

Industrial relations and employment

24 Mosman Council

Senior officer contracts

That Local Government NSW takes no further action on the proposal to remove senior staff (excluding General Managers) from the *Local Government Act 1993* in order to bring senior staff (excluding General Managers) under the Local Government State Award and re-iterate its commitment to allowing members to have individual discretion to determine whether or not to have senior officer positions, as is currently the case.

Note from Council

In 2021 the Board of LGNSW made a decision to support a proposal to remove references to senior staff from the *Local Government Act 1993* (LGA), with the exception of General Managers.

This would bring those staff off contract and under the Local Government Award. This was stated to be a response to the findings of Operation Dasha although it is not an actual recommendation of Operation Dasha. The concerns this raises include:

- Councillors like being consulted about the appointment or removal of senior staff and it is usually a beneficial process not a corrupt one;
- Being on contract encourages performance and accountability;
- Senior staff member may be 'performance managed' out of the organisation instead of having a respectful termination of contract with adequate compensation;
- The use of contracts allows flexibility for new General Managers to build new teams whilst allowing for reasonable compensation for out-going senior staff;
- It will create conflicts of interest as senior staff have to adjudicate on award benefits and entitlements as well as assist in award negotiations; and
- It does nothing to address the potential for inappropriate political pressure on General Managers which is the more profound concern.

A recent survey conducted by LGNSW of staff on this topic demonstrated a majority (68%) were against the idea. It is understood to be a long standing ambition of the various unions who are a party to the Award however it is worth noting that there are other solutions to addressing the issue of undue political influence on senior staff including:

- Section 332 of the LGA allows individual councils the discretion to determine whether or not to have senior officer positions at all, so at any time an individual member council can resolve to not have any and thus make all staff (other than the General Manager) subject to the Local Government Award.
- An amendment allowing senior officers to access the dispute mechanisms under the award.
- Similar to a Section 11 notification under the ICAC Act, a Duty to notify the Office of Local Government of use of the summary dismissal provision including the reasons and consultation undertaken with the elected Council, to increase transparency of the event.

In December 2021 the General Managers of NSROC wrote to the NSW Department of Planning, Industry and Environment voicing concerns that the decision of the Board was neither representative nor consultative.

In January 2022 the Group Deputy Secretary of Planning, Delivery and Local Government responded by stating that whilst aware of the proposal 'no decision has been made to progress it'.

Ian Robertson

From: Ian Robertson
Sent: Saturday, 26 February 2022 11:39 AM
To: mayor@mosman.nsw.gov.au
Subject: FW: Motion 24

Good morning, Mayor Corrigan,

Introduction

I'm the Secretary of the union covering health, building and planning professionals in local government. I have been for a very, very long time, and have witnessed the introduction of term contracts which allow good senior staff to be sacked with "*no reason*". I use the expression "*no reason*", because that's the way the ICAC refers to these contracts, and what drove their recommendations in investigations of Mid-Western, and more recently the former Canterbury, in *Operation Dasha*, for the industry to do something about it.

At both those councils, Councillors threatened the GM that if he didn't sack the Director of Planning, they would sack him.. This practice is more common than you might think.

It was in response to the ICAC recommendations in *Operation Dasha* that we were able to develop a consensus position with LGNSW to reduce the corruption risk the ICAC had identified in the "*no reason*" provision in senior staff contracts. Get rid of those contracts, shine a light on employment practices and be more transparent. LGNSW also sought assistance from the ICAC to ensure this initiative was consistent with the recommendation. ICAC officials believed it a response entirely consistent with the recommendation and LGNSW proceeded to adopt it through its Industry Advisory Committee and their recommendation to the Board..

This consensus between the unions and the employers' organisation is unprecedented and had been encouraged by a succession of Ministers for Local Government and OLG as the only way forward on this critical issue. It was also influenced by everyone's commitment to cleaning up the reputation of the industry because the sort of things in local government that find their way to the ICAC are embarrassing for Council staff and other councillors across the industry. Local government needs a cleaner reputation.

Motion 24

I am alarmed at motion 24, to be moved by you at the LGNSW conference on Tuesday. Up until this motion, the only opposition to the consensus was from GM's who didn't want to lose the right to sack people unfairly (although no one acknowledges that's the reason, of course) - either the GM didn't like them, or was simply too lazy to go through the procedural fairness steps for managing or terminating an employee who isn't working out - the normal processes councils go through for all the other employees who need performance management or dismissal.

But now, with the motion before the conference, the reputation of the industry is on a hiding to nothing. What you are looking to do with this motion is to extinguish an historic bipartisan initiative that would remove a corruption risk. I would enhance the reputation of the industry because this kind of threatening and intimidating dismissal can't continue.

I can see the headlines now, and I would rather not. "*Councillors step in to protect their right to threaten GM's to sack people*"?

I hope you're not alarmed at receiving an email from a union in the industry but there is a very short timeframe available here, and if at all possible, it would be great to talk to you about this.

The "Note from Council"

The six dot points provided by the Council supporting your motion are demonstrably wrong, or embarrassingly naïve. I've responded briefly to each:

- 1 Councillors would no longer be consulted about the appointment or removal of senior staff –
Response: this would be at the discretion of the GM and only a foolhardy general manager would stop that practice. I'm sure Dominic would not terminate this arrangement if he had the opportunity.
- 2 *"Being on contract encourages performance and accountability"* –
Response: only if you're lazy and reluctant to go through performance management and normal disciplinary procedures. It's hard to imagine that the best motivator a GM can come up with for directors is the threat that they could be sacked. You want better than that.
- 3 "Performance managed" out of the organisation instead of a respectful termination with adequate compensation would be unavailable –
Response: Wrong. Just as councils do this all the time for Award staff, reaching agreement on an exit for someone who's not working out with appropriate compensation would not be affected. Senior staff terminated under this arrangement rarely find the process a *"respectful termination"*.
- 4 The flexibility of new GM building new teams with reasonable compensation for outgoing staff –
Response: this would continue, employers could be made redundant under a new structure, or agreements could be negotiated to exit.
- 5 Conflict-of-interest for senior staff when the Award is negotiated –
Response: Council managers who are involved in LGNSW consultation in Award negotiations are usually Award-based employees from HR. In any event, the industry is very good at how to manage conflicts. And declarations of interest.
- 6 *"Does nothing to address the potential for inappropriate political pressure on general managers"* –
Response: it does everything to address that potential by entirely removing the ability of councillors to threaten general managers to sack employees because those employees would have redress to the Industrial Relations Commission.

The history of term contracts in the industry

<https://depa.net.au/component/acymailing/mailid-252.html>

I hope you can rethink your approach and please feel free to ring me on 0409 619916 to discuss.

Ian Robertson
Secretary
depa

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