

DISCUSSION PAPER

Merit-based recruitment in councils

March 2023

Contents

Contents.....	2
How to make a submission.....	3
Context.....	4
Background.....	4
This Discussion Paper	5
Section 1: Reinstating a merit principle in the Local Government Act	5
Section 2: Requiring that vacancies in the position of general manager be advertised and that appointments be according to merit.....	8
Section 3: General manager recruitment and performance assessment principles	9

How to make a submission

Submissions on the options for reform presented in this paper are welcome from members of the community, stakeholders, councils, council staff, and elected representatives. Respondents are encouraged to review the principles, specific reform proposals, and context outlined in this paper to inform their feedback.

Submissions might consider the following prompts:

- Do you expect that a requirement that councils make decisions to appoint or promote employees based on merit will improve council services?
- Would this principle support or hinder access to employment opportunities in councils by the Tasmanian community?
- How can councils, and councillors, be supported to identify the best possible candidate for a vacancy in the important role of general manager?

Submissions by email to lgconsultation@dpac.tas.gov.au are preferred. Alternatively, submissions may be provided by mail, addressed to:

Attention: Merit-based recruitment in councils discussion paper
Office of Local Government
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

Submissions must be received by midnight on 19 April 2023.

In the absence of clear information that a submission is to be treated as confidential, submissions will be treated as public information and published on the Department of Premier and Cabinet's website. If you would like your submission to be treated as confidential, you must indicate in writing, at the time of providing your submission, the parts of your submission you wish to remain confidential and provide the reasons for this.

Please consult the Tasmanian Government's [Public Submission Policy](#) for further information.

Submissions will be published after consideration by Government.

Context

Background

The Tasmanian Government is pursuing an ambitious reform program to enhance the capability of our system of local government in Tasmania. Alongside the Future of Local Government Review and reforms to the Local Government Code of Conduct Framework, it is opportune to pursue more targeted changes to resolve issues arising within the sector.

Importantly, this paper responds directly to reform recommendations contained in *Report of the Auditor-General No. 2 of 2021-22: Council general manager recruitment, appointment and performance assessment* and the Integrity Commission's *2023 CEO Report of the Investigation: Investigation Smithies: Systemic Issues*.

The discussion paper is seeking feedback on two related legislative and regulatory amendments to clarify and improve standards for the recruitment of council staff and of council general managers. These related matters are considerably separately within the statutory framework established by the *Local Government Act 1993* (the Act).

Tasmania is one of two Australian jurisdictions—the other being Queensland—which does not include some variation on a requirement that local government employees be appointed based on merit within their local government legislation. Tasmania's Act did contain a merit principle for the appointment of employees historically, which was removed through the *Local Government Amendment Act 2005*.

This discussion paper proposes that a merit principle be reinstated in the Local Government Act. This will require the elected council and general managers, in their respective capacities, to ensure councils undertake recruitment in accordance with the merit principle.

Government separately undertook in 2021 to put in place a Ministerial Order regarding the appointment and performance management of council general managers. Scope to make an order for this purpose is provided under section 61A of the Local Government Act, which was inserted through the *Local Government Amendment (Targeted Review) Act 2017*.

This discussion paper canvasses a change to section 61(3) of the Act to enable this order to be made. Government's intention in pursuing the Ministerial Order is that councils will need to invite applications from their community, and more widely, for a vacancy in the position of general manager. The process councils are required to undertake to appoint and general managers will be tied to the definition of merit introduced into the Act in respect of employees.

Finally, the paper presents the principles to be embedded in the future order made under section 61A. The Minister for Local Government is required, at section 61A(3), to consult with councils as to the matters the Minister is considering including in the order. The Minister for Local Government has endorsed this discussion paper as the mechanism to fulfil that statutory requirement to consult with councils.

This Discussion Paper

This paper has been drafted to inform the community of proposed legislative amendments, and the related and subsequent ministerial order in relation to general manager appointment and performance management. It includes a brief overview of provisions relating to merit-based appointments of staff and the appointment of general managers in other Australian jurisdictions, and outlines the existing provisions of the Act.

Section 1: Reinstating a merit principle in the Local Government Act

It is proposed that the Act be amended to reinstate a clear expectation that the appointment and promotion of council employees be according to merit. It is acknowledged that many Tasmanian councils maintain employment practices, and policy and procedure documentation, which is consistent with that principle. However, a legislated expectation is considered beneficial for consistency and its broad application.

Appointment according to merit means, in general terms, that:

- eligible applicants are provided a fair chance to seek work in local government workplaces;
- selection is based only upon the relative ability of applicants for roles to perform in that role; and
- the candidates selected are those most capable, ensuring the workforce is of high quality.¹

The Tasmanian State Service is bound by the *State Service Act 2000* and associated Employment Directions to recruit and promote according to the merit principle. State public service legislation in all jurisdictions contains variations on the merit principle, as does the *Public Service Act 1999* (Cth). It is sometimes formulated as a joint 'merit and equity' principle.

Until 2005, Tasmania's Act required that "A council is to ensure that ... all employees are appointed and promoted according to merit and without discrimination; and ... all employees receive fair and equitable treatment without discrimination." This reference to employment according to merit was omitted in the amendments made in the Local Government Amendment Act in 2005.

It is difficult to be definitive about the reasons for this change. Project and legislative documentation from the time suggests that revisions to the Act (at section 63) were primarily intended to clarify the respective roles of general managers and councillors in regards to employees. It may also be the case that a view was taken that matters were addressed sufficiently by the *Anti-Discrimination Act 1998*, which does apply to employment decisions taken by councils.

The local government legislation of all other Australian jurisdictions, excepting Queensland, provides for appointment according to merit. These provisions are outlined in the table overleaf.

¹ Adapted from New South Wales' Independent Commission Against Corruption, [Recruitment and selection - Independent Commission Against Corruption \(nsw.gov.au\)](https://www.icac.nsw.gov.au/Recruitment-and-selection)

	Tasmania	Queensland	Victoria	New South Wales	South Australia	Western Australia	Northern Territory
Are councils required in legislation to appoint employees according to merit?	No.	No.	Yes. Victoria's <i>Local Government Act 2020</i> requires at s48(2)(a) that a council's Chief Executive Officer must adopt and maintain a recruitment policy ensure that selection processes are based on merit; supports transparency in recruitment processes and the public advertising of positions; and have regard to gender equity, diversity, and inclusiveness measures.	Yes. New South Wales' <i>Local Government Act 1993</i> provides at s348 that, for appointments of 12 months or more, a council <i>must</i> advertise the vacancy in a manner sufficient to enable suitably qualified applicants to apply. The appointed person must (at s349) be from among the applicants; and must be the applicant with the greatest merit. That determination is made with respect to the nature of the duties of the position; the abilities, qualifications, experience and work performance of the applicants, relevant to those duties; and equal opportunity objectives, including the elimination of discrimination on specified grounds and the promotion of equal employment opportunities.	Yes. South Australia <i>Local Government Act 1999</i> provides at s107(2)(a) that selection processes are based on an assessment of merit and are fair and equitable.	Yes. Western Australia's <i>Local Government Act 1995</i> provides at s5.40 that employees are to be selected and promoted in accordance with principles of merit and equity; and that powers with respect to employees may not be exercised based on nepotism or patronage.	Yes. S172(a) provides that a council must adopt policies on human resource management and ensure that those policies give effect to selection processes for appointment, or promotion, based on merit; and which are fair and equitable. Section 173 requires that a general manager must maintain employment policies consistent with those principles.
Must a vacancy in the position of general manager/Chief Executive Officer (CEO) be advertised?	No	No.	No. Under sections 44 and 45 the council must adopt a Chief Executive Officer Employment and Remuneration Policy, requiring independent professional advice, and appoint a CEO in accordance with that policy. Victoria's Local Government Inspectorate notes that the "current arrangements give full discretion to councils on how they employ their CEOs and under what conditions." ²	Yes. Sections 348 and 349 apply to a vacancy in the office of general manager.	Yes. S98(3) requires that the council must invite applications for a vacancy by advertising on a website determined by the council.	Yes. S5.36(4) provides that a position of a local government CEO must be advertised if it becomes vacant, in accordance with the prescribed manner, <i>unless</i> the position is to be filled by a person of a prescribed class (which exempts at section 18A of the Local Government (Administration) Regulations 1996 the appointment of persons employed, <i>and who will continue to be employed</i> , at another council). Standards for recruitment and performance management may be prescribed. CEO contract renewals are subject to advertising and a contested process after 10 years, under the Local Government (Administration) Amendment Regulations 2020, at c13.	Yes. S169 provides the vacancy must be advertised within six weeks' of its occurrence and as prescribed (with the Local Government (General) Regulations 2021 providing at c109(1)(a) that the its advertising include a newspaper circulating in the area).

² <https://www.lgi.vic.gov.au/summary-ceo-employment-cycle-report>

The 2023 Integrity Commission CEO report titled 'Investigation Smithies: Systemic Issues' recommends that the Minister for Local Government implement a requirement in the Act for employees to be recruited on merit. The Report describes systemic issues at one Tasmanian council stemming from a lack of proper recruitment policy and procedure. A further recommendation regarding model employment policies will be considered separately and at a later time.

This discussion paper proposes, as recommended, that a requirement to recruit employees according to merit be reinserted into the Act. It is intended this draw on the formulations of merit found at sections 7(1) and (2) of the State Service Act (within the State Service Principles), to promote alignment between the employment practices of local government and the Tasmanian State Service.

Specifically it is proposed that:

- A council will be required to adopt policies, and a general manager to adopt practices and procedures, such that:
 - council employees are appointed and promoted based on merit;
 - there is reasonable opportunity for members of the community to apply for employment in local government;
 - recruitment decisions, including the merit assessment process, are documented; and
 - the council promotes fairness and equity in employment, including access to employment opportunities.
- A decision to appoint or promote an employee is based on merit where:
 - an assessment is made based on the relative suitability of the candidates for the duties;
 - the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties;
 - the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
 - the assessment is the primary consideration in making the decision.

It is not proposed that:

- a uniform requirement be imposed that councils, for example, be required to solicit applications for all positions; or
- statutory scope be created for the review of individual local government employment decisions in respect of these principles.

Rather, a legislated requirement will place a clear onus on councils to maintain a high standard of human resources management. State entities with a remit including local government, namely the Director of Local Government, Integrity Commission, and Tasmanian Ombudsman, are empowered to monitor councils' systemic compliance with legislated requirements, and these reinstated and expanded requirements would be within their remit.

Feedback on this proposition is encouraged. Specifically, feedback might have regard to:

- whether the proposition balances appropriately the merit principle with the principle of equitable access to employment and promotion;
- whether the degree of operational separation, namely that the requirements be embedded and operationalised through council policy, practices, and procedures, is appropriate; and
- whether the proposition adequately focuses the legislative intent on systemic standards, rather than individual employment decisions.

Section 2: Requiring that vacancies in the position of general manager be advertised and that appointments be according to merit

The Report of the Auditor-General into Council General Manager Recruitment, Appointment and Performance Assessment (the Report), released October 2021, recommended that the Minister for Local Government “develop and issue mandatory requirements and supplementary guidance on recruitment, appointment and performance assessment processes that are consistent with contemporary HR practice.” The Report considered six council general manager recruitment processes (and six council performance assessment processes), and provided a separate assurance report considering the contemporaneous Huon Valley Council general manager recruitment process.

The Minister for Local Government at that time, as noted in the Report, affirmed Government’s intentions to make a ministerial order, under section 61A of the Act, providing standards for general manager appointment and performance assessment.

In considering matters to be prescribed in a section 61A order, it was identified that a threshold requirement was that councils be required to advertise a vacancy and receive applications from the community, considered broadly. This is not presently required in the Act, and its introduction is considered timely. As outlined in the table in section 1 of this paper, four of seven Australian jurisdictions require that councils solicit applications for a general manager (or CEO) vacancy.

It is noted that the role of general manager is a highly important one, being responsible for the day-to-day operations of the council, and implementing the decisions, policies, plans, and programs of the council. These unique functions of a general manager sharpen the imperative that a council obtains the best candidate among eligible and interested persons for that role.

One of the six general manager recruitment processes described in the Report was a direct appointment, without advertising, and it is noted that other councils have appointed general managers similarly. Without any suggestion that individual processes did not appoint meritorious candidates, it is considered that the interests of the community are better served if applications are sought and a competitive selection process, consistent with the merit principle, undertaken to appoint a general manager. Councils undertaking a competitive process can be more confident that the most suitable candidate will be appointed to the vacancy.

It is acknowledged that at least one council has advocated for direct appointment following internal succession planning. As outlined in the Report, succession planning—while desirable—is

a separate process to recruitment in contemporary human resources practice. Succession planning identifies and develops future leaders so that employers are prepared for the departure of employees in key positions—but those persons are tested through a competitive recruitment process, to confirm suitability for a role. As such, succession planning within councils is not considered a sufficient argument against reform.

Section 61(3) of the Act provides that “If there is a vacancy in the position of general manager and the council chooses to invite applications for that vacancy, the council is to place, in a daily newspaper circulating in the municipal area, a public notice inviting such applications.” This provision, in its optionality, does not permit the making of a section 61A order imposing the requirement that a vacancy be advertised.

This discussion paper seeks feedback on the proposition that this section of the Act be replaced with an express requirement that a vacancy in the position of general manager be advertised and applications sought from the community.

It is noted that the statutory requirement in Western Australia makes provision for appointment *without* advertising where an appointee is a current, and continuing, employee of another council. This exception is considered desirable, as it facilitates arrangements including the joint or shared appointment of a general manager, a model which is adopted presently by some Tasmanian councils. A similar provision is being considered.

Noting the separate proposition that a merit principle for recruitment and promotion be introduced into the Act, it is further proposed that the appointment of general managers must be in accordance with that principle, as outlined in Section 1 of this paper.

Section 3: General manager recruitment and performance assessment principles

As outlined, Government intends to put in place a ministerial order under section 61A of the Act providing standards for general manager recruitment and performance assessment. This responds to the recommendation contained in the Report of the Auditor-General that mandatory requirements be put in place. It is noted that the element of the recommendation pertaining to supplementary guidance will be considered at a later time.

Section 61A(3) requires that “Before making ... an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order...” This discussion paper outlines the matters the Minister for Local Government intends to make in the future section 61A order, in fulfilment of this requirement.

The Director of Local Government wrote to the Local Government Association of Tasmania in October 2021 outlining an initial set of policy directions proposed for the order, and soliciting feedback from the Association on behalf of councils. Feedback received was broadly supportive, and was taken into consideration in the principles as proposed (noting the discussion of succession planning within section 2 of this paper).

Subsequent to, and conditional on, the final drafting and legislation of the Local Government Amendment Bill 2023, it is proposed that the Minister for Local Government make an order under section 61A providing that:

Recruitment

- The process for the appointment of the general manager must be:
 - open and competitive
 - based on an assessment against a detailed role description, including selection criteria,
 - informed by the recommendations of a selection panel, comprising a majority of councillors and supported by persons appropriately qualified in contemporary human resources practices and the recruitment of senior management personnel, and
 - documented comprehensively, including the evaluation of candidates against the criteria in the role description.
- Conflicts of interest of any participant must be documented and appropriate mitigation strategies must be agreed by the panel and documented. Where a councillor, member of a selection panel, or consultant cannot reasonably mitigate a conflict of interest with a candidate due to the nature of that conflict, their participation in the general manager recruitment process must be discontinued.
- All reports from the selection panel and decisions of council are to be included in the open or closed minutes of a council meeting.

Performance assessment

- General managers must be treated fairly in the assessment of their performance, including with consideration to merit, equity, and transparency of the performance assessment process.
- The performance management of a general manager is to be:
 - conducted on at least an annual basis,
 - based on clear and measurable goals agreed with the general manager and the council, and the evaluation of those goals,
 - based on advice from persons appropriately qualified in contemporary human resources practices in the conduct of the performance assessment cycle, including in the measurement and evaluation of performance against the agreed goals, and
 - documented and recorded in the open or closed minutes of a council meeting
- Decisions of council regarding the remuneration and reappointment of general managers are to have regard to its most recent performance assessment.

Variation from the Ministerial Order

A council may seek in writing approval from the Director of Local Government to vary the application of a provision of this order to a specific, prospective general manager recruitment or performance assessment process.