

LOCAL GOVERNMENT (ADMINISTRATION) AMENDMENT REGULATIONS 2021 – EXPLANATORY NOTES

CEO Standards Explanatory Notes

Section in Amendment Act	Explanation
<p><i>Local Government Legislation Amendment Act 2019.</i> Section 22 – Sections 5.39A, 5.39B & 5.39C.</p>	<p>The <i>Local Government (Administration) Amendment Regulations 2021</i> brings into effect Section 22 of the <i>Local Government Legislation Amendment Act 2019</i> (the Amendment Act).</p> <p>5.39A - Model standards for CEO recruitment, performance and termination. 5.39B - Adoption of Model Standards 5.39C - Policy for temporary employment or appointment of CEO.</p>

	Regulation	Explanation
1	Citation	This provision sets out the citation title of the instrument.
2	Commencement	These regulations come into effect as follows – <ul style="list-style-type: none"> • Regulations 1 & 2 – on the day on which they are published in the <i>Gazette</i> (2 February 2021); • The rest of the regulations – on the day on which the <i>Local Government Legislation Amendment Act 2019</i> section 22 comes into effect (3 February 2021).
3	Regulations amended	These regulations amend the <i>Local Government (Administration) Regulations 1996</i> (Administration Regulations).

	Regulation	Explanation
4	<p>Regulation 18A amended</p> <p>Regulation 18A – Vacancy in position of CEO or senior employee to be advertised (Act s.5.36(4) and 5.37(3)).</p>	<p>Regulation 18A(1) is being amended to align with the new State-wide public notice provisions. If the position of CEO, or of a senior employee, becomes vacant the local government must give State-wide public notice of the position in accordance with the requirements of the Local Government Act (sections 5.36(4) and 5.37(3)).</p> <p>Regulation 18A(2)(da) provides that the State-wide public notice must include a website address where the job description form (JDF) for the position can be accessed.</p>
5	<p>Regulation 18C and 18D deleted</p> <p>Regulation 18C – Selection and appointment process for CEOs</p> <p>Regulation 18D – Performance review of CEO, local government’s duties as to</p>	<p>Regulation 18C is repealed. The prescribed model standards for CEO recruitment and appointment outlined at Schedule 2 (Clauses 3-14) of the <i>Local Government (Administration) Amendment Regulations 2021</i> replace 18C.</p> <p>Local governments are required to determine the selection criteria for the position of CEO prior to a recruitment process being undertaken. The local government must approve by a resolution of an absolute majority of council, a job description form which sets out the duties and responsibilities of the position (5(2)(a)) and details the selection criteria (5(2)(b)).</p> <p>A position vacancy must be advertised in accordance with 5.36(4) of the <i>Local Government Act</i> and 18A of the <i>Local Government (Administration) Regulations 1996</i>. A JDF form must also be made available on the local government’s official website.</p> <p>As part of the process of selection, a panel must be established to conduct the recruitment and selection for appointment to CEO. The selection panel must be</p>

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		<p>made up of council members and at least one independent person who is not a current councillor, human resources consultant, or employee of the local government. The independent person should have experience in the recruitment and selection of CEO's and / or senior executives. It is the role of the selection panel to recommend one or more suitable applicants to the position of CEO based on the selection criteria outlined in the JDF.</p> <p>A final decision to make an offer of appointment to the position of CEO must be made by an absolute majority of council. The resolution must also approve the proposed terms of the contract.</p> <p>Regulation 18D is repealed. The prescribed model standards for performance review outlined at Division 3 of the of the <i>Local Government (Administration) Amendment Regulations 2021</i> (clauses 15-19) replace 18D.</p> <p>Local governments are required to review the performance of a CEO annually in accordance with section 5.38 of the Act. Division 3 sets out the process for performance review, including establishing the performance criteria upon which to base the review and the requirement to endorse the performance review assessment by absolute majority on its completion.</p> <p>The CEO must be notified of the results of the performance review, including any issues identified in relation to the performance of the CEO, and how the local government proposes to address and manage those issues.</p>
6	Regulations 18FA to 18FC inserted	Regulation 18FA sets out the model standards for local governments in relation to the recruitment, performance review and termination of employment of a local government CEO.

	Regulation	Explanation
	<p>Regulation 18FA – Prescribed model standards for CEO recruitment, performance and termination (Act s.5.39A(1)).</p> <p>Regulation 18FB – Certification of compliance with adopted standards for CEO recruitment (Act s.5.39B(7))</p> <p>Regulation 18FC – Certification of compliance with adopted standards for CEO termination (Act s.5.39B(7)).</p>	<p>Regulation 18FB requires local governments to certify that they have complied with the adopted standards under section 5.39B(7)(a) of the Act. 18FB applies in relation to the recruitment and appointment of a local government CEO. As soon as practicable after a person is employed as CEO, the local government (council), must by resolution of an absolute majority, certify the appointment was made in accordance with the adopted standards.</p> <p>A copy of the resolution to appoint the CEO must be provided to the Department of Local Government, Sport and Cultural Industries (DLGSC) within 14 days of the resolution being passed.</p> <p>Regulation 18FC requires a local government to certify that they have complied with the adopted the standards under section 5.39B(7)(a) of the Act. 18FC applies in relation to the termination of a CEO’s employment contract.</p> <p>If a local government makes the decision to terminate the employment of the CEO, they must certify that the termination was carried out in accordance with the adopted standards for termination by a resolution of an absolute majority. A copy of the resolution must be provided to DLGSC within 14 days of the resolution being passed.</p>
7	Schedule 2 inserted – Model Standards for CEO recruitment, performance and termination	Schedule 2 inserts the model standards for CEO recruitment, performance and termination of employment.
	Division 1 – Preliminary provisions	

	Regulation	Explanation
1.	Citation	<p>New section 5.39B of the Amendment Act requires local governments to adopt the Model Standards within three months of these Regulations coming into operation. The Model Standards, as drafted, provide a template for local governments to adopt the Standards as their own by inserting their local government name.</p> <p>In accordance with section 5.39B, local governments can include additional provisions provided they are consistent with the model standards.</p> <p>To adopt the standards, a resolution needs to be passed by an absolute majority. Once the standards are adopted, it must be published on the local government's website.</p>
2.	Terms used	<p>This clause defines <i>Act, additional performance criteria, applicant, contract of employment, contractual performance criteria, job description form, local government, selection criteria</i> and <i>selection panel</i>. All other terms used have the same meaning as in the Act unless the contrary intention appears.</p>
Division 2 – Standards for recruitment of CEO's		
3.	Overview of Division	<p>Clause 3 sets out the standards to be observed by the local government in relation to the recruitment of CEOs.</p>
4.	Application of Division	<p>Regulation 18C of the <i>Local Government (Administration) Regulations 1996</i> is repealed. Instead, clause 4 applies in relation to Division 2 - the recruitment and selection process for a local government CEO.</p>

	Regulation	Explanation
		<p>Division 2 does not apply in the event that the position of CEO is to be filled by a person in a prescribed class or in relation to the renewal of the CEO's contract, unless the CEO has been employed for a period of 10 or more consecutive years and a period of 10 or more years has elapsed since a selection and recruitment process was carried out.</p> <p>For the purposes of 5.36(5)(a), a person in a prescribed class includes a person who is and will continue to be employed by another local government and is contracted for a period of less than five years, or the person will be acting in the position of CEO for a period of less than one year.</p>
5.	<p>Determination of selection criteria and approval of job description form</p>	<p>Clause 5 deals with determining the selection criteria for the position of CEO. It is a requirement that the local government base the selection criteria on the necessary skills, knowledge, experience and qualifications necessary to effectively perform the role and responsibilities associated with the position.</p> <p>The local government must approve (by absolute majority) a job description form (JDF) that sets out the duties and responsibilities of the position and the selection criteria.</p>
6.	<p>Advertising requirements</p>	<p>Clause 6 deals with advertising the position of CEO where the position becomes vacant or the incumbent has held the position for 10 or more consecutive years. It is a requirement of the Local Government Act (s 5.36(4)) that upon the position of CEO becoming vacant, it must be advertised in a manner prescribed. Regulation 18A of the <i>Local Government (Administration) Regulations 1996</i> sets out the requirements for State-wide advertising.</p>

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7.	Job description form to be made available by local government	<p>Clause 7 requires a local government to provide a copy of the JDF to a person upon request. The local government must either provide the web address where the JDF can be downloaded, or alternatively if the person is unable to access the website, email a copy, or send a hard copy in the post.</p>
8.	Establishment of selection panel for employment of CEO	<p>Clause 8 requires a local government to establish a selection panel to conduct the selection and recruitment process for appointment of a person to the position of CEO.</p> <p>The selection panel must be comprised of council members and at least one independent person. The independent person (or persons) must not be:</p> <ul style="list-style-type: none"> • a councillor; • a human resources consultant; or • an employee of the local government; <p>It is recommended that an independent person have relevant experience in the recruitment and selection of CEO's and / or senior executives. It is the role of the selection panel to recommend one or more suitable applicants to the position of CEO based on the selection criteria outlined in the JDF.</p> <p>It is at the discretion of the local government to determine the number of people on the selection panel.</p>
9.	Recommendation by selection panel	<p>It is the role of the selection panel to recommend a preferred applicant, or applicants, for appointment to the position of CEO. Clause 9 requires an assessment to be made of each applicant's ability to perform the role of CEO</p>

	Regulation	Explanation
		<p>based on their knowledge, experience, qualifications and skills as measured against the selection criteria outlined in the JDF.</p> <p>The selection panel is required to provide a summary of assessment of each applicant, along with the panel's recommendation as to which applicant, or applicants, are suitable to be employed in the position of CEO.</p> <p>If the selection panel considers none of the applicants suitable for appointment, they must recommend to the local government that a new recruitment and selection process be carried out. The selection panel may also recommend changes be made to the duties and responsibilities of the position, or the selection criteria.</p> <p>The selection panel must act in an impartial and transparent manner and in accordance with the principles set out in section 5.40 of the Act.</p> <p>The selection panel is responsible for ensuring that any applicant, or applicants, they recommend for appointment have demonstrated they meet the selection criteria and have had their qualifications verified. The selection panel must exercise due diligence in verifying referees, work history, skills and any other claims made by the applicant.</p> <p>The local government must have regard to, but is not bound to accept, a recommendation made by the selection panel.</p>
10.	Application of clause 5 where new process carried out	<p>If the selection panel finds that none of the applicants are suitable to be appointed to the position of CEO, they must advise the local government in accordance with 9(3)(a).</p>

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		<p>Clause 10 requires the recruitment and selection process to be undertaken again if the selection panel advises the local government it considers none of the applicants to be suitable for appointment to the position of CEO.</p> <p>Unless the selection panel recommends changes be made to the duties and responsibilities of the position, or the selection criteria, clause 5 does not apply. In this instance, the original JDF previously approved by the local government (under clause 5) is the JDF form for the purposes of the new recruitment and selection process.</p>
11.	Offer of employment in position of CEO	<p>Clause 11 requires the decision to make an offer of employment to an applicant to the position of CEO is made by an absolute majority of council.</p> <p>The council must approve making the offer of employment to the preferred applicant and the proposed terms of the contract to be entered into.</p>
12.	Variations to proposed terms of contract of employment	<p>Clause 12 applies where the contract terms of the CEO's employment are amended from the original contract offer as a result of negotiations between the successful applicant and the local government.</p> <p>It is a requirement that council approve the terms of the negotiated contract by an absolute majority decision.</p>
13.	Recruitment to be undertaken on expiry of certain CEO contracts	<p>Clause 13 applies if a local government CEO has held the position for a period of 10 or more consecutive years upon expiry of the CEO's contract. Regulation</p>

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		<p>13 also applies if a period of 10 or more consecutive years has elapsed since a recruitment and selection process for the position has occurred and the incumbent CEO has notified the local government that they wish to have their contract of employment renewed upon its expiry.</p> <p>Subclause 13(2)(a)(ii) is drafted to allow for the possibility that a CEO who has, for example, held office for 10 years and has their contract renewed for another 5-year term following the recruitment and selection process. In this instance, clause 13(2)(a)(ii) will operate to ensure that another 10 years can pass before another recruitment process is required. In the absence of clause 13(2)(a)(ii), when the renewed term came to an end, the CEO would have held the position for 15 consecutive years and clause 13(2)(a)(i) would operate to require a new process be undertaken.</p> <p>The local government must carry out the recruitment and selection process before expiry of the incumbent CEO's contract.</p> <p>The incumbent CEO may have their contract of employment renewed upon expiry if they are selected in accordance with the recruitment and selection process at subclause (3).</p>
14.	Confidentiality of information	<p>Clause 14 requires confidentiality to be observed by the local government as part of the process of recruitment and selection. Information obtained as part of this process must only be used for, or in connection with, recruitment and selection.</p>

	Regulation	Explanation
	Division 3 – Standards for review of performance of CEOs	
15.	Overview of Division	<p>Regulation 18D is repealed. Division 3 effectively deals with the requirement to consider the performance review of the CEO in accordance with section 5.38 of the Act.</p> <p>Division 3 sets out the standards to be observed by the local government in relation to the review of the performance of the CEO.</p>
16.	Performance review process to be agreed between local government and CEO	<p>Clause 16 requires the local government and the CEO to agree on the process for performance review and any performance criteria that are additional to those specified in the contract. For example, the local government and the CEO may wish to include additional performance criteria after 1 or 2 years into a contract term as circumstances and priorities change.</p> <p>The process for performance review must be consistent with clauses 17 (Carrying out a performance review), 18 (Endorsement of the performance review) and 19 (CEO to be notified of the results of the performance review).</p> <p>The process for performance review and the selection criteria upon which the review will be based must be set out in a written document.</p>
17.	Carrying out a performance review	Clause 17 deals with how a review of a CEO's performance must be carried out.

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		A performance review must be carried out in an impartial and transparent manner. It must also be comprehensive, and evidence based. The CEO's performance must be measured against the performance criteria as specified in the CEO's contract and any other performance criteria as agreed to and set out in the documented process for performance review.
18.	Endorsement of performance review by local government	Clause 18 requires that a performance review is endorsed by an absolute majority of council upon completion.
19.	CEO to be notified of results of performance review	<p>Clause 19(a) requires a local government to notify the CEO of the results of the performance review in writing. If the review identifies any performance issues, the local government must outline how it proposes to address and manage those issues.</p> <p>The local government must notify the CEO of the results of the performance review after it has been endorsed by an absolute majority of council.</p>
	Division 4 – Standards for termination of employment of CEO's	
20.	Overview of Division	Clause 20 sets out the standards to be observed by the local government in relation to the termination of employment of a CEO.
21.	General principles applying to any termination	Clause 21 outlines the general principles that must apply to any termination of a CEO's employment contract. Decisions relating to termination of employment must be made in an impartial and transparent manner.

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		<p>A CEO must be afforded procedural fairness in relation to the process for termination of employment, this includes:</p> <ul style="list-style-type: none"> a) being informed of their rights, entitlements and responsibilities; b) notification of any allegations against the CEO; c) being given a reasonable opportunity to respond to the allegations; d) and genuinely considering any response provided by the CEO to the allegations.
22.	<p>Additional principles applying to termination for performance-related reasons</p>	<p>Clause 22(1) applies if the local government proposes to terminate the employment of a CEO based on the CEO's work-related performance.</p> <p>Subclauses 22(2)(a)-(d) and 22(3) require that a CEO's employment must not be terminated unless the local government has:</p> <ul style="list-style-type: none"> • previously identified any issues with the CEO's performance as part of the performance review process; • informed the CEO of the performance issues; • given the CEO reasonable opportunity to address and implement a plan to remedy the performance issues; • determined that the CEO has not remedied the performance issues to the satisfaction of the local government; and • 22(3) reviewed the performance of the CEO within the preceding 12 months in accordance with 5.38(1) of the Local Government Act.
23.	<p>Decision to terminate</p>	<p>Clause 23 requires that a decision to terminate the employment of a CEO must be made by an absolute majority of council.</p>

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24.	Notice of termination of employment	Clause 24 requires that a local government must provide notice in writing of the decision to terminate the employment of a CEO. Written notice must include the local government's reasons for termination.