

ITEM NUMBER: 14.1**CONFIDENTIAL REPORT****MINUTES – EXECUTIVE COMMITTEE –
26 APRIL 2022**

Pursuant to Section 83(5) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- a. **information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person or persons (living or dead).**
- e. **matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person.**

CONFIDENTIAL

Recommendation – Exclusion of the Public – Section 90(3)(a)&(e) Order

- 1** That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the General Manager, Strategy and Corporate and the staff minute taker in attendance at the meeting in order to consider Report No: 137/22, Minutes – Executive Committee – 26 April 2022 in confidence.

 - 2.** That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 137/22, Minutes – Executive Committee – 26 April 2022 on the following grounds:
 - a.** pursuant to section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to Report No: 137/22, Minutes – Executive Committee – 26 April 2022 is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead), being Chief Executive Officer, Mr Roberto Bria because that details of his remuneration will be discussed, which are sensitive and are details only known to those who have participated in the discussion.

 - e.** pursuant to section 90(3)(e) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is related to matters affecting the security of an employee of the Council. As details of the Chief Executive’s remuneration will be discussed, which are sensitive and are details only known to those who have participated in the discussion.

 - 3.** The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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Item No: 14.1

Subject: **MINUTES – EXECUTIVE COMMITTEE – 26 APRIL 2022**

Date: 10 May 2022

Written By: Personal Assistant, Strategy and Corporate

General Manager: Strategy and Corporate, Ms P Jackson

SUMMARY

The minutes of the meeting of the Executive Committee held 26 April 2022 are presented to Council for information and endorsement.

RECOMMENDATION

That Council:

1. notes the confidential minutes of the Executive Committee of 26 April 2022.
2. appoints a qualified independent member to the Executive Committee for the period until the Chief Executive Officer's 2021/22 Performance Review process has concluded; and
3. endorses the amended Terms of Reference for the Executive Committee.

RETAIN IN CONFIDENCE - Section 91(7) Order

4. That having considered Agenda Item 14.1 Minutes – Executive Committee – 26 April 2022, Report No 137/22 in confidence under Section 90(2) and (3)(a & e) of the *Local Government Act 1999*, the Council, pursuant to Section 91(7) of that Act orders that the report, attachment and minutes be retained in confidence for a period of 24 months and this order be reviewed every 12 months.
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STRATEGIC PLAN

Legislative requirement

COUNCIL POLICY

Not applicable

STATUTORY PROVISIONS

Not applicable

BACKGROUND

Council established an Executive Committee pursuant to Section 41 of the *Local Government Act* with responsibility for undertaking the annual performance appraisal of the Chief Executive Officer to:

- recommend to Council the form and process of the Chief Executive Officer's annual performance appraisal;
- undertake the annual performance appraisal; and
- provide a report and to make recommendations to Council on any matters arising from the annual performance appraisal.

The Executive Committee's authority extends to making recommendations to Council and does not have any authority to make decisions in relation to the Chief Executive Officer's employment arrangements.

REPORT

Confidential minutes of the meeting of the Executive Committee held on 26 April 2022 are attached for Members' information.

Refer Attachment 1

At the end of 2021, several changes were made to the *Local Government Act 1999* (the Act) relating to the appointment, performance review and termination of Chief Executive Officer (CEO). A copy of the changes is included as Attachment 2.

Refer Attachment 2

A key change relates to the performance review of the CEO. A new section 102A provides that a council must review the performance of its CEO at least once in each year. In addition, the council must obtain and consider the advice of a qualified independent person for the purposes of the review. This section of the Act outlines the definition of a qualified independent person:

- a) not a member or employee of the council; and*
- b) determined by the council to have the appropriate qualifications or experience in human resource management.*

The information provided in this section of the Act does not explicitly state that a qualified independent person must be appointed to the Committee reviewing the CEO's performance, however interaction between the person and the committee is clearly envisaged.

The Executive Committee considered the following three options, which would appear to satisfy the legislative requirements.

1. Appoint an independent qualified person as a member of the Executive Committee.
2. Engage an independent qualified person to attend the relevant Executive Committee meeting, without being a member, to provide independent advice.
3. Engage an independent qualified person to review the recommendations of the Executive Committee, and present both to Council for a decision.

The Executive Committee decided option 1 would be the most appropriate option. The primary benefit of this option is the independent person can both glean context from the Committee and input expertise. The Council's Audit Committee is an example of the benefits of this model.

Given this Council is in its final year of term, it is recommended to appoint an independent member for the purposes of the 2021/22 Performance Review process, and then undertake an appointment process for an independent member of the Executive Committee at the commencement of the new Council's term.

The Executive Committee will consider possible independent members at its meeting on 10 May 2022 for consideration by Council.

Appointment of an independent member requires amendments to the Committee's Terms of Reference. A copy of the Committee's amended Terms of Reference are included as Attachment 3 with the proposed amendments marked in red.

Refer Attachment 3

BUDGET

This report does not have any budget implications at this stage.

LIFE CYCLE COSTS

This report does not have any full life cycle cost implications.

Attachment 1



Confidential Minutes of the Executive Committee of the City of Holdfast Bay held in the Council Chamber, Glenelg Town Hall, Moseley Square, Glenelg, on Tuesday 26 April 2022 at 5.00pm.

PRESENT

Members

Deputy Mayor – John Smedley
Councillor S Lonie
Councillor R Snewin
Councillor W Miller
Councillor R Abley

Staff

General Manager Strategy and Corporate – P Jackson

1. OPENING

The Deputy Mayor declared the meeting open at 5.09pm.

2. APOLOGIES

2.1 Apologies Received – Mayor A Wilson

2.2 Absent

3. DECLARATION OF INTEREST

Members were reminded to declare their interest before each item.

4. CONFIRMATION OF MINUTES

Motion

That the minutes of the Executive Committee held on 18 May 2021 be taken as read and confirmed.

Moved by Councillor Abley, Seconded by Councillor Lonie

Carried Unanimously

5. CONFIDENTIAL REPORTS BY OFFICERS**5.1 Performance Review Process – Chief Executive Officer (Report No: 125/22)****Motion – Exclusion of the Public – Section 90(3)(a)&(e) Order**

- 1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the General Manager, Strategy and Corporate and the staff minute taker in attendance at the meeting in order to consider Report No: 125/22, Chief Executive Officer's Performance Review Process in confidence.**
- 2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 125/22, Chief Executive Officer's Performance Review Process on the following grounds:**
 - a. pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to Report No: 125/22, Chief Executive Officer's Performance Review Process is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead), being Chief Executive Officer, Mr Roberto Bria, because in that details of his remuneration will be discussed, which are sensitive and are details only known to those who have participated in the discussion.**
 - e. pursuant to Section 90(3)(e) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is related to matters affecting the security of an employee of the Council. As details of the Chief Executive's remuneration will be discussed, which are sensitive and are details only known to those who have participated in the discussion.**
- 3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.**

Moved Councillor Abley, Seconded Councillor Lonie

Carried Unanimously

Motion

The Executive Committee advises Council it recommends:

- 1. Council appoints a qualified independent member to the Executive Committee for the period until the Chief Executive Officer's 2021/22 Performance Review process has concluded; and**
- 2. Council endorses the amended Terms of Reference for the Executive Committee.**

RETAIN IN CONFIDENCE - Section 91(7) Order

3. That having considered Agenda Item 5.1, Performance Review Process – Chief Executive Officer, Report No 125/22 in confidence under Section 90(2) and (3)(a & e) of the Local Government Act 1999, the Council, pursuant to Section 91(7) of that Act orders that the report, attachment and minutes be retained in confidence for a period of 24 months and this order be reviewed every 12 months.

Moved Councillor Lonie, Seconded Councillor Miller

Carried Unanimously

6. **URGENT BUSINESS – SUBJECT TO THE LEAVE OF THE MEETING - Nil**

7. **CLOSURE**

The Meeting closed at 5.26pm.

CONFIRMED 10 May 2022

CHAIRMAN

Attachment 2



CEO Appointment, Performance Review and Termination

This information sheet relates to the commencement of section 57, 58, 60 and 61 of the Statutes Amendment (Local Government Review) Act 2021 (the Review Act), amending/inserting sections 97, 98, 99A and 102A of the Local Government Act 1999. Based on information currently available, and consistent with previous advice from the Minister for Local Government, the new section 99A will commence on proclamation which is anticipated to be in September 2021. Remaining sections are expected to commence on 10 November 2021.

A number of changes have been made to sections of the *Local Government Act 1999* (the Local Government Act) relating to the appointment, performance review and termination of the Chief Executive Officer (CEO). These changes are summarised below and include the insertion of two new sections.

1. Section 97—Vacancy in office

Section 97 now provides that before terminating the appointment of a CEO (other than on grounds that he or she has been convicted of an indictable offence punishable by imprisonment, has become bankrupt, or has applied to take the benefit of a law for insolvent debtors) council must have regard to advice from a qualified independent person.

2. Section 98—Appointment procedures

Section 98 now provides that a council must ensure that *either or both* of the following apply to the process of appointing a CEO:

- (a) council appoints at least 1 person who is not a member or employee of council to the selection panel;
- (b) before making the appointment, council obtains and considers the advice of a qualified independent person on the assessment of applications and recommendations on the appointment.

Section 98 of the Act does not apply in circumstances involving the reappointment of a CEO following the completion of a term of office (s 98(6)).

3. Section 99A—Remuneration of chief executive officer

The new Section 99A, provides that the remuneration of a CEO will be determined by the council, subject to the minimum and maximum remuneration determination made by the Remuneration Tribunal SA (RTSA). Whilst this section is anticipated to commence in September 2021, councils will not need to comply with this requirement for new CEOs or CEOs who have completed a term of office and are being reappointed until the first determination has been made. In accordance with the transitional provision in Section 147 of the Review Act, existing CEO salaries are unaffected during their term of office.

At this stage there is limited information available regarding the process to be used by the RTSA. Preliminary discussions have suggested that the RTSA is likely to divide councils into salary bands, which would mirror the process currently used for determining council member allowances. The LGA will provide further information on CEO remuneration as it becomes available.

For further information contact the Governance Team

148 Frome Street Adelaide SA 5000 | governance@lga.sa.gov.au | 08 8224 2000 | lga.sa.gov.au

ECM 731956

4. Section 102A—Chief executive officer—performance review

New section 102A provides that a council must review the performance of its CEO at least once in each year and, if relevant, before reappointment. The council must obtain and consider the advice of a qualified independent person for the purposes of any review.

Importantly, whilst the conduct of a performance review process for the CEO is not new, it is now a legal obligation that it occur at least once per year.

5. Definition of qualified independent person

For each of the circumstances outlined above, the definition of a **qualified independent person** is a person who is:

- (a) not a member or employee of the council; and
- (b) determined by the council to have the appropriate qualifications or experience in human resource management.

6. Qualified independent person FAQ

1. Who is a qualified independent person?

The Local Government Act defines a qualified independent person as a person who is:

- (a) not a member or employee of *the* council, and
- (b) determined by the council to have appropriate qualifications or experience in human resource management.

In appointing a qualified independent person a member or employee of *another* council is not precluded from that role, subject to them having the appropriate qualifications or experience in human resource management.

2. What are ‘appropriate qualifications or experience in human resources management’?

- Examples of appropriate tertiary and/or other qualifications include:
 - Diploma in Human Resource Management or a related field
 - Certificate in Human Resource Management or a related field
 - Bachelors Undergraduate Degree in Human Resource Management or a related field
 - Master’s Degree in Human Resource Management or a related field
 - PhD in Human Resource Management or a related field
 - Related fields may include business, industrial relations, psychology or law
- A person might have “appropriate experience” if they have worked for several years in a human resources or people and culture role, ideally:
 - in more than one organisation;
 - with an understanding of the strategic needs of organisations; and
 - with particular experience dealing with senior managers of an organisation

For further information contact the Governance Team

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ECM 731956

- Examples of roles that council might determine constitutes 'appropriate experience' include:
 - Human Resources Practitioner (eg HR Manager, HR Consultant, HR Director, Deputy HR Director, Chief People Officer, HR Advisor, and other similar HR related roles)
 - Employment lawyer
 - Operations manager (those with significant experience in people management practices)
 - Recruitment Consultant (for CEO appointments only)
 - Organisational psychologist

In relation to professionals with no formal qualifications, the length of experience deemed 'appropriate' is at the discretion of the council, but it can be reasonable to expect at least 36 months given the seniority of the role under consideration.

3. *How can the council source an appropriately qualified independent person?*

- Applying a standard procurement process (eg advertise, select, and appoint).
- Sharing resources with other councils (eg an agreement between councils to provide access to appropriately qualified and independent people if available).
- Requesting support through the LGA's HR Service.
- Using human resource management professionals the council has existing arrangements with.

4. *How will the council know if the person is appropriately qualified and/or independent?*

Examples of ways this can be determined include:

- Checking credentials/qualifications.
- Checking employment history (resumes).
- Requesting professional references.
- Requesting samples of similar work undertaken.
- Requesting that the person signs a conflict-of-interest declaration.

5. *How much will a qualified independent person cost the council?*

The cost will vary depending on who is appointed and the role they will undertake. An externally sourced HR practitioner, for example, could cost in the region of \$125 - \$200¹ per hour plus GST.

6. *What are the roles and responsibilities of the qualified independent person?*

The roles and responsibilities of those involved in the process should be clarified before any work is undertaken, by way of a written agreement.

If the council elects to appoint the qualified independent person to the selection panel for the appointment of the CEO, the qualified independent person must be as involved in the decision making process as the other members of the panel. For example, this may include reviewing written applications, participating in interviews, conducting reference checks.

If the qualified independent person is not appointed to the selection panel, their role is to provide advice on the assessment of applications and recommendations on the appointment.

¹ Indicative hourly rate amounts derived from market survey conducted mid 2021

7. *What documentation should the council provide the qualified independent person?*

The qualified independent person should receive all documentation necessary to enable them to undertake their statutory role.

By way of example, if the person is appointed as a member of the selection panel, they should receive the same documentation as the other members of the panel (e.g. resumes and selection records, a proposed contract of employment and remuneration package, and relevant KPI's).

If the person is providing advice in relation to a possible termination, they should receive a management pack containing relevant investigation details and the CEO's current contract of employment.

If they are providing advice in respect of a performance review, they should receive the CEO's current contract of employment, relevant KPI's, the outcomes of previous performance reviews (if applicable) and the Terms of Reference of the CEO Performance Review Committee.

8. *What should the council consider in relation to confidentiality?*

The council should arrange for a confidentiality agreement to be signed by the independent person, which may form part of the overall terms of engagement.

The council's agreement with the independent person should clearly set out who the person should communicate with (eg the Mayor, a selection panel).

Council should determine who will have access to the advice of the independent person. This decision should be incorporated into the agreement with the independent person.

9. *For CEO appointments, the Act requires that either or both of the following apply:*

(i) a council appoints at least one person who is not a member or employee of the council to the selection panel, or

(ii) (ii) before making the appointment, the council should obtain and consider the advice of a qualified independent person on the assessment of applications and recommendations.

Does this mean that the council can have an unqualified person on the selection panel provided they are independent?

Yes. However, when determining the composition of the selection panel inclusion of one or more members with suitable experience in recruitment and selection is encouraged.

Alternatively, the provision of training to selection panel members, as part of the establishment of the panel, to ensure their meaningful participation could be provided.

The operation of the new section 98(4a) means that if the council does not appoint an independent panel member to the selection panel, it must obtain and consider the advice of a qualified independent person before appointing a CEO. Accordingly, a panel may comprise entirely of council members, provided this advice is obtained.

10. *What support is there for councils to implement these changes in practice?*

If required, the LGA HR Service and HR-IR Library (delivered in partnership with Norman Waterhouse Lawyers) can support councils by:

- assisting with sourcing qualified independent people.
- Providing councils with pre-selected profiles of qualified independent people for approval.
- Providing updated and lawful policies, procedures, and training in relation to all CEO appointment, performance review and termination processes.
- Providing updated and lawful policies and procedures in relation to CEO inductions.
- Providing a helpline and dedicated email address to answer any human resources related questions and/or concerns.

This resource has been prepared by the Local Government Association of SA (LGA) to assist councils with implementation of legislative changes arising from Local Government Reforms, incorporating advice from Norman Waterhouse, for the guidance of and use by member councils.

Last Updated: 31/08/2021

Attachment 3





C250815/188

EXECUTIVE COMMITTEE TERMS OF REFERENCE

1. The Executive Committee is a committee established under section 41 of the Local Government Act 1999.
2. The objective of the Executive Committee is to undertake the annual performance appraisal of the Chief Executive Officer.
3. The functions of the Executive Committee are:
 - a. To recommend to Council the form and process of the Chief Executive Officer's annual performance appraisal;
 - b. To undertake the annual performance appraisal;
 - c. To provide a report and to make recommendations to Council on any matters arising from the annual performance appraisal.
4. The Executive Committee's authority extends to making recommendations to Council and does not have any authority to make decisions in relation to the Chief Executive Officer's employment arrangements.
5. Membership of the Executive Committee comprises:
 - a. The Mayor;
 - b. The Deputy Mayor;
 - c. Four other Elected Members being one from each Council ward, appointed by Council; and
 - d. **an Independent qualified person.**
6. **The Independent Member of the Executive Committee must have recent and relevant human resource management, business, industrial relations, psychology, or law qualifications and must not be an employment of the City of Holdfast Bay as required under section 102A of the Local Government Act 1999.**
7. **Members of the Executive Committee are appointed by Council. Elected Members are appointed for the term of Council or as otherwise determined by Council. The Independent Member are appointed for a term not exceeding 3 years. On expiry of their term, the Independent Member may be re-appointed by Council.**
7. The Mayor, or in his/her absence, the Deputy Mayor is the Chairperson of the Executive Committee.
8. Meetings are conducted in accordance with Part 3 of *the Local Government (Procedures at Meetings) Regulations 2000*.
9. Minutes of the Executive Committee meetings will be presented to Council as soon as practicable.



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10. Meetings will be open to the public unless sec 90(3) of the *Local Government Act 1999* applies.
11. A quorum comprises 4 members and no business can be transacted unless a quorum is present.
12. Members shall be provided not less than 3 clear days' notice in writing of the time and place of an ordinary meeting of the Executive Committee and 4 hours' notice of the time and place of a special meeting.