

# Summary: Protecting integrity: Leading the way Managing the employment cycle of a council CEO

## Background

The role of a Chief Executive Officer (CEO) 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 community 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.

Previous work by the Inspectorate together with the Local Government Act review has identified 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. The purpose of this review<sup>1</sup> 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.

## The role of a CEO

The role and responsibilities of a council Chief Executive Officer are set out in the Local Government Act and individual contracts. However, the position presents challenges because the local council operates as a business whose CEO is directly managed by a democratically elected body of people who form a representative tier of government. Several studies suggest that political disputes can be a significant cause of CEO turnover contributing to resignations prior to the end of the contract.

The CEO's responsibilities under the *Occupational Health and Safety Act 2004* also add complexity to the role. The

CEO is the officer responsible, along with employees, to ensure a workplace is safe and without risks to health and safety. The council also has an obligation to ensure the public, contractors and councillors are not exposed to health and safety risks. CEOs face practical challenges managing issues when a potential risk to health and safety is as a result of actions by a councillor, who is in effect, their employer.

The difficult space for the CEO and councils exists particularly where allegations against councillors relate to bullying and harassment, including sexual harassment, and where health and safety may be at risk.



<sup>1</sup> This report was originally published in February 2019 but relevant legislative changes under the 2020 Act have been included in this summary.

## Closed-door contract negotiations without full council approval

An Inspectorate investigation found that three contracts negotiated by two mayors and two different councils for the same CEO gave favourable terms to the CEO. This exposed the councils to substantial financial risk due to costly exit clauses.

### Excessive termination payout clauses

Reviews of two successive CEO contracts revealed a termination clause had been included over and above sector standards. The clause allowed the council to terminate the contract for any reason provided the CEO was paid out the full value of the contract. This could expose the council to a \$1 million liability

- Bonus payments were not needed.
- Council human resources departments should be removed from the appointment, contracting and performance monitoring processes due to the perception of an inherent conflict of interest.

*“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.

Current and former CEOs made the following recommendations:

- With appropriate redactions, the CEO contract should be available online.
- A six-month maximum payout gives an individual time to adjust ‘and is not too onerous for the community’.
- There is 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.

*“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

## Current employment arrangements

The current arrangements give full discretion to councils on how they employ their CEOs and under what conditions.

Part 2 Division 7 of the *Local Government Act 2020* sets out the role of the CEO and replaces the arrangements under section 94 of the 1989 Act.

A Council must appoint a person to be its CEO in accordance with its Chief Executive Officer Employment and Remuneration Policy.

While councils are responsible for employing and monitoring their CEOs performance, councillors sometimes do not have the expertise in key areas such as setting appropriate remuneration and contractual conditions and conducting 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.

## 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.

### Mayors

We spoke to current and former mayors. Key issues that were raised were:

- Access to independent advice was critical to help them in the CEO appointment and remuneration process.
- Effective performance management of the CEO was vital and ongoing process. Independent help with this processes would be an advantage.

## Peak representative bodies

We sought views on 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).

In its response, LGPro considered the relationship between CEO and council to be critical. This relationship was potentially more difficult where there is a perceived power imbalance; inexperienced and unskilled councillors and an experienced CEO, or long serving councillors appointing an inexperienced CEO.

Some of the main themes peak bodies raised were:

- There is variation across the sector in the processes used to recruit and engage CEOs, and the capability of councils to undertake recruitment.
- Standardised contracts, independent advice on contract matters and maximum payouts on exit clauses were vital in gaining best value and transparency for the community.
- Full council oversight of the contractual arrangements, deliberation and resolution process was needed.
- CEO contracts should not expire in the caretaker period prior to council elections.
- Councils have a diverse range of exit clauses in CEO contracts. No-fault exit clauses should be a six-month minimum and 12 months maximum payment.
- Councils should obtain independent professional advice for performance management.
- Some councils use the advice of internal staff in the CEO recruitment and contracting process, creating potential conflicts of interest. This should be discouraged.
- Councillors should receive regular training on recruitment and selection which is overseen by Local Government Victoria.
- Standard benchmarks should be used to determine remuneration, such as key performance indicator outcomes, consumer price index movement and equivalent market rates for similar-sized councils.

### Local government law practitioner

We spoke to a local government lawyer who made the following points:

- Remuneration guidelines should be developed by the industry and needed to be robust.
- Councils should introduce a specific delegated power for the mayor to obtain advice in matters pertaining to the CEO, where required.

- Termination payments should be 6–12 months with full transparency to the community, especially if a council decides to pay more than the industry standard
- The CEO contract, or at least key contract terms, should be published on the council website.

*“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

## 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.

We compared published salaries and reports on CEO remuneration to VPS executive salary packages and found significant overlap between the reported CEO remuneration levels and the VPS executive officer salary ranges.

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.

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

### 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.

We found that councillors had expressed reservations about CEO performance but did not have the knowledge or skills effectively performance manage the CEO.

The council was not able to provide independent assistance or advice. The consequences led to a mismanaged organisation and serious governance failures.

Councils would benefit from guidelines on how councils should go about the full employment cycle, including a remuneration policy.





## Performance reviews

There is variation across councils on the way performance reviews are conducted. These included a CEO 'Employment Matters Committee'; reviews done in conjunction with all councillors; a councillor-only committee reviewing performance; or engaged an independent facilitator.

We consider that a committee working alongside an independent facilitator can provide more effective management of performance reviews.

## CEO terms and tenure

We considered if, once the contract of a CEO expires, the roles should be advertised publicly, or the CEO could be re-engaged without advertising. We also considered if there should be limits on the number of successive contracts.

Our high-level review found less than 10 per cent of CEOs were employed at one council for more than 10 years and 60 per cent were in the position for less than five years. The majority of CEOs were employed on five-year contracts.

We believe that reappointment without advertising is not an issue if the recruitment and review of performance processes are fair and robust.

## Payment of bonuses

There was general opposition to this payment with the overriding view that these payments did not improve performance.

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.

### **Bonus payment made without full council knowledge**

An Inspectorate investigation found inadequate performance management over a long period of time at a regional council. We found that the 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

Many respondents believed 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.

We have uncovered examples where the management of the CEO was not transparent to the full council which led to divisions and discontent within the council.

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

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.

## Role of Audit Committee

We support an 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. We support an audit committee having a role in relation to monitoring compliance with the remuneration policy.

## Independent advice

The Inspectorate recognises that many councillors may not have experience in human resources' 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

We support the development of sector-led best practice guidelines, coordinated by a central body. The benefits include consistency and standardisation across the state.

## Internal staff

Some councils use the advice of internal human resource staff in the appointing, contractual arrangements and performance monitoring of the CEO. We strongly oppose this practice due to potential conflicts of interest arising from the power imbalance, and should be actively discouraged.

## Contract/tenure/separation

During this review, we found contracts with variations in entitlements or separation arrangements. There was significant variation in separation arrangements, including one example where a council was exposed to serious financial liability of up to \$1 million. Separation arrangements ranged from three months to up to 4.5 years.

Given the political risk of the role, the sector believed that the range should be 6-12 months.

There was support for the establishment of a sector specific, minimum standard contract. However, there was also support for optional clauses to be made available for implementation at local discretion, such as the remuneration schedule.

### New South Wales' standard CEO contract

New South Wales has mandated a standard contract for council CEOs and senior staff since September 2006. This aims to ensure consistency and certainty in employment relationships and made specific rules on contract termination.

We 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.

## Recommendations

1. Development and mandating of a model contract, which includes employment terms, timeframes, separation arrangements, and excludes bonuses.
2. Legislate the requirement for a CEO remuneration policy, with any changes to remuneration made by a resolution of the full council.
3. Legislated function of the Audit Committee to oversee the adherence of council to the remuneration policy.
4. Development of best practice guidelines by the local government sector, coordinated by Local Government Victoria, and supported by appropriate training.
5. No necessary change to current provisions on advertising, readvertising or not advertising council CEO roles.
6. Increase awareness of CEO workplace safety responsibilities in respect to councillors through consultation with Local Government Victoria, WorkSafe, Victorian Equal Opportunity and Human Rights Commission, peak bodies and councils.

## Read the full report

Read the [full report](http://www.lgi.vic.gov/our-reports) on the LGI website: [www.lgi.vic.gov/our-reports](http://www.lgi.vic.gov/our-reports)