

To: All Local Governments

From: Tony Brown
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Date: 3 February 2021

Priority: High



Subject: New and amended Regulations - *Local Government (Model Code of Conduct) Regulations 2021, Local Government (Administration) Amendment Regulations 2021 and Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021*

Operational Area:	Governance
Key Issues:	<ul style="list-style-type: none">• The <i>Local Government (Model Code of Conduct) Regulations 2021, Local Government (Administration) Amendment Regulations 2021 and Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021</i> take effect today, Wednesday 3 February.• Amendments to the <i>Local Government Act 1995</i> to provide for the above regulations have also now taken effect.• The Department of Local Government, Sport and Cultural Industries has acknowledged that Local Governments may take up to three months to operationalise the new regulations and has provided some resources to assist.
Action:	WALGA recommends that Local Governments review the available resources before deciding on a pragmatic program to implement the new regulations

Background

The *Local Government (Model Code of Conduct) Regulations 2021, Local Government (Administration) Amendment Regulations 2021 and Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021* (collectively the New Regulations) were gazetted on Tuesday 2 February 2021 and took effect on 3 February 2021. New sections of the *Local Government Act 1995* (the Act) that provided for the New Regulations were proclaimed concurrently and are also now in effect.

The New Regulations, explanatory notes, FAQs and other supporting material are available on the Department of Local Government, Sport and Cultural Industries (DLGSC) [website](#).

WALGA has advocated that DLGSC take a pragmatic approach to the implementation of the New Regulations, in recognition of the lack of time, and competing demands on the sector. DLGSC has acknowledged that there will be an implementation phase of up to three months during which time Local Governments must undertake a series of actions to operationalise the New Regulations.

WALGA provides the following outline of recommended actions to implement the New Regulations, as well as existing or forthcoming resources to assist.

Local Government (Administration) Amendment Regulations 2021 (CEO Standards)

The CEO Standards amend the *Local Government (Administration) Regulations 1996* to prescribe model standards for the recruitment, selection, performance review and termination of Local Government CEOs. In addition to prescribing minimum requirements for these processes, the CEO Standards will also require Local Governments to advertise the position of CEO if a period of 10 or more years has elapsed since a recruitment process has been carried out. WALGA has strongly advocated against this requirement.



Local Governments will be required to adopt standards that incorporate the model standards within three months, under the new s.5.39B(2) of the Act. Until this time, the model standards are taken to be the adopted standards (new s.5.39B(5)).

Resources available:

- DLGSC has produced FAQs and 'Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination'.
- WALGA will continue to advocate to DLGSC to develop and provide in the near future, a template Policy for Temporary Employment or Appointment of a CEO, as this policy is required under the new s.5.93C of the Act.

Key actions recommended:

- Any Local Government that, as at 3 February, has commenced and not yet concluded a CEO recruitment, performance review or termination process, is requested by the Department to contact them to obtain advice on compliance with the CEO Standards.
- Shire Presidents / Mayors and CEOs should initiate discussions to determine whether any inconsistencies exist between the CEO Standards and the CEO's employment contract and previously agreed Performance Review arrangements. If inconsistencies exist, it may be appropriate to seek industrial relations advice to assist with negotiation and referral to Council (as the employing authority) for decision if required.
- While the CEO Standards include additional compliance requirements when undertaking a CEO Recruitment, CEO Performance Review or when Terminating the CEO's employment, Local Governments are strongly encouraged to continue to obtain industrial relations advice to ensure appropriate processes are followed and compliance is achieved.
- Local Governments are able to include in their adopted standards additional provisions that are not inconsistent with the model standards. The actions above may identify additional provisions Local Governments could consider for inclusion.
- The CEO must publish the adopted standards on the Local Government's official website (new s.5.39B(6)). As the model standards are taken to be the adopted standards from 3 February 2021, Local Governments should publish the model standards as soon as practicable.

Local Government (Model Code of Conduct) Regulations 2021 (Model Code of Conduct)

The Model Code of Conduct repeals and replaces the *Local Government (Rules of Conduct) Regulations 2007*. In addition to redrafted versions of the previous Rules of Conduct, the Model Code of Conduct includes general principles and behaviours. Complaints of alleged breaches of behavioural requirements must be dealt with by the Local Government. WALGA has strongly advocated against this element of the Model Code of Conduct, and will continue to call on DLGSC to ensure the sector is adequately supported to implement this new process.

Local Governments will be required to adopt a Code of Conduct for Council Members, Committee Members and Candidates that incorporates the Model Code of Conduct within three months, in accordance with the new s.5.104 of the Act. Until that time, the Model Code of Conduct will be taken to be the Local Government's adopted Code of Conduct.



Resources available:

- DLGSC has produced FAQs and 'Guidelines on the Model Code of Conduct for Council Members, Committee Members and Candidates'.
- DLGSC has produced a template complaints form.
- WALGA will continue to advocate to DLGSC to produce a template policy and more detailed guidelines for the development of a complaints handling process to deal with complaints alleging breaches of behavioural provisions.

Key actions recommended:

- Local Governments should provide an induction to train Council Members, Committee Members and the CEO in the provisions of the Model Code, as it will be taken to be the Local Government's adopted Code of Conduct from 3 February 2021.
- DLGSC has advised that by 24 February 2021, Local Governments should authorise an officer for the purposes of receiving complaints and withdrawals of complaints, in accordance with cl. 11(3) of the Model Code of Conduct. Local Governments may wish to consider delegating the power of appointment to the CEO. Local Governments must also approve a complaint form in accordance with cl. 11(2)(a). The DLGSC template may be used for this purpose.
- Local Governments should begin developing a complaints handling policy and procedure for adoption by Council. DLGSC's Guidelines provide some suggestions but significant additional work will be required. If Local Governments receive complaints immediately, WALGA recommends that Local Governments acknowledge and accept the lodgement, but advise that the complaint cannot be progressed until a policy and procedure are adopted. Complainants would need to be kept appropriately informed of a reasonable timeframe for this to occur.
- The adopted Code of Conduct may include additional behavioural requirements that are not inconsistent with the Model Code of Conduct. Local Governments may wish to commence workshops / consultation with Council Members to consider any additional behavioural requirements for incorporation in the Code of Conduct for adoption.
- The CEO must publish the adopted Code of Conduct on the Local Government's official website (new s.5.104(7)). As the Model Code of Conduct is taken to be the adopted standards from 3 February 2021, Local Governments should publish the model standards as soon as practicable.

Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021 (Employee Code of Conduct Regulations)

The Employee Code of Conduct Regulations amend the *Local Government (Administration) Regulations 1996* to prescribe requirements that the CEO must include in a Code of Conduct for Employees. The requirements for disclosure of gifts are now at the discretion of the CEO. The CEO is also able to determine a lower threshold for prohibited gifts, not exceeding \$300. Requirements in relation to impartiality interests have been redrafted but remain the same in substance, and the Employee Code of Conduct Regulations also include a list of additional matters that must be addressed.

DLGSC has confirmed that Local Governments are not required to implement a new Code of Conduct immediately. Rather, existing Codes of Conduct should be reviewed, and a new Code of Conduct prepared and implemented as soon as practicable.

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Resources available:

- DLGSC has produced FAQs.
- The Public Sector Commission has produced the resource 'Developing a code of conduct – guide for local government'. Although this guide uses different terminology than is found in the Employee Code of Conduct Regulations, this may assist Local Governments in developing a new code of conduct.
- WALGA will produce a template Code of Conduct for Employees.

Key actions recommended:

- As a preliminary step, Local Governments may wish to review existing Codes of Conduct to remove references to Council Members and Committee Members.
- The CEO must approve any changes to the Code of Conduct and arrange for publication on the Local Government's official website.
- Whenever a Code of Conduct for Employees is amended or replaced, Local Governments should provide an induction to train all staff and contractors in the new Code of Conduct, with reference to their employment conditions.

During the implementation period WALGA encourages Local Governments to raise any concerns with DLGSC. WALGA will continue to provide support and advice, as well as advocating for DLGSC to provide additional resources.

For further information please contact:

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