

GENERAL MANAGER PERFORMANCE MONITORING

PART 7 DIVISION 1 LOCAL GOVERNMENT ACT 1993

INFORMATION SHEET
July 2024

Performance monitoring and assessment of the general manager is one of the most important functions of councillors, and one which often proves challenging for councillors to undertake autonomously.

Statutory requirements are found in Part 3, Division 3 and Part 7, Division 1 of the *Local Government Act 1993* (the Act) and in the *Local Government (Appointment and Performance of General Managers) Order 2024* (the Order). References in this document to sections (s.) are references to the Act, and clauses (cl.) to the Order.

This information sheet is intended to help you navigate those statutory instruments. Additional guidance is available from the Local Government Association of Tasmania.

The Local Government Association of Tasmania makes available a model employment contract with relevant requirements, though this is not reviewed nor endorsed by the Tasmanian Government. Councils should have close regard to the provisions of their existing and future general manager employment contracts in the conduct of the annual performance review cycle. In the event those provisions appear to conflict with statutory requirements councils should seek legal advice.

Privacy, integrity and non-discrimination requirements will apply to human resources processes under separate legislation, including the *Personal Information Protection Act 2004* and *Anti-Discrimination Act 1998*, and councils should liaise with relevant agencies and seek legal advice where required.

Councillors are to ensure the general manager is treated fairly, equitably, and without discrimination in the conduct of the annual performance review cycle (cl. 7(c)).

Responsibility for the performance monitoring of general managers

All councillors are responsible collectively for monitoring the performance of the general manager (s. 28(2)(d)).

The mayor is to lead the performance monitoring of the general manager (s. 27(1)(g)), and is responsible for liaison, on behalf of the council, with the general manager in relation to the performance and exercise of their functions and powers in supporting the council (s. 27(1)(h)). The mayor may delegate these functions to the deputy mayor (s. 27(2A)(b)).

Council is permitted to delegate its performance monitoring function to a panel or similar (s. 22(1)). In the ordinary course, this panel is chaired by the mayor, though the mayor may delegate that function to the deputy mayor.

Annual performance review cycle

The council must undertake a written assessment of the general manager's performance at least once in every 12-month period, commencing from the time the general manager is appointed (cl. 7(a)).

The council and the general manager commence the annual performance review cycle by agreement upon specified, clear and measurable criteria that will be used to evaluate and assess the performance of the general manager (cl. 7(b)).

While these criteria are not prescribed, they might correspond to objectives set in the council's strategic and annual plans; relate to internal organisational outcomes; or relate to the governance of the council and working relationship between the general manager and the council.

The criteria may include the current and future remuneration of the general manager (cl. 7(b)). That is, the council is permitted to set measurable criteria corresponding to remuneration outcomes in the current and subsequent years, which might include the establishment of an explicit performance-based remuneration framework.

There are no statutory steps in the annual performance review cycle. Council should seek professional guidance for the development of an annual performance review process which is suited to council and its general manager (see below). Councils may consider adopting contemporary evaluation processes including '360 degree' feedback and similar, and it may be appropriate in some instances to structure these more involved and detailed evaluations in a biennial cycle.

Obligation to obtain professional support

In undertaking this function, Councillors cannot rely on their ordinary source of professional advice—namely, the provision of qualified advice through the general manager.

For this reason, and reflecting ordinary practice, councillors are obligated to obtain advice and information from at least one person, who is not a councillor, having experience in the conduct of performance assessments for senior management, including the measurement and evaluation of performance against criteria, and who holds appropriate qualifications in contemporary human resource practices and procedures (cl. 7(d)).

Council enjoys discretion in the scope of this service, which might range from assistance through the complete annual review cycle to initial advice as to the setting of performance criteria, with subsequent support as required. Care should be taken to ensure any councillor seeking professional guidance at any stage in the performance monitoring cycle is afforded access to that guidance.

In the ordinary course, the qualified person might be an external recruitment consultant, which is consistent with prevailing practice in the local government sector. While a matter for

Council, it is likely that conflicts of interest make any internal human resources executive to council unsuitable for this role; however, there may be other more appropriate alternatives, including accessing human resources expertise from another council.

Professional and legal support is of paramount importance where council is experiencing performance challenges or is considering discontinuing the employment of the general manager. It is essential to seek professional guidance to ensure the general manager is afforded procedural fairness and council's conduct as an outcome of the performance review cycle is lawful.

Documentation

Council is required to document its performance monitoring cycle and must include these reports in the minutes of an open or closed council meeting (cl. 7(e)).

While the Order does contemplate the option of publication of this information in minutes made available to the general public, it is considered generally advisable that employee information be kept confidential. The general manager should be consulted prior to the inclusion of performance information in the open meeting minutes. Care is advised especially where this information may be adverse, as its publication could cause harm to the general manager and engage other legal obligations of council in its capacity as the general manager's employer.