

9.7 ADVERTISING OF NEW POLICY - TEMPORARY EMPLOYMENT OR APPOINTMENT OF CEO POLICY

- Attachments:**
1. **Draft Temporary Employment or Appointment of CEO Policy**
 2. **WALGA Template Policy - Temporary Employment or Appointment of CEO**
 3. **Council Delegation 2.2.1 - Appointment of an Acting CEO**

RECOMMENDATION

That Council APPROVES the proposed new Temporary Employment or Appointment of CEO Policy, at Attachment 1, for the purpose of community consultation.

PURPOSE OF REPORT:

For Council to approve, for the purpose of community consultation, the proposed new policy (Policy) as detailed at **Attachment 1**.

BACKGROUND:

In July 2019 the *Local Government Act 1995* (Act) was amended to include a requirement for local governments to adopt a policy (by absolute majority) for the temporary employment or appointment of a Chief Executive Officer (CEO).

The policy must address the employment of a person, and the appointment of an employee, in the position of CEO for a period not exceeding 1 year.

The Western Australian Local Government Association (WALGA) have provided a template policy as a guide for local governments to consider when developing or amending a temporary employment or appointment of a CEO policy. WALGA's template policy is at **Attachment 2**.

The provisions of the WALGA template policy provide authorisation for the CEO to appoint an acting CEO for planned and unplanned leave and provides suggested wording for the policy.

Council has delegated authority (delegation 2.2.1) to the CEO to appoint an acting CEO under s5.36(1)(a) of the Act. A copy of Council's delegation to appoint an acting CEO has been included as **Attachment 3**.

The City's current practice, as determined by Council, is that the CEO may appoint an acting CEO subject to the following conditions:

- the employee being designated a "Senior Employee", as prescribed by the Act;
- appointments being no longer than 30 days;
- Council Members to be advised of acting CEO; and
- the acting role to be rotated between the Executive Directors of the City where practicable.

The requirement of provisions outlined in clause 1.3 of the Policy Development and Review Policy were presented to Council Members through the Policy Paper in November 2021.

DETAILS:

The Policy is based on the WALGA template with minor amendments to reflect the City's existing practice and a proposed minor amendment to the condition of delegation 2.2.1.

The Policy will permit the CEO to appoint an acting CEO for planned and unplanned leave for a period of up to 6 weeks. The conditions of Council delegation 2.2.1 limit such appointments to being no longer than 30 days. Administration is recommending that Council amend its condition to this delegation to enable appointments to be made for a period of up to 6 weeks. This will enable contingency arrangements to be made in the event of unforeseen absence and will align with industry standard.

It is proposed that amendments to Council delegation 2.2.1 will be recommended to Council at the conclusion of community consultation and will form part of Administration's report on the outcome of advertising and consideration of public submissions.

The Policy fulfils the requirements of section 5.39C of the Act and aligns with remaining conditions of Council's delegation related to the appointment of an Acting CEO. The Policy also sets out arrangements for the unlikely event that the CEO is unavailable or unable to make the decision to appoint an Acting CEO.

The major points for consideration of the Policy are:

1. Proposed amendment to Council delegation 2.2.1

The Policy will permit the CEO to appoint an acting CEO for planned and unplanned leave for a period of up to 6 weeks. To facilitate this provision the condition of Council delegation 2.2.1 will require amendment.

Extending the permissible appointment period will enable contingency arrangements to be made in the event of unforeseen absence and will align with industry standard.

2. Proposed sub-delegation of Council delegation 2.2.1

Clause 1.3 of the Policy is proposing sub-delegation of delegation 2.2.1. Sub-delegation would enable the Executive Manager Corporate Strategy and Governance to appoint an acting CEO in the unlikely event that the CEO is unavailable or unable to make the decision.

Clause 3(4) of the WALGA template proposes Council determination of a succession line.

Sub-delegation has been proposed to enable consideration of the operational requirements of the organisation and to facilitate the City's current practice to rotate the role where practicable. Conditions on all Council delegations also apply to sub-delegations and would require any appointment to be made in accordance with clause 1.1 of the Policy.

3. Remuneration and conditions of acting CEO provisions

Remuneration and conditions of acting CEO provisions have been amended to reflect the existing practice. The CEO currently determines the remuneration and benefits when appointing an employee as acting CEO.

4. Additional clause 4.2

Additional clause 4.2 is proposed to enable the Executive Manager Corporate Strategy and Governance to determine the remuneration and benefits when appointing an acting CEO in the unlikely event that the CEO is unavailable or unable to make the determination.

5. Additional clause 4.4

Additional clause 4.4 is proposed to reiterate the confer of delegated powers and duties to acting appointments.

CONSULTATION/ADVERTISING:

In accordance with the City's Community and Stakeholder Engagement Policy, community consultation of all new and significantly amended policies must be provided for a period exceeding 21 days in the following ways:

- notice published on the City's website;
- notice posted to the City's social media;
- notice published in the local newspapers;
- notice exhibited on the notice board at the City's Administration and Library and Local History Centre; and
- letters distributed to relevant local businesses and community groups.

LEGAL/POLICY:

Section 5.39C of the Act requires local governments to adopt a policy (by absolute majority) relating to:

- employment of a person in the position of CEO for a term not exceeding 1 year; and
- appointment of an employee to Act in the position of CEO for a term not exceeding 1 year.

Section 2.7(2)(b) of the *Local Government Act 1995* provides Council with the power to determine policies.

The City's Policy Development and Review Policy sets out the process for the development and review of the City's policy documents.

RISK MANAGEMENT IMPLICATIONS

Low: It is low risk for Council to provide public notice of the proposed new policy.

STRATEGIC IMPLICATIONS:

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

Innovative and Accountable

We are open and accountable to an engaged community.

Our community is aware of what we are doing and how we are meeting our goals.

SUSTAINABILITY IMPLICATIONS:

This does not contribute to any environmental sustainability outcomes.

PUBLIC HEALTH IMPLICATIONS:

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025*.

FINANCIAL/BUDGET IMPLICATIONS:

Nil.



TEMPORARY EMPLOYMENT OR APPOINTMENT OF CEO POLICY

Legislation / local law requirements	<i>Local Government Act 1995</i> <ul style="list-style-type: none"> • s5.39 Contracts for CEO and senior employee's; • s5.39C Policy for temporary employment or appointment of CEO • s5.40 Principles affecting employment by local governments.
Relevant delegations	Delegation 2.2.1 - Appointment of an Acting CEO
Related policies, procedures and supporting documentation	Organisational Structure and Designation of "Senior Employees" Policy

PRELIMINARY

INTRODUCTION

Pursuant to section 5.36 of the *Local Government Act 1995* (Act), it is a requirement that Council employ a person to be Chief Executive Officer (CEO) to enable the functions of the Local Government and the functions of Council to be performed. jj

The manner of the recruitment is prescribed in the Act and the *Local Government (Administration) Regulations Act 1996*.

Section 5.39C of the *Local Government Legislation Amendment Act 2019* was inserted into the Act and informs the requirements for this policy.

PURPOSE

To set out the process in relation to the appointment of Senior Employees (Executive Directors) to act in the position of CEO for a term not exceeding one year.

OBJECTIVE

To establish policy, in accordance with section 5.39C of the Act, that details the City of Vincent's processes for appointing an Acting or Temporary CEO for periods of less than 12 months of planned or unplanned leave or an interim vacancy in the substantive office.

SCOPE

This policy applies to the statutory position of CEO of the City of Vincent.



TEMPORARY EMPLOYMENT OR APPOINTMENT OF CEO POLICY

POLICY PROVISIONS

DEFINITIONS

Acting CEO means a person employed or appointed to fulfil the statutory position of CEO during a period where the substantive CEO remains employed but is on planned or unplanned leave.

Temporary CEO means a person employed or appointed to fulfil the statutory position of CEO for the period between the end of the substantive CEO's employment and the appointment and commencement of a newly appointed substantive CEO.

Senior Employee means a person appointed to the position of Executive Director

POLICY

1. Appoint Acting CEO – Planned and unplanned leave for periods up to 6 weeks

1.1 Consistent with Council Delegation 2.2.1 – Appointment of an Acting CEO, the CEO is authorised to appoint an Acting CEO, subject to the following conditions:

- the Employee being designated a "Senior Employee", as prescribed by the LGA and determined by Councils [Organisational Structure and Designation of "Senior Employees"](#) policy;
- appointments being no longer than 6 weeks;
- Council Members to be advised of Acting CEO; and
- the acting role to be rotated between the Executive Directors of the City where practicable or an external sector Senior Employee through a secondment arrangement.

1.2 The CEO must appoint an Acting CEO for any leave periods greater than 48 hours and less than 6 weeks.

1.3 If the CEO is unavailable or unable to make the decision to appoint an Acting CEO the Executive Manager Corporate Strategy and Governance will appoint an Acting CEO in accordance with 1.1. above.

1.4 Council may, by resolution, extend an Acting CEO period under subclause (1.3) beyond 6 weeks if the substantive CEO remains unavailable or unable to perform their functions and duties.

2. Appoint Acting CEO for extended leave periods greater than 6 weeks but less than 12 months.

2.1 This clause applies to the following periods of extended leave:

- substantive CEO's extended planned leave which may include accumulated annual leave, long service leave or personal leave; and
- substantive CEO's extended unplanned leave which may include any disruption to the substantive CEO's ability to continuously perform their functions and duties.



TEMPORARY EMPLOYMENT OR APPOINTMENT OF CEO POLICY

- 2.2 The Council will, by resolution, appoint an Acting CEO for periods greater than 6 weeks but less than 12 months, as follows:
- Appoint one Senior Employee, or multiple Senior Employees for separate defined periods, as Acting CEO to ensure the CEO position is filled continuously for the period of extended leave; or
 - Conduct an external recruitment process in accordance with clause 3.1(c).
- 2.3 The Mayor will liaise with the CEO, or in their unplanned absence the Executive Manager Corporate Strategy and Governance to coordinate Council reports and resolutions necessary to facilitate an Acting CEO appointment.
- 2.4 Subject to Council's resolution, the Mayor will execute in writing the Acting CEO appointment with administrative assistance from the Executive Manager Corporate Strategy and Governance.

3. Appoint Temporary CEO – Substantive Vacancy

- 3.1 In the event that the substantive CEO's employment with the City of Vincent is ending, the Council when determining to appoint a Temporary CEO may either:
- by resolution, appoint a Senior Employee as the Temporary CEO for the period of time until the substantive CEO has been recruited and commences their employment with the City; or
 - by resolution, appoint a Senior Employee as the interim Temporary CEO for the period of time until an external recruitment process for a Temporary CEO can be completed; or
 - following an external recruitment or secondment process in accordance with the principles of merit and equity prescribed in section 5.40 of the LGA, appoint a Temporary CEO for the period of time until the substantive CEO has been recruited and commences employment with the City.
- 3.2 The Mayor will liaise with the Executive Manager Corporate Strategy and Governance to coordinate Council reports and resolutions necessary to facilitate a Temporary CEO appointment.
- 3.3 The Mayor is authorised to execute in writing the appointment of a Temporary CEO in accordance with Council's resolution/s, with administrative assistance from the Executive Manager Corporate Strategy and Governance.

4. Remuneration and conditions of Acting / Temporary CEO arrangements

- 4.1 The CEO will determine the remuneration and benefits when appointing an employee as Acting CEO.
- 4.2 Where an appointment is made in accordance with clause 1.3 above the Executive Manager Corporate Strategy and Governance will determine the remuneration and benefits when

TEMPORARY EMPLOYMENT OR APPOINTMENT OF CEO POLICY



appointing an employee as Acting CEO. Determination will have due regard to the remuneration and benefits applied formerly.

- 4.3 Council will determine by resolution, the remuneration and benefits to be offered to a Temporary CEO when entering into a contract in accordance with the requirements of Sections 5.39(1) and (2)(a) of the Act.
- 4.4 Acting and temporary CEOs will be delegated the powers and be able to discharge the duties of the CEO, subject to any limitations imposed by the CEO or Council through an appointment under this policy.

OFFICE USE ONLY	
Responsible Officer	Please use title only
Initial Council Adoption	DD/MM/YYYY
Previous Title	Applicable if the policy has been renamed
Reviewed / Amended	DD/MM/YYYY
Next Review Date	MM/YYYY



WALGA Template Policy

Temporary Employment or Appointment of CEO

WALGA Note:

This template policy addresses the requirements of section 5.39C of the *Local Government Act 1995* that require a Local Government to adopt, by absolute majority, a policy that sets out the process to be followed in relation to:

- Employment of a person in the position of CEO for a term not exceeding 1 year;
- Appointment of an employee to act in the position of CEO for a term not exceeding 1 year.

WALGA provides this template policy as a guide for Local Governments to consider when developing or amending a Policy. This template policy provides suggested wording only and Local Governments should consider, develop and implement policy suitable to their operational requirements.

Remember: Policy implementation is given effect through appropriate induction, ongoing training and operational procedures that evidence Council Members and Employees have been made aware of and are accountable for their obligations and responsibilities.

Template Council Policy:

Temporary Employment or Appointment of CEO

Policy Objective

To establish policy, in accordance with Section 5.39C of the *Local Government Act 1995* ('the Act'), that details the [insert LG name]'s processes for appointing an Acting or Temporary Chief Executive Officer (CEO) for periods of less than 12 months of planned or unplanned leave or an interim vacancy in the substantive office.

Policy Scope

This policy applies to the statutory position of Chief Executive Officer (CEO) of the [insert LG name].

Policy Statement

1. Definitions:

- (1) **Acting CEO** means a person employed or appointed to fulfil the statutory position of CEO during a period where the substantive CEO remains employed, but is on planned or unplanned leave.
- (2) **Temporary CEO** means a person employed or appointed to fulfil the statutory position of CEO for the period of time between the end of the substantive CEO's employment and the appointment and commencement of a newly appointed substantive CEO.

WALGA Note: {Delete before publication} CEO's are entitled to leave conditions specified in their employment contract. Approval of CEO leave entitlements is at the written discretion of the President / Mayor and approval should not be unreasonably withheld.

2. Acting and Temporary CEO Requirements and Qualification

- (1) When the CEO is on planned or unplanned leave, or the CEO's employment with the Local Government has ended, an Acting or Temporary CEO is to be appointed in accordance with this Policy to fulfil the functions of CEO as detailed in Section 5.41 of the *Local Government Act 1995*, and other duties as set out in the Act and associated Regulations.
- (2) Through this policy and in accordance with section 5.36(2)(a) of the Act, the Council determines that employees appointed to the substantive position(s) of [insert Position title]/s are considered suitably qualified to perform the role of Acting or Temporary CEO.

- (3) A person appointed to act in the position of [insert Postion title]/s is not included in the determination set out in Clause 3 (2).

3. Appoint Acting CEO – Planned and unplanned leave for periods up to 6 weeks

- (1) The CEO is authorised to appoint the [insert Postion title]/s in writing as Acting CEO, where the CEO is on planned or unplanned leave for periods not exceeding 6 weeks, subject to the CEO's consideration of the [insert Postion title]/s performance, availability, operational requirements and where appropriate, the equitable access to the professional development opportunity.
- (2) The CEO must appoint an Acting CEO for any leave periods greater than 48 hours and less than 6 weeks.
- (3) The CEO is to immediately advise all Council Members when and for what period of time the [insert Postion title] is appointed as Acting CEO.
- (4) If the CEO is unavailable or unable to make the decision to appoint an Acting CEO in accordance with (2), then the following line of succession shall apply:
- a. The [insert Postion title (1)] will be appointed as Acting CEO; or
 - b. If the [insert Postion title (1)] is unable to act, the [insert Postion title (2)] will be appointed as Acting CEO; or
 - c. If the [insert Postion title (2)] is unable to act, the [insert Postion title (3)] will be appointed as Acting CEO.
- (5) Council may, by resolution, extend an Acting CEO period under subclause (4) beyond 6 weeks if the substantive CEO remains unavailable or unable to perform their functions and duties.

4. Appoint Acting CEO for extended leave periods greater than 6 weeks but less than 12 months.

- (1) This clause applies to the following periods of extended leave:
- Substantive CEO's Extended Planned Leave which may include accumulated annual leave, long service leave or personal leave; and
 - Substantive CEO's Extended Unplanned Leave which may include any disruption to the substantive CEO's ability to continuously perform their functions and duties.
- (2) The Council will, by resolution, appoint an Acting CEO for periods greater than 6 weeks but less than 12 months, as follows:

- a. Appoint one employee, or multiple employees for separate defined periods, as Acting CEO to ensure the CEO position is filled continuously for the period of extended leave; or
 - b. Conduct an external recruitment process in accordance with clause 5(1)(c)(iii).
- (3) The [President / Mayor] will liaise with the CEO, or in their unplanned absence the [insert Postion title] to coordinate Council reports and resolutions necessary to facilitate an Acting CEO appointment.
- (4) Subject to Council's resolution, the [President / Mayor] will execute in writing the Acting CEO appointment with administrative assistance from the [insert Postion title].

5. Appoint Temporary CEO – Substantive Vacancy

- (1) In the event that the substantive CEO's employment with the [insert LG name] is ending, the Council when determining to appoint a Temporary CEO may either:
 - a. by resolution, appoint [insert Postion title]/s as the Temporary CEO for the period of time until the substantive CEO has been recruited and commences their employment with the Local Government; or
 - b. by resolution, appoint [insert Postion title] as the interim Temporary CEO for the period of time until an external recruitment process for a Temporary CEO can be completed; or
 - c. following an external recruitment process in accordance with the principles of merit and equity prescribed in section 5.40 of the Act, appoint a Temporary CEO for the period of time until the substantive CEO has been recruited and commences employment with the Local Government.
- (2) The [President / Mayor] will liaise with the [insert Postion title] to coordinate Council reports and resolutions necessary to facilitate a Temporary CEO appointment.
- (3) The [President / Mayor] is authorised to execute in writing the appointment of a Temporary CEO in accordance with Councils resolution/s, with administrative assistance from the [insert Postion title].

6. Remuneration and conditions of Acting or Temporary CEO

- (1) Unless Council otherwise resolves, an employee appointed as Acting CEO shall be remunerated at [$<$ $>$ %] of the cash component only of the substantive CEO's total reward package.
- (2) Council will determine by resolution, the remuneration and benefits to be offered to a Temporary CEO when entering into a contract in accordance with the requirements of Sections 5.39(1) and (2)(a) of the Act.

- (3) Subject to relevant advice, the Council retains the right to terminate or change, by resolution, any Acting or Temporary CEO appointment.

Document Control Box							
Document Responsibilities:							
Owner:	[insert Position Title]			Owner Business Unit:	[insert Unit Title]		
Reviewer:	[insert Position Title]			Decision Maker:	Council		
Compliance Requirements:							
Legislation:	Local Government Act 1995 s.5.39 Contracts for CEO and senior employees Local Government Act 1995 s.5.39C Policy for temporary employment or appointment of CEO s.5.40 Principles affecting employment by Local Governments						
Other:							
Organisational:							
Document Management:							
Risk Rating:	[low / med / high]	Review Frequency:	[annaul / biennial / triennial]	Next Due:	[20##]	Records Ref:	[CP####]
Version #	Decision Reference:		Synopsis:				
1.	[decision date / EDMS Ref]		[brief description of the adoption / changes approved]				
2.							

2.2 Delegations from Council to the CEO

2.2.1 Appointment of an acting CEO

Delegation from Council to CEO

Head of power to Delegate: <i>Power that enables a delegation to be made</i>	Section 5.42 <i>Local Government Act 1995</i>
Express Power or Duty Delegated:	Power to appoint an Acting Chief Executive Officer under s5.36(1)(a).
Function: <i>This is a precis only. Delegates must act with full understanding of the legislation and conditions relevant to this delegation.</i>	Power to appoint an Acting Chief Executive Officer under s5.36(1)(a).
Council Conditions on this Delegation:	<ul style="list-style-type: none"> • The Employee being designated a "Senior Employee", as prescribed by the Local Government Act; • Appointments being no longer than 30 days; • Council Members to be advised of acting Chief Executive Officer; • The acting role to be rotated between the Executive Directors of the City where practicable.
Express Power to Sub-Delegate:	<i>Local Government Act 1995:</i> s.5.44 CEO may delegate some powers and duties to other employees

Delegation by CEO to other employees

Sub-Delegate/s: <i>Appointed by CEO</i>	Nil.
CEO Conditions on this Sub-Delegation: <i>Conditions on the original delegation also apply to the sub-delegations.</i>	N/A.

Notes:
Previously Delegation 1.1 of the City's 2018/19 Register.