

Appointing a chief executive officer

Guidance paper no.1

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This document and others in the series are provided as a guide to good practice and not as a compliance requirement.

The content is based on officer's knowledge, understanding, observation of, and appropriate consultation on, current good practice. Information papers may also include the Office of Local Government's views on the intent and interpretation of the legislation.

The material does not constitute legal advice.



Introduction

The purpose of this paper is to provide councils with guidance on the legislative requirements and better practices when selecting and appointing a chief executive officer (CEO).

Selecting and appointing a 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.

It is essential that correct processes are followed so that applicants are given every opportunity to put the appropriate information forward, so that the council can choose the person most suited to the position. When a council appoints a CEO it is entering into a contractual relationship with the CEO. Accordingly, the processes used by a council in this area are extremely important.

Applicable legislation

Part 1 of Chapter 7 of the [Local Government Act 1999](#) (the Act) contains the legislative provisions applicable to the appointment of a CEO.

Section 96 of the Act provides that every council must have a CEO.

Section 98 of the Act sets out the appointment procedures required. In particular, the section provides that the council **must**—

- invite applications by advertising on a website determined by the council, and may take other action as the council thinks appropriate.
- appoint a selection panel to assess applications for the position of CEO, to recommend readvertisement, or other additional steps (if necessary) and to make recommendation to the council on an appointment.
- incorporate the advice of a '**qualified independent person**' either through appointment of at least one independent person (not a member or employee of the council) on the selection panel, or provision of an independent assessment of the applications and recommendations prior to finalisation, or both.

For the purposes of this process a **qualified independent person** is a person who is-

- a) not a member or employee of the council; and
- b) determined by the council to have appropriate qualifications or experience in human resource management.

The council makes the appointment to the office of chief executive.

Elements of Better Practice

The suggested elements of better practice are designed to give an appropriate level of confidence that the process and decision-making will be effective, and that the principles of merit, fairness and equity will be applied.

These principles require that the position is filled through a process that is open, competitive, and is free from bias, unlawful discrimination, nepotism or patronage. The process should involve a thorough assessment of the applicants' skills, knowledge, qualifications, experience, aptitude and abilities relevant to the position of CEO.

The requirements stated in the position description and selection criteria are the basis for making a merit-based selection.

The recruitment process

A council has a number of options available to it when deciding the process to be adopted. It may choose to contract out the entire process (other than the actual appointment) or parts of it, or handle it in-house.

It is good practice for a council to formally adopt the process to be followed at the start of the recruitment process to ensure transparency and shared understanding. Once adopted, the process should be followed unless it is found to be deficient, wherein a further resolution could be made by the council altering the process. In situations where the changes are significant it may be desirable to recommence the entire recruitment process.

Depending on the size of the council 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.

Should this be the option chosen, it is recommended that rigorous checks are 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. Also beneficial would be an understanding of the council's culture to ensure that the consultant can appropriately assess prospective applicants.

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
- finalising the contract.

Should the council decide to outsource the recruitment process it is essential that it maintains a high level of involvement in the process and maintains regular contact with the consultants it appoints. Further, it is crucial that the council enters into a formal agreement (contract) with the consultant, and ensures that the contract is managed efficiently and results in an effective outcome.

If a recruitment consultant is chosen, the council should provide the consultant with a copy of these guidelines as part of the appointment process.

Developing the position description and selection criteria

Prior to advertising the position, a position description needs to be developed or the current position description reviewed and revised as needed. It would be appropriate for the council, a committee of council or the consultant (if one is used) to undertake this task.

The role of the CEO includes the functions articulated in section 99 of the Act. It is important to note that a CEO will have functions and responsibilities under other Acts and not just the Local Government Act. A council needs to determine selection criteria that will facilitate the appointment of a person with the appropriate set of skills and experience. Care should be taken to ensure the criteria accurately and adequately states the requirements of the position so that an appropriate field of candidates is attracted and the merit distinction between applicants is possible. For example, the characteristics of the council area may include a large number of diverse groups, and therefore a selection criterion might be 'Proven ability to work and negotiate with diverse groups in the community'. If such a criterion is not included an assessment of the applicants' abilities in this area may be overlooked.

Selection criteria are generally classified as 'essential' and 'desirable'.

- **Essential criteria** are the capabilities needed to perform the job to the appropriate standard.

- **Desirable criteria** are not an essential requirement of the position and should be kept to a minimum.

The 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.

Applicants who are able to satisfy all the essential criteria should be considered for interview. Desirable criteria may assist selection panels to make a comparative assessment of each applicant's ability to exceed the essential minimum requirements. Applicants who do not fully address the essential selection criteria in their application should generally not be considered for interview.

Contract of employment

The council should review and amend, where necessary, the terms and conditions of the CEO contract before proceeding to advertise the position. It is recommended that the council obtains advice on the contract where any alterations or amendments are proposed unless they are minor and their meaning is beyond dispute.

The remuneration package in the contract of employment should not differ from the remuneration package as advertised.

Advertising the vacancy

The minimum requirement under the Act is for the position to be advertised on a website determined by the council. Ideally, the position should be advertised as widely as possible to attract the best possible field. It may be desirable to advertise nationally and/or more than once to attract the widest field possible.

The content and context of advertisements should be carefully considered so that it attracts the interest of potential applicants. At a minimum the advertisement should contain the following details—

- position title
- brief description of the council and its area
- brief description of the duties of the position
- value and details of remuneration package, or that the remuneration is to be negotiated with successful applicant
- length of contract
- details of where to submit application and to whom

- contact name and number
- closing date (minimum of two weeks from advertisement).

The contact person should be the Principal Member of the council, or another person independent of the council's staff. It is not appropriate for an applicant or acting CEO to be the contact person.

An information package could be provided to potential applicants. The package could contain the position description and selection/performance criteria, information about the council's profile, its organisational structure and its strategic plan.

Selection and appointment process

Prior to advertising the position, the selection and appointment process to be applied should be approved by the council.

Extensive consideration should be given to the overall process, especially the shortlisting and interview process. The council must be very clear about the methods, techniques and questions to be used during the selection process.

The respective roles of a consultant, selection panel and full council must be clear. It is suggested that the selection panel consist of at least three and no more than five members. It is essential that the members involved in the process have a thorough understanding of their roles and responsibilities. The Principal Member of the council should be a member of the selection panel, and there should be at least one female member and one male member.

Section 98 (4a)(a) of the Act gives the council the option to appoint a selection panel member who is not a member or employee of the council. However, should the council choose not to include an independent person on the selection panel at this stage in the appointment process, the input of a 'qualified independent person' must be obtained and considered prior to finalising the appointment decision (refer section 98(4a)(b) of the Act).

Selection panel members should declare any previous association with an applicant at the time of short-listing. If a member's relationship with an applicant is such that it may give rise to a conflict of interest (e.g. perception of nepotism, patronage or bias) the member should exclude themselves from the selection process.

Applicants should be short-listed according to their capacity to meet the essential selection criteria. Not all persons short-listed must be interviewed. The selection panel may decide to only interview the most competitive applicants short-listed. It is important

that reasons are documented with brief comments against the selection criteria to demonstrate that a considered and justifiable decision has been made.

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

Conducting the interview

The interview process can be challenging for both panel members and applicants. It is good to provide applicants with at least five working day notice of the impending interview wherever possible to allow them to adequately prepare for the interview. Obviously, if you are a council in regional South Australia and are expecting an applicant to travel, then sufficient time needs to be allowed.

The questions and the format need to be determined prior to the interviews and the questions based on the selection criteria. Applicants should be asked the same questions to ensure a fair and consistent approach. Supplementary questions to clarify a point or expand on information provided during the interview are quite acceptable.

At the conclusion of the interview it is appropriate to provide the applicant with an opportunity to ask questions and to add any further information they consider relevant. Panel members may take notes throughout the interview to assist the preparation of the panel's report. A template containing the questions asked with provision for notes may be useful to panel members.

Making a decision

Eventually, after considering all the information available to it, the selection panel then has to make a recommendation on which applicant is the most suitable for appointment. A selection report should be prepared for consideration by the council and must be sufficient to enable the council to be confident that the most meritorious applicant is being recommended for the position.

References may be written or oral. At least two referees should be contacted to establish a reliable picture of the applicant. Referees should be asked to elaborate, or substantiate or refute an applicant's claims in relation to the selection criteria and previous work experience.

The selection panel 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.

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

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.

Assessment of Recommendations (if required)

If the council has chosen not to appoint at least one independent person (not a member or employee of the council) to the CEO selection panel, prior to finalising the appointment, the council must obtain an assessment of applications and recommendations on the appointment by a 'qualified independent person' (refer section 98 (4a)(b) of the Act). This assessment may include recommendations to the council on the appointment of the CEO.

It is noted that section 98 (4a) of the Act gives a council the option to have both an independent external selection panel member and obtain qualified independent advice on the assessment of applications and recommendations should it wish.

Finalising the appointment

Following the decision of the council to appoint a CEO, the Principal Member should offer the successful applicant the position.

After the offer has been accepted, the unsuccessful applicants (including those not interviewed) should be notified of the decision and offered the opportunity to seek feedback on their application and/or interview performance. This information should be provided urgently, before the name of the successful applicant becomes public. It is suggested that the panel chairperson provide this, or the recruitment consultant where one is used.

The contract is a matter for the council and successful applicant to negotiate. The successful applicant should not commence duties with the council until the contract is signed. The contract should include a performance agreement with the council. This agreement should reflect the activities, performance measures and targets outlined in the council's strategic plan.

Performance criteria

Performance criteria are quantitative and/or qualitative measures of performance and can have general application to the ongoing role and apply at all times, or can relate to a specific project.

Performance criteria should be determined by the council based on what they want the CEO to achieve on an annual basis. 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.

Performance criteria relevant to a specific project/s will be subject to annual negotiation, and assessed at least once during each year. The successful applicant needs to be informed about this as part of the appointment process.

Confidentiality

From the beginning to the conclusion of the process, absolute confidentiality must be maintained by every person involved in the selection process.

This is crucial as any information that finds its way into the public domain before a recommendation is made to the council may well compromise the selection process. Particularly important is keeping the names of the applicants confidential so that all prospective applicants that apply are confident that only those directly involved in the selection process will be aware of their application, unless and until they are successful and accept the position.

The council might like to consider the use of a confidentiality agreement, which requires all persons involved in the selection process to agree to appropriate levels of confidentiality.

A council should receive and discuss the report of the selection panel in confidence. Using section 90, subsections (2) and (3)(a) of the Act, council should resolve that the public be excluded from the meeting to receive, discuss and consider in confidence information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

The council should also resolve to keep the selection panel's report confidential to the extent that it contains information dealt with by council on a confidential basis pursuant to section 91(7) of the Act. (Note: The council must not make an order to prevent the disclosure of the remuneration or conditions of service of the CEO after the contract has been signed: refer section 91(8)(a)).

Pursuant to section 91(9)(a) of the Act, any order made under section 91(7) must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which it will be reviewed, which must be at least once every 12 months. However, it may be reasonable for the council to continue to make an order that the report, its attachments and any information distributed at the meeting, and the minutes arising, be kept confidential on the basis that disclosure would be an unreasonable disclosure of information concerning the personal affairs of the applicants.

Section 105 of the Act requires that a Register of Salaries be kept that contains details of each position held by an employee of the council (including the CEO), the salary or salary scale applicable, and details of any other allowances or benefits paid or payable. Any person may inspect this register, and upon payment of a fee obtain an extract thereof.

For further information about this and other guidance papers contact:

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