

GENERAL MANAGER RECRUITMENT

PART 7 DIVISION 1 LOCAL GOVERNMENT ACT 1993

INFORMATION SHEET
July 2024

Selecting the council's general manager is one of the most important functions of councillors.

Statutory requirements are found in Part 3, Division 3 and Part 7, Division 1 of the *Local Government Act 1993* (the Act) and in the *Local Government (Appointment and Performance Management of General Managers) Order 2024* (the Order). References in this document to sections (s.) are references to the Act, and clauses (cl.) to the Order.

This information sheet is intended to help you navigate those statutory instruments. Additional guidance is available from the Local Government Association of Tasmania.

Privacy, integrity and non-discrimination requirements will apply to recruitment processes under separate legislation, including the *Personal Information Protection Act 2004* and *Anti-Discrimination Act 1998*, and councils should liaise with relevant agencies and seek legal advice where required.

Councillors are to be guided by principles of integrity, accountability, and transparency, and ensure applicants are treated fairly and without discrimination. All participants in the selection process are to manage conflicts of interest to ensure the integrity, accountability, and transparency of the selection process (cl. 4).

Responsibility to appoint general manager

All councillors are responsible collectively for appointing the general manager (s. 28(2)(d) of the Act).

Council must not delegate any of its powers relating to the appointment of a general manager (s. 22(3)(f)). This means the final decision to appoint rests with the entire council, though council receives and has regard to the recommendations of the selection panel (see below).

The mayor is to lead and participate in the appointment of the general manager (s. 27(1)(g)). This means the mayor is to chair the selection panel. The mayor may delegate this function to the deputy mayor (s. 27(2A)(b)).

Merit assessment

A decision to appoint a general manager must be based primarily on merit assessment (s. 61(1A)(b)).

A merit assessment is defined at s. 60G of the Act. A merit assessment is a written, comparative assessment of the knowledge, skills, qualifications, and experience of a person, having regard for the relative suitability of candidates for the required duties, and outcomes related to the duties, of the role of general manager. It is based upon the relationship between the work-related qualities of candidates and the work-related qualities *genuinely* required for the duties of the appointment—that is, a merit assessment is not to take into account matters extraneous to the role.

The selection panel is required to record its assessment leading to its recommendation to the council as to the preferred general manager candidate, and this must be included in the minutes of a closed council meeting (cl. 6(2)(m)). This must comprise a written evaluation of each candidate against the selection criteria and role description. It may be appropriate for more granular or detailed evaluation against individual criteria to be undertaken for candidates shortlisted for interview, or similar, with a threshold assessment of eligibility conducted for the wider field.

Obligation to obtain professional support

In undertaking this function, councillors cannot rely on their ordinary source of professional advice—namely, the provision of qualified advice through the council’s general manager.

For this reason, and reflecting ordinary practice, councillors are obligated to obtain the support of at least one person, who is not a councillor, having experience in the recruitment of senior management personnel and holding appropriate qualifications in contemporary human resources practices (cl. 6(2)(c)).

This person may be, but does not need to be, appointed as a member of the selection panel. The advisor needs to be available to provide support to all members of the panel and to councillors.

In the ordinary course, this person might be an external recruitment consultant, which is consistent with prevailing practice in the local government sector.

Careful conflict of interest management would be required if this person was an internal human resources executive in the council; however, consideration could be given to accessing human resources expertise from another council.

Role description and selection criteria

Council is to consider the content of the role description and the selection criteria for the position of general manager and consider whether these should be updated to reflect current and anticipated requirements of the position (cl. 5(a) and (b)) at the commencement of the recruitment process. The professional human resources support that council is required to obtain should be able to assist in this process.

Conditions of appointment of general manager

A council is to appoint a general manager for a term not exceeding 5 years on terms and conditions it considers appropriate (s. 61(1)).

The Local Government Association of Tasmania makes available a model employment contract, though this is not reviewed nor endorsed by the Tasmanian Government.

It is prudent that council determine the conditions of employment, including a range for the total remuneration package, prior to seeking applications for the general manager vacancy. Council should leverage the professional human resources support it is required to obtain to support this process, including relevant benchmarking and in the undertaking of any negotiation with the preferred candidate.

Notifying vacancies and seeking applications

Council is to place a public notice inviting applications for the general manager vacancy in a daily newspaper circulating in the municipal area (s. 61(3)). This is a minimum requirement, and it is prudent for council to advertise nationally for a role of this significance through newspapers and online job platforms.

It is advisable that the time provided to accept applications be longer than for ordinary vacancies at the council; and council should have careful regard to the quality of information provided about the role, and the council, to encourage applications from high-quality candidates. Council's professional human resource support should be able to aid in the preparation of recruitment documents and advertisements, and to field inquiries from interested candidates.

Council is *not* required to advertise a general manager vacancy if it resolves to reappoint its incumbent general manager to a subsequent term, though some requirements do apply (see below).

Similarly, a council entering into a resource sharing arrangement, which involves appointing the current and continuing general manager of another Tasmanian council as its general manager, does not need to advertise a general manager vacancy (see below).

Selection panel and process

The council is to convene a selection panel (cl. 6(2)(a)). The panel must comprise councillors in the majority (cl. 6(2)(b)).

The selection panel may include one or more non-councillor members who have relevant skills and experience—this could be the person engaged to provide professional human resources support, or, for instance, a former general manager of another council.

The mayor is to chair the selection panel (cl. 6(2)(d)) but may delegate this function to the deputy mayor (s. 27(2A)(b)).

The selection panel is to receive the applications and undertake a merit assessment to identify the preferred candidate. The Act and the Order do not prescribe any particular series of steps to be undertaken, and this is appropriately left to the selection panel and council to determine with professional support. In the ordinary course, this would as a minimum involve initial shortlisting, successive interview rounds, comprehensive referee checks with multiple previous employers for multiple final candidates, and appropriate screening for matters such as convictions and professional misconduct.

The selection panel is to detail the process that it has undertaken in relation to the appointment of the general manager, including the evaluation of each applicant against the role description and selection criteria. This record must be included in the minutes of a closed council meeting (cl. 6(2)(m)). This requirement acknowledges that the selection panel's evaluations will invariably include confidential information on the field of candidates.

The selection panel is to prepare a report recommending its preferred candidate for the general manager, which must be recorded in the open or closed minutes of a council meeting (cl. 6(2)(n)).

The council is to then resolve to appoint a person as the council's general manager pursuant to s. 61(1) of the Act.

In appointing a person as the general manager, the council must be satisfied its determination is primarily on the basis of a merit assessment within the meaning of the Act (s. 61(1A)(b)). The council is required to have regard to the recommendations of the selection panel (cl. 5(c)) but is not required at law to follow those recommendations. In the event the council intends to deviate from the panel's recommendations, it may be prudent to seek legal advice to ensure council's decision is lawful.

The mayor should then make an offer of employment after the council has resolved to appoint the successful candidate.

Conflicts of interest

Members of the selection panel and any person providing professional human resources or administrative support to the selection process, are to monitor for any actual or potential conflicts of interest arising in the process (cl. 6(2)(e)). These conflicts would be, in the main, associated with potential or actual candidates for the role of general manager, though the statutory provisions are not limited in their application.

Members of the selection panel, and any persons providing professional human resources or administrative support to the selection process, who identify such potential or actual conflicts must promptly disclose, in writing, those conflicts to each member of the selection panel (cl. 6(2)(e)).

The selection panel members are to collectively review all disclosed conflicts of interest and determine whether the conflict of interest can be mitigated, and the mitigation measures which are appropriate in the circumstances (cl. 6(2)(f)).

There are no prescribed mitigation measures, but these might reasonably include restricted access to information on a particular candidate, or restrictions on the involvement of a member of the selection panel in the merit assessment of a particular candidate.

A selection panel is to determine whether the conflict can be mitigated and the mitigation measures, if any, which are required; and this majority must include the mayor (or the deputy mayor in the event the mayor has delegated this function) (cl. 6(2)(g) and (h)).

In the event the determination is made that the conflict cannot be mitigated, the matter must be referred to the council (cl. 6(2)(g)(ii)). The council is then to review this determination and resolve as to whether the conflict can be mitigated and the mitigation measures, if any, which are required; or otherwise, whether the selection panel member or person providing professional human resources or administrative support is to be removed entirely from the selection process (cl. 6(2)(i)).

The council has the discretion to replace or not replace a person so removed from the selection process, however it must do so where:

- the person removed was the mayor (or deputy mayor as the mayor's delegate);
- the person removed was a councillor, and that person's removal would otherwise mean the panel no longer comprised a majority of councillors; or
- the person removed was the only person engaged to provide professional human resources support (cl. 6(2)(j)).

Reappointment of general manager

A council seeking to reappoint its incumbent general manager to a subsequent term is not required to advertise a vacancy and seek applications (s. 61(4)). A council may resolve to reappoint that general manager not later than 6 months before the expiry of a general manager's term of appointment.

A council is not to extend a general manager's appointment beyond 5 years in total unless it has reviewed its terms and conditions (s. 61(2)).

Any decision to reappoint the general manager is to be consistent with a merit assessment within the meaning of the Act, though this does not require comparative evaluation within a field of candidates.

Before resolving to reappoint a general manager, council is required to first consider:

- Whether the role description and selection criteria require updating (cl. 5(a) and (b)); and
- The content of the general manager's most recent performance assessment (cl. 5(d)).

Relevant provisions may be contained in the general manager's contract of employment.

Resource sharing appointments

A council is not required to advertise a vacancy where it is commencing a resource sharing arrangement whereby the incumbent and continuing general manager of another Tasmanian council is appointed as its general manager (s. 61(4A)).

However, this does not exclude the other statutory requirements of the Act and Order. Council is still to review its role description and selection criteria; consider the terms and conditions of the appointment; obtain professional support from a person having experience in the recruitment of senior management personnel and holding appropriate qualifications in contemporary human resources practices; appoint a selection panel; make its appointment primarily on the basis of a merit assessment; monitor for and mitigate conflicts of interest; and so on.

This is important, as council remains the employer of the (shared) general manager, and should enjoy the same confidence in the knowledge, skills, qualifications, and experience of its general manager. Shared appointments create some additional complexity and risk, increasing the salience and value of professional support. Furthermore, selection based on merit is fundamental to credible performance monitoring by council over the duration of the general manager's tenure.

In the case that a general manager role within a resource sharing arrangement is vacated, and the councils intend to continue that arrangement, it would be appropriate for the councils' individually appointed selection panels to sit jointly. The vacancy would need to be advertised through a public notice inviting applications in a daily newspaper circulating in the municipal areas, and the remaining requirements as articulated above would apply. The councils would then receive and consider the recommendations, developed jointly, of their selection panels, and make their decision to appoint a general manager individually, noting that this function cannot be delegated by the councils.