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Who should read this	Councillors / General Managers / Human Resources Staff
Contact	Mr Doug Friend, Council Governance Team / 02 4428 4201 / doug.friend@olg.nsw.gov.au
Action required	Information / Response to OLG

Proposed amendments to the standard contract of employment for general managers

What's new or changing

- As a result of its investigation of the former Canterbury City Council, the Independent Commission Against Corruption (ICAC) recommended that the Department of Planning and Environment conduct a review into the “no fault” termination provision in the standard contract of employment for general managers.
- In response to ICAC’s recommendation, the Office of Local Government (OLG) has undertaken a review of the standard contract of employment for general managers in consultation with the parties to the *Local Government (State) Award*, (Local Government NSW, the United Services Union, the Development and Environmental Professionals' Association and the Local Government Engineers Association of NSW).
- OLG is consulting with councils on the proposed amendments to the standard contract arising from that review before they are approved by the “departmental chief executive” under section 338 of the *Local Government Act 1993* (the Act).

What this will mean for your council

- Under section 338 of the Act, general managers must be employed under performance-based contracts of terms between 12 months and 5 years based on a standard contract approved by the departmental chief executive of OLG.
- Once approved by the departmental chief executive, the amended standard contract will not alter existing employment contracts between councils and their general managers.
- However, where a council renews the employment contract of its general manager or appoints a new general manager, they must be employed under the approved standard contracts as amended.

Key points

- Submissions on the proposed amended standard contract may be made by email to olg@olg.nsw.gov.au.

- Submissions should be labelled 'Standard Contract of Employment for General Managers' and marked to the attention of OLG's Council Governance Team.
- Submissions should be made before 14 June 2022.

Where to go for further information

- The proposed amended standard contract is available [here](#) .The proposed amendments are highlighted in the contract.
- Information about the proposed amendments to the standard contract is set out in the attachment to this circular.
- For further information please contact Doug Friend of OLG's Council Governance Team on (02) 4428 4201 or by email at olg@olg.nsw.gov.au.

Melanie Hawyes

Deputy Secretary, Crown Lands and Local Government

ATTACHMENT

What changes are being made to the standard contract of employment for general managers to ensure greater security of employment?

As a result of its investigation of the former Canterbury City Council, ICAC recommended that the Department of Planning and Environment conduct a review into the “no fault” termination provision in the standard contract of employment for general managers. ICAC recommended that the review should canvass options such as requiring a two-thirds majority vote of a council, an absolute majority vote or the availability of mediation.

The Government does not support the first two of these options.

A good working relationship between the governing bodies of councils and their general managers is essential to councils being able to exercise their functions effectively. Experience has repeatedly demonstrated that where, for whatever reason, general managers lose the support and confidence of a majority of councillors, the council can become dysfunctional. Councils cannot focus on serving their communities if councillors and the general manager are at war with each other. General managers also cannot hope to perform effectively in their role in circumstances where they have lost the confidence and the support of a majority of councillors. Councils therefore need to have the flexibility to terminate the employment relationship with the general manager with appropriate compensation, where that relationship breaks down.

A key focus of the proposed amendments to the standard contract of employment for general managers 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 employment for poor performance, the council must have first conducted a performance review, concluded that the general manager’s performance falls short of the performance criteria or the terms of their performance agreement, and afforded the general manager a reasonable opportunity to utilise dispute resolution.
- Where a council intends to terminate the employment of its general manager 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 does not agree to participate in mediation, it must give the general manager reasons for its decision where the general manager requests it.
- Councils and general managers may agree on a mediator when the contract is made.
- Where a council terminates the general manager’s employment under the “no fault” termination provision (clause 10.3.1(e)), the council must give the

general manager reasons for its decision to terminate their employment where the general manager requests it.

- Serious and persistent breaches of the council's code of conduct by the general manager constitute grounds for summary dismissal.

What changes are being made to the standard contract of employment for general managers relating to their remuneration?

The following amendments are proposed to the provisions of the contract relating to general managers' 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 determines that it is to apply for the balance of the contract.
- Clause 8.4 also allows for the payment of a retention allowance 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 at the end of the contract period.

What other changes are being made to the standard contract of employment for general managers?

Other changes include:

- Definitions and other provisions have been updated to reflect legislative and administrative changes made since the previous standard contract was 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 of the general manager's duties prescribed under clause 6 to reflect legislative changes and to place an obligation on general managers 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 are to remain confidential unless otherwise agreed to by the general manager or required by law.
- The service of notice provisions, (clause 18), have been updated to allow service by email.