



Tasmanian
Audit Office

**Report of the Auditor-General
No. 2 of 2021-22**

Council general manager recruitment,
appointment and performance assessment

12 October 2021

The Role of the Auditor-General

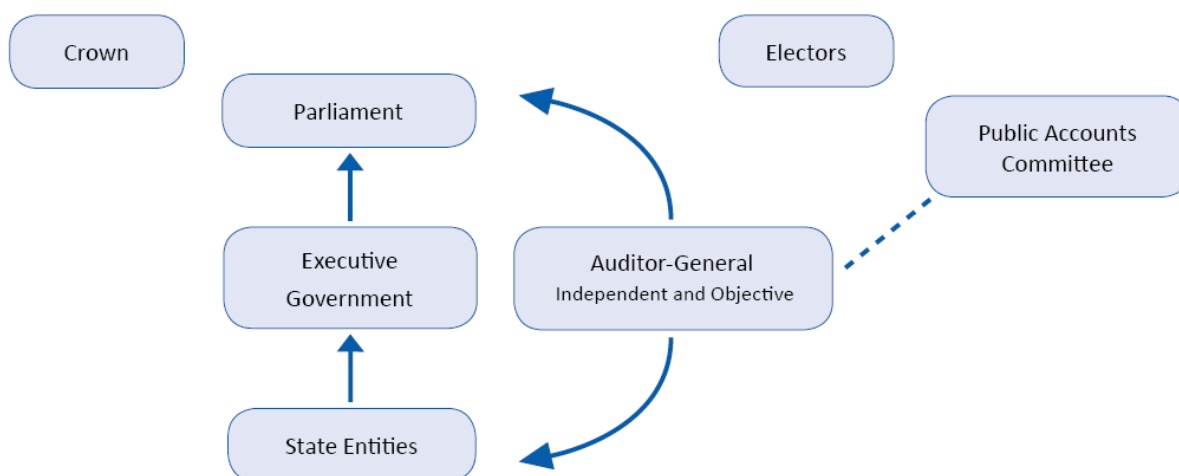
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**2021
PARLIAMENT OF TASMANIA**

Council general manager recruitment, appointment and performance assessment

12 October 2021

Presented to both Houses of Parliament pursuant to
Section 30(1) of the *Audit Act 2008*

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ISBN: 978-0-6450792-4-1

12 October 2021

President, Legislative Council
Speaker, House of Assembly
Parliament House
HOBART TAS 7000

Dear President, Speaker

Report of the Auditor-General No. 2 of 2021-22 – Council general manager recruitment, appointment and performance assessment

This report, which has been prepared consequent to examinations conducted under section 23 of the *Audit Act 2008*, contains two assurance reports. The first relates to an audit of council general manager recruitment, appointment and performance assessment, and the second relates to a review of Huon Valley Council's recent general manager recruitment.

The objective of the audit of council general manager recruitment, appointment and performance assessment was to form a reasonable assurance conclusion on whether recruitment and appointment of general managers by local government councils was conducted in accordance with the principles of merit, equity and transparency and whether performance assessments followed the principles of fairness, integrity and impartiality and were aligned with councils' strategic objectives.

The objective of the review of Huon Valley Council's recent general manager recruitment was to form a conclusion on the effectiveness of Huon Valley Council's management of conflicts of interest during the process to recruit a general manager.

Yours sincerely



Rod Whitehead
Auditor-General

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Foreword

Council general managers are pivotal to the success of councils and the community they serve. Their role is diverse and encompasses helping council set its strategic direction and long term plan through to responsibility for the day-to-day operations and affairs of the council, including the management of its resources and assets.

Councils can be strengthened by searching, selecting and appointing the right person for the general manager position. At a high-level, recruitment, selection and appointment activities involve analysing the inherent requirements of a job, attracting and screening applicants and offering employment to the preferred applicant. However, the job market is more competitive than ever. As a result, the approach also needs to be more proactive, inclusive and transparent than it has been in the past.

A structured and transparent approach to general manager performance assessment can optimise a council's relationship with its general manager through mutually agreed performance expectations. It can also improve the overall performance of a council by aligning the general manager's performance with the council's objectives and transparently linking performance outcomes to remuneration and reappointment. An effective performance assessment process provides the mechanism through which general managers can set and be supported to achieve developmental goals that may also benefit council.

As no guidance has yet been issued under the *Local Government Act 1993*, section 61A *Order relating to appointment and performance of general managers*, the framework used to assess the performance of councils in recruiting, appointing and reviewing the performance of general managers is based on guidance and directions issued to councils in other Australian jurisdictions. Such guidance and directions encapsulate the principles of merit, equity and transparency for appointment and the principles of fairness, integrity and impartiality for performance assessment.

My hope from this audit is twofold. Firstly, to inform the Parliament on identified better practice relating to general manager recruitment, appointment and performance assessment. Secondly, to provide some practical recommendations to improve future general manager recruitment, appointment and performance assessment activities.

I also conducted a limited assurance review of Huon Valley Council's management of conflict of interests during their recent general manager recruitment process. I decided it was in the public interest to review how effective their management of an actual and significant conflict of interest was and whether their approach ensured a fair process free from potential bias that ensured public trust and confidence in the appointment to this important position.



Rod Whitehead
Auditor-General

12 October 2021

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Independent assurance report

This independent assurance report is addressed to the President of the Legislative Council and the Speaker of the House of Assembly. It relates to my audit of recruitment, appointment and performance assessment of local government council general managers.

Audit objective

The objective of the audit was to form a reasonable assurance conclusion on whether recruitment and appointment of general managers by local government councils was conducted in accordance with the principles of merit¹, equity and transparency and whether performance assessments followed the principles of fairness, integrity and impartiality and were aligned with councils' strategic objectives.

Audit scope

The audit examined and analysed general manager recruitment, selection and appointment and performance assessment information for the following councils:

| Recruitment, selection and appointment | Performance assessment |
|--|------------------------|
| Brighton | Circular Head |
| Burnie City | Central Highlands |
| Clarence | Huon Valley |
| George Town | Launceston City |
| Meander Valley | Northern Midlands |
| West Coast. | Sorell. |

Councils were selected based on their size and location in addition to time the general manager had been in the position.

¹ For this audit, the principle of merit is based on the definition in section 10A(2) of the *Public Service Act 1999* (Cth) A decision to engage or promote a person is based on merit if:

- all eligible members of the community are given a reasonable opportunity to apply
- an assessment is made of the relative suitability of candidates, using a competitive selection process
- the assessment is based on the relationship between the candidates' work-related qualities and the qualities genuinely required to perform the relevant duties
- the assessment focuses on the relative capacity of candidates to achieve outcomes related to the relevant duties
- the assessment is the primary consideration in making the employment decision.

This definition is consistent with the definition of merit under the *State Service Act 2000* (Tas).

Audit approach

The audit was conducted in accordance ASAE 3500 *Performance Engagements*, issued by the Australian Auditing and Assurance Standards Board to express a reasonable assurance conclusion.

The audit evaluated the following criteria:

1. Were recruitment and appointment processes in line with established guidance and contemporary human resources (HR) practice²?
 - 1.1 Was there an effective recruitment plan?
 - 1.2 Was there an effective selection and appointment process?
2. Were processes to assess general manager performance effective?
 - 2.1 Were clear performance expectations established and communicated?
 - 2.2 Was the performance assessment process clearly defined?
 - 2.3 Were performance feedback processes effective?
 - 2.4 Were actionable outcomes identified in the performance assessment?

Audit observations and findings were based on information and evidence obtained through:

- discussions with councils, general managers and consultants engaged by councils
- examining corroborative documentation such as employment contracts, council minutes, annual performance assessments and supporting policies and procedures.

Responsibility of management

Local government councils are responsible for recruiting, appointing and reviewing the performance of general managers in accordance with requirements under the *Local Government Act 1993*.

Responsibility of the Auditor-General

In the context of this audit, my responsibility was to express a reasonable assurance conclusion on whether the recruitment and appointment of general managers by local government councils was conducted in accordance with the principles of merit, equity and transparency and whether performance assessments followed the principles of fairness, integrity and impartiality and were aligned with councils' strategic objectives.

² Tasmania has yet to issue guidance to support recruitment, selection and appointment processes for council general managers. Contemporary human resources (HR) practice reflects guidelines and principles published by other Australian jurisdictions to help support and direct recruitment, selection and appointment processes for council general managers and chief executive officers.

Independence and quality control

I have complied with the independence and other relevant ethical requirements relating to assurance engagements, and apply Auditing Standard ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements* in undertaking this audit.

Conclusion

It is my conclusion councils have not managed the recruitment, appointment and performance assessment of local government council general managers effectively, with respect to certain criteria and sub-criteria of the performance audit.

The recruitment and appointment of general managers was not conducted in accordance with the principle of transparency because for two councils there were deficiencies in the approach to declaring and managing conflicts of interest and for all councils there was an absence of documentation to support either shortlisting or preferred applicant decisions. While performance assessments broadly followed the principles of fairness, integrity and impartiality and were aligned with councils' strategic objectives, there were instances where reappointments and salary increases occurred without reference to recent performance assessments.



Rod Whitehead
Auditor-General

12 October 2021

Executive summary

Summary of findings

Council general managers are pivotal to the success of councils and the community they serve. Their role is diverse and encompasses helping council set its strategic direction and long term plan through to responsibility for the day-to-day operations and affairs of the council, including the management of its resources and assets. They are accountable to the council, which comprises of councillors elected by people in the municipality to undertake duties in the interests of the community and in accordance with the *Local Government Act 1993* (the Act).

One of the most important actions councils undertake is establishing and maintaining a functional relationship with their general manager. This relationship is underpinned by the council recruiting for and appointing the right person to the general manager position and regularly assessing their performance. In other Australian jurisdictions, councils can refer to guidelines and principles provided under local government legislation to help support and direct these important processes. In Tasmania such guidance has yet to be issued.

Whilst the Act assigns council the collective responsibility for the appointment and performance assessment of the general manager, it does not prescribe how recruitment, appointment and performance assessment processes for general managers should be run. We expected appointments of general managers by councils to be conducted in accordance with the principles of merit, equity and transparency. In one of the appointments examined, a council employee was directly appointed to the general manager position without going through a recruitment process. While a direct appointment is permitted under the Act, it does not adhere to the principle of merit.

Not all elected members have the experience or the skills required to conduct effective recruitment, appointment or performance assessment processes. To reduce the risks associated with a lack of experience, most councils contracted consultants to increase their capacity and capability to undertake these processes. Our assessment of consultant fees charged for the services provided indicated the use of consultants represented value for money for councils. Despite consultants being engaged to support councils, our assessment of recruitment, appointment and performance assessment processes identified instances of both good and poor practice.

For the recruitments examined, position descriptions were reviewed prior to advertising, vacancies were advertised broadly and consultants checked references, negotiated salary packages and debriefed unsuccessful applicants. For most appointments, councils used an employment contract template developed by the Local Government Association of Tasmania (LGAT), which eliminated the need to pay for separate legal advice. However, total salary packages were not comprehensively considered prior to advertising the position, recruitment plans were not documented and elements of the selection and appointment processes were variable in quality and not transparent.

The approach taken by councils to shortlist applications was relatively consistent, with the consultant performing the shortlisting exercise and providing a recommendation to council. However, selection panels were used to varying degrees and documentation was inadequate. In the majority of recruitments examined, neither the consultant nor council could provide documentation that rated and compared applicants using the selection criteria at the shortlisting or interview stages. In addition, in the majority of councils, conflicts of interest were not documented or were reported after the shortlisting process had been completed.

Performance assessment processes in most councils were defined using the general manager's employment contract. Performance criteria in these contracts helped communicate performance expectations. The signing of the employment contract would normally indicate that the incoming or reappointed general manager accepted the performance expectations. However, there was evidence that performance expectations were not always mutually agreed or recently updated.

No council conducted a performance assessment process that was consistent with contemporary HR practice. Councils sought feedback on the general manager's performance from councillors and direct reports to varying degrees of success. However, less than half of the councils reviewed identified more than one actionable item following the general manager's performance assessment. In addition, three of the salary increases and two of the reappointments reviewed were not tied to the performance assessment.

We would like to thank the councils for their assistance in undertaking this audit.

Recommendations

1. The Local Government Division of the Department of Premier and Cabinet support the Minister for Local Government to develop and issue mandatory requirements and supplementary guidance on recruitment, appointment and performance assessment processes that are consistent with contemporary HR practice.
2. Councillors with limited recruitment or performance assessment experience involved in such activities either undertake relevant training to improve their knowledge on contemporary HR practice or be supported by a person with the required expertise to help them fulfil their obligations under the Act.
3. Councils review and, where appropriate, improve the recruitment and appointment process by:
 - managing potential conflicts of interest once applicants for the position become known
 - requiring all participants to declare and document perceived, potential or actual conflicts of interest prior to shortlisting applicants to be interviewed
 - retaining documentation that demonstrates how applicants were compared against each other to determine applicants to be interviewed and the preferred applicant
 - ratifying shortlisting to ensure all applicants were considered equitably

- undertaking interviews that are consistent and equitable for each applicant interviewed and follow contemporary HR practice.
4. Councils review and, where appropriate, improve the performance assessment process by:
- establishing specific, measureable, achievable, relevant and time-bound (SMART) performance measures
 - obtaining feedback on performance from a wider range of stakeholders
 - identifying actionable outcomes in performance assessments
 - linking remuneration increases and reappointment to the most recent performance assessment.

Submissions and comments received

In accordance with section 30(2) of the *Audit Act 2008* a summary of observations was provided to the Minister for Local Government, Treasurer, LGAT and each council subject to audit with a request for submissions or comments.

Submissions and comments that we receive are not subject to the audit nor the evidentiary standards required in reaching an audit opinion. Responsibility for the accuracy, fairness and balance of these comments rests solely with those who provided the response. However, views expressed by the responders were considered in reaching our conclusions.

Section 30(3) of the Audit Act requires that this Report include any submissions or comments made under section 30(2) or a fair summary of them. Submissions received are included in full below.

Response from the Premier

I welcome the report, which makes valuable recommendations for effectively recruiting, appointing and assessing the performance of general managers.

I understand that since the commencement of your investigation, the Minister for Local Government and Planning, the Hon Roger Jaensch MP, has requested the Director of Local Government prepare a draft ministerial order prescribing minimum standards in respect of these matters, which will be informed by the recommendations of your report and consultation with the local government sector.

Thank you for the opportunity to comment. I expect this report will contribute to the improvement of practices of Tasmanian councils in these important areas.

The Honourable Peter Gutwein MP

Response from the Minister for Local Government and Planning

I do wish to thank you for the valuable insight of your office in preparing this report, which I am confident will lead to improvements in the practices of Tasmanian councils, and will inform enhancements to the regulatory framework in which councils operate.

I have already instructed the Director of Local Government to commence the preparation of a draft ministerial order under section 61A of the *Local Government Act 1993* providing minimum standards for general manager recruitment, appointment and performance management. The proposed order will be informed by the recommendations of your report and consultation with the local government sector.

Thank you for the opportunity to comment.

The Honourable Roger Jaensch MP

Response from the Launceston City Council

The Council's management response is limited to the General Manager Performance Assessment section of the performance audit.

It should be noted that the performance audit only considered a single year and therefore cannot be considered to constitute a representative assessment of the participants, let alone the sector. For instance, over the term of the current General Manager's contract, our Council has established a process of alternating a 360 degree review every second year, with a less onerous process involving only the Councillors and the General Manager in the intervening year. It is submitted that had this audit considered a year in which a full 360 review was undertaken, it would not have concluded that "no council conducted a performance assessment process that was consistent with contemporary HR practice". Indeed, it is not considered to be either necessary nor appropriate to complete a full 360 degree review on an annual basis due to the cost and scale of such a process. It would be concerning to see mandatory requirements introduced for the sector based on what was a very narrow audit.

Councillor Albert Van Zetten, Mayor

1. Introduction

Responsibility to appoint and monitor the performance of the general manager

- 1.1 The Act specifies the responsibility to appoint and monitor the performance of the general manager of a council collectively sits with the councillors of a council (section 28(2)(d)). The Act further specifies it is the responsibility of the mayor to lead and participate in the appointment, and the monitoring of the performance, of the general manager (section 27(1)(g)).
- 1.2 Section 61 of the Act deals outlines requirements relating to the appointment of the general manager. In summary, these specify:
 - (a) A council is to appoint a person as general manager of the council for a term not exceeding 5 years on terms and conditions it considers appropriate.
 - (b) In appointing a person as general manager of the council, a council is to do so in accordance with any relevant order made under section 61A (no relevant orders have been made under section 61A relating to the appointment of a general manager).
 - (c) An appointment is not to be extended or renewed so as to exceed 5 years in total unless the council has reviewed its terms and conditions.
 - (d) 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.
 - (e) Not later than six months before the expiry of the general manager's appointment, a council may resolve to reappoint the general manager without seeking applications for the position.
 - (f) A reappointment is to be treated as if it were an appointment under (a) above.

General manager appointments in Tasmania

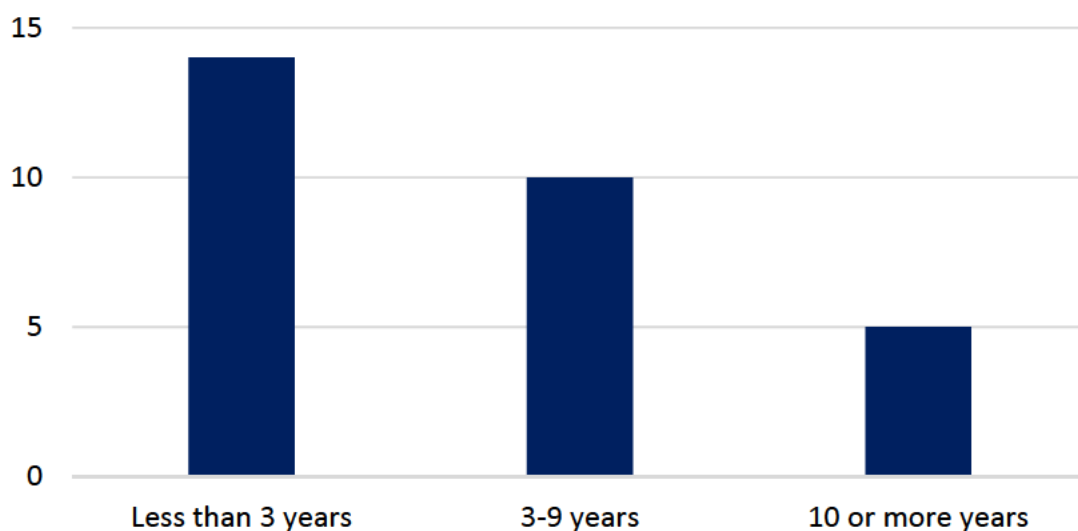
- 1.3 The following information obtained during the course of the audit provides statistical and comparative information on general manager appointments.
- 1.4 Councils vary widely in their size and location and in the broad range of community services they supply. For comparison purposes in this Report, we group them based on the Australian Classification of Local Government compressed into the five classifications used by the Local Government Division. This classification was based upon a national standard and is updated periodically for changes in population and other determining factors. The classification groups were:

- Urban medium, with populations between 30,000 and 70,000
- Urban small, with populations of up to 30,000
- Rural agricultural, very large, with populations between 10,000 and 20,000 at a density of less than 30 per square kilometre
- Rural agricultural, large, with populations between 5,000 and 10,000 at a density of less than 30 per square kilometre
- Rural agricultural, small and medium, with populations of up to 5 000 at a density of less than 30 per square kilometre.

Length of tenure

- 1.5 There is significant variation in the length of general manager tenure across councils. While the longest serving general manager has been in the position for 22 years, the average length of tenure is five years. A summary general managers' length of tenure is provided in Figure 1.

Figure 1: Length of tenure of general managers as at 1 August 2021



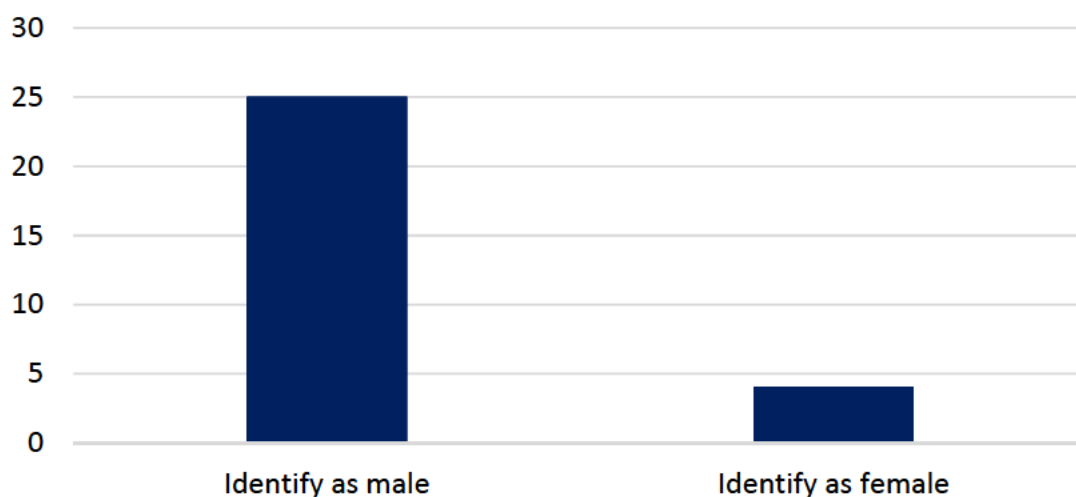
Source: Tasmanian Audit Office

- 1.6 The vast majority of appointments were made through a recruitment process, with a limited number made through direct appointment.

Gender diversity

1.7 Figure 2 shows the gender diversity of general managers in Tasmanian councils.³

Figure 2: Gender diversity in general managers of councils in August 2021

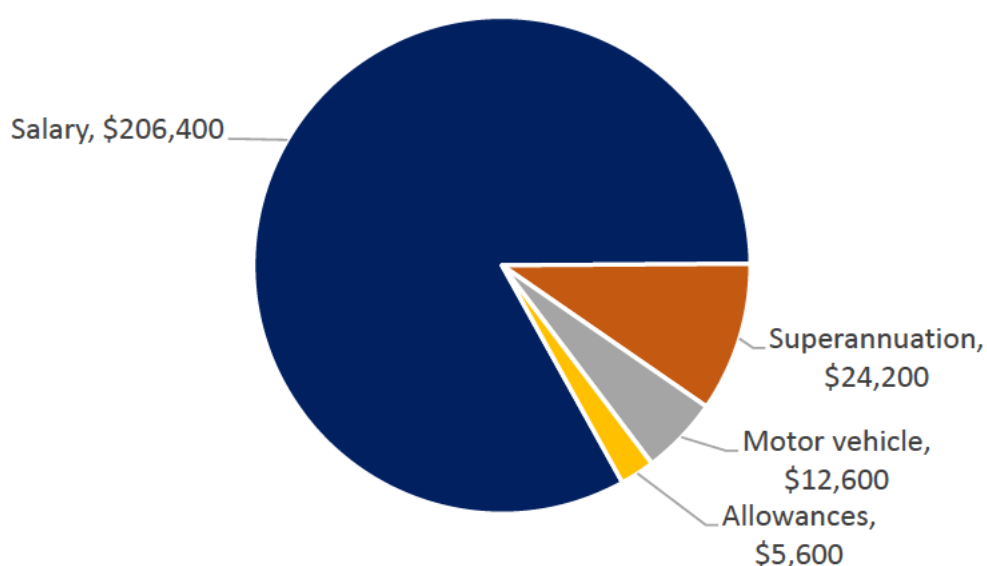


Source: Tasmanian Audit Office.

Total salary package

1.8 Total salary package includes base salary, superannuation, motor vehicle and any other allowances identified in the employment contract. The average composition of a general manager's salary package is provided in Figure 3.

Figure 3: Average composition of a general manager's salary package

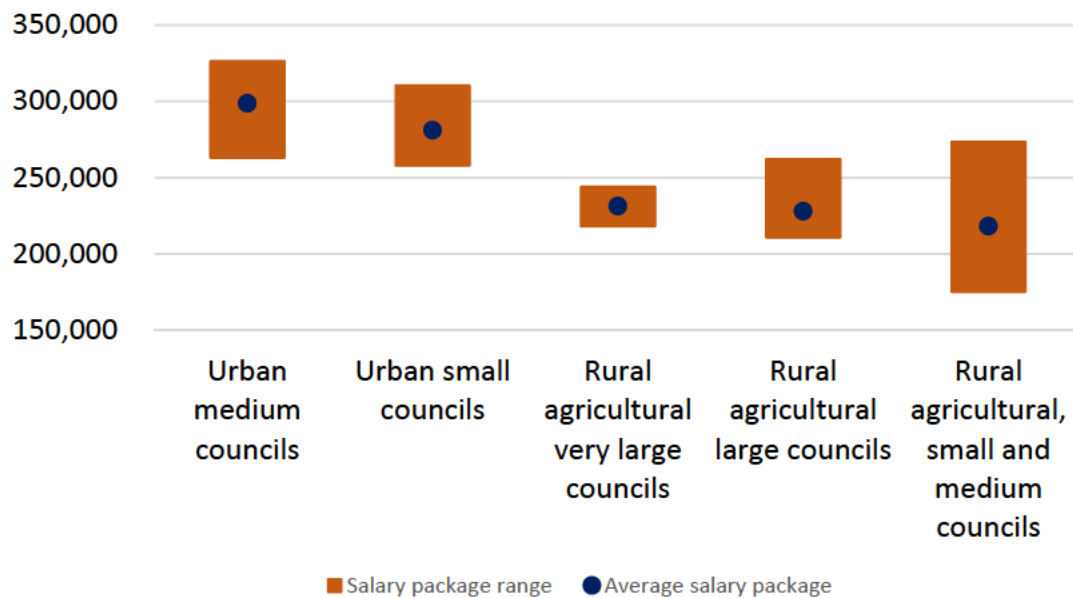


Source: Tasmanian Audit Office.

³ The gender diversity analysis was based on the personal pronouns used in the councils' publications.

- 1.9 The value of the salary package varies, but is usually reflective of the size of the council and the complexity of the council's operations. Figure 4 provides the range in salary packages and average value of the package for each local government area classification.




Figure 4: Total salary package value by local government area type



Source: Tasmanian Audit Office.

- 1.10 There was also significant variation in the allowances included in general manager contracts and the approach to recording the value of those allowances. For example, most general managers were provided with a mobile phone, laptop or tablet, but only four of the contracts assigned a monetary value for the equipment provided. Figure 5 shows the variation across councils in respect to motor vehicles, professional development and professional memberships.

Figure 5: Specific components of salary packages⁴

| |  Motor vehicle |  Professional development |  Professional memberships |
|--|--|--|---|
| Monetary value | 23 councils | 8 councils | 9 councils |
| Value range | \$5,000 - \$18,900 | \$1,000 - \$5,000 | \$500 - \$3,000 |
| Average value per annum | \$12,700 | \$2,700 | \$1,400 |
| Provision for component but no monetary value | 5 councils | 13 councils | 14 councils |
| Not covered in package | - | 7 councils | 5 councils |

Source: Tasmanian Audit Office

⁴ Kentish Council and Latrobe Council share the same General Manager. The information relating to these councils has been reported once.

2. Adequacy of recruitment processes

In this chapter we assess whether the recruitment processes undertaken for six recent general manager appointments were in line with established guidance and contemporary HR practice. In particular, we examined whether councils had an effective recruitment plan and an effective selection and appointment process.

Chapter summary

The Act does not prescribe how a recruitment and appointment process for a general manager should be run. The Minister has not yet issued any principles or procedures to support councils in undertaking these activities. As a consequence, most councils engaged a consultant to implement a recruitment process that met contemporary HR practice. The one exception was a council that appointed a general manager based on their approach to succession planning, without a recruitment process being run.

There were some common elements in the recruitment and appointment processes examined. Position descriptions were generally reviewed prior to advertising. Vacancies were advertised broadly with sufficient information generally provided to prospective applicants. Consultants checked references, negotiated salary packages and debriefed unsuccessful applicants. In addition, most councils used an employment contract template developed by LGAT in 2014 which eliminated the need to pay for separate legal advice. However, total salary packages were not comprehensively considered prior to advertising the position, recruitment plans were not documented and elements of the selection and appointment processes were variable in quality and not transparent.

The approach taken by councils to shortlist applications was relatively consistent with the consultant performing the shortlisting exercise and providing a recommendation to council. However, selection panels were used to varying degrees and documentation was inadequate. In the majority of recruitments examined, neither the consultant nor council could provide documentation that rated and compared applicants using the selection criteria at the shortlisting or interview stages. In addition, conflicts of interest were not documented or were reported after the shortlisting process had been completed.

Broadly, the engagement of consultants to provide the necessary expertise was appropriate and represented value for money.

No guidance has been issued to support recruitment and appointment processes

- 2.1 The Act does not prescribe how a recruitment and appointment process for a general manager should be run.
- 2.2 Guidance on the legislative requirements associated with general manager recruitment was issued by the Local Government Division in 2014 in an information sheet on *General Manager Appointments & Contracts*. However, no guidance has

been issued by the Minister on the preferred approach to general manager recruitment in general or specific to an appointment.

2.3 Section 61A(1) of the Local Government Act, which was introduced as part of the *Local Government Amendment (Targeted Review) Bill 2017* and commenced in November 2017, states that the Minister may specify the:

- principles governing the selection of a general manager
- matters, and classes of matters, that are to be taken into account when a council is selecting, or reappointing, a general manager
- procedures to be followed by a council in relation to appointing, or reappointing, a general manager.

2.4 The intention of this provision was communicated in the Second Reading Speech:

The intention is that the sector will be able to raise any areas where there may be a systemic lack of clarity that should be addressed through a Ministerial Order, and the sector would work together with the Government to address these matters.

2.5 In September 2021, the Director of Local Government advised:

While the local government sector has not formally raised any systemic issues with general manager recruitment, appointment and performance management with the Minister in the intervening period, the issue of general manager performance was included in the Review of the Local Government Legislation Framework, which commenced in June 2018. Following extensive consultation with the local government sector and other stakeholders, the Government approved a series of reform directions, including prescribing minimum standards for general manager recruitment, contracts, performance management and termination (Reform Direction 25).

This reform aims to encourage best-practice recruitment practices in line with community expectations and ensure a consistent approach to general manager contracts. Under the reform, the power to issue a Ministerial Order would remain, allowing the Minister to further specify the principles and processes governing the selection of general managers and the monitoring of their performance by councillors, should that be required.

Consideration of these reforms was necessarily paused following Parliament's commitment to consider structural reform of the local government sector, based on the recommendations of the Premier's Economic and Social Recovery Advisory Council.

2.6 Councils and consultants we spoke to during the audit expressed the view that guidance relating to minimum standards would help councils ensure they

implemented a fair and consistent approach. The involvement of consultants in the recruitment process is discussed in the following sections.

One council directly appointed a general manager

2.7 One council selected for audit directly appointed a council employee to the general manager position without a recruitment process being run. Although direct appointments are permitted under the Act, they do not adhere to the merit principle.

2.8 Reasons supporting the council's decision for the direct appointment were:

- most management positions had been filled from within council ranks based on sound succession planning
- the cost of engaging an external consultant to conduct a recruitment process was viewed as significant and unnecessary
- the employee identified as a strong candidate for the general manager position was performing well and had broad experience in local government, including acting as general manager within the council and at another council
- an external appointment to the position would incur lost momentum and uncertainty, factors important in the council's growth.

2.9 The council transparently discussed and endorsed use of succession planning to appoint the general manager at several meetings preceding the appointment. It also sought legal advice on the employment contract and established a committee to review the total salary package.

2.10 Contemporary HR practice is to treat succession planning and recruitment as separate processes. The purpose of succession planning is to identify and develop future leaders so that council is prepared for the departure of employees in key positions. Employees identified in succession planning receive professional development and on-the-job experience to ensure they are ready to step up when the time comes. When a key position becomes vacant, the identified employee is tested through an open recruitment process to confirm that they are the best person for the job. This approach promotes trust and confidence in the general manager from the local community and provides the highest degree of legitimacy to council decisions around recruitment.

Councils relied on consultants' expertise to plan for recruitment

2.11 Planning is an essential element of an effective recruitment and appointment process. The process should at a minimum:

- develop a recruitment plan that outlines the process that will be followed to recruit to the position
- review the position description to ensure it still meets the current operational requirements of council

- set a range for negotiating the total salary package
- comply with the principles of equal opportunity, equity and transparency
- involve a merit-based selection process
- actively protect participants from risks associated with bias and real or perceived conflicts of interest
- be conducted by councillors with the necessary skills and expertise.

2.12 As noted in paragraphs 2.2 to 2.6, guidance has not yet been issued by the Minister in regard to general manager recruitment. As a consequence, the five councils examined that ran a recruitment process relied, to varying degrees, on the expertise of a consultant to review the position description, provide the information to assist council in setting the total salary package and develop a recruitment plan.

Recruitment plans were developed but not documented

- 2.13 Only two councils had documented the key steps involved in its general manager recruitment process. One of these steps was to engage a consultant with the required expertise. Once the consultant was in place, the plan for all councils was to rely on the methodology and processes of the selected consultant.
- 2.14 Due to the lack of documentation associated with this approach, the completeness of planning could not be assessed.

Most position descriptions were reviewed during the planning phase of recruitment

- 2.15 In three of the five recruitments examined, consultants ran workshops to identify the attributes the council was looking for in a general manager, to develop the position description and to establish the selection criteria that would be used to assess applications.
- 2.16 In one of the recruitments examined, the consultant reviewed the position description on behalf of the council to ensure it met the current operational requirements of the council.
- 2.17 In the final recruitment examined, council advised that the position description was not reviewed in detail to ensure it met the operational requirements of the Council.

Total salary packages were not comprehensively considered prior to advertising the role

- 2.18 Four of the five councils benchmarked the salary packages for general managers of similar sized councils to set a range for negotiating the total salary package of the successful applicant with support from the recruitment consultant. The other council used the salary package of the outgoing general manager as the expected salary package for the incoming general manager.
- 2.19 Councils' consideration of the total salary package was not well documented. For example:

- One council advised that a ball park figure was discussed with the consultant so that the consultant could provide relevant information to prospective applicants, but Fringe Benefits Tax was not part of council's consideration of the total salary package cost.
- Councils had not considered the cost over the term of the contract to council. For example, the increase in the superannuation guarantee rate had not been taken into account.
- Some of the package components, such as the motor vehicle, professional development and professional membership fees, were not always assigned a monetary value.

2.20 As a result of the lack of documentation, we were not satisfied councils had comprehensively considered the total salary package or identified the full cost of the total salary package to be offered.

Vacancies were advertised broadly with sufficient information provided to applicants

2.21 Advertising of positions was led by the consultants who implemented a broad print and online communication strategy. This strategy usually involved advertisements in national newspapers and on a number of webpages, including Seek and that of the consultant and council.

2.22 All but one of the five councils that conducted a recruitment process prepared an information pack to promote the vacancy. The council that did not offer an information pack had an expectation that the applicants would do their own research by reviewing council publications available on its website.

2.23 The provision of an information pack represents good contemporary HR practice and can assist in the attraction of applicants by providing information on, for example, the:

- council, including the council's vision, mission and values, structure and size
- municipality, including features that may be appealing to potential applicants
- application and recruitment process, including advice to applicants
- position description, conditions of employment and benefits from working with the council.

Selection and appointment processes were not consistent or transparent

2.24 There was a lack of consistency and transparency across selection and appointment activities with:

- the size and composition of selection panels varying from three councillors to all elected members
- an absence of documentation for declarations of perceived or actual conflicts of interest
- varying degrees of reliance placed on consultants' processes for shortlisting applicants
- four of the five councils relying on consultants to perform reference checks, which were generally done by phone and later confirmed in writing, with reference checks for one council being undertaken by the Mayor.

2.25 There was however consistency in some elements. For example, consultants:

- negotiated final salary packages that, in all but one instance, were within the range identified by council
- debriefed unsuccessful applicants.

2.26 Despite the limitations or variations in approach, recruitments were completed in a timely manner of around three months, appointments were approved by the full council and written contracts were executed. In addition, five of the six councils used the LGAT template general manager contract or a modified version of it for the appointment of the general manager.

The size, composition and approach of selection panels varied

2.27 A selection panel considers and authenticates relevant information regarding applicants and makes a recommendation for appointment. The aim in forming the panel is to bring together individuals with the required skills and knowledge to effectively implement the selection process and best determine the right person for the vacancy. It is essential that panel members encourage diversity and actively discourage discrimination.

2.28 Councillors generally did not have the relevant training or experience required to conduct an effective shortlisting and interview process. This lack of training or experience was overcome by the recruitment consultant facilitating both the shortlisting and interview processes. In some instances, training was provided by the consultant engaged to support the recruitment process.

2.29 In relation to shortlisting written applications, the consultant provided a list of recommended applicants from which the panel or council selected the applicants for interview in three of the recruitments examined. In the other two recruitments, the council was supported by the consultant to complete the shortlisting process.

2.30 The approach to interviewing applicants also varied with:

- one council using the same selection panel that shortlisted applications to perform the interviews
- two councils involving the full council in interviewing shortlisted applicants
- one council involving the full council in two rounds of interviews
- one council using a sub-committee to perform the first round of interviews then involving all councillors in the second round of interviews.

2.31 Further variations were identified in consultants' involvement in the interview process. For example:

- for three recruitments the consultant asked all prepared questions of each applicant to ensure consistency, with councillors given the opportunity to ask questions to clarify an issue or at the end of the interview
- in one recruitment the consultant prepared questions and facilitated the interviews
- in one recruitment each councillor was allocated questions drafted by the consultant, but some of the councillors changed their question during the interviews.

2.32 The most consistent results occurred when the consultant posed all the questions.

2.33 The involvement of the full council in the shortlisting and interview process is not the most efficient approach and, as identified in paragraph 2.30, resulted in an inconsistent process. However, it is the best option available when there is a lack of confidence amongst councillors that a panel will select the best applicant. Involvement of the full council in the process also allows all councillors' views to be heard and considered and for councillors to own and support the process.

The approach to declaring conflicts of interest was not sufficient

2.34 Council processes require councillors to declare actual, perceived and potential conflicts of interest. Councils should ensure they have appropriate management strategies in place to manage selection panel member and consultant conflicts of interest once applicants are known. This is essential in ensuring a fair process without the potential for intentional or unintentional bias. If the conflict of interest relates to a family or other close relationship, the most common management strategy is for the conflicted individual to exclude themselves and be replaced by another individual who is not conflicted. For conflicts of interest involving a consultant, the council must consider how the contract with the consultant needs to be managed to remove any actual or perceived conflicts.

2.35 Actual, perceived or potential conflicts of interest were not addressed prior to the interview process in two councils. As a consequence:

- in one recruitment examined an internal applicant prepared the information pack for distribution to potential applicants

- in two recruitments examined there was no documentation to confirm whether councillors or the consultant had a conflict of interest or not.
- 2.36 In three of the five recruitments examined, conflicts or the lack thereof were documented as being declared prior to interviewing shortlisted applicants. When a conflict was declared, the councillor excluded themselves from discussion about the applicant with whom they had a conflict. The management strategy council put in place for the interview process appeared to be an appropriate response to the declared conflict.
- 2.37 Recruitment consultants can also have conflicts of interest when supporting a recruitment process. For example, the consultant may have a close association with one of the applicants or provided services to an applicant during a general manager recruitment process. While this is a relatively common circumstance for consultants, there was no documentation to confirm that consultants had declared any conflicts for four of the five recruitments examined. This lack of documentation adversely impacted on the transparency of the process. For one recruitment examined, the consultant declared they had no conflicts of interest and this was documented. The consultant was obligated to notify the council in writing if circumstances changed.

Documentation of shortlisting and preferred applicant decisions was not adequate

- 2.38 Documentation of the shortlisting and interview processes should demonstrate how the selection panel, or full council, determined that the preferred applicant was the highest performing applicant against the evaluation criteria. This approach ensures that the selection of the preferred applicant is based on merit, is transparent and supports the council in defending their decision if challenged.
- 2.39 As noted in paragraph 2.25, the approach to shortlisting varied. However, the lack of documentation to supporting the shortlisting process was consistent. In four of the five recruitments examined, neither the consultant nor council could provide documentation that rated and compared the written applications using the selection criteria and identified the rationale for which applicants would progress to interview.
- 2.40 In regards to documentation supporting the interview process, councils could not provide documentation evaluating and comparing each applicant interviewed using the selection criteria for any of the recruitments examined. Documentation that was available was limited to a summary report for:
 - three of the recruitments examined that outlined the process that was followed and identified the rationale for selecting the preferred applicant
 - one of the recruitments examined that outlined the process that was followed, but did not identify the rationale for selecting the preferred applicant.
- 2.41 The summary report could not be provided to support the final recruitment examined.

Consultants debriefed unsuccessful applicants

- 2.42 As stated in paragraph 2.25, services provided by the consultants included debriefing unsuccessful applicants. Both councils and consultants advised this approach mitigated the risk of disputes about the recruitment process or outcome.
- 2.43 While noting that disputes about recruitment outcomes was a risk, councils did not identify a process that would be used if a legal challenge was raised. In respect to a legal challenge, a key limitation was the lack of documentation retained by council to support the selection of the preferred applicant from application through to the final decision. This lack of documentation could leave councils exposed to legal challenge.

Consultant services represented value for money

- 2.44 Recruitment consultants were engaged through an expressions of interest process in four councils and directly engaged by the other council. The services that consultants provided was broadly consistent and included:
- developing the recruitment plan, including facilitating a review of the general manager's position description
 - advertising the role through online advertising and direct email
 - evaluating written applications, preparing a shortlist and recommending applicants to be interviewed
 - facilitating the interview process
 - checking references
 - debriefing unsuccessful applicants
 - providing a report to council outlining the process followed and the recruitment outcome.
- 2.45 Consultants for four councils also performed behavioural testing.
- 2.46 The cost of services ranged from \$5,300 to \$42,700, with an average cost of \$26,300. This cost is considered value for money due to the extensive services provided by the consultants and the need for an expert to support councillors through the recruitment process.

3. Effectiveness of performance assessment

We assessed whether general manager performance assessments were undertaken in line with established guidance and contemporary HR practice by examining the performance assessment process used by six councils. Our assessment considered whether councils:

- mutually agreed performance expectations with general managers
- implemented performance assessment processes that were of sufficient frequency, adequately detailed and transparent
- identified actionable outcomes in performance assessments
- tied reappointments or salary increases to performance
- established dispute resolution processes.

Chapter summary

Performance assessments represent an opportunity for the general manager to be informed of the council's perspective on their progress towards delivering the council's strategic plans, ability to lead the council and relationship with the mayor and councillors. Effective performance assessments will also encourage innovation and continuous improvement and identify development opportunities for the general manager.

Most councils relied on the performance criteria established in the general manager's employment contract, which was developed during the recruitment and appointment process, to communicate performance expectations. The signing of the employment contract indicated the incoming or reappointed general manager accepted the duties and performance expectations. However, there was evidence that performance expectations were not always mutually agreed or recently updated.

All councils overcame gaps in skills and knowledge in performance assessment by engaging a consultant to support the process. Councils also sought feedback on the general manager's performance from councillors and direct reports to varying degrees of success. However, less than half of the councils reviewed identified more than one actionable item for the general manager to improve performance.

Although all employment contracts reviewed linked salary increases to performance assessments, salary increases or reappointments were not always tied to performance assessments.

While the dispute resolution process was defined in only half of the employment contracts reviewed, most general managers felt the process in place was effective.

Performance agreements were generally not established outside of employment contracts

3.1 An effective performance assessment process begins with the establishment of a performance agreement. A performance agreement provides the framework against

which an objective, transparent and competency based review of performance can be performed.

- 3.2 Only one of the councils reviewed had a stand-alone performance agreement. This agreement was established within three months of signing the employment contract and was reviewed on an annual basis to ensure it remained fit for purpose.
- 3.3 Other councils relied on the performance criteria provided in general managers' employment contract to communicate performance expectations. One shortcoming arising from incorporating performance expectations and measures in the employment contract is the perception that performance expectations cannot:
- legally change without a variation to the contract
 - be discussed, amended and mutually agreed after the general manager commences employment.
- 3.4 All of the employments contracts reviewed:
- outlined the need for council to assess the general managers' performance against operational responsibilities and delivery of the council's strategic direction, goals and objectives
 - established performance expectations in the form of criteria provided in the position description with:
 - all councils identifying the need for the general manager to provide leadership to council
 - three councils covering participation in professional development activities
 - noted the duties and performance expectations would be reviewed after each performance assessment with council to make reasonable amendments.
- 3.5 Employment contracts were developed as part of the recruitment and appointment process. In this respect, while the signing of the employment contract indicated the incoming or reappointed general manager accepted the duties and performance expectations, there was evidence to suggest the performance expectations were not mutually agreed in two councils.
- 3.6 There was also no evidence of amendments to performance expectations after each performance assessment in two of the councils examined.

Suitable performance measures were not consistently established

- 3.7 Performance measures are a key component of a performance agreement as they support an objective evaluation of the general manager's performance against the agreed plan. The use of SMART performance measures ensures that:
- efforts to reach council's objectives, as set out in the council's strategic plan, are trackable
 - the general manager is working towards their full potential.

3.8 Examples of performance measures that effectively evaluate elements of the general manager's performance include:

- draft annual plan and budget publicly advertised by 31 May
- annual plan and budget approved by Council by 30 June
- annual plan delivered on time and within budget, with councillors advised where there are unavoidable delays
- met requirements under the Local Government Act and relevant regulations
- equal employment opportunity and occupational health and safety matters properly undertaken as required by the legislation and good management practice.

3.9 While performance expectations had been established in general managers' employment contracts:

- two of the six councils reviewed had established SMART performance measures, one of which engaged a consultant to help them develop the measures
- one of the six councils had engaged a consultant to help them develop SMART performance measures but no time boundaries for the measures were established
- two of the councils had not established SMART performance measures
- one council had not been able to reach agreement with the general manager about which performance measures would be used.

The approach to performance assessments varied across councils

3.10 An effective performance assessment process involves a structured and documented annual review that is supported by either documented quarterly reviews or more frequent, informal reviews. This approach ensures:

- there are regular opportunities to confirm that the performance agreement continues to reflect relevant priorities and the council's objectives
- there are no surprises in the annual review
- the annual review is reflective of performance across the entire year
- any issues or areas of potential under-performance are identified and addressed in a timely manner.

3.11 Documentation of points discussed makes it easier for councils to review general managers' performance progress by providing a reference point for future performance discussions. All councils advised they had discussed performance on an ongoing basis, but only the annual performance assessment was documented.

Capturing matters discussed during regular performance discussions would support the annual review process.

- 3.12 A high level summary of the performance assessment process was defined in employment contracts. A summary of that process is provided in Table 1.

Table 1: Performance assessment process defined in employment contracts

| Process | Councils | | | | | |
|---|----------|---|----------------|----|----------------|----|
| | A | B | C | D | E | F |
| Reviewed as required and at least annually | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reviewed by: | | | | | | |
| Council | ✓ | ✓ | x ¹ | ✓ | x ¹ | ✓ |
| Council Committee | x | x | ✓ | x | ✓ | x |
| Supported by consultant or equivalent arrangement | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Notice provided to general manager on concerns to be addressed (days) | 7 | - | 28 | 28 | 28 | 28 |
| Council required to provide written assessment | ✓ | x | ✓ | ✓ | ✓ | ✓ |
| Opportunity for general manager to respond to review | x | x | ✓ | ✓ | ✓ | ✓ |
| Council monitors general manager's performance on ongoing basis | x | x | ✓ | ✓ | ✓ | ✓ |

Source: Tasmanian Audit Office

Note (1): The Council Committee provided a summary of the performance assessment outcome to the Council in a closed council meeting.

- 3.13 Four of the six councils reviewed engaged a consultant to support them in implementing a contemporary performance assessment process. This approach generally facilitated communication between councillors, the general manager and senior council employees on general managers' performance. One council engaged a HR employee from a neighbouring council to support the performance assessment process. The other council implemented the performance assessment internally.
- 3.14 Approaches to collecting feedback varied as summarised in Table 2.

Table 2: Sources of feedback for general managers' annual performance assessments

| Source of information | Councils | | | | | |
|---|----------|---|---|---|---|---|
| | A | B | C | D | E | F |
| Feedback from councillors | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Feedback from the general manager | ✓ | ✓ | ✓ | ✓ | x | x |
| Feedback from direct reports | x | ✓ | ✓ | ✓ | ✓ | ✓ |
| Feedback from council employees (other than direct reports) | x | x | x | x | x | x |
| Operational reports specified in employment contract | x | x | x | ✓ | ✓ | x |

Source: Tasmanian Audit Office.

- 3.15 As demonstrated by Table 2, most councils received feedback on the general manager's performance from councillors and direct reports. A review of the consultants reports summarising this feedback revealed that:
- four of the councils included a self-assessment from the general manager
 - one consultant provided the general manager with unfiltered survey comments
 - one council's Mayor had received and summarised councillors' comments.
- 3.16 While none of the councils reviewed conducted a full 360 review, one council advised that a consultant-led 360 degree review is conducted every two years. A 360 review is a contemporary performance evaluation tool in which feedback is sought from councillors, direct reports and other council employees to evaluate the general manager's performance and provide actionable feedback. Feedback from other council employees need not be obtained through the same survey of direct reports. It can be sought through a broader organisational survey conducted annually or every two years. The same sentiment applies to feedback from external stakeholders on council performance and, by extension, general managers' performance. This feedback could be sought in a number of ways. For example, it could be a summary of conversations councillors have with key external stakeholders, a survey of those key stakeholders or a broader community survey.
- 3.17 Only two councils referred to operational reports, such as updates on implementation of the annual plan and finance reports, used to inform the performance assessment. Consideration of operational reports, in addition to a 360 review, represents a more comprehensive approach than those illustrated in Table 2.

Councils demonstrated a variable approach to identify actionable outcomes in performance assessments

3.18 A key component of performance assessments is to define actionable outcomes that can relate to a variety of circumstances including:

- resetting or reprioritising goals linked to changing council objectives
- new agreed initiatives
- changed general manager responsibilities
- revised performance indicators
- development and learning opportunities.

3.19 Not all performance assessments examined had identified actionable outcomes which limited the effectiveness of some processes. For example:

- two councils clearly identified multiple actionable outcomes in performance assessment documentation
- two councils advised that they identified at least one actionable item during the performance assessment process
- two councils identified no actionable outcomes.

3.20 There were no recommendations to undertake training or development activities linked to continuous professional development. Councils did not expect performance assessments to identify training or development activities unless it was to address unsatisfactory performance. Some of the general managers interviewed had self-identified professional development to stay up to date with contemporary business practice.

Reappointments or salary increases were not always tied to performance assessments

3.21 A recent performance assessment is helpful in supporting a council's decision to increase a general manager's salary or reappointment a general manager for a further period of up to five years. Use of this information does however, require an objective, well-defined performance assessment process.

3.22 In relation to salary increases:

- all employment contracts reviewed stated that salary would be reviewed following a performance assessment
- four contracts stated there was no obligation for an increase
- two contracts awarded automatic annual increments tied to the Consumer Price Index without reference to the performance assessment

- one of the contracts awarded bonus payments for the achievement of stretch targets outlined in the employment contract.

3.23 Implementation of the employment contract terms on salary increases varied with:

- three of the six councils linking the increase in the general manager's salary to a satisfactory performance assessment
- three councils not clearly linking the salary increase to the performance assessment.

3.24 Four of the councils reviewed had reappointed their general manager for terms of between two and five years. Two of these councils had ensured the decision to reappoint was informed by the most recent performance assessment. In regards to the other councils:

- One council formed a committee to consider whether to reappoint the general manager. This committee relied on discussion amongst councillors about whether the general manager was doing a good job to support its recommendation to council to reappoint rather than the most recent performance assessment. The decision to reappoint was made in a closed meeting of the full council.
- The other council approved the reappointment in a closed council meeting, but made no reference in the decision to the most recent performance assessment.

Dispute resolution processes were generally effective

3.25 The dispute resolution process was defined in three of the six employment contracts reviewed. Although in practice, general managers of five of the six councils reviewed felt they had the ability to discuss their concerns with the performance assessment process with the Mayor or the consultant engaged to facilitate the review. Some general managers advised they could also discuss issues with the council at closed council meetings.

3.26 For one council, while the general manager's opportunity to respond to the performance assessment was identified in the employment contract, the dispute resolution process had not been defined. In this instance, general dispute resolution processes were also considered to be ineffective due to broader communication issues within the council and the lack of agreement on the performance measures to be used in the general manager's performance assessment.

Independent assurance report

This independent assurance report is addressed to the President of the Legislative Council and the Speaker of the House of Assembly. It relates to my review of the process run by the Huon Valley Council (Council) to recruit a general manager.

Review objective

The objective of the review was to form a limited assurance conclusion on the effectiveness of Council in managing conflicts of interest during the process to recruit a general manager.

Review scope

This review covered Council's management of conflicts of interest in the recruitment process, which ran from 31 March 2021 to 15 September 2021.

The suitability of the applicant selected for interview and subsequently appointed was not within the scope of the review.

Review approach

The review was conducted in accordance with the Australian Standard on Assurance Engagements ASAE 3500 *Performance Engagements* issued by the Auditing and Assurance Standards Board, to express a limited assurance conclusion. The procedures performed in a limited assurance review vary in nature and timing from, and are less in extent than for, a reasonable assurance engagement and consequently the level of assurance obtained in a limited assurance review is substantially lower than the assurance that would be obtained had a reasonable assurance engagement been performed.

The review evaluated the effectiveness of Council's approach to managing conflicts of interest during the recruitment process to appoint a general manager.

I conducted my limited assurance review by making such enquiries and performing such procedures I considered reasonable in the circumstances. Evidence for the review was obtained primarily through discussions with relevant personnel and examining corroborative documentation and included:

- reviewing documents relevant to the recruitment process
- interviewing Councillors on the General Manager Recruitment Panel (the Panel) and another Councillor not on the Panel but involved in the later stages of the recruitment process
- interviewing Ms Joanne Inches (the Consultant), Managing Director of Red Giant
- interviewing a director of Edge Legal (Legal Adviser)
- reviewing correspondence received from interested parties.

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

Responsibility of management

Council is responsible for recruiting and appointing the general manager, at a minimum, in accordance with requirements under the *Local Government Act 1993* (the Act).

Responsibility of the Auditor-General

In the context of this review, my responsibility was to express a limited assurance conclusion on the effectiveness of Council's approach to managing conflicts of interest during the recruitment process to appoint a general manager.

Independence and quality control

I have complied with the independence and other relevant ethical requirements relating to assurance engagements, and apply Auditing Standard ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements* in undertaking this assurance review.

Conclusion

Based on the procedures performed and evidence obtained, the following matters have come to my attention:

- the Panel's consideration of the conflict of interest in the recruitment process did not demonstrate an understanding of the significance of the Consultant's reported conflict of interest and pecuniary interest
- the Panel accepted the Consultant's suggested approach to managing the Consultant's conflict and did not seek to appropriately mitigate the risk that emerged as a result of that decision
- Council decided to proceed with the recruitment despite knowing, after receipt of the report from its Legal Adviser, that the process lacked integrity.

These matters cause me to believe the Council's approach to managing conflicts of interest during the recruitment process to appoint a general manager was not effective.



Rod Whitehead
Auditor-General

12 October 2021

Executive summary

Summary of findings

In reference to the recruitment process for Council's general manager, an actual conflict of interest arose for the Consultant upon their partner submitting an application for the general manager position on 24 May 2021. The Consultant did not report the conflict of interest to the Panel until 4 July 2021.

The review identified three key concerns where decision-making related to the management of the conflict of interest was inadequate. These are when Council:

- accepted the Consultant's suggested approach to managing her conflict and did not seek to appropriately mitigate the risk that emerged as a result of that decision
- identified the Consultant's partner as the preferred applicant during the interviews with the full Council
- decided to proceed with the recruitment despite knowing, after receipt of the report from the Legal Adviser, that the process lacked integrity.

The inadequate management of the conflict of interest resulted in a flawed recruitment process as the potential for bias and unfair treatment of applicants was significant throughout the process. In addition, the process undermined the public confidence required in an appointment as significant as the general manager of Council.

We thank the parties involved in this review for their assistance.

Recommendation

Council review and improve the recruitment and appointment process by developing guidance and implementing a process whereby those involved in a recruitment process:

- declare conflicts of interest, or lack thereof, once applicants are known
- implement management strategies that are commensurate with the nature and extent of the conflict of interest.

Submissions and comments received

In accordance with section 30(2) of the *Audit Act 2008* a summary of observations was provided to the Premier, Minister for Local Government and Planning and the Huon Valley Council with a request for submissions or comments.

Submissions and comments that we receive are not subject to the audit nor the evidentiary standards required in reaching an audit opinion. Responsibility for the accuracy, fairness and balance of these comments rests solely with those who provided the response. However, views expressed by the responders were considered in reaching our conclusions.

Section 30(3) of the Audit Act requires that this Report include any submissions or comments made under section 30(2) or a fair summary of them. Submissions received are included in full below.

Response from the Minister for Local Government and Planning

I note the findings in respect of Huon Valley Council's general manager recruitment process and I will continue to work closely with the Director of Local Government in relation to this matter.

The Honourable Roger Jaensch MP

Response from the Huon Valley Council

Thank you for the opportunity to comment on the Tasmanian Audit Office review of the Huon Valley Council General Manager recruitment process in managing conflicts of interest.

The Huon Valley Council acknowledges and accepts the summary of findings and recommendations of the Tasmanian Audit Office.

The Huon Valley Council adopted the Recommendations from the Edge Legal report and has identified training providers with the assistance of the Local Government Association of Tasmania. The Council is preparing an Expression of Interest (EOI) criteria so that it can complete all the recommendations outlined in the Edge Legal Report. The Council will ensure that the Auditor-General's report that is made available to the public is included in the EOI and forms part of the criteria.

The Council recognises the importance of undertaking this training to ensure that not only the current elected members are fully trained to manage conflict of interest in recruitment processes but also that future councillors gain from the training and documentation that has been identified in the Edge Legal and Tasmanian Audit Office recommendations.

The EOI will include:

- Conflicts of Interest Management including:
 - developing guidelines to support the Code of Conduct in respect to the identification and management of conflicts of interest; and
 - provide training to Councillors in relation to the management of conflicts of interest in accordance with the guidelines developed
- Effective Use of Panels and Committees
 - functions and scope for a Panel or Committee established by the Council and reporting requirements back to the Council for further guidance or when consensus cannot be achieved;
 - how to engage in robust but respectful discussion;
 - the importance of note taking;
 - how to give adequate reasons for decisions reached.

Councillor Bec Enders, Mayor

1. Introduction

Managing conflicts of interest

- 1.1 The Tasmanian community is entitled to have confidence that local government recruitment processes are carried out in an impartial, ethical, efficient and professional manner.
- 1.2 Conflicts of interest, whether perceived, real or potential, will occur. Where a conflict of interest exists, at any stage in a recruitment process, that conflict must at all times be identified, declared, documented and effectively and transparently managed, so that there is no question about the merit of the outcome, principles applied and overall integrity of the process.
- 1.3 Conflicts of interest in themselves are not necessarily wrong or unethical, and may not always be able to be avoided. However, identifying and managing a conflict is critical to conducting an impartial, ethical, efficient and professional recruitment.
- 1.4 An appropriate approach⁵ to managing conflict of interest encompasses:
 - disclosing conflicts of interest, where they exist, even where small and considered inconsequential, as soon as practicable
 - documenting all disclosures of real, potential and perceived conflicts
 - documenting the declared conflict of interest and steps taken to manage it in the recruitment selection report.
- 1.5 Persons involved in making employment decisions have a responsibility to minimise creating or entering into situations, which may result in a conflict for themselves, or other people. However, no person should be excluded from the opportunity to apply for a position because it may create a conflict of interest. The responsibility for managing a conflict of interest in recruitment lies with the employment decision maker, not the applicant.

Conflicts of interest

- 1.6 Conflicts of interest arises from a conflict between the performance of a public duty, and a private or personal interest.
- 1.7 A personal interest includes the private, professional or business interests of a person, or of the individuals or groups with whom they have a close association, such as relatives or friends.
- 1.8 A conflict of interest may be actual, perceived, potential or an apprehension of bias. The distinction between these types of conflicts of interest are:

⁵ Adapted from Tasmanian State Service Policy, *Managing Conflicts of Interest in Recruitment*, <https://www.dpac.tas.gov.au>

- an actual conflict of interest occurs when there is a conflict between a person's official duties and responsibilities in serving the public interest, and their personal interest
- a perceived conflict of interest occurs when a reasonable person, knowing the facts, would consider that a conflict of interest may exist, whether or not this is the case
- a potential conflict of interest occurs where a person has a personal interest that could conflict with their official duties in the future.

1.9 Personal interests may be pecuniary or non-pecuniary. Pecuniary refers to an actual or potential financial gain or loss for the person, their family, friends or close associates. Non-pecuniary refers to an interest that is not financial or monetary but arises from such things as personal relationships, beliefs or involvement in social, cultural, religious or sporting activities.

Apprehension of bias

1.10 The concept of apprehension of bias is wider than conflict of interest. It is drawn from circumstances or by the outward appearance of the decision-making process. Apprehension of bias may occur when a fair-minded person might reasonably think that a decision-maker might not bring an impartial mind to the decision, noting the difference between an actual impartial mind and one that is seen to be impartial.

Managing a conflict of interest or apprehension of bias

1.11 The stages of managing a conflict and/or apprehension of bias are:

- identifying that there may be an actual, perceived or real conflict of interest and/or apprehension of bias
- declaring the conflict of interest to the other decision makers prior to assessment process starting, or as soon as a conflict is identified
- documenting the conflict of interest and/or apprehension of bias
- managing the conflict of interest through management strategies, to effectively and transparently manage that conflict so that the perception and risk to the decision making is eliminated or significantly reduced.

1.12 Management strategies to manage or avoid the conflict of interest include:

- removing the conflicted person from the recruitment process
- restricting the conflicted person's involvement in the recruitment process
- including an independent or third party to oversee or review decision-making.

Key events in Council's recruitment process

1.13 Key events in the Council's process to recruit the general manager are outlined in Table 3.

Table 3: Key events in the recruitment process

| 2021 | Event |
|------------|---|
| 31 March | Council established a General Manager Recruitment Panel (the Panel) to facilitate the recruitment process. |
| 22 April | The Panel accepted a proposal dated 13 April 2021 from Red Giant Pty Ltd. |
| 5 May | The Consultant advertised the position on Seek, LinkedIn and the Red Giant website. |
| 6 May | The Consultant's partner emailed the Consultant to express an interest in the role. |
| 24 May | The Consultant's partner submitted an application. |
| 26 May | Applications for the position closed. |
| 10 June | The Consultant interviewed her partner and the other applicants to determine their suitability to be shortlisted. |
| 4 July | The Consultant provided the Candidate Report, which shortlisted 14 applicants from 85 applications, and reported a conflict of interest in relation to one of the shortlisted applicants. |
| 5 July | The Panel resolved to accept the Consultant's proposed approach to managing the reported conflict of interest. |
| 13-15 July | The shortlisted applicants were interviewed. |
| 28 July | The Panel provided a Selection Panel Report, which included the results of reference checking, to Council recommending three applicants be interviewed by the full Council. |
| 30 July | Council interviewed the three shortlisted applicants. |
| 16 August | Council resolved to not continue with one of the three recommended applicants and invite the two remaining applicants to participate in psychometric testing. |
| 17 August | The remaining two applicants participated in psychometric testing through a specialised provider. |

| 2021 | Event |
|--------------|---|
| 23 August | A second consultant, engaged by the Consultant, met with Council to discuss the results of the psychometric testing. |
| 23 August | The Director of Local Government requested that the Mayor consider undertaking an independent review of the process and provide written assurance that the process was conducted professionally and with the necessary integrity to enable Council to make an appropriate determination. |
| 25 August | Council resolved to proceed with the appointment (subject to contract negotiations and employment contract approval) and commence an independent review of the recruitment process. |
| 30 August | The Mayor made a statutory declaration to the Director of Local Government that the Council recruitment process 'followed the professional advice and decision(s) of the Council and in this instance was conducted professionally and with the necessary integrity to enable the Council to make an appropriate determination on this matter'. |
| 15 September | Council considered the report on the independent review and resolved to proceed with the appointment. |

Source: Huon Valley Council.

Contracting the Consultant

1.14 On 31 March 2021, Council considered a report from a senior Council employee on the need for, and proposed approach to, recruiting a general manager. The report identified risks inherent in any recruitment, including:

- the 'inexperience of the recruiting team and the dependence on experts to select the best candidate'
- expecting a good outcome from an inadequate process.

1.15 The report also identified these risks would be generally addressed by a number of methods including:

- design and implementation of a rigorous recruitment process
- engaging a suitably qualified recruitment expert to provide advice and support the recruitment process.

1.16 Following consideration of the report, Council agreed to engage an external consultant to compensate for the lack of executive recruitment experience of Councillors on the Panel. The Council authorised the Acting Mayor, with agreement of the Panel, to obtain quotes for an external consultant to:

- prepare a position description and selection criteria for approval by the Panel
- prepare and implement a job advertisement and advertising plan

- to be the sole contact between the prospective applicants and the Council
- prepare interview questions for approval of the recruitment panel
- shortlist applicants and present to the Panel
- schedule interviews, prepare interview packs of the Panel and meet with the Panel to run through the interview process
- undertake interviews in conjunction with the Panel
- undertake reference checks and other actions as agreed
- prepare recruitment reports detailing recommendation for appointment.

1.17 The process for identifying and entering into a contract with the Consultant was not within the scope of this review.

2. Council's management of conflicts of interest

Managing conflicts of interest was not broadly considered at the beginning of the recruitment process

- 2.1 There is no evidence that the Panel discussed the importance of declaring conflicts of interest as soon as they arose internally or with the Consultant at the beginning of the recruitment process.
- 2.2 Under the *Local Government Act 1993*, Councillors are required to declare any conflicts of interest at any meeting in which they participate and apply an appropriate management strategy.
- 2.3 Council's view is no conflicts of interest existed for Panel members in respect of the general manager's recruitment as no conflicts were declared. In the absence of any documented evidence as to whether conflicts of interest were considered by Panel members during the recruitment process, we are unable to express a view on this point.

The initial response to the Consultant's reported conflict of interest was inadequate

- 2.4 In Council's recruitment process, there was the potential for the Consultant to have a conflict of interest when her partner⁶ expressed interest in the general manager position on 6 May 2021.
- 2.5 The potential conflict of interest became an actual conflict of interest when the Consultant's partner submitted an application for the general manager position on 24 May 2021. From this date onwards, the perception that the Consultant's actions were biased existed.
- 2.6 The Consultant did not report the conflict of interest to the Panel until 4 July 2021 when the Consultant emailed the Candidate Report to Panel members. Between 24 May 2021 and 4 July 2021, the Consultant:
 - reviewed 85 applications
 - conducted preliminary interviews with 14 applicants, including her partner, to determine if they were suitable

⁶ In this report 'partner' refers to the personal relationship between the Consultant and the successful applicant.

- provided the Candidate Report containing 14 applicants, including her partner, for the Panel to consider for interview.
- 2.7 The late reporting of the conflict of interest by the Consultant prevented the Panel from putting management strategies in place earlier in the recruitment process. The delivery of the Candidate Report, and notification of the conflict of interest, a day prior to the shortlisting process did not give the Panel members enough time to consider the two matters separately. The consequence of this approach was that the Panel's attention centred on the shortlisting of applicants and the conflict of interest became a minor procedural issue.
- 2.8 From the time the Consultant became aware of her partner's application for the general manager position, the Consultant had a pecuniary interest in the recruitment process arising from the potential financial gain for her partner, and indirectly, herself, if her partner was appointed to the general manager position.
- 2.9 Notwithstanding the declared conflict of interest and pecuniary interest, the Consultant provided advice to the Panel on management strategies for the conflict of interest. Specifically, the Consultant proposed that she would not be involved in any decision making on her partner's suitability for the general manager position and would hand over any decision making regarding the outcome of his application to the Panel.
- 2.10 The Panel accepted the proposed management strategies. There was no evidence confirming the Panel's recognition of the Consultant's pecuniary interest in making its decision.
- 2.11 The Panel's consideration of the conflict of interest in the recruitment process did not demonstrate an understanding of the significance of the Consultant's reported conflict of interest and pecuniary interest. A better practice approach would have been to halt the recruitment process, report the conflict to the full Council and allow the full Council to determine whether the contractual relationship with the Consultant would continue.

The Consultant was unable to deliver the contracted services from the time the management strategy was in place

- 2.12 As a result of the agreed strategy for mitigating the conflict of interest, the Consultant was unable to:
 - be the sole contact between the prospective applicants and the Council
 - shortlist applicants and present to the Panel
 - undertake interviews in conjunction with the Panel
 - undertake reference checks and other actions as agreed
 - prepare recruitment reports detailing recommendation for appointment.

- 2.13 The Consultant fulfilled an administrative role rather than being the expert that a Panel with limited experience in general manager recruitment needed. This was not the agreed role specified in the contract between the Council and the Consultant.
- 2.14 There was no evidence to suggest that the Panel had considered the impact of the Consultant being unable to deliver on the contracted services. There was also no evidence that the Panel recognised that the Consultant was initially engaged to support an inexperienced Panel to implement an effective recruitment process. As a result, the risk accepted by the Panel in not ending the contract with the existing Consultant and engaging a new consultant was significant.

Council appointed the Consultant's partner as the general manager despite knowing the process used to arrive at the decision was flawed

2.15 On 25 August 2021, Council determined at its ordinary meeting to:

- appoint the Consultant's partner as its general manager subject to successful contract negotiations and final approval of the employment contract by Council with a proposed commencement date of 21 September 2021
- seek an independent review of the process from the Legal Adviser that considered whether:
 - the Consultant appropriately disclosed the conflict of interest
 - Council put appropriate steps in place to manage the conflict of interest
 - the recruitment process engaged in breached the Act or any other relevant policies or procedures applicable to Council.

2.16 On 15 September 2021, the Council considered the report from the Legal Adviser in a Special Meeting and decided to approve the employment contract. Key findings from that report are summarised below:

- The Consultant disclosed the conflict as soon as she considered it appropriate to do so. Late disclosure resulted from a lack of understanding on her part. It was not to advantage the Consultant's partner. Once disclosed, it was Council's responsibility to determine if a conflict existed and the appropriate strategies to manage it.
- On 5 July 2021, the Panel should have referred the conflict back to the full Council to resolve how to manage it.
- The full Council did not properly consider the adequacy of the management of the conflict of interest until its ordinary meeting on 25 August 2021. In that meeting, the focus was on resolving to decide on the preferred applicant and determining to undertake an independent review of the recruitment process and management of the conflict of interest. The late notification of the conflict

of interest by the Panel disadvantaged the full Council in managing the conflict. Like the Panel, the full Council lacked an adequate understanding of the conflict of interest issue.

- The conduct engaged in by the Council in managing the conflict falls below expected standards of managing conflicts, particularly having regard to the need for public confidence in the recruitment process of its general manager.
- The Council's management of the conflict of interest in the recruitment process did not breach the Code of Conduct, the Act or the Council's Governance Framework.

2.17 While there was no evidence that the process was actually biased, the potential for bias in the process remained. Examples of potential bias included the Consultant:

- having an in-depth understanding of the qualities that Council was looking for in a general manager
- having access to the interview questions
- participating in interviews with other applicants
- being present when the Panel, and later the Council, discussed the strengths and weaknesses of other applicants interviewed.

2.18 The management strategy was, in respect to the potential for bias, inadequate. It also did not limit the opportunity for the Consultant to support her partner, through verbal or non-verbal communication, in the discussion about applicants after each interview stage. It also did not prevent the Consultant not supporting other applicants when it was due.

2.19 The existence of the potential bias means that the process was inequitable. Specifically:

- an applicant may have more confidence in the process knowing that their partner is involved in running the process
- the other applicants were not aware of the conflict or that they were involved in a process that had the potential to be biased.

2.20 Putting strategies in place to ensure the recruitment process was equitable and had integrity was the Council's responsibility.

Acronyms and abbreviations

| | |
|-------------------|---|
| Council | Huon Valley Council |
| HR | Human Resources |
| KPI | Key Performance Indicator |
| LGAT | Local Government Association of Tasmania |
| SMART | Specific, Measurable, Achievable, Reliable and Time-bound |
| The Act | <i>Local Government Act 1993</i> |
| The Consultant | Ms Joanne Inches, Manager Director of Red Giant Pty Ltd |
| The Legal Adviser | Edge Legal |
| The Panel | General Manager Recruitment Panel |

Audit Mandate and Standards Applied

Mandate

Section 23 of the *Audit Act 2008* states that:

- (1) The Auditor-General may at any time carry out an examination or investigation for one or more of the following purposes:
 - (a) examining the accounting and financial management information systems of the Treasurer, a State entity or a subsidiary of a State entity to determine their effectiveness in achieving or monitoring program results;
 - (b) investigating any matter relating to the accounts of the Treasurer, a State entity or a subsidiary of a State entity;
 - (c) investigating any matter relating to public money or other money, or to public property or other property;
 - (d) examining the compliance of a State entity or a subsidiary of a State entity with written laws or its own internal policies;
 - (e) examining the efficiency, effectiveness and economy of a State entity, a number of State entities, a part of a State entity or a subsidiary of a State entity;
 - (f) examining the efficiency, effectiveness and economy with which a related entity of a State entity performs functions –
 - (i) on behalf of the State entity; or
 - (ii) in partnership or jointly with the State entity; or
 - (iii) as the delegate or agent of the State entity;
 - (g) examining the performance and exercise of the Employer's functions and powers under the *State Service Act 2000*.
- (2) Any examination or investigation carried out by the Auditor-General under subsection (1) is to be carried out in accordance with the powers of this Act

Standards Applied

Section 31 specifies that:

'The Auditor-General is to perform the audits required by this or any other Act in such a manner as the Auditor-General thinks fit having regard to -

- (a) the character and effectiveness of the internal control and internal audit of the relevant State entity or audited subsidiary of a State entity; and
- (b) the Australian Auditing and Assurance Standards.'

The auditing standards referred to are Australian Auditing Standards as issued by the Australian Auditing and Assurance Standards Board.



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