

INFOPAGE

To: All Local Governments **From:** Tony Brown,
Executive Director Member Services

Date: 29 January 2025

Subject: Sector Feedback - CEO Matters and Online Registers

Operational Area:	Governance
Key Issues:	<ul style="list-style-type: none">Local Governments are requested to provide feedback on the Department's Consultation process on CEO Matters and Online RegistersWALGA is seeking Member Local Governments comment to assist with a sector-wide response on the Consultation Proposals
Action Required:	Response to WALGA by 4:00pm Wednesday, 19 March 2025

The *Local Government Amendment Act 2023* (Tranche 1) was assented to in May 2023. A number of the Tranche 1 provisions are yet to commence.

The Department of Local Government, Sport and Cultural Industries recently commenced a consultation process on the introduction of Tranche 1 amendments relating to CEO Matters and Online Registers. In addition to the Consultation document, the Department released the *Local Government Regulations Amendment Regulations 2024* that will give effect to the amendments.

The Department's Consultation process includes commentary on CEO Matters and Online Registers, which are summarised below.

CEO Matters include:

- CEO Selection Panel
- CEO Recruitment, Termination and Certification
- CEO KPIs

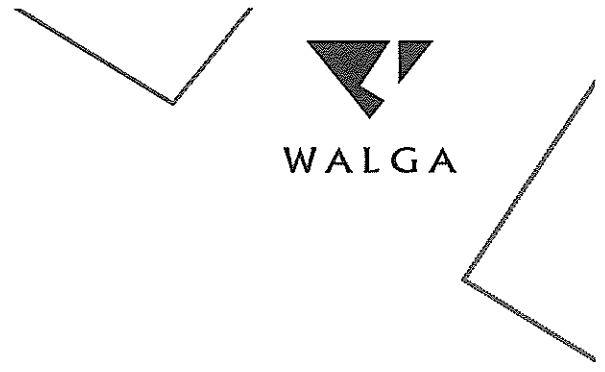
Online Registers include:

- Leasing Register
- Grants and Sponsorship Register
- Development / Applicant Contributions Register
- Goods and Services Contracts Register

WALGA seeks feedback from Local Governments to assist in the composition of a sector-wide response to the Department's Consultation. Attached to this Infopage is a brief Discussion Paper summarising the proposed regulatory amendments, together with commentary for your Local Government's consideration.

To inform an item for the May 2025 meeting of State Council, Council decisions are requested by **19 March 2025**. Local Governments will also be able to provide feedback through the April round of Zone meetings.

For more information, please contact Tony Brown on 9213 2051 or Felicity Morris on 9213 2093 and responses to governance@walga.asn.au



Discussion Paper

CEO Matters and Online Registers

January 2025

Background

The *Local Government Amendment Act 2023* is the first tranche of Act amendments following the adoption of the Minister for Local Government's Reform Proposals released in 2022. The Reform Proposals can be found [here](#).

WALGA supported the majority of tranche 1 proposals that feature in the *Local Government Regulations Amendment Regulations 2024* (the Amendment Regulations). The following Table provides a link between the Amendment Regulations and the 2022 Reform Proposals:

2022 Reform Proposals	Subject	WALGA Advocacy
Item 3.4	Online Registers	Support
Item 3.5	CEO KPIs	Conditional Support
Item 5.8	CEO Recruitment	Support

Discussion Paper

The following Discussion Paper provides guidance on the purpose and intent of the Amendment Regulations and WALGA Comment including comments for your consideration.

1. CEO Matters – Publishing KPIs

Amendment Regulation 18AA (s.5.38(4)(c) of the *Local Government Amendment Act 2023*)

Amendment Regulation 18AA relates to the conduct and publication of the annual CEO performance review. Amendment Regulation 18AA(3) requires a statement to be published on the Local Government website stating the target to be achieved for the performance criterion to be met, including whether:

- the target was achieved
- the target was not achieved
- no determination reached on target

Amendment Regulation 18AA(4) requires the grouping of targets so that a statement can be made as to the percentage of targets achieved, or otherwise.

Amendment Regulation 18AA(5) provides for the exclusion of a target from publication, if:

- the reason a target was not achieved was beyond the CEOs control
- no determination could be made on whether target was achieved
- the Departmental CEO may direct the target be excluded from publication

WALGA Comment:

Amendment Regulation 18AA reports targets on an 'achieved/not achieved' basis where under current practice, substantial or partial achievement of a target may be satisfactory to a Local Government.

- Could Regulation 18AA(3)(b) and (4) be improved by publishing a target that is substantially (though not fully) achieved if to the satisfaction of the Local Government?
- Is it necessary to separately report on percentages of target achievement/non-achievement?
- In relation to the Departmental CEOs exclusion direction, should regulations
 - o specify that a Local Government may request such a direction, by resolution of Council?

- (6) and (7) payment of fees to independent person
- (8) Publication by Departmental CEO of a list of independent persons

WALGA Comment:

Amendment Regulation 18FAB broadly aligns with s.5.39A(4) of the *Local Government Amendment Act 2023* as supported by WALGA in the 2022 Reform Proposals.

No provision is made for the appointment of an independent person other than from the Departmental CEOs panel. Attention is drawn to the following extract from Item 5.8 of the Reform Proposals:

'Councils will be able to appoint people outside of the panel with the approval of the (Local Government) Inspector'

- Should Amendment Regulation 18FAB include a provision that permits the Departmental CEO or Local Government Inspector to appoint persons from outside the panel, particularly if the list of independent panel members does not include people that reside or live in approximation to rural and remote Local Governments?

Local Government response:

Amendment Regulation 18FAC (s.5.39A(4) and (5))

Amendment Regulation 18FAC introduces the definition of 'disqualifying interest' relating to a financial, indirect financial or impartiality interest in relation to independent panel members. If an independent panel member identifies the existence of a disqualifying interest, they must not continue to serve on the CEO selection panel.

WALGA Comment:

The 'disqualifying interest' provisions are closely related to financial, indirect financial and impartiality interests for Council Members. Newly elected Council Members are required to undergo mandatory training with one specific module of the Council Members' Essentials dedicated to understanding conflicts of interest.

Presently, an independent panel member would only be required to declare a conflict of interest if the CEO selection panel was established as a Committee of Council under s.5.8 of the Act, when the Local Government's Code of Conduct for Council Members, Committee Members and Candidates will apply. The Model Code of Conduct Regulations includes management of conflict of interest under Division 2, cl. 4 'Personal Integrity'. Item 5.8 of the 2022 Reform Proposals does not refer to conflicts of interest.

- Should those appointed to the independent persons panel (Amendment Regulation 18FAB) be required to participate in Conflicts of Interest training?
- The Department's Guide to Interest Affecting Impartiality at Item 5.4 provides a broad definition of 'friendship'. Does the inclusion of 'impartiality' as a disqualifying interest have potential to lead to a high number of exclusions from selection panels, should the independent person be well acquainted with any candidate?

- specify the Departmental CEO may give an exclusion direction for specific types of targets applicable to all Local Governments?

Local Government response:

Amendment Regulation 18FAA (s.5.39AA(1) of the *Local Government Amendment Act 2023* and s.5.96A(1)(i) of the *Local Government Act 1995*)

Amendment Regulation 18AA relates to the performance criteria specified in the CEO's contract of employment.

Amendment Regulation 18FAA (1) to (7) sets out the provisions for publication on the Local Government website information relating to the CEO's performance as set out in the employment contract, including that the Departmental CEO may direct the performance criterion be excluded from publication.

WALGA Comment:

- In relation to the Departmental CEOs exclusion direction, should regulations specify that a Local Government may request such a direction, by resolution of Council?

Local Government response:

2. CEO Matters – Independent Persons Panel

Amendment Regulation 18FAB (s.5.39A(4) and (5))

Amendment Regulation 18FAB relates to the establishment by the Departmental CEO of a panel of persons to serve as independent persons on a CEO selection panel.

Amendment Regulation 18FAB(1) to (8) established:

- (1) Updated definitions relating to independent persons and selection panels
- (2) Requires the Departmental CEO to appoint independent persons, and may establish undertakings relating to their conduct on a panel
- (3) and (4) appointing an independent person and serving on the panel in accordance with undertakings
- (5) Notifying of appointment or removal of independent person on a panel.

- Should the declaration of an impartiality interest be treated in the same way as for Council Members, whereby a declaration is made but participation continues?

Local Government response:

3. CEO Matters – Recruitment, Termination and Certification

Amendment Regulation 18FBA (s.5.39B(7))

Amendment Regulation 18FBA adds an additional certification requirement to that already provided under current Administration Regulation 18FB. Under 18FBA, Council must certify by absolute majority that the recruitment of an incumbent CEO (i.e. one who has already served 10 years or more and was an applicant in the CEO recruitment process under Model Standards) was successful and their contract of employment was renewed.

WALGA Comment:

No information is provided in the Department’s Consultation of a reason why this regulation is necessary. Presently, Administration Regulation 18FB requires certification that a CEO recruitment process was conducted in compliance with Model Standards, regardless of the outcome.

- Is Amendment Regulation 18FBA necessary to the CEO recruitment process?

Local Government response:

Schedule 2 Clause 13 Replaced

This amendment clarifies the provision for recruitment of a CEO upon the incumbent CEO having served 10 or more consecutive years in the role. This amendment introduces a provision that having served 10 or more years, an incumbent CEO’s contract cannot be varied to extend the term and permits renewal of the contract of employment if the incumbent CEO is selected in the recruitment process.

WALGA Comment:

Presently, Schedule 2 clause 13(2)(b) places a requirement on an incumbent CEO to notify the Local Government if they wish to renew the contract of employment, having already served 10 or more

consecutive years in the role. The serving of 10 or more years in the role triggers a CEO recruitment process.

Additionally, the current Schedule 2 clause 13(3) provides that before the expiry of the incumbent CEO's contract of employment, a recruitment process must be conducted. The 'before' provision does not appear in the proposed replacement Schedule 2 clause 13.

- Should a CEO recruitment process continue to be held before the expiry of the incumbent CEO's contract of employment, if the CEO has advised their intention to participate in the recruitment process?
- Does replaced Schedule 2 clause 13 have potential to create unintended contractual issues? (For example, is it possible to renew an expired contract?)

Local Government response:

Schedule 2 Clause 15A Inserted

The new Schedule introduces requirements for contractual and additional performance criteria.

WALGA Comment:

The introduction of mandated performance criterion is set out in Item 3.5 of the 2022 Reform Proposals. The new Schedule 2 clause 15A provides for standardised content of performance criterion.

- Do Local Governments adopt performance criterion additional to the content proposed?
- Would the additional clause be beneficial? *'(e) any additional information that the Local Government and CEO agree should apply to performance criterion'*

Local Government response:

Schedule 2 Clause 25 Inserted

The intent of the new Schedule 2 clause 25 is to exclude certain provisions if termination occurs during the probationary period (if included in a contract of employment), but after reviewing the CEOs performance during this period.

WALGA Comment:

Dealing with probationary period performance in the proposed manner offers a dignified contract management approach. The new Schedule 2 clause 25 does not contemplate additional circumstances that might warrant consideration, such as a finding of serious misconduct following an independent inquiry conducted by the Local Government.

- Do Local Governments support including additional circumstances where the exclusion provision can be applied? Provide examples.

Local Government response:

4. Online Registers (s.5.96B)

Administration Regulation 29E Inserted

The new Regulation currently states online registers will commence from and must be up-to-date as at the beginning of 1 July 2025.

WALGA Comment:

With the Department's Consultation process closing in May 2025, submissions will require consideration and there is the prospect some proposals may require redrafting prior to the Amendment Regulations commencing. WALGA suggests an extended commencement date for publication of online registers, to permit adequate time for preparation of information.

It is suggested that a (once off) 12-month grace period to ensure everything is included across the reporting period be provided.

Local Government response:

Administration Regulation 29F Inserted (Leases of Land)

Regulation 29F(1) sets out the types of lease agreements that require publication; Regulation 29F(2) requires the CEO to keep a register of current leases to which a Local Government is a party (i.e. lessee or lessor); Regulation 29F(3) establishes information to be included in the register for publication, but does not require publication of names of persons entering into a residential tenancy agreement; and Regulation 29F(4) provides exclusions from publication.

WALGA Comment:

The new Regulation broadly aligns with the 2022 Reform Proposal and appropriately excludes the names of persons entering into residential tenancy agreements.

The 2022 Reform Proposals pre-date the *Privacy and Responsible Information Sharing Bill 2024* which includes provisions relating to public registers, and associated rights of individuals in relation to registers required by a written law.

No provision is provided in relation to confidentiality provisions that may be included in current lease agreements; for example, a Local Government that is lessor of property that is subject of a confidentiality undertaking in the lease agreement.

- WALGA seeks comment from Local Governments that may be party to lease agreements that include confidentiality provisions.
- In keeping a lease register, does your Local Government foresee any potential implications of the *Privacy and Responsible Information Sharing Bill 2024*?
- Are there additional matters not yet considered that may compromise a lease agreement entered into by a Local Government?

Local Government response:

Administration Regulation 29G Inserted (Grants and Sponsorship)

Regulation 29G introduces requirements for grants and sponsorships made in the previous 5-year period to be maintained by the CEO in a register as from 1 July 2025, including information that is set out in subregulation (3); Regulation 29G(4) excludes grants and sponsorships that are greater than 5 years old or valued at less than \$500 from inclusion in the register.

WALGA Comment:

Local Governments are very often the principal financial supporter of local community, sporting, arts, aged care and benevolent organisations within the district and the volume of grants and sponsorships issued over a 5 year period may be considerable. The prospective commencement date of 1 July 2025 is foreseeably problematic as it may prove difficult for Local Governments to apply the required administrative effort to develop the initial register of information.

Regulation 29G includes similar definitions for 'grant' and 'sponsorship'. Typically, a grant is provided net of the expectation of any benefit to the grantee, whereas a sponsorship normally includes an

expectation of a benefit to the sponsoring body. Clearer definitions will assist Local Government administrators managing the publication requirements.

- Is it reasonable for the grants and sponsorship register to capture arrangements within the previous 5-year period?
- Is the register threshold of \$500 reasonable?
- Does the Local Government have adequate capacity to develop a register by 1 July 2025?
- Should regulations exclude publication of the name of a recipient where the recipient is a natural person, particularly if the recipient/beneficiary is a child?

Local Government response:

Administration Regulation 29H Inserted (Development Contributions)

Regulation 29H(1) established definitions that will apply to the keeping of a register of information; Regulation 29H(2) requires the CEO to maintain a register containing development contributions including information set out in Regulation 29H(3); Regulation 29H(4) provides for exclusions; and Regulation 29H(5) establishes a definition of an 'exhausted' development contribution.

WALGA Comment:

Local Governments collect a range of funds for contributions related to development applications. The regulations propose that all Local Governments will be required to establish a register of development contributions and cash in lieu payments to be kept and published.

The Regulations proposed the development of registers for contribution types that have existing legislative requirements in place to ensure appropriate receipt, holding and expenditure of collected funds. For example, those contributions required by Section 154 of the *Planning and Development Act 2005* for money paid in lieu of open space, and formal development contribution arrangements that fall under a development contribution plan developed under *State Planning Policy 3.6 Infrastructure Contributions*.

WALGA is concerned that there the potential for duplication of exiting process from the proposed regulations which will place undue regulatory burden on Local Government for limited improvements in transparency and accountability.

- Does the requirement to develop and implement registers for these contributions duplicate existing regulatory requirements?
- Will the proposed registers create unnecessary regulatory burden on Local Governments?
- Does the Local Government have adequate capacity to develop a register?
- Considering the details proposed to be included in the registers (set out in Regulation 29H(3)), would your Local Government have collected this information from historical contributions?
- Would a requirement to only record new contributions on the proposed registers reduce the regulatory burden on your Local Government?

Local Government response:

Administration Regulation 29I Inserted (Contracts for Goods and Services)

Regulation 29I(1) establishes that the CEO must maintain a register of contracts for goods and services that includes required information set out in subregulation (2). Regulation 29I also requires certain information to be updated in the register during the term of the contract. For example, subregulation (2)(f) requires the register to record a summary of variations and subregulation (2)(g) requires recording of the amount of payments made to contractors and amounts still to be paid to contractors.

WALGA Comment:

Regulation 29(3)(a) requires publication of contracts greater than \$50,000. Item 3.4 of the 2022 Reforms proposed the publication of contracts above \$100,000, and this was supported by WALGA. It is arguable that the list of accounts paid provides adequate reporting of goods and services transactions, with the register replicating some of the details.

It is noted there are similarities between some information required to be included in the register and information already published in a tenders register - reg. 17 of the *Local Government (Functions and General) Regulations*.

Regulation 29I differs from other online registers as certain information will need regular updating. Subregulations (2)(f) and (2)(g) will require rolling reporting of variations and payments made and payments pending, throughout the contract term. This requirement is likely to result in considerable administrative effort.

WALGA has previously notified the Department that Local Governments are concerned with the publication of sensitive information that could give rise to a risk of use for fraudulent or corrupt purposes¹:

<p>s.5.94</p> <p><i>Public can inspect certain local government information</i></p>	<p>The Act requires public access or inspection rights for documents that contain personal information, i.e. electoral roll, owner / occupier, rate record [s.5.94(m) and (s)]. The Act only limits the right to access this information where the CEO is unable to be satisfied that the information will not be used for a commercial purpose [Admin.r.29B]. WALGA members have expressed concern of the risks that may extend to information when combined with other personal information; for example, cyber security / identity theft risks OR personal safety risks.</p> <p><i>Recommend there be an analysis of the public benefit versus public risk arising from statutory provisions that ensures public disclosure of documents containing personal details (i.e. electoral rolls, rate record) in the context of the potential for this information to be manipulated or misused for improper purposes.</i></p>
---	--

¹ WALGA Local Government Reform Proposals Member Response - February 2022

Local Governments report the particular risk that public information (i.e. list of accounts paid) can be harvested for the purpose of falsifying creditor information, and the subsequent misdirection of creditor payments. The Office of the Auditor General has published guidance on the risk of fraud and corruption in this regard², and the extensive public availability of Local Government, as opposed to State or Federal Government, creditor information has potential to exacerbate that risk within the sector.

- Does the publication of the register of contracts have potential to elevate the risk of fraud or corruption in your Local Government? Could this risk be minimised if the information required to be published in the register was reviewed?
- Has your Local Government assessed the current risk associated with the current level of publicly available information related to the purchase of goods and services? Do you have any suggestions relating to the required information
- The proposed threshold of \$50,000 is too low and not reasonably manageable; is a higher figure of \$100,000 or even the \$250,000 tender threshold amount more appropriate?

Local Government response:

² Supplier Master Files Better Practice Guide; OAG WA Report 1: 2024-25 August 2024

5. Other comments

Any other comment on the proposed regulations

Local Government response: