



Department of
Local Government, Sport
and Cultural Industries



CEO KPIs and online registers consultation

Local Government Reform

Background

The *Local Government Amendment Act 2023* (2023 Amendment Act) was passed by Parliament in May 2023. It implemented several key reforms, particularly relating to local government elections. The 2023 Amendment Act also brought about the following changes which are yet to commence:

- Requirements for local government CEO's performance criteria and performance reviews to be published.
- A requirement for local governments to publish and maintain registers on their website.

In order to implement these reforms, the WA Government has drafted the Local Government Regulations Amendment Regulations 2024 which will implement these reforms. These draft regulations are now available for public comment. This explanatory paper sets out what these regulations will require and intend to achieve.

The Department of Local Government, Sport and Cultural Industries (DLGSC) invites local governments, council members, CEOs, local government employees and members of the community to consider the proposed regulations and provide feedback. The feedback received will inform the finalisation of draft regulations and the practical measures to implement and enforce the legislative requirements.

Submissions can be made to DLGSC's Act Review team by:

- email to actreview@dlgsc.wa.gov.au or
- post to:
DLGSC Act Review — Consultation on regulations
PO Box 8349
PERTH BUSINESS CENTRE WA 6849

Your say and your privacy

Submissions will be treated as public documents unless explicitly requested otherwise. A summary of feedback will be released publicly after the consultation period has closed.

If you do not consent to your submission being treated as a public document, you should mark it as confidential, or specifically identify the confidential information, and include an explanation.

Please note, even if your submission is treated as confidential by DLGSC, it may still be disclosed in accordance with the requirements of the *Freedom of Information Act 1995* (WA) or any other applicable written law.

DLGSC reserves the right to redact any content that could be regarded as racially vilifying, derogatory or defamatory to an individual or an organisation.

Chief Executive Officer (CEO) matters

Part 2, Division 3 of the draft regulations makes amendments to the Local Government (Administration) Regulations 1996 (Admin Regulations) relating to local government CEOs. This will revise the existing local government CEO employment standards and allow for the publication of key performance indicators (KPIs) in relation to a CEO.

One of the fundamental roles of the council is the employment and management of the local government's CEO. These amendments seek to provide greater guidance and on issues of CEO contract renewal, CEO performance reviews and termination of CEO employment.

1. CEO employment standards (amending regulations 4, 7 to 14)

Schedule 2 of the Admin Regulations contains the model standards for CEO recruitment, performance and termination. The following key changes have been made to clarify the arrangements around the employment of a local government CEO:

- The independent member of a CEO selection panel cannot be a council member of another local government; and must be drawn from the list prepared by the Departmental CEO (Director General of DLGSC).
- Clarifying the requirement that if a CEO has held their position for 10 years or more, that their contract may not be varied to extend their term and may not be renewed unless a selection process for a CEO is undertaken and they are the successful candidate.
- Requiring a local government in addition to certifying that a recruitment or termination process was consistent with the CEO standards, that a CEO contract renewal was consistent with the standards.
- In order to facilitate the publication of CEO performance criteria and reviews, providing standards in respect of performance criteria.
- Inserting provisions to clarify the application of the standards to terminations during a probationary period.

The Director General will establish a pool of suitable people to be the independent member of a CEO selection panel which will be published on the DLGSC website. Additionally:

- To be appointed to the pool of potential independent members of a CEO selection panel, the members of that panel must give certain undertakings to the Director General regarding to manage conflicts of interest.
- The independent member of a CEO selection panel must declare their interest and resign from a CEO selection panel if they have what would be considered a financial or impartiality interest in that CEO selection process.
- The independent member of a CEO selection panel can be paid and reimbursed expenses as though they are an independent member of a committee.

2. CEO KPIs (amending regulations 5, 6 and 13)

The CEO holds an important operational and financial role in the local government as head of the administration. Allowing the community to view progress against CEO KPIs is another measure of confidence to track how a local government is performing overall. CEOs will also be provided with the opportunity to respond to balance the equation. This approach recognises that complex

factors may be at play, not all of which are within the CEO's control. By providing a standardised measurement methodology in the regulations, it will become easier to compare trends across the sector.

Clause 15A of the CEO standards in Schedule 2 will provide that a CEO performance criterion (both contractual and additional) must contain:

- the aspect of the CEO's role to which the performance criteria applies
- the indicator that will be used to assess the performance against that criteria
- the target to be achieved in order for the performance criteria to be met
- the evidence which will be used for determining whether the target is achieved.

New regulation 18AA has been inserted regarding the content of a CEO's performance review report, which must rate the following against each criterion:

- What was the target to be achieved?
- Was the target:
 - achieved
 - not achieved or
 - achievement could not be determined.
- If the target was not achieved, whether this was beyond the CEO's control and why?
- If no determination could be made, why?

Regulation 18FAA requires that the performance criteria of a CEO must be published with the minutes of the meeting of the council where criteria was approved, either as part of the CEO's contract approval, or as an approval of additional criteria.

Reports on the CEO's performance, including the CEO's response, are to be published with the minutes of the meeting at which that performance review was conducted.

Online registers

The 2023 Amendment Act inserted new section 5.96B which will require local governments to maintain the following series of prescribed registers:

- leases that the local government is party to
- grants of money that a local government makes to other persons or businesses
- contracts for goods and services the local government is a party to
- development applicant contributions, accounting for funds collected such as cash-in-lieu for public open space and car parking.

These registers intend to provide transparency to the public and improve local government record keeping. All registers must be published on the local government's website and be updated every 3 months.

1. Leasing register (draft regulation 29F)

The register of leases the local government is party to will include all leases, licences to occupy or tenancy agreements that are current or in holding over. It is intended to capture information regarding these leasing arrangements for public understanding of what the local government is using the community's property for. This register would include both where the local government leases property to other persons, or leases property from other persons.

The regulations will require a leasing register to capture the details of lease, licences to occupy and tenancy agreements that the local government is party to the:

- type of agreement (either a residential tenancy agreement, a retail shop agreement or another type of agreement)
- name of the parties to the agreement
- if the local government is the lessee or lessor
- address of that property or other details that identify the property
- a summary of the permitted use under the lease
- date the lease or licence was entered into
- details about when that lease might end, such as the original fixed expiry date, details of any extensions, or the grounds for which it might be terminated
- amount of rent payable on an annual basis for that lease or licence.

Where property is a residential tenancy, names of the tenants are not to be listed.

2. Grants and sponsorship register (draft regulation 29G)

The register of grants of money a local government gives out will also include sponsorship arrangements within the previous five-year period. This provides transparency to the community about where money is being spent for a purpose that does not always result in a return for the local government.

This register also addresses some of the matters arising from the Inquiry into the City of Perth around grants and sponsorship programs run by local governments.

Grants or sponsorships include monetary grants and in-kind grants such as free venue hire. This register also assumes that local governments are undertaking prudent governance measures in managing their grants and sponsorship including:

- having written agreements with the parties receiving grants or sponsorship
- requiring a grant or sponsorship recipient to acquit or otherwise report on the spending on the money to the satisfaction of the local government.

The regulations will require a grants and sponsorship register to capture the details of any grants or sponsorship the local government has provided and include the following details:

- the date the grant or sponsorship agreement was entered into
- a summary of the grant or sponsorship purpose
- the name of the grant or sponsorship recipient.
- the total value of the grant or sponsorship, including monetary value and any in-kind support or waiver of fees and charges provided by the local government
- the final report date (if any) for the recipient to report on their spending
- if that date has passed, whether relevant reports or acquittals have been received.

This register does not need to include sponsorship or grant agreements which are more than 5 years old or worth less than \$500.

3. Applicant contributions register (draft regulation 29H)

This register is for funds currently held by a local government that have arisen as a contribution from a development application, such as for public art, car parking, public open space or under a

formal development contribution plan. It promotes good record keeping and transparency for the public and applicants in knowing that such money is being appropriately kept and spent.

The regulations will require a register of development contributions and cash in lieu payments to be kept and published, which must include the following details:

- name of the party that gave the money
- address or description of the development location
- contribution purpose
- contribution amount
- date of payment
- date the local government must spend the money by (if applicable)
- amount of interest earned
- list of each item (infrastructure or facility) the money was spent on, including the amount or percentage of the contribution that was attributed to that infrastructure or facility.

A local government may omit the money from the register 5 years after the contribution is no longer held in either its municipal, trust or reserve fund because it has been expended or refunded.

4. Good and services contracts register (draft regulation 29I)

This register is for goods and services contracts that a local government is party to. It includes all ongoing, active goods and services contracts.

Recommendation 288 of the *Inquiry into the City of Perth* recommended that this register covers contracts with a value of \$50,000 (GST inclusive) or more. It will cover all forms of goods and services contracts including those obtained in accordance with the local government's purchasing policy, through a public tender or a tender exemption.

The register promotes good record keeping, transparency for the public and allows potential suppliers and service providers sufficient time to plan when big contracts are advertised for tender.

The regulations will require a register of contracts for goods and services to be kept and published, which must include the following details:

- a) supplier name
- b) whether the contract arose from a tender process and if not, a summary of the method by which the supplier was chosen
- c) the contract start date
- d) a summary of the goods and services to be provided
- e) whether the contract has a fixed period, the date that period ends, including contract extensions
- f) contract variations, including when and for what purpose
- g) funds spent by the local government under that contract and the expected amount remaining to be paid.

Contracts worth less than \$50,000 do not need to be listed on the register. However, contracts with the same supplier with a similar purpose which cumulatively add up to \$50,000 need to be listed. Contracts that have ended do not need to be listed.



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