

<b>Circular Details</b>	23-16 / 15 December 2023 / A885509
<b>Previous Circular</b>	N/A
<b>Who should read this</b>	Councillors / General Managers / Council procurement staff
<b>Contact</b>	Council Governance Team / (02) 4428 4100 / <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a>
<b>Action required</b>	Council to Implement

## Regulation amendments to protect the employment of waste workers.

### What's new or changing

- Amendments have been made to the Local Government (General) Regulation 2021 (the Regulation) to strengthen employment protections where councils tender for domestic or other waste management services.

### What this will mean for your council

- Section 173 of the Regulation has been amended to require tender submissions for the performance of domestic or other waste management services to contain an undertaking that the tenderer will ensure that current employees (whether of the council or the current contractor) will be offered employment to continue to provide the service, and for anyone who accepts the offer of employment:
  - the employment will be on at least the same terms as the individual's current employment, and
  - the employment will be taken to be a continuation of the individual's current employment with no loss of entitlements, and
  - the tenderer will pay an annual increase in the individual's base rate pay in accordance with the applicable industrial instrument or the Local Government (State) Award if there is no applicable instrument.
- Section 177 of the Regulation has been amended to provide that tender submissions for the performance of domestic or other waste management services cannot be considered by a council unless they contain the required undertaking.
- To facilitate the giving of undertakings, section 170 of the Regulation has been amended to require tender proposal documents issued by councils in relation to contracts for the performance of domestic or other waste management services to provide details of the employees who currently provide the service and the terms on which they are employed. This information must be provided in a way that protects the privacy of individual workers. This information is not required to be included if the council cannot reasonably obtain access to the information.
- Section 178(1A) of the Regulation has been amended to provide that a council must not accept a tender submission for a proposed contract unless the council has consulted with each relevant union and the unions are satisfied that appropriate industrial arrangements will be in place to ensure compliance with the undertaking during the life of the contract.
- Section 178 of the General Regulation currently provides that councils must ensure that every contract they enter into as a result of a tender submission

they accept, is with the successful tenderer and in accordance with the tender. This means that the terms and conditions of any contract for the performance of domestic or other waste management services must reflect the undertaking given by the tenderer.

- Section 173(6) of the Regulation further provides that an individual, to which an undertaking relates, may take action to enforce the undertaking as if the undertaking were a contract between the tenderer and the individual.

### **Key points**

- The Regulation defines “domestic or other waste management services” as “the storage, treatment, processing, collecting, removal, disposal, destruction, sorting or recycling of domestic waste and other waste.”
- The new requirements also apply in circumstances where the services which are the subject of a tender are currently provided in-house by council employees and the council is proposing to outsource the provision of the services.

### **Where to go for further information**

- For further information please contact the Council Governance Team on 02 4428 4100 or by email at [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au).

**Brett Whitworth**  
**Deputy Secretary, Local Government**