

Metropolitan Local Government Reform



Information Sheet

Related legislative provisions

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Legislative provisions

Local Government Act 1995 employment provisions

Related employment provisions of the *Local Government Act 1995* are set out below for easy reference.

Local government employees

- Section 5.36 (1), whereby a local government is to employ a person to be the CEO of the local government (and such other persons as the council believes are necessary to enable the functions of the local government and the functions of the council to be performed).
- Section 5.36 (2), whereby a person is not to be employed in the position of CEO unless the council believes that the person is suitably qualified for the position and is satisfied with the proposed arrangements relating to the person's employment.
- Section 5.36 (4) which provides that, if the position of a CEO of a local government becomes vacant, it is to be advertised in a prescribed manner and with content as prescribed; also associated regulation 18C, *Local Government Administration Regulations 1996*, requiring the local government to approve a process for the selection and appointment of a CEO for the local government before the position of CEO is to be advertised.
- Section 5.36 (5A), however, provides that 5.36 (4) does not require a position to be advertised if it is proposed that a person would be acting in the position for up to 12 months;

Senior employees

- Section 5.37 (1), which provides that a local government may designate employees or persons belonging to a class of employee, to be senior employees
- Section 5.37 (2), which provides that the CEO is to inform the council of each proposal to employ or dismiss a senior employee, other than a senior employee acting in a position for a term not exceeding one year, and the council may accept or reject the CEO's recommendation but if the council rejects a recommendation, it is to inform the CEO of the reasons for its doing so.

Annual review of certain employee's performances

- Section 5.38, which requires that the performance of an employee, including the CEO, employed for a term of more than one year, is to be reviewed at least once in relation to every year of employment.

Contracts for CEO and senior employees

- Section 5.39 (1) and (2) provides that the employment of a CEO or senior employee is to be governed by a contract and sets out contract requirements. These include, in the case of a contract for an acting or temporary position, a term not exceeding one year and, in every other case, a term not exceeding five years.
- Section 5.39 (4) provides that a contract under this section may be renewable and varied under specified conditions (Section 5.39 (5)).
- Section 5.39 (7) provides that a CEO is to be paid such remuneration as is determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7A.

Transitional saving provisions in Schedule 9.3, Division 2, Clause 43 of the *Local Government Act 1995* which relate to a *preserved CEO* – a person who is employed, other than in an acting or temporary capacity, as the CEO of the local government on 19 October 2011 - provide that, from 1 July 2012:

- ✓ CEOs with existing contracts of employment entered into prior to 19 October 2011 which have a remuneration currently **over** the recommended remuneration bands set by the Tribunal will not be required to comply with the new requirements for the length of their employment with their current employer;
- ✓ All other existing CEO contracts of employment (including those entered into after 19 October 2011 and acting arrangements) will be able to be fulfilled before having to comply with the new requirements. After this point, the entering into or renewing of a contract of employment (including acting contracts) will need to comply with the new requirements; and
- ✓ The new provisions will not apply where a CEO position to which a contract relates has already been advertised prior to the new sections coming into operation. In these circumstances, the position may be filled at the advertised remuneration, however, once that contract is fulfilled, the entering into or renewing of a contract of employment will need to comply with the Tribunal's determinations.

Principles affecting employment by local governments

- Section 5.40, which sets out principles of employment in respect to all employees:
 - ✓ Selection and promotion in accordance with the principles of merit and equity;
 - ✓ No power exercised with regard to matters affecting employees on the basis of nepotism and patronage;
 - ✓ Employees to be treated fairly and consistently;
 - ✓ No unlawful discrimination on a ground in the *Equal Opportunity Act 1984* or on any other ground; and
 - ✓ Provision of safe and healthy working conditions in accordance with applicable legislation.

Payments to employees

Section 5.50 provides for payments to employees whose employment with the local government is finishing, with the setting of a maximum amount allowed of up to one year's remuneration, in addition to such conditions as are included in a contract or award. An amendment was made to the *Local Government (Administration) Regulations 1996, Regulation 19A*, to clarify that this provision could not be used for further payments for CEOs and senior employees. However, in relation to other employees, there is the capacity for them to also receive redundancy payments under industrial arrangements.

It is proposed that the *Local Government Act 1995* will be amended to clarify that there is a one-year remuneration cap on a termination payment ("compensation acceptable to the person") for all employees in the case of Orders made under Section 2.1 of the Act. Until this amendment is made, it is recommended that local governments adopt payment of up to one year as a matter of policy, which is consistent with other parts of the operation of the *Local Government Act 1995*.

Operation of the two year guarantee for employees

For full details about the operation of this provision under the *Local Government Act 1995* see the accompanying Information Sheet on this matter.

Transitional arrangements for orders about districts

- Section 2.1 (1) provides that the Governor, on the recommendation of the Minister, may make an order –
 - ✓ declaring an area of the State to be a district; or
 - ✓ changing the boundaries of a district; or
 - ✓ abolishing a district; or
 - ✓ as to a combination of any of these matters.
- Section 2.1 (2) provides that Schedule 2.1 has effect.
- Schedule 2.1, Provisions about creating, changing the boundaries of, and abolishing districts, clause 11 (4) and clause 11 (5) which set out transitional arrangements for orders about districts.
 - ✓ Clause 11 (4) provides that a contract of employment that a person has with a local government is not to be terminated or varied as a result (wholly or partly) of an order under section 2.1 of the Act so as to make it less favourable to that person unless compensation acceptable to the person is made or a period of at least 2 years has elapsed since the order had effect.
 - ✓ Clause 11 (5) provides that the rights and entitlements of a person whose contract of employment is transferred from one local government to another, whether arising under the contract or by reason of it, are to be no less favourable to that person after the transfer than they would have been had the person's employment been continuous with the first local government.
- *Local Government (Constitution) Regulations* and Governor's Orders will provide that a person who, immediately before commencement, has a contract of employment with local government A, is to be taken to have an identical contract of employment with local government B.

Other legislative provisions

Industrial instruments and arrangements, including the *Fair Work Act 2009*, *Local Government Industry Award 2010*, National Employment Standards and Enterprise Agreements also need to be taken into account.

Other considerations include equal employment opportunity and occupational health and safety policies, procedures and requirements.

Notes

Application of provisions

It should be noted that, in Schedule 2.1, clauses 11 (4) and 11 (5) above, the word “contract” is to be interpreted in a broad sense to mean all employment arrangements made by a local government with employees, including arrangements made under industrial awards.

In addition, the scope of Section 2.1 means that clauses 11 (4) and 11 (5) apply whether changes are made by amalgamation or boundary change.

Employee entitlements

A case by case approach will need to be taken to determine employee entitlements. The specific arrangements in place in each local government, the provisions of the *Local Government Act 1995* and Federal industrial arrangements will need to be considered.

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Related legislative provisions is available for viewing and download from the Department of Local Government and Communities website: www.dlqc.wa.gov.au

For more information, please contact:

Department of Local Government and Communities

Gordon Stephenson House, 140 William Street, Perth WA 6000

GPO Box R1250, Perth WA 6844

Telephone: (08) 6551 8700 Fax: (08) 6552 1555

Freecall: 1800 620 511 (Country only)

Email: info@dlqc.wa.gov.au Website: www.dlqc.wa.gov.au

Translating and Interpreting Service (TIS) – Tel: 13 14 50