

Introduction

The Shire of Serpentine Jarrahdale welcomes the opportunity to comment on the draft CEO Standards and Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination.

Overall, the Shire welcomes the Standards and Guidelines and views their implementation as a positive step in strengthening local government performance. The Shire agrees that the selection, appointment and performance measurement of a CEO is uniquely challenging and critical for Council and one where assistance to support local decision-making is vital.

The Shire notes that the draft for consultation involves two elements:

- draft Standards that will become law through the drafting of regulations; and
- guidelines to support Council decision-making.

The Shire submits the following comments regarding each of the elements of the Standards and Guidelines. These comments have been prepared based on observations of the sector at large and should not be interpreted as a reflection, commentary or judgement on practices at a specific local government.

Recruitment and Selection Standard

The Recruitment and Selection Standards proposed to inform the drafting regulations involve eleven elements. As these will become the basis of laws, each of these elements is discussed below:

S1.1 The council has identified and agreed to the qualifications and selection criteria necessary to effectively undertake the role and duties of the CEO within that particular local government context.

Shire comment -

The Shire suggests that determining and documenting the required competencies as well as essential and desirable criteria for a CEO is a vital component of the recruitment and selection of a CEO. The Shire uses the term 'competencies' rather than qualifications because qualifications refer to the recognition of a past completion of an examination rather than the possession of specific skills, abilities, applied experience or characteristics.

S1.2 The council has approved, by absolute majority, the Job Description Form which clearly outlines the qualifications, selection criteria and responsibilities of the position, and which is made available to all applicants.

Shire comment -

The Shire supports this requirement.

S1.3 The local government has established a selection panel to conduct the recruitment and selection process. The panel must include at least one independent person who is not a current elected member or staff member of the local government.

Shire comment -

Contact Us

Enquiries

Call: (08) 9526 1111
Fax: (08) 9525 5441
Email: info@sjshire.wa.gov.au

In Person

Shire of Serpentine Jarrahdale
6 Paterson Street, Mundijong WA 6123
Open Monday to Friday 8.30am-5pm (closed public holidays)



www.sjshire.wa.gov.au



The Shire does NOT support a requirement to establish a selection panel to conduct the recruitment and selection process. The establishment of a selection panel may be an appropriate mechanism but equally so may a formal Committee of Council established under s5.8 of the *Local Government Act 1995*, as many local governments currently do. Appointing members to a formal Committee of Council carries with it the significance of an absolute majority decision of Council. The Standards are silent in terms of whether this requirement will extend to appointments to a Panel.

A requirement to include at least one independent person conceptually to assist Council presents some challenges that may not have previously been considered. Unlike Councillors, an independent person appointed to the panel would not be a public official under the *Corruption, Crime and Misconduct Act 2003* and would not be bound by its requirements. The independent person would also not be bound by the proposed model code of conduct for Councillors, Committee Members and Candidates. The draft Standards do not provide means to ensure the fidelity or appropriateness of the independent person.

Further, with no restriction on the number of Councillors appointed to the selection panel, an independent person's influence may be substantially diminished.

The Shire does support the concept of an independent panel member to bring an external prospective to the process however the effectiveness of such a member and the impact of the identified issues above may well hinge on formation of the panel and its decision making power.

S1.4 The local government attracts applicants through a transparent, open and competitive process (this is not necessary for vacancies of less than one year).

Shire comment –

The Shire supports a requirement to attract applicants through a transparent, open and competitive process.

S1.5 The local government has assessed the knowledge, experience, qualifications and skills of all applicants against the selection criteria.

Shire comment –

The Shire supports a requirement to assess the knowledge experience, qualifications and skills of all applicants but suggests that the term 'qualifications' be substituted in favour of 'competencies', which could also include formal qualifications.

The Shire has concerns regarding the term 'local government'. Regulations should be clear regarding to whom this requirement binds. The term 'local government', is often substituted in the Act to mean the 'Council' but if the task of assessing the candidates is delegated to a panel, comprising some but not all of the Council and an independent person who is not part of the local government, Council as a collective has limited ability to ensure that an assessment is conducted in accordance with regulations.

S1.6 The local government has thoroughly verified the recommended applicant's work history, qualifications, referees and claims made in his or her job application.

Shire comment –

The Shire supports a requirement to verify the recommended applicant's work history, qualification, referees and claims. Again, the Shire has concerns regarding the term 'local government'. Regulations should be clear regarding to whom this requirement binds. The term



'local government' is often substituted in the Act to mean the 'Council' but if the task of assessing the candidates is delegated to a panel, comprising some but not all of the Council and an independent person who is not part of the local government, Council as a collective has limited ability to ensure that an assessment is conducted in accordance with regulations.

S1.7 The appointment is merit-based, with the successful applicant assessed as clearly demonstrating how his or her knowledge, skills and experience meet the selection criteria.

Shire comment

The Shire supports a requirement for the appointment to be based on merit.

S1.8 The appointment is made impartially and free from nepotism, bias or unlawful discrimination.

Shire comment

The Shire supports a requirement for the appointment to be made impartially and free of nepotism, bias and unlawful discrimination.

S1.9 The council has endorsed by absolute majority the final appointment.

Shire comment

The Shire supports a requirement for the final appointment to be endorsed by an absolute majority. The Shire also suggests that Regulations should provide explicit powers for Council to have access to all information required to make a determination in accordance with the Standard. In the absence of such a requirement, Councillors who did not participate in the panel may not believe that they have had sufficient opportunity to make a determination in accordance with the Standards.

S1.10 The council has approved the employment contract by absolute majority.

Shire comment

The Shire supports a requirement for the employment contract to be endorsed by an absolute majority.

S1.11 The local government must re-advertise the CEO position after each instance where a person has occupied the CEO position for ten (10) consecutive years.

Shire comment

The Shire does NOT support a requirement to re-advertise the CEO position after each instance where a person has occupied the CEO position for ten (10) consecutive years. Under the current legislation the maximum contract length is five years. As part of good practice, re-advertising COULD occur but this is not required to be mandated. A requirement would be inconsistent with requirements for every other public sector office.

Recruitment and Selection Guidelines

The recruitment and selection guidelines form recommended best practice and additional information to assist local governments adhering to the Standards. Overall, the Shire supports the principles behind strengthening CEO selection and performance measurement, but wishes to draw attention to specific inclusions and exclusions in the guidelines that may result in unintended consequences and a departure from the documented principles.

**Confidentiality**

The Shire notes that the guidelines recommend confidentiality. In keeping with best practice in human resources matters, the Shire agrees that all matters related to CEO recruitment and selection are treated confidentiality. Given the importance of confidentiality but occasional competing public expectations for transparency, the Shire suggests that the overriding importance of confidentiality should be reflected in the Standard and not just the guidelines.

The role of the Independent Person

As noted above, the Shire has concerns regarding the role of the independent person. The Shire notes that the guidelines provide examples of an independent person include former employees or Councillors. The Shire suggests that the guidance material on the criteria for being an independent person should go beyond the narrow criteria in the draft that will ensure the independence of the person and ensure that their involvement aids, rather than detracts from a robust and effective recruitment process. The Shire also notes that while the intent of requiring an independent person is to aid in diversifying the viewpoints of those involved in selection, the practicalities of appointment mean that an independent person may narrow rather than expand the viewpoints. Requiring an independent person to be part of the panel lead to Councils reducing the number of Councillors on a panel in order for the panel to remain an effective size.

The role of Human Resources

The Shire suggests that the Guideline's recommendations that require the local government's Human Resources area not be involved, is well meaning but misplaced. Recruitment and selection involves all manner of administrative tasks, including the drafting of Council Reports, records keeping, purchasing of advertising, preparation of job descriptions, convening meetings and so forth. It is entirely impractical for these tasks to be completed by Council alone. A local government's Human Resources professionals, who are bound by the local government's code of conduct, the Act and the *Corruption and Crime Commission Misconduct Act 2003*, are best suited to assist Council in this regard. The Guidelines should reflect good practice in relation to the unavoidable and logistical involvement of local government staff, rather than create an expectation that it can or should be avoided.

Similarly, the Shire suggests that the recommendation to contract an independent Human Resources consultant, distinct from the independent person, has merit conceptually but may not necessarily result in a fairer process or better recruitment outcomes. Just as Councillors are not necessarily experts in recruitment, they may not be experts in the procurement of Human Resource services. Guidelines that require Council to contract an independent Human Resources consultant could have the effect of blurring rather than separating the lines between Council and Administrative roles.

The role of Councillors who are not members of the Panel

One area that the guidelines do not address is the role of Councillors who are not members of the Panel. The Shire suggests that efforts to strengthen CEO recruitment and performance measurement will be dulled if this area is not addressed.

While Council is required by Absolute Majority to make a determination, a committee or panel approach inherently means that Councillors will have different levels of access to information in the decision-making process. The guidelines are largely silent on this important topic leaving several key resulting questions:



- should all Councillors, including those not part of the panel or committee, be able to view all applications received?
- should all Councillors, including those not part of the panel or committee, be able to make comment on the applications received?
- should all Councillors, including those not part of the panel or committee, be able to observe interviews for all applicants?
- what supporting information should be required to be presented to Council from the panel or committee in support of their recommendation?

Part 2 – Performance Review Standards

The Standard specifies six elements associated with performance review. The Shire supports these as minimum standards.

Performance Review Guidelines

The Shire reiterates its view that performance review requires Council to balance the benefits of employing a sub-set of Council with the need to involve all of Council in this important decision-making activity.

Part 3 – Termination Standards

The Shire supports the termination standards.

Termination Guidelines

While the Shire supports the general intent of the guidelines, it has reservations regarding the practical implementation of some of the components. Many of these relate to the use of the term 'Council'. For example, in respect to 'opportunity to improve and mediation' the guidelines state that,

“Council should clearly outline the areas in need of improvement, and with the CEO’s input, determine a plan to help the CEO improve.”

This may present a problem, as the only decision-making mechanism that Council has is a formal resolution through a Council Meeting. The Shire does not believe that is the intention of the Guidelines, but could easily be interpreted as such by Councillors and the community.

Part 4 – Monitoring and enforcement

The Shire notes that the paper introduces the concept of an independent Local Government Commissioner. A Local Government Commissioner could have wide-ranging powers and perform many roles variously played currently by integrity agencies, Local Government Advisory Board, Local Government Standards Panel and the Minister. This is not inherently a criticism of the concept or the review, at large, but the Shire suggests that such a bold reform is deserving of its dedicated discussion paper and subsequent discussion.

The Shire would welcome more information regarding the Commission’s powers and responsibilities and its relationship to existing integrity agencies, quasi-judicial boards, or the Minister.