Local Government Act 1995

Local Government (Administration) Amendment Regulations 2021

SL 2021/14

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Local Government (Administration) Amendment Regulations 2021*.

2. Commencement

These regulations come into operation as follows —

(a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;

(b) the rest of the regulations — on the day on which the *Local Government Legislation Amendment Act 2019* section 22 comes into operation.

3. Regulations amended

These regulations amend the *Local Government (Administration) Regulations 1996*.

4. Regulation 18A amended

(1) In regulation 18A(1) delete "is to advertise the position in a newspaper circulating generally through the State" and insert:

must give Statewide public notice of the position

(2) In regulation 18A(2):

(a) delete "An advertisement referred to in subregulation (1) is to" and insert:

The Statewide public notice must

(b) after paragraph (d) insert:

(da) a website address where the job description form for the position can be accessed; and

5. Regulations 18C and 18D deleted

Delete regulations 18C and 18D.

6. Regulations 18FA to 18FC inserted

After regulation 18F insert:

18FA. Model standards for CEO recruitment, performance and termination (Act s. 5.39A(1))

Schedule 2 sets out model standards for local governments in relation to the following —

(a) the recruitment of CEOs;

(b) the review of the performance of CEOs;

(c) the termination of the employment of CEOs.

18FB. Certification of compliance with adopted standards for CEO recruitment (Act s. 5.39B(7))

(1) In this regulation —

adopted standards means —

(a) the standards adopted by a local government under section 5.39B; or

(b) if the local government has not adopted standards under that section, the standards taken under section 5.39B(5) to be the local government's adopted standards.

(2) This regulation applies if —

(a) a local government employs a person in the position of CEO of the local government; and

(b) the local government's adopted standards in relation to the recruitment of CEOs apply to the employment.

(3) As soon as practicable after the person is employed in the position of CEO, the local government must, by resolution*, certify that the person was employed in accordance with the local government's adopted standards in relation to the recruitment of CEOs.

* Absolute majority required.

(4) The local government must give a copy of the resolution to the Departmental CEO within 14 days after the resolution is passed by the local government.

18FC. Certification of compliance with adopted standards for CEO termination (Act s. 5.39B(7))

(1) In this regulation —

adopted standards has the meaning given in regulation 18FB(1).

(2) This regulation applies if a local government terminates the employment of the CEO of the local government.

(3) As soon as practicable after the CEO's employment is terminated, the local government must, by resolution*, certify that the CEO's employment was terminated in accordance with the local government's adopted standards in relation to the termination of the employment of CEOs.

* Absolute majority required.

(4) The local government must give a copy of the resolution to the Departmental CEO within 14 days after the resolution is passed by the local government.

7. Schedule 2 inserted

After Schedule 1 insert:

Schedule 2 — Model standards for CEO recruitment, performance and termination

[r. 18FA]

Division 1 — Preliminary provisions

1. Citation

These are the [*insert name of local government*] *Standards for CEO Recruitment, Performance and Termination*.

2. Terms used

(1) In these standards —

Act means the *Local Government Act 1995*;

additional performance criteria means performance criteria agreed by the local government and the CEO under clause 16(1)(b);

applicant means a person who submits an application to the local government for the position of CEO;

contract of employment means the written contract, as referred to in section 5.39 of the Act, that governs the employment of the CEO;

contractual performance criteria means the performance criteria specified in the CEO's contract of employment as referred to in section 5.39(3)(b) of the Act;

job description form means the job description form for the position of CEO approved by the local government under clause 5(2);

local government means the [*insert name of local government*];

selection criteria means the selection criteria for the position of CEO determined by the local government under clause 5(1) and set out in the job description form;

selection panel means the selection panel established by the local government under clause 8 for the employment of a person in the position of CEO.

(2) Other terms used in these standards that are also used in the Act have the same meaning as they have in the Act, unless the contrary intention appears.

Division 2 — Standards for recruitment of CEOs

3. Overview of Division

This Division sets out standards to be observed by the local government in relation to the recruitment of CEOs.

4. Application of Division

(1) Except as provided in subclause (2), this Division applies to any recruitment and selection process carried out by the local government for the employment of a person in the position of CEO.

(2) This Division does not apply —

(a) if it is proposed that the position of CEO be filled by a person in a class prescribed for the purposes of section 5.36(5A) of the Act; or

(b) in relation to a renewal of the CEO's contract of employment, except in the circumstances referred to in clause 13(2).

5. Determination of selection criteria and approval of job description form

(1) The local government must determine the selection criteria for the position of CEO, based on the local government's consideration of the knowledge, experience, qualifications and skills necessary to effectively perform the duties and responsibilities of the position of CEO of the local government.

(2) The local government must, by resolution of an absolute majority of the council, approve a job description form for the position of CEO which sets out —

(a) the duties and responsibilities of the position; and

(b) the selection criteria for the position determined in accordance with subclause (1).

6. Advertising requirements

(1) If the position of CEO is vacant, the local government must ensure it complies with section 5.36(4) of the Act and the *Local Government (Administration) Regulations 1996* regulation 18A.

(2) If clause 13 applies, the local government must advertise the position of CEO in the manner referred to in the *Local Government (Administration) Regulations 1996* regulation 18A as if the position was vacant.

7. Job description form to be made available by local government

If a person requests the local government to provide to the person a copy of the job description form, the local government must —

(a) inform the person of the website address referred to in the *Local Government (Administration) Regulations 1996* regulation 18A(2)(da); or

(b) if the person advises the local government that the person is unable to access that website address —

(i) email a copy of the job description form to an email address provided by the person; or

(ii) mail a copy of the job description form to a postal address provided by the person.

8. Establishment of selection panel for employment of CEO

(1) In this clause —

independent person means a person other than any of the following —

(a) a council member;

(b) an employee of the local government;

(c) a human resources consultant engaged by the local government.

(2) The local government must establish a selection panel to conduct the recruitment and selection process for the employment of a person in the position of CEO.

(3) The selection panel must comprise —

(a) council members (the number of which must be determined by the local government); and

(b) at least 1 independent person.

9. Recommendation by selection panel

(1) Each applicant's knowledge, experience, qualifications and skills must be assessed against the selection criteria by or on behalf of the selection panel.

(2) Following the assessment referred to in subclause (1), the selection panel must provide to the local government —

(a) a summary of the selection panel's assessment of each applicant; and

(b) unless subclause (3) applies, the selection panel's recommendation as to which applicant or applicants are suitable to be employed in the position of CEO.

(3) If the selection panel considers that none of the applicants are suitable to be employed in the position of CEO, the selection panel must recommend to the local government —

(a) that a new recruitment and selection process for the position be carried out in accordance with these standards; and

(b) the changes (if any) that the selection panel considers should be made to the duties and responsibilities of the position or the selection criteria.

(4) The selection panel must act under subclauses (1), (2) and (3) —

(a) in an impartial and transparent manner; and

(b) in accordance with the principles set out in section 5.40 of the Act.

(5) The selection panel must not recommend an applicant to the local government under subclause (2)(b) unless the selection panel has —

(a) assessed the applicant as having demonstrated that the applicant's knowledge, experience, qualifications and skills meet the selection criteria; and

(b) verified any academic, or other tertiary level, qualifications the applicant claims to hold; and

(c) whether by contacting referees provided by the applicant or making any other inquiries the selection panel considers appropriate, verified the applicant's character, work history, skills, performance and any other claims made by the applicant.

(6) The local government must have regard to, but is not bound to accept, a recommendation made by the selection panel under this clause.

10. Application of cl. 5 where new process carried out

(1) This clause applies if the local government accepts a recommendation by the selection panel under clause 9(3)(a) that a new recruitment and selection process for the position of CEO be carried out in accordance with these standards.

(2) Unless the local government considers that changes should be made to the duties and responsibilities of the position or the selection criteria —

(a) clause 5 does not apply to the new recruitment and selection process; and

(b) the job description form previously approved by the local government under clause 5(2) is the job description form for the purposes of the new recruitment and selection process.

11. Offer of employment in position of CEO

Before making an applicant an offer of employment in the position of CEO, the local government must, by resolution of an absolute majority of the council, approve —

(a) the making of the offer of employment to the applicant; and

(b) the proposed terms of the contract of employment to be entered into by the local government and the applicant.

12. Variations to proposed terms of contract of employment

(1) This clause applies if an applicant who is made an offer of employment in the position of CEO under clause 11 negotiates with the local government a contract of employment (the ***negotiated contract***) containing terms different to the proposed terms approved by the local government under clause 11(b).

(2) Before entering into the negotiated contract with the applicant, the local government must, by resolution of an absolute majority of the council, approve the terms of the negotiated contract.

13. Recruitment to be undertaken on expiry of certain CEO contracts

(1) In this clause —

commencement day means the day on which the *Local Government (Administration) Amendment Regulations 2021* regulation 6 comes into operation.

(2) This clause applies if —

(a) upon the expiry of the contract of employment of the person (the ***incumbent CEO***) who holds the position of CEO —

(i) the incumbent CEO will have held the position for a period of 10 or more consecutive years, whether that period commenced before, on or after commencement day; and

(ii) a period of 10 or more consecutive years has elapsed since a recruitment and selection process for the position was carried out, whether that process was carried out before, on or after commencement day;

and

(b) the incumbent CEO has notified the local government that they wish to have their contract of employment renewed upon its expiry.

(3) Before the expiry of the incumbent CEO's contract of employment, the local government must carry out a recruitment and selection process in accordance with these standards to select a person to be employed in the position

of CEO after the expiry of the incumbent CEO's contract of employment.

(4) This clause does not prevent the incumbent CEO's contract of employment from being renewed upon its expiry if the incumbent CEO is selected in the recruitment and selection process referred to in subclause (3) to be employed in the position of CEO.

14. Confidentiality of information

The local government must ensure that information provided to, or obtained by, the local government in the course of a recruitment and selection process for the position of CEO is not disclosed, or made use of, except for the purpose of, or in connection with, that recruitment and selection process.

Division 3 — Standards for review of performance of CEOs

15. Overview of Division

This Division sets out standards to be observed by the local government in relation to the review of the performance of CEOs.

16. Performance review process to be agreed between local government and CEO

(1) The local government and the CEO must agree on —

(a) the process by which the CEO's performance will be reviewed; and

(b) any performance criteria to be met by the CEO that are in addition to the contractual performance criteria.

(2) Without limiting subclause (1), the process agreed under subclause (1)(a) must be consistent with clauses 17, 18 and 19.

(3) The matters referred to in subclause (1) must be set out in a written document.

17. Carrying out a performance review

(1) A review of the performance of the CEO by the local government must be carried out in an impartial and transparent manner.

(2) The local government must —

(a) collect evidence regarding the CEO's performance in respect of the contractual performance criteria and any additional performance criteria in a thorough and comprehensive manner; and

(b) review the CEO's performance against the contractual performance criteria and any additional performance criteria, based on that evidence.

18. Endorsement of performance review by local government

Following a review of the performance of the CEO, the local government must, by resolution of an absolute majority of the council, endorse the review.

19. CEO to be notified of results of performance review

After the local government has endorsed a review of the performance of the CEO under clause 18, the local government must inform the CEO in writing of —

(a) the results of the review; and

(b) if the review identifies any issues about the performance of the CEO — how the local government proposes to address and manage those issues.

Division 4 — Standards for termination of employment of CEOs

20. Overview of Division

This Division sets out standards to be observed by the local government in relation to the termination of the employment of CEOs.

21. General principles applying to any termination

(1) The local government must make decisions relating to the termination of the employment of a CEO in an impartial and transparent manner.

(2) The local government must accord a CEO procedural fairness in relation to the process for the termination of the CEO's employment, including —

(a) informing the CEO of the CEO's rights, entitlements and responsibilities in relation to the termination process; and

(b) notifying the CEO of any allegations against the CEO; and

(c) giving the CEO a reasonable opportunity to respond to the allegations; and

(d) genuinely considering any response given by the CEO in response to the allegations.

22. Additional principles applying to termination for performance-related reasons

(1) This clause applies if the local government proposes to terminate the employment of a CEO for reasons related to the CEO's performance.

(2) The local government must not terminate the CEO's employment unless the local government has —

(a) in the course of carrying out the review of the CEO's performance referred to in subclause (3) or

any other review of the CEO's performance, identified any issues (the ***performance issues***) related to the performance of the CEO; and

(b) informed the CEO of the performance issues; and

(c) given the CEO a reasonable opportunity to address, and implement a plan to remedy, the performance issues; and

(d) determined that the CEO has not remedied the performance issues to the satisfaction of the local government.

(3) The local government must not terminate the CEO's employment unless the local government has, within the preceding 12-month period, reviewed the performance of the CEO under section 5.38(1) of the Act.

23. Decision to terminate

Any decision by the local government to terminate the employment of a CEO must be made by resolution of an absolute majority of the council.

24. Notice of termination of employment

(1) If the local government terminates the employment of a CEO, the local government must give the CEO notice in writing of the termination.

(2) The notice must set out the local government's reasons for terminating the employment of the CEO.

N. HAGLEY, Clerk of the Executive Council.