

# Guidelines on the recruitment of senior council executives

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Office of Local Government, Department of Planning and Environment  
5 O'Keefe Avenue      Locked Bag 3015      Phone 02 4428 4100      [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)  
NOWRA NSW 2541      NOWRA NSW 2541      TTY 02 4428 4209      [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)

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## Introduction

In its investigation of the former Canterbury City Council (Operation Dasha), the Independent Commission Against Corruption (ICAC) identified several corruption risks associated with the recruitment of senior council executives.

These guidelines are informed by the corruption prevention recommendations arising from Operation Dasha and are designed to ensure councils have appropriate systems and recruitment practices in place to address the corruption risks associated with the recruitment of senior council executives identified by ICAC.

These guidelines apply broadly to the recruitment of all senior council executives, not just the holders of "senior staff" positions employed under fixed term contracts.

## Merit selection

Councils deliver a broad range of services and infrastructure to their communities and exercise important regulatory functions. It is critical that the staff employed by councils to undertake these activities have the skills and capabilities necessary to do so.

This is particularly the case at the senior executive level. Senior council executives exercise key roles in councils in overseeing the delivery of services and infrastructure and the exercise of the council's regulatory functions. They have responsibility for large budgets and the management of significant cohorts of staff.

To ensure that councils' functions are undertaken by personnel with the necessary skill and capabilities, the *Local Government Act 1993* (the Act) requires all council recruitment decisions, including the appointment of the general manager and senior council executives, to be made on merit selection principles, unless the appointment is a demotion or lateral transfer.

The key provisions embedding merit selection principles in council recruitment decisions are set out in sections 348 and 349 of the Act. These sections require the following:

- where it is proposed to make an appointment to a position in the organisation structure of the council, the position must be advertised in a manner sufficient to enable suitably qualified persons to apply for the position
- only a person who has applied for appointment to a position may be appointed to it
- that person must be the applicant who had the greatest merit among the pool of applicants eligible for appointment
- the merit of persons eligible for appointment to a position is to be determined according to the nature of the duties of the position, and the abilities, qualifications, experience, and standard of work performance of those persons relevant to those duties
- in determining the merit of a person eligible for appointment to a position, consideration must also be given to equal employment opportunity principles.

These requirements do not apply to the re-appointment of senior council executives under a new contract where they hold a "senior staff" position in the council and are employed under a fixed term contract.

They also do not apply to appointments if the term of employment is for not more than 12 months, or two or more periods that together are not more than 12 months in any period of 2 years.

## Internal recruitment

One of the guiding principles prescribed for councils under section 8A(1)(i) is that councils should be responsible employers and provide a consultative and supportive working environment for staff.

As responsible employers, councils should encourage the development of the skills and capabilities of their staff through activities such as training, multi-skilling, and job rotation. Staff development and organisational design that develops opportunities for career paths within councils can improve productivity and effectiveness in the achievement of the council's objectives.

By actively promoting the development of staff capabilities, councils may find that they have a pool of suitably qualified persons to meet changes in the needs of the council and its community over time.

Where vacancies arise, councils that have actively developed the capabilities of their staff may find that some vacancies can be filled on merit through internal advertisement. This can reduce the time and cost of external advertising and in training external appointees to undertake the role they have been appointed to. It can also provide opportunities for the career progression of staff, particularly in country areas where it may be difficult to attract applicants with the necessary skills and experience.

Before deciding to fill a position through internal advertisement, councils must first be satisfied that there is a suitably skilled and qualified pool of staff so that a merit-based appointment can be made. If the council is not satisfied that this is the case, then it should externally advertise the role.

As noted above, appointments to vacancies may also be filled by lateral transfer without the need to advertise and councils have the discretion to fill positions by the transfer of staff with equivalent skills, accountabilities, and remuneration. This will be particularly important where the organisational structure has changed or for the purposes of job rotation.

## Recruitment policies

One of the corruption risks identified by ICAC in Operation Dasha was that, while the council

had a recruitment and selection policy, procedures and user guide, the document did not cover the recruitment and selection of senior council executives.

ICAC noted that the absence of a policy governing the appointment of senior executives afforded the general manager a wide discretion in relation to decisions such as the composition of interview panels, allowed inconsistent practices to evolve and exposed the process to an unnecessary risk of corruption.

All councils should have a recruitment policy to guide their recruitment practices and to ensure merit selection principles are correctly applied when making decisions on appointments. The recruitment policy should apply to the appointment of all staff including senior executives.

Councils should provide a copy of their recruitment policy together with a copy of these guidelines to all members of recruitment panels for senior council executive positions to ensure proper processes are followed and merit selection principles are correctly applied.

## Use of external recruitment specialists

ICAC noted in Operation Dasha, that the involvement of an external recruitment consultant in the recruitment process for the position of the Director of City Planning ultimately helped highlight the integrity problems in the recruitment process and demonstrated the inherent value in councils using the expertise of human resources professionals during recruitment for senior executive positions.

In undertaking recruitments for senior executive positions, councils should ensure that a senior human resources manager or external recruitment consultant is involved in the recruitment process and has a role in verifying that council processes and

procedures are followed in making appointments.

That person should be provided with copies of the council's recruitment policy and these guidelines to assist them.

## Use of subject matter experts

In Operation Dasha, ICAC observed that no one on the interview panel for the Director of City Planning position had formal qualifications in planning or a related field such as architecture, urban design, or law.

Councils should ensure that a suitable, impartial subject matter expert is included on interview panels for the appointment of senior executives, especially for high-risk positions that require specialised technical knowledge or skills.

Combined with relevant and rigorous questions, subject matter experts have an important role in ensuring that candidates have both suitable experience and the technical knowledge to perform the role.

## The role of internal audit

Councils can use their internal audit function to provide a level of independent assurance over recruitment and employment processes for senior council executives through the conduct of periodic reviews.

Internal audits can add value by recommending ways to improve a council's recruitment processes. They can also help deter corruption by letting staff know that transactions, processes and actions are subject to review and check.

Among other things, periodic internal audits may examine whether:

- positions are adequately advertised in accordance with section 348 of the Act
- a senior human resources manager or external recruitment consultant is involved

in recruitment processes to verify that council processes and procedures are followed

- recruitment panels include suitable, impartial subject matter experts where appropriate
- only persons who applied for positions are appointed to them, and
- in the case of appointments to "senior staff positions" the general manager has consulted with the governing body of the council prior to making the appointment as required under section 337 (see below).

## The role of councillors

Section 335 of the Act expressly confers on the general manager responsibility for the appointment of all staff, including senior executives.

Councillors should not, as a rule, be included on recruitment panels for senior executives or other staff, except in the circumstances set out below.

As ICAC has noted, the inclusion of councillors on recruitment panels has the potential to create confusion about who is responsible for the appointment of the successful candidate. It may also send the wrong message to the employee as to who may give directions about the exercise of their functions. Under the Act senior and other staff are subject to direction by the general manager and not councillors.

The only circumstances where it would be appropriate for councillors to participate in recruitment panels for staff is where the role involves the provision of administrative or other support directly to councillors. When recruiting for such roles, councillors should only comprise a minority of panel members.

## Consultation with councillors on senior staff appointments

Under section 337 of the Act, general managers must consult with the governing



body of the council before making appointments to “senior staff” positions.

“Senior staff” positions are determined by the governing body in consultation with the general manager. The holders of senior staff positions are employed under a fixed term contract based on the standard contract approved by the Office of Local Government.

Under section 332 of the Act, a council may not determine a position to be a “senior staff” position unless:

- the responsibilities, skills and accountabilities of the position are generally equivalent to those applicable to the Executive Band of the *Local Government (State) Award*, and
- the total remuneration package payable with respect to the position is equal to or greater than the minimum remuneration package (within the meaning of Part 3B of the *Statutory and Other Offices Remuneration Act 1975*) payable with respect to senior executives whose positions are graded Band 1 under the *Government Sector Employment Act 2013*. As of 2020/21 this is \$192,600.

It is important to note that section 337 requires this consultation to occur before a decision on appointment has been made. The requirement to consult with the governing body under section 337 will not be satisfied where a general manager informs councillors of their decision after it has been made.

Consultation with the governing body of the council on the appointment of senior staff need not necessarily occur at a formal council meeting. For example, consultation can occur at a councillor briefing, an informal workshop or with each councillor individually by telephone or email.

Where consultation occurs outside of a council meeting, the requirement to consult with the “council” under section 337 necessarily requires that this be undertaken in a way that ensures that all members of the governing body are informed of the proposed decision

and are given the opportunity to provide comment to the general manager.

When consulting with councillors on decisions to appoint senior staff, the general manager should inform them of their proposed decision and provide sufficient information to allow councillors to understand the reasons for the decision and to allow them to provide input into the decision.

When consulting councillors on a decision to appoint a senior staff member, the general manager should consider the views of councillors. However, the ultimate decision to appoint senior staff rests with the general manager and not the governing body. It is therefore not open to the governing body of the council to direct the general manager on the appointment of senior (and any other) staff.

## Reporting

If anyone has any concerns that proper processes may not have been followed in relation to the recruitment of senior council executives, they may report them to the Office of Local Government.

Alternatively, if anyone suspects corrupt conduct in relation to the recruitment of a senior council executive, they should report their concerns to ICAC.

