

Councillors Contributing into Super

This matter has been a bit of an on again, off again saga, but the ATO has now made a definitive ruling (ATO ID 2007/205) that allows for Councillors to redirect their fees into superannuation.

A clear point in the ruling is that Councillors are deemed not to be an employee under common law.

In order to facilitate an arrangement whereby Council fees can be paid into superannuation on a pre tax basis (i.e. the superannuation fund deducts 15% tax as these contributions are received), Councils must ensure they have in place a policy outlining the payment of expenses and the provision of “facilities” to Councillors. This policy should provide for the reduction of fees paid to Councillors in the event that monies are paid to a complying superannuation fund.

A sample wording to go into your policy is provided below:

“In accordance with the Australian Taxation Office Interpretative Decision 2007/205, Council may enter into an arrangement with a Councillor under which the Councillor agrees to forego all or part of their annual fee in exchange for the Council making contributions to a complying superannuation fund on their behalf.”

Having set up the facility, any request by a Councillor to redirect their fees as a superannuation contribution must be in writing and cannot be retrospective. The wording would be similar to that of a normal employee deduction request, regardless of whether Councillor fees are paid via normal payroll or through accounts payable.

Of course, the Local Government Superannuation Scheme (LGSS) is a complying superannuation scheme and we would be delighted if Councillors choose to be a member of the superannuation fund that specifically provides for employees from the Local Government sector.

When sending in your first Councillor contribution to LGSS please indicate that the person is a Councillor, that way we “flag” them and don’t come back to you asking about superannuation guarantee contributions and the like.