



REPORT OF THE INTEGRITY COMMISSION

NO. 1 OF 2023 / 28 February 2023

A report on systemic misconduct risks in recruiting
local government employees in Tasmania, as
identified in an investigation into alleged misconduct
in 8 recruitments at a council



INTEGRITY
COMMISSION
TASMANIA

The objectives of the Integrity Commission are to –

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania;
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

We acknowledge and pay our respects to Tasmanian Aboriginal people as the traditional owners of the Land upon which we work. We recognise and value Aboriginal histories, knowledge and lived experiences, and commit to being culturally inclusive and respectful in our working relationships with all Aboriginal people.

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This report and further information about the Commission can be found on the website
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INTEGRITY
COMMISSION
TASMANIA

28 February 2023

President
Legislative Council
Parliament House
HOBART TAS 7000

Speaker
House of Assembly
Parliament House
HOBART TAS 7000

Dear Mr President

Dear Mr Speaker

In accordance with section 11(3) of the *Integrity Commission Act 2009*, the Integrity Commission presents *Report 1 of 2023* to Parliament, a summary report of systemic misconduct risks in recruiting local government employees in Tasmania, as identified in an investigation into alleged misconduct in 8 recruitments at a council.

Yours sincerely

Aziz Gregory Melick, AO RFD SC
Chief Commissioner
On behalf of the Board

Michael Easton
Chief Executive Officer

MISCONDUCT RISKS REPORT – INVESTIGATION SMITHIES

A review of systemic misconduct risks in recruiting local government employees in Tasmania, as identified in an investigation into alleged misconduct in 8 recruitments at a council

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PART A BACKGROUND

1. Introduction

This is a report of an investigation for the Chief Executive Officer (CEO) of the Integrity Commission (the Commission), prepared pursuant to section 55(1) of the *Integrity Commission Act 2009* (Tas) (IC Act).

These findings relate to an investigation into alleged misconduct in 8 recruitments at a local council. This report and findings focus on systemic issues faced by local government across Tasmania. I make these findings under sections 31(a)–(c), (e) and (h) of the *IC Act*, which describes the Commission's educative, preventative and advisory functions as follows:

- (a) *to take such steps as the Integrity Commission considers necessary to uphold, promote and ensure adherence to standards of conduct, propriety and ethics in public authorities;*
- (b) *to review and make recommendations about practices, procedures and standards in relation to conduct, propriety and ethics in public authorities and to evaluate their application within those authorities;*
- (c) *to provide advice to public officers and the public about standards of conduct, propriety and ethics in public authorities;*
- ...
- (e) *to evaluate the adequacy of systems and procedures in public authorities for ensuring compliance with relevant codes of conduct;*
- ...
- (h) *undertake research into matters related to ethical conduct and investigatory processes ...*

This report focuses on 4 systemic issues identified in the investigation:

- ▼ the lack of requirement to apply the merit principle
- ▼ an absence of model policies and procedures, including relating to direct appointments
- ▼ inadequate record keeping practices, and
- ▼ poor understanding, identification and management of conflicts of interest.

1.1. The complaint

In 2021, the Commission received a complaint about the management of a council. The complainant alleged there had been misconduct in the recruitment of 8 staff members.

The Commission investigated 15 allegations of misconduct relating to the 8 recruitments. In general, the factual allegations were that the 8 appointees were appointed without following proper recruitment processes and/or without ensuring that conflicts of interest had been disclosed or managed. Some of the recruitment processes were direct appointments.

PART B LOCAL GOVERNMENT CONTEXT AND FRAMEWORK

2. Local government in Tasmania

Tasmania has 29 local government councils, which employ over 4,000 people in 155 different occupations across the state.¹

The Local Government Association of Tasmania (LGAT) says that Tasmanian local governments face several workforce challenges. It says that 69% of councils experience skills shortages and 50% experience skills gaps, with engineers, town planners, environmental health officers and building surveyors being the top four areas of skills shortage.²

Regional, rural and remote councils face particular challenges and risks in staff recruitment, including:

- ▼ heightened conflict of interest risks in small communities where members are known to each other
- ▼ attracting skilled and experienced applicants from outside the region, and
- ▼ retaining staff, including managing the risks of staff being poached by corporate sectors offering substantial benefits.³

2.1. Government and sector support

Government and sector support bodies play an important role in encouraging good governance practices in local government.

The Office of Local Government (OLG), part of the Department of Premier and Cabinet, provides advice and services to the local government sector to ensure that councils are well governed, responsive, sustainable and act overall in the best interest of their communities.⁴

LGAT is Tasmania's peak advocacy body for local government. It provides support and services to its member councils.

While both the OLG and LGAT develop and publish resources to guide and support a range of sector functions, limited resources relate to recruitment and employment practices.

In addition, the Commission provides training in ethical conduct and other advice and support to councils.

2.2. Employee codes of conduct

LGAT has developed a model code of conduct for local government employees. All councils should have such a code. Codes of conduct usually require employees to declare and manage conflicts of interest, and to act with honesty and impartiality in their role.

3. Legislative framework

3.1. Local Government Act 1993

The *Local Government Act 1993* (Tas) (LG Act) establishes the powers and functions of Tasmanian councils; section 63 of the Act is the only section directly relevant to employee recruitment:

63. Employees

- (1) *The general manager of a council may -*
 - (a) *appoint persons as employees of the council; and*
 - (b) *allocate duties to employees; and*
 - (c) *control and direct employees; and*
 - (d) *suspend or dismiss employees.*
- (2) *The general manager is to develop human resource practices and procedures in accordance with policies of the council to ensure employees of the council receive fair and equitable treatment without discrimination.*

Under section 63 of the *LG Act*, council general managers are primarily responsible for recruitment policies, practices and procedures. In its information sheet, *Role of the General Manager*, the OLG affirms the role of the general manager relating to employees, including developing human resources practices and procedures.⁵

Recruitment powers and functions of councillors and mayors

Outside the recruitment of a council's general manager, it is uncommon for councillors and mayors to be involved in employee recruitment.

The powers and functions of councillors and mayors are outlined in the *LG Act*, and include:

- ▼ councillors are to determine and monitor the application of human resources policies, including those relating to employment,⁶ and
- ▼ mayors are to promote good governance and liaise with general managers on the activities of council and councillors.⁷

In its *Mayoral Handbook*, LGAT describes the relationship between a mayor and a general manager as fundamentally important to a well-performing council, and that 'the general manager may at his or her discretion raise with or advise the mayor on matters of administrative or managerial detail'.⁸

3.2. Anti-Discrimination Act 1998

Local government recruitment is underpinned by the requirements of the *Anti-Discrimination Act 1998* (Tas). This legislation makes it unlawful to discriminate against a person based on certain protected attributes in any activity in connection with employment.⁹

4. Misconduct risks in government recruitment

Common misconduct risks in government recruitment include:

- ▼ making a long-term temporary direct appointment to evade a competitive merit-based process
- ▼ restricting advertising time frames to limit who is able to apply
- ▼ writing selection criteria to favour a certain applicant
- ▼ appointing panel members who can be influenced to ensure a favoured candidate is selected
- ▼ concealing negative referee reports from the rest of the selection panel, and
- ▼ appointing a fellow employee who is a friend or family member to a more senior position than their current role without declaring a conflict of interest.¹⁰

Favouritism in democratic governments is undesirable. It interferes with the community's expectation of fairness and equality. As they are not necessarily the best appointee based on merit, the service rendered to the public by the favoured appointee may be inferior and consequently contrary to public interest.

PART C SYSTEMIC RISKS IN LOCAL GOVERNMENT RECRUITMENT

5. The merit principle

Merit is the key principle of employment at all levels of Australian government.

Applying the merit principle in recruitment is generally understood to mean appointing the best applicant based on merit alone. On merit alone means assessing the applicant on their qualifications, experience and capabilities relevant to the job, and not assessing them on other factors that are not relevant to the job, such as where they are from, whether they are known to a panel member, what football team they support and so on.

The merit principle in recruitment operates in the context of community expectation that public officials are required to make all decisions in the public interest. It is often understood as requiring all eligible members of the community to be given a reasonable opportunity to apply for a position.¹¹

The Organisation for Economic Cooperation and Development (OECD) recommends that democratic governments build public integrity by promoting:

a merit-based, professional, public sector dedicated to public-service values and good governance, in particular through:

- (a) ensuring human resource management that consistently applies basic principles, such as merit and transparency, to support the professionalism of the public service, prevents favouritism and nepotism, protects against undue political interference and mitigates risks for abuse of position and misconduct;*
- (b) ensuring a fair and open system for recruitment, selection and promotion, based on objective criteria and a formalised procedure, and an appraisal system that supports accountability and a public-service ethos.¹²*

Merit is legislatively required to be applied in recruitment processes in both the Tasmanian State Service¹³ and the Australian Public Service (see Appendix A).¹⁴

5.1. The LG Act and the merit principle

When first implemented, the *LG Act* did include a requirement to recruit on merit, in the then section 63(2):

- (2) A council is to ensure that –*
 - (a) all employees are appointed and promoted according to merit and without discrimination; and*
 - (b) all employees receive fair and equitable treatment without discrimination.*

In 2005 the *LG Act* was amended and section 63(2) was revised to its current wording:

- (2) The general manager is to develop human resource practices and procedures in accordance with policies of the council to ensure employees of the council receive fair and equitable treatment without discrimination.*

The amendment removed the requirement for councils to appoint and promote employees according to merit. There is now no direct or implied obligation in the *LG Act* to apply the merit principle, despite the requirement in section 63(2) for 'fair and equitable treatment without discrimination'.

Although it is implicit that employee appointments be in accordance with the human resources practices and procedures that general managers are obliged to develop, failure to develop those practices and procedures will not amount to misconduct.

'Council administration and operations' was a specific focus during the review of the *LG Act* that led to its amendment. According to the then minister's second reading speech on the legislation, the amendments were:

*to refine and improve the effectiveness and transparency of Councils' operations whilst giving them the flexibility they need to respond to the changing needs and circumstances of today's communities.*¹⁵

Beyond this, we do not know why the merit requirement was removed. Neither the OLG nor LGAT have records about why it was removed, although LGAT said it may have been because merit-based selection was covered by other legislation in place at the time.¹⁶

All state and territory jurisdictions except Queensland require employment based on the principles of merit in their local government legislation (see Appendix B).

Although some councils refer to merit in their recruitment policies,¹⁷ councils currently do not have to apply the merit principle as a standard in their recruitment processes. This contrasts with both good practice and community expectations.

5.2. Recommendation

Recommendation 1

Under section 58(3) of the *Integrity Commission Act 2009*, the Board of the Integrity Commission has recommended to the Minister for Local Government and Planning that the Minister reinstate the requirement in the *Local Government Act 1993* (Tas) for employees to be recruited on merit.

6. Policies and procedures

6.1. General

The council investigated in this matter has no recruitment policies or procedures. Of the 29 Tasmanian councils, 7 have recruitment policies on their website (see Appendix C). While some councils may have unpublished policies, it is likely that most Tasmanian councils, like the one investigated in this case, do not have any recruitment policies or procedures in place.

Good practice recruitment policies and procedures should address all aspects of the recruitment process, including:

- ▼ establishing a business case for the recruitment or position
- ▼ if used, procedures and guidelines for direct appointments
- ▼ developing the position description
- ▼ requirement for, and explanation of, the merit principle
- ▼ declaring and managing conflicts of interest
- ▼ shortlisting and interviewing candidates
- ▼ selecting the preferred applicant, and
- ▼ record keeping.

The OLG published the *Good governance guide for local government in Tasmania*, which suggests councils should have a recruitment policy, but does not provide any guidance on good recruitment practice.¹⁸

In 2021 the Victorian government published its online *Local Government Act 2020 Governance Resources*¹⁹ to assist Victorian councils develop their own recruitment policies. For comparison with recruitment policies in other jurisdictions, see Appendix D.

Tasmanian councils do not have a good practice model for recruitment policy and procedures, although several councils have adopted similar policies to each other.

6.2. Direct appointments

Local government in Tasmania interprets section 63(1) of the *LG Act* as meaning that general managers can make 'direct appointments' (also known as 'targeted recruitments' or 'direct selections').

Direct appointments are when an employee is appointed outside a transparent and competitive selection process. Put simply, it means they are directly appointed to the role, usually without giving others an opportunity to apply for the role and/or the employer undertaking formal recruitment processes. The appointee may not be asked to respond to selection criteria, submit a resumé or undergo interview or referee checks before being appointed.

Direct appointments have inherent integrity risks. At best, they can appear to undermine the merit principle; at worst, they facilitate cronyism and nepotism. Direct appointments can be misused to favour an individual more easily than an open recruitment process. Councils that make direct appointments should have policies and procedures in place to:

- ▼ guard against the inherent misconduct risks, and
- ▼ ensure employees and the public have trust in all recruitment processes.

Despite the interpretation of section 63(1) as allowing direct appointments, no statutory grant of power is completely unfettered. Section 63(1) must be exercised reasonably and in a manner consistent with the purposes for which the power was granted and the purposes of the legislation.

Of the 7 Tasmanian councils that have publicly available recruitment policies, some of them restrict the general manager's ability to directly appoint employees. For example, the Glamorgan Spring Bay Council (GSBC) recruitment policy sets out its procedures as follows [emphasis added]:

*For a direct selection appointment, the hiring manager must seek written approval from the General Manager **outlining the reasons why direct selection is being sought, the applicant and their assessment of their capacity to fill the position and explicitly cover off conflict of interest considerations.***

If the hiring manager is the General Manager, the approval is to be sought from the Mayor. The Mayor cannot unreasonably withhold approval and must put in writing approval or in the case of decline, reasons for decline.

Common reasons for considering a direct selection process include:

- *Employment period is short in nature i.e. casual or short fixed-term.*
- *Specialist skills, knowledge and experience are required and there is a known short supply of this.*
- *Past difficulty attracting or recruiting for the role or like roles and the need to actively seek and approach staff within existing roles at other organisations to fill the position.*
- *If there is only one applicant for the role post an advertising process.*
- *There is an urgent need to make an appointment to the role i.e. time critical position.²⁰*

Ideally, to avoid the high and inherent risks in undertaking direct appointments, all Tasmanian councils should adhere to these aspects of the GSBC policy.

Application of the merit principle to direct appointments

Council recruitment policies appear to vary in their level of understanding and application of direct appointments and the merit principle. The Break O'Day Council recruitment and selection policy advises:

The General Manager may, at his/her discretion, select on merit, a prospective employee (internal or external) for appointment to a position without advertising the vacancy. ... External direct selections will generally only be made in the case of short term casual or temporary employment.²¹

The Central Highlands Council employee recruitment and selection policy includes in its recruitment strategy:

At the discretion of the General Manager, vacant positions may be filled by: ...

(c) by direct selection ...

The General Manager may, at their discretion select on merit a prospective employee for the appointment to a position without advertising the vacancy.²²

Both policies, which are substantially the same, define the merit principle as having:

regard to the knowledge, skills, qualifications, experience and potential for future development of each person in relation to their individual capacity to perform the duties and responsibilities associated with the position.²³

In both policies, it is unclear whether a direct appointment must be made in accordance with the merit principle or despite it.

The Devonport City Council recruitment and selection policy says:

Selection to positions within Council is based on the principles of merit and the provision of equal employment opportunity.

'Selection based on merit' is described as meaning that:

the grounds for the decision must relate to the inherent requirements of the position and prevents those decisions being made on unjustified discriminatory grounds.²⁴

This application of 'selection based on merit' suggests that a direct appointment can still be made according to the principles of merit as long as it does not discriminate – that is, a direct appointment does not exclude the merit principle.

7. Record keeping

Our investigation found that the council did not generate selection reports or any other documentation recording why an appointed applicant was the preferred applicant. It was therefore impossible to assess whether the appointee was genuinely the best applicant for the job.

Similarly, no written justification for any of the direct appointments was given, relating to either:

- ▼ the decision to undertake a direct appointment process, or
- ▼ the decision who to directly appoint.

The council also did not require written declarations of conflict of interest, or documentation of disclosure and management of conflicts of interest.

Other recruitment records held by the council were sporadic, with some recruitments having more fulsome records than others.

Good records are the only way to demonstrate, both internally and externally, that a recruitment process has been free from bias, favouritism and discrimination.

Like other public authorities, councils must keep and dispose of records in accordance with the *Archives Act 1983* (Tas). The Office of the State Archivist has established disposal schedules specific to local government, including requiring that councils keep records documenting the management of vacant positions and recruitments for 2 years.²⁵ The schedule anticipates that councils will create records including:

- ▼ advertising documentation
- ▼ schedules of applicants
- ▼ interview notifications
- ▼ selection panel reports
- ▼ selection notifications
- ▼ unsuccessful applications, and

- ▼ medical reports of unsuccessful applicants.²⁶

Tasmanian councils must keep records even when recruitments are outsourced to recruitment agencies.²⁷

Basic good record-keeping practice for a recruitment process includes:

- ▼ recording why unsuccessful applicants were considered unsuitable
- ▼ interview panel members writing comments for each interviewee against all selection criteria
- ▼ integrating the joint deliberations of selection panel members into a selection panel report
- ▼ making notes of referee checks.²⁸

8. Conflicts of interest

Without the necessary infrastructure in place – including through the implementation of clear policy, regular training and appropriate record keeping – agencies are at risk of producing a work environment which is perceived as both reluctant and unable to manage conflicts of interest.

Corruption Prevention Concepts: Conflicts of Interest,
Australian Commission for Law Enforcement Integrity²⁹

A conflict of interest occurs when a public official exercises their duties and functions influenced by their private interests. When conflicts of interest are undeclared, concealed, understated or mismanaged, they may give rise to misconduct.

Conflicts of interest are a particular risk to recruitment and selection processes. The declaration (disclosure) and the management of potential or actual conflicts are key mechanisms to identify the potential for a poor recruitment process, for example involving favouritism..

A common conflict of interest in recruitment is the presence of family or friends on a recruitment panel. Employees in smaller councils, particularly those in remote areas, are more likely to face conflicts of interest in recruitment, given the inevitability of applicants being known to employees involved in the process. Conflicts of this nature often result in claims of cronyism and nepotism in a recruitment outcome.

In our investigation, we found there were conflicts, all of which related to past or current professional relationships with applicants. This resulted in bias by members of the recruitment panel either toward or against some applicants. For example, 2 applicants who were known to the panel and who failed to address the selection criteria for the position were given an additional opportunity to address them. This opportunity was not provided to other applicants who were not known to the panel and who had failed to address the selection criteria in their applications.

The respondents denied that a professional relationship is a conflict of interest, a response that suggests this type of conflict is poorly understood.

Good practice management of conflicts of interest in recruitment involves all selection panel members signing declarations, regardless of whether they have a conflict. This is standard practice in the Tasmanian State Service but is less common in local government. Before this became common practice across the State Service, the Auditor-General made this observation:

The lack of any established COI policy and process does in itself heighten amongst staff the perception or suspicion that conflicts or bias may be present in the recruitment process.

This perception then has the potential to become heightened in unsuccessful candidates, thus leading to potentially erroneous conclusions being drawn and ultimately an erosion of, and negative impact on, the whole agency culture.³⁰

In a more recent report on recruitment practices for local government general managers, the Tasmanian Auditor-General found that the approach to declaring conflicts of interest was not sufficient.³¹

The *LG Act* does not require council employees to identify or manage nonpecuniary interests. Of those councils that do have policies relating to recruitment, not all identify or address conflicts of interest. Often the only reference to the management of conflicts is in the employee code of conduct. The definition of a conflict in these policies can be very narrow, requiring a pecuniary interest or a familial relationship.

The management of conflicts of interest is a common challenge for local governments. A Queensland Crime and Corruption Commission audit of 13 councils recommended that 77% of the councils needed to put into place an overarching conflict of interest framework.³²

The Commission's form for declaring conflicts of interest in recruitments appears as an example in Appendix E of this report. Forms like this are common in the Tasmanian State Service. On the form, a 'professional relationship' is one of the 6 forms of association that may be declared; another is being a referee for an applicant.

8.1. Recommendation

In 2021, the Tasmanian Auditor-General released a report on an audit of recruitment practices for local government general managers. The Auditor-General found that documentation for shortlisting and preferred applicant decisions was not adequate,³³ while the approach to declaring conflicts of interest was not sufficient.³⁴

Recommendation 3 of that report is equally as applicable to employee recruitment in local government:

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.*

Recommendation 2

Under section 58(3) of the *Integrity Commission Act 2009*, the Board of the Integrity Commission has recommended to the Minister for Local Government and Planning that the Minister, in consideration of *Report of the Auditor-General No. 2 of 2021-22: Council general manager recruitment, appointment and performance assessment*, develop a model recruitment policy for Tasmanian councils. The policy should include:

- procedures for direct appointments, including whether and how the merit principle is to be applied to such processes
- clear record keeping requirements, including retaining documentation that demonstrates how applicants were compared against each other to determine applicants to be shortlisted and the preferred applicant, and
- a requirement for all selection panel members to make a conflict of interest declaration in all recruitments, with a conflict of interest being defined broadly to include a professional relationship.

PART D CONCLUSION AND RECOMMENDATIONS

9. Conclusion

The 8 recruitments investigated by the Commission showed a lack of proper recruitment policy and procedure at one council, reflecting a lack of written policy and procedure.

Key failures included:

- ▼ no selection reports or documentation showing why a selected applicant was the best one based on merit
- ▼ professional relationships leading to bias and different treatment of applicants, at times favourable and at times not favourable
- ▼ no documentation of the reason for using a direct appointment process rather than an open and competitive one

There was no identification, no declaration and no management of conflicts of interest, and no acknowledgement by respondents that professional associations should be declared and managed.

It is likely that the complainant in this matter is internal. It appears that the Auditor-General was accurate in the observation that a 'lack of any established COI policy and process does in itself heighten amongst staff the perception or suspicion that conflicts or bias may be present in the recruitment process'.³⁵

Given the lack of legislative support and model policy, it is probable that these misconduct risks are not isolated to one council.

Recommendations

(1) Under section 58(3) of the *Integrity Commission Act 2009*, the Board of the Integrity Commission has recommended to the Minister for Local Government and Planning that the Minister reinstate the requirement in the *Local Government Act 1993 (Tas)* for employees to be recruited on merit.

(2) Under section 58(3) of the *Integrity Commission Act 2009*, the Board of the Integrity Commission has recommended to the Minister for Local Government and Planning that the Minister, in consideration of *Report of the Auditor-General No. 2 of 2021-22: Council general manager recruitment, appointment and performance assessment*, develop a model recruitment policy for Tasmanian councils. The policy should include:

- procedures for direct appointments, including whether and how the merit principle is to be applied to such processes
- clear record keeping requirements, including retaining documentation that demonstrates how applicants were compared against each other to determine applicants to be shortlisted and the preferred applicant, and

- **a requirement for all selection panel members to make a conflict of interest declaration in all recruitments, with a conflict of interest being defined broadly to include a professional relationship.**

PART E APPENDICES

A. Legislative requirements for merit-based appointments in 3 tiers of government

<i>Public Service Act 1999 (Cth)</i>	<i>State Service Act 2000 (Tas)</i>	<i>Local Government Act 1993 (Tas)</i>
<p>Section 10A(1)(c) requires that the Australian Public Service ‘makes decisions relating to engagement and promotion that are based on merit’.</p> <p>For those purposes, section 10A(2) requires that:</p> <ul style="list-style-type: none"> • 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. 	<p>Section 7(1)(b) requires that ‘the State Service is a public service in which employment decisions are based on merit’.</p> <p>For those purposes, section 7(2) requires that:</p> <ul style="list-style-type: none"> • employment decisions are based on merit: • an assessment is made of the relative suitability of the candidates for the duties; and • the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties; and • the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and • the assessment is the primary consideration in making the decision. 	<p>Nil</p>

B. Local government legislation – national comparison

	Australian Capital Territory³⁶	Northern Territory	New South Wales	Queensland	South Australia	Victoria	Western Australia	Tasmania
Legislation	<i>Public Sector Management Act 1994</i>	<i>Local Government Act 2019</i>	<i>Local Government Act 1993</i>	<i>Local Government Act 2009</i>	<i>Local Government Act 1999</i>	<i>Local Government Act 2020</i>	<i>Local Government Act 1995</i>	<i>Local Government Act 1993</i>
Employee selection based on merit and equity	s 68(2)(a): The head of service may only appoint a person to an office if the person is selected according to merit and equity principles.	s 172(a)(i): Selection processes for appointment or promotion must be based on merit	s 349(1)(b) and (2): Appointments are to be on merit. The applicant who has the greatest merit is to be selected. In determining the merit of a person eligible for appointment to a position, equal employment opportunities should be considered.	Nil	s 107(2)(a): The CEO must ensure that selection processes are based on an assessment of merit, and are fair and equitable.	s 48(2)(a): A CEO must adopt and maintain a recruitment policy that ensures that recruitment decisions are based on merit.	s 5.40(a): Employees are to be selected and promoted according to merit and equity principles	Nil
Development of employment policies and procedures	Many procedures are set out in industrial instruments; however, others exist but are not	s 173(1): The CEO must maintain up-to-date employment policies.	N/A	N/A	s 99 (1)(a): CEO functions include ensuring that the policies and lawful decisions of the	s 48(2)(b): A CEO must adopt and maintain a recruitment policy that	N/A	s 63(2): The general manager is to develop human resource practices and

	Australian Capital Territory ³⁶	Northern Territory	New South Wales	Queensland	South Australia	Victoria	Western Australia	Tasmania
	specified in the Act.	s 173(2)(a)(iii): Employment policies must cover 'opportunities for advancement that are based on merit and are fair and equitable'.			council are implemented in a timely and efficient manner.	supports transparency in recruitment processes and the public advertising of positions.		procedures in accordance with policies of the council to ensure employees of the council receive fair and equitable treatment without discrimination.
Other	s 17(3)(a): The head of service functions include to engage, appoint and employ people on behalf of the Territory in accordance with merit and equity principles.	s 177: CEO and other members of council staff, the chief executive and other members of a local government subsidiary's staff must maintain proper standards of integrity, diligence and concern for the public interest.	s 337: The general manager may appoint or dismiss senior staff only after consultation with the council.	s 196(3) The CEO appoints local government employees.	s 103(1) & (2): CEO is responsible for appointing, managing, suspending and dismissing other employees of the council (on behalf of the council). The CEO must ensure that an appointment under s 103(1) is consistent with strategic policies and budgets	Nil	s 5.41(g): CEO functions include being responsible for the employment, management supervision, direction and dismissal of other employees.	s 63(1): The general manager of a council may – (a) appoint persons as employees of the council; and (b) allocate duties to employees; and (c) control and direct employees; and

	Australian Capital Territory ³⁶	Northern Territory	New South Wales	Queensland	South Australia	Victoria	Western Australia	Tasmania
					approved by the council.			(d) suspend or dismiss employees.

C. Tasmania local governments – comparison of publicly available policies

Council	Recruitment	Equal opportunity / anti-discrimination	Conflicts of interest / record management / other related	Staff code of conduct
Break O'Day	Recruitment and Selection Policy (No LG31)	Equal Opportunity Policy (No LG24) Anti-Discrimination and Harassment Policy (No LG13)	–	Staff Code of Conduct Policy (No LG35)
Brighton	–	–	–	–
Burnie	–	–	–	–
Central Coast	–	–	–	–
Central Highlands	Employee Recruitment & Selection Policy (No 2013–18)	Harassment and Discrimination Policy (No 2015–34)	Records Management Policy (No 2015–37)	Staff Code of Conduct Policy (No 2017–51)
Circular Head	Recruitment and Selection Policy (No 38)	Management of Discrimination and Harassment (No 28)	Human Resources Policy (no 26)	–
Clarence City	–	–	–	–
Derwent Valley	–	–	–	–
Devonport City	Recruitment and Selection Policy	Harassment Bullying and Anti–Discrimination Policy Equal Opportunity (EOO) and Diversity Policy	Governance Policy	Staff Code of Conduct Policy
Dorset	–	–	–	–
Flinders Council	Employee Promotion Policy (HR6) Employee Recruitment and Selection Policy (HR7) and Procedure (HR7–P)	–	–	–
George Town	–	–	–	–

Council	Recruitment	Equal opportunity / anti-discrimination	Conflicts of interest / record management / other related	Staff code of conduct
Glamorgan Spring Bay	Recruitment policy	–	–	Code of conduct policy
Glenorchy City	–	–	Good Governance Human Resources Policy	–
Hobart City	–	–	–	–
Huon Valley	–	–	–	–
Kentish	–	Harassment, Bullying and Discrimination (Policy No. 02:24:2099)	–	–
Kingsborough	–	–	–	Employee Code of Conduct Administrative Policy (Policy Manual No. 9.14)
King Island	Recruitment policy (C198)	–	–	–
Latrobe	–	–	–	–
Launceston City	–	–	–	–
Meander Valley	–	–	–	–
Northern Midlands	–	–	Information Management Policy	–
Sorell	–	–	Records Management Policy	–
Southern Midlands	–	–	–	Code of Conduct Policy (employee)
Tasman	–	–	–	–
Waratah–Wynyard	–	–	–	–
West Coast	–	–	–	–

Council	Recruitment	Equal opportunity / anti-discrimination	Conflicts of interest / record management / other related	Staff code of conduct
West Tamar	–	Bullying, Harassment, Discrimination and Equal Employment Opportunity Policy (WT-HRM-9.00)	Employment Screening Policy (WT-HRM-28.00)	–

D. Local government – sector guidance related to employee recruitment

	Northern Territory	New South Wales	Queensland	South Australia	Victoria	Western Australia	Tasmania
Number of councils and local authorities	9 large regional councils and 63 remote community local authorities	128 councils	77 local governments	68 local governments	79 local governments	137 local governments and 2 Indian Ocean territories	29 local governments
Supporting government department	Department of the Chief Minister and Cabinet	Office of Local Government	State Development, Infrastructure, Local Government and Planning	Office of Local Government	Local Government Victoria	Department of Local Government, Sport and Cultural Industries	Office of Local Government
Resources and guidance on council employee recruitment	None publicly available on council websites	2011–14: <i>Guidelines for the Appointment and Oversight of General Managers</i> 2021–22: <i>Updated guidance on the appointment and dismissal of senior staff</i>	None publicly available on local government websites.	<i>Guidance paper No.1 – Appointing a chief executive officer</i> (November 2021)	<i>Local Government Act 2020: Recruitment Policy Guide</i> (2021) <i>Foundational workforce plan guide: Local Government Act 2020</i> (2021)	<i>Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination</i> (February 2021)	None publicly available on local government websites. The Good Governance Guide suggests councils should have a recruitment policy. ³⁷
Local government association	Local Government Association of the Northern Territory	Local Government NSW	Local Government Association of Queensland	Local Government Association of South Australia	Victorian Local Government Association	Western Australian Local Government Association	Local Government Association of Tasmania

E. Integrity Commission recruitment conflict of interest declaration and management form



Recruitment and Selection

Conflict of Interest Declaration and Management Form

Recruitment for: [Title of position being recruited]

All persons involved in the selection process must complete this form. A copy of the completed and signed forms for all panel members must be included with the Selection Report.

Panel members declaring a conflict of interest must have a management strategy endorsed by either the panel chair or the delegate (CEO or Chief Commissioner).

Actual conflict of interest	Perceived conflict of interest
Where there is a direct conflict between an individual's official duties in serving the public interest and their personal interests.	Where a reasonable person, familiar with the facts, would consider that a conflict might exist, whether or not this is the case.

Role in selection process:

☐ Chair ☐ Panel Member ☐ Delegate ☐ Other (Detail)

Declaration

I, [your name], declare that:

- ☐ A. I have **no actual or perceived conflict of interest** with respect to my role on this selection panel as I have no personal or professional association with any of the applicants.
- ☐ B. I **have, or another person may reasonably perceive me to have, an actual conflict of interest** with respect to my role on this selection panel as one of the following applies:
- ☐ I have a familial or close personal relationship with one or more of the applicants.
 - ☐ I have, or have had, a personal relationship involving social activity outside of work with one or more of the applicants.
 - ☐ I have a current professional association with one or more of the applicants.
 - ☐ I have a previous professional association with one or more of the applicants.
 - ☐ I have, or have had, a direct supervisory relationship with one or more of the applicants.
 - ☐ I have or been asked to provide a reference for one or more of the applicants.
 - ☐ Other (details provided below).

Additional details (include name of applicant(s), how you know them and the history of the relationship/association eg. regularity of contact and length of association):

Management Actions

I have declared this information to the other panel members, and in consultation with the panel, Chair and delegate (if required) developed the following strategies to manage the conflict(s) of interest declared:

Signed: _____ Date: _____

Approval

I endorse the strategies to manage the declared conflict(s) of interest detailed above.

☐ Panel Chair ☐ CEO ☐ Chief Commissioner

Name: _____

Signature: _____ Date: _____

Recommended management actions to mitigate the risk	
Association	Management Action
No association	<i>No action required.</i>
Family or close relationship	<p><i>Declare to delegate and/or panel and document.</i></p> <p>Remove – <i>cannot participate on the selection panel or in the decision-making process.</i></p>
Relationship involving social activity outside work	<p><i>Declare to delegate and/or panel and document. Continued participation on panel is dependent on the extent and regularity of the social interaction.</i></p> <p>Record – <i>Is the perceived conflict of interest minor? If so, documenting the details of the association may be enough to manage it.</i></p> <p>Restrict – <i>remain on panel but in an appropriately restricted capacity e.g. blind assessments, limited participation in selection process events, offering opinion on applicants only after all other panel members</i></p> <p>Recruit – <i>recruit an independent third party to oversee part or all of the decision-making process so they can vouch for the integrity of the process. This is often a particularly useful option in rural or remote communities where expertise is necessary and hard to replace.</i></p> <p>Remove – <i>If the first actions above cannot sufficiently manage the conflict, it may be necessary for the people to remove themselves from the process/decision.</i></p>
Professional relationship	<p><i>Declare to panel and document. Continued participation on panel is dependent on the extent of the professional relationship or association.</i></p> <p>Record – <i>Is the perceived conflict of interest minor? If so, documenting the details of the association may be enough to manage it.</i></p> <p>Restrict – <i>remain on panel but in an appropriately restricted capacity e.g. blind assessments, limited participation in selection process events, offering opinion on applicants only after all other panel members.</i></p>

Recommended management actions to mitigate the risk	
	<p>Recruit – recruit an independent third party to oversee part or all of the decision-making process so they can vouch for the integrity of the process. This is often a particularly useful option in rural or remote communities where expertise is necessary and hard to replace.</p> <p>Remove – If the first actions above cannot sufficiently manage the conflict, it may be necessary for the people to remove themselves from the process/decision.</p>
Is (or has been) a direct supervisor of applicant	<p>Declare to panel and document.</p> <p>Record – Is the perceived conflict of interest minor? If so, documenting the details of the association may be enough to manage it.</p> <p>Restrict – remain on panel but in an appropriately restricted capacity e.g. blind assessments, limited participation in selection process events, offering opinion on applicants only after all other panel members.</p> <p>Recruit – recruit an independent third party to oversee part or all of the decision-making process so they can vouch for the integrity of the process. This is a particularly useful option in rural or remote communities where expertise is necessary and hard to replace.</p>
Referee for applicant	<p>Declare to panel and document.</p> <p>Record – Confirm and record the appropriate management action required such as: submit referee report prior to short listing as directed by delegate or suggest applicant provide an alternate referee.</p>

Endnotes

- ¹ Local Government Association of Tasmania, *LGAT Advocacy and Policy: Human Resources and Workforce Development* www.lgat.tas.gov.au/member-services/lgat-advocacy/human-resources-and-workforce-development .
- ² Local Government Association of Tasmania, *LGAT Advocacy and Policy: Human Resources and Workforce Development* www.lgat.tas.gov.au/member-services/lgat-advocacy/human-resources-and-workforce-development .
- ³ Independent Commission Against Corruption (New South Wales), Corruption prevention advice topics: Recruitment and Selection www.icac.nsw.gov.au/prevention/corruption-prevention-advice-topics/recruitment-and-selection .
- ⁴ Tasmanian Government Department of Premier and Cabinet, Office of Local Government www.dpac.tas.gov.au/divisions/local_government .
- ⁵ Office of Local Government, *Information Sheet: Role of the General Manager* (November 2018).
- ⁶ *Local Government Act 1993* (Tas) s 28(2).
- ⁷ *Local Government Act 1993* (Tas) s 27.
- ⁸ Local Government Association of Tasmania, *Mayoral Handbook* (2018) 15.
- ⁹ *Anti-Discrimination Act 1998* (Tas) s 22(1)(a).
- ¹⁰ Independent Commission Against Corruption (New South Wales), Corruption prevention advice topics: Recruitment and Selection www.icac.nsw.gov.au/prevention/corruption-prevention-advice-topics/recruitment-and-selection .
- ¹¹ The Australian Public Service Employment Principles include that ‘a decision relating to engagement or promotion is based on merit if ... all eligible members of the community were given a reasonable opportunity to apply to perform the relevant duties’, see *Public Service Act 1999* (Cth) s 10A(2)(a).
- ¹² OECD, *OECD Recommendation of the Council on Public Integrity* (2017) 11 (Recommendation 7); www.oecd.org/gov/ethics/recommendation-public-integrity/ .
- ¹³ *State Service Act 2000* (Tas) ss 7(1)(b), 7(2), and 37(1)(a).
- ¹⁴ *Public Service Act 1999* (Cth) s 10A(2)(a).
- ¹⁵ Tasmania, *Parliamentary Debates*, House of Assembly, 22 March 2005, 57 (James Glennister Cox, Minister Assisting the Premier on Local Government).
- ¹⁶ Email trail between LGAT and Integrity Commission, *RE: Request for confidential meeting* (24 March 2022); Email from OLG to Integrity Commission, *RE: CONFIDENTIAL: Section 63 of Local Government Act* (5 April 2022).
- ¹⁷ For example, Devonport City Council, *Recruitment and Selection Policy* (22 September 2021) cl 1.
- ¹⁸ Tasmanian Government Department of Premier and Cabinet, Office of Local Government, *Good governance guide for local government in Tasmania* (3rd edition, August 2022) 20.
- ¹⁹ Department of Jobs, Precincts and Regions, Victoria, *Local Government Act 2020 Governance Resources* (2021) <[Governance resources \(localgovernment.vic.gov.au\)](http://localgovernment.vic.gov.au)>
- ²⁰ GSBC, *Recruitment Policy* (15 April 2020) cl 2.4.
- ²¹ Break O’Day Council, *Policy No LG31: Recruitment and selection policy* (17 August 2020) cl 7.
- ²² Central Highlands Council, *Policy No. 2013–18: Employee Recruitment and Selection Policy* (19 November 2019) cl 7.
- ²³ Break O’Day Council, *Policy No LG31: Recruitment and selection policy* (17 August 2020) cl 6; Central Highlands Council, *Policy No. 2013–18: Employee Recruitment and Selection Policy* (19 November 2019) cl 8.5.
- ²⁴ Devonport City Council, *Recruitment and Selection Policy* (22 September 2021) cl 1.
- ²⁵ Tasmanian Archive and Heritage Office, *Disposal Schedule for functional records of Local Government – Disposal Authorisation No. DA2200* (26 April 2017) cl 21.08.04, 21.18.01.
- ²⁶ Tasmanian Archive and Heritage Office, *Disposal Schedule for functional records of Local Government – Disposal Authorisation No. DA2200* (26 April 2017) cl 21.18.01.

²⁷ Tasmanian Archive and Heritage Office, *State Records Guideline No 10 – Outsourcing of Government Business – Recordkeeping Issues* (27 May 2015).

²⁸ Independent Commission Against Corruption (New South Wales), Corruption prevention advice topics: Recruitment and Selection <www.icac.nsw.gov.au/prevention/corruption-prevention-advice-topics/recruitment-and-selection>.

²⁹ Australian Commission for Law Enforcement Integrity, *Prevention in Practice: Understanding Conflicts of Interest* (2020) <[Prevention in Practice - Conflicts of Interest.pdf \(aclei.gov.au\)](http://www.aclei.gov.au/prevention-in-practice-conflicts-of-interest)>.

³⁰ Tasmanian Audit Office, *Report of the Auditor-General No 1 of 2014–15: Recruitment practices in the State Service* (August 2014) 45.

³¹ Tasmanian Audit Office, *Report of the Auditor-General No. 2 of 2021–22: Council general manager recruitment, appointment and performance assessment* (12 October 2021) 21.

³² Crime and Corruption Commission Queensland, *Managing and responding to conflicts of interest involving council employees: Summary audit report* (October 2017) 4.

³³ Tasmanian Audit Office, *Report of the Auditor-General No. 2 of 2021–22: Council general manager recruitment, appointment and performance assessment* (12 October 2021) 22.

³⁴ Tasmanian Audit Office, *Report of the Auditor-General No. 2 of 2021–22: Council general manager recruitment, appointment and performance assessment* (12 October 2021) 21.

³⁵ Tasmanian Audit Office, *Report of the Auditor-General No 1 of 2014–15: Recruitment practices in the State Service* (August 2014) 45.

³⁶ The ACT does not have a separate system of local government; instead government functions usually handled by local government are directly handled by the ACT government.

³⁷ Tasmanian Government Department of Premier and Cabinet, Office of Local Government, *Good governance guide for local government in Tasmania* (3rd edition, August 2022).

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