

Circular Details	21-22 / 10 August 2021 / A774699
Previous Circular	19-17 <i>The appointment and dismissal of senior staff</i>
Who should read this	General Managers/Councillors
Contact	Council Governance Team / 02 4428 4100 / olg@olg.nsw.gov.au
Action required	Information

Updated guidance on the appointment and dismissal of senior staff

What's new or changing

- The purpose of this Circular is to provide updated guidance to councils on the requirements of the *Local Government Act 1993* (the Act) relating to the appointment and dismissal of senior staff other than the general manager.
- The updated guidance is informed by the recommendations of the Independent Commission Against Corruption (ICAC) arising from its investigation and inquiry into the former Canterbury City Council (Operation Dasha).

What this will mean for your council

- Under section 338 of the Act only general managers and the holders of positions determined by the council by resolution to be "senior staff" positions may be employed under fixed term contracts of employment based on those approved by the "Departmental Chief Executive" of the Office of Local Government.
- Council staff must not be employed under a senior staff contract unless the council has first determined by resolution that the position the staff member has been appointed to, is a "senior staff" position for the purposes of section 332 of the Act.
- Under section 337 of the Act general managers must consult with the governing body of the council before appointing or dismissing the holders of "senior staff" positions. It is important to note that section 337 requires this consultation to occur **before** a decision on appointment or dismissal has been made. The requirement to consult with the governing body under section 337 will not be satisfied where a general manager informs councillors of their decision after it has been made.
- Consultation with the governing body of the council on the appointment and dismissal of senior staff need not necessarily occur at a formal council meeting. For example, consultation can occur at a councillor briefing, an informal workshop or with each councillor individually by telephone or email.
- Where consultation occurs outside of a council meeting, the requirement to consult with the "council" under section 337 necessarily requires that this be undertaken in a way that ensures that **all** members of the governing body are informed of the proposed decision and are given the opportunity to provide comment to the general manager.
- When consulting with councillors on decisions to appoint or dismiss senior staff, the general manager should inform them of their proposed decision and provide sufficient information to allow councillors to understand the reasons for the decision and to allow them to provide input into the decision.

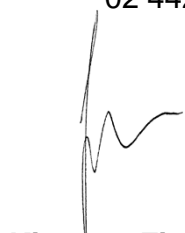
- When consulting councillors on a decision to appoint or terminate the employment of a senior staff member, the general manager should consider the views of councillors. However, the ultimate decision to appoint or dismiss senior staff rests with the general manager and not the governing body. It is therefore not open to the governing body of the council to direct the general manager on the appointment or dismissal of senior (and any other) staff.
- The requirement to consult with councillors on the appointment of senior staff under section 337 of the Act is not satisfied by including councillors on recruitment panels for senior staff. Section 335 of the Act expressly confers on the general manager responsibility for the appointment of staff, and councillors should not, as a rule, be included on recruitment panels for staff. As ICAC has noted, the inclusion of councillors on recruitment panels has the potential to create confusion about who is responsible for the appointment of the successful candidate. It may also send the wrong message to the employee as to who may give directions about the exercise of their functions. Under the Act senior and other staff are subject to direction by the general manager and not councillors.
- The only circumstances where it would be appropriate for councillors to participate in recruitment panels for staff is where the role involves the provision of administrative or other support directly to councillors. When recruiting for such roles, councillors should only comprise a minority of panel members.

Key points

- Under section 332 of the Act, the governing body of a council may, in consultation with the general manager, determine positions within a council's organisation structure to be "senior staff" positions.
- Under section 332, a council may not determine a position to be a "senior staff" position unless:
 - the responsibilities, skills and accountabilities of the position are generally equivalent to those applicable to the Executive Band of the *Local Government (State) Award*, and
 - the total remuneration package payable with respect to the position is equal to or greater than the minimum remuneration package (within the meaning of Part 3B of the *Statutory and Other Offices Remuneration Act 1975*) payable with respect to senior executives whose positions are graded Band 1 under the *Government Sector Employment Act 2013*. As of 2020/21 this is \$192,600.

Where to go for further information

- For more information, contact the Council Governance Team by telephone on 02 4428 4100 or by email at olg@olg.nsw.gov.au.



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