



Government of **Western Australia**
Department of **Local Government and Communities**

ITEM 4.2.4
APPENDIX A

Local Government Operational Guidelines

Number 10 – Revised August 2012

Appointing a CEO

1. Introduction

Selecting and appointing a Chief Executive Officer (CEO) is one of the most important tasks elected members may undertake during their term of office. Choosing the right person is critical to the success of the council and the local government.

It is essential that correct processes are followed so that every opportunity is given to the candidates to put the appropriate information forward so the council can choose the person most suited to the position. It is important that elected members understand that when they appoint a CEO they are entering into a contractual relationship with the CEO. A commitment to trust and good faith by both parties will lead to an effective relationship between the council and the CEO. This guideline has been developed to assist councils to conduct an effective process when selecting their new CEO.

2. Legislation

There are three sections of the *Local Government Act 1995* (the Act) that have direct application to the appointment of a CEO. Section 5.36(2)(a) and (b) of the Act provides that a local government is not to employ a person to fill the position of CEO unless council believes that the person is suitably qualified for the position and is satisfied with the provisions of the proposed employment contract. Section 5.39 contains provisions for the contracts of CEOs. Section 5.40 requires that all employees are to be selected in accordance with the principles of merit and equity.

In addition to the above provisions of the Act the *Local Government (Administration) Regulations 1996*, regulations 18A, 18B, 18C, 18E, 18F and 19A also deal with advertising, contracts, and the selection and appointment process.

The principles of merit and equity refer to the process of filling vacancies whereby a thorough assessment is made of the candidates' skills, knowledge and abilities against the work related requirements of the vacancy. The process must be open, competitive and free from bias, unlawful discrimination, nepotism or patronage.

"Suitably qualified" is not defined in the legislation but the intention is not limited to academic qualifications. Through the position description and selection criteria the council needs to ensure that processes are in place to appoint the person that best meets the qualities required in terms of academic qualifications, experience, skills and knowledge.

3. Outsourcing the Recruitment Process

Depending on the size of the local government and the availability and skills of staff, outsourcing the recruitment process may be the best option.

Generally recruitment consultants provide a professional service and possess a wide range of knowledge and skills in staff recruitment. It is recommended that rigorous checks be conducted on any recruitment consultants before they are appointed to ensure they have the necessary skills and experience (local government recruitment experience would be beneficial) to effectively assist the council in its selection of a CEO.

An early decision needs to be made by council on whether it will handle the recruitment in-house or appoint a consultant to coordinate the appointment process. If a recruitment consultant is chosen, council should provide the consultant with a copy of these guidelines as part of the appointment process.

A recruitment consultant may be involved in the following aspects of the selection process:

- development or review of the position description;
- development of selection criteria;
- drafting of the advertisement;
- preliminary assessment of the applications;
- final shortlisting;
- drafting of the questions for interview;
- coordinating interviews; and
- finalising the contract.

If a decision is made to outsource the recruitment process it is imperative that the council maintains a high level of involvement in the process and enters into a formal agreement (contract) with the consultant. In order to manage the contract efficiently, and ensure an effective outcome, regular contact with the consultant is required during the recruitment process.

4. Reviewing Necessary Documentation

There are two very important documents that need to be reviewed and approved by council prior to advertising the position. These are the Position Description Form and the Contract of Employment.

Given the importance of the position of CEO, a police clearance should also be sought.

Position Description Form

The Position Description Form, particularly the selection criteria and performance criteria (where it is included in the Position Description Form) should be reviewed prior to advertising. The council, a committee of council or the consultant (if one is used) should undertake this task.

Council needs to determine what they want their CEO to do and whether the selection criteria will facilitate the appointment of a person with the appropriate set of skills.

For example, it may be very important that a CEO work with diverse elements of the community such as developers, mine operators, Indigenous communities or other specific interest groups. Therefore, a selection criterion might be "Proven ability to work and negotiate with diverse groups in the community". If such criteria is not included an assessment of the applicants' abilities in this area may be overlooked. This is why councils must ensure when commencing the task of appointing a new CEO that the skills and qualities required are well understood and documented.

Selection criteria are generally classified as 'essential' or 'desirable'. Applicants who are able to satisfy all the essential criteria should be considered for interview.

If an application does not fully address the essential selection criteria the applicant should not be considered for interview.

However, on occasions an application may be received where the applicant has the skills and experience which indicate a capacity to satisfy the essential selection criteria even though it is not clearly elaborated in their address of the selection criteria in their application. In these circumstances the application may warrant further consideration.

Desirable criteria are not an essential requirement of the position. They are normally identified to attract applicants who may have a wider range of skills and experience which an employer would consider desirable.

Council may decide that it would be more appropriate to attract applicants with a wider range of knowledge, experience and management skills than just local government. If this is the case the selection criteria should accommodate this.

Performance Criteria

Performance criteria are quantitative and/or qualitative measures of performance. There are two broad categories of performance criteria; those that have general application and apply at all times and specific criteria that apply for a limited period of time. An example of the first type would be, "Advice to council is relevant, accurate and timely." An example of the second type of performance criteria would be, "Calling of tenders for the new

recreation centre is undertaken on time and in compliance with the law." It is obvious that the first is always going to be required, whereas the second is specific to the project of the new recreation centre.

Council may set ongoing permanent performance criteria that will be included in the contract. The successful applicant needs to be informed that performance criteria relevant to a specific project/s will also be subject to annual negotiation. These will be assessed at least once during each year.

In setting performance criteria, council will need to determine what it is they want their CEO to do over and above legislative requirements. Councils need to be realistic in terms of their expectations and provide appropriate resources to facilitate achievement of performance criteria.

The performance criteria must be consistent with the position description and the selection criteria.

It is not essential that performance criteria relating to a specific project/s are identified prior to the appointment but, if not, they must be identified very soon after so that the new CEO is aware of what is required of him or her in the coming year or years.

Contract of Employment

The council should review and amend, where necessary, the existing terms and conditions of the CEO contract before proceeding to advertise the position.

It is also recommended that council obtains advice on the contract where alterations or amendments are proposed and there is any (even slight) doubt as to the meaning of those alterations or amendments.

It should be noted that section 5.39(3) of the Act provides that an employment contract is of no effect unless it contains:

- an expiry date; and
- performance criteria for the purpose of reviewing the person's performance.

Regulation 18B of the *Local Government (Administration) Regulations 1996* also requires that the contract contains a provision that places a limit on the maximum amount of remuneration that can be paid to a person should the contract be terminated prior to its expiry date.

Amendments to Regulation 19A of the *Local Government (Administration) Regulations 1996* now sets that limit to a maximum of one year salary termination payment or the value of the remuneration for the balance of the period of contract that is left to run, whichever is the lessor of the two amounts.

To further assist local governments, model contracts have been developed by both the Western Australian Local Government Association (WALGA) and Local Government Managers Australia WA Division (LGMA).

CEO Remuneration

Amendments to section 5.39(7) of the Act now provide for a CEO's remuneration to be determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*.

5. Advertising the Vacancy

Ideally, the position should be advertised as widely as possible to attract the best possible field of candidates. The minimum requirement for advertising under *Local Government (Administration) Regulation 18A(1)* is for the position to be advertised in a newspaper circulating generally throughout the State.

Regulation 18A(2) prescribes the minimum requirements to be included in an advertisement for the position of CEO. Those requirements are:

- the details of the remuneration and benefits offered;
- details of the place where applications for the position are to be submitted;
- the date and time for the closing of applications for the position;
- the duration of the proposed contract; and
- contact details for a person who can provide further information about the position.

In addition to the above, a local government is to include any other information in the advertisement which it believes is relevant.

The content and context of advertisements should be carefully considered.

An attractive and well-constructed advertisement is more likely to attract the interest of potential candidates.

A comprehensive application kit comprising documentation relevant to the vacant position should be developed and provided to potential applicants on request. Reference to, and instructions on how to access the kit should be included in the advertisement.

Allow sufficient time within the advertisement for potential applicants to prepare and forward applications.

It is recommended that the position be open for a minimum of two weeks with a definite date and time after which applications will not be considered.

6. Confidentiality

From the beginning to the conclusion of the process, absolute confidentiality must be maintained by every person involved in the selection process. This cannot be emphasised enough as any information which finds its way into the public domain before a recommendation is made to council may well compromise the selection process.

Council should consider the use of a confidentiality agreement which requires all persons involved in the selection process to agree to appropriate levels of confidentiality.

7. Selection and Appointment Process

The selection and appointment process to be applied to a CEO position must be approved by council prior to advertising as prescribed under *Local Government (Administration) Regulation 18C*.

A check list is provided at Attachment 1 in this guideline to assist local governments with following an appropriate sequence in the selection and appointment process.

Extensive consideration should be given to the overall process, especially the shortlisting, as to whether preliminary interviews will be conducted and whether final interviews will be with full council.

Council must be very clear about the methods, techniques and questions used during the selection process.

It is essential that the council manages the process professionally and that members involved in the process have a thorough understanding of their roles and responsibilities.

Council may decide to establish a committee or panel to coordinate the preliminaries of the selection process. This committee or panel should liaise with the employment consultant if one is appointed.

If council establishes a formal committee (in accordance with the Act), then it can delegate its powers and duties to that committee.

It should be noted that, unlike council committees established under the Act, any selection panel that is appointed cannot be delegated any powers or duties by council, nor can the Mayor or President be delegated any power to make decisions on behalf of council, i.e. approve the conditions of the contract.

The respective roles of a consultant, council committee/panel, full council and individual elected members must be clear.

Applicants should be shortlisted according to their capacity to address the relevant selection criteria. Where there is a large pool of applicants, the most competitive should be shortlisted for interview. It is the responsibility of the selection panel/committee to determine how many applicants it will interview. Their assessment must involve detailed consideration of the applications and may involve a preliminary interview. The selection panel/committee should be provided with the full list of applicants,

not just those recommended for short listing and interviews.

Elected members may act as referees for applicants. This most often occurs when a person already employed by the local government applies for the CEO position. When this occurs it is recommended that the member provide a written referee report prior to interview (assuming the applicant is granted an interview).

Elected members should declare any previous association with a potential applicant at the time of shortlisting if they are part of the selection panel/ committee established for the purpose. Similarly, if the interviews involve the full council, the elected member should make an appropriate declaration before the interviews commence. If a member's relationship with an applicant is significant and may result in claims of nepotism, patronage or bias the member should exclude themselves from the selection process.

Where rating scales and other scoring tools are used to assess the relative performance of applicants, it is important that all elected members and other members involved in the interview understand how these are applied so they produce meaningful results. The selection panel/committee may also consider using psychological or other testing as part of the selection process.

8. Conducting the Interview

The interview process can be challenging for both panel members and applicants.

It is a practice in local government that the full council be involved with the final interview and selection. This is perfectly understandable, as all members of council

have to work closely with this person and trust them.

Often, all elected members feel they need to be involved in the assessment and final selection.

If this does not occur it is desirable that at the very least, all members of council have the opportunity to meet the recommended applicant prior to the appointment being considered by council.

Applicants should be provided with at least five working days notice of the impending interview wherever possible to allow them to adequately prepare. Obviously, if you are a council in regional Western Australia and are expecting an applicant to travel, then sufficient time needs to be allowed. Interviewing over a weekend may be an option.

It is important to provide an environment that puts the interviewee at ease and allows them to perform at the highest possible level. In this regard, consideration should be given to environmental factors such as location and lighting. A well organised process will ensure that everything runs smoothly.

The importance of the chairperson in managing the interview process cannot be overstated. The chairperson is responsible for ensuring that the interview is managed efficiently and effectively.

Ideally, all elected members who are to be in attendance at the final interview should be involved in planning the interview process.

Each applicant must be subject to the same assessment method, i.e. the interview questions or any tests to be undertaken. It is quite acceptable for the panel to ask additional questions to clarify a point or tease out further information during the interview.

It is not necessary for all elected members to have the opportunity to ask a question. Often, it is best to allocate the questions to a small group of elected members (a maximum of 3 is ideal) which ensures consistency of approach.

At the conclusion of the interview it is appropriate to provide the applicant with an opportunity to clarify any issues with the selection panel/committee.

9. Making a Decision

The council should not make a decision to appoint an applicant until all available information has been considered. This includes, but is not limited to, assessment of interview performance, quality of application, referee reports, copies of reports written by the applicant and the results of any psychological or other tests (if used).

The council must be satisfied regarding the claims by the applicant about their relative experience and qualifications.

Local Government (Administration) Regulation 18E makes it an offence for a person to provide false information relating to their academic qualifications.

A police clearance should be sought and considered, given the importance of the position of CEO.

Referee reports are an important part of the process and should be in writing and address the relevant selection criteria for the position.

The council may source a referee who is not one nominated by an applicant, providing they advise the applicant of their intention to do so.

In the event that a referee who was not nominated by the applicant provides a report that contains negative comments, the applicant should be given the opportunity to respond to any such comments.

10. Finalising the Appointment

Eventually, after considering all the information available to it, the selection panel/committee then has to make a decision on which applicant is the most suitable for appointment.

A selection report should be prepared for consideration by council which documents the assessment of each applicant interviewed. The report should identify the most suitable applicant/s and include a recommendation for council to approve an offer of appointment.

Following the decision of council to approve an offer to appoint, with the contract negotiations finalised and the preferred applicant accepting the offer of appointment, council is required to make the formal and final appointment of the CEO.

It is strongly recommended that the successful applicant not commence duties with the local government until the contract is signed.

The unsuccessful applicants (including those not interviewed) should be notified of the decision and offered the opportunity to seek feedback on their application or interview performance if they were granted an interview.

Should an unsuccessful applicant request feedback, it is recommended that the chairperson of the interview panel/

selection committee provide this.
If a recruitment consultant is used
they can undertake this task.

*Local Government (Administration)
Regulation 18F* does not allow a local
government to increase the value of
a CEO's remuneration and benefits in
excess of those advertised when
finalising the appointment.

For further reading it is suggested
reference should be made to:

- sections 5.36, 5.39 and 5.40 of
the *Local Government Act 1995*;
- *Local Government (Administration)
Regulations 1996* 18A, 18B, 18C, 18E,
18F and 19A.
- Salaries and Allowances Tribunal website:
www.sat.wa.gov.au/LocalGovernmentCEOs

Attachment 1

CEO Recruitment and Appointment Check List

Council to (preferably in conjunction with a professional HR adviser);

- Develop a profile of the preferred applicant (i.e. desired and essential skills, abilities, knowledge and qualifications).

- Approve an agreed salary package (set a suitable salary package that complies with the determination under section 7A of the *Salaries and Allowances Act 1975*).

- Review necessary documentation (contract of employment and position description).

NB: The key provisions to be included in the contract are: an expiry date, performance criteria and reference to the limit placed on the remuneration to be paid should the contract be terminated prior to the expiry date.

- Approve a process to be used for the selection and appointment of the CEO (i.e. stages of the process, who is to be involved and to what extent, whether a consultant is appointed and their role in the process).

NB: It is good practice for council to formally adopt a process to ensure transparency, clarity and a shared understanding. Once adopted, the process should be followed unless found to be flawed, in which case a decision should be made to amend the process as soon as possible.

- Advertise the position inviting applications from suitably qualified applicants (advertisement to contain information set out in 18A(2) of the *Local Government (Administration) Regulations 1996*).

- Applicants to be short listed (may be undertaken by consultants, selection panel/ committee or council).

NB: It is noted that in most cases this is done by the consultants or the selection panel/committee in conjunction with the consultants.

- Conduct interviews of the short listed applicants (may be undertaken by consultants, selection panel/ committee or council).

NB: This may be done prior to the final decision to appoint if availability of preferred applicant is limited due to travel arrangements etc. If not interviewed by the entire council it is recommended that all elected members meet with the preferred applicant prior to final appointment.

- Select preferred applicant/s (make recommendation for council to offer the position to the 1st preferred applicant subject to contractual negotiations, within the designated salary package, including the preliminary performance criteria to be contained in the contract).

NB: If 1st preferred applicant is not accepted or declines the offer, a decision may be made on any 2nd or 3rd preferred applicant in line until an offer and acceptance is reached or until no preferred applicants are appointed (applicants identity may remain confidential until such time a final appointment is made).

- Approve the formal and final appointment (must be decision by council that it:
 - (i) believes the person is suitably qualified for the position of CEO; and
 - (ii) is satisfied with the provisions of the proposed CEO employment contract).

NB: Absolute majority decision required for (ii).

NB: All legislative references are from the *Local Government Act 1995* and associated regulations.

These guidelines are also available on the Department's website at www.dlgc.wa.gov.au



About the Guideline series

This document and others in the series are intended as a guide to good practice and should not be taken as a compliance knowledge, understanding, observation of, and appropriate consultation on contemporary good practice in local government. Guidelines may also involve the Department's views on the intent and interpretation of relevant legislation.

All guidelines are subject to review, amendment and re-publishing as required. Therefore, comments on any aspect of the guideline are welcome. Advice of methods of improvement in the area of the guideline topic that can be reported to other local governments will be especially beneficial.

For more information about this and other guidelines, contact the Local Government Regulation and Support Branch at:

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