

Circular to Councils

Subject/title	Amendments to the <i>Local Government Act 1993</i> removing the option for councils to employ senior council executives under statutory contracts.
Circular Details	24-09 / 12-06-2024 / A901423
Previous Circular	22-27 Discussion paper – Senior staff employment
Who should read this	Councillors / General Managers / Senior staff / Council human resources staff
Contact	Council Governance Team / (02) 4428 4100/ olg@olg.nsw.gov.au
Action required	Council to Implement

What's new or changing?

- The *Local Government Act 1993* (the Act) has been amended by the *Local Government Amendment (Employment Arrangements) Act 2024* (the amending Act). The amending Act received assent on **31 May 2024**.
- As a result of the amendments, as of **1 September 2024**, councils will no longer have the option to determine positions within their organisation structure as “senior staff positions” and to employ the holders of those positions under the statutory contract approved by the “departmental chief executive” of the Office of Local Government (OLG).
- The amendments mean that the governing bodies of councils and the general manager will have the following responsibilities in determining the organisation structure of a council:
 - the governing body is required to approve the resources to be allocated to the employment of staff after consulting the general manager, and
 - the general manager is in turn responsible for determining the organisation structure of the council after consulting with the governing body.

- Subject to the transitional arrangements set out below, the amendments will ultimately see the terms and conditions of employment of all council staff other than the general manager, regulated under an award or enterprise agreement approved by the Industrial Relations Commission of New South Wales (IRC).

What will this mean for council?

- As noted above, as of 1 September 2024, councils will no longer have the option to determine “senior staff positions” in their organisation structure.
- From this date, new employees in these former roles will be employed under an award or enterprise agreement approved by the IRC.
- Staff currently employed under the approved senior staff contract will continue to be employed under that contract until it expires. When the contract expires, senior staff’s employment can continue under an award or enterprise agreement, and councils will need a valid and lawful reason not to continue their employment.
- Current senior staff may request to transition to employment under an award or enterprise agreement before the contract expiry date. Councils must not unreasonably refuse such a request. Senior staff may apply to the IRC for a review of a council’s refusal of such a request.
- Where a senior staff member is transitioning off a contract into ongoing employment under an award or enterprise agreement, the usual requirement to advertise the position does not apply.
- Where the employment of senior staff is transitioned to employment under an award or enterprise agreement, their accrued entitlements will be preserved.
- The current provisions of the Act and Local Government (General) Regulation 2021 that apply to senior staff of councils will continue to apply to them while they continue to be employed under the senior staff contract.
- However, to ensure staff currently employed under the senior staff contract are not adversely affected in their employment, they will immediately have access to the jurisdiction of the IRC.
- Senior staff members’ contracts are deemed to be an industrial instrument for the purposes of Part 6 of Chapter 2 of the *Industrial Relations Act 1996*, and it will be open to them or their union to seek orders and directions by the IRC, including in relation to unfair dismissal.

Key points

- When transitioning from employment under a senior staff contract to employment under an award or enterprise agreement, employers and employees must act reasonably. Employees should not suffer a net loss as a result of the transition.
- In the event of a dispute about transitioning employment, assistance may be sought from the IRC, who can determine the outcome by ordering the council to transition the staff member's employment to employment under an award or enterprise agreement on the terms and conditions specified in the order, within the time specified in the order.

Where to go for further information

- For further information, contact the Council Governance Team on 02 4428 4100 or olg@olg.nsw.gov.au.
- For practical guidance on implementation of the amendments, councils that are members of Local Government NSW (LGNSW) should contact LGNSW's Workplace Relations team.
- For support and assistance in transitioning to employment under an award or enterprise agreement, council staff should contact their union.

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