



Department of
Local Government, Sport
and Cultural Industries



Local Government
Act 1995 Review
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LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination

***Local Government (Administration) Amendment
Regulations 2021***

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Part 1 – Recruitment and Selection

One of the fundamental roles of the council is the employment of the local government's CEO. The CEO is responsible for implementing the council's strategic vision and leading the local government administration.

Principles

A local government must select a CEO in accordance with the principles of merit, equity and transparency. A local government must not exercise nepotism, bias or patronage in exercising its powers. Additionally, a local government must not unlawfully discriminate against applicants. Section 5.40 of the *Local Government Act 1995* (Act) lists a number of general principles of employment that apply to local governments.

Recruitment and Selection Standard

The minimum standard for recruitment and selection will be met if:

- S1.1** The council has identified and agreed to the qualifications and selection criteria necessary to effectively undertake the role and duties of the CEO within that particular local government context.
- S1.2** The council has approved, by absolute majority, the Job Description Form (JDF) which clearly outlines the qualifications, selection criteria and responsibilities of the position. The JDF is made available to all applicants.
- S1.3** The local government has established a selection panel to conduct the recruitment and selection process. The panel must include at least one independent person who is not a current elected member, human resources consultant, or staff member of the local government.
- S1.4** The local government attracts applicants through a transparent, open and competitive process (this is not necessary for vacancies of less than one year). The local government must advertise a vacancy for the position of CEO in the manner prescribed.
- S1.5** The local government has assessed the knowledge, experience, qualifications and skills of all applicants against the selection criteria.
- S1.6** The local government has verified the recommended applicant's work history, qualifications, referees and claims made in their job application.
- S1.7** The appointment is merit-based, with the successful applicant assessed as clearly demonstrating how their knowledge, skills and experience meet the selection criteria.

Advertising

The local government should ensure that applicants are clearly informed about the application process, such as the application requirements, the closing date for applications and how applications are to be submitted. It is essential that this process is transparent and that each step in the process is documented. Associated records must be kept in a manner consistent with the *State Records Act 2000 (WA)*.

It is a requirement that a local government is to give Statewide public notice if the position of CEO becomes vacant. Statewide public notice must contain:

- details of the remuneration and benefits offered;
- details of the place where applications are to be submitted;
- the date and time applications close;
- the duration of the proposed contract;
- a web address where the JDF can be accessed;
- contact details for a person who can provide further information; and
- any other relevant information.

In order to attract the best possible pool of applicants for the position of CEO, it is recommended that local governments use a diverse range of advertising methods, mediums and platforms (in addition to the advertising requirement under section 5.36(4) of the Act). For example:

- advertising on the local government's website;
- posting on online jobs boards (e.g. SEEK);
- sharing the advertisement via professional networks; and
- undertaking an executive search.

A local government must publicly advertise the CEO position if the same person has remained in the job for 10 consecutive years. This requirement does not prevent the incumbent CEO from being employed for another term, provided they are selected in accordance with the standards for recruitment and selection.

Selection panel and independent person

Local governments are required to establish a selection panel to conduct and facilitate the recruitment and selection process. The selection panel should be made up of elected members (the number of which is determined by the council) and must include at least one independent person. The independent person cannot be a current elected member, human resources consultant, or staff member of the local government. Examples of who the independent person could be include:

- former elected members or staff members of the local government;
- former elected members (such as a Mayor or Shire President) or staff members of *another* local government;
- a prominent or highly regarded member of the community; or
- a person with experience in the recruitment of CEOs and senior executives.

- arranging for an integrity check and/or police clearance; and
- assisting the council in preparing the employment contract.

The consultant is not to be directly involved in determining which applicant should be recommended for the position, their role is not one of decision-maker.

It is recommended that rigorous checks be conducted on any independent consultants before they are engaged to ensure they have the necessary skills and experience to effectively assist the council. Local government recruitment experience may be beneficial but is not a requirement.

The independent human resources consultant must be able to validate their experience in senior executive recruitment and appointments. It is important to note that if the local government uses a consultant or agency to assist in finding applicants, they will require an employment agent licence under the *Employment Agents Act 1976 (WA)*.

A good independent human resources consultant will bring expertise, an objective perspective and additional human resources to what is a complex and time-consuming process. Given the time and effort involved in finding a competent CEO, and the cost of recruiting an unsuitable CEO, there can be a good business case for spending money on a human resources consultant.

If a decision is made to engage an independent human resources consultant, it is imperative that the council maintains a high level of involvement in the process and enters into a formal agreement (contract) with them. In order to manage the contract efficiently, and ensure an effective outcome, regular contact with the consultant is required during the recruitment process. As with any contractor engagement, the local government must ensure their procurement and tender processes comply with the Act and the procurement policy of the local government.

Council's responsibilities

A human resources consultant cannot undertake the tasks for which the council is solely responsible. An independent consultant cannot and should not be asked to:

- Conduct interviews: This should be done by the selection panel. However, council may decide to interview applicants recommended by the selection panel. A consultant can provide support with interviews, providing advice on the recruitment and selection process and writing up recommendations. The consultant may also arrange referee reports and checks of applicants.
- Make the decision about who to appoint to the position of CEO: Only the council can make this decision, drawing upon advice from the selection panel.
- Negotiate the terms and conditions of employment: Noting that the consultant should be able to provide advice on remuneration constraints and other terms and conditions.

Creating Diversity

In order to ensure all applicants are given an equal opportunity for success, selection methods need to be consistent and objective. In a structured interview, each applicant should have the opportunity to answer the same primary questions with follow-up questions used to illicit further detail or clarification. Behavioural-based interview

such as a previous employer. This may be useful in obtaining further information regarding an applicant's character and work experience, and verifying related claims. The applicant should be advised of this and be able to provide written comments to the council.

A search of social media and whether an applicant has an online presence may also assist in identifying potential issues. For example, an applicant may have expressed views which are in conflict with the local government's values. This should be made clear in the application information. To ensure the integrity of the recruitment process, a council must act collectively when performing due diligence.

Selection

Once the application period closes, the selection panel, or consultant on behalf of the selection panel, must assess applications and identify a shortlist of applicants to be interviewed.

In shortlisting applicants for the interview phase, the selection panel should consider the transferable skills of applicants and how these would be of value in the role of CEO. The selection panel should not overlook applicants who do not have experience working in the local government sector.

It is important that the assessment process is consistent for all applicants. For example, each applicant is asked the same interview questions which are related to the selection criteria and each are provided with the same information and undertake the same assessments.

Elected members should declare any previous association with an applicant or any potential conflict of interest at the time of shortlisting if they are part of the selection panel. Similarly, if the interviews involve the full council, the elected member should make an appropriate declaration before the interviews commence. If the potential conflict of interest is significant or a member's relationship with an applicant may result in claims of nepotism, patronage or bias, the council may need to consider whether to exclude the elected member from the process. The decision should be documented and recorded for future reference.

Selecting an applicant should be based on merit; that is, choosing an applicant that is best suited to the requirements of the position and the needs of the local government. This involves the consideration and assessment of applicants' skills, knowledge, qualifications and experience against the selection criteria required for the role. As part of the selection process, a council may consider it appropriate for each of the preferred candidates to do a presentation to council.

The appointment decision by the council should be based on the assessment of all measures used, including:

- assessment technique(s) used (e.g. interview performance);
- quality of application;
- referee reports;
- verification and sighting of formal qualifications and other claims provided by the applicant; and
- other vetting assessments used (e.g. police checks, integrity checks, etc.).

The unsuccessful applicants (including those not interviewed) should be notified of the outcome of their application. It is recommended that the local government creates a template letter for unsuccessful applicants that can be easily personalised with the applicants' details and sent out quickly.

The council should keep a record of their assessment of the unsuccessful applicant(s) and provide the unsuccessful applicant(s) with the opportunity to receive feedback on their application, or interview performance if they were granted an interview. Should an unsuccessful applicant request feedback, it is recommended that a member of the selection panel provides this. If a recruitment consultant is used, they may undertake this task.

Confidentiality

The local government should ensure that all information produced or obtained during the recruitment and selection process is kept confidential. This includes applicants' personal details, assessment details, the selection report and outcome of the process. This ensures privacy requirements are met and maintains the integrity of the process. It is recommended that selection panel members and councillors sign a confidentiality agreement to ensure that they are aware of their obligations.

CEO induction

Local governments should ensure that they provide the CEO with all of the necessary information on the local government's processes, policies, procedures and systems at the commencement of the CEO's employment.

New CEOs are eligible to participate in the Local Government CEO Support Program which is a joint initiative of the Department and LG Pro to provide mentoring and general support to those appointed to the position of CEO in a local government for the first time. The program runs for six to nine months from the time a CEO is appointed and involves the CEO being matched with a mentor that best meets their needs.

The program provides the CEO with an opportunity (through meetings and on-going correspondence) to discuss a wide range of issues with their appointed mentor in the strictest confidence. The program is aimed at addressing the individual needs of the CEO. Examples of issues that may be covered include the following:

- Role of the CEO
- Governance
- Strategic and long-term planning
- Legislative framework
- Relationships and dealing with council members
- Risk management
- Resource management
- Managing the business of Council
- Family considerations

performance review criteria in the employment contract, additional criteria (e.g. the performance indicators in relation to specific projects) and how the criteria will be assessed. The performance agreement should be negotiated and agreed upon by the CEO and the council. The performance agreement may also set out the CEO's professional development goals and outline a plan to achieve these goals.

Performance Criteria

Setting the performance criteria is an important step. One of the CEO's key responsibilities is to oversee the implementation of council's strategic direction, and so it is important to align the CEO's performance criteria to the goals contained in the council's Strategic Community Plan and Corporate Business Plan. Accordingly, as these plans are updated, the CEO's performance criteria should be updated to reflect the changes.

In leading the administrative arm of a local government, the CEO is responsible for undertaking core tasks, the achievement of which will contribute to the effectiveness of the council. It is important that the outcomes associated with these tasks are measurable and clearly defined. These could be in relation to:

- service delivery targets from the council's Strategic Community Plan;
- budget compliance;
- organisational capability;
- operational and project management;
- financial performance and asset management;
- timeliness and accuracy of information and advice to councillors;
- implementation of council resolutions;
- management of organisational risks;
- leadership (including conduct and behaviour) and human resource management; and
- stakeholder management and satisfaction.

Performance criteria should focus on the priorities of the council and, if appropriate, can be assigned priority weighting in percentages. The council and CEO should set goals related to target outcomes for future achievement in the performance criteria. Goals should be specific, measurable, achievable, relevant and time-based.

Following the determination of the performance criteria and goals, the council will need to determine how to measure the outcomes of each criteria. It is important to relate performance indicators to the selection criteria used in selecting the CEO. For example, if the CEO has been selected due to their financial experience and ability to improve the local government's finances, indicators regarding improved revenue and reduced expenses are obvious starting points.

Considering the context within which the local government is operating is important. For example, if a significant financial event occurs, such as a downturn in the economy, financial performance indicators will likely need to be adjusted. It is important that such contextual factors are given appropriate weighting and that goals are flexible to allow regular adjustment. Adjustments may be initiated by either the CEO or the council. Councils need to be realistic in terms of their expectations of a CEO's performance and provide appropriate resources and support to facilitate the

council as part of regular reporting. These sources include:

- achievement of key business outcomes;
- interactions with the council and progress that has been made towards implementing the council's strategic vision;
- audit and risk committee reports;
- workforce metrics (e.g. the average time to fill vacancies, retention rate, information about why people leave the organisation and staff absence rate);
- incident reports (e.g. results of occupational health and safety assessments, the number and nature of occupational health and safety incident reports, and the number and nature of staff grievances);
- organisational survey results;
- relationships (e.g. with relevant organisations, stakeholder groups, and professional networks); and
- insights from key stakeholders (this could be done by way of a survey to obtain stakeholder input).

It is important that, in addition to looking at the achievement of key performance indicators (KPIs), the council considers the following:

- How the CEO has achieved the outcomes. In particular, whether or not their methods are acceptable and sustainable.
- The extent to which current performance is contingent upon current circumstances. Has the CEO demonstrated skills and behaviours to address and manage changes in circumstances which have affected his or her performance? (for example, the impact of COVID-19.)
- What the CEO has done to ensure the wellbeing of staff and to maintain trust in the local government.

The council should consider the attention the CEO has given to ensuring equal employment opportunity, occupational health and safety, privacy, managing potential conflicts of interest, and complying with procurement process requirements.

Addressing performance issues

Once the CEO's performance has been assessed, it is essential that any areas requiring attention or improvement are identified, discussed with the CEO and a plan is agreed and put in place to address these. The plan should outline the actions to be taken, who is responsible for the actions and an agreed timeframe.

The performance review panel must decide on an appropriate course of action that will address the performance issue. This may include professional development courses, training, counselling, mediation, mentoring or developing new work routines to ensure specific areas are not neglected. The performance review panel should then arrange for regular discussion and ongoing feedback on the identified performance issues, ensuring improvements are being made.

It is important to keep in mind that a local government falling short of its goals is not always attributable to the CEO. External factors may have resulted in initial performance expectations becoming unrealistic. Failure to meet performance criteria does not necessarily mean the CEO has performed poorly and, for this reason,

Part 3 – Termination

Principles

The standards for the termination of a local government CEO's employment (other than for reasons such as voluntary resignation or retirement) are based on the principles of fairness and transparency. Procedural fairness is a principle of common law regarding the proper and fair procedure that should apply when a decision is made that may adversely impact upon a person's rights or interests.

Termination Standards

The minimum standards for the termination of a CEO's contract will be met if:

- S3.1** Decisions are based on assessment of the CEO's performance as measured against the documented performance criteria in the CEO's contract.
- S3.2** Performance issues have been identified as part a performance review (conducted within the preceding 12 months) and the CEO has been informed of the issues. The council has given the CEO a reasonable opportunity to improve and implement a plan to remedy the performance issues, but the CEO has not subsequently remedied these issues to the satisfaction of the local government.
- S3.3** The principle of procedural fairness is applied. The CEO is informed of their rights, entitlements and responsibilities in the termination process. This includes the CEO being provided with notice of any allegations against them, given a reasonable opportunity to respond to those allegations or decisions affecting them, and their response is genuinely considered.
- S3.4** Decisions are impartial and transparent.
- S3.5** The council of the local government has endorsed the termination by absolute majority.
- S3.6** The required notice of termination (which outlines the reasons for termination) is provided in writing.

Guidelines

Reasons for termination

The early termination of a CEO's employment may end due to:

- poor performance;
- misconduct; or
- non-performance or repudiation of contract terms.

Opportunity to improve and mediation

If a CEO is deemed to have been performing poorly, the council must be transparent and inform the CEO of this. It is important that the CEO is given an opportunity to remedy the issues within a reasonable timeframe as agreed between the CEO and the council. The council should clearly outline the areas in need of improvement, and with the CEO's input, determine a plan to address any issues. If a plan for improvement is put in place and the CEO's performance remains poor, then termination may be necessary. If a local government decides to terminate the employment of the CEO it must have conducted a performance review in the previous 12 months in accordance with section 5.38 of the Act.

Where the concerns or issues relate to problematic working relationships or dysfunctional behaviour, it is recommended that a council engages an independent accredited mediator to conduct a mediation between the parties. A mediation session may be useful in assisting parties to understand and address issues before the situation escalates to a breakdown in the working relationship (which affects the ability of the CEO to effectively perform their duties) and the subsequent termination of the CEO's employment.

Termination report

The council should prepare a termination report which outlines the reasons for termination, the opportunities and assistance provided to the CEO to remedy any issues, and an explanation of the CEO's failure to do so. Council must provide prior opportunities and support to the CEO to assist them in remedying the issues which form the basis of the termination. It is a requirement of the regulations that council must provide written notice to the CEO outlining the reasons for their decision to terminate. In addition, council must certify that the termination of the CEO's employment was carried out in accordance with the standards set out in regulations.

Confidentiality

Local governments should ensure that the termination process is kept confidential. The CEO is to be informed of their rights and entitlements. Notice of termination of employment is required to be given in writing. Where possible, the news of termination of employment should also be delivered in person. The CEO should be provided with a letter outlining the reasons for, and date of, the termination of their employment.

Before making any public announcements on the termination of the CEO, a council should ensure that the entire termination process is complete, including that the CEO has been informed in writing of the termination.

Disclaimer

It is outside the scope of these guidelines to provide legal advice, and local governments should seek their own legal advice where necessary. Guidance as to legal requirements and compliance in relation to the termination of employment is provided by the Fair Work Commission at www.fwc.gov.au, the Fair Work Ombudsman at www.fairwork.gov.au and the Western Australian Industrial Relations Commission at www.wairc.wa.gov.au.