

2008

Local Government (Councillor Remuneration Review) Panel Report

Report of the Local Government
(Councillor Remuneration Review) Panel
January 2008

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Prepared by
Local Government (Councillor Remuneration Review) Panel

Published by Local Government Victoria
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Message from the Chair

The Local Government (Councillor Remuneration Review) Panel appointed by the Hon Richard Wynne MLA, Minister for Local Government submitted its report on 25 January 2008.

At the outset, the Panel knew that the important issues involved in Councillor remuneration and support for the Councillor role would be a major challenge and would have a significant bearing on the decisions of Victorians from all walks of life and whether to stand in the forthcoming local government elections in November 2008.

The Panel met on fifteen occasions and our meetings were characterised by both vigorous debate and careful reflection by members. The volume and calibre of submissions made to the review made the work of the Panel more stimulating and rewarding.

On behalf of Panel members, I would like to acknowledge and thank the Municipal Association of Victoria and the Victorian Local Governance Association for their research and contributions and all the Councils, Councillors, organisational representatives and individuals who made submissions and took the time to meet with the Panel members to further discuss their views. This input was invaluable in bringing a broad range of perspectives before the Panel for further consideration in our debates and deliberations on key issues.

Local Government Victoria provided research, coordination and administrative support. I would like to acknowledge Shirley Strachan, Senior Policy Analyst who undertook the key role, Tim Presnell, Governance Analyst, John Watson, Acting Executive Director, Colin Morrison, Executive Officer for the Victoria Grants Commission and Carmel Coniglio, Business Support Officer.

The Panel's recommendations and matters considered are included in this report and we commend them to the Minister for Local Government.

Liz Roadley
(Chair)

Joanne Anderson
(Member)

Bruce Hartnett
(Member)

Bruce Mildenhall
(Member)



Executive summary and recommendations

The Panel considered its Terms of Reference, conducted research on the relevant matters and invited written and verbal submissions from stakeholders.

Remuneration

There has been no increase in payments since the release of the year 2000 Policy *Flexibility and Accountability the Victorian Government's New Approach to Mayoral and Councillor Allowances* and, as a consequence, there has been a serious erosion of the real value of the allowances. The Panel formed the view that current allowance levels present a barrier to candidates standing for election, particularly women, young people and mid career professionals.

To restore the real value of the allowances established in 2000 the Panel recommends that the increases applied to the remuneration of Victorian Statutory and Executive Officers over the period 2000-2007 be applied to Mayoral and Councillor allowances. The cumulative impact of these annual and occasionally biennial increases in this period is 30.46%.

Superannuation is complex (see section 2.3.1 of this report). Councillors are not employees so almost all Victorian Councillors and Mayors do not receive superannuation. To be eligible for superannuation Councillors need to be members of Councils that have unanimously resolved to become Eligible Local Government Bodies (ELGBs) under s221A and s221B of the *Income Tax Assessment Act 1936* (Cwlth).

Legislation requires superannuation payments by employers to be 9% of remuneration. This is now regarded as a community standard. The Panel recommends the equivalent of the current 9% superannuation guarantee be available to non ELGBs and that the quantum of the allowances for Mayors and Councillors be set in two parts:

- the Table below factors in the 30.46% increase (Part A) applied to Victorian Statutory and Executive Officers and is applicable to all Councillors.
- the equivalent of the Superannuation Guarantee Contribution (currently 9%), is additional for those Councillors who are not members of an ELGB (Part B).

Category	Current allowances since 2000		Part A: Recommended Allowances ¹	
	Councillor	Mayor	Councillor	Mayor
1	\$ 5,000-\$12,000	Up to \$36,000	\$ 15,700	\$ 47,000
2	\$ 5,000- \$15,000	Up to \$46,500	\$ 19,600	\$ 60,700
3	\$ 5,000-\$ 18,000	Up to \$57,500	\$ 23, 500	\$ 75,000

¹Note: Melbourne City Council allowances are set by separate Order of 31 July 2001 under s74 of the Local Government Act 1989 (Vic) and s26 (1) and (2) of the City of Melbourne Act 2001 (Vic). The Order sets the allowances at \$25 000 for Councillors, \$45 000 for the Deputy Lord Mayor and \$110 000 for the Lord Mayor.

(Table referenced as Table 2 in the report).

Recommendation 1

That the quantum of the allowances for Mayors and Councillors be set in two parts as follows:

- Part A: Current maximum allowances adjusted to restore the relative value of the Mayoral and Councillors' allowances set in 2000 based on the increase applied to Victorian Statutory and Executive Officers' payments by the Victorian Government over the period 2000 – 2007 (30.46%).

The Part A allowances for each category should be as follows:

- Category 1 Councillor: \$ 15,700, Mayor: \$ 47,000
 - Category 2 Councillor: \$ 19,600, Mayor: \$ 60,700
 - Category 3 Councillor: \$ 23,500, Mayor: \$ 75,000
- Part B: Application of the equivalent of the SGC (currently 9%) to Part A for those Councils that are not ELGBs.

The three category model

The current model for Mayor and Councillor remuneration is a three category model with thresholds based on population and revenue. The Panel assessed the benefit of increasing the complexity of the current model through the inclusion of a variety of additional factors as suggested in submissions. This analysis resulted in little benefit and some unintended consequences from the increased complexity. The Panel recommends the retention of the current approach.

The current provisions enable Councils to determine allowances within a range consistent with the category applicable to that Council. This limited flexibility is utilised by a handful of the 79 Victorian Councils and the setting of allowance levels at the lower end of the current available range can adversely affect individual Councillors or provide a disincentive to standing for election in those Municipalities. The Panel recommends that there be a single level of remuneration for Councillors and Mayors for each of the three categories. Councillors who believe that the remuneration is not warranted have the option of declining its acceptance.

Recommendation 2

That the three category model be retained and the following arrangements apply:

- the model continue to be based on the current population and revenue formula with the current thresholds to determine categories
- the current approach of discounting for inflation by adjustment using the Consumer Price Index (CPI) to maintain the relative value of the revenue established by the 2000 Policy to continue

- annually assess and identify Councils eligible to move up into the next category without the need to make a special application to a Local Government Panel. A mechanism to be included in the Local Government Act 1989 to give effect to the results of this process
- Councils with points below the category thresholds to continue to have the opportunity to make application to a Local Government Panel for category changes based on exceptional circumstances
- provision should be made for the Minister for Local Government to request a Local Government Panel review the category of a Council

Future adjustments

The Panel was strongly of the view that regular adjustments should be made to the allowances to ensure that the real value is not eroded and to reduce the need to establish Panels to assess the adequacy of the allowances.

The Panel considered four options – the Consumer Price Index (CPI), Average Weekly Earnings and Average Weekly Ordinary Time Earnings (AWE and AWOTE), Victorian Statutory and Executive Officer increases and Federal Remuneration Tribunal increases. While many submissions to the Panel supported the CPI as the appropriate index for annual adjustment, the application of this index, while preserving the purchasing power of the allowance, would erode the relative value of the allowance over time. Accordingly, the Panel supports the application of the increases applicable to Victorian Statutory and Executive Officers.

Recommendation 3

That increases applicable to Victorian Statutory and Executive Officers be applied to Victorian Mayoral and Councillor allowances and that a mechanism be included in the Act to give effect to such movements.

Reimbursement of expenses and minimum 'Toolkit' of administrative support, resources and facilities

Submissions to the Panel and survey research it conducted established that there was a wide variation in support provided to Mayors and Councillors. Some Councils were not adhering to the requirements of the year 2000 Policy.

The Panel recommends that a minimum standard 'toolkit' be provided to Mayors and Councillors.

Recommendation 4

That all Councils provide all of the following as a minimum toolkit:

Resources/facilities mandatory

- Administrative support for the Mayor
- Office for Mayor
- Vehicle for Mayor
- Computer – desktop or laptop
- Mobile phone and landline
- Stationery
- Access to fax/copier
- Website development as part of Council website

Reimbursement

- Travel – including reimbursement of public transport costs
- Telephone – reimbursement of relevant call costs
- Internet
- Child care/family care.

As a matter for Council determination, the following be considered:

- Access to pool car for Councillors
- Office space and furniture.

Amendments to the Local Government Act 1989

A number of recommendations may affect provisions of the *Local Government Act 1989* (Vic). The Panel's recommendations (below) are discussed in section 2.3 of this report:

Recommendation 5

- (a) Conflict of interest
That a blanket exemption under s80 allows Councils to vote to become an ELGB without the need for an individual application for Ministerial exemption from conflict of interest provisions.
- (b) Levels of remuneration, escalation, category ranges
That s74 of the Act be amended to give effect to the Panel's recommendations regarding set levels of remuneration for each category by eliminating ranges and Council reviews of allowances.
- (c) Changes of category
That:
 - s74C of the Act be amended to provide a process to give effect to category changes resulting from an annual review of revenue and population data

- s74C (2) be retained for exceptional circumstances cases and that the Act include a definition of exceptional circumstances
 - s74C of the Act be amended to provide for the Minister for Local Government to request that a Local Government Panel review the category status of a Council.
- (d) Reimbursement of expenses
That s75 of the Act be amended to require Councils reimburse Councillors or members of Council Committees for necessary out of pocket expenses incurred while performing duties as a Councillor and that a definition of duties be provided.
- (e) Guidelines on expenses reimbursement and provision of resources and facilities support
That:
- the Act be amended to provide for regulations to be made to require provision of minimum resources and facilities for Mayors and Councillors.
 - the *Local Government (General) Regulations 2004* (Vic), Part 5 'Information to be made available to the public', s11 'Documents to be provided to the public' be amended to require that Council policies for expenses and resources/facilities support to Mayors and Councillors be made available for public inspection and to make available information on actual expenses paid on behalf of or reimbursed to Mayors and Councillors.
- (f) That the Act be further amended as necessary to give effect to the Panel's recommendations.

Taxation advice

The Panel notes the recently released advice from the Australian Tax Office (ATO) – ID 2007/205 'Assessability of superannuation contributions made in favour of local government Councillors'. This advice from the ATO now enables local government Councillors to direct their allowances into superannuation without it being assessable for income tax purposes and Councillors can access superannuation and salary sacrificing arrangements without voting unanimously to become an Eligible Local Governing Body (ELGB).

These matters are more fully discussed in section 2.4.

The Panel noted that the peak bodies were best placed to ensure that Councils were kept up to date with the list of ATO rulings relating to local government Councillors. Similarly, given that the allowable level of electoral expenses is a Federal Government responsibility, this is not an issue for the Panel to comment on but should be the subject of representations from the peak organizations to the ATO.

Frequency of formal reviews

Provided that the Government accepts the Panel's recommendations to restore the real and relative value of the allowances established in 2000 and make annual adjustments in July each year, the Panel is of the view that the need for future remuneration reviews will be limited to situations when there is a major change in the role and responsibility of Councillors or when there is a significant cumulative impact of minor changes.

Recommendation 6

That, subject to the acceptance of other remuneration related recommendations, any further remuneration reviews should only occur when there is either a significant change in role or responsibility identified or an accumulation of minor changes which, when taken together, constitute a justification for remuneration review.

Other matters

Key issues highlighted in submissions and hearings follow:

WorkCover

The Panel notes that the Minister for Local Government sought advice from the Minister for WorkCover, the Hon Tim Holding MLA regarding local government Councillors and WorkCover. Minister Holding advised Minister Wynne of the forthcoming independent review of the *Accident Compensation Act 1985 (Vic)* (due to be finalised in mid 2008) and that local government Councillors would be included in this review.

The role of the Councillor

Although considerations of the Councillor role and changes to the role were important factors in the Panel's recommendations an analysis of the Councillor role was outside the Panel's Terms of Reference. These issues are briefly discussed in sections 1.1 and 2.6.2.

It is clear that the traditional governance role has been expanded together with greater expectations of, and demands on, Councillors in relation to community development and engagement. The Panel believes the changing role of the Councillor warrants further attention and a more detailed understanding that would come through further independent research on the changing role of the Council and Councillors.

Professional development of Councillors

The Panel received several submissions seeking improvements in the professional development and training of Councillors and support for this to occur.

Although outside its Terms of Reference, depending on the outcome of the current review on Councillor Development and Training, the Panel supports the inclusion of a section on support for Councillor Training and Development in the 'Guidelines on expenses reimbursement and resources/facilities support' that broadly follows the example set by the current arrangements in New South Wales and South Australia.



Background and introduction

The Victorian Government recognises 'that while the primary motivation of Mayors and Councillors is to serve the community, they deserve to be remunerated fairly'.

Mayoral and Councillor allowances have not been reviewed since 2000. The Government indicated its intention to undertake a review of the Policy during the election campaign in 2006 and the Minister for Local Government, the Hon Richard Wynne MLA announced the establishment of the Local Government (Councillor Remuneration Review) Panel on 8 May 2007.

Terms of Reference

The Local Government (Councillor Remuneration Review) Panel (the Panel) was appointed to advise on remuneration of Victoria's locally elected leaders through a review of current allowances and to provide advice and recommendations on allowances and guidelines on the appropriate reimbursement of expenses and provision of resources¹ support for the Mayoral and Councillor role.

The Panel will have regard to:

- a) the relevant provisions of the *Local Government Act 1989*
- b) the statutory responsibilities of Mayors and Councillors and the community expectations of their roles as the basis for setting such remuneration and guidelines on reimbursement of expenses and provision of resources support

and is to consider:

1. the adequacy of the quantum of current allowances, bearing in mind that Mayoral and Councillor allowances do not constitute a salary, and to ensure that they reflect a fair and reasonable opportunity cost to Mayors and Councillors undertaking the role and should not constitute a barrier to candidates nominating for election
2. whether the existing three tier model for allowances based on classification of types of Council is sufficiently robust to serve as an appropriate model going forward, and if not, whether the existing model should be adjusted, or what alternative model would meet this requirement
3. an appropriate current amount or amounts and limits for allowances and whether an escalation factor is appropriate for the future, and if so, how that escalation factor should be administered
4. what factors are likely to significantly affect the scope and quantum of allowances

¹ Excludes training. The Government is working with the peak bodies on a separate initiative to improve the quality of access to Councillor training and development and to explore opportunities for access to accredited training.

5. the impact of other legislation on allowances, particularly the 'eligible local governing body' mechanism in s221B of the Income Tax Assessment Act 1936 (Commonwealth) to provide a basis to consider Councillor remuneration in the wider legislative context
 6. appropriate reimbursement of expenses of office incurred by Mayors and Councillors
 7. what guidelines for the Sector may be provided to encourage fair and reasonable reimbursement of expenses and provision of appropriate resources support for the Mayoral and Councillor roles
 8. what, if any, legislative changes may be required to the Local Government Act 1989 to give effect to supported recommendations regarding allowances, reimbursement of expenses and resources support
 9. to the extent possible, clarify for the purpose of providing broad advice to local government, the application of income tax to Mayoral and Councillor allowances, reimbursement of expenses and resources support
 10. the frequency at which any subsequent formal reviews of allowances, reimbursement of expenses and resources support should occur
 11. any other matters considered relevant to the matter of Councillor allowances, reimbursement of expenses and resources support
- and
12. The Panel is also specifically empowered to hear and make recommendations during its term (or any extension thereof) on submissions from Councils seeking a change of category under the existing allowances system.

In assessing what is fair and reasonable, the Panel will consider remuneration and other support given to Councillors in Victoria and elsewhere and what is available to comparable roles and positions in the public sector, particularly to elected appointed officials and members of boards.

1.1 Context for the review

The starting point for this review is a commitment to the value and significance of the role of the Councillor. The Panel agrees that the skills and ability of Councillors to represent and engage with their communities is key to their role in developing solutions to the pressing social and cultural, environmental and economic challenges facing communities everywhere.

Allowances for local government Mayors and Councillors were first introduced over 20 years ago. Since then, successive governments have reviewed arrangements and implemented policies for the payment of allowances. The last review, undertaken in 2000, established the current Policy with allowances determined by a Council's population and revenue and described in a three category system.

The Panel noted that for the purposes of this review, allowances applicable to Melbourne City Council were outside the scope of its terms of reference. Melbourne City Council's allowances are established by the *City of Melbourne Act 2001* (Vic) and by separate Order in Council (31 July 2001). Other matters dealt with in this report apply to Melbourne City Council.

The work of Councillors is recognised as requiring time and commitment. Often this means sacrificing earnings and superannuation as well as incurring costs for travel, accommodation and child and dependant care.

The current arrangements do not include guidelines or regulation of basic standards for Councillor support and across Victoria's Councils there is a large variation of policies on the provision of reimbursement of expenses, travel allowances, facilities, vehicles and support staff. Although expenses and other costs not reimbursed can be offset to some extent through personal taxation confusion exists for both Councils and Councillors in understanding the tax and legal issues affecting their entitlements. This situation is further confused by the ability of a Council to elect to become an 'Eligible Local Governing Body' (ELGB) under taxation legislation. This arrangement allows Councillors to become employees for superannuation purposes.

1.2 Current arrangements

Councillor allowances are considered by the Victorian Government to be a payment made to recognise the contributions of those elected to voluntary, part time roles in local government. These payments are not regarded as salary.

The Victorian Government Policy *Flexibility and Accountability, the Victorian Government's New Approach to Councillor and Mayoral Allowances* was introduced in September 2000 and an Order in Council (29 March 2001) established the current allowances framework for all Councils other than Melbourne City Council.

A formula based on the Council's population and revenue (excluding non recurrent) for the preceding financial year determines the appropriate category of allowances for each Victorian Council.

The intention of the year 2000 Policy and the three category system has been maintained by the recommendation of the former Local Government (Category Review) Panel to discount revenue for inflation by indexing the figures for the financial year just completed using the Consumer Price Index (CPI).

1.3 Review process

Consultation commenced with the release of an issues paper and an invitation to make submissions (<http://www.localgovernment.vic.gov.au>). Comment was sought on:

- the allowance framework, particularly the population and revenue model and alternative approaches
- the quantum of allowances and how the scale of allowances compared to other states in Australia
- the impact and importance of allowances on the participation and retention of Councillors
- indexation of allowances, the method of indexation, whether indexation should be automatic and the frequency of review
- the level of resources, facilities support and travel support that should be provided
- whether there was a need for broad advice to be provided on taxation.

Each Council was invited to make a submission and the review was advertised in key metropolitan and regional newspapers inviting community participation.

Ninety one written submissions were received from Councils, Councillors and the community (refer Appendix 1).

Councils were also invited to participate in a survey of their policies on expenses, reimbursement and resources and facilities support. Twenty four Councils responded.

The Panel conducted 25 hearings from 18 October to 15 November in metropolitan and regional locations. Presentations were made by 7 Councils, 32 Councillors, 4 individuals, the Municipal Association of Victoria (MAV) and the Victorian Local Governance Association (VLGA).

The Panel also:

- familiarised itself with local government Councillor responsibilities and evolving approaches to roles and responsibilities in community governance and in land use planning
- conducted a desktop study of remuneration models and monitored reviews and changes to remuneration for Mayors and Councillors in Australia and in the United Kingdom and New Zealand
- gained an understanding of the remuneration of Federal Government Boards and Committees and the Australian Government's Remuneration Review Tribunal and of the remuneration of Victorian Statutory and Executive Officers
- considered the remuneration of Members of Parliament and the arguments for a nexus between the role of local government Councillors and of Members of Parliament
- assessed the impact of a selection of Victoria Grants Commission factors to test the robustness of the current population and revenue based allowances model
- investigated various indices including Consumer Price Index (CPI), Average Weekly earnings (AWE), the Average Weekly Ordinary Time Earnings (AWOTE)
- considered the report of the review undertaken in year 2000 and the work of the Local Government (Category Review) Panel 2004-2007 regarding exceptional circumstances arguments for allowances category changes
- conducted a survey of Victorian Councils on their reimbursement of expenses practices and the levels and nature of resources and facilities support
- researched guidelines and policies operating in other Australian jurisdictions notably New South Wales and South Australia
- considered the research work of the MAV and VLGA including:
 - MAV 2006 *Councillor Census*
 - MAV *Councillor Competency Framework (2007)*
 - VLGA *What Price Democracy*
 - VLGA *Councillor remuneration online survey*
- compiled a synopsis of Australian Taxation Office (ATO) Rulings, Determinations and Decisions relating to local government Councillors
- considered current superannuation arrangements applicable to all Councillors and broadly assessed the implications of a Council pursuing status as an Eligible Local Governing Body
- initiated a briefing for the Minister for Local Government requesting advice and clarification from the Minister for WorkCover regarding workers' compensation for local government Councillors
- considered the relationship of this remuneration project to other current projects including Councillor Development and Training, Embedding Community Priorities into Council Planning and *Better Local Governance 2007*.

The Panel has addressed the issues within its Terms of Reference relevant to Councillor allowances, reimbursement of expenses and resources support, but was not able to consider the matters raised in submissions to the Panel that were outside the Panel's Terms of Reference.



Matters considered by the Panel

2.1 Allowances

2.1.1 Adequacy of the quantum

TOR 1: Consider the adequacy of the quantum of current allowances, bearing in mind that Mayoral and Councillor allowances do not constitute a salary, and to ensure that they reflect a fair and reasonable opportunity cost to Mayors and Councillors undertaking the role and should not constitute a barrier to candidates nominating for election

The year 2000 Policy *Flexibility and Accountability the Victorian Government's New Approach to Mayoral and Councillor Allowances* established the following category structure with remuneration ranges within each category.

Category	Year 2000 allowances ¹	
	Councillor	Mayor
1	\$ 5,000-\$12,000	Up to \$36,000
2	\$ 5,000- \$15,000	Up to \$46,500
3	\$ 5,000-\$ 18,000	Up to \$57,500

¹Note: Melbourne City Council allowances are set by separate Order in Council of 31 July 2001 under s74 of the Local Government Act 1989 (Vic) and s26 (1) and (2) of the City of Melbourne Act 2001(Vic). The Order sets the allowances at \$25,000 for Councillors, \$45,000 for the Deputy Lord Mayor and \$110,000 for the Lord Mayor.

Table 1 Categories and allowance ranges set by the year 2000 Policy *Flexibility and Accountability, the Victorian Government's New Approach to Mayoral and Councillor Allowances.*

The majority of submissions considered the quantum of allowances to be inadequate. Councils, Councillors, community organizations and individuals generally held this view with many individuals wanting to see increased reward linked to performance, productivity and professional development.

The Panel supports the view that the current quantum of allowances is inadequate, is not fair and reasonable and does not compensate for the 'opportunity cost' of taking up the role. On a conservative estimate the role requires 20 hours a week average in reading papers, attending Council meetings, Council committees, meeting with community organisations and meeting residents and ratepayers.

A number of submissions sought to establish a direct relationship with the remuneration of State Parliamentarians. The Panel acknowledges that there are similarities. Both are elected roles and in multi-member wards in metropolitan Melbourne the constituency base can be similar. Both are subject to contact every day of the week and at most times of the day in social, community and business contexts.

However, both Federal and State Members of Parliament have a significantly broader range of responsibilities that can have a greater impact. Their decisions literally affect the life and liberty of all members of the State or the nation. Their deliberations have a fundamental effect on the way we relate to and interact with each other as individuals and as members of the community – how we behave and how we are held accountable for that behaviour as citizens, as parents, as employers, as employees and as members of community groups and whether that behaviour is legal or could result in our being fined or imprisoned. The State is the primary jurisdiction; it can cede powers to the Commonwealth Government and grant powers to local government.

The Panel did not accept the establishment of a direct relationship between the remuneration of State and local government.

While acknowledging that an analysis of the Councillor's role requires further work, the Panel concluded that the role has more similarity to that of members of Boards of Government Business Enterprises or Statutory Authorities. Admittedly, members of Government Boards would rarely be phoned at home by irate constituents or challenged in the street when shopping but the level of responsibility and financial impact is in many cases similar.

Since Councillor allowances were last reviewed in 2000 a succession of annual and occasionally biennial reviews of the remuneration of Victorian Statutory and Executive Officers have increased payments by 30.46%.

The Panel recommends that this increase should be applied to Councillor remuneration to redress the reduction of the relative value of allowances since 2000.

The current Policy and the allowances paid do not include superannuation. Over the past 20 years the Federal Government's responsibility for the age pension and superannuation policy has meant there has been a dramatic shift in community attitudes to superannuation. Employers are required by law to pay a minimum of 9% of salary as superannuation. This amount has now become the community standard.

Mayors and Councillors are not employees and are therefore not subject to superannuation law. For those who forgo income and/or employment to participate in local government the loss of superannuation has been identified as a significant issue. This can become a barrier to participation for both existing and potential Councillors.

The Panel is of the view that, as most Councillors are not paid superannuation, any new arrangements should include a 9% payment equivalent to application of the Superannuation Guarantee (currently 9%) to the revised value of the allowances.

2.1.2 Allowance levels and motivation for candidacy

Councils and Councillors and their peak bodies expressed the view that the amount of allowances had a significant impact on the decision to stand for Council and to return for a second or third term. In particular, surveys had shown that women, single parents and young adults with or without children were under-represented in candidacies as were business owners and young professionals. This view was strongly supported in submissions from the community and especially by advocacy groups for women and young people.

The Panel formed the view that allowance levels do present a barrier to candidacy for those women, young people and mid career professionals both standing for election for the first time and those standing for re-election.

Submissions and hearings pointed out that for most Councillors becoming Mayor involves a full-time commitment to the role and the sacrifice of income if an individual takes unpaid leave from his or her previous employment. The duties of a Councillor demand time, energy and commitment and many reduce their time in paid employment to meet the demands of the role.

Becoming a Councillor also incurs costs for travel, accommodation and child and dependant care, which are not always fully reimbursed by the Council.

Some of the work of a Councillor occurs in ways that are not able to be discretely separated from other activities for the purposes of reimbursement, for example, representations about municipal matters received during non Council activities. The submissions the Panel received were almost unanimous in describing the financial sacrifices and the failure of the current level of allowances to compensate this.

The Panel believes it is necessary to adjust the value of the allowance.

Overall the Panel believes the acceptance of recommendations on increases to the quantum would encourage diversity and, in particular, increase the likelihood that women, young people and people of non-English speaking background will nominate for election to their local Council.

In recommending a higher quantum, the Panel took account of submissions that called for greater equity between all Councils and concluded the use of ranges be discontinued and a set figure per category apply.

The recommended allowances in Table 2 show the revised quantum of allowances that would result from application of Part A (30.46%). The application of Part B (currently 9%) is additional for Councils that are not ELGBs.

Category	Current allowances since 2000		Part A: Recommended Allowances	
	Councillor	Mayor	Councillor	Mayor
1	\$ 5,000-\$12,000	Up to \$36,000	\$ 15,700	\$ 47,000
2	\$ 5,000- \$15,000	Up to \$46,500	\$ 19,600	\$ 60,700
3	\$ 5,000-\$ 18,000	Up to \$57,500	\$ 23, 500	\$ 75,000

Table 2: Current allowances applicable to Council categories compared with the recommended revised quantum of allowances incorporating the Part A (30.46%).

Recommendation 1

That the quantum of the allowances for Mayors and Councillors be set in two parts as follows:

- Part A: Current maximum allowances adjusted to restore the relative value of the Mayoral and Councillors' allowances set in 2000 based on the increase applied to Victorian to Statutory and Executive Officers' payments by the Victorian Government over the period 2000-2007 (30.46%).

The Part A allowances for each category should be as follows:

- Category 1 Councillor: \$ 15,700, Mayor: \$ 47,000
- Category 2 Councillor: \$ 19,600, Mayor: \$ 60,700
- Category 3 Councillor: \$ 23,500, Mayor: \$ 75,000
- Part B: Application of the equivalent of the SGC (currently 9%) to Part A for those Councils that are not ELGBs.

2.1.3 Three category model

TOR 2 Whether the existing three tier model for allowances based on classification of types of Council is sufficiently robust to serve as an appropriate model going forward, and if not, whether the existing model should be adjusted, or what alternative model would meet this requirement

The current model for Mayor and Councillor remuneration for all Councils other than Melbourne City Council is a three-category model with thresholds based on population and revenue. The former Local Government (Category Review) Panel's recommendation to discount the revenue figures of the financial year just completed for inflation by indexing using CPI has been applied to all category changes since the model was introduced.

Submissions asked for other factors to be included in the allowances model. The Municipal Association of Victoria cited ethnic diversity and geographic area as factors that could influence Councillor workload, effort or skill set required. These and a variety of other factors, including population growth, were also proposed in submissions from Councils and Councillors.

With the assistance of the Victoria Grants Commission Executive Officer, the Panel assessed the benefit of increasing the complexity of the current model through the inclusion of a variety of additional factors suggested in submissions. This analysis resulted in little benefit and some unintended consequences from the increased complexity and the Panel advocates the retention of the current approach.

An annual review should be undertaken to determine automatic movements into the next category. These reviews should consider:

- Victoria Grants Commission revenue figures for the previous financial year, and
- estimated population figures released by the ABS around February of the review year

The Review should take place at a time that allows Councils to adjust their budgets accordingly.

The existing system also provides the opportunity for individual Councils to apply for a category change based on exceptional circumstances. This approach requires a Council to demonstrate how it differs from other Councils of a similar size. Exceptional circumstances should be limited to circumstances the Council cannot avoid and factors to be considered include socio-cultural, economic, environment/planning, other eg historical/inherited issues, population dispersion.

The current provisions enable Councils to determine allowances within a range consistent with the category applicable to that Council. This limited flexibility is utilised by a handful of the 79 Victorian Councils and submissions have indicated that the setting of allowances at the lower end of the current available range can adversely affect individual Councillors or provide a disincentive to standing for election in those municipalities.

The Panel concluded there be a single level of remuneration for Councillors and Mayors for each of the three categories.

Recommendation 2

That the three-category model be retained and the following arrangements apply:

- the model continue to be based on the current population and revenue formula with the current thresholds to determine categories
- the current approach of discounting for inflation by adjustment using the Consumer Price Index (CPI) to maintain the relative value of the revenue established by the 2000 Policy to continue
- annually assess and identify Councils eligible to move up into the next category without the need to make a special application to a Local Government Panel. A mechanism to be included in the Act to give effect to the results of this process

- Councils with points below the category thresholds to continue to have the opportunity to make application to a Local Government Panel for category changes based on exceptional circumstances
- provision should be made for the Minister for Local Government to request a Local Government Panel to review the category of a Council

2.1.4 Appropriate amounts/limits and escalation

TOR 3 An appropriate current amount or amounts and limits for allowances whether an escalation factor is appropriate for the future, and if so, how that escalation factor should be administered

The Panel believes it appropriate to regularly adjust the value of the Mayor and Councillor allowances so that their value is not eroded. Four indices were considered:

- Consumer Price Index
- Average Weekly Earnings or Average Weekly Ordinary Time Earnings
- Victorian Statutory and Executive Officer Increases
- Federal Remuneration Tribunal Increases.

Each index has strengths and weaknesses and the Consumer Price Index (CPI) was widely supported in submissions and is commonly thought to be an appropriate index to apply. Adjustments by this index would preserve the 'real value' of the allowance. However, in the past, average earnings have increased at a faster rate than prices (approximately 1% more) leading to price based increases gradually falling behind remuneration in the rest of the community.

This situation has been recognised in other areas eg the Old Age Pension was previously adjusted to reflect the CPI and is now linked to Average Weekly Earnings.

A measure that reflects the percentage change in Average Earnings - either the Index of Average Weekly Earnings or Average Weekly Ordinary Time Earnings (which takes out the impact of 'overtime' payments) would preserve the relative position of Councillor remuneration.

Based on historical values these are likely to move by a little more than prices - about 1% higher. However, this index more explicitly links the remuneration to a wage or salary, as opposed to an allowance.

There is potential for this approach to imply that Mayor and Councillor payments are a salary and could lead to misunderstandings when a so called 'salary increase' decision is made.

The Federal Government's Remuneration Review Tribunal annually increases the remuneration of Federal Parliamentarians. Many State Parliaments as well as Federal Statutory appointees and Board Members have chosen to adopt their recommendations.

This method takes into account both price movements and wage and salary increases and reflects community wide movements in remuneration. It also has the advantage of relative objectivity and of greater removal from the pressures of interested parties and pressure groups. However, it has the disadvantage of a link to Parliamentary remuneration that this Panel has not accepted.

The Panel's preference is to increase the Mayor and Councillor allowances in line with the increases determined by the State Government and applied to Victorian Statutory and Executive Officer payments. This provides a mechanism that adjusts the allowances over time and maintains their relative value.

Recommendation 3

That increases applicable to Victorian Statutory and Executive Officers be applied to Victorian Mayoral and Councillor allowances and that a mechanism be included in the Local Government Act 1989 to give effect to such movements.

2.1.5 Factors affecting the scope and quantum of allowances

TOR 4 What factors are likely to significantly affect the scope and quantum of allowances

The role

The Panel has broadly considered current debate about the role of the Councillor. Submissions by the peak bodies argued that the increased complexity of the role of the Councillor should be recognised and that superannuation should be included.

Analysis of the Councillor role was outside the Panel's Terms of Reference although changes to the role were an important consideration in its decision-making. The factors the Panel identified as relevant in addressing the adequacy of the quantum of allowances have been dealt with in section 2.1.1. However, the Panel is of the view that further work should be conducted to better understand the roles and responsibilities of Councillors. This is addressed in 2.6.2.

Superannuation

The Panel has addressed the issue of superannuation in recommendation 1 (section 2.1.1).

Land use planning

Land use planning was consistently raised as an issue creating large workloads for Councillors particularly in terms of understanding legislation, consideration of Council reports and personal contact with applicants and objectors. The need for Councillor understanding of the legislation and the requirement for ongoing professional development was also an issue of concern raised in the community submissions and hearings.

While the Panel accepts there will always be tensions between the roles of strategic decision making and local mediation in land use planning matters, it is clearly the responsibility of Councillors to establish their own work boundaries and ensure appropriate delegations are in place.

Professional development

The Panel also received representations arguing for a link between allowance levels and participation in training and professional development in specific areas of Council responsibilities.

Although the Panel's Terms of Reference expressly exclude the issue of training it is important to acknowledge that this was one of the major issues raised in Council, Councillor and community submissions.

The Panel also notes that the Victorian Government is working with the peak bodies on a separate initiative to improve the quality of access to Councillor training and development and to explore opportunities for access to accredited training. This review of Councillor Development and Training is due to be reported to the Minister in March 2008.

2.1.6 Impact of legislation on allowances

TOR 5 The impact of other legislation on allowances, particularly the 'eligible local governing body' mechanism in s221B of the Income Tax Assessment Act 1936 (Commonwealth) to provide a basis to consider Councillor remuneration in the wider legislative context

Local government Councillors are not employees however, if a Council unanimously votes to become an 'Eligible Local Governing Body' (ELGB) under s221B of the *Income Tax Assessment Act 1936* (Cwlth) Councillors can be regarded as employees for the purposes of superannuation. Until late in 2007, the process of becoming an ELGB was difficult for most Councils.

- ELGB status was difficult to achieve if a Council did not reach unanimous agreement
- voting on the matter constituted a conflict of interest and required the approval of the Minister for Local Government under s80 of the *Local Government Act 1989*.

- while securing superannuation the ELGB pathway carried with it wider taxation implications not properly understood by Councils and Councillors
- there was a lack of clarity around the employer contribution of 9% for superannuation and whether this should come from within the existing allowance or be an additional payment.

During the Panel's term the ATO released Interpretative Decision ATO ID 2007/205 '*Assessability of superannuation contributions made in favour of local government Councillors*'.

The ruling allows all Councillors, not just those who are members of ELGBs, to enter into salary sacrificing arrangements with a complying superannuation fund. Prior to this ruling if a Councillor, not part of an ELGB, wanted to salary sacrifice any part of his or her allowance, it was regarded as a redirection of income and subject to income tax (ATO ID 2007/8 withdrawn).

The ATO ID 2007/205 and the access to salary sacrificing arrangements also addressed the perceived inequities in the taxation environment by allowing Councillors more flexibility in meeting their tax obligations while at the same time managing their superannuation savings.

In response to Term of Reference 5 the Panel takes the view that:

- taxation is the responsibility of individual Councillors and their taxation advisers
- the ATO ID 2007/205 makes it possible for all Councillors to access superannuation opportunities and now less likely that Councils will seek the ELGB pathway to do so
- should there be a demand to pursue the ELGB pathway the Panel understands sections 77B, 79 and 80 requirements of the *Local Government Act 1989* may need revision (refer section 2.3 on the *Local Government Act 1989*).

For Councillors whose Councils are not ELGBs the Panel has recommended the application of the equivalent of the SGC (currently 9%) to the revised value of the allowance at recommendation 1.

If this recommendation is adopted, individual Councillors in Councils that are not ELGBs will be able to choose to salary sacrifice this amount, along with any or all of the allowance into a recognised superannuation fund and thereby benefit from the equivalent of an employer superannuation guarantee contribution that is currently only available to ELGBs.

2.2 Expenses, guidelines and resources support

TOR 6 Appropriate reimbursement of expenses of office incurred by Mayors and Councillors

TOR 7 What guidelines for the Sector may be provided to encourage fair and reasonable reimbursement of expenses and provision of appropriate resources support for the Mayoral and Councillor roles

Section 75 of the *Local Government Act 1989* provides for discretionary expense reimbursement.

Further, the year 2000 *Policy Flexibility and Accountability, the Victorian Government's New Approach to Mayoral and Councillor Allowances* set the expectation that Councils would individually prepare their own policies of support, and would provide for child and family care.

The survey of Councils undertaken as part of this review sought information on expenses, reimbursement and resources and facilities support. Twenty four Councils responded to the survey with responses indicating there is a wide variation in the levels of support provided.

Submissions indicate there is broad support for Councils to provide a standard suite of tools to assist Councillors in their role.

The Panel believes there is a minimum cost of governance which must be recognised by each Council and agrees that a standard minimum toolkit for Councillors must be provided for Councillors to undertake their responsibilities. The Panel also notes that support provided to Councillors above this minimum level will depend on the financial capacity of the Council.

To support the fair and reasonable reimbursement of expenses the Panel has developed principles-based 'Guidelines for the reimbursement of expenses and resources and facilities support for Victorian Mayors and Councillors' (refer to Appendix 2). These were modelled on Guidelines produced by the Department of Local Government, NSW (2006).

Recommendation 4

That all Councils provide all of the following as a minimum toolkit:

Resources/facilities mandatory

- Administrative support for the Mayor
- Office for Mayor
- Vehicle for Mayor
- Computer – desktop or laptop
- Mobile phone and landline
- Stationery
- Access to fax/copier
- Website development as part of Council website

Reimbursement

- Travel - including reimbursement of public transport costs
- Phone –reimbursement of relevant call costs
- Internet
- Child care/family care

Council can determine the following

- Access to pool car for Councillors
- Office space and furniture

2.3 Changes to the Local Government Act 1989

TOR 8 What, if any, legislative changes may be required to the Local Government Act 1989 to give effect to supported recommendations regarding allowances, reimbursement of expenses and resources support

The Panel understands a number of its recommendations may affect provisions of the *Local Government Act 1989*. These are:

2.3.1 Conflict of interest – superannuation and ELGB status

Superannuation is discussed in Section 2.1.1 of this report. Taxation issues are discussed in Section 2.4 of this report.

Matters relating to superannuation appear to have been simplified with the introduction of the ATO ID 2007/205 ruling. It is now less likely that Councils will seek ELGB status to access superannuation although it is possible there are other reasons that may lead to Councils pursuing ELGB status. This process can be simplified by amending the *Local Government Act 1989* to dispense with the need for the individual s80 application to the Minister for Local Government for exemption from conflict of interest provisions to vote on ELGB status.

2.3.2 Remuneration levels, escalation and the abolition of category ranges

Section 74 of the *Local Government Act 1989* will require amendment for the Panel's recommendations on increases to the levels of remuneration and the abolition of ranges for each category to be implemented:

- allowances will be determined by the formula described in this report and by the application of the data on a Council's population and revenue. The provision that Councils must review and determine the level of the Councillor and Mayoral allowance within 7 months of an election can be removed
- subject to subsection (3) the allowances determined under subsection (1) are payable during the 'next 4 financial years'. This provision will need to be amended to recognise that changes in the level of allowances may change if the Council's category changes
- a Council can only vary an allowance if:
 - an Order in Council has been made under section 74B and
 - the Council has conducted a further review of allowances
- a person has a right to make a submission under s223 in respect of a review of allowances. This subsection requires different interpretation since there will no longer be a requirement that Council must review and determine the level of the Councillor and Mayoral allowance within 7 months of an election
- S74B (c) will require amendment to remove the word 'range'.

2.3.3 Automatic change of category for complying Councils

Under s74C (2) a Council is currently required to make a submission to the local government Panel requesting an Order in Council be made under s74B to change the category of that Council and

(3) if after considering a submission under subsection(2) the local government Panel considers that the category of the Council should be changed, the local government Panel may make a recommendation to the Minister for Local Government that an Order in Council be made to change the category of that Council and

(4) The Minister must give effect to a recommendation under subsection (3).

It is the Panel's view that the three category model be reviewed annually by Local Government Victoria (LGV) when the previous year's population statistics and revenue figures are available, and those Councils which meet the points requirements be automatically adjusted upwards to the correct category.

Councils should also retain the ability to make a submission to the Minister for Local Government for a change of category based on 'exceptional circumstances'.

S74C of the Act should be amended to reflect this opportunity.

2.3.4 Reimbursement of expenses

Currently s75 of the Act states that 'a Council may reimburse Councillors or members of Council Committees for necessary out of pocket expenses incurred while performing duties as a Councillor or committee member.'

The Panel has adopted the approach that reimbursement of legitimate expenses should be compulsory and recommends that the provision be amended.

The Panel considered that the phrase 'while performing duties' should be more precisely defined.

Recommendation 5

(a) Conflict of interest

That a blanket exemption under s80 to allow Councils to vote to become an ELGB without the need for an individual application for Ministerial exemption from conflict of interest provisions.

(b) Levels of remuneration, escalation, category ranges

That s74 of the Local Government Act 1989 be amended to give effect to the Panel's recommendations regarding set levels of remuneration for each category by eliminating ranges and Council reviews of allowances.

(c) Changes of category

That:

- s74C of the Act be amended to provide a process to give effect to changes of category resulting from an annual review of revenue and population data.
- s74C (2) be retained for exceptional circumstances cases and that the Act include a definition for exceptional circumstances.
- s74C of the Act be amended to provide for the Minister for Local Government to request that a Local Government Panel review the category status of a Council.

(d) Reimbursement of expenses

That s75 of the Act be amended to require Councils reimburse Councillors or members of Council Committees for necessary out of pocket expenses incurred while performing duties as a Councillor and that a definition of duties be provided.

(e) Guidelines on expenses reimbursement and provision of resources and facilities support

That:

- the Act be amended to provide for regulations to be made to require provision of minimum resources and facilities for Mayors and Councillors.
- the *Local Government (General) Regulations 2004*, Part 5 'Information to be made available to the public', Section 11 'Documents to be provided to the public' be amended to require that Council policies for expenses and resources/facilities support to Mayors and Councillors be made available for public inspection and to make available information on actual expenses paid on behalf of or reimbursed to Mayors and Councillors.

(f) That the Act be further amended as necessary to give effect to the Panel's recommendations.

2.4 Allowances, expenses and taxation

TOR 9 To the extent possible, clarify for the purpose of providing broad advice to local government, the application of income tax to Mayoral and Councillor allowances, reimbursement of expenses and resources support

Submissions from Councils and Councillors highlighted:

- the need for more advice and clarification of the taxation implications of allowances
- the need to raise the \$1000 cap on claims for electoral expenses.

The Panel identified the taxation Rulings Determinations and Decisions that affect local government Councillors (Appendix 3). These provide a broad indication of the differences between an ELGB and a non ELGB in areas including allowances, superannuation, FBT and substantiation rules.

Taxation

The previous requirement to become an ELGB to access superannuation involved more rigid requirements in terms of substantiation rules, FBT, and exposure to automatic deductions made by the Child Support Registrar. In addition until late in 2007, Councillors who were not part of ELGBs could not salary sacrifice their allowances into a superannuation fund without the contribution being assessable as income.

The Panel notes that the recently released decision ATO ID 2007/205 '*Assessability of superannuation contributions made in favour of local government Councillors*', allows all Councillors to salary sacrifice without those contributions being assessable as income.

The Panel has recommended that Councillors who are not part of ELGBs receive the equivalent of the SGC (see recommendation 1) and expects that this may result in a decline in interest by Councils in electing to become ELGBs.

As there may be other factors that could mean Councils still want to pursue ELGB status, the Panel has recommended (refer section 2.3 recommendation 5(a)) that the Act be amended to provide a blanket exemption under s80 to allow Councillors to vote to become an ELGB without the need for an individual Council application for Ministerial exemption from conflict of interest provisions.

The Panel is of the view that it cannot take this matter any further and believes the peak bodies take a more proactive stance in providing taxation advice that may better serve the local government sector.

Electoral expenses

Although the Panel was sympathetic to arguments put to it and supports a more realistic level of reimbursement of electoral expenses, the Panel noted that this is a matter for ATO determination.

A list and information extracted from current ATO Rulings, Determinations and Decisions is at Appendix 3.

2.5 Frequency of formal reviews

TOR 10 The frequency at which any subsequent formal reviews of allowances, reimbursement of expenses and resources support should occur;

Many submissions recommended a formal review occur in alignment with the new 4-year local government electoral cycle.

Provided that the Government accepts the Panel's recommendations to restore the real and relative value of the allowances established in 2000 and makes annual adjustments in July each year, the Panel believes the need for future remuneration reviews will be limited to situations where there is a major change in the role and responsibility of Councillors or when there is a significant cumulative impact of minor changes.

Recommendation 6

That, subject to the acceptance of other remuneration related recommendations, any further remuneration reviews should only occur when there is either a significant change in role or responsibility identified or an accumulation of minor changes which, when taken together, constitute a justification for remuneration review.

2.6 Other matters

TOR 11 Any other matters considered relevant to the matter of Councillor allowances, reimbursement of expenses and resources support

The key issues highlighted in submissions and hearings follow:

2.6.1 WorkCover

Lack of WorkCover for locally elected leaders featured prominently in submissions.

The *Local Government Act 1989* provides for indemnity and public liability for all Councillors (a mandatory requirement) through a scheme coordinated by the Municipal Association of Victoria.

The general consensus in submissions and hearings was that this level of cover was inadequate to properly protect Councillors while conducting their duties. Longer terms, a more complex environment and increased risk exposures require this issue to be addressed.

While the majority of respondents called for WorkCover to apply, some thought that it was not appropriate for Councillors as the disclosure procedures required of 'employees' as part of insurance risk management did not currently apply to Councillors. This did not exclude recognition that an improved compensation framework was required.

The Panel noted that Members of Parliament as 'Workers under the Crown' and appointees to Boards requiring Governor in Council approval are covered for WorkCover and that WorkCover legislation precluded Councillors from eligibility.

(The definition of 'worker' that implies an employer-employee relationship is not applicable to Councillors).

The Panel notes that the Minister for Local Government sought advice from the Minister for WorkCover, the Hon Tim Holding MLA regarding WorkCover and local government Councillors. Minister Holding has advised of the pending independent review of the *Accident Compensation Act 1985 (Vic)* (due to be finalised in mid 2008) and that local government Councillors would be included in this review.

2.6.2 The changing role of the Councillor – professional or volunteer?

Central to the issue of allowances and the provision of other support to Mayors and Councillors is the debate on the role.

Many submissions argued that the roles of Mayors and Councillors were that of an elected official with many submissions making a comparison with Members of State Parliament. The volunteer - community service view of these roles also had strong support but recognised the changing requirement for high professional standards and capabilities to deliver on the challenges of the role.

The Panel determined that the role of Councillors is different to the role of Members of Parliament because:

- the responsibility and authority placed upon Federal and State Parliamentarians result in legislation that has a broader and more fundamental impact on individuals, organisations and communities
- the Victorian Government, acting through either the Minister for Local Government or legislation, can dismiss individual Councillors, whole Councils and even all Councils across the State. In this sense a Council and Councillors are contingent on the decisions of the State Government.

While a professional approach is required to meet the demands of the role of a Councillor and Councillors often have professional backgrounds the role itself was not seen as either strictly professional or simply that of a volunteer.

The Panel considered the role of the Councillor to be best compared to members of Boards of Government Business Enterprises or Statutory Authorities while acknowledging there are differences with these roles.

The most significant difference is that while Board Members are appointed Councillors are elected and therefore directly and immediately accountable to their electorate.

What has changed for the Councillor role in the last decade?

The role of Councillors has changed since Council amalgamations in 1996 particularly through the increasing demands of legislation and regulation. Submissions suggested there have been further changes to the complexity of the Councillor role over more recent times with the increasing demands of the community development and engagement model.

Amalgamations and ward structures

Amalgamations and the creation of multi member wards have led to larger local government areas. Many Councillors must cover larger geographic areas and represent more constituents increasing the demands on conscientious individual Councillors.

Legislation

Changing legislation now requires more considered decision making by Councillors and the ability to respond to the more significant challenges of governance and standards required by the *Local Government Act 1989*.

Other challenges relate to land-use planning, risk management, health and community wellbeing and economic and regional development.

Increased focus on economic growth and development, strategic planning and long-term decision-making

The Panel acknowledges these changes.

It is accepted that the revised timing of local government elections and the transition by all Councils to 4 year terms in 2008 will involve an increased commitment from individuals seeking election to Council.

The Panel is of the view that the increase in the real value of the Councillors' allowance resulting from acceptance of its recommendations is recognition of the changing demands on Councillors similar to those holding Executive and Statutory Officer roles in Government. Both have been required to meet the challenges of change and increased responsibilities in their roles.

The Panel believes the changing role of the Councillor warrants further attention and a more detailed understanding that would come through further independent research on the changing role of the Council and Councillors.

2.6.3 Professional development

The Panel's Terms of Reference expressly excludes the issue of training and notes that the Government is working with the peak bodies on a separate initiative to improve the quality of access to Councillor training and development and to explore opportunities for access to accredited training. This review is due to be reported in March 2008.

Nevertheless, it is important to acknowledge that this was one of the major issues raised in submissions.

Earlier in this report (section 2.2), the Panel recommended that a standard toolkit be provided for the support of Councillors and guidelines for the toolkit have been developed as at Appendix 2.

The Panel is of the view that these guidelines should also include reference to professional development.



Appendix 1 Submissions

Peak Bodies

Municipal Association of Victoria (MAV)
Victorian Local Governance Association (VLGA)

Council submissions

Submissions were received from 34 Councils and 7 of these (shown in bold) attended for hearings:

Ararat Rural Shire Council
Bayside City Council
Boroondara City Council
Campaspe Shire Council
Cardinia City Council
Darebin City Council
Greater Dandenong City Council
East Gippsland Shire Council
Greater Geelong City Council
Hindmarsh Shire Council
Hobsons Bay City Council
Horsham Rural City Council
Hume City Council
Indigo Shire Council
Kingston City Council
Knox City Council
Latrobe City Council

Macedon Ranges Shire Council
Manningham City Council
Maroondah City Council
Melbourne City Council
Moonee Valley City Council
Moorabool Shire Council
Moreland City Council
Mornington Peninsula Shire Council
Mount Alexander Shire Council
Nillumbik Shire Council
Port Phillip City Council
Stonnington City Council
Surf Coast Shire Council
Whitehorse City Council
Whittlesea City Council
Wodonga Rural City Council
Wyndham City Council

Individual Councillor Submissions

32 Councillors participated from the following Councils and 12 in total attended for hearings from the Councils shown in bold.

Baw Baw Shire Council
Borough of Queenscliffe
Greater Bendigo City Council
Casey City Council
Corangamite Shire Council
Greater Geelong City Council
Indigo Shire Council
Knox City Council
Latrobe City Council

Macedon Ranges Shire Council
Maroondah City Council
Moreland City Council
Nillumbik Shire Council
South Gippsland Shire Council
Surf Coast Shire Council
Wodonga Rural City Council
Wyndham City Council
Yarra City Council

Organisations and Community

Australian Local Government Women's Organisation
Bayside Ratepayers Association
Emily's List
Glen Eira Community Association
Kangerong Ward Action Group
Knox Ratepayers Association
Maroondah Ranges Ratepayers Association
Monash Ratepayers Association
Ratepayers Victorian Committee
Women's Participation in Local Government Coalition (VLGA)

Thirteen individuals made submissions (3 had formerly held Mayoral/Councillor roles, one was a former MP). As the review gained media attention additional correspondence was received by the Minister for Local Government and considered by the Panel.

Survey Respondents

Banyule City Council	Loddon Shire Council
Boroondara City Council	Macedon Ranges Shire Council
Campaspe Shire Council	Maribyrnong City Council
Central Goldfields Shire Council	Maroondah City Council
Colac Otway Shire Council	Melbourne City Council
Darebin City Council	Monash City Council
Frankston City Council	Moorabool Shire Council
Greater Dandenong City Council	Mornington Peninsula Shire Council
Greater Geelong City Council	Moyne Shire Council
Hepburn Shire Council	Stonnington City Council
Hume City Council	Surf Coast Shire Council
Kingston City Council	Whittlesea City Council



Appendix 2

Guidelines for the reimbursement of expenses and resources and facilities support for Victorian Mayors and Councillors

Purpose of the Guidelines

The aims of these guidelines are to:

- describe the principles for reimbursement of expenses and resources and facilities support
- specify the minimum claimable expense reimbursement that can be claimed as reasonable and appropriate for Mayors and Councillors and
- specify the minimum standard of resources and facilities support that are reasonable and appropriate for Mayors and Councillors.

Councils are encouraged to promote these guidelines on their websites to better inform the community of Mayor and Councillor entitlements.

Legislative, Statutory and Policy context

The Local Government (Councillor Remuneration) Review Panel has recommended changes to the *Local Government Act 1989* that are related to these Guidelines.¹

These guidelines need to be read in conjunction with the Government's new forthcoming policy on Mayoral and Councillor Allowances.

These guidelines do not provide model clauses for inclusion in individual Council policies and nor do they deal with the setting and payment of Mayoral and Councillor allowances.

Codes of Conduct are governed by s76C of *the Local Government Act* and associated model guides²

¹ Recommendation 5 (d)) of the review requires the *Local Government Act 1989* be amended so that Councils reimburse Councillors for necessary out of pocket expenses incurred while performing duties as a Councillor and that a definition of duties be provided; recommendation 5(e) requires that the Act be amended to provide for regulations to be made to require provision of minimum resources and facilities for Mayors and Councillors and that the *Local Government (General) Regulations 2004*, Part 5 "Information to be made available to the public" and s11, "Documents to be provided to the public" be amended to require that Council policies for expenses and resources/facilities support to Mayors and Councillors be made available for public inspection. The proposed amendments are to also to make available information on actual expenses paid on behalf of or reimbursed to Mayors and Councillors.

² The Panel noted that in November 2007 a consultation paper *Better Local Governance – reforms to support Councillor Conduct and other matters* was released. The consultation phase is due to be finalised 29 February 2008. One of the outcomes of the *Better Local Governance* initiative may involve a principles based approach in to s76C of the *Local Government Act 1989* to govern Councillor conduct in a range of areas that will include the use of Council resources.

PRINCIPLES

1 Conduct

Under Section 76B of the *Local Government Act* (Rules of Conduct), subsection (1), a person in performing the role of Councillor or a member of a special committee must act honestly and must exercise reasonable care and diligence. Under Section 76C (Code of Conduct), subsection (1), a Council must develop and approve a Code of Conduct for the Council within the period of 6 months after the commencement of section 57 of the *Local Government (Democratic Reform) Act 2003*. Section 76C of the Act requires that s76B (Rules of Conduct) be included in Codes of Conduct.

In July 2004 the *Model Code of Conduct* was released to assist Councils in preparing their individual Codes of Conduct. The Code itself is not a mandatory document however Part 3E of the Model Code of Conduct requires that 'Councillors will exercise appropriate prudence in the use of public resources'. This includes:

- (a) maintaining appropriate separation between their personal property and public property in the care of the Council
- (b) not using public resources including staff and equipment for electoral or other personal purposes
- (c) ensuring claims for out of pocket expenses are accurate and relate strictly to Council business.

It is acknowledged that incidental use of Council resources and facilities may occur from time to time. Such incidental private use is not subject to a compensatory payment.

Where more substantial private use has occurred Council policies should include provision for a payment to be made to cover the level of that private use. Councils should establish a suitable rate for private use and include it within the Policy. This would most likely apply to call charges on mobile phones and landlines, and may include aspects of use of the Internet.

2 Encouraging diversity in participation, equity and access

The provisions made in individual Council policies should be appropriate to encourage members of the community, particularly those from under-represented groups such as women, young people, those with disabilities and those in primary caregiver roles (whether of children, the disabled and the aged/infirm) to seek election to Council and remain motivated in their Councillor role by ensuring that they would not be financially or otherwise disadvantaged in undertaking the duties of Councillor.

Reimbursement of expenses and resources/facilities support must be applied in a non discriminatory way and used in an equitable manner to cater for the full participation of all Councillors in Council business and with their communities, while also recognising individual needs and circumstances.

Councillors work with a wide range of constituents and need to be accessible and stay informed. They need to attend meetings and participate in community activities. All Councillors should be provided with:

- support for travel expenses (including public transport) while acting in the formal capacity of Councillor
- communications technology including the access to the internet and the creation of web space as part of Council websites to communicate with constituents
- a Council expenses policy that takes account of and makes reasonable provision for flexible and adequate childcare arrangements especially where after hours childcare support is required
- a Council policy that allows support for access to Council premises where appropriate, and to facilities, resources and administrative support to maximise participation in the broad civic duties of Councillors and the meetings and business of Council
- (where applicable) provision for sight or hearing impairments and for those Councillors with other disabilities reasonable transportation provision should be made for those unable to drive a vehicle.

Councillors operate in a complex environment and bring unique skills and insights to the role. The Panel has recommended that subject to the outcome of the current separate review on Councillor Development and Training that these 'Guidelines on expenses reimbursement and resources/facilities support for Victorian Mayors and Councillors' also include reference to professional development.

Councillors cope with widely different personal financial circumstances. Where a Councillor seeks advance payment for the cost of a service to be incurred, and for which he or she is entitled to receive payment, consideration should be given to the provision of an advance subject to the allocation being reconciled at a future date within a timeframe stated in the Council's policy.

3 Accountability and transparency

Section 75 of the *Local Government Act* currently provides that *a Council may reimburse Councillors or member of Council committees for necessary out-of-pocket expenses incurred while performing duties as a Councillor or committee member.*

It is not appropriate for Councils to provide for 'general expenses/allowances' unrelated to actual expenses incurred and which could be designed to supplement Councillors' annual allowances entitlements under the *Local Government Act 1989*.

Council expenses policies should ensure that there is accountability and transparency in the reimbursement of expenses incurred or to be incurred by Councillors. They should cover the specific expenses for which Councillors are entitled to receive reimbursement and ensure adequate substantiation of claims.

Individual Council policies should adequately reflect the basic toolkit and suite of entitlements available to all Mayors and Councillors under these guidelines.

Councillors can only receive reimbursement for expenses when the expense, resource and facilities support are identified in the Council's policy and adequately substantiated.

The overriding principle to be addressed in the development of Councils' expenses reimbursement policies is that the details and range of benefits provided to Mayors and Councillors by Councils should be clearly stated and be fully transparent and acceptable to their local communities.

4 Reasonableness and appropriateness

The reimbursement of expenses and resources/facilities support policy should ensure that Councillors are reimbursed adequately for expenses reasonably incurred in the performance of their role as a Councillor.

5 Local flexibility

Councils may determine their own rates of expenses and provision of resources and facilities support over and above these guidelines as long as they conform to legislative and statutory requirements or standards and other policies or determinations nominated in these guidelines.

6 Recognising local differences while maintaining the standard

These guidelines specify a standard 'toolkit' for the provision of reimbursement of expenses and for the provision of resources and facilities support to Mayors and Councillors.

Individual Council policies should be sufficiently flexible and tailored to allow Councils to determine what they can afford to provide for beyond the basic toolkit and what is acceptable to their communities.

It is the responsibility of Councils to establish and define an appropriate and reasonable level of provision that would enable Councillors to effectively carry out their civic role. Provision for support beyond the reimbursement of expenses entitlements and the basic toolkit needs to recognise the differences between Councils. Differences include levels of complexity of their governance, population size and growth and including the financial circumstances of a Council in terms of its revenue base and its local/regional economic and development environment.

These differences are broadly reflected in the three categories of Councils under the Victorian Mayoral and Councillor allowances model and it is expected that the needs of different Councils would be reflected in the scale, scope and nature of expenses, resources and facilities support provided over and above the basic toolkit.

It is a basic cost of governance that all Councils should provide for the reimbursement of expenses as stated in these guidelines and the basic toolkit - regardless of individual circumstances.

7 Separation of allowances from reimbursement of expenses and provision of resources and facilities support

The allowances category of a Council will have a bearing on the level of reimbursement of expenses and facilities/resources support that can be provided beyond the standard toolkit.

It is a principle that expenses reasonably incurred by Councillors are separate to the provision of allowances as are the costs of facilities/resources support. Councillors must not be disadvantaged or be asked to subsidise their entitlements from their annual allowance. Councillors should also not be required to provide for any other additional entitlements provided for in individual Council policies.

Approval arrangements

Approval is required for all Councillors undertaking discretionary trips and interstate travel and attendance at conferences. At a minimum the Chief Executive Officer should be the approval authority in accordance with the Council's predetermined policy. The Council's policy should specify any additional approval arrangements required by the Council. All overseas travel should be by resolution of full Council.

Minimum toolkit – expenses, support and resources

Resources/facilities mandatory

- Administrative support for the Mayor
- Office for Mayor
- Vehicle for Mayor
- Computer - desktop or laptop
- Mobile phone and landline
- Stationery
- Access to fax/copier
- Website development as part of Council website

Reimbursement

- Travel - including reimbursement of public transport costs
- Phone - reimbursement of relevant call costs
- Internet
- Child care/family care

And that as a matter for Council determination the following be considered

- Access to pool car for Councillors
- Office space and furniture



Appendix 3

Taxation information: list and extracts from Rulings, Determinations and Decisions affecting local government Councillors

Disclaimer: The list of excerpts below is provided for information only and should not be relied upon for legal or taxation advice. All of the rulings, determinations and decisions are available on the Australian Taxation Office website at www.ato.gov.au as listed in the bibliography.

Abbreviations:

ATO:	Australian Taxation Office
CDS:	Case Decision Summary (ATO)
ELGB:	Eligible Local Governing Body
FBTAA:	<i>Fringe Benefits Tax Assessment Act 1986</i> (Cwlth)
ID:	Interpretative Decision (ATO)
ITAA:	<i>Income Tax Assessment Act 1936</i>
SGAA:	<i>Superannuation Guarantee (Administration) Act 1992</i> (Cwlth)
SGR:	Superannuation Guarantee Ruling (ATO)
TD:	Taxation Determination (ATO)

ATO rulings 1992-2007 specific to Local Government Councillors

(1) 5 November 1992; TR 92/15

Income Tax and fringe benefits tax: the difference between an allowance and a reimbursement

This Ruling explains the difference between an allowance and a reimbursement for the purposes of determining whether a payment is a fringe benefit under the FBTAA or whether the benefit is assessable income under the ITAA.

According to this taxation Ruling, other than living away from home allowances, most allowances will be considered under the ITAA and reimbursements will be considered under the FBTAA.

The Ruling gives examples of an allowance versus a reimbursement.

(2) 1993 TD 93/4

Income tax: Is a local government Councillor who receives an allowance or other remuneration subject to the substantiation requirements of sections 82KZ and sections 82KUA to 82KY in relation to expenses he or she incurs in carrying out Council duties?

The Determination states that Councillors who receive an allowance or other remuneration and incur expenses whilst performing Council duties must comply with substantiation requirements relating to car expenses, travel expenses and eligible expenses in relation to meal and travel allowances.

The Councillor is not required to substantiate other expenses but should be able to show that he or she has incurred those expenses to be entitled to a deduction.

These other expenses could be expenses such as those related to home office and telephone expenses.

(3) 1986 - Taxation Ruling No. IT 2258 'Income tax: election expenses: deductibility of expenditure incurred and effect of public funding of elections'

The ruling describes the types of expenditure indicated by the Electoral Commission to be accepted prima facie as 'election related'.

The ATO's website advises that the maximum a Councillor can claim is \$1000 per election to be deducted for the income year in which the expenditure was incurred.

**(4) SGR 2005/1 'Superannuation Guarantee - who is not an employee'.
Members of an eligible local governing body**

91. Subject to subsection 12(10) of the SGAA, a person who holds office as a member of a local government Council is not an employee of the Council.

92. Under subsection 12(10), a person who is a member of an 'eligible local governing body' (as that term is defined in section 221A of the ITAA 1936) is an employee for the purposes of the SGAA. An eligible local governing body is a local governing body that made a resolution which, in effect, brought the remuneration of its members into the old PAYE system. The effect of subsection 12(10) is to also bring those members into the superannuation guarantee system.

(5) ID 2007/205 'Assessability of superannuation contributions made in favour of local government Councillors'

(It should be noted that under the previous and now withdrawn ID 2007/8 (described below) Councillors who were not members of ELGBs could not salary sacrifice their allowances into a superannuation fund. The contribution to the fund was regarded as a redirection of income that was otherwise assessable and was therefore subject to income tax.)

The 2007/205 decision deals with amounts paid by a Council in the form of contributions to a complying superannuation fund that are assessable to the fund under ITAA, and whether or not they represent assessable income of the Councillor for the purposes of the ITAA. The new ID 2007/205 determines that the amounts paid by a Council in the form of contributions to a complying superannuation fund do not represent assessable income of the Councillor.

Withdrawn ATO determination

**(6) ID 2007/8
Superannuation and Salary Sacrifice arrangements (SSA)**

The interpretative determination addressed the taxation treatment of contributions of Councillor allowances to a superannuation fund in the case where the Council was not an ELGB. It stated that where a Council was not an ELGB payments into the fund were considered a redirection of Councillors' income that is otherwise assessable.

The explanation states that to enter into an effective salary sacrificing arrangement the PAYG withholding provisions must apply, and this could only occur where the Council was an ELGB (as determined under TR 2002/D8 (Finalised as TR 2002/21)).

Councillors who are not part of ELGBs are not in an employer-employee relationship. The ruling described that 'none of the traditional indicia of common law employment relationship are applicable to the relationship between local government Councillors and the Council. Therefore local government Councillors are not employees in common law'.

If a Councillor was not a member of an ELGB, any part of the remuneration paid to the superannuation fund could not constitute employer contributions for the superannuation guarantee.



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