

# Chief Executive Officer Employment and Remuneration Policy

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## 1 Document Information

The electronic version of this document is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.

RESPONSIBLE GENERAL MANAGER	General Manager Corporate Services
RESPONSIBLE MANAGER (Policy Owner)	Manager Governance
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## 2 Purpose

The purpose of the Chief Executive Officer Employment and Remuneration Policy (this Policy) is to provide a clear and transparent framework for the employment, management and remuneration of the Chief Executive Officer (CEO) that is consistent with leading employment practice principles and compliant with the requirements of section 45 of the *Local Government Act 2020* (the Act).

## 3 Definitions

<b>Act</b>	means the <i>Local Government Act 2020 (Vic)</i> .
<b>Committee</b>	means the Employment Matters Committee established by resolution of Council.
<b>Council</b>	means the City of Kingston Council.
<b>Independent Professional Consultant</b>	means a consultant engaged by Council to provide advice to assist Council to carry out its responsibilities pertaining to the appointment of the CEO.
<b>Independent Member</b>	means a suitably skilled and qualified person appointed by Council resolution to the Employment Matters Committee.
<b>Recruitment Agency/Consultant</b>	means an agency or consultant engaged by Council to administer and conduct the process of selection of a suitable candidate for the position of CEO.

#### 4 Scope

This Policy applies to Council in relation to its legislative responsibility for the appointment and management of the CEO.

This Policy applies to the CEO and prospective applicants for the role of CEO for clarity regarding the employment, remuneration and management processes undertaken by Council in relation to the role of CEO.

In the event of any inconsistency between this policy and the CEO's Contract of Employment, the provisions of the CEO's Contract of Employment shall prevail to the extent of the inconsistency.

#### 5 Policy Details

Pursuant to section 45 of the Act, this Policy has been developed to provide clear processes for all aspects of the CEO's employment including:

- obtaining independent professional advice in relation to the matters dealt with in this Policy;
- all processes relating to the recruitment and appointment of the CEO;
- the CEO Contract of Employment;
- establishment of Key Performance Indicators (KPIs);
- quarterly and/or bi-annual performance reviews; and
- annual performance and remuneration reviews.

Council will make CEO employment decisions based on a timely and proper assessment of the individual's organisational executive leadership skills and performance against the position description and KPIs.

Council will have regard to the following employment principles when fulfilling its legislative responsibilities:

- Employment decisions are based on merit;
- The employee is treated fairly and reasonably;
- The Performance Review process is transparent, and reviews are timely;
- Equal employment opportunity is provided; and
- The employee has a reasonable avenue of redress against unfair or unreasonable treatment.

## **5.1 Independent Professional Advice**

Council will appoint an experienced and qualified independent professional consultant to provide advice to assist Council to carry out its responsibilities pertaining to the appointment of the CEO (including provisions included in the Contract of Employment and establishment of KPIs), associated quarterly and/or bi-annual and annual performance and remuneration reviews in accordance with legislative requirements and the employment principles outlined in clause 5 of this Policy.

Council will also appoint an independent, suitably skilled and qualified person to the Employment Matters Committee outlined in clause 5.2 of this Policy to provide ongoing impartial, professional feedback and perspectives with regard to the employment and management of the CEO.

## **5.2 CEO Employment Matters Committee**

Council will establish by resolution a CEO Employment Matters Committee (the Committee) to oversee the implementation of this Policy. The Committee is advisory in nature only and has no delegated decision-making power or authority. The Committee will provide regular advice and recommendations to enable Council to make decisions in relation to the matters included in this Policy.

The Committee is to be established at the commencement of the CEO's recruitment process.

The Committee shall operate in accordance with the Council resolution and the Committee Procedures and Operations contained in Appendix 1 of this Policy.

Support to the Committee will be provided by the General Manager Corporate Services, who in collaboration with the independent professional consultant, the Manager Governance and the Executive Manager Legal as required, will ensure the following support is provided to the Committee:

- co-ordinating meetings of the Committee;
- preparing relevant documentation including reports to Council and contractual documents;
- procuring independent legal advice on contractual or employment matters at the request of the Committee; and
- maintaining appropriate records regarding performance reviews.

### **5.2.1 Composition and Scope of Committee**

The Committee shall be comprised as follows.

- The Mayor
- The Deputy Mayor
- Two (2) other Councillors appointed by Council
- One (1) Independent member appointed by Council in accordance with the process outlined in clause 5.2.2 of this Policy, who will be remunerated for their role.

The Committee shall advise on and make recommendations regarding:

- CEO recruitment and appointment process;
- Employment and remuneration;
- Performance Issues; and
- Any other matters relevant to the employment and performance of the CEO in accordance with the CEO's Contract of Employment and the Act.

### **5.2.2 Independent Member of the Committee**

The appointment of a suitably skilled and qualified Independent Member to the Committee will ensure consistent, informed and independent perspectives and feedback to the Committee and Council. The Independent Member will attend all Committee meetings but does not have voting rights.

The administration of the appointment process of the Independent Member will be undertaken by the General Manager Corporate Services.

Notwithstanding the appointment of an Independent Member, the Committee may at any time obtain independent additional professional advice to help it discharge its obligations in respect of any matter dealt with in this Policy.

a. Appointment and Tenure

The appointment of the Independent Member will be conducted as follows:

- Council will call for Expressions of Interest from interested persons to be an Independent Member of the Committee.
- Where there is a vacancy in the position of Independent Member (or an impending vacancy) the Committee will call for Expressions of Interest.
- The Committee will prepare a shortlist, conduct interviews and make a recommendation to Council on the appointment of the Independent Member. The list of all Expressions of Interest considered by the Committee will be provided to Council.

The Independent Member may be appointed for up to five (5) years, or the term of the CEO's contract, whichever is the lesser period.

The Independent Member may be re-appointed by Council subject to Council's procurement requirements.

b. Remuneration

The Independent Member will be remunerated at a rate to be determined by the Council from time to time.

c. Key Competencies

The Independent Member must possess and demonstrate the following key competencies:

- Strong leadership and communication skills
- Skills, expertise and experience in one or more of the following:
  - human resources management (including Executive recruitment, remuneration and talent management)
  - senior business or government (including local government) experience
  - experience with and understanding of employment law
  - demonstrated ability in performance management and development of Executive level staff
- Understanding of good governance and previous experience working with Governance bodies or Boards
- Ability to work effectively with Councillors and the CEO
- Knowledge and understanding of the issues affecting the City of Kingston.

### **5.3 CEO Recruitment and Appointment Process**

The processes leading to a decision to appoint a new CEO will be based on an open and competitive process against objective selection criteria.

In accordance with Council's Procurement Policy and with the support of the General Manager Corporate Services, Council will appoint an experienced and qualified recruitment agency/consultant to administer and conduct the process of selection of a suitable candidate for the position of CEO. The Committee will make recommendations to the Council when

appointing a recruitment agency/consultant, determining the CEO position requirements, selection criteria and developing the CEO's contract of employment.

The recruitment agency/consultant will liaise with the Committee to manage the end to end recruitment process including:

- Review and Finalisation of Position Description;
- Establishment of Selection Criteria;
- Establishment of KPIs for the first 12 months of employment;
- Identify, attract and encourage suitable applicants to apply;
- All aspects of the selection process;
- Contract negotiations (including remuneration and conditions); and
- Reporting to the Committee throughout the process.

The Mayor, supported by the Committee, will lead the process to enable the Council to appoint the CEO. The Committee will provide recommendations and assistance to the Mayor where required and will play a role in ensuring Council is compliant with legislative requirements.

#### **5.4 CEO Contract of Employment**

The appointment of the CEO will be the subject of a Council resolution and the appointee and Council must execute a Contract of Employment outlining the terms and conditions of employment.

The CEO contract will at minimum outline:

- The Position Description
- KPIs
- Conflict of interest management requirements
- The total remuneration package and its inclusions
- Leave and other terms and conditions of employment
- Legislative obligations including those continuing after appointment
- processes for managing unsatisfactory performance and early termination provisions

Council will utilise the independent professional consultant when developing the provisions of the Contract of Employment with a law firm selected from Council's Workforce and Industrial Relations legal services panel. Where required, external additional professional advice may also be obtained regarding the Contract of Employment.

Council's consideration of the option of reappointment or contract renewal and relevant recommendations from the Committee shall be in accordance with the Act and the CEO's Contract of Employment.

#### **5.5 Performance and Remuneration Review**

##### **5.5.1 Performance**

The Committee will develop annually, in conjunction with the CEO, KPIs and make recommendations to Council and accepted by CEO.

KPIs are to be reviewed and adopted by Council annually, based on the Committee's recommendations, to ensure consistency with the Council's priorities and plans as they develop over time. The KPIs are to remain consistent with the intent of the CEO's Position Description and Contract of Employment.

With the assistance and support of the independent professional consultant, Council will provide constructive feedback to the CEO by undertaking:

- Quarterly and/or Bi-annual performance reviews; and
- An annual review based on a formal submission from the CEO outlining their achievements to the KPIs.

These reviews are to clarify Council's expectations and ensures the direction and priorities of the Council and the CEO are aligned.

## **5.5.2 Remuneration**

For the purposes of this policy, total remuneration includes:

- salary;
- cost to employer of motor vehicle (as per Council's Vehicle Policy);
- superannuation; and
- other employment benefits (inclusive of any associated Fringe Benefits Tax).

The Committee will make recommendations to Council on the remuneration of the CEO and undertake an annual review of the total remuneration package as part of the CEO's annual performance review, in accordance with the CEO's contract of employment.

The Committee in collaboration with the independent professional consultant will present a Council report on any recommendation to adjust the CEO's remuneration (and conditions) in accordance with the Contract of Employment and having regard to the prior year performance assessment.

Council will also have regard to 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, as well as any statement of policy issued by the Government of Victoria which is in force with respect to its wages policy (or equivalent).

## **5.6 Performance Management and Disciplinary Action**

This section outlines the protocols to be followed in the event the matter pertains to the CEO and seeks to ensure concerns are addressed before they become significant.

### **5.6.1 Early communication of concerns**

- a. If a Councillor has a concern that the CEO's performance or conduct has been unsatisfactory, the Councillor must communicate any concerns to all members of the Committee, in writing at an early stage. The Councillor should also copy in the Independent Professional Consultant.
- b. The CEO will arrange to meet the Councillor with the concern as soon as practicable after being informed. The Mayor (or the Deputy Mayor, if the concern has been raised by the Mayor) and the Independent Member and the Independent Professional Consultant will be present at the meeting.
- c. The CEO and the Councillor with the concern, will discuss the matter in good faith with a view to resolving the issue.
- d. The CEO will document the outcomes of that communication in an email to the Councillor, copying in the members of the Committee.

### **5.6.2 Engagement of an Independent Mediator**

Where concerns cannot be resolved following the process in clause 5.6.1, the involved Councillor, the CEO, the Mayor or Deputy Mayor may request the independent professional consultant refer the dispute to an independent mediator as agreed by the parties, or otherwise as nominated by a legal services provider on Council's panel.

The Councillor/s and CEO will:

- a. Agree to participate in any mediation process in good faith, with such mediation to operate in a manner as agreed by the CEO and Council; and
- b. Acknowledge the right of either the CEO or Council to appoint, in writing, any other person to act on their behalf in relation to any mediation process.

The cost of the mediation service will be met by Council.

The CEO and Council will each be responsible for paying costs of any advisor or nominated representative used by them.

### **5.6.3 Performance Management**

Should concerns not be resolved or escalate, the following protocol is to be followed and the processes considered by the Committee as soon as practicable, preferably through the quarterly / bi-annual performance review process, and only actioned after being resolved on by Council.

- a. If the Council forms the reasonable opinion that areas of the CEO's performance have not been satisfactory, it must notify the CEO of the issues in writing as soon as practicable after forming that opinion (by resolution).
- b. The written notification should clearly set out:
  - i. the details of the performance concerns;
  - ii. the standard of performance which Council expects to see; and
  - iii. a reasonable timeframe during which the Council requires those areas of performance to be improved to the required standard.
- c. The Council must provide whatever counselling, advice and assistance are reasonably necessary to enable the CEO to improve their performance during that period.
- d. At the end of those timelines, the Council may:
  - i. if it considers that the CEO's performance has reached the required standard, take no further action;
  - ii. if it considers that the CEO's performance has not reached the required standard:
    - extend the timelines for specified improvement for a further specific period; or
    - if the Officer's performance is still unsatisfactory, take further action against the Officer (which may include dismissal upon the minimum amount of notice required by the *Fair Work Act 2009* or any industrial instrument, (whichever is the greater) or payment in lieu of such notice.

All communications to the CEO regarding performance management matters must be in writing and sent by the Mayor, or in the Mayor's absence the Deputy Mayor, and copied to the independent professional consultant.

When responding to communications regarding performance management matters, the CEO should respond to the Mayor (or Deputy Mayor, as applicable) and copy in the independent professional consultant.

If the Councillor forms the view that the matter has not been dealt with to a satisfactory standard, the Councillor will have the option of raising the concerns with the Committee and ultimately for consideration by Council.

#### **5.6.4 Disciplinary Action**

If the Council forms the reasonable opinion that the CEO has engaged in misconduct, the Council may take disciplinary action against the CEO.

Disciplinary action may include:

- a. Counselling – for situations involving relatively minor misconduct; or
- b. Written warnings – for situations where the misconduct is sufficiently serious that repetition may warrant dismissal; or
- c. Dismissal with notice – for situations where the misconduct is sufficiently serious to warrant dismissal, or where misconduct has continued or been repeated despite the provision of a warning or warnings; or
- d. Dismissal without notice – if the CEO has engaged in conduct which meets the criteria for dismissal without notice under their employment agreement.

When taking or considering taking disciplinary action, Council should consider the principles of natural justice.

All communications to the CEO regarding disciplinary matters must be in writing and sent as soon as practicable by the Mayor, (or in the Mayor's absence the Deputy Mayor) and copied to all other Councillors and the independent professional consultant, unless the circumstances (such as the nature of the allegations, and the parties involved) make it inappropriate to include particular individuals.

When responding to communications regarding disciplinary matters, the CEO should respond to the Mayor (or Deputy Mayor, as applicable) and copy in all Councillors, unless the circumstances (such as the nature of the allegations or the response, and the parties involved) make it inappropriate to include particular individuals.

### **5.7 Integrity of the Process**

#### **5.7.1 Conflicts of Interest**

Throughout the implementation of this Policy, Council, Committee members and any professional consultants engaged will take care to identify all perceived, potential or actual Conflicts of Interest. Any identified conflicts must be appropriately considered and managed by all parties involved in CEO employment matters.

#### **5.7.2 Confidentiality and Behaviours**

All information relating to the recruitment, selection and performance review process must be kept strictly confidential. Councillors and staff involved in the process must take all reasonable steps to maintain confidentiality and respect the privacy of all persons involved.

Respectful, open and frank discussions are a part of the structure of the Committee however inappropriate behaviours and/or a breach of confidentiality as it applies to 'confidential information' as defined in the Local Government Act may constitute a contravention of the Councillor Code of Conduct **and the Local Government Act**. (or if/where applicable Staff Code of Conduct).

The Committee shall report on any non-compliance matters to Council.

## **6 Delegation Authority and Decision Guidelines**

### **6.1 Delegations/Authorisations**

There are no delegations applicable to this policy unless resolved by the Council and consistent with the Local Government Act 2020 (Vic)

### **6.2 Exemptions**

In the event of any inconsistency between this policy and the CEO's Contract of Employment, the provisions of the CEO's Contract of Employment shall prevail to the extent of the inconsistency.

### **6.3 Human Rights Charter**

This Policy has been reviewed against and complies with the Charter of Human Rights and Responsibilities Act 2006.

## **7 Related Documents and Resources**

### **Legislation**

- *Local Government Act 2020 (Vic)*
- *Fair Work Act 2009 (Vic)*
- *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019 (Vic)*
- *Equal Opportunity Act 2010 (Vic)*
- *Gender Equality Act 2020 (Vic)*

### **City of Kingston Documents**

- CEO Position Description
- CEO Contract of Employment
- CEO's Key Performance Indicators
- Council's Procurement Policy and procedures
- Councillor Code of Conduct

### **Resources / External Documents**

- National Employment Standards
- Government Policy on Executive Remuneration in Public Entities
- Protecting Integrity – Leading the Way. Managing the employment cycle of a council CEO – Local Government Inspectorate (Victoria) (February 2019)

## **8 Appendix 1 – Employment Matters Committee Terms of Reference**

### **1. Meeting Schedule**

- a. The Committee will meet at least once every six (6) months.
- b. The Committee will provide a report to Council following each meeting.
- c. Special Meetings may be called by the Committee Chair providing two (2) weeks' notice of and the reasons for the Special Meeting.

### **2. Chair**

- a. The Mayor shall Chair the meetings.
- b. In the event the Mayor is not available the Deputy Mayor shall Chair the meeting
- c. The Mayor/Chair has the option to appoint an alternate person to Chair or facilitate the meeting in consultation with the Committee.

### **3. Meeting procedures**

- a. Meetings will follow standard meeting procedures.
- b. All Committee meetings and records are confidential as the matters relate to personnel and contractual matters.
- c. All members have equal voting rights in Committee meetings except the Independent Member.
- d. Majority and minority opinions will be reflected in Committee minutes and provided to Council.

### **4. Conflicts of Interest**

- a. If a Committee Member has a conflict of interest relating to any item on the Agenda, the Member must disclose to the Mayor/Chair, the type and nature of the interest immediately before consideration of the matter in question.

### **5. Quorum and Attendance**

- a. A majority of members of the Committee constitute a quorum, providing that the Mayor or Deputy Mayor and one (1) Independent Member are present.
- b. If, at any scheduled Committee meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting will be adjourned and must re-convene within two (2) weeks of the adjourned meeting.
- c. The CEO will attend meetings, as required.
- d. Virtual attendance is acceptable.
- e. A Member who misses two (2) consecutive meetings without a formal apology may, at the discretion of Council, have their term revoked.

### **6. Minutes of the Meeting**

- a. The independent professional consultant will provide executive support to the Committee.
- b. Where the meeting is also an Informal Meeting of Councillors, an Informal Meeting of Councillors record must also be submitted in accordance with the Governance Rules.
- c. The Agenda shall be distributed at least five (5) working days in advance of the meeting to all Committee members and a call for Agenda items will be made prior to issuing the Agenda.
- d. A copy of the minutes shall be distributed to all Committee members within five (5) working days of the meeting, as far as practicable.
- e. A report to Council will be tabled after every meeting of the Committee, as a confidential report to Council.
- f. Reports to Council should reflect a consensus view. Where consensus cannot be reached, the report should clearly outline the differing points of view i.e., the majority and minority opinions

### **7. Advice to the Committee**

- a. The Committee may obtain legal or other specific expert advice, as required and necessary.
- b. Any formal advice requested by the Committee will be made available to all Committee members and, where relevant and appropriate, will be provided to Council through meeting minutes.
- c. Any advice required by the Committee will be arranged through the Manager Governance to ensure compliance with Council's Procurement policies and procedures.