

# Protecting integrity: Leading the way

## Managing the employment cycle of a council CEO



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## Foreword

**David Wolf, Chief Municipal Inspector**



The role of Chief Executive Officer in a municipal council comes with significant responsibility but also presents many challenges in delivering the expected operational or service delivery functions in the context of a political democracy. Council CEOs are, by virtue of leading a public entity, visible and accessible with high levels of accountability to their employer (elected councillors), the community and the council as a business. While accountability to these three areas is common for most CEOs, it is the status or composition of the employer and the relationship with this employer that contributes to the uniqueness of the role.

Recent investigations and events have directed our focus on the unique employer/employee relationship. This is prescribed under the legislative framework for local government, where the CEO is employed and managed by an entity comprised of elected community representatives who make decisions by democratic vote. It creates a unique situation where a group of people, who may have limited capability in managing employment cycles, have a say in the employment relationship but no single individual is responsible.

The challenges this creates are numerous and are, for the most part, managed well across the sector but in the cases we have reviewed, the employment and management process has not worked well. In each case there were either adverse outcomes for the CEO, adverse outcomes for the councillors or significant challenges for the council as an organisation, or a combination of all three. What was consistent in all cases was the cost of the outcome, a cost which is ultimately borne by the community.

With the cost to community in mind, the purpose of this review was to seek views from across the sector to assist in defining the issues and then identify where improvements to legislation, policies or processes could reduce the instances of adverse outcomes. I wish to thank the parties that provided advice and opinions to inform this work and look forward to the progress of our recommendations that, in our view, assist councils and CEOs in their employment relationship.

### Terms used in this report

**Act:** Local Government Act 1989

**Council/full council:** democratically elected council

**CEO:** Chief Executive Officer

**CMI:** Chief Municipal Inspector

**Inspectorate:** Local Government Inspectorate

**Employment cycle:** encompassing the full CEO employment process from advertising to contract negotiation, employment, performance management and end of tenure.

**Peak bodies:** Local government representative bodies comprising Municipal Association of Victoria, Victorian Local Governance Association and LG Professionals.

## 1 Background

The role of a Chief Executive Officer in Victorian local government is essential to the delivery of council services for the community. Successful appointees to the position are accountable to the councillors who are their employer, to ratepayers, the media and local industry and to staff. They are also a crucial player in the council's interaction with other levels of government.

Often the role of council and CEO are misunderstood. The council are elected under the Local Government Act to undertake their duties in the best interests of the people in the municipality by providing the overall policy and strategic direction. One of the most important decisions a council makes relates to the employment cycle of their CEO, who is the only person council employs. CEOs manage council's operations and business including its delegated functions and powers, employ staff, deliver projects and implement council decisions including the budget and council plan. This is a unique and complex role given the political nature, service delivery and business imperatives.

The Local Government Inspectorate has reviewed existing arrangements between councils and CEOs, including the complete employment cycle of recruitment, performance management, tenure and separation. This was completed for the purpose of identifying opportunities to strengthen employment practices and performance management, with the overall goal of ensuring the best overall outcome for the community.

Previous work by the Inspectorate together with the Local Government Act review has identified a number of issues with the employment relationship between CEOs and councils. The way in which both new and reappointed CEO contracts are negotiated, prepared and executed has at times been problematic, prompted in part by a misunderstanding by councillors of their roles and obligations in this process and/or limited experience or capability in human resource management.

Instances have occurred in which the proposed contract has not been subject to proper consultation with councillors; the proposed appointment and contract may not be subject to a proper report and recommendations to the

council; or the council has not formally adopted or executed the contract. Each of these circumstances could pose an unintended financial risk for the council.

The Inspectorate is aware of instances where CEO performance reviews have not been appropriately conducted or where review outcomes were not formally reported and adopted by the council. There was also many examples of a lack of capability among the employer in managing the CEO review process.

The Inspectorate consulted a cross section of current and former CEOs and mayors and the peak representative organisations and reviewed relevant reports and publications on the topic. In particular their views were sought on the way in which both new

and reappointed CEO contracts are negotiated, prepared and executed and on performance management of CEOs by councils. Views were also sought on the appropriate length of CEO contracts and the termination process.

### Case study 2 - Excessive CEO separation payouts

The Ararat Commission of Inquiry found there was no sound or defensible reason for the termination of the CEO on 7 July 2017. The Commission found that the CEO was paid \$171,000 in excess of what was legally necessary without any sound or defensible reason.

The Commission also found that the majority of councillors failed in their obligation to act in the interest of the municipality at arm's length from the CEO in the decision to terminate the contract and by failing to obtain independent and impartial advice on the applicable termination payment.

There appeared to be no appreciation that the sum of \$271,044 gross paid to the CEO as an ex gratia payment raised risk issues as to whether the council had paid over and above the CEO's contractual entitlements.

In another example, the Ombudsman was concerned about CEO severance packages, particularly the lack of transparency to council and the community. The Ombudsman called for guidance to be provided on all remuneration packages to ensure the packages were in the community's interest.

### Case study 1 – Closed-door contract negotiations without full council approval

An Inspectorate investigation found that contract negotiations had not been properly conducted and ratified for three separate contracts for the same CEO at two different metropolitan councils.

Contracts were negotiated by two mayors to give favourable terms to the CEO, which also left the employer exposed to substantial financial risk due to costly exit clauses.

The same CEO was investigated while previously at another council, leading to the successful prosecution of two mayors for misuse of position by exceeding their authority in agreeing to contract arrangements during the CEO appointment process.

### Case study 3 – Excessive termination payout clauses

A review of two successive CEO contracts at a regional council revealed a termination clause had been included over and above sector standards. The clause allowed council to terminate the agreement for any reason, provided the CEO is compensated for early termination with the full remaining value of the agreed remuneration package. In effect, this would mean that a council could be liable, based on an average CEO salary, for nearly \$1 million if an early termination was sought after only 12 months. This may expose the council to significant financial risk, which would ultimately be borne by the ratepayer.

## 2 The role of CEO

The role and responsibilities of a council Chief Executive Officer are largely set out in relevant sections of the Local Government Act and within individual contracts but the position presents many unique challenges.

Some of the challenges relate specifically to the operation of a local council as a business but whose CEO is directly managed by a democratically elected body of people who form a representative tier of government. A CEO's responsibilities under the Occupational Health and Safety Act 2004 (OH&S Act) also broaden and add complexity to the role.

### Political risk for the role of CEO

One of the key issues across the sector was the political risk inherent in local government politics. It was commonly considered that a CEO is not fairly judged on their performance.

In an academic paper<sup>1</sup>, Stephen Jones observes that the contractual and performance arrangements established by the elected councillors can considerably impact on a CEO's ability to successfully undertake their role. Their performance indicators served as the basis for the performance of senior managers and the organisation as a whole.

Victorian CEOs prefer the presence of third parties, primarily legal advisers or HR consultants, throughout the performance assessment process to ensure councils do not make unprecedented or unconfirmed demands.

Jones reported that effective CEOs that are given management discretion with little political interference from councillors led to better performing councils. Poor performing councils, in his opinion, are politically fractious.

The ability for CEOs to separate themselves from electoral politics while remaining politically sensitive is the most common factor contributing to CEOs successfully doing their job.

A key challenge for councils is to establish contractual and performance management systems that allow CEOs to achieve their objectives, to deal more effectively with challenges facing communities and contribute to more sustainable local governments.

It is argued that CEOs performance is not the major determinant of success in the role; rather the capacity to engage councillors was identified as the most critical issue in gaining successful outcomes.

The CEO must be policy oriented but not political. Without this balance there can be serious consequences. Several empirical studies have suggested that political disputes can be a significant cause of CEO turnover contributing to resignations prior to contract completion.

### Chief Executive Officer responsibilities under workplace safety legislation

Recent events at Melbourne City Council raised the challenges for a CEO in respect to their obligations as an employer under workplace safety legislation and the relationship with councillors. The Melbourne case was made more complex due to the involvement of the Lord Mayor and allegations of sexual harassment.

One of the responsibilities of the CEO, as specified under section 94A(1)(e) of the current Act, is the carrying out of the council's responsibilities as a deemed employer of councillors. Under this section, they are considered as deemed workers in relation to any matters which arise under or with respect to the *Accident Compensation Act 1985* or the *Workplace Injury Rehabilitation and Compensation Act 2013*.

The Act refers to section 14AA of the *Accident Compensation Act* (which was repealed in 2013) and clause 15 of Schedule 1 to the *Workplace Injury Rehabilitation and Compensation Act*.

<sup>1</sup> Jones, Stephen (2011) "Superheroes or Puppets? Local Government Chief Executive Officers in Victoria and Queensland," *Journal of Economic and Social Policy*: Vol. 14 : Iss. 2 , Article 6.

## Chief Executive Officer responsibilities under workplace safety legislation (continued)

Under this legislation, the council of which the councillor is a member, while the councillor is carrying out the duties of their role, is deemed to be their employer. In effect those Acts define a councillor as a worker.

Similarly, under the *Occupational Health and Safety Act 2004* (OH&S Act), the council as an entity is the employer but it is the CEO as the 'officer' who manages and controls the workplace. The CEO has a responsibility, along with employees, to 'the extent that is reasonably practical' to ensure that the workplace is safe and without risks to health and safety. The council also has an obligation to persons other than employees under the OH&S Act to ensure they are not exposed to risks to their health and safety. This obligation extends to members of the community, contractors and, in this case, councillors.

Having established the CEO's responsibilities under workplace safety legislation, it is necessary to understand the practical challenges faced by a CEO in managing issues where there is a potential risk to health and safety as a result of actions by a councillor, who is in effect their employer.

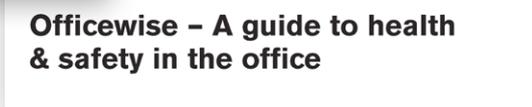
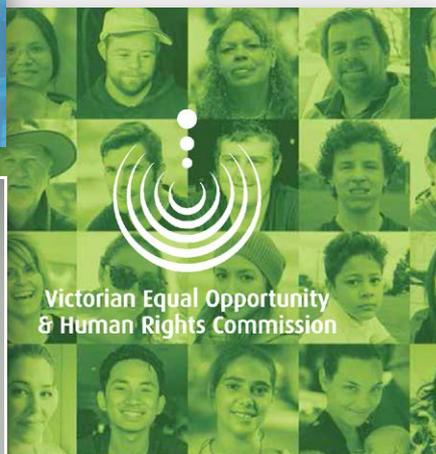
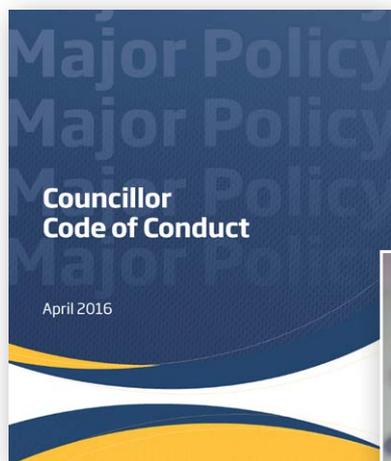
It is important to mention that this does not include allegations of assault, sexual assault or threats of assault, which in all cases ought to be directed to Victoria Police who then have mechanisms in appropriate circumstances to intervene. And also, setting aside minor behavioural or conduct matters that councils are expected to resolve through their councillor conduct process, the difficult space for the CEO and councils exists particularly where allegations relate to bullying and harassment including sexual harassment and where health and safety may be at risk.

In the case of a significant allegation such as harassment by a councillor is reported to the CEO, it is incumbent on the CEO to take steps so far as reasonably practicable to ensure the workplace is safe. There are a range of steps a CEO could take in these

circumstances and a number of pathways to deal with these allegations under the existing framework in the Local Government Act and other Acts, as well as referring matters to bodies including Worksafe, Victoria Police and the Victorian Equal Opportunity and Human Rights Commission.

However, unlike council employees, the CEO has no powers to direct a councillor to take certain action, not to attend certain places or not to contact certain people. Any of the intervention steps a CEO may take can exacerbate the political risk of their role. This may depend on the political or personal affiliations of the councillors who make up the employer, and the people involved.

In the Inspectorate's view, this anomaly where the CEO has primacy to a degree over elected councillors raises expectations of the CEO and uncertainty on their part. Acknowledging the complexity of this issue, this is an area where consultation with sector stakeholders will identify opportunities to improve awareness and understanding of workplace safety responsibilities.



### 3 Current employment arrangements

Under section 94 of the Act, a council must appoint a chief executive officer and fill that position as soon as reasonably practicable, after a vacancy occurs. Applications for the CEO position must, as a minimum, be invited by notice in a newspaper circulating generally throughout Victoria. The exception occurs when the council wishes to reappoint its existing CEO without advertising the position. In this circumstance the council must give public notice two weeks in advance of its intention to put a resolution to reappoint. Details of the reappointed CEO's total remuneration under the new contract must then be made public.

A council may not re-contract its incumbent CEO earlier than six months before his or her current contract is due to expire. Prior to a general election, the council is prohibited from cutting short its CEO contract and then entering into a new contract to extend the CEO's employment beyond that election. Nor can a council make any decisions with regard to CEO employment during the caretaker period before a general election.

A CEO's contract cannot extend beyond five years but there is no limit on how many times a CEO can be reappointed and enter into a new contract. The CEO's contract must specify performance criteria, and the council must review the CEO's performance at least once a year.

The Minister may exempt a council from employing a CEO under contract, and may also forbid a council from employing a CEO or entering into a new contract with an incumbent CEO.

#### What do the arrangements mean?

The current arrangements give full discretion to councils on how they employ their CEOs and under what conditions, with minimum regulation based around ensuring that the public is notified if a reappointment is to occur and that the CEO's performance criteria are specified and regularly assessed by the council.

There are other prescriptive elements such as limits on a CEO's contract terms, timelines for renewing a CEO's contract and requirements for councils to monitor their CEO's performance. These provisions reflect the interest of local communities about what is an important public office.

It is also argued that the existing provisions fall short in two important respects. Firstly, they attempt to regulate for responsible employment practices in a prescriptive way, rather than specifying high-level objectives. It is argued this promotes a compliance culture, where councils and CEOs can seek to achieve what they want by ticking the necessary statutory boxes.

Secondly, while councils are responsible for employing and monitoring their CEOs performance, councillors sometimes do not have the expertise to do so (for example, expertise to set appropriate remuneration and contractual conditions and to conduct effective and timely performance monitoring). Councillors have expressed concern that CEOs have a disproportionate advantage in negotiating their own contractual conditions and that there is insufficient oversight of their performance.

#### Proposed legislative reforms

In 2016 the State Government set about a process of reforming the Local Government Act. This resulted in a Bill before Parliament in 2018.

The proposed Local Government Act reforms required all councils to have a CEO remuneration policy that broadly aligns with the Remuneration Principles of the VPSC's Policy on Executive Remuneration for Public Entities in the Broader Public Sector. A council was to be required to publish its CEO remuneration policy on its website.

The reforms also enable the audit and risk committee to monitor and report on a council's performance against the remuneration policy but this is not mandated.

There were also reforms proposed that required the Mayor and/or council to obtain independent advice in overseeing CEO recruitment, contractual arrangements and performance monitoring.

This will be discussed later in the report, noting that the proposed legislation lapsed during the 2018 parliamentary term.

## 4 Views from the sector

As part of this review we sought comment from peak representative bodies, mayors and CEOs and reviewed past decisions and literature on the subject of CEO employment. While this wasn't exhaustive, it gave the Inspectorate a good understanding of each stakeholder's views.

### Mayors

The Inspectorate spoke to current and former mayors seeking their views on the employment cycle of their CEOs.

Key issues that arose from discussions included:

#### Independent advice

Mayors that were interviewed agreed that gaining independent advice was critical to assist them in the CEO appointment and remuneration process.

#### Effective performance management

Mayors considered effective performance management of the CEO was vital and needed to be an ongoing process, not a 'tick and flick' at the end of each year. Independent assistance in this process was seen as advantageous.

#### Bonus payments

While mayors rejected the need for bonus payments, they considered the transparency of the CEO contract and developing standard contracts in conjunction with peak bodies was beneficial to the sector and the community.

### Council HR departments

Mayors strongly advocated for council HR departments to be removed from the appointment, contracting and performance monitoring processes due to the perception of an inherent conflict of interest.

Mayors did not see a need to change the current maximum contract term of five years for a CEO or further restrict the reappointment terms. They believed relevant measures in the proposed legislative reforms would negate the need for further restrictions.

Overall, mayors emphasised the need to develop professional respectful relationships between the CEO, the mayor and the council as a whole.

*All decisions involving the CEO need to be made by the full council. They should not be delegated. All councillors need to be made aware of the specifics of the CEO contract.*

*What must be remembered is there is enormous variability in the level of skills of councillors particularly in relation to performance monitoring the CEO.*

*Metropolitan council mayor*

### Current and former CEOs

CEOs raised several key issues related to employment matters, from contract negotiation and termination payments to the need for councillors to seek independent advice throughout the contracting and performance management processes.

*CEO appointments and ongoing performance monitoring - whether you like it or not - are often political. However there is also a lack of interest and capability to manage the relationship. Often, for example, over 15 years you might only have two out of the nine councillors making any comment during the performance process.*

*Former metropolitan council CEO*

### Recruitment

Regarding CEO recruitment and selection, their contract, tenure and departure, and performance evaluation and remuneration, one CEO said council decisions on these matters "are some of the most important decisions a council can make and should be made by a resolution of the full council - [they] should not be delegated".

### Contracting

Several CEOs were supportive of industry-led aims on management of CEO contracts and the need for councillors to receive training and regular guidance in managing the relationship. One former CEO noted that an independent chair of committee should be appointed to advise the council on contract preparation and negotiation. As a general rule, they stated there should be no performance bonuses included as part of the package.



## Best practice guidelines and remuneration policy

CEOs were in general agreement with the direction of the proposed legislative reforms regarding CEO remuneration/performance management policy, audit committee oversight and an independent advisory capacity for the mayor.

There was also general support for a set of best practice guidelines for the CEO remuneration/performance management policy to be developed by the sector.

*The maximum payout [on termination] should be six months but the overriding factor is transparency. This should extend to payouts and the council, particularly the mayor, should have access to the CEO's contract. There should be no dispute about this.*

*Former metropolitan council CEO*

*The mayor and councillors as a rule do not have the capacity to oversee/monitor the CEO recruitment, contractual arrangements and performance monitoring. Independent advice to assist in this is crucial.*

*Regional council CEO*

## Independent advice

All agreed that smaller councils and those in regional and rural areas require the most assistance. At issue is organisational capability, particularly in overall governance, and a budget to manage the CEO contract cycle.

- ### Current and former CEO recommendations
- With appropriate redactions, the CEO contract should be available online
  - Six month maximum payout gives an individual time to adjust 'and is not too onerous for the community'
  - No need to advertise contracts every 3-5 years if other safeguards such as proper performance management are implemented
  - Audit committee oversight of remuneration policy is a good step forward.

## Peak representative bodies

The Inspectorate sought views on a range of topics related to the employment cycle of the CEO from the three Victorian peak bodies that represent councils: LG Professionals (LGPro), Municipal Association of Victoria (MAV) and Victorian Local Governance Association (VLGA).

As part of the review, the Inspectorate asked the peak bodies to give their views on any current gaps in the employment cycle process and improvements that could be made. In particular, the Inspectorate sought views on the method in which new and reappointed CEO contracts are negotiated, prepared and executed and on the current performance management of CEOs by councils. Peak bodies were also asked about the appropriate length of CEO appointments without the requirement to formally advertise the position.

LGPro gave a detailed response to inform all aspects of the Inspectorate's review, while the VLGA provided a summary of its key issues and recommendations. MAV indicated the relevance of its submissions<sup>2,3</sup> to the directions paper for the new Local Government Act and Local Government Bill exposure draft to the issues raised.

In its response, LGPro considered the relationship between CEO and council to be critical and any legislative change or sector improvements put in place need to strengthen the relationship and help to improve, or at the very least safeguard, the perception of the sector.

It was recognised by LGPro that this relationship is potentially more difficult where there is a perceived power imbalance; inexperienced and unskilled councillors (non-professional or skilled backgrounds) and an experienced CEO. The same could be said to apply where long serving councillors appoint an inexperienced CEO. It was indicated that while the issues identified by the Inspectorate are significant, there was a prevailing view that they are prominent rather than prevalent.

## Recruitment

VLGA and LGPro acknowledged the high proportion of recruitment activity for CEOs over the past 12-18 months. They also saw there was a variation across the sector on processes undertaken to recruit a CEO. It was also noted there was a broad range in the capability of councils to undertake the recruitment process. Both variations can lead to less objectivity in the process.

## Contracting

**Issues:** Variation in contracts; conflict of interest in staff being involved in preparation of contracts; process to recontract the CEO and advertising requirement for CEOs unnecessary; lack of formal oversight, deliberation and resolution procedures.

**Potential solutions:** a sector-specific minimum standard contract; councils being mandated to receive independent advice; remove requirement to publicly advertise CEO contract; mandate formal oversight process.

Peak bodies generally agreed that standardised contracts, independent advice on contract matters and maximum payouts on exit clauses were vital in gaining the best value and transparency for the community.

LGPro broadly supported the establishment of a sector-specific minimum standard contract. While it was acknowledged that a model based on a templated contract is in place in many municipalities, this is not consistent and even the templates vary in terms of minimum requirements on matters such as notice, benefits or exit clauses.

In addition to minimum standards, it would be helpful to develop a list of optional clauses for matters that are at local discretion, but could provide some guidance to councils and/or CEOs on appropriateness or relevance.

2 J [https://www.mav.asn.au/\\_data/assets/word\\_doc/0020/5780/Submission-to-the-Local-Government-Act-review-Directions-Paper-Sep-2016.docx](https://www.mav.asn.au/_data/assets/word_doc/0020/5780/Submission-to-the-Local-Government-Act-review-Directions-Paper-Sep-2016.docx)  
3 [https://www.mav.asn.au/\\_data/assets/word\\_doc/0020/7526/Submission-on-Local-Government-Bill-Exposure-Draft-Mar-2018.docx](https://www.mav.asn.au/_data/assets/word_doc/0020/7526/Submission-on-Local-Government-Bill-Exposure-Draft-Mar-2018.docx)

On the matter of exit clauses, it was recognised that there is a significant diversity of outcomes currently in this area. While the negotiated outcome may need to depend on location and risk factors associated with the role, 'no fault' exit clauses should have a 12 month maximum and six month minimum payment associated with them.

With regard to tenure, LGPro recommended fixed term contracts, with a maximum five year term. It supported a legislated requirement that no contract should be agreed with an expiry date that falls within the next projected caretaker period.

It was strongly suggested that the current requirement for councils to publicly advertise their intention to renew the contract of their CEO in advance of their decision making on the matter be removed on the basis that the employment relationship is between the CEO and the elected council, and the advertising process only serves to undermine the credibility of the CEO and destabilise the workforce.

Key issues of concern:

- The full council was sometimes not privy to the contractual arrangements and there was a need for a formal council oversight, deliberation and resolution process
- The need for appointments/reappointments and performance reviews to be done in an objective manner
- The capability of some councils to negotiate and enter into contract arrangements.

## Performance management

**Issues:** internal staff involvement leading to conflict of interest; susceptibility of the performance management process to a loss of objectivity.

**Potential solution:** all councils should obtain independent professional advice, though this comes at additional cost.

LGPro stated that the focus needs to be on developing a sound framework which would include:

- an independent facilitator drawn from an accredited panel of suppliers.
- a set of basic KPI's that cover annual plan qualitative and quantitative measures with capacity for "local issue" KPI's
- administrative support for the process.

LGPro submitted that politics impacts on CEO performance and perception of performance, which was seen as one of the reasons why CEO turnover is always high after a council election, and has been high across 2017 and 2018. It was also acknowledged that any system will work effectively providing that there is goodwill/intent on the part of all parties.

While some councils use the advice of internal staff in the CEO recruitment and contracting process, this was not recommended as good practice due to potential conflicts of interest arising from the power imbalance, and should be actively discouraged.

In its draft submission on the Local Government Bill exposure draft, MAV observed that the new provisions provide for the council to obtain independent professional advice in relation to the matters dealt with by the policy. The submission recommended that the obtaining of independent advice should be at the council's discretion and not mandated.

### Case study 4 – Lack of councillor capability in managing CEO

A recent Inspectorate investigation found inadequate performance management over a long period of time at a regional council. In this case it was found that councillors expressed reservations about CEO performance but did not have the knowledge or skills effectively performance manage. The organisation was unable to provide independent assistance or advice. The consequences led to a mismanaged organisation and serious governance failures.

AUGUST 2017

## Protecting integrity: Central Goldfields Shire Council investigation



Local Government Investigations and Compliance Inspectorate



## Separation arrangements

**Issues:** separation payments made to CEOs outside contractual arrangements can have a financial and reputational impact on councils (see case studies 2 and 3). Termination conditions vary between councils.

**Potential solutions:** separation payments should not exceed terms agreed to in CEO contracts. Standardised termination conditions within the contract would provide fairness to the council and the employee.

## Best practice guidelines and remuneration policy

There was broad acknowledgement that councils would benefit from guidelines on how councils should go about the full employment cycle, including a remuneration policy.

It was generally agreed that if the sector is to operate within best practice guidelines that they should be developed and “owned” by the sector.

VLGA and LGPro expressed similar views on the guidelines, in that they should include items such as:

- principles supported or based on contemporary practice in public and private sectors;
- training provided to councillors on a regular basis on recruitment/selection and overseen by Local Government Victoria;
- consideration of the public report at council meetings regarding the process and outcome to improve public perception
- role of independent expert advice
- need to review guidelines regularly, e.g. after each election
- role of council staff.

Overall recommendations included:

- That a working group be established to create best practice standards and guidelines for the CEO recruitment and review process and that these be appropriately disseminated
- That workshops are offered to councils to increase their understanding and capability in relation to good governance.

Peak bodies acknowledged remuneration was a contentious issue, both by councils and the community. They generally supported a principle-based remuneration policy that provides guidance to councils on appropriate remuneration ranges and processes for remuneration reviews. This should incorporate transparent guidance on ‘in-contract pay adjustments’ to apply in circumstances where lower than market remuneration rates may be set upon appointment but warrant review based on demonstrated performance and delivery.

Peak bodies agreed that the following standard benchmarks should be used in determining remuneration review:

- KPI outcomes;
- salary benchmarked to the equivalent market rates for a similar sized council group
- CPI movement.

The concept of performance related bonuses should be discouraged on the basis of difficulties in administering the process in a way that is consistent and transparent.

In summary, any revised approach to these matters should provide CEOs, councillors and a majority of the community with confidence that there is a fair and reasonable process in place. Peak bodies also supported the proposed requirement to have a CEO employment remuneration policy mandated by the state government.

In its submission to the Local Government Act Directions Paper, MAV expressed concerns that the “proposed monitoring and reporting on compliance with the CEO remuneration policy” by the audit and risk committee “may detract from the key audit and risk role and require members with additional expertise”.

## Local government law practitioner

This respondent made some similar points to the CEOs presented above, including the recommendation that guidelines on remuneration should be developed by the industry and “need to be particularly robust and not too vague”.

They also agreed with the direction with proposed reforms of the Act in regard to CEO remuneration policy, audit committee oversight and independent advice for the mayor.

Councils, in their opinion, should introduce a specific delegated power for the Mayor to obtain advice in matters pertaining to the CEO where required.

*While [I] support training, it needs to be ongoing and recognise that the vast majority of councillors are amateurs while CEOs are professionals. It is very difficult for councillors to obtain a sufficient level of capability to recruit a CEO, manage the contractual arrangements and performance monitor.*

*Sector law practitioner*

Other key points included:

- No further restrictions on the appointment or reappointment of the CEO, if supported by robust guidelines
- Termination payments to be in the range of 6-12 months, with full transparency to the community especially if a council decides to pay more than the industry standard
- Full CEO contract, or at least key contract terms, should be on council website.

## 5 Sector wide observations and trends

### Comparison to Victorian Public Service (VPS) executives

The VPS has a standard contract that sets out the terms and conditions for executive employment. There is a remuneration policy set out by the Secretary and Executive Remuneration Panel. The Inspectorate compared the published salaries and reports on CEO remuneration to VPS executive salary packages and found the majority had a remuneration package within the ranges of the VPS executive bands EO1 to EO3. The data indicates that there is significant overlap between the reported CEO remuneration levels and the VPS executive officer salary ranges. The comparison suggests that current remuneration levels within the local government sector for CEOs is comparable to an executive level VPS position. While this was compared strictly in remuneration terms, there is an equivalent level of responsibility and financial risk but often a higher level of public accountability, and the inherent political risk, in a council CEO position.

#### Total remuneration

Of the councils reviewed, the average CEO remuneration was \$295,000 with the range across the state between \$200,000 to \$400,000. There was a strong relationship between remuneration and population of the municipality.

### Performance reviews

There is variation across councils between those who had a CEO 'Employment Matters Committee'; undertook performance reviews in conjunction with all councillors; had a councillor-only committee reviewing performance or engaged an independent facilitator. The Inspectorate considers that a committee working alongside an independent facilitator can provide more effective management of performance reviews.

### CEO terms and tenure

One of the matters raised with the Inspectorate in the course of this review related to the tenure of the council CEO and whether at the expiration of the contract, the role is advertised publicly or the CEO can be re-engaged without advertising and no limit imposed on the successive number of contracts.

The Inspectorate conducted a high-level review across the sector and found less than 10 per cent were employed at the one council for more than 10 years. Close to 60 per cent were in the position for less than five years and the vast majority were employed on five year contracts.

In essence, the frequency of the reappointment without advertising is minimal in comparison to the CEO workforce across the state. The provision in the legislation may eliminate the organisational lag in

a CEO recruitment process, provided the current council current council is satisfied with the CEOs performance. If the employment cycle is completed in a fair and robust manner, then this does not pose an issue.

### Payment of bonuses

The issue of the payment of performance bonuses to CEOs was raised by a number of individuals that were consulted. There was general opposition to this payment with the overriding view that these payments did not improve performance.

CEOs are critical to leading our public institutions and supporting the delivery of high quality services for Victorians. It is therefore important that employment arrangements for CEOs reflect best practice and enable them to continue to provide the high quality work and leadership which is expected.

It would be considered unhelpful to offer financial incentives that could potentially encourage CEOs to direct resources to activities related to their performance review rather than areas that benefit the community.

Peak bodies and CEOs indicated that the concept of performance-related bonuses should also be discouraged on the basis of difficulties in administering the process in a way that is consistent and transparent.

#### Comparing VPS executive structure to council CEO salary (figures as of March 2017)

VPS Executive level	Salary range	CEO type by grouping	Salary (median)
EO3	\$178,500 - \$231,439	Group 1	\$234,757
EO2	\$206,539 - \$330,582	Group 2	\$307,733
EO1	\$300,148 - \$439,332	Group 3	\$362,038

(Salary figures and averages taken from VPSC and Inspectorate data)

Group 1: Small to medium rural council

Group 2: Large rural, regional or small metro council

Group 3: Large regional to large metro council

The Victorian Public Sector Commission recently conducted a review of current executive officer (EO) arrangements<sup>4</sup> and found that VPS EO bonuses are generally not effective in driving performance and that the global provision of bonuses to public service executives is unique to Victoria amongst the Australian jurisdictions.

Consistent with the VPSC's review, the Victorian Premier in August 2016 approved the removal of bonuses from the VPS EO employment and remuneration policies. This affected both existing and new VPS EOs.

### Case study 5 – Bonus payment made without full council knowledge

A recent Inspectorate investigation found inadequate performance management over a long period of time at a regional council. In this case it was found that councillor expressed reservations about CEO performance but did not have the knowledge or skills effectively performance manage. The organisation was unable to provide independent assistance or advice. The consequences led to a mismanaged organisation and serious governance failures.

## Full council to decide on all matters relating to CEO employment

Current legislation provides for a process to delegate CEO matters to a committee which may leave councillors unaware of final decisions.

Many respondents considered that the full council needs to approve of all employment matters relating to the CEO. For example if a council delegates to a committee the appraisal of the CEO it must be sent back to the full council for approval.

The work of the Inspectorate over recent years has uncovered examples where the management of the CEO was not transparent to the full council which led to divisions and discontent within the council.

### Issues raised relating to CEO contracts included:

- councillors unaware of contract details before CEO appointment
- councillors unaware of performance bonus provisions in the contract
- councillors unaware of payments related to performance or ex gratia payments
- councillors unaware of recontracting for a new term.

A view was raised by some stakeholders that the involvement of full council may not be the most effective way of managing the CEO, but the contrary view is that the decisions under delegation avoided full scrutiny and transparency to the community.

Matters relating to the CEO recruitment and selection, contract/tenure/exit, performance evaluation and remuneration are some of the most important decisions a council can make and should be made by a resolution of the full council. It should not be delegated.

## CEO Remuneration Policy

The proposed legislative reforms from the Local Government Act Review included that a council must develop, adopt and apply a CEO Employment and Remuneration Policy.

A CEO Employment and Remuneration Policy must provide for the council to obtain independent professional advice in relation to the matters dealt with in the CEO Employment and Remuneration policy; and provide for the recruitment and appointment process, provisions to be included in the contract of employment, performance monitoring and an annual review.

In addition, a council must also ensure that the Chief Executive Officer Employment and Remuneration Policy is consistent with the remuneration policies contained in the Government of Victoria's Policy on Executive Remuneration in Public Entities.

It is noted that during the course of the review that a number of councils, consistent with their policy, had advertised for independent members for the CEO Employment Matters Advisory Committee.

Acknowledging the reforms did not progress during this parliamentary term, the process can still assist councils and CEOs in dealing with perceived power imbalances.

## Role of Audit Committee

The current legislation does not mandate that the audit and risk committee monitor and report on a council's performance against the remuneration policy. An important function of having a remuneration policy is that the oversight of, and compliance with, the policy is monitored.

The Inspectorate supports the audit committee having a role in relation to the remuneration policy, and if not mandated in legislation, it should be incorporated in the audit committee charter or best practice guidelines.

## Independent advice

The Inspectorate recognises that many councillors may not have experience in HR employment practices, therefore independent advice is essential to ensure a transparent and accountable process in the employment of their CEO. It is important that advice is provided to the elected council to inform decision making.

## Best practice guidelines

A common suggestion from the sector related to the development of best practice guidelines for the CEO recruitment and employment cycle.

The Inspectorate supports the development of sector-led best practice guidelines, coordinated by a central body.

There are benefits that include consistency and standardisation across the state, which provides fairness for all councils.

## Internal staff

Both mayors, CEOs and peak bodies indicated that some councils use the advice of internal human resource staff in the appointing, contractual arrangements and performance monitoring of the CEO. This was strongly opposed due to potential conflicts of interest arising from the power imbalance, and should be actively discouraged.

It is acknowledged that council staff have an administrative function in engaging external advisory services and providing governance advice. However it is essential that this is separate from the actual CEO appointment, contract and performance process.

## Contract/tenure/separation

In the course of this review, the Inspectorate found a number of generic contracts with variations in entitlements or separation arrangements.

On the matter of separation clauses, the review found significant variation in separation arrangement, including one example where a council was exposed to serious financial liability of up to \$1 million (case study 2).

The review found that separation arrangements ranged from three months to up to 4.5 years. The general view from the sector, given the political risk of the role, is that the suggested range should be 6-12 months. The standard VPS Executive Officer contract has a clause of four months separation payment, noting that the VPS executive remuneration policy<sup>4</sup> states that “under no circumstances may an unexpired portion of the contract be paid out”.

There was broad support for the establishment of a sector specific, minimum standard contract, which would alleviate unnecessary variations to contracts.

There was also support for optional clauses to be made available for implementation at local discretion, such as the remuneration schedule.

As previously stated, the Inspectorate supported the condition that the CEO contract should be available for scrutiny by the full council.

## New South Wales’ standard CEO contract

In New South Wales, the state has mandated a standard contract for council CEOs and senior staff since September 2006.<sup>5</sup> The requirements aimed to ensure consistency and certainty in employment relationships and made specific rules on contract termination, in which the employee would be paid the lesser of “a monetary equivalent to 38 weeks’ remuneration” or the amount they would have received if they had been employed to the contract termination date.

The Inspectorate considers that councils should use a standard contract developed by the sector and endorsed by the relevant Local Government Department, leaving CEO remuneration, contract term and separation arrangements (within a specified range) to be decided by the council.

This would assist in solving the problem of leaving the community at risk from excessive termination payments.



### Standard Contract of Employment

General Managers of Local Councils in New South Wales

<sup>5</sup> Standard Contract of Employment for General Managers of Local Councils in New South Wales

## 6 Recommendations

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**Issue:** Variation in the terms and conditions of individual contracts can leave councils open to financial risk.

**Recommendation 1:** Development and mandating of a model contract, which includes employment terms, timeframes, separation arrangements, and excludes bonuses.

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**Issue:** There is inconsistency in remuneration arrangements across the state and many instances of a lack of transparency to the full councillor group in decisions on remuneration.

**Recommendation 2:** Legislate the requirement for a CEO remuneration policy, with any changes to remuneration made by a resolution of the full council.

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**Issue:** Audit Committees may be given the power to oversee adherence to the remuneration policy conditions but the lack of statewide legislation enforcing their role dilutes the effectiveness of this important oversight measure<sup>6</sup>.

**Recommendation 3:** Legislated function of the Audit Committee to oversee the adherence of council to the remuneration policy.

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**Issue:** Inconsistency with recruitment, contracting, performance management and separation arrangements for CEOs leading to adverse outcomes for the community.

**Recommendation 4:** Development of best practice guidelines by the local government sector, coordinated by Local Government Victoria, and supported by appropriate training.

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**Issue:** Advertising, readvertising or not advertising council CEO roles.

**Recommendation 5:** No necessary change to current provisions.

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**Issue:** CEOs have the difficult position of being the employee of a councillor group but also responsible for their health and wellbeing as the person in charge of the council as an organisation.

**Recommendation 6:** Increase awareness of CEO workplace safety responsibilities in respect to councillors through consultation with Local Government Victoria, WorkSafe, VEOHRC, peak bodies and councils.

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<sup>6</sup> Oversight, in this context, does not mean the application of the policy, only the adherence to it.

## Protecting integrity: leading the way

Managing the employment cycle  
of a council CEO

February 2019

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