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Dear WALGA members

Summary of position: superannuation for council members

Following an amendment to the *Local Government Act 1995 (Western Australia)* last year, local governments may decide to make payments as a contribution to a superannuation account nominated by their council members from 1 February 2025. These superannuation contributions will be mandatory for class 1 and 2 local governments from 19 October 2025.

Where a council resolves to make superannuation contribution payments for its council members, the amount of the payment is to be the amount the council would have been required to contribute under the Commonwealth *Superannuation Guarantee (Administration) Act 1992* as superannuation if the council members were employees of the local government.

It is considered the following payments to council members will be ordinary time earnings for superannuation purposes:

- Meeting attendance fees.
- Annual allowance for mayor, president, chair, deputy mayor, deputy president and deputy chair.

It is considered the following payments will NOT be ordinary time earnings for superannuation purposes:

- Expenses to be reimbursed on claim, such as travel, vehicle, childcare and professional development expenses.
- An annual allowance in lieu of reimbursement of expenses.

Payment type	OTE/Superannuation
Meeting attendance fees	YES
Annual allowance for mayor, president, chair, deputy mayor, deputy president and deputy chair	YES
Travel expenses	NO
Vehicle expenses	NO
Childcare expenses	NO
Professional development expenses	NO
Annual allowance in lieu of reimbursement of expenses	NO

Background

We need to look to the *Superannuation Guarantee (Administration) Act 1992* to determine from the range of remuneration paid to council members in the form of allowances, fees and expense reimbursements, which would be classified “salary or wages” for the purpose of calculating superannuation contributions now provided by the *Local Government Act 1995*.

Based on the Commissioner’s Ruling SGR 2009/2, it seems clear the following payments would be considered OTE and subject to superannuation.

- Meeting attendance fees.
- Annual allowance for mayor, president, chair, deputy mayor, deputy president and deputy chair.

It also seems uncontroversial the following payments are not OTE:

- Expenses to be reimbursed on claim, such as travel, vehicle, childcare and professional development expenses.

This leaves us to determine how to treat an annual allowance paid in lieu of reimbursement of expenses. It is unconditional and the council member has complete discretion on if or how the allowance is spent. On the other hand, there is an expectation it will be fully expended while acting as a council member.

It is our considered view an annual allowance paid in lieu of reimbursement paid to a council member would not be OTE and therefore not subject to superannuation.

A local government or regional local government may decide, by absolute majority, instead of reimbursing council members for all of a particular type of expense, it will pay all council members, for this type of expense, an annual allowance within the range determined by the Act.

In determining the maximum annual allowance for expenses of a particular type, the Salaries and Allowances Tribunal considers a range of factors including the following:

- the intent of the allowance to reflect the extent and nature of the expenses incurred and not to result in a windfall gain for council members;
- the capacity of local governments to set allowances appropriate to their varying operational needs;
- the particular practices of local governments in the use of information and communication technology (e.g. laptop computers, iPads); and
- the varying travel requirements of council members in local governments associated with geography, isolation and other factors.

Given the strict legislative requirements and the explicit comments of the Salaries and Allowances Tribunal where these annual allowances in lieu of reimbursement of expenses should not result in a windfall gain for council members, we consider it to be an allowance which is a predetermined amount which has been calculated to cover the estimated expense and is given with the expectation it will be fully expended in the course of the council member providing their services.

An allowance in lieu of reimbursement of expense which does not result in a windfall gain for council members would not be considered OTE and not attract superannuation contributions.

WALGA Tax Service Subscribers may direct any inquiries to: walgatax@moore-wa.com.au

Yours faithfully



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Disclaimer: This letter has been created for WALGA members by Moore Australia (WA) and aims to provide Western Australian local governments guidance on which types of payments to council members will attract mandatory superannuation at the prevailing rate in the circumstances set out in this letter. It is not intended to be used to provide guidance on the administration of the superannuation payments, nor will it be relevant for local governments who have made a unanimous election to become and Eligible Local Governing Body under Division 446 of the Tax Administration Act 1953.

It is also acknowledged this letter does not contain a complete list of payments which can be made to council members and in this regard, cannot be relied upon where payments are made outside of the circumstances mentioned above, although the principles can be applied. If in doubt, please contact WALGA Tax.

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