



# Standard Contract of Employment

## Senior Staff (other than General Managers) of Local Councils in New South Wales

Local Government  
Association of NSW



Shires Association  
of NSW



LOCAL  
GOVERNMENT  
MANAGERS  
AUSTRALIA  
NEW SOUTH WALES

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# Contract of Employment

This Contract of Employment is made on

Date .....

**between**

Name of  
General Manager .....

*[Referred to in this contract as "the employer"]*

**Note: The general manager may appoint or dismiss senior staff only after consultation with the council: section 337 of the Act. See subclause 4.2 of this contract.**

Name of Council .....

*[Referred to in this contract as "Council"]*

Address .....

**and**

Name of Employee .....

*[Referred to in this contract as "the employee"]*

Address .....

# 1 Position

The senior staff position to which this contract applies is

---

*[Title of the position]*

**Note: A senior staff position must be determined in accordance with section 332 of the Act.**

**A person who has held civic office in relation to Council must not be appointed to any paid position on the staff of Council within 6 months after ceasing to hold the office: section 354 of the Act.**

# 2 Term

Subject to the terms and conditions in this contract, the employee is appointed for a term of:

*[Length of term]* .....

---

**Note: The term of this contract must not be less than 12 months or more than 5 years (including any option for renewal): section 338 of the Act.**

commencing on *[date]* .....

and terminating on *[date]* .....

### 3 Definitions

3.1 In this contract, unless otherwise stated or indicated:

**the Act** means the *Local Government Act 1993*.

**Code of conduct** means the document within the meaning of section 440 of the Act adopted by Council and which incorporates the provisions of the model code.

**Commencement date** means the date that this contract commences as specified in clause 2.

**Confidential information** means any and all confidential information, data, reports, operations, dealings, records, materials, plans, statistics, finances or other agreements and things (other than that which is already in the public domain), whether written or oral and of whatever type or nature relating to property, assets, liabilities, finances, dealings or functions of Council or any undertaking from time to time carried out by Council.

**Director-General** means the Director-General of the New South Wales Department of Local Government.

**Equal employment opportunity management plan** means the document a council must prepare under Part 4 of Chapter 11 of the Act.

**Minister** means the New South Wales Minister for Local Government.

**Model code** means the Model Code of Conduct for Local Councils in NSW prescribed by the Regulation.

**Month** means a calendar month.

**Performance agreement** means the agreement referred to in clause 7.

**Performance criteria** means the criteria to which a performance review is to have regard.

**Performance review** means a review of the employee's performance conducted in accordance with the procedures under clause 7.

**the position** means the position referred to in clause 1.

**the Regulation** means the *Local Government (General) Regulation 2005*.

**Senior executive office holder (New South Wales Public Service)** means the holder of a senior executive position within the meaning of the *Public Sector Employment and Management Act 2002*.

**Statutory and Other Officers Remuneration Tribunal** means the Statutory and Other Officers Tribunal constituted under the *Statutory and Other Officers Remuneration Act 1975*.

**Termination date** means the date that this contract terminates as specified in clause 2.

3.2 Expressions in this contract corresponding with expressions that are defined in the Act have those meanings.

## 4 Contract operation and application

- 4.1 This contract constitutes a contract of employment for the purposes of section 338 of the Act, and governs the employment of the employee while in the position.
- 4.2 The general manager acts for and on behalf of Council as the employer of the employee under this contract.
- 4.3 Where the employer lawfully authorises a person to act as his or her delegate and carry out any of the employer's duties, obligations or actions required to be carried out under this contract, this contract will be construed as if any relevant reference to the employer includes a reference to that delegate.
- 4.4 A reference in this contract to any Act or regulation, or any provision of any Act or regulation, includes a reference to subsequent amendments of that Act, regulation or provision.
- 4.5 A reference to a Schedule to this contract refers to a Schedule as may be varied in accordance with this contract, and applies whether or not the Schedule has been physically attached to this contract.
- 4.6 Any staff entitlement set out in a lawful policy of Council as adopted by Council from time to time and that is set out in Schedule A will apply to the employee unless this contract makes express provision to the contrary. Schedule A may be varied from time to time by agreement between the employee and employer, such agreement not to be unreasonably withheld.

**Note: Only those policies that create entitlements are to be set out in Schedule A. Schedule A policies are distinct from those which create a duty or function as referred to in subclause 6.1.4 and which are not required to be set out in Schedule A.**

- 4.7 Subject to clauses 7 and 13, the terms of this contract, as varied from time to time in accordance with this contract, represent the entire terms of all agreements between the employee and the employer and replace all other representations, understandings or arrangements made between the employee and the employer that relate to the employment of the employee in the position.

**Note: The contract authorises the making of agreements that are linked to the contract. Clause 7 requires the parties to sign a performance agreement. Clause 13 allows either party to require the other to sign a confidentiality agreement for the purpose of protecting intellectual property.**

## 5 Renewal of appointment

- 5.1 At least 9 months before the termination date (or 6 months if the term of employment is for less than 3 years) the employee will apply to the employer in writing if seeking re-appointment to the position.
- 5.2 At least 6 months before the termination date (or 3 months if the term of employment is for less than 3 years) the employer will respond to the employee's application referred to in subclause 5.1 by notifying the employee in writing of its decision to either offer the employee a new contract of employment (and on what terms) or decline the employee's application for re-appointment.
- 5.3 At least 3 months before the termination date (or 1 month if the term of employment is for less than 3 years) the employee will notify the employer in writing of the employee's decision to either accept or decline any offer made by Council under subclause 5.2.
- 5.4 In the event the employee accepts an offer by the employer to enter into a new contract of employment, a new contract of employment will be signed.

## 6 Duties and functions

- 6.1 The employee will:
- 6.1.1 to the best of their ability, meet the performance criteria set out in the performance agreement as varied from time to time,
- 6.1.2 carry out the duties and functions imposed by the Act and Regulation, or any other Act and associated regulations, which include but are not limited to:
- (a) giving immediate notice to the employer on becoming bankrupt or making a composition, arrangement or assignment for the benefit of the employee's creditors and providing the employer, within the time specified by the employer with any further information concerning the cause of the bankruptcy or of the making of the composition, arrangement or assignment,
  - (b) not engaging, for remuneration, in private employment or contract work outside the service of Council without the approval of the employer,
  - (c) acting honestly and exercising a reasonable degree of care and diligence in carrying out the employee's duties and functions,
  - (d) complying with the provisions of the code of conduct,
  - (e) preparing and submitting written returns of interest and disclosing pecuniary interests in accordance with the Act and the Regulation,

**Note: Sections 341, 353, 439, 440 and 445 of the Act.**

- 6.1.3 carry out the duties and functions set out in Schedule B as varied from time to time by agreement between the employee and the employer, such agreement not to be unreasonably withheld,

**Note: Schedule B may include additional duties and functions, for example, those related to special projects.**

- 6.1.4 carry out the duties and functions set out in the policies of Council as adopted by Council from time to time during the term of this contract,

- 6.1.5 observe and carry out all lawful directions given by the employer, in relation to the performance of the employee's duties and functions under this contract,

- 6.1.6 work such reasonable hours as are necessary to carry out the duties and functions of the position and the employees obligations under this contract,

- 6.1.7 obtain the approval of the employer for any absences from the business of Council,

- 6.1.8 where appropriate, facilitate Council staff awareness of the procedures for making protected disclosures and of the protection provided by the *Protected Disclosures Act 1994*, and

- 6.1.9 report to the employer on any overseas travel taken by the employee where that travel is funded in whole or in part by Council.

- 6.2 the employer:

- 6.2.1 will allocate available resources to enable the employee to carry out the duties and functions specified in subclause 6.1 and Schedule B,

- 6.2.2 will provide the employee with reasonable opportunities to participate in professional development initiatives relevant to the duties and functions under this contract subject to the operational needs of Council, and

- 6.2.3 will take all necessary steps to ensure that the employee is not subject to direction by Council or a councillor as to the content of any advice or recommendation made by the employee.

**Note: section 352 of the Act.**

## 7 Performance agreement and review

- 7.1 Within 3 months after the commencement date, the employee and the employer will sign a performance agreement setting out agreed performance criteria.
- 7.2 In the event that the employee and the employer are unable to agree on the performance criteria, the employer will determine such performance criteria that are reasonable and consistent with the employee's duties and functions under clause 6 and in Schedule B.
- 7.3 The performance agreement may be varied from time to time during the term of this contract by agreement between the employee and the employer, such agreement not to be unreasonably withheld.
- 7.4 Within 2 months after signing or varying the performance agreement, the employee will prepare and submit to the employer an action plan which sets out how the performance criteria are to be met.
- 7.5 the employer will ensure that the employee's performance is reviewed (and, where appropriate, the performance agreement varied) at least annually. Any such review is to have regard to the performance criteria.

**Note: The employer may review the employee's performance every 6 months or more frequently if necessary.**

- 7.6 the employer will give the employee at least 10 days notice in writing that any performance review is to be conducted.
- 7.7 The structure and process of the performance review is at the discretion of the employer following consultation with the employee.
- 7.8 The employee may prepare and submit to the employer an assessment of the employee's own performance prior to a performance review.
- 7.9 Within 6 weeks from the conclusion of a performance review, the employer will prepare and send to the employee a written statement that sets out:
- (a) the employer's conclusions about the employee's performance during the performance review period,
  - (b) any proposal by the employer to vary the performance criteria as a consequence of a performance review, and
  - (c) any directions or recommendations made by the employer to the employee in relation to the employee's future performance of the duties of the position.

- 7.10 The employee and the employer will, as soon as possible after the employee receives the written statement referred to in subclause 7.9, attempt to come to agreement on any proposal by the employer to vary the performance criteria and on any recommendations by the employer as to the future performance of the duties of the position by the employee.
- 7.11 Subject to the employee being available and willing to attend a performance review, the employer undertakes that if a performance review is not held in accordance with this clause, this will not operate to the prejudice of the employee unless the employee is responsible for the failure to hold the performance review.

## 8 Remuneration

- 8.1 The total remuneration package for the employee is set out in Schedule C.
- 8.2 The total remuneration package includes salary, compulsory employer superannuation contributions and other benefits including any fringe benefits tax payable on such benefits.

**Note: Compulsory employer superannuation contributions are those contributions required under the *Superannuation Guarantee Charge Act 1992* of the Commonwealth and any contributions required to be paid for an employee under a superannuation arrangement entered into by Council for that employee. See Schedule C.**

- 8.3 The employer may, on only one occasion during each year of this contract, approve an increase in the total remuneration package where the employee's performance has been assessed in accordance with a performance review as being of a better than satisfactory standard.
- 8.4 Any increase in remuneration approved under subclause 8.3 will not be paid as a lump sum.
- 8.5 On each anniversary of the commencement date, the total remuneration package will be increased by a percentage amount that is equivalent to the latest percentage amount increase in remuneration for senior executive office holders as determined by the Statutory and Other Officers Remuneration Tribunal.

**Note: When making determinations referred to in subclause 8.5, the Tribunal takes into account key national economic indicators and movements in public sector remuneration across Australia, market conditions, the Consumer Price Index and wages growth as measured by the Wage Cost Index. Tribunal determinations are published in the Government Gazette and are available at [www.remtribunals.nsw.gov.au](http://www.remtribunals.nsw.gov.au). The Premier's Department issues periodic Memoranda summarising the Tribunals determinations. These Memoranda are available at [www.premiers.nsw.gov.au](http://www.premiers.nsw.gov.au).**

- 8.6 The structure of the total remuneration package may be varied from time to time during the term of this contract by agreement between the employee and the employer, such agreement not to be unreasonably withheld.
- 8.7 The total remuneration package, as varied from time to time, remunerates the employee for all work undertaken by the employee while in the position. No other remuneration, benefit, overtime or allowances other than those to which the employee may be entitled under this contract will be paid to the employee during the term of this contract.

## **9 Leave**

### **9.1 General**

9.1.1 Paid leave under this clause will be calculated in accordance with Schedule C.

9.1.2 On the termination of this contract, and if the employee is not re-appointed to the position under clause 5 or appointed to any other position in Council's organisation structure,

- (a) the employee in the case of annual leave, or
- (b) the employee or new employer council in the case of long service leave,

will be paid accrued but unused leave entitlements calculated at the monetary value of the total remuneration package as specified in Schedule C.

9.1.3 If the employee is re-appointed to the position under clause 5 or appointed to any other position in Council's organisation structure within 3 months after the termination of this contract, the employee will be taken to have continuing service with Council for the purpose of determining the employee's entitlement to annual leave, long service leave and sick leave.

9.1.4 Any leave accrued with Council standing to the credit of the employee immediately prior to entering into this contract will be taken to be leave for the purposes of this contract.

### **9.2 Annual leave**

The employee is entitled to 4 weeks' paid annual leave during each year of employment under this contract to be taken as agreed between the employee and the employer.

### **9.3 Long service leave**

- 9.3.1 The employee's entitlement to long service leave is to be calculated by the same method that applies to a non-senior member of Council staff.
- 9.3.2 Long service leave is transferable between councils in New South Wales in the same manner that applies to a non-senior member of Council staff.

### **9.4 Sick leave**

- 9.4.1 The employee is entitled to 3 weeks' paid sick leave during each year of employment under this contract provided that:
  - (a) the employer is satisfied that the sickness is such that it justifies time off, and
  - (b) satisfactory proof of illness to justify payment is provided to the employer for absences in excess of two days.
- 9.4.2 Sick leave will accumulate from year to year of employment under this contract so that any balance of leave not taken in any one year may be taken in a subsequent year.
- 9.4.3 the employer may require the employee to attend a doctor nominated by the employer at Council's cost.
- 9.4.4 Accrued but unused sick leave will not be paid out on the termination of this contract.

### **9.5 Parental leave**

- 9.5.1 Parental leave includes supporting parent's leave, maternity leave, paternity leave and adoption leave.
- 9.5.2 The employee is entitled to the same parental leave that a non-senior member of Council staff would be entitled.

### **9.6 Carer's leave**

The employee is entitled to the same carer's leave that a non-senior member of Council staff would be entitled.

## **9.7 Concessional leave**

The employee is entitled to the same concessional leave that a non-senior member of Council staff would be entitled.

## **9.8 Special leave**

The employer may grant special leave, with or without pay, to the employee for a period as determined by the employer to cover any specific matter approved by the employer.

# **10 Termination**

## **10.1 General**

On termination of this contract for any reason the employee will immediately return to the employer all property of Council in the employee's possession including intellectual property and confidential information and will not keep or make any copies of such property and information.

## **10.2 Termination date**

The employment of the employee under this contract terminates on the termination date.

## **10.3 Termination by either the employee or Council**

This contract may be terminated before the termination date by way of any of the following:

10.3.1 written agreement between the employee and the employer,

10.3.2 the employee giving 4 weeks' written notice to the employer,

10.3.3 the employer giving 4 weeks' written notice to the employee, or alternatively by termination payment under subclause 11.1, where:

- (a) the employee has been incapacitated for a period of not less than 12 weeks and the employee's entitlement to sick leave has been exhausted, and
- (b) the duration of the employee's incapacity remains indefinite or is likely to be for a period that would make it unreasonable for the contract to be continued,

- 10.3.4 the employer giving 13 weeks' written notice to the employee, or alternatively, by termination payment under subclause 11.2 where the employer:
- (a) has conducted a performance review, and
  - (b) concluded that the employee has not substantially met the performance criteria or the terms of the performance agreement,
- 10.3.5 the employer giving 38 weeks' written notice to the employee, or alternatively, by termination payment under subclause 11.3.

## **10.4 Summary dismissal**

- 10.4.1 The employer may terminate this contract at any time and without notice if the employee commits any act that would entitle an employer to summarily dismiss the employee. Such acts include but are not limited to:
- (a) serious or persistent breach of any of the terms of this contract,
  - (b) serious and willful disobedience of any reasonable and lawful instruction or direction given by the employer,
  - (c) serious and willful misconduct, dishonesty, insubordination or neglect in the discharge of the employee's duties and functions under this contract,
  - (d) failure to comply with any law or Council policy concerning sexual harassment or racial or religious vilification,
  - (e) commission of a crime, resulting in conviction and sentencing (whether or not by way of periodic detention), which affects the employee's ability to perform the employee's duties and functions satisfactorily, or in the opinion of the employer brings Council into disrepute,
  - (f) absence from the business of Council without the employer's approval for a period of 3 or more consecutive business days.
- 10.4.2 This contract is terminated immediately without notice if the employee becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

## **11 Termination payments**

- 11.1 On termination of this contract under subclause 10.3.3, where written notice has not been given, the employee will be paid a monetary amount equivalent to 4 weeks' remuneration calculated in accordance with Schedule C.

- 11.2 On termination of this contract under subclause 10.3.4, where written notice has not been given, the employee will be paid a monetary amount equivalent to 13 weeks' remuneration calculated in accordance with Schedule C.
- 11.3 On termination of this contract under subclause 10.3.5, where written notice has not been given, the employee will be paid a monetary amount equivalent to 38 weeks' remuneration calculated in accordance with Schedule C, or the remuneration which the employee would have received if the employee had been employed to the termination date, whichever is the lesser.
- 11.4 On termination of this contract under subclause 10.3.1, 10.3.2, 10.4.1 or 10.4.2, the employee will be paid remuneration up to and including the date of termination calculated in accordance with Schedule C and any other payment to which the employee is entitled under this contract.

## **12 Expenses and credit cards**

In addition to any duties or entitlements that may be set out in any relevant policies of Council as adopted by Council from time to time, the employee will:

- 12.1 keep such records of expenses, travel and motor vehicle use as required by the employer from time to time,
- 12.2 be reimbursed for expenses properly incurred on Council business, subject to the employer's prior approval to this expense being incurred,
- 12.3 only use any Council credit card for expenses incurred on Council business, and
- 12.4 return any Council credit card on request from the employer.

## 13 Intellectual property

- 13.1 Any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract is the sole property of Council and Council will unless otherwise agreed have the exclusive right to use, adapt, patent and otherwise register it.
- 13.2 The employee will immediately disclose to the employer any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee after the commencement date to enable the employer to ascertain whether it was discovered, developed or produced wholly outside and wholly unconnected with the course of employment under this contract.
- 13.3 To protect disclosures made in accordance with subclause 13.2, the employer or the employee may require a confidentiality agreement to be signed prior to, during or immediately after discussion of the intellectual property being considered.

**Note: IP Australia, the Commonwealth Government intellectual property agency, has developed a Confidentiality Agreement Generator for the purpose of preparing intellectual property confidentiality agreements. It is available at [www.ipaustralia.gov.au/smartstart/cag.htm](http://www.ipaustralia.gov.au/smartstart/cag.htm).**

- 13.4 The employee assigns to Council by way of future assignment all copyright, design, design right and other property rights (if any) in respect to any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract.
- 13.5 At the request of the employer and expense of Council the employee will complete all necessary deeds and documents and take all action necessary to vest in Council any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract and obtain for Council the full benefit of all patent, trademark, copyright and other forms of protection throughout the world.

## 14 Confidential Information

The employee will not divulge any confidential information about Council either during or after the term of their employment under this contract.

## 15 Waiver

The failure of either the employee or the employer to enforce at any time any provision of this contract or any right under this contract or to exercise any election in this contract will in no way be considered to be a waiver of such provision, right or election and will not affect the validity of this contract.

## 16 Inconsistency and severance

- 16.1 Each provision of this contract will be read and construed independently of the other provisions so that if one or more are held to be invalid for any reason, then the remaining provisions will be held to be valid.
- 16.2 If a provision of this document is found to be void or unenforceable but would be valid if some part were deleted, the provision will apply with such modification as may be necessary to make it valid and effective.

## 17 Dispute resolution

- 17.1 In relation to any matter under this contract that may be in dispute, either the employee or the employer may:
- (a) give written notice to each other of the particulars of any matter in dispute, and
  - (b) within 14 days of receiving a notice specified in subclause 17.1(a), a meeting will be convened between the employer (along with any nominated representative of the employer) and the employee (along with any nominated representative of the employee) in an attempt to resolve the dispute.
- 17.2 The employee and the employer will attempt to resolve the dispute at the workplace level.
- 17.3 Upon failure to resolve the dispute at the workplace level, the employee and the employer will:
- (a) refer the dispute to an independent mediator as agreed by the employee and the employer, or otherwise as appointed by the Director-General,
  - (b) agree to participate in any mediation process in good faith, with such mediation to operate in a manner as agreed by the employee and the employer, and
  - (c) acknowledge the right of either the employee or the employer to appoint, in writing, another person to act on their behalf in relation to any mediation process.
- 17.4 The cost of the mediation service will be met by Council.

- 17.5 The employee will be responsible for meeting the cost of any advisor or nominated representative used by the employee.

## 18 Service of notices and communications

- 18.1 Any communication, including notices, relating to this contract will be in writing and served on the employee or the employer at their last known residential or business address in accordance with subclause 18.2.
- 18.2 Any written communication including notices relating to this contract is taken to be served:
- (a) when delivered or served in person, immediately,
  - (b) where served by express post at an address within New South Wales in the Express Post Network, on the next business day after it is posted,
  - (c) where served by post otherwise in the ordinary course of postage, as set down in Australia Post's delivery standards, and
  - (d) where sent by facsimile, within standard business hours otherwise on the next business day after it is sent.

## 19 Variations

- 19.1 Where this contract provides that its terms may be varied, that variation will be by agreement in writing signed by the employee and the employer.

**Note: See clauses 4.5, 6.1.3, 7.3, 8.6 and 19.2.**

- 19.2 Where the Director-General approves an amended or substitution standard form of contract for the employment of a senior staff member (other than the general manager) of a council, the provisions of this contract may be varied by agreement between the employee and the employer to the extent that they are consistent with the provisions of that amended or substitution standard form of contract.

**Note: See section 338 of the Act.**

## 20 Other terms and conditions

- 20.1 The employee and the employer acknowledge that they have sought or had the opportunity to seek their own legal and financial advice prior to entering this contract.
- 20.2 In accordance with section 731 of the Act, nothing in this contract gives rise to any action, liability, claim or demand against the Minister, the Director-General or any person acting under their direction.

## 21 Signed by the employee and employer

### THE EMPLOYER:

**Note: See subclause 4.2.**

Signed by the  
General Manager .....

Date .....

Name of  
General Manager  
in full *[printed]* .....

Signed by Witness .....

Name of Witness  
in full *[printed]* .....

### THE EMPLOYEE:

Signed by the  
employee .....

Date .....

Name of employee  
in full *[printed]* .....

Signed by Witness .....

Name of Witness  
in full *[printed]* .....

# Schedule A – Council policies

**Note: This Schedule may be varied during the term of this contract in accordance with subclauses 4.6 and 19.1 of this contract.**

This Schedule operates on and from

Date .....

For the purposes of subclause 4.6 of this contract, the following policies apply to the employee:

Signed by the employer .....

Signed by the employee .....

## Schedule B – Duties and functions

**Note: This Schedule may be varied during the term of this contract in accordance with subclauses 6.1.3 and 19.1 of this contract.**

This Schedule operates on and from

Date

In addition to the duties and functions specified in clause 6 of this contract, the employee will carry out the following duties and functions

Signed by the employer

Signed by the employee

# Schedule C – Remuneration

**Note: This Schedule may be varied during the term of this contract in accordance with clauses 8 and 19 of this contract.**

This Schedule operates on and from

Date .....

**The Annual Total Remuneration Package is as follows:**

\$ .....

**The Total Remuneration Package is comprised of:**

<b>ANNUAL RENUMERATION</b>	<b>\$</b> .....

The employee agrees and acknowledges that deductions under subclause 8.2 of this contract are made principally for the benefit of the employee and that the Council relies on that statement in providing the non-cash benefits requested by the employee.

In the case of an employee who is a member of a defined benefit division of the Local Government Superannuation Scheme (or equivalent) compulsory employer superannuation contributions are the long term or "notional" employer contribution, as advised by the Actuary for the Local Government Superannuation Scheme from time to time.

The employee's superable salary will be the amount of the total remuneration package less the amount of compulsory superannuation contributions.

Signed by the employer .....

Signed by the employee .....