***LOCAL GOVERNMENT REGULATIONS AMENDMENT REGULATIONS (No. 2) 2020* – GUIDANCE NOTES**

These regulations bring into effect all of the remaining parts of the *Local Government Legislation Amendment Act 2019*, apart from the best practice standards for CEO recruitment, performance review and termination, and the new Code of Conduct which are both being drafted (and are out for consultation until 6 December 2020).

The guidance notes below cover all of the changes made in these Regulations.

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| **Section in Amendment Act** | **Section in LG Act** | **Topic** |
| 5 | 1.7 and 1.8 | Local and state-wide public notice |
| 13 | 4.39 | Close of enrolments (state-wide public notice) |
| 14 | 4.47 | Call for nominations (state-wide public notice) |
| 16 | 4.52 | Exhibition of candidates’ details (on local government website) |
| 17 | 4.64 | Election notice (state-wide public notice) |
| 20 | 5.29 | Convening electors’ meetings (local public notice) |
| 24 | 5.50 | Additional payments to employees (local public notice and publication on website) |
| 57 | 5.120 | Complaints officer |
| 64 | 9.10 | Appointment of authorised person |
| 65 | 9.13 | Onus of proof (authorised person) |
| 66 | 9.15 | Terms (authorised person) |
| 68 | 9.49A | Execution of documents |
| 74(1) and (2) | Schedule 9.3 | Transitional provisions to 1995 Act (senior employee definition removed)  Transitional provisions for the Amendment Act (authorised person) |

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| Part 4 | * *Caravan Parks and Camping Grounds Act 1995* * *Cat Act 2011* * *Cemeteries Act 1986* * *Control of Vehicles (Off-road Areas) Act 1978* * *Dog Act 1976* | Authorised person |

| Regulation | Amends | Explanation/Guidance |
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| Reg 4 | *Caravan Parks & Camping Grounds Regulations 1997,* Regulation 6 | Regulation 6 is amended to implement a more streamlined and uniform method of appointing an authorised person across multiple pieces of legislation. All appointments will now be made under section 9.10(2) of the *Local Government Act 1995.* The CEO will appoint a person as an “authorised person” for the purpose of exercising functions conferred under the relevant piece of legislation and identity cards will be standardised. |
| Reg 5 | Form 5 | In addition to authorised officers appointed by the local government, the Department has the power to appoint an authorised officer under section 17(1)(a) of the *Caravan Parks and Camping Grounds Act 1995*. The ‘Identity Card’ in Form 5 is being modified so that it is only applicable to authorised officers appointed by the Department. |
| Reg 7-10 | *Control of Vehicles (Off-road Areas) Regulations 1979,* Regulation 14, 36,37 and First Schedule | All references to authorised officer are replaced by a reference to authorised person. This aligns the terminology across multiple pieces of legislation in the local government portfolio. |
| Reg 10 | First Schedule | In addition to the above, Form 4 is being amended to make it clear that it is not the authorised person who has the power to withdraw an infringement notice but a person authorised by the local government. (A person who issues an infringement cannot withdraw it.)  Form 5 will no longer be used by local governments for the appointment of authorised persons, this having been replaced by appointment under section 9.10(2) of the *Local Government Act 1995*, thus ensuring consistency across multiple pieces of legislation. Form 5 ‘Certificate of appointment of Authorised Person’ has been modified so it will only be used by the Minister for Local Government using the Minister’s power to appoint an authorised person. The form has also been modified to require a photograph. |
| Reg 12 | *Dog Regulations 2013,* Regulation 35 | Restatement of existing regulation 35(6) in plain English to enhance clarity. An authorised person cannot withdraw an infringement they have issued. |
| Reg 13 | Form 1 | Form 1 will no longer be used by local governments for the appointment of authorised persons. This has been replaced by appointment under section 9.10(2) of the *Local Government Act 1995*, thus ensuring consistency across multiple pieces of legislation. Form 1 in Schedule 1 has been replaced and will be used by the local government to appoint registration officers under the *Dog Act 1976*. |
| Reg 15 | *Local Government (Administration) Regulations 1996,* Regulations 3A and 3B | The definitions of local public notice and state-wide public notice have been amended in the *Local Government Act 1995* to recognise alternative and contemporary means of communication. These are set out in new Part 1A of the Administration Regulations to provide flexibility to respond quickly to include future contemporary communication methods as and when necessary.  The *Local Government Legislation Amendment Act 2019* amends section 1.7 of the Local Government Act so that local public notice will be given when notice is published on the official website of the local government and in at least three of the ways set out in new regulation 3A.  The new forms of communicating a local public notice include publication in a newspaper or newsletters circulating generally in the district or a newspaper in the State, publication on the official website of a relevant State Government department, circulation by email or text or posting on a local government’s social media account.  Publication on the website of a State Government department would allow, for example, a tender to be posted on TendersWA, or an election notice on the WAEC website as one of the three ways. Note: While advertising on State Government websites may not be currently available, the regulations have been future proofed so that the option will be available later. Until then, the other forms of notice are to be used.  If the option of advertising on a State Government website is available and local governments use it, current processes for arranging publication should be used.  Notices that are posted need to remain available for at least the time specified in the Act or 7 days if no time is specified.  The new state-wide public notice provisions incorporate all of the methods that are available as a local public notice. In addition to the requirement to publish the notice on the local government’s own website, regulation 3B states that the notice must be published either in a newspaper circulating generally throughout the State or on the official website of a State Government agency. |
| Reg 16 | Regulation 10 | Regulation 10 deals with the process to revoke or change a decision made at a council or committee meeting, under section 5.25 of the Act. The change to this regulation recognises that the requirement for a special majority decision has been removed from the Act. |
| Reg 17 and 18 | Regulation 11, 12, 13 | To further the policy aims of transparency and accountability, an amendment to regulation 11 has been made to require a local government to include in the minutes, all documents which are attached to a council or committee meeting agenda, except where that part of the meeting was closed to the public.  The purpose of this amendments is to ensure the public do not have to refer to separate records to gain an understanding of the matter considered by Council, or the reason for the recording of a Council decision. Having the meeting agenda, including all attachments such as officers’ reports and recommendations, included in the minutes enables readers to get the whole picture.  The current provisions in Regulation 14(2) of the Administration Regulations that relate to parts of a meeting that may be closed to members of the public have not been changed.  From a record keeping perspective, this change does not alter the requirement for local governments to keep and preserve minutes and all documents relating to meetings. Where confidential material (including confidential minutes) is produced, local governments should continue to keep this material as a (confidential) record of decisions and discussions.  The [*State Records Act 2000*](about:blank) applies to local governments with regards to the keeping of records and can be found at [www.legislation.wa.gov.au](about:blank).  Regulation 12 currently provides the requirements for giving local public notice of meetings. The new regulation 12 provides for the same information to be published by the CEO of a local government on a local government’s official website instead.  Regulation 13 is being replaced to improve accessibility to information held by local government. The unconfirmed minutes of each council or committee meeting open to members of the public are to be published on the local government’s official website. This is in addition to the current requirement of the unconfirmed minutes being available for public inspection.  With regards to the *Local Government (Financial Management) Regulations 1996* – Regulation 13, local governments should ensure that only the information that is prescribed is recorded in the Minutes. |
| Reg 19 | Regulation 14 | Regulation 14 is amended to improve accessibility to information held by local governments. The amendment provides that all notice papers, agendas, reports and other documentation produced for a local government or committee meeting must be published on the local government’s official website at the time they are made available to council or committee members. This obligation will not apply, if, in the CEO’s opinion, that part of the meeting to which the information refers is likely to be closed to the public. |
| Reg 20 | Regulations 19B and 19CA | Existing regulation 19B has been replaced to provide for additional information to be included in the annual report. In addition to the requirement to report on the number of employees receiving salary over an increased threshold of $130,000 in $10,000 bands, the annual report is now to include:   * the amount of money the local government has paid in Standards Panel costs for hearing a complaint regarding one of its council members and any amount that the Standards Panel orders to be reimbursed to the local government by the council member; * the remuneration\* paid or provided to the CEO; * the number of council and committee meetings attended by each council member; and * diversity data, including age ranges for council members (where this information is available).  1. Previously, the annual salary threshold of $100,00 or more had to be reported in the annual report. This is now increased to an annual salary of $130,000 or more. 2. \*Remuneration paid or provided to the CEO under the *Salaries and Allowances Act 1975* includes salary, allowances, fees, emoluments (a salary, fee, or profit from employment or office) and benefits (whether in money or not). 3. The requirement to provide details of modifications to the strategic community plan and corporate business plan, where significant, made during the financial year has been moved from regulation 19CA (which is being deleted) to be included in 19B.   These provisions take effect from the financial year beginning on or after 1 July 2020. There is no requirement for local governments to publish the material listed above for years before these provisions come into effect. |
| Reg 21 | Regulation 19D | The method by which the public has access to the strategic community plan in regulation 19D has been updated. The local government is to publish its strategic community plan on its official website. Local public notice is still required to be given of the adoption or modification of the plan. |
| Reg 22 | Regulation 29 | The information to be available for public inspection under regulation 29 is being amended to recognise that it is available in other forms.  As regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* was deleted as part of the reforms introduced by the *Local Government Regulations Amendment (Gifts) Regulations 2019*, the redundant reference in sub regulation 29(1)(baa) is being deleted. The Act requires the gift register to be made available on the local government’s website.  Regulation 13 is amended (see above) to provide that the unconfirmed minutes of each Council or Committee meeting that is open to the public is to be published on the local government’s official website. The requirement in sub regulation 29(1)(c) is consequently unnecessary.  As regulation 14 has been amended (see above) to require notice papers, agendas, reports and other documentation produced for a local government or committee meeting to be published on the local government’s official website, the requirement in sub regulation 29(1)(d) is unnecessary and is being deleted. Since sub regulations 29(2)-(3) relate expressly to sub regulations 29(1)(c) and 29(1)(d) (relating to closed meetings) above, they are also being deleted.  Superseded (previous) versions of policies are to be made available for public inspection. Current policies are to be made available on a local government’s website - see new 29C below.  There is no requirement for local governments to publish the previous versions of policies for years before these provisions came into effect. |
| Reg 23 | Regulation 29A | Section 5.95(5) of the *Local Government Act 1995* was deleted by section 46(2) of the *Local Government Legislation Amendment Act 2019,* removing the requirement to make the contract of a CEO or a Senior Employee available for inspection. As a consequence, regulation 29A(1) is being deleted.  Instead the remuneration paid or provided to the CEO is to be disclosed in the annual report (see 19B above). |
| Reg 24 | Regulations 29C and 29D | New regulation 29C imposes an obligation on the CEO of a local government to publish information on the local government official website (in addition to that information in section 5.96A(1) of the *Local Government Act 1995*). The additional information includes:   * any adverse recommendation from an inquiry by an authorised person under section 8.13 (authorised persons report); * any adverse finding or recommendation made by an oversight body being the Corruption and Crime Commission, Public Sector Commissioner, State Administrative Tribunal, an Inquiry Panel or a Royal Commission, against the local government, the council, a council member or the CEO, once this is made available to the public; * current versions of local government policies (this amendment captures any policy made under any legislation, including the Local Government Act.) Previous versions of local government policies do not have to be made available on the official website but do have to be available for inspection if requested (see regulation 29 above). * the name of each council member who has lodged a primary or annual return for a financial year beginning 1 July 2020; * the position of each employee who has lodged a primary or annual return for a financial year beginning 1 July 2020 (the returns themselves will not be published); and * the type and amount or value of fees, expenses or allowances paid to each council member, mayor or president during a financial year beginning 1 July 2020. These will need to be detailed by person and type.   Regulation 29C also includes timeframes for each class of information to be published on the local government’s official website.  New regulation 29D specifies the period for which information must be kept on the local government’s official website. The following documents must be retained for a period of not less than five years beginning on the day the information is first published:   * The annual report; * The annual budget; * Confirmed minutes of council and committee meetings; * Minutes of electors’ meetings; * Notice papers, agendas, reports and other documents tabled or produced at council or committee meetings except where these were closed to the public; and * The information listed in 29C above. |
| Reg 25 | Regulation 34B | Regulation 34B sets out the gift provisions for employees. The amendment removes the CEO from the definition of an “*employee*” as the CEO is captured under the gift provisions contained in the Act. |
| Reg 27 | *Local Government (Elections) Regulations 1997*  Regulation 30G | Regulation 30G requires the CEO of a local government to establish and maintain an electoral gift register. The amendment requires the CEO to publish an up-to-date version of the electoral gift register on the local government’s official website. Rather than the full address, only the town or suburb of an individual is to be published. |
| Reg 28 | Regulation 30I | This amendment relates to electoral gift registers - the definition of ‘publish’ is being updated to reflect the amended definition in Local Government Act. |
| Reg 29 | Regulation 43 | A minor amendment is being made to regulation 43(1)(ba) to correct the reference to electoral gift register. |
| Reg 30 | Regulation 73 | Regulation 73 deals with the adjournment or postponement of a poll. The changes require that the notice of adjournment or postponement is to be published on the local government’s official website for at least three days. If the local public notice is published on another (government) website, a notice board or using social media, it must also be posted for at least three days. |
| Reg 32 | *Local Government (Financial Management) Regulations 1996* Regulation 27 | Regulation 27 sets out a list of notes to be included with the annual budget of a local government. Point (l) is being amended to clarify that itemised information in relation to the fees, expenses and allowances paid to each council member and mayor or president is required. |
| Reg 33 | Regulation 44 | Regulation 44 requires information about fees, expenses and allowances paid to council members, the mayor or the president to be included in the annual financial report. The amendment provides clarity that itemised information is required for each council member and mayor or president, rather than total figures. |
| Reg 35 | *Local Government (Functions and General) Regulations 1996*  Regulation 15 | Regulation 15 deals with the minimum time public tenders are required to be open. The amendment specifies that the closing date for submission of tenders will be at least 14 days after notice is published on the local government’s official website and in the three other ways it is advertised under the public notice provisions. The 14-day notice period starts from the date of the last publication.  If a list of acceptable tenderers is being invited to submit tenders, the 14 days commences from the date notice was given to the last potential tenderer. |
| Reg 36 | Regulation 17 | Regulation 17 provides for a tenders register to be kept by the CEO of a local government and for this to be available for public inspection. The CEO will now be required to also publish the tenders register on the local government’s official website. There is no change to content of the tenders register.  There is no prescribed timeframe for this to occur, but the practice of complying as soon as practicable is to be observed in accordance with section 63 of the [*Interpretation Act 1984*](about:blank)(available at [www.legislation.wa.gov.au](about:blank)). |
| Reg 37 | Regulation 22 | Regulation 22 sets out the minimum time that must be provided for submitting an expression of interest to quote for a contract to supply goods or services to a local government. The 14 days will start from the last date of publication on the local government’s official website or any of the other three ways notice must be given. |
| Reg 38 | Regulation 24AE | Regulation 24AE sets the minimum time to be allowed for submitting an application to join a panel of pre-qualified suppliers of particular goods or services. The 14 days will start from the last date of publication on the local government’s official website or any of the other three ways notice must be given. |
| Reg 39 | Regulation 24E | Regulation 24E deals with regional price preference policies. The amendment will require the proposed regional price preference policy to be published on the local government’s official website. |
| Reg 40 | Regulation 24F | Regulation 24F deals with the adoption of a regional price preference policy. The amendment will require the local government to publish a copy of the adopted policy on their official website. |
| Reg 41 | Regulation 30 | Regulation 30 deals with disposal of property (including land) that is excluded from the application of section 3.58 ‘Disposing of property’ in the *Local Government Act 1995*. Regulation 30(2a) deals with a disposition of property that is an exempt disposition because it has been disposed of within six months of a public tender or auction process. Currently information on the disposal of property under regulation 30(2a) is to be made available for public inspection for at least 12 months. This amendment extends this to also require the publication of details of this disposal on the local government’s official website. |
| Reg 43 | *Local Government (Regional Subsidiaries) Regulations 2017* Regulation 18 | The effect of this amendment is to require a regional subsidiary to report on the salary bands of employees receiving $130,000 or more, and the remuneration of the CEO. |