



Circular Details	Circular No 22-25 / 31 August 2022 / A812271
Previous Circular	22-12 <i>Proposed amendments to the standard contract of employment for general managers</i>
Who should read this	Councillors / General Managers / Joint Organisation Executive Officers / Human Resources Staff
Contact	Council Governance Team / 02 4428 4100 / olg@olg.nsw.gov.au
Action required	Councils and joint organisations to implement

New standard contracts of employment for general managers and executive officers and updated guidelines for the appointment and oversight of general managers

What's new or changing

- The “departmental chief executive” has approved new standard contracts of employment for general managers of councils and executive officers of joint organisations under section 338 of the *Local Government Act 1993* (the Act).
- The new standard contracts have been developed in consultation with the sector in response to recommendations arising from ICAC’s investigation of the former Canterbury City Council (Operation Dasha).
- New *Guidelines for the Appointment and Oversight of General Managers* have also been issued under section 23A of the Act to assist councils in the implementation of the new contracts.
- The Guidelines have been updated to reflect the new standard contracts and to implement ICAC’s recommendation that they include guidance that general managers’ performance agreements include performance indicators related to the promotion of an ethical culture. The Guidelines also contain guidance on the importance of good working relationships between councils and general managers.
- The changes are summarised in the attachment to this circular.

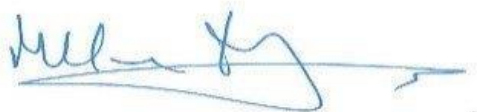
What this will mean for your council

- Under section 338 of the Act, general managers and executive officers must be employed under contracts with terms of between 12 months and 5 years based on the standard contracts approved by the departmental chief executive of OLG.
- When appointing a new general manager or executive officer or renewing their contract, councils and joint organisations must use the new approved standard contracts.
- The approval of the new standard contracts does not affect existing employment contracts general managers and executive officers are employed under. However, clause 19.2 of existing contracts allows them to be varied by agreement between the employee and the council or joint organisation to be consistent with the provisions of the new approved standard contracts.

- A separate review is being undertaken of employment arrangements under the Act for “senior staff”. Until the review is completed, councils should continue to use the existing approved standard contract of employment for senior staff.
- Under section 23A of the Act, councils and joint organisations must consider the updated Guidelines when exercising their functions in relation to the recruitment and oversight of general managers.

Where to go for further information

- The new standard contracts of employment for general managers and executive officers and the updated Guidelines are available [here](#).
- Information about the amendments to the standard contracts is set out in the attachment to this circular.
- For further information please contact OLG’s Council Governance Team on (02) 4428 4100 or by email at olg@olg.nsw.gov.au.



Melanie Hawyes
Deputy Secretary, Crown Lands and Local Government

ATTACHMENT

What changes have been made to the standard contracts of employment for general managers of councils and executive officers of joint organisations to ensure greater security of employment?

A key focus of the amendments to the standard contracts of employment for general managers and executive officers is to strengthen access to mediation under the contract to manage and address conflict in the relationship when it arises and to ensure more rigour in decisions by councils to terminate the employment of the general manager.

These amendments include the following:

- Before terminating a general manager's or executive officer's employment for poor performance, the council or joint organisation must have first conducted a performance review, concluded that the general manager's or executive officer's performance falls short of the performance criteria or the terms of their performance agreement, and afforded the general manager or executive officer a reasonable opportunity to utilise dispute resolution.
- Where a council or joint organisation intends to terminate the employment of its general manager or executive officer utilising the 'no fault' termination provision (clause 10.3.1(e)), if either party requests it and both parties agree, they may participate in mediation in relation to the proposed decision to terminate. If the council or joint organisation does not agree to participate in mediation, it must give the general manager or executive officer reasons for its decision where the general manager or executive officer requests it.
- Councils and joint organisations and their general managers or executive officer may agree on a mediator when the contract is made.
- Where a council or joint organisation terminates the general manager's or executive officer's employment under the "no fault" termination provision (clause 10.3.1(e)), the council or joint organisation must give the general manager or executive officer reasons for its decision to terminate their employment where the general manager or executive officer requests it.
- Serious and persistent breaches of the council's code of conduct by the general manager or executive officer constitute grounds for summary dismissal.

What changes are being made to the standard contracts of employment for general managers and executive officers relating to their remuneration?

The following amendments have been made to the provisions of the contracts relating to general managers' and executive officers' remuneration:

- Clause 8.4 of the contract has been amended to clarify that a discretionary performance-based pay increase only applies for one year unless the council or joint organisation determines that it is to apply for the balance of the contract.

- Clause 8.4 also allows for the payment of a retention bonus on one occasion during the term of the contract. This accrues on an annual, pro-rata basis for the remainder of the term of the contract and is to be paid to the general manager or executive officer at the end of the contract period.

What other changes are being made to the standard contracts of employment for general managers and executive officers?

Other changes include:

- Definitions and other provisions have been updated to reflect legislative and administrative changes made since the previous standard contracts were approved.
- A new provision has been included (clause 5.5) empowering the departmental chief executive of OLG to approve an extension of the timeframes prescribed under clause 5 for the renewal of the contract in exceptional or unforeseen circumstances.
- Minor amendments have been made to the functions and duties of general managers and executive officers prescribed under clause 6 to reflect legislative changes and to place an obligation on general managers and executive officers to ensure a safe workplace and to facilitate compliance with the *Work Health and Safety Act 2011*.
- A new provision (clause 7.12) has been included that confirms that the performance agreement, action plan and any associated records that contain information about the work performance or conduct of the general manager or executive officer are to remain confidential unless otherwise agreed to by the general manager or executive officer or required by law.
- The provision that provides that the contract automatically terminates where the employee becomes bankrupt (clause 10.4.2) has been extended to also apply if the employee is disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001*.
- The service of notice provisions, (clause 18), have been updated to allow service by email.