



No. 7 of 2018

REPORT OF THE REMUNERATION TRIBUNAL
ALLOWANCES FOR MEMBERS OF ADELAIDE CITY COUNCIL

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 constituted under Local Government legislation are entitled to be paid.
3. The two Determinations are as follows.
 - Determination 6 of 2018 establishes allowances payable to members of Councils constituted under the *Local Government Act 1999*.
 - Determination 7 of 2018 establishes allowances payable to members of the Adelaide City Council.
4. This Report concerns Determination 7 of 2018.
5. Determination 6 of 2018, which prescribes allowances payable to members of Local Government Councils established under the *Local Government Act 1999*, is subject to a separate Report in relation to that Determination.

BACKGROUND

6. The *City of Adelaide Act 1998* (“the Act”) and the *Local Government Act 1999* 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 legislation¹ which commenced operation on 14 January 2010.
10. Determinations were made by the Tribunal in 2010 and 2014 in accordance with the legislation. The relevant Reports and Determinations are available on the Tribunal's website. In 2010, a 5 level structure prescribing levels of allowances in an ascending order from level 5 to level 1 was determined. The Adelaide City Council was included at level 1.
11. In 2014, the Tribunal determined to make a separate Determination for the Adelaide City Council. The level of the allowances so fixed were higher than the highest level otherwise applicable in the Determination of allowances payable to elected members of Councils constituted under the *Local Government Act 1999*.
12. The allowance for the Lord Mayor, in 2014, was Determined as a money amount per annum.
13. The relevant legislation provides for the allowances determined by the Tribunal to be indexed, as follows:

Section 24(9) of the City of Adelaide Act 1998

“(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.”
14. The Regulation which prescribes the scheme for the indexation of the relevant allowances between 4 yearly Determinations by the Tribunal is set out below:

Section 4(2) of the City of Adelaide (Member Allowances and Benefits) Regulations 2010

“(2) For the purposes of section 24(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 24 of the Act (with the amount so adjusted being rounded up to the nearest dollar).”
15. 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.

PROCEDURAL HISTORY

16. Section 10(2) of the *Remuneration Act 1990* requires that before the Tribunal makes a Determination affecting the remuneration of a particular person, or persons, the Tribunal must allow that person, or persons, a reasonable opportunity to make submissions orally or in writing to the Tribunal.
17. Section 24(5) of the Act requires that, without limiting section 10 of the *Remuneration Act 1990*, the Tribunal must allow persons who are entitled to be enrolled on the voters roll for the City of Adelaide, and the Local Government Association (“LGA”), a reasonable opportunity to make submissions in relation to the Tribunal's Determination of allowances for members of Council.
18. On 29 May 2018, by letters, the Tribunal wrote to the following officers, notifying of its intention to review Local Government Council Allowances in 2018. The Tribunal fixed a closing date for submissions 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 Premier, as the Minister responsible for the *Remuneration Act 1990*.

¹ *Statutes Amendment (Council Allowances) Act 2009*

19. On 31 May 2018, a LGA circular was distributed to Local Government Councils by the LGA, which notified councils of the Tribunal's intention to conduct a review of Local Government Council Allowances in 2018.
20. On the week commencing 2 June 2018, the Tribunal placed the below public notices in *The Advertiser*, *The Messenger*, and in rural newspapers, calling for submissions in relation to the review. Additionally, a notice was placed on the Tribunal's public website.



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

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

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

SUBMISSIONS

21. The Adelaide City Council did not make an official submission. No submission was received from the Lord Mayor, the Deputy Lord Mayor or the Chief Executive. No submission was made by the Minister for Local Government in respect of the Tribunal's determination of allowances for members of the Adelaide City Council. No elected member of the Adelaide City Council made a submission.
22. The Tribunal did receive a personal submission and a number of attachments of information from a member of the public, who is presumed to be an enrolled voter for the purposes of elections for membership of the Council.
23. This submission was made by a former Councillor who has served as Deputy Lord Mayor.
24. The statutory direction for the making of the relevant Determination, which is set out in section 24 of the Act, in particular subsection (3) thereof, which is set out below:

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

(a) *the role of members of the 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 and social 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.”*
25. The submission focused on consideration of the comparative allowances for elected members of capital city Councils in Australia, particularly the City of Melbourne, and those to which elected members of the Adelaide City Council are entitled.
26. The submission took issue with the following paragraph of the Tribunal’s 2014 Report which accompanied the Determination² providing for the allowances for elected members of the Adelaide City Council.
- “There was some argument presented to the Tribunal that the allowances payable to members of the ACC should be more aligned with the level of allowances payable to members of the City of Melbourne Council, or even the rates payable to members of the City of Perth Council. The Tribunal came to the view that there were numerous reasons why it was inappropriate.”*
27. The submission contended that the *“clear intent of the legislation is that it would be appropriate to closely align the level of allowances for the Adelaide City Council with those payable to councillors in other capital cities”*.
28. The submission also states as follows:
- “I am also very familiar with the City of Melbourne, and Melbourne’s council. I can see no substantive difference at all between being a member of the Adelaide City Council and Melbourne City Council in terms of role and responsibilities. The situation is, for all intents and purposes, identical. I can conceive of no reason why a member of the Adelaide City Council, holding the different offices one can hold, should receive any less than the equivalent that is paid for the equivalent position in the City of Melbourne.”*
29. The submission stated that *“the Lord Mayoral allowance should be no less than \$225,000 and a councillor role should be no less than \$45,000”* with *“a loading of 15% for any member who is a chairman of a council committee”* plus superannuation of at least 9.5%.
30. It was appropriate to consider the submission according to the mandatory statutory direction which identifies those matters to which the Tribunal must have regard for the purposes of determining the relevant allowances, as shown above; namely, size, population, revenue and the role of a Council member, plus relevant social and economic features of the Council’s jurisdiction.
31. For convenience, the table below sets out the comparative size, population and revenue of the Adelaide City Council and the Melbourne City Council.

Council	Size (Ha)	Population (Persons)	Revenue
Melbourne City Council	3,770	137,000	\$512,939,000
Adelaide City Council	1,524	22,690	\$211,111,000

32. Having regard to the statutory considerations, the focus of the submission is not sound. In reaching this conclusion, in addition to the significant differences in area, population and revenue, the nature of the representative function in the two jurisdictions was considered likely to differ in the comparative circumstances of scale and complexity.
33. While, conceptually, the general representative functions of elected members of Councils may be considered comparable, the context in which the role is performed will differ, usually because of the scale and complexity of a Council’s operations. This was recognised by the Tribunal in 2014, with the making of a separate Determination of allowances for elected members of the Adelaide City Council, having regard to the relevant differences between it and other Councils. The combination of the provisions of Section 24(3) of the Act and the

² Remuneration Tribunal Determination 6 of 2014 – Allowances for Members of Adelaide City Council

provisions of Section 76(3) of the *Local Government Act 1999*, which are identical, make clear that these considerations are fundamental to the statutory policy which guides the Tribunal's consideration of the appropriate level of allowances.

34. Moreover, the Tribunal is unable to discern the statutory policy or intent that the submission relied upon. In this respect, the Tribunal sees nothing in the express provisions of the Act which accords with the submission that the policy of the legislature is that the Tribunal should have regard to and take into account the allowances payable to elected members of other capital city Councils and "align" therewith. Certainly, there is no such expression in Section 24 of the legislation or indeed Division 4, Allowances and benefits of Part 3 – Special arrangements for the Adelaide City Council.
35. Likewise, the Objects of the Act, expressed in section 3 thereof, offer no support to the submission. Unless the general reference to the special role the city plays as the capital city and the heart of South Australia can be taken to be a clear inference that the alignment of allowances for Councillors and those applicable in other capital cities is intended to be an Object of the legislation. The Tribunal considers that such an indirect and general inference is not available, in light of the absence of any reference to such a consideration in the specific provisions of Division 4 of Part 3 of the legislation.
36. The author of the submission attached a draft submission prepared for consideration by the Adelaide City Council for the purposes of the Tribunal's deliberations in relation to the 2018 Determination of allowances payable to elected members of the Council. The Tribunal's understanding, which the Executive Officer of the Tribunal has confirmed with the Adelaide City Council, is that the draft submission was not adopted by the Council. In these circumstances, and those mentioned at the outset concerning the paucity of submissions received, the Tribunal can place little reliance on that part of the draft submission provided, which refers, very briefly and without justification, to alignment with allowances payable in other jurisdictions.
37. Also included were attachments of material prepared for the purposes of the 2014 Determination of the relevant allowances by the Tribunal. The submission urged the Tribunal to reconsider that material. While the Tribunal may be at liberty to disagree with its predecessors, due regard should be paid to the principle of comity. Given the limited and unpersuasive nature of submissions before us, it was not considered appropriate to conduct a critical analysis of the reasons for, or the outcome of, the 2014 Determination. In this regard, it is appropriate to note that in addition to making a separate Determination to apply to the Adelaide City Council, in 2014, the Tribunal significantly increased the level of allowances payable to elected members of the Adelaide City Council at that time, in response to the submissions received.
38. Rather than revisit the proceedings as at 2014, the Tribunal directed its attention to the relevant circumstances obtaining in 2018, as far as possible, in the absence of a formal submission on behalf of the Adelaide City Council, the Lord Mayor, the Chief Executive or an elected member which addressed the relevant statutory considerations.
39. The submission that the allowances payable to elected members of the Adelaide City Council should be the subject of superannuation contributions is, in the Tribunal's view, beyond the Tribunal's jurisdiction. The Tribunal sought Crown Law opinion on this subject in 2014 and was advised that the subject was beyond jurisdiction. We respectfully concur with the conclusion reached accordingly by the Tribunal, as it then was.
40. The Tribunal does not think it necessary to provide an extensive analysis of the issue of jurisdiction. However, even if the Tribunal's conclusion were technically wrong about the issue of jurisdiction, consideration of the relevant statutory provisions would cause the Tribunal to conclude that the determination of superannuation entitlements to elected Council members was not the intention of the legislature when the Tribunal's jurisdiction was established.
41. The Tribunal considers that the allowances determined by the Tribunal, which the statute prescribes are taken to be in the nature of a fee, are a different species of entitlement to an obligation upon an employer to make superannuation contributions in respect of the

income of an employee. As the legislation specifically states, the allowances determined by the Tribunal are not to be taken as salary. If the allowances were to be taken to be in the nature of salary the amount of the allowances may, and most likely would, be subject to relevant superannuation legislation. The express distinction and definition of the nature of the allowances in the statute is considered conclusive of the legislature's intention that the Tribunal has not been authorised to determine a superannuation obligation upon Councils in respect of elected members.

CONCLUSION

42. Having carefully considered all of the relevant criteria and the only submission before it in relation to the allowances to be determined for members of the Adelaide City Council, the Tribunal concluded that there should be only a minor change to the level of the allowances currently applicable and issued Determination 7 of 2018 to give effect to this conclusion. The variation to the level of allowances is marginal and is considered appropriate to maintain coherence within the overall structure of the amount of allowances payable to elected members of Councils generally, having regard to changes determined under the provisions of the *Local Government Act 1999*, in respect of other allowances within that structure.
43. The Tribunal has determined new levels of allowances for members of the City of Adelaide Council. The amounts of those allowances is included in the accompanying Determination. The money value of the increase in the level of the annual allowances is \$379 for councillors and \$1,339 for the Lord Mayor. The cost of the increase in the allowances to members of the Adelaide City Council will be marginal as a factor of total operating revenue respectively.
44. 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 councillors, determined for the year ending 30 June 2017, represents 0.00261 of one per cent of the total operating revenue of Adelaide City Council. 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 in 2017.



John Lewin
PRESIDENT



Peter Alexander
MEMBER



Pamela Martin
MEMBER

Dated this 30th day of August 2018