pimpala, Thalassa, Southern Vales and South Coast.*

*It should be noted that the City of Onkaparinga currently has a Mayor elected by the community and twenty (20) councillors. Therefore, there will be a reduction of eight (8)*

*councillors following the November 2018 elections when the new composition of the Council will come into effect.*

*Further detail on the Review can be found in the Elector Representation Review Final Report attached for your information.*

*Size (number of elected members etc)*

*The number of electors in the City of Onkaparinga is currently in excess of 121,000. The reduction in elected member numbers come November 2018 will serve to increase the current elector ratio across the City of one councillor per 6,093 to approximately one councillor per 10,155. This will be the highest elector ratio in the state.”*

111. The submission concludes by asking the Tribunal to give particular consideration to the following:

*“whether the City of Onkaparinga continues to be captured within the current Group A of metropolitan Council’s (sic) for the purpose of setting allowances or whether the City of Onkaparinga should be in a separate Group due to its (sic) elector ratio due to come into effect in November 2018.”*

112. The reference to Group A is understood to be intended to refer to Group1A. The Tribunal has given careful consideration to the Council’s submission as requested.

113. From the information provided it is not possible to understand the submission to contemplate the possibility that the Council could be appropriately classified at level 1B of the classification structure established by the 2014 Determination. However, for the avoidance of doubt, we do not think that the Council could be appropriately classified within the classification structure at level 1B having regard to the relevant statutory criteria.

114. The Council’s submission can only be cogently understood to seek the Tribunal’s consideration of whether a higher level of allowance than applies to level 1A would be appropriate, in light of the changes to the Council’s representational arrangements and the consideration of other information, concerning the population, geographic area, revenue, expenditure, economic, social and demographic factors affecting the Council, plus the schedule of governance activity included with the submission.

115. The provisions of sub paragraph (a) of subsection (3) of Section 76 of the Act direct the Tribunal to have regard to the following:

*“(a) the role of members of council as members of the council’s governing body and as representatives of their area;”*

116. The ordinary meaning of the word *role* in the relevant context is the expected function of a person in a particular setting. In this case the statutory provisions specify two considerations, namely, governance and representative functions.

117. The Council provided a copy of a report to the Electoral Commissioner on the extensive process by which the decision to change the number of elected members from 20 to 12 was arrived at. Included in that report are two expressions of view which are relevant to consideration of whether this change should cause the creation of a new classification for the City of Onkaparinga, at a higher level of allowance than would apply at level 1A.

118. The relevant text of the views expressed in the report is set out below:

*“Council believes that the proposed reduction to twelve ward councillors is the right and responsible course of action to take at this time. Whilst Council is keen to maintain the quality of representation long afforded the community, it believes that twelve councillors should be sufficient to provide adequate and fair representation to the community, and to perform the roles and responsibilities of Council.”*

*Although the task of a councillor may become more demanding, candidates for election will be aware of the task facing them. Further, the role of an elected member has changed over the years to primarily that of a strategic and policy decision maker, and a communication conduit between Council and the community. This being the case, it is envisaged that the demands to be placed upon the future elected members should be manageable and may, in part, be mitigated by ever improving telecommunications and information technology.*

*Council is confident that twelve councillors should be able to represent and serve the community of the City of Onkaparinga adequately over the coming years.”*

119. Further and elsewhere, under the heading of “Communication”, the following is stated:

*“Council believes that the mayor and twelve ward councillors can provide adequate lines of communication between Council and the community, given the relatively compact nature of the urban precincts within the Council area, wherein a large percentage of the population resides. Representation of the communities and electors residing in the large*

*rural area may be more challenging and demanding, however, the task will be known to aspiring members and they will have to adjust and adapt in order to meet the demands of their constituents. Most of the larger (area) regional councils have similar circumstances and are able provide fair and adequate representation.*

*In addition, the task of representing each of the proposed wards will be shared by two ward councillors; and on-going advances in telecommunications and information technology should serve to assist in this regard."*

120. Taken at the highest, the submission rests upon a somewhat unknown and potentially uneven level of increased demand upon Councillors, which it is considered may arise from the combination of a higher elector to member ratio, changing role definition and the advantages of contemporary communication and information technologies. Having regard to the views referred to above, it appeared that the Council is yet to ascertain the actual extent and distribution of the impact on the representative function which will arise from the change in the number of elected members. The contents of the report to the Electoral Commissioner seem equivocal on the subject. The Tribunal considered that it would be premature to reach a conclusion that the change in the number of elected members of the Council, of itself, should result in the creation of a new and higher level of allowance than that which is appropriate for level 1A.
121. The Tribunal has given close consideration to the area, population, revenue, social and economic features of the Councils jurisdiction. On this occasion, on balance, the Tribunal is not convinced that the creation of a new and discrete classification for the Council of the City of Onkaparinga is appropriate. However, the Council's profile against the statutory criteria shows relevant development.
122. Should the current trends continue relative to other Councils and the actual experience of the change in the number of elected members be relevant, a more substantive case for such a reclassification may emerge over the coming four years. The evaluation of that question would be a matter for the Tribunal at that time, and no indication of an outcome should be inferred from this observation.

## **TRAVELLING TIME ALLOWANCES**

123. Several submissions drew attention to the demands upon elected members of non-metropolitan Councils caused by distance and the need to travel for sometimes significant amounts of time to attend meetings. The size of the geographic area of Councils is a relevant statutory consideration. Such a consideration inherently directs the Tribunal's attention to the issue of travelling time as a factor pertinent to the determination of the relevant allowances.
124. The submissions can be divided into two considerations. The first is the general aspect of the extent of the travelling time demands upon elected members of those Councils. The second concerns the structure of the existing travelling time allowances and in particular the distance criteria for the entitlement to the current amounts of the allowances. In this latter respect, the submissions identify what are considered to be anomalies in the application of the terms of the 2014 Determination. Namely that the distance criteria are too widely separated.
125. It is convenient to set out the relevant provisions of the 2014 determination.

### **"TIME TRAVEL ALLOWANCES FOR MEMBERS OF NON-METROPOLITAN COUNCILS**

*4.1 An allowance of \$336 per annum will be payable to council members, excluding principal members, whose usual place of residence is within the relevant council area and is located **at least 30 kms but less than 50 kms** from that council's principal office, via the most direct road route.*

*4.2 An allowance of \$560 per annum will be payable to council members, excluding principal members, whose usual place of residence is within the relevant council area and is located **at least 50 kms but less than 100 kms** from that council's principal office, via the most direct road route.*

4.3 An allowance of \$1,120 per annum will be payable to council members, excluding principal members, whose usual place of residence is within the relevant council area and is located **100 kms or more** from that council's principal office, via the most direct road route.

4.4 The non-metropolitan council members travel time allowance will be payable in addition to any entitlement to reimbursement of expenses actually incurred.

4.5 A list of the non-metropolitan councils to which this payment applies is provided in Appendix 2."

126. The Tribunal considers the amount of the travelling time allowances to be modest and has made an adjustment to the allowances to more adequately address the relevant demands.
127. Additionally, the existing distance table of travelling time entitlements has been varied. An allowance for travelling time of an elected member of a non-metropolitan Council whose usual place of residence is within the relevant Council area and at least 75 kilometres but less than 100 kilometres from that Council's office by the most direct route will be included. Respectively an allowance for the relevant distance between 75 kilometres and 100 kilometres is provided for. Finally, the allowance for a member travelling more than 100 kilometres has been increased by \$297 per annum. None of these or other travelling time allowances will apply to Principal Members.
128. All of the above variations address the representative function of elected members of Councils with large geographic areas, to a modest degree, having regard to the limited information available from the submissions before us.

## CONCLUSION

129. The Tribunal has applied the indexation of the allowances determined in 2014 in accordance with the scheme prescribed by regulation 4(2) of the *Local Government (Members and Benefits) Regulations 2010* for the purposes of its consideration of the appropriate level of the allowances to be prescribed in accordance with section 76(2) of the Act.
130. As previously set out, section 76(9) of the Act prescribes as follows:

*"(9) An allowance determined under this section is to be adjusted on the first, second and third anniversaries of the relevant periodic elections to reflect changes in the Consumer Price Index under a scheme prescribed by the regulations."*
131. The Regulation which prescribes the scheme for the indexation of the relevant allowances between four yearly Determinations by the Tribunal is set out below:

*Section 4(2) of the Local Government (Member Allowances and Benefits) Regulations 2010*

*"(2) For the purposes of section 76(9) of the Act, an allowance is to be adjusted by multiplying the allowance by a proportion obtained by dividing the Consumer Price Index for the September quarter last occurring before the date on which the allowance is to be adjusted by the Consumer Price Index for the September quarter immediately before the date on which the allowance was determined under section 76 of the Act (with the amount so adjusted being rounded up to the nearest dollar).*
132. The date upon which the allowances were determined by the Tribunal in 2014 was 28 July 2014. Consequently, that is the first reference point for the operation of the scheme. For the avoidance of doubt this was the subject of advice from the Crown Solicitor's Office.
133. Taking all the submissions into account, our independent enquiries, data published by the Local Government Grants Commission, a review of changes in the circumstances confronting elected members of councils since the 2014 review, the Tribunal determined that it was appropriate to provide the allowances set out in Determination 6 of 2018. The allowances have been increased in various amounts according to discrete considerations

gleaned from the submissions and the information gathered independently, upon which the Tribunal has proceeded, having regard to the statutory criteria prescribed by section 76 of the Act for the making of the Determination.

134. The increases in the amounts of the allowances do not involve reclassification of any Council within the previously determined 5 levels including sub divisions 1a and 1b of level 1. The proportionate increase in the amount of the allowance at level 5 is greatest, as a result of the Tribunal's concern that the money value of the allowance at that level of the structure was inadequate.
135. The Tribunal has made changes to the structure and amounts of travelling time allowances which address equity issues raised in the submissions received and to ensure that allowances for elected members travelling significant distances are adequate.
136. The money value of the increase in the level of the annual allowances varies within the range of \$212 and \$460, depending upon the classification of the Council. The cost of the increases in the allowances to all Councils will be marginal as a factor of total operating revenue respectively.
137. On the basis of the information published by the Local Government Grants Commission, as far as the Tribunal can ascertain, the cost of the increase in the annual allowances for the year ending 30 June 2017, determined represents 0.001 of one per cent of the revenue of a Council with total operating revenue as low as \$3.65 million per annum, and less than 0.001 of one per cent of the revenue of the council with the highest total operating revenue. For many councils, the cost of the increase in the allowances is likely to be less as a result of increases in revenue since the publication of the data by the Local Government Grants Commission.



John Lewin  
**PRESIDENT**



Peter Alexander  
**MEMBER**



Pamela Martin  
**MEMBER**

Dated this 30<sup>th</sup> day of August 2018

# **Attachment 1 – Part 5 of the *Local Government Act 1999***

## **Part 5—Allowances and benefits**

### **76—Allowances**

(1) *Subject to this section, a member of a council is entitled to the allowance determined by the Remuneration Tribunal in relation to the member's office and indexed in accordance with this section.*

(2) *The Remuneration Tribunal must make determinations under this section on a 4 yearly basis before the designated day in relation to each set of periodic elections held under the Local Government (Elections) Act 1999.*

(3) *The Remuneration Tribunal must, in making a determination under this section, have regard to the following:*

*(a) the role of members of council as members of the council's governing body and as representatives of their area;*

*(b) the size, population and revenue of the council, and any relevant economic, social, demographic and regional factors in the council area;*

*(c) the fact that an allowance under this section is not intended to amount to a salary for a member;*

*(d) the fact that an allowance under this section should reflect the nature of a member's office;*

*(e) the provisions of this Act providing for the reimbursement of expenses of members.*

(4) *For the purposes of the proceedings before the Remuneration Tribunal but without derogating from the operation of subsection (3), the allowances to be determined under this section will be taken to be in the nature of a fee under the definition of remuneration in the Remuneration Act 1990.*

(5) *Without limiting section 10 of the Remuneration Act 1990, the Remuneration Tribunal must—*

*(a) allow persons who are entitled to be enrolled on the voters roll for an area a reasonable opportunity to make submissions orally or in writing to the Tribunal in relation to a determination under this section that relates to the members of the council for that area; and*

*(b) allow the LGA a reasonable opportunity to make submissions orally or in writing to the Tribunal in relation to any determination under this section.*

(6) *Nothing in subsection (5) requires the Remuneration Tribunal, for the purposes of making all determinations required under this section in any 4 year period, to hold more than 1 hearing to receive any oral submissions that persons may care to make (and the Tribunal is not required to hold any hearing if it appears to the Tribunal that no one is seeking to make oral submissions).*

(7) *The rates of allowances may vary from office to office, and from council to council.*

(8) *An allowance determined under this section will, in relation to the members of a particular council, be payable for the period—*

*(a) commencing on the conclusion of the relevant periodic election; and*

*(b) concluding at the time at which the last result of the next periodic election is certified by the returning officer under the Local Government (Elections) Act 1999 (including in respect of a member of the council for whom the conclusion of the next periodic election is, for other purposes, the last business day before the second*

Saturday of November of the year of the periodic election as a result of the operation of section 4(2)(a)).

(9) An allowance determined under this section is to be adjusted on the first, second and third anniversaries of the relevant periodic elections to reflect changes in the Consumer Price Index under a scheme prescribed by the regulations.

(10) Sections 17 and 19 of the Remuneration Act 1990 do not apply in relation to a determination under this section.

(11) Subject to subsection (8), a member of a council who holds an office for part only of the period in respect of which an allowance is payable is entitled to the proportion of the allowance that the period for which the member held the office bears to the total period.

(12) An allowance under this section is to be paid in accordance with any requirement set out in the regulations (unless the member declines to accept payment of an allowance).

(13) Despite any other Act or law, the reasonable costs of the Remuneration Tribunal in making a determination under this section are to be paid by the LGA under an arrangement established by the Minister from time to time after consultation with the President of the LGA and the President of the Tribunal.

(14) Regulations made for the purposes of this section may make different provision according to the offices or classes of council to which they are expressed to apply.

(15) In this section—

**Consumer Price Index** means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics;

**designated day**, in relation to particular periodic elections, means the day that is 14 days before the day on which nominations close for those elections.

#### **77—Reimbursement of expenses**

(1) A member of a council is entitled to receive from the council—

(a) reimbursement of expenses of a kind prescribed for the purposes of this paragraph incurred in performing or discharging official functions and duties; and

(b) reimbursement of expenses of a kind prescribed for the purposes of this paragraph, and approved by the council (either specifically or under a policy established by the council for the purposes of this section), incurred in performing or discharging official functions and duties.

(2) A policy under subsection (1)(b) lapses at a general election of the council.

(3) A person is entitled to inspect (without charge) a policy of a council under subsection (1)(b) at the principal office of the council during ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the council, to a copy of a policy under subsection (1)(b).

#### **78—Provision of facilities and support**

(1) A council may provide facilities and other forms of support to its members to assist the members in performing or discharging official functions and duties.

(2) The provision of facilities and services under this section is at the discretion of the council subject to complying with the following requirements:

(a) the council must specifically resolve that the provision of the facilities or services is necessary or expedient to the performance or discharge of official functions or duties;

(b) facilities and services must be available to members on a uniform basis (other than facilities or services specifically provided for the benefit of the principal member);

(c) any property provided to a member remains the council's.

(3) A member of a council must not use a facility or service provided by the council under this section for a purpose unrelated to the performance or discharge of official functions or duties (unless the use has been approved by the council and the member has agreed to reimburse the council for any additional costs or expenses associated with this use).

#### **78A—Obtaining of legal advice**

(1) The regulations may establish a scheme under which a member of a council may directly obtain legal advice at the expense of the council to assist the member in performing or discharging official functions and duties.

(2) The scheme may require the preparation and adoption of a policy by a council and include provisions for the variation of the policy and its availability to the public.

(3) The scheme or a policy adopted under the scheme may—

(a) impose limitations on the obtaining of legal advice; and

(b) provide for a process for approval of requests to obtain legal advice; and

(c) allow for conditions to be imposed on an approval, including a condition limiting the expenditure that may be incurred; and

(d) provide for a council to set an overall budget for the purpose; and

(e) include other relevant provisions.

#### **79—Register of allowances and benefits**

(1) The chief executive officer of a council must ensure that a record (the **Register of Allowances and Benefits**) is kept in which is entered, in accordance with principles (if any) prescribed by the regulations, in respect of each member of the council—

(a) the annual allowance payable to the member; and

(b) details of any expenses reimbursed by the council under section 77(1)(b); and

(c) details of other benefits paid or payable to, or provided for the benefit of, the member by the council.

(2) The chief executive officer must ensure that an appropriate record is made in the Register, in accordance with principles prescribed by the regulations, in respect of—

(a) changes in the allowance or a benefit payable to, or provided for the benefit of, members; or

(b) the provision of a reimbursement (other than a reimbursement under section 77(1)(a)) or benefit not previously recorded in the Register.

(3) A person is entitled to inspect (without charge) the Register at the principal office of the council during ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the council, to an extract from the Register.

#### **80—Insurance of members**

A council must take out a policy of insurance insuring every member of the council, and a spouse, domestic partner or another person who may be accompanying a member of the council, against risks associated with the performance or discharge of official functions or duties by members.