



Department of
**Local Government, Sport
and Cultural Industries**



Superannuation for council members

What's changing?

New provisions streamline the provision of superannuation to council members.

Following passage of the *Local Government Amendment Act 2024*, new sections 5.99B to 5.99E of the *Local Government Act 1995* (the Act) will allow local governments to resolve by absolute majority to make superannuation contributions for council members from 1 February 2025.

Prior to this, if a local government wanted to offer superannuation to council members, it would need to become an "Eligible Local Governing Body" (ELGB) under Division 446 of the *Taxation Administration Act 1953* (Cth), which requires a unanimous council resolution.

How do these changes support local governments?

Making superannuation contribution payments for council members acknowledges the significant dedication and investment of time a council member commits to their role and helps bring council members in line with the wider workforce.

The resolution process is streamlined by only requiring an absolute majority decision rather than a unanimous one. Similarly, the system set out in the Act means superannuation can be paid without needing to also address the other taxation requirements of becoming an ELGB.

This reform aims to attract and retain council members and encourage greater diversity across local governments.

Is it mandatory?

- From 1 February 2025 all local governments will have the option to resolve by absolute majority to make superannuation contributions for council members.
- From 19 October 2025, it will become mandatory for class 1 and 2 local governments to make superannuation contributions.
- For class 3 and 4 local governments, the payment will remain optional for each council to decide if they want to make superannuation contributions to council members.

Where a local government is required to, or resolves to, make superannuation contributions, individual council members may choose to 'opt out' of receiving superannuation.

How will it work?

Superannuation contribution payments for council members will be made in addition to any other fees and allowances. These will sit outside the threshold for fees and allowances set by the Salaries and Allowances Tribunal. Council members may receive various types of fees and allowances, in accordance with the Act and the relevant determination of the Salaries and Allowance Tribunal.

The requirement to make superannuation contribution payments in respect of these fees and allowances is to be determined in accordance with Commonwealth *Superannuation Guarantee (Administration) Act 1992* (SG Act) and the further guidance provided in Superannuation Guarantee Ruling SGR 2009/2.

While council members are not considered employees under the SG Act, they are to be treated in the same manner as employees of the local government for the purposes of calculating superannuation contribution payments.

The payment is to be the same required under the SG Act. By 1 July 2025, the superannuation guarantee rate will be 12 per cent.

The superannuation contribution payment is to be paid at the same time as the remuneration of the council member is paid. In order to allow a superannuation contribution payment to be made, a council member must nominate a superannuation account from a scheme or fund to which the SG Act applies. Local governments must not make a superannuation contribution payment for a council member if they fail to nominate an eligible superannuation account before the end of the month to which the payment relates.

Local governments must not make superannuation contribution payments for council members during any period in which they are suspended under the Act. Council members are also not entitled to a superannuation contribution payment during any period in which they are not entitled to receive their fees and allowances.

Individual council members may opt out of receiving superannuation contribution payments by providing a notice in writing to the CEO.

Advance payments

If a council member is paid their fees and allowances in advance, in the event of their resignation or suspension, they will need to repay any overpaid superannuation contributions. As this typically cannot be taken from the superannuation fund, the council member will need to repay this from their own finances.

The method of calculating the amount to be repaid is specified in regulations 32B and 34AE(2) of the *Local Government (Administration) Regulations 1996*.

Costs

The cost of paying superannuation for council members will need to be met by each local government out of its existing budget. This cost will vary depending on what fees and allowances the Salaries and Allowances Tribunal and the Council have determined to pay to the mayor / president and councillors and how many council members there are.

Non-compliance

In the event of non-compliance with the payment of superannuation the matter may be referred to the DLGSC as regulator of the local government sector. A council member could also seek to enforce the payment of their entitlements in court.

Our local government already provides superannuation to council members. Do we have to change the way we do so?

No, but you can if you wish to.

Can our local government still opt to become an ELGB?

Yes, if you wish to do so.

A local government may resolve to become an ELGB with the consequence that council members are to be treated as employees for a range of taxation purposes, including PAYG withholding and superannuation.

A resolution to become an ELGB requires a unanimous decision of council.

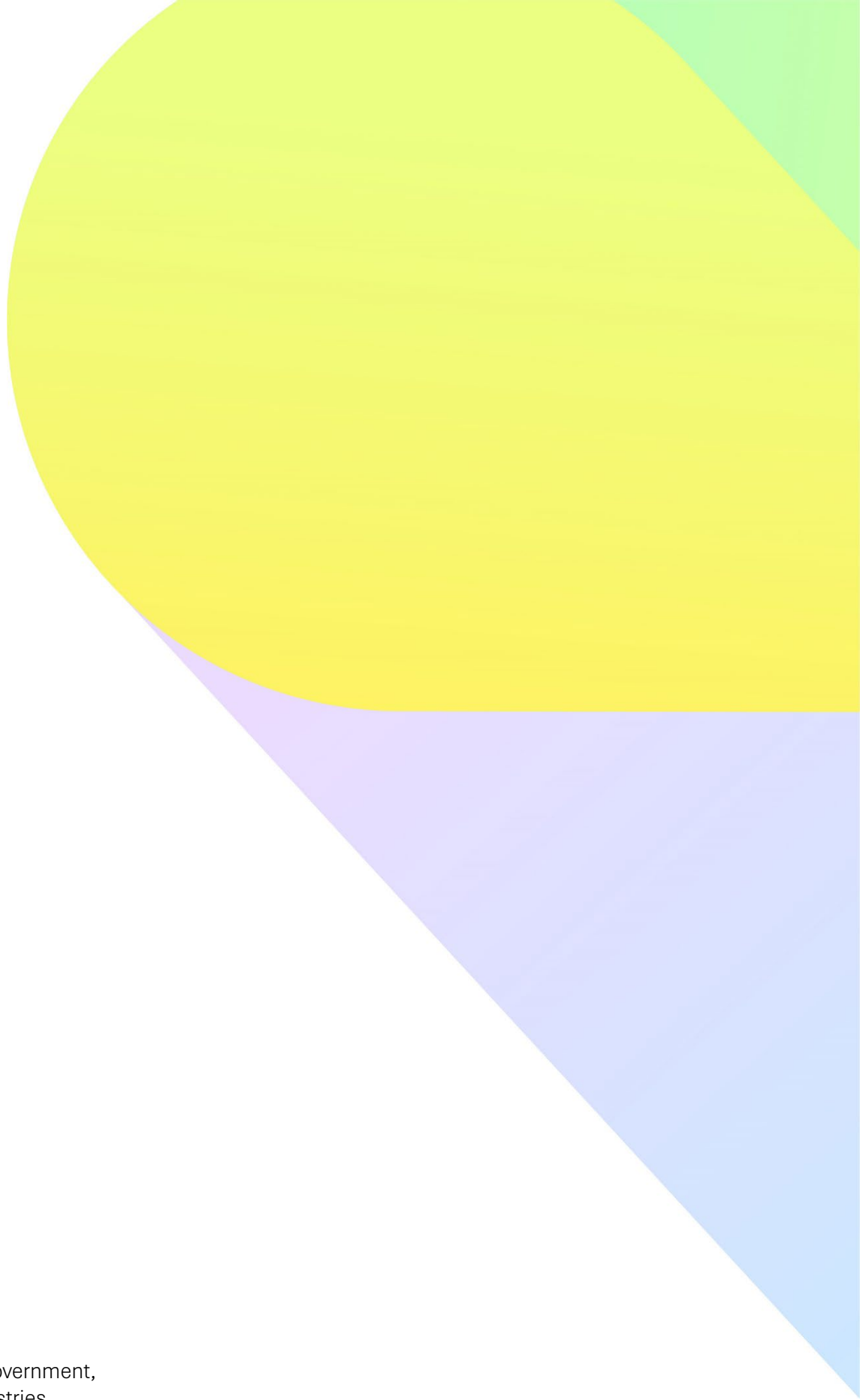
Financial implications

These reforms do not have the same tax implications for councillors as resolving to PAYG withholding under Commonwealth tax law. There are Fringe Benefits Tax (FBT) implications by resolving to become an ELGB.

The information in this guide is general in nature. It is recommended that Councils and council members seek independent financial advice to consider their particular circumstances and the resultant impacts (if any) of making receiving superannuation contribution payments.

More information

If you have any further queries, please contact the Local Government hotline at lghotline@dlgsc.wa.gov.au or 1300 762 511.



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