

GENERAL MANAGER APPOINTMENTS & CONTRACTS

INFORMATION SHEET
September 2014

Introduction

The purpose of this information sheet is to provide guidance to councillors regarding the appointment, reappointment and oversight of general managers.

The position of general manager provides the important interface between elected members and the administrative arm of a council.

A general manager is responsible for implementing council decisions and for the day-to-day operations and affairs of the council. More information regarding the role of a general manager is provided in the 'General Manager' information sheet.

Appointment of a general manager – Function of councillors collectively with no power to delegate

Under section 28 of the *Local Government Act 1993* (the Act), it is a function of councillors collectively to appoint and monitor the performance of the general manager.

Under subsection 22(3)(f), a council must not delegate any of its powers relating to the appointment of the general manager.

This means that a council is required to make all final decisions relating to the appointment of the general manager and cannot delegate any such decisions to a council committee or special committee.

However, a council may delegate the task of general manager recruitment and contract development/review to a council committee/panel, and approve the process the committee/panel is to follow.

Appointment of a general manager – Legislative requirements

Section 61 of the Act outlines the legislative requirements relating to a council's appointment of the general manager.

Appointment of a general manager – Five year term

Under subsection 61(1) of the Act, a council is to appoint a person as general manager of the council for a term not exceeding five years, on terms and conditions the council considers appropriate.

The terms and conditions of a general manager's appointment should be incorporated into the general manager's contract.

Appointment of a general manager – Extending beyond a five year term

Under subsection 61(2) of the Act, if the general manager's appointment under subsection 61(1) is extended or renewed so as to exceed five years in total, a council is required to review the terms and conditions of the general manager's appointment.

Developing/reviewing a general manager's contract

The general manager is made accountable to his/her council primarily through the contract of employment.

While a council may delegate the task of general manager recruitment and contract development/review to a council committee/panel, a council is required to make all final decisions relating to the appointment of the general manager, as per subsection 22(3)(f) of the Act.

In order for a council to make an informed decision regarding the general manager's appointment, the contract should be made available to a council.

The council should ensure that the terms and conditions of the general manager's contract cover duties and functions, performance management and review, contract renewal or termination, suspension, remuneration, salary reviews and leave entitlements.

The Local Government Association of Tasmania (LGAT) and the Local Government Managers Australia (LGMA) have jointly developed a 'General Manager Contract Template' for councils. A copy of this template is available on the LGAT extranet, or by contacting LGAT.

Appointment of a general manager – Notification of vacancy

Under subsection 61(3) of the Act, when a vacancy for the position of a general manager occurs or is about to occur, a council is to notify the vacancy, and may invite applications for the position in a daily newspaper circulating in the municipal area.

Reappointment of a general manager

Under subsection 61(4) of the Act, not later than six months before the expiry of a general manager's appointment, a council may resolve to reappoint the general manager without seeking applications for the position.

Subsection 61(5) provides that such a reappointment is to be treated as if it were an appointment under subsection 61(1).

Therefore, if the reappointment of the general manager results in an extension beyond a five year term, a council is required to review the terms and conditions of the general manager's appointment, as per subsection 61(2).

Appointment of an acting general manager

Under subsection 61(6) of the Act, the mayor of a council may appoint a person as acting general manager until:

- the appointment of that person as general manager is confirmed at the next council meeting; or
- the council appoints another acting general manager.

Reviewing/monitoring a general manager's performance

The Act is largely silent in the area of reviewing/monitoring a general manager's performance, except that it is a function of councillors collectively under section 28 of the Act.

Therefore, a council is entitled to determine its own procedures in relation to reviewing/monitoring the general manager's performance. Such procedures may be outlined in the general manager's contract or related policies.

There is no specific requirement in the Act for a council as a whole to undertake a performance review of the general manager.

Therefore, a council may appoint a council committee/panel to review/monitor the general manager's performance.

Leading practice – Reviewing a general manager's performance

It is leading practice for the performance of the general manager to be reviewed at least annually, against the agreed performance criteria for the position. A council may choose to undertake more frequent interim reviews of the general manager's performance.

The performance review of a general manager may be facilitated by an independent body, using a system that encourages elected members and employees of a council to take an active role.

The use of an independent body helps to ensure equity and procedural fairness, and continuity when elected members change.

It is important, however, that a council continues to play an integral part in the review and that the mayor and deputy mayor are included on the review committee/panel.

Discussing a general manager's appointment/performance in closed session

Under regulation 15 of the *Local Government (Meeting Procedures) Regulations 2005* (the Regulations), a council may decide to discuss a general manager's appointment or performance in closed session. If it is a council meeting, this decision must be made by an absolute majority¹.

If a council closes a meeting or part of a meeting, subregulation 15(5) requires that the grounds for the closure of the meeting are recorded in the minutes.

The grounds for the closure of a meeting relating to a general manager's appointment or performance may be that the discussions relate to 'personnel matters', as per subsection 15(2)(j).

Regulation 34 requires that, in respect of any matter discussed at a closed council meeting, the general manager is to record in the minutes of the open meeting, in a manner that protects confidentiality, only the fact that the matter was discussed. The details of the outcomes should not be recorded, unless the council determines otherwise.

1. 'absolute majority' – more than half the elected councillors, whether or not any of them are present at a council meeting'

Under subregulation 15(6)(b) of the Regulations, the chairperson may exclude the general manager from a closed meeting, if the matter to be discussed relates to the contract of employment or the performance of the general manager.

Under subregulation 34(4), if a general manager has been excluded from a closed meeting, the chairperson of the meeting is to direct a person to record the minutes of the meeting.

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