

CEO Employment and Remuneration Matters Policy



Moreland
City Council

Date Authorised by Council:	12 July 2023
Commencement Date:	13 July 2023
Review Date	At least every 3 years, and within 6 months after each Council election
Responsible Department/Branch	Business Transformation / People and Safety Branch

This policy has been authorised.

1. Introduction

This policy reinforces Council's commitment to good governance practices and provides a consistent, fair, and transparent framework for employment matters relating to the Chief Executive Officer (CEO) including recruitment, contract terms, performance monitoring and annual review. This policy is a requirement of the Local Government Act 2020 (the **Act**) and outlines the Council's approach to managing the recruitment and appointment of its CEO.

2. Principles

Council will carry out its functions relating to the recruitment, appointment, remuneration, performance monitoring and annual review of the CEO in accordance with the following principles:

- Decision-making processes are fair, accessible, and applied consistently in comparable circumstances;
- Decision-making criteria are relevant, objective, and available to the people subject to the decision;
- Decisions and actions are conducive to ongoing good governance;
- Documentation is sufficiently clear and comprehensive to render decisions transparent and capable of effective review;
- Employment decisions are based on the proper assessment of individual's work-related qualities, abilities, and potential against the genuine requirements of the role; and
- Decisions to appoint a new Chief Executive Officer are based on competitive selection, open processes, objective criteria, and has regard to gender equity, diversity, and inclusiveness.

The aims of the CEO in relation to this Policy are to:

- work collaboratively with the Committee in determining the Performance Plan on an annual basis;
- actively participate in the performance appraisal process as required by the Committee;
- make use of constructive feedback from Councillors and Committee Members in relation to performance appraisals;
- undertake professional development on an as needed basis, and/or as part of the Performance Plan; and
- promptly draw the Committee's attention to any situation where any variation of the Performance Plan may be required in light of the current circumstances, except where this is already reported to Council through other means.

3. Policy Details

3.1 CEO Employment and Remuneration Matters Advisory Committee (the Committee)

The purpose of the Committee is to guide and make recommendations to Council regarding the:

- recruitment and appointment process of the CEO;
- provisions to be included in the contract of employment;
- performance monitoring (in consultation with the independent advisor/consultant);
- an annual review (in consultation with the independent advisor/consultant), including making recommendations to Council about the remuneration of the CEO (having regard to any Statement of Policy issued by the Government of Victoria with respect to its wages policy and any determination in effect under section 21 of the Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019 in relation to remuneration bands for executive employed in public service bodies);
- any other matters prescribed by regulations; and
- making of a recommendation to Council about the appointment of an independent advisor/consultant (for independent professional advice) to assist the Committee to discharge its obligations.

The Committee operates under the CEO Employment and Remuneration Matters Advisory Committee Terms of Reference which address the following aspects:

- Scope (purpose of the Committee);
- Delegation of Authority;
- Membership and Chairperson;
- Role of staff member and external independent advisor/consultant;
- Frequency of meetings;
- Quorum; and
- Accountability of the Committee.

Membership of the Committee consists of the following:

- Mayor; and
- All other Councillors.

The Committee must be chaired by:

- a) The Mayor; or
- b) If the Mayor is not present at the committee meeting, the Deputy Mayor; or
If the Mayor or Deputy Mayor are not present at the meeting, a councillor who is present at the committee meeting and is appointed by agreement of the members of the Committee who are also present to chair the meeting.

A quorum is 6 councillors.

The Committee may, at any time, obtain additional independent professional advice (including legal advice) to help it discharge its obligations in respect of any matter dealt with in this Policy.

3.2 Appointment and reappointment of the CEO

Council's role is to appoint the CEO, on the recommendation of the Committee.

The appointment (or reappointment) of the CEO must be made by a resolution of Council.

Council will, by resolution, determine whether reappointment of the incumbent CEO pursuant to section 44(3) of the Act is under consideration (without testing the market by advertising the CEO role) or whether Council will test the market for a CEO.

The Committee must make recommendations to Council no more than nine (9) months and no less than six (6) months prior to the expiry of the CEO contract to either:

- reappoint the CEO under a new contract of employment (and, if so, the proposed provisions of a new contract of employment);
- test the market for a CEO; and/or
- allow the CEO's contract to lapse due to the expiry of the contract without reappointment.

Where the contract of employment is for a term of 12 months or less, the period of months referred to above shall be no more than 3 months and no less than 2 months.

Reappointment of CEO under consideration

Where the reappointment of the incumbent CEO is under consideration:

- At least eight (8) months prior to the expiration of the period of employment (or two (2) months prior where the contract of employment is for a term of 12 months or less), Council and the CEO may confer about whether the CEO shall be reappointed for a further period and, if so, on what terms;
- Council must advise the CEO no more than nine (9) months and no less than six (6) months (or such other period as they may agree in writing) prior to the expiry of the CEO contract whether it is proposing to exercise its discretion to offer reappointment to the CEO.

The Committee shall ensure a confidential, fair, and respectful process is undertaken so that Council should make its decision on whether and on what terms to offer reappointment, only after reasonable time is provided for Councillors to be informed adequately on relevant matters and to allow an opportunity for the incumbent CEO to make a formal presentation to the Council and/or the Committee.

Any reappointment of the current CEO must be made by Resolution.

Test the market

Where Council makes the decision to test the market for a CEO, the Committee shall, in accordance with Council's Procurement Policy and Procedures, seek and appoint an independent Executive Search Consultant/Provider (Recruitment Provider) to manage and conduct the process of selection of a suitable candidate(s) for Council's consideration for appointment to the position of CEO, and ensure professional care throughout administration of the process.

The Committee shall, in conjunction with the Recruitment Provider engaged, develop, and agree upon:

- A recruitment sub-committee charged with interviewing candidates identified by the Recruitment Provider (noting that the full Council may interview the final 3 candidates);
- A search and selection process and timeframe;
- Setting the Remuneration Package (determined consistently with clause 3.4 below) and other conditions;
- Key accountabilities;
- Key selection criteria;
- Candidate application briefing material;
- A candidate identification strategy;
- Methods of applicant evaluation – including approach to shortlisting, due diligence and embracing diversity and gender equity principles and best practice processes to eliminate bias; and
- Public relations or relevant communication activities.

The Committee shall, in conjunction with the Recruitment Provider:

- Ensure that the CEO role is publicly advertised;
- Oversee the development of the candidate pool by the Recruitment Provider, providing feedback on the quality and diversity of candidates being identified;
- Review the Recruitment Provider's report on the candidate pool and select between 5 to 8 candidates (if practicable) from that pool for preliminary interview by the recruitment sub-committee; and
- Shortlist the final candidates for interview by the full Council.

Once the preferred candidate is determined by the full Council, with the support of the Recruitment Provider, and subsequent to or following the successful completion of any applicable due diligence checks (i.e. Psychometric Assessments, Police Checks/Right to Work Assessment, Reference Checks, and relevant medical assessments), the Committee shall negotiate the terms of employment within the contractual framework of employment provided by Council in accordance with the Act.

The Committee shall then:

- Ensure, through the Recruitment Provider, that all candidates are updated on the outcome of the recruitment and selection process; and
- Develop and recommend to the Council an on-boarding program for the new CEO.

3.3 CEO Contractual Requirements

The CEO's contract of employment is to be read in conjunction with this Policy (but the terms of this Policy are not incorporated into the Contract of Employment).

The contract of employment will generally be in accordance with the Maddocks Lawyers Chief Executive Officer model contract as updated from time to time. The Contract of Employment will, at a minimum, outline the following:

- the employment term, which must not exceed 5 years in accordance with section 44(2) of the Act;

- the responsibilities and duties of the position, including compliance with the Act and the Code of Conduct for Council staff;
- how conflicts of interest will be managed;
- the CEO's Remuneration Package and other entitlements;
- legislative and contractual obligations, including those during and continuing after appointment;
- the CEO's leave entitlements;
- processes for managing unsatisfactory performance;
- processes for early termination, including notice of termination (or payment in lieu) provisions with notice of termination by Council being restricted to a maximum of six (6) months; and
- any other matters required to be contained in the Contract of Employment by the Regulations made under the Act.

The Contract of Employment may only be varied by a resolution of Council and where such variation is accepted by the CEO, recorded in a deed of variation.

3.4 Remuneration and Expenses

The Remuneration Package provided to the CEO will form part of the Committee's annual review, having regard to (in accordance with section 45(3) of the Act):

- Any statement of policy issued by the Government of Victoria which is in force with respect to its wages policy (or equivalent); and
- any Determination that is currently in effect under section 21 of the *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* in relation to remuneration bands for executives employed in public service bodies.

Remuneration will be reviewed annually, in accordance with the CEO's Performance Plan and contractual requirements.

In line with Council's remuneration and expenses policies, or as separately agreed in the CEO's contract of employment, Council will meet reasonable expenses incurred by the CEO in relation to:

- membership and subscription fees payable to professional associations which are reasonably necessary in order to carry out the CEO's duties;
- reasonable costs incurred where attending conferences, seminars, or other networking functions; and
- reasonable costs incurred in performance of required duties.

3.5 Performance monitoring

Council will adopt an annual Performance Plan for the CEO, which will include Key Performance Indicators or performance criteria however described (**KPIs**). The Performance Plan must be developed by the Committee (in consultation with the CEO) and confirmed by a Council resolution.

The Committee will ensure that the CEO submits a Performance Plan report and is given the opportunity to present their self-assessment.

Within the initial 4 to 6 months of the CEO's term, a workshop/meeting with Councillors and the CEO should be arranged so that:

- The CEO can prepare and present their views formed since their appointment on any related matters, and highlight any projections or forecasts of relevance to Council during their tenure;
- Councillors can provide feedback to the CEO on their perspective of the CEO's performance during the initial period of the CEO's employment; and
- Council and the CEO can consider projects and priorities for inclusion in the CEO's Performance Plan and KPIs.

Nothing in this Policy prevents the Committee and/or Council from monitoring the CEO's performance on an ongoing basis.

3.6 Annual review

In preparation for Council's review, the Committee is required to submit an annual review report in consultation with the independent advisor/consultant (**Annual Review Report**) to Council, which includes recommendations on the following:

- Whether, and to what extent, the CEO has met the KPIs under the Performance Plan;
- Whether, and to what extent or in what respect, any KPIs or other criteria ought to be varied under the Performance Plan;
- Whether, and to what extent, the Remuneration Package ought to be varied;
- The setting of the Performance Plan for the measurement of the CEO's performance for the next 12-month period;
- The matters to be agreed with the CEO on a personal and professional development plan for the next 12-month period;
- Whether any options of the CEO's contract should be exercised in accordance with the contract; and
- Any other necessary matters.

In circumstances where written Councillor feedback is sought out of session, any feedback received will be circulated to all Councillors.

The Committee will submit the Annual Review Report to Council only after meeting with the CEO to discuss the Committee's proposed recommendations.

The CEO may request the opportunity to address Council as part of this process.

The Committee shall ensure all Councillors are invited to provide comments which informs the appraisal of the CEO's performance to the Committee. The independent advisor/consultant will attend to the collection and collation of Councillor feedback in relation to the CEO's performance, as measured against the Performance Plan approved by Council.

The Independent advisor/consultant is responsible for supporting the Committee to provide:

- Recommendations on the review of the CEO's Remuneration Package as a component of the annual review for Council's consideration;
- Feedback to the CEO about their performance and proposed outcome of the remuneration review; and
- The Annual Review Report to Council.

Council shall, after receipt of the Annual Review Report, review the recommendations in the Annual Review Report, resolve upon the matters described in the report and advise the CEO of the terms or effect of the resolution.

3.7 Acting CEO

Council must appoint an Acting CEO when there is an unplanned vacancy in the office of the CEO, or the CEO is unable to perform their duties of the office of Chief Executive Officer for a period exceeding 28 days. The Committee may advise Council on the selection and appointment of an Acting CEO in accordance with the Committee Terms of Reference.

The appointment of the Acting CEO must be made by a resolution of Council unless the Acting CEO is appointed for a period not exceeding 28 days, in which case the CEO may appoint an Acting CEO under delegation from Council pursuant to section 11(3) of the Act.

3.8 Dispute resolution

Council will develop a dispute resolution process which is suitable to assist in the resolution of any disputes about any matters under this Policy or the CEO's contract of employment.

3.9 Independent professional advice

The Independent advisor/consultant is responsible for providing independent professional advice in relation to the matters dealt with under this Policy in accordance with section 45(2)(a) of the Act.

An independent advisor/consultant will be appointed by Council in consultation with Mayor, Councillors and CEO to:

- Assist the Committee and Council to discharge its obligations in relation to the Act;
- Assist the Committee and Council to establish a Performance Plan; and
- Assist to conduct the annual performance review of the CEO and provide recommendations to the Committee which inform remuneration outcomes.

Council, or the Committee with the approval of a Resolution, can, on an as needed basis, obtain additional independent professional advice in relation to the matters dealt with under this Policy.

3.10 Administrative Support

Council acknowledges that, in implementing this Policy, it, the Committee and/or the independent advisor/consultant will from time to time require the assistance of members of staff, including assistance in relation to governance and employment/human resources matters, and (where relevant) procurement and contract management.

Council, the Committee and/or the independent advisor/consultant may from time to time request a member of staff to provide assistance in implementing this Policy, recognising that the position of the member of staff may be difficult because they are accountable to the CEO (or a person acting as CEO) and therefore requests for assistance need to be limited to no more than those which are reasonably necessary.

The CEO should be kept informed of any decisions made to utilise Council staff for the purposes outlined in this section.

3.11 Interaction with Act, Regulations and Committee Terms of Reference

This Policy applies subject to any inconsistent obligations in the Act, or the Regulations made under it.

The Policy applies to the exclusion of any inconsistent obligation in the Committee Terms of Reference.

3.12 Confidentiality

Council is not required to disclose any personal information, being information which, if released, would result in the unreasonable disclosure of information about any person or their personal affairs.

All information relating to the recruitment, selection and performance review process must be kept strictly confidential. Councillors, CEO, and staff involved in the process must take all reasonable steps to maintain confidentiality and respect the privacy of all persons involved. A breach of confidentiality may constitute a breach of the Councillor Code of Conduct or Staff Code of Conduct.

3.13 Delegations

Council must not delegate the power to appoint the CEO, whether on a permanent or acting basis, but may delegate to the CEO the power to appoint an Acting CEO for a period not exceeding 28 days (sections 11(2)(d) and 11(3) of the Act).

Council must not delegate the power to make any decision in relation to the employment, dismissal, or removal of the CEO (section 11(2)(e) of the Act).

4. Monitoring, Evaluation and Review

Following the adoption of this Policy, this Policy (and the associated Terms of Reference) will be reviewed every 3 years, and within 6 months after each Council election, and the Committee may make a recommendation to Council with respect to any suggested changes.

5. Associated Documents

- CEO Employment and Remuneration Matters Advisory Committee Terms of Reference

6. References

- *Local Government Act 2020*
- *Fair Work Act 2009*
- *Gender Equality Act 2020 Charter of Human Rights and Responsibilities Act 2006*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Section 45(3)(a) of the Act requires Council to have regard to any statement of policy issued by Government of Victoria which is in force with respect to its wages policy (or equivalent). The current Victorian Government Wages Policy applies in the public sector until 31 December 2021. See: [https:// www.vic.gov.au/wages-policy-and-enterprise-bargaining-framework](https://www.vic.gov.au/wages-policy-and-enterprise-bargaining-framework)*
- *Section 45(3)(b) of the Act requires Council to have regard to the published remuneration bands for executives employed in public service bodies. See: [https:// www.vic.gov.au/tribunals-determination-vps-executive-remuneration-bands](https://www.vic.gov.au/tribunals-determination-vps-executive-remuneration-bands)*