

SUPPLEMENTARY BRIEFING PAPERS

Council Members' Agenda Briefing

6:00pm 13 May 2025

Council Chamber (Level 1), Civic Centre,
23 Dundobar Road, Wanneroo

wanneroo.wa.gov.au



**Supplementary Briefing Papers
for Tuesday 13 May, 2025**

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Item 6 Late Reports

6.1 Submission - Public Notice of Chief Executive Officer KPI's and Online Registers

File Ref: 2391 – 25/115400
Responsible Officer: Chief Executive Officer
Attachments: 2

Changes to Report and Additional Information Arising from Agenda Briefing

Any changes or additional information following Agenda Briefing will be shown here.

Issue

To confirm the City's feedback on the draft *Local Government Regulations Amendment Regulations (Consultation Draft) 2024 (Draft Regulations)*.

Background

The Local Government Amendment Act 2023 (Tranche 1) (Amendment Act) was assented in May 2023 with several Tranche 1 provisions yet to commence. In December 2024, the Department of Local Government, Sport and Cultural Industries (the **Department**) commenced a consultation process to gather sector-wide feedback relating to provisions requiring Chief Executive Officer (**CEO**) matters and Registers to be publicly available. As part of the consultation, the Department released the draft Regulations that will give effect to the amendments (**Attachment 1**).

The CEO matters dealt with in the Regulations involved:

- CEO Selection Panel;
- CEO Recruitment, Termination and Certification; and
- CEO KPI's.

The Regulations require the following online registers to be published:

- Leasing Register;
- Grants and Sponsorship Register;
- Development/Applicant Contribution Register; and
- Goods and Services Contracts Register.

WALGA submitted a report to the May 2025 WALGA State Council Meeting (**WALGA Report (Attachment 2)**) containing several recommendations for the Department to consider in reviewing the Regulations. The information in the WALGA Report reflected the concerns submitted by internal stakeholders.

As part of the internal consultation process, Administration assessed the WALGA Report in conjunction with the feedback by The Local Professionals Australia WA (**Association**) to prepare a position on the Regulations to then submit to the Department.

The Department has set a deadline of 8 May 2025 for submitting feedback on the Regulations. Administration has advised that the City's submission will not be lodged by this date. However, WALGA has indicated that the City's feedback will still be welcomed after the deadline.

Detail

Both the feedback received from internal stakeholders, WALGA and the Association all reflected similar concerns:

- The creation of red tape and excessive administrative burden, without clear public benefit, conflicts with a key theme of the reforms.
- Continued proliferation of compliance requirements for Local Governments, including overlapping but inconsistent reporting obligations.
- Unreasonable implementation timeframes given existing Local Government workload and a cumulative burden of ongoing program of reform and upcoming elections.
- Confusion and lack of clarity (plain English drafting) in the Draft Regulations.

CEO Selection Panel

Draft regulation 18FAB relate to the establishment, by the Departmental CEO, of a panel of persons to serve as independent persons on a CEO selection panel. Notably, there are no provisions in the Draft Regulations dealing with the appointment of an independent persons other than from the panel established by the Department CEO. This is despite section 5.39A(3)(b) of the *Local Government Act 1995* (the **Act**) providing for the creation of regulations that allow the Department CEO to authorise a Local Government not to involve a member of the panel. This section is not yet in effect.

The Association has queried the term of appointment to the panel and whether there should be any restrictions to the maximum number of times a person can be on a panel within a 12-month period. WALGA has also reiterated concerns on the lack of clarity about the selection criteria and processes to be followed by the Departmental CEO in establishing the panel.

Administration supports the concerns.

CEO Recruitment, Termination and Certification

WALGA and the Association questioned the necessity of draft regulation 18FBA requiring Council to certify, by absolute majority, that the renewal of an incumbent CEO's contract was done in accordance with the City's adopted standards. Both organisations criticised the need for the draft regulation when additional certification requirements are already provided for under current *Administration Regulation 18FB*. No feedback has been given by the Department as for the needs of draft regulation 18FBA.

Administration supports the concerns.

CEO KPI's

Draft regulation 18FAA sets out the provisions for the publication of information relating to the CEO's performances on the City's website as set out in the employment contract. These KPI's can be directed by the Department CEO to be excluded from being published provided it is in the public interest to do so.

The Association and WALGA strongly objects to the publishing of CEO KPI's as a public transparency obligation of Local Government. Concerns have also been expressed at the lack

of clarity on if the Council or CEO can request non-publication instead of leaving the decision solely to the Department CEO.

The Association has suggested the Department include a definition of 'public interest' to improve guidance as to what constitutes non-publication. Notwithstanding the Association's objection to the publishing of CEO KPI's, they have advocated for a dispute mechanism to be introduced that will enable Council to request non-publication instead of leaving the decision to the discretion of the Department CEO.

Administration supports the concerns.

Leasing Register

The Draft Regulations require all online registers to commence and be up to date from the 1 July 2025. Both WALGA and the Association have advocated for a 12-month grace period to ensure that everything is included across the reporting period as the Department's submission closes on the 8 May 2025.

Feedback from all parties have identified that the definition of a 'lease' in draft regulation 29F is too broad and may incorporate not-for-profit leases and small community and sporting groups. This will open these groups to higher public attention which will be an un-intended consequence of the reforms attempt to increase disclosure requirements on commercial transactions administered by local governments. The Draft Regulations do not consider information that would be ordinarily commercial in confidence or subject to confidentiality clauses in a lease agreement.

Consultation from both internal stakeholders and the Association have raised concern as to the onerous nature of the Draft Regulations.

Administration supports the concerns.

Grants and Sponsorship

Draft regulation 29G requires grants and sponsorships made in the previous five-year period to be maintained by the CEO from 1 July 2025. This excludes grants and sponsorships greater than five years old or valued at less than \$500 from inclusion on the register.

Both the Association's position and consultation from internal stakeholders have confirmed that it will be particularly onerous to comply with draft regulation 29G by the 1 July 2025 due to the considerable demand to include the previous five years' worth of grants and sponsorships. This onerous burden will also be significant due to the lack of clarity and consideration to the privacy and confidential nature of some grants or sponsorships.

Further, both WALGA and the Association have argued that the threshold of \$500 is not reasonable and instead a minimum threshold of \$5,000 will help reserve capacity for Administration to prioritize other work and avoid trivialising the accountability theme the reforms are trying to introduce.

Administration supports the concerns.

Development Contributions

Draft regulation 29H requires the CEO to keep a register of all development contributions by the City, excluding any that were exhausted (fully applied or refunded) more than five years ago. Sector feedback reflects concerns as to the duplicate nature of the reporting requirements that create unnecessary administrative burdens without adding value.

As part of the reporting requirements under the State Planning Policy 3.6 and Local Planning Scheme, the City already maintains detailed records and registers for formal DCP's. The proposed registers under the Draft Regulations would replicate information already on the City's websites. It was identified in the report that these requirements will likely lead to delays and an increase in the costs administering the DCP's. The onerous and complicated nature of the requirement under draft regulation 29H is further highlighted when considering that some DCP's can be active over a period of 20 years.

Goods and Services Contracts Register

Draft regulation 29I requires the CEO to keep a register of all current contracts for goods and services. This includes the requirement to update the register with information for the term of the contract. An exception applies to contracts where the total value of the consideration already paid by the City, or the expected consideration remaining to be paid is less than \$50,000.

Feedback from internal stakeholders, WALGA and the Association reflect the same concerns raised by the implementation of the other Registers in that the administration burden will be extensive and that reporting obligations will be duplicated for no clear benefit to the public. Internal stakeholders have raised concerns at the lack of clarity as to what the Draft Regulations mean by a 'contract' and that the threshold for \$50,000 is too low and will be burdensome. Both WALGA and the Association reiterated these concerns.

Administration supports the concerns.

Consultation

The WALGA Report provided nine recommendations (**Attachment 2**) in response to the different matters introduced by the Draft Regulations. They reflect both the feedback provided by internal stakeholders and the Association. Administration supports the concerns.

Comment

Administration supports WALGA's nine resolutions and if supported by Council it would be in line with the feedback from the broader Local Government sector.

The increased red tape and onerous practical nature of the Draft Regulations are a concern of the Administration particularly given retrospective requirement of the Registers and upcoming election period.

Statutory Compliance

Nil

Strategic Implications

The proposal aligns with the following objective within the Strategic Community Plan 2021 – 2031:

7 ~ A well governed and managed City that makes informed decisions, provides strong community leadership and valued customer focused services

7.1 - Clear direction and decision making

Risk Appetite Statement

In pursuit of strategic objective goal 7, we will accept a Medium level of risk as the City balances the capacity of the community to fund services through robust cost-benefit analysis and pursues evidence-based decision making to be effective stewards of the Council and City for future generations.

Risk Management Considerations

Risk Title	Risk Rating
ST-S25 Legislative Reform or Changes	Low
Accountability	Action Planning Option
Chief Executive Officers	Manage

Policy Implications

The Draft Regulations will have a significant impact on a range of the City's Council and Corporate Policy's once they have been consented to by Parliament. Administration will continue to monitor the progress of the reforms and assess any advice received from the Department and WALGA as to the practical effect of the reforms.

Financial Implications

Should Parliament approve the Draft Regulations, the City would assume new administrative responsibilities. These additional duties would necessitate the allocation of staffing and program-related resources.

Voting Requirements

Simple Majority

Recommendation

That Council:-

- SUPPORTS** the nine recommendations contained in Attachment 2 in relation to draft *Local Government Regulations Amendment Regulations (Consultation Draft) 2024*; and
- AUTHORISES** Administration to make a submission to the Department of Local Government, Sport and Cultural Industries supporting Western Australian Local Government Association's resolutions 1 – 9 contained in Attachment 2.

Attachments:

- [1](#) Attachment 1 - Local Government Regulations Amendment Regulations 2024 (Consultation Draft) 25/133490
- [2](#) Attachment 2 - State Council Agenda 7 May 2025 WALGA Position on Draft Regulations 25/133491

Western Australia

Local Government Regulations Amendment Regulations 2024

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Local Government Act 1995

Local Government Regulations Amendment Regulations 2024

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Local Government Regulations Amendment Regulations 2024*.

2. Commencement

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published on the WA legislation website (*publication day*);
- (b) regulations 5, 6, 11 and 13 — on 1 July 2025;
- (c) regulation 7, Part 2 Division 2 and Part 3 — on 1 January 2025;
- (d) the rest of the regulations — on the day after publication day.

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Part 2 Local Government (Administration) Regulations 1996 amended

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**Part 2 — Local Government (Administration)
Regulations 1996 amended**

Division 1 — CEOs

3. Regulations amended

This Division amends the *Local Government (Administration) Regulations 1996*.

4. Regulation 3 amended

In regulation 3(1) insert in alphabetical order:

adopted standards, in relation to a local government, means —

- (a) the standards adopted by the local government under section 5.39B; or
- (b) if the local government has not adopted standards under section 5.39B — the standards taken under section 5.39B(5) to be the local government's adopted standards;

5. Regulation 18AA inserted

After regulation 18A insert:

**18AA. Summary of CEO's performance review
(Act s. 5.38(4)(c))**

- (1) In this regulation —

target, in relation to a performance criterion, means the target contained in the performance criterion in accordance with the local government's adopted standards.

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Note for this definition:

See clause 15A of the model standards in Schedule 2 of these regulations (introduced by regulation 18FA).

- (2) This regulation applies for the purposes of section 5.38(4)(c).
- (3) A statement must, for each performance criterion against which the CEO's performance was reviewed, state the following (to the extent not stated under section 5.38(4)(a) or (b)) —
 - (a) the target that had to be achieved for the performance criterion to be met;
 - (b) whichever of the following applies —
 - (i) the target was achieved;
 - (ii) the target was not achieved;
 - (iii) no determination could be made as to whether the target was achieved;
 - (c) if the target was not achieved — whether this was substantially because of circumstances beyond the CEO's control and, if so, the circumstances;
 - (d) if no determination could be made as to whether the target was achieved — the reasons why this was the case.
- (4) A statement must state whichever of the following applies —
 - (a) all targets for all performance criteria against which the CEO's performance was reviewed were achieved;
 - (b) 50% or more, but not all, of those targets were achieved;
 - (c) less than 50% of those targets were achieved.

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- (5) A target must be disregarded for the purposes of subregulation (4) if any of the following applies —
 - (a) the target was not achieved substantially because of circumstances beyond the CEO's control;
 - (b) no determination could be made as to whether the target was achieved;
 - (c) the target relates to a performance criterion that is the subject of a direction of the Departmental CEO under section 5.39AA(2) or regulation 18FAA(7).

6. Regulation 18FAA inserted

After regulation 18F insert:

18FAA. Publication of information relating to CEO's performance (Act s. 5.39AA(1) and 5.96A(1)(i))

- (1) In this regulation, references to the minutes of the meeting of the council are to —
 - (a) subject to paragraph (b), the confirmed minutes;
 - (b) until the confirmed minutes are published on the local government's official website, the unconfirmed minutes.

Notes for this subregulation:

- 1. Confirmed minutes are required to be published on the local government's official website under section 5.96A(1)(f).
 - 2. Unconfirmed minutes are required to be published on the local government's official website under regulation 13.
- (2) For the purposes of section 5.39AA(1)(a), the performance criteria must be published on the local government's official website alongside the minutes of

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the meeting of the council at which the CEO's contract of employment is approved.

- (3) The copies of the statements referred to in section 5.39AA(1)(b) and (c) must be published on the local government's official website alongside the minutes of the meeting of the council at which the CEO's performance review is conducted.
- (4) For the purposes of subregulation (3), if a statement has not been prepared by the time the minutes are published, the statement must be published alongside the minutes as soon as practicable after the statement is prepared.
- (5) Subregulation (6) applies, subject to subregulation (7), to a performance criterion, other than one specified in the CEO's contract of employment under section 5.39(3)(b), that is to be met by the CEO as agreed by the local government and the CEO under the local government's adopted standards.

Note for this subregulation:
See clause 16(1) of the model standards in Schedule 2 of these regulations (introduced by regulation 18FA).
- (6) For the purposes of section 5.96A(1)(i), the performance criterion must be published on the local government's official website alongside the minutes of the meeting of the council at which the local government agreed to the performance criterion.
- (7) The Departmental CEO may, if satisfied that it is in the public interest to do so, direct that a performance criterion is not to be published under subregulation (6).

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7. Regulations 18FAB and 18FAC inserted

After regulation 18FA insert:

18FAB. Independent persons panel (Act s. 5.39A(4) and (5))

- (1) In this regulation and regulation 18FAC —
- independent person***, in relation to a selection panel established by a local government, means a person other than the following —
- (a) a member of the council of the local government or of any other local government;
 - (b) an employee of the local government;
 - (c) a human resources consultant engaged by the local government;
- independent persons panel*** means the panel that the Departmental CEO must establish under subregulation (2)(a);
- selection panel*** means a selection panel that a local government must establish under its adopted standards to conduct the recruitment and selection process for the employment of a person in the position of CEO.

Note for this definition:

See clause 8 of the model standards in Schedule 2 of these regulations (introduced by regulation 18FA).

- (2) The Departmental CEO —
- (a) must establish a panel of persons to serve as independent persons on selection panels that local governments establish on or after 1 July 2025; and
 - (b) for the purposes of paragraph (a) —
 - (i) must, from time to time, appoint persons to the independent persons panel for periods, and otherwise on terms and

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conditions, determined by the
Departmental CEO; and

- (ii) without limiting subparagraph (i), may require a person, as a condition of their appointment to the independent persons panel, to provide the Departmental CEO with a written undertaking relating to how the person will conduct themselves.

Example for this subregulation:

For the purposes of paragraph (b)(ii), a written undertaking could relate to how the person will avoid, or otherwise deal with, conflicts of interest or potential conflicts of interest.

- (3) If a local government is establishing a selection panel, it is for the local government (and not the Departmental CEO) to select and appoint 1 or more members of the independent persons panel to serve as an independent person on the selection panel (subject to subregulation (4) and regulation 18FAC).
- (4) A member of the independent persons panel must not serve, or continue to serve, on a selection panel in contravention of the terms and conditions of their appointment to the independent persons panel (including any undertaking provided by the member as referred to in subregulation (2)(b)(ii)).
- (5) A local government must give written notice to the Departmental CEO of the following as soon as practicable after it occurs —
 - (a) the appointment by the local government to a selection panel of a member of the independent persons panel (including the member's name);
 - (b) the resignation or removal from a selection panel established by the local government of a member of the independent persons panel (including the member's name).

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- (6) A member of the independent persons panel who is appointed to a selection panel is entitled to be paid fees and reimbursed expenses in accordance with subregulation (7).
- (7) Section 5.100 applies to the member as if —
 - (a) the selection panel were a committee of the council; and
 - (b) the member were a member of that committee who is neither a council member nor an employee.
- (8) The Departmental CEO must publish a list of the membership of the independent persons panel on the Department's website, and update the list from time to time as necessary.

18FAC. Disqualifying interests (Act s. 5.39A(4) and (5))

- (1) For the purposes of this regulation, a member of the independent persons panel has a *disqualifying interest* in relation to a selection panel if either or both of the following apply —
 - (a) it is reasonable to expect that, if the recruitment and selection process has a particular outcome, that outcome will result, directly or indirectly, in a financial gain, loss, benefit or detriment to —
 - (i) the member; or
 - (ii) a person with whom the member is closely associated (as determined in accordance with section 5.62(1)(a) to (e) and (f) as if the member were a relevant person);
 - (b) the member has an interest (whether arising from kinship, friendship or membership of an association or otherwise) that could, or could

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reasonably be perceived to, affect adversely the impartiality of the member as a member of the selection panel.

- (2) A member of the independent person's panel must not serve, or continue to serve, on a selection panel if the member is aware, or becomes aware, that they have a disqualifying interest.

Penalty for this subregulation: a fine of \$5 000.

- (3) If a member of the independent persons panel who is a member of a selection panel becomes aware that they have a disqualifying interest, they must disclose the nature of the disqualifying interest to each of the following as soon as possible —

- (a) the Departmental CEO;
- (b) the chair of the selection panel or, if the member is the chair, the mayor or president.

Penalty for this subregulation: a fine of \$5 000.

8. Regulation 18FB amended

- (1) Delete regulation 18FB(1).
- (2) In regulation 18FB(2):
 - (a) in paragraph (b) delete "employment." and insert:
employment; and
 - (b) after paragraph (b) insert:
 - (c) regulation 18FBA does not apply.

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9. Regulation 18FBA inserted

After regulation 18FB insert:

18FBA. Certification of compliance with adopted standards for renewal of CEO's contract of employment (Act s. 5.39B(7))

- (1) This regulation applies if —
- (a) a local government renews the contract of employment of the CEO of the local government; and
 - (b) the local government's adopted standards in relation to the recruitment of CEOs apply to the renewal.

Note for this subregulation:

See clauses 4(2)(b) and 13 of the model standards in Schedule 2 of these regulations (introduced by regulation 18FA).

- (2) As soon as practicable after the contract is renewed, the local government must, by resolution*, certify that the renewal was in accordance with the local government's adopted standards in relation to the recruitment of CEOs.

* Absolute majority required.

- (3) The local government must give a copy of the resolution to the Departmental CEO within 14 days after the resolution is passed by the local government.

10. Regulation 18FC amended

Delete regulation 18FC(1).

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11. Schedule 2 clause 8 amended

- (1) In Schedule 2 clause 8(1) in the definition of *independent person* delete paragraph (a) and insert:

(a) a member of the council of the local government or of any other local government;

- (2) In Schedule 2 clause 8(3)(a) delete “council members” and insert:

members of the council of the local government

- (3) After Schedule 2 clause 8(3) insert:

(4) An independent person on the selection panel must be a member of the independent persons panel established under the *Local Government (Administration) Regulations 1996* regulation 18FAB.

(5) An independent person on the selection panel must be replaced if the independent person makes a disclosure under the *Local Government (Administration) Regulations 1996* regulation 18FAC(3)(b).

12. Schedule 2 clause 13 replaced

Delete Schedule 2 clause 13 and insert:

13. Recruitment to be undertaken on expiry of certain CEO contracts

- (1) In this clause —
commencement day means the day on which the *Local Government Regulations Amendment Regulations 2024* regulation 12 comes into operation.

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- (2) This clause applies if, upon the expiry of the contract of employment (the *current contract*) of the person (the *incumbent CEO*) who holds the position of CEO —
 - (a) the incumbent CEO will have held the position for a period of 10 or more consecutive years, whether that period commenced before, on or after commencement day; and
 - (b) a period of 10 or more consecutive years will have elapsed since a recruitment and selection process for the position was carried out, whether that process was carried out before, on or after commencement day.
- (3) The current contract must not be varied so as to extend its term.
- (4) The current contract must not be renewed unless —
 - (a) the local government first carries out a recruitment and selection process in accordance with these standards to select a person to be employed in the position of CEO after the expiry of the current contract; and
 - (b) the incumbent CEO is selected in the recruitment and selection process to be employed in the position of CEO.

13. Schedule 2 clause 15A inserted

After Schedule 2 clause 15 insert:

15A. Contents of performance criteria

- (1) This clause applies to contractual performance criteria and additional performance criteria.
- (2) A performance criterion must contain the following information —
 - (a) the aspect of the CEO's role to which the performance criterion applies;

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- (b) the indicator to be used to assess the CEO's performance against the performance criterion;
- (c) the target to be achieved in order for the performance criterion to be met;
- (d) the evidence to be used for determining whether the target is achieved.

Examples for this subclause:

1. For the purposes of paragraph (a), the CEO's management of the provision of services by the local government.
2. For the purposes of paragraph (b), satisfaction of persons to whom services are provided by the local government.
3. For the purposes of paragraph (c), at least 90% of persons to whom services are provided by the local government are satisfied with the services.
4. For the purposes of paragraph (d), results of surveys completed by a representative sample of persons to whom services are provided by the local government.

14. Schedule 2 clause 25 inserted

After Schedule 2 clause 24 insert:

25. Probationary period

Clauses 21(2) and 22 do not apply to the termination of the employment of a CEO if —

- (a) before becoming CEO, the CEO was never an employee of the local government; and
- (b) the CEO's contract of employment provides —
 - (i) for a probationary period; and
 - (ii) for the review by the local government of the CEO's performance during the probationary period with a view to determining whether the CEO's employment should continue after the probationary period; and

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- (iii) for the local government to have the option of terminating the CEO's employment during the probationary period after reviewing the CEO's performance as referred to in subparagraph (ii);
- and
- (c) the local government terminates the employment of the CEO during the probationary period —
 - (i) after reviewing the CEO's performance as referred to in paragraph (b)(ii); and
 - (ii) otherwise in accordance with the contract of employment.

Division 2 — Registers**15. Regulations amended**

This Division amends the *Local Government (Administration) Regulations 1996*.

16. Part 7A inserted

After regulation 29D insert:

Part 7A — Registers (Act s. 5.96B)**29E. Preliminary**

- (1) This Part requires the CEO to keep registers for the purposes of section 5.96B(1).
- (2) The CEO must keep each register on and from 1 July 2025.
- (3) Initially, the information contained in a register must be up-to-date as at the beginning of 1 July 2025.

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- (4) The CEO must then update the register at intervals of no more than 3 months.

29F. Leases of land

- (1) In this regulation —

lease means a lease, licence or agreement under which a person has a right to occupy or use land over a period —

- (a) whether the occupation or use of the land is on an exclusive basis or otherwise; and
- (b) whether the occupation or use of the land is continuous over the period or otherwise; and
- (c) whether the period is a fixed period or otherwise;

Notes for this definition:

- 1. A person's right to occupy or use land under a lease, licence or agreement may, in some situations, derive from a provision of a written law (for example, the *Residential Tenancies Act 1987* section 76C).
- 2. For the purposes of paragraph (c), the period may, from time to time after the beginning of the lease, licence or agreement, be extended or change in nature (for example, from a fixed period to an indefinite period).

Examples for this definition:

- 1. For the purposes of paragraph (a), the person's right to occupy or use the land may be —
 - (a) to occupy or use the land to the exclusion of all other persons; or
 - (b) to share in the occupation or use of the land with other persons.
- 2. For the purposes of paragraph (b), the person's right to occupy or use the land may be —
 - (a) to occupy or use the land continuously over a period of 1 year; or
 - (b) to occupy or use the land for 20 hours per week over a period of 1 year.

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3. For the purposes of paragraph (c), the period may be —
- (a) a fixed period of 1 year with no option to extend the fixed period; or
 - (b) a fixed period of 1 year with an option to extend the fixed period on 1 or more occasions; or
 - (c) an indefinite period that may be terminated by a party to the lease, licence or agreement giving notice to the other party.

lease period, in relation to a lease, means the period over which the land may be occupied or used;

rent includes the following —

- (a) a fee or charge payable for the occupation or use of land;
- (b) any other type of amount that is in the nature of rent;

residential tenancy agreement has the meaning given in the *Residential Tenancies Act 1987* section 3;

retail shop lease has the meaning given in the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 3(1);

unclassified lease means a lease that is neither a residential tenancy agreement nor a retail shop lease.

- (2) The CEO must keep a register containing the information required by subregulation (3) in relation to each lease to which the local government is a party —
 - (a) whether the lease is made before, on or after 1 July 2025; but
 - (b) subject to subregulation (4).
- (3) The required information is as follows —
 - (a) whether the lease is a residential tenancy agreement, a retail shop lease or an unclassified lease;
 - (b) the role of the local government under the lease;

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Examples for this paragraph:

1. Lessor or licensor.
 2. Lessee or licensee.
- (c) if the lease is a retail shop lease or an unclassified lease — the name of each party to the lease other than the local government;
- (d) the following —
- (i) if the land has an address — the address;
 - (ii) otherwise — the location of the land by reference to the number of the relevant deposited plan and the number of the relevant lot shown on that plan;
- (e) a summary of the purposes for which the land may be occupied or used;
- (f) a description of the lease period, including the following —
- (i) the first date of the lease period;
 - (ii) the last date of the lease period as at the beginning of the lease (if that date is fixed);
 - (iii) the current last date of the lease period (if that date is fixed);
 - (iv) if the current last date of the lease period is not fixed — the circumstances in which the lease period will end;
 - (v) a summary of any extensions or changes in nature to the lease period that occur after the beginning of the lease;
- (g) details of the rent payable under the lease to or by the local government.

Examples for this paragraph:

1. \$10 000 per annum.
2. \$1 000 per month.

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- 3. \$100 per hour.
- 4. A one-off amount of \$1 000.
- (4) Subregulation (2) does not apply to a lease if any of the following applies —
 - (a) the right to occupy or use the land no longer subsists;
 - (b) the lease period, as at the beginning of the lease, is a fixed period of less than 1 month and there is no option under the lease to extend the fixed period to or beyond 1 month;

Example for this paragraph:

The land may be occupied or used only for 6 hours on a particular day for a one-off event.

- (c) the land may be occupied or used only for the purpose of accessing or egressing other land.

29G. Grants and sponsorships

- (1) In this regulation —

final report date, in relation to a grant or sponsorship, means the latest date by which the recipient of the grant or sponsorship must, under the terms of the grant or sponsorship, make a report to the local government covering 1 or more of the following —

 - (a) the way in which the grant or sponsorship has been applied;
 - (b) the outcomes achieved by the application of the grant or sponsorship;
 - (c) the recipient's compliance with the terms of the grant or sponsorship;
 - (d) any other matter about which the recipient is required to report to the local government under the terms of the grant or sponsorship;

grant means a grant of a monetary or non-monetary kind;

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sponsorship means a sponsorship of a monetary or non-monetary kind;

value, in relation to a grant or sponsorship, means its monetary amount or, if it is of a non-monetary kind, its equivalent monetary amount.

- (2) The CEO must keep a register containing the information required by subregulation (3) in relation to each grant or sponsorship made by the local government —
- (a) whether the grant or sponsorship is made before, on or after 1 July 2025; but
 - (b) subject to subregulation (4).
- (3) The required information is as follows —
- (a) the date on which the grant or sponsorship is made;
 - (b) a summary of the purpose for which the grant or sponsorship is made;
 - (c) the name of the recipient;
 - (d) the value;
 - (e) the final report date (if any);
 - (f) if the final report date (if any) has passed — whether the recipient has made all reports to the local government that the recipient is required to make under the terms of the grant or sponsorship.
- (4) Subregulation (2) does not apply to a grant or sponsorship if any of the following applies —
- (a) the grant or sponsorship is made on a day before 1 July 2025 and the period of 5 years beginning on that day has expired;

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- (b) if there is a final report date — the period of 5 years beginning on the final report date has expired;
 - (c) the value is less than \$500.
- (5) For the purposes of subregulation (4)(c), the value includes the value of any other grant or sponsorship that is made, or that is to be made, by the local government to the same recipient for the same purpose or a purpose that is substantially the same.

29H. Development contributions

- (1) In this regulation —
- authorised purposes**, in relation to a development contribution, means the purposes for which the development contribution, including any interest earned, must or may be applied by the local government;
- contributor**, in relation to a development contribution, means the person from whom the development contribution is received;
- development** —
- (a) has the meaning given in the *Planning and Development Act 2005* section 4(1); and
 - (b) includes development (as defined in paragraph (a)) that is proposed;
- development contribution** means money received by the local government under the *Planning and Development Act 2005* (including a local planning scheme) in connection with development or a subdivision —
- (a) as a contribution towards the provision of infrastructure or facilities by the local government; or

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- (b) in lieu of compliance with a requirement imposed under the *Planning and Development Act 2005* (including a local planning scheme);

exhausted — see subregulation (5);

interest earned, in relation to a development contribution, means any interest earned from the investment of the development contribution, or any portion of it, by the local government;

subdivision —

- (a) means any action referred to in the *Planning and Development Act 2005* section 135(1)(a), (b) or (c); and
 - (b) includes a subdivision (as defined in paragraph (a)) that is proposed.
- (2) The CEO must keep a register containing the information required by subregulation (3) in relation to each development contribution received by the local government —
- (a) whether the development contribution is received before, on or after 1 July 2025; but
 - (b) subject to subregulation (4).
- (3) The required information is as follows —
- (a) the name of the contributor;
 - (b) the address, or other description of the location, of the development or subdivision in connection with which the development contribution is received;
 - (c) a summary of the authorised purposes;
 - (d) the amount of the development contribution;
 - (e) the date on which the development contribution is received;

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- (f) the date (if any) by which the development contribution, including any interest earned, must be fully applied by the local government for authorised purposes;
 - (g) the amount of interest earned;
 - (h) each item of infrastructure and each facility in respect of which the development contribution, including any interest earned, is applied;
 - (i) for each item of infrastructure and each facility referred to in paragraph (h) —
 - (i) the amount expended by the local government towards its provision; and
 - (ii) the proportion of that amount that comes from the application of the development contribution, including any interest earned.
- (4) Subregulation (3) does not apply to a development contribution if —
 - (a) the development contribution is exhausted; and
 - (b) the period of 5 years beginning on the day on which the development contribution became exhausted has expired.
- (5) For the purposes of subregulation (4), a development contribution is ***exhausted*** if any of the following applies —
 - (a) the development contribution, including any interest earned, has been fully applied by the local government for authorised purposes;
 - (b) the development contribution, including any interest earned, has been fully paid back to the contributor by the local government;

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- (c) the development contribution, including any interest earned —
 - (i) has been partly applied by the local government for authorised purposes; and
 - (ii) to the extent not applied by the local government for authorised purposes, has been paid back to the contributor by the local government.

29I. Contracts for goods and services

- (1) The CEO must keep a register containing the information required by subregulation (2) in relation to each contract made by the local government for another person (the *supplier*) to supply goods or services —
 - (a) whether the contract is made before, on or after 1 July 2025; but
 - (b) subject to subregulation (3).
- (2) The required information is as follows —
 - (a) the name of the supplier;
 - (b) whether tenders were publicly invited for the contract and, if they were not, a summary of the method by which the supplier was chosen;
 - (c) the date on which the contract is made;
 - (d) a summary of the goods or services;
 - (e) if the goods or services are to be supplied over a fixed period —
 - (i) the fixed period as at the beginning of the contract; and
 - (ii) if the fixed period is extended on 1 or more occasions — the fixed period as extended;

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- (f) if the contract is varied on 1 or more occasions — a summary of each variation;
- (g) the following —
 - (i) the amount of consideration under the contract that the local government has paid;
 - (ii) the amount, or expected amount, of consideration under the contract that the local government is still to pay;
 - (iii) the sum of the amounts referred to in subparagraphs (i) and (ii).
- (3) Subregulation (1) does not apply to a contract if either of the following applies —
 - (a) the sum referred to in subregulation (2)(g)(iii) is less than \$50 000;
 - (b) no further goods or services are to be supplied under the contract.
- (4) For the purposes of subregulation (3)(a), the sum includes the equivalent sum for any other contract made by the local government with the same supplier —
 - (a) that is for the same purpose or a purpose that is substantially the same; and
 - (b) to which subregulation (3)(b) does not apply.

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Part 3 — *Local Government (Functions and General)*
***Regulations 1996* amended**

17. Regulations amended

This Part amends the *Local Government (Functions and General) Regulations 1996*.

18. Regulation 35B amended

- (1) In regulation 35B delete “The” and insert:

(1) The

- (2) At the end of regulation 35B insert:

(2) The Departmental CEO’s functions under the *Local Government (Administration) Regulations 1996* regulation 18FAB are delegable functions.

Clerk of the Executive Council

8 MATTERS FOR DECISION

8.1 REGULATIONS FOR CEO KPIS AND ONLINE REGISTERS – WALGA SUBMISSION

By Tony Brown, Executive Director Member Services and Felicity Morris, Manager Governance and Procurement

WALGA RECOMMENDATION

That WALGA endorse the recommendations contained in the attached '*Regulations for CEO KPIs and public registers submission*'.

EXECUTIVE SUMMARY

- Consultation is open on the draft Local Government Regulations Amendment Regulations 2024 (the Draft Regulations), which give effect to reforms relating to the publication of online registers, publication of CEO performance criteria and performance reviews, and other CEO matters.
- The Local Government legislation reform platform from the State Government indicated that one of the reform outcomes was "Reducing red tape, increasing consistency and simplicity".
- The overwhelming sector feedback is that these reforms will not achieve this aim and will instead increase red tape without any clear public benefit.
- Sector feedback has been collated and identifies overarching concerns listed in this report.
- The attached submission, informed by this feedback, is recommended for endorsement.

ATTACHMENT

- Regulations for CEO KPIs and public registers Draft WALGA submission

POLICY IMPLICATIONS

WALGA's existing advocacy positions are based on the high-level reform proposals provided for public consultation in 2022.

The current [Advocacy Positions](#) are:

2.2.4 CEO Recruitment Panel

The Local Government sector supports the Department of Local Government, Sport and Cultural Industries establishing a panel of approved panel members to perform the role of the independent person on CEO recruitment panels.

2.5.27 Online Registers

The Local Government sector supports requiring Local Governments to report specific information in online registers on the Local Government's website, including registers for leases, community grants, interests disclosures, applicant contributions and contracts (excluding contracts of employment).

2.5.28 Publishing CEO Key Performance Indicators

1. *The Local Government sector conditionally supports the reporting of CEO Key Performance Indicators (KPIs) that are consistent with the strategic direction and operational function of the Local Government, subject to exemptions for publishing KPIs of a confidential nature.*
2. *The Local Government sector does not support results of CEO performance reviews being published.*

BACKGROUND

The *Local Government Amendment Act 2023* (2023 Amendment Act) contained the Tranche 1 reforms to the *Local Government Act 1995* (the Act). This included the following changes which are yet to commence:

- Requirements for Local Government CEO's performance criteria and performance reviews to be published.
- Establishment of a panel of independent persons for CEO performance reviews.
- A requirement for Local Governments to publish and maintain registers on their website.

The draft Local Government Regulations Amendment Regulations 2024 (the Draft Regulations), which will give effect to these reforms, have been released for public consultation. The Department of Local Government, Sport and Cultural Industries (DLGSC) have requested comment by 8 May. Information is available on the [DLGSC website](#), including a copy of the [Draft Regulations](#) and a [DLGSC Consultation Paper](#).

WALGA circulated a discussion paper and request for comment to all Local Governments on 30 January.

COMMENT

Responses received from Local Governments indicate serious concerns with the detail of the Draft Regulations. Overarching concerns include:

- The creation of red tape and excessive administrative burden, in conflict with a stated aim of the reform, and without clear public benefit.
- Continued proliferation of compliance requirements for Local Governments, including overlapping but inconsistent reporting obligations.
- Unreasonable implementation timeframes given existing Local Government workload, cumulative burden of ongoing program of reform and upcoming elections.
- Confusion and lack of clarity (plain English drafting) in the Draft Regulations.

Specific concerns are discussed in relation to each proposal.

CEO matters: Publishing performance criteria and reports on performance review

Of the submissions that provided comment on this aspect of the Draft Regulations, over half expressed strong opposition to publication of CEO KPIs and performance reviews. Opposition was based on factors including the inconsistency with public sector practice, risks to CEOs, mechanisms for reporting on organisational rather than individual performance and the erosion of Local Government autonomy. A small number of Local Governments broadly supported the regulations or their intent. In addressing the content of Draft Regulations 18AA and 18FAA, submissions raised concerns with the proposed reporting of target achievement and the mechanisms for exclusion of performance criteria from publication.

CEO matters: Independent persons panel (CEO recruitment)

Key concerns included a lack of clarity about the selection criteria and processes to be followed by the Departmental CEO in establishing the panel, the capacity for Councils to appoint independent members from within their own districts, and the management of conflicts of interest.

CEO matters: Certification, recruitment and termination

There were divided views on the requirement for separate certification, but support for the retention of a requirement to conduct a selection process before contract expiry, the option to include additional information in a performance criterion and the proposed modification of the CEO Standards in relation to termination during probation.

Registers: General considerations

Local Governments articulated a range of concerns that are applicable to all registers, including the administrative burden, unreasonable commencement and retrospectivity, lack of clarity and difficulty in applying the requirements, and the implications of the *Privacy and Responsible Information Sharing Act 2024* (the PRIS Act).

Lease register

Submissions raised considerable concerns with this proposed register. Issues include the breadth of the lease definition, safety and confidentiality for residents and community groups, commercial in confidence information and the ability of Local Governments to generate best value from assets, whether through commercial returns or community benefits.

Grants and sponsorships register

Some Local Governments provided general support for the register, subject to the exclusion of retrospectivity. However, the majority of submissions identified concerns regarding the value threshold, privacy and confidentiality, and a lack of clarity in the calculation of value.

Development contributions register

The majority of submissions expressed concerns regarding the administrative burden with limited improvements in transparency and oversight of Developer Contribution Plans (DCPs) than is currently provided for under the state planning framework. This burden is exacerbated by the retrospectivity and short implementation timeframe. Those Local Governments with a high number of DCPs advise that this is likely to lead to delays and increased costs in the administration of DCPs. Privacy considerations and practical issues with the calculation of interest for individual contributions, and the list of items and percentage of expenditure were also identified.

Contracts for goods and services register

All submissions that commented on the contract register highlighted concerns including the administrative burden associated with the unreasonably low threshold value and duplication of existing reporting requirements. Members raised heightened fraud risks, and issues relating to commercial in confidence information. There is also a lack of clarity regarding the definition of contract and contract value.

This sector feedback and detailed analysis of the Draft Regulations has informed the preparation of the attached draft WALGA submission.



Regulations for CEO KPIs and public registers

Draft WALGA Submission

April 2025

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About WALGA

The Western Australian Local Government Association (WALGA) is an independent, member-based, not for profit organisation representing and supporting the WA Local Government sector.

Our membership includes all 139 Local Governments in the State. WALGA uses its influence, support and expertise to deliver better outcomes for WA Local Governments and their communities.

We advocate to all levels of Government on behalf of our Members, and provide expert advice, services and support to Local Governments. WALGA's vision is for agile and inclusive Local Governments enhancing community wellbeing and enabling economic prosperity.

Acknowledgement of Country

WALGA acknowledges the continuing connection of Aboriginal people to Country, culture and community. We embrace the vast Aboriginal cultural diversity throughout Western Australia, including Boorloo (Perth), on the land of the Whadjuk Nyoongar People, where WALGA is located, and we acknowledge and pay respect to Elders past and present.

1. Introduction

The current *Local Government Act 1995* reform process is based on 6 themes:

1. Earlier intervention, effective regulation and stronger penalties
2. Reducing red tape, increasing consistency and simplicity
3. Greater transparency and accountability
4. Stronger local democracy and community engagement
5. Clearer roles and responsibilities
6. Improved financial management and reporting.

The *Local Government Amendment Act 2023* (the 2023 Amendment Act) included provisions for the publication of CEO performance criteria (KPIs) and the results of CEO performance reviews, as well as a series of public registers.

When initial high-level consultation was undertaken on reform proposals in 2022, WALGA adopted the following Advocacy Positions.

2.2.4 CEO Recruitment Panel

The Local Government sector supports the Department of Local Government, Sport and Cultural Industries establishing a panel of approved panel members to perform the role of the independent person on CEO recruitment panels.



2.5.27 Online Registers

The Local Government sector supports requiring Local Governments to report specific information in online registers on the Local Government's website, including registers for leases, community grants, interests disclosures, applicant contributions and contracts (excluding contracts of employment).

2.5.28 Publishing CEO Key Performance Indicators

1. *The Local Government sector conditionally supports the reporting of CEO Key Performance Indicators (KPIs) that are consistent with the strategic direction and operational function of the Local Government, subject to exemptions for publishing KPIs of a confidential nature.*
2. *The Local Government sector does not support results of CEO performance reviews being published.*

The support for online registers demonstrates a willingness on the part of the sector to accept reasonable measures to improve transparency and accountability. However, this should not come at a cost of increased red tape, complexity and inefficiency. Similarly, the sector's conditional support for the publication of CEO KPIs was dependent on the link to the strategic direction and operational function of the Local Government and subject to exemptions. It was also qualified by concerns regarding the politicisation of the employment relationship, high levels of potentially unfair or misguided community scrutiny and potential impacts on CEO recruitment. For these reasons, the sector did not support publication of CEO performance reviews.

The draft Local Government Regulations Amendment Regulations 2024 (the Draft Regulations) provide the regulatory detail to give effect to these reforms, and additional CEO matters. WALGA undertook sector consultation on the Draft Regulations to inform the preparation of this submission. There are serious concerns that the Draft Regulations expose CEOs to potential negative consequences and impose a level of regulatory burden that is disproportionate to any anticipated transparency and accountability benefits.

Specific issues are discussed in relation to each proposed reform. However, overarching concerns include:

- The creation of red tape and excessive administrative burden, in conflict with a stated aim of the reform, and without clear public benefit.
- Continued proliferation of compliance requirements for Local Governments, including overlapping but inconsistent reporting obligations.
- Unreasonable implementation timeframes given existing Local Government workload, cumulative burden of the ongoing program of reform and upcoming elections.
- Confusion and lack of clarity (plain English drafting) in the Draft Regulations.

Indicative Member comments

"As an overarching comment it is disappointing that the State Government is not acknowledging that the proposed legislation and industry reform is adding to the workload of Councillors and CEOs. This is resulting in a loss of focus on the core business

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of a local government of meeting the needs of a community and adding to the difficulty in attracting CEOs to regional and remote locations. It is also at odds to the State Government's commitment to reducing red tape."

"These proposed changes represent yet another hurdle for tier 4 local governments, which already struggle with resource constraints, financial sustainability, and workforce retention. The increased administrative burden, coupled with recruitment challenges and heightened scrutiny, places additional pressure on smaller local governments, threatening their long-term viability."

Recommendation 1: General

1. *That WALGA advise the Department of Local Government Sport and Cultural Industries to:*
 - a. *Ensure that all amendment regulations support the stated aim of reducing red tape, increasing consistency and simplicity.*
 - b. *Consider Local Government reporting responsibilities holistically, aligning any new requirements with existing obligations to avoid duplication and achieve efficiency.*
 - c. *Consider the cumulative burden of the full suite of reforms to be implemented, upcoming elections, and variation in systems, size and scale.*
 - d. *Ensure there is no retrospectivity of requirements as this creates unreasonable compliance obligations.*
 - e. *Review the Draft Regulations to improve clarity and plain English drafting.*

2. CEO matters

2.1. Publishing performance criteria and reports on performance review

Relevant Draft Regulations

Sections of the 2023 Amendment Act which are yet to take effect require a statement summarising the CEO's annual performance review to be prepared and published on the Local Government's website. Draft Regulation 18AA sets out the requirements for this statement.

The statement must:

- State the target for each performance criteria.
- State whether the target was achieved, not achieved, or that no determination could be made and reasons why.
- If the target was not achieved, state whether this was because of circumstance substantially beyond the CEOs control.
- State whether all, more than 50% but less than all, or less than 50% of targets were met.

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The calculation of the percentage of targets met must exclude any targets:

- That were not met due to circumstances beyond the CEO's control.
- For which no determination could be made.
- That the Departmental CEO has directed not to be published.

Draft Regulation 18FAA sets out the requirements for publication on the Local Government website of the performance criteria included in the CEO's contract, and those agreed to by the Council and the CEO.

Draft Regulation 18FAA(7) allows the Departmental CEO to, if satisfied it is in the public interest, direct that a performance criterion is not to be published. It is noted that this mechanism only applies to agreed performance criteria, and not those included in the CEO's contract of employment (see Draft Regulation 18FAA(5)&(6)). It appears that a contractual performance criterion may only be excluded from publication under the new s.5.39AA(2). This section will provide a general power for the Departmental CEO, if satisfied it is in the public interest, to "direct that specified information be excluded from anything published" in relation to the CEO's performance criteria or performance review statements. It is not clear why Draft Regulation 18FAA(7) could not be drafted to provide a single mechanism for both contractual and agreed performance criteria.

The Department of Local Government, Sport and Cultural Industries (DLGSC) consultation paper states that "[a]llowing the community to view progress against CEO KPIs is another measure of confidence to track how a local government is performing overall."

Comment

Of the submissions that provided comment on this aspect of the Draft Regulations, over half took the opportunity to express their continued opposition to publication of CEO KPIs, and performance reviews. A small number of Local Governments broadly supported the regulations or their intent in providing transparency and clarity in managing CEO performance. In addressing the content of Draft Regulations 18AA and 18FAA, submissions raised concerns with the proposed reporting of target achievement and the mechanisms for exclusion of performance criteria from publication.

Publication of Performance Reviews

The sector continues to raise concerns regarding:

- Undermining or politicisation of the employment relationship.
- Inequitable application of accountability requirements to Local Government CEOs with no equivalent requirements in public sector agencies.
- The exposure of CEOs to unwarranted public criticism and reputational damage through performance reporting that does not capture relevant context and circumstances.
- Potential negative impacts on the psychosocial safety of CEO.
- Potential negative impacts on CEO performance due to stress, or potential diversion of resources to targets rather than organisational priorities.

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- Existing accountability and reporting mechanisms for measuring organisational rather than individual performance.
- Undermining Local Government autonomy and general competency.

If CEO KPIs align with the strategic objectives of the Local Government, the overall performance of the Local Government may be more appropriately measured by reporting in strategic planning documents. With the introduction of Council Plans, there is an opportunity to provide for regular reporting on organisational performance against defined targets and objectives. This could remove the individual focus and risks associated with publishing CEO performance reviews, and provide a more meaningful indicator for the community.

Target achievement

For individual targets, Members advised that a binary approach of achieved or not achieved was inadequate and supported additional options of reporting targets as partially or substantially achieved. This is particularly relevant for long term targets, which may be worked towards over several years.

The objective of reporting the overall percentage of targets achieved, in terms of 100%, more than 50% or less than 50% is unclear. Reviews do not typically include a high number of performance criteria, making an overall calculation unnecessary. In addition, this proposal would result in a performance review with 51% of targets successfully achieved receiving the same overall rating as a review where 99% of targets were achieved. Finally, this measure cannot accommodate the relative weight or significance of criteria. This requirement is unnecessary and not supported.

Exclusion of criteria from publication

Submissions highlighted the need for clear, efficient and timely processes for exclusion of criteria from publication. A general direction from the Departmental CEO excluding specified categories of KPIs from publication would avoid the need for individual decisions. If an individual direction is required, the Draft Regulations should prescribe a clear process for Council to request the direction, and a timeframe for the Departmental CEO to respond. This additional administrative process will still result in some delays. A number of Local Governments suggested that this could be avoided by allowing Councils to themselves resolve to exclude a performance criterion from publication. Concerns were also raised regarding the assessment of the public interest, and the resolution of disputes as to whether a criterion should be published.

Indicative Member comments

"This inequitable treatment places undue pressure on Local Government CEOs, creating an unfair accountability burden unique to this role.

The proposal will more than likely expose CEOs and Councillors to unwarranted criticism, particularly on social media, regardless of the context behind their results. The resulting reputational risks and stress will deter talented individuals from pursuing or remaining in Local Government leadership roles, leading to a potential talent loss to the industry."

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"It should be the responsibility of the Council and not the State Government to oversee the performance of the CEO."

Recommendation 2: Publishing performance criteria and reports on performance review

2. That WALGA advise the Department of Local Government Sport and Cultural Industries to:

- a. Reconsider the publication of CEO performance reviews due to the identified risks, and available alternatives for reporting on organisational performance.*
- b. If proceeding with publication of CEO performance reviews:*
 - i. Include an option to state that a target was "substantially" or "partially" achieved ; and*
 - ii. Remove the requirement for a statement of whether all, more than 50% or less than 50% of targets were achieved.*
- c. Allow categories of contractual and agreed performance criteria to be excluded from publication by a general direction from the Departmental CEO.*
- d. Provide a clear process for Council to request a performance criterion be excluded from publication and receive a response from the Departmental CEO within a prescribed timeframe.*
- e. Commit to a review of the impact of publication requirements within 3 years with reference to community perception, Council and CEO satisfaction and CEO recruitment and retention.*
- f.*

2.2. Independent persons panel (CEO recruitment)

Relevant Draft Regulations

Draft Regulation 18FAB requires the Departmental CEO to establish a panel of independent persons by 1 July 2025. Under Draft Regulation 18FAB(3) it will be mandatory for Councils to appoint a person from the independent persons panel to serve on CEO recruitment panels. It is noted that the original reform proposal provided that Councils will be able to appoint people outside of the panel with the approval of the Local Government Inspector. The new s.5.39A(3)(b), which has not yet taken effect, provides for regulations allowing the Departmental CEO to authorise a Local Government not to involve a member of the panel. This does not appear in the Draft Regulations.

Draft Regulation 18FAC prescribes that members of the independent persons panel must not continue to serve on a CEO selection panel if they become aware they have a disqualifying interest. Disqualifying interest is defined in terms equivalent to financial and impartiality interests.



Comment

Key concerns included a lack of clarity about the selection criteria and processes to be followed by the Departmental CEO in establishing the panel, the capacity for Councils to appoint independent members from within their own districts, and the management of conflicts of interest.

Opposition to mandatory appointment

It is noted that Local Governments have been required to include an independent person on CEO selection panels since 2021 and have done so successfully. It is not clear whether there is any need for a mandatory appointment from a pre-selected panel of independent persons. Members expressed concerns that this requirement represents unwarranted interference in Local Government processes and undermines Local Government autonomy. Local Governments identified the need for an independent person to understand the local context to be able to judge the suitability and culture fit of a candidate for CEO. The requirement to select from a panel, or to seek approval to appoint a person from within the district, adds an additional layer of bureaucracy to the CEO recruitment process.

Selection criteria and processes for independent persons panel

Members expressed concerns at the lack of available information regarding:

- the processes for nomination and appointment to the independent persons panel,
- terms and conditions of appointment (including standards of performance and behaviour),
- selection criteria,
- induction or training to be undertaken,
- size of the panel, and
- the representation of regions, different backgrounds, skills and experience.

Unavailable or unsuitable panel members may cause delays to CEO recruitment processes. For the panel to function effectively, there will need to be enough members to meet demand when there are multiple simultaneous recruitment processes. Members from regional and remote areas, and those with a range of Local Government and corporate experience will need to be recruited. If recruitment of independent persons has not already begun, it seems unlikely that the panel will be operational by 1 July 2025. A delayed commencement date of 1 July 2026 would allow the Departmental CEO to both establish the panel and provide further information to Local Governments about the composition and administration of the panel.

Appointment of persons not on the panel

There is strong support for Councils to be able to appoint an independent person from outside the panel, with approval from the Departmental CEO or Local Government Inspector if necessary. This mechanism could be used where there is a lack of available panel members, where there are no panel members from the Local Government district or neighbouring area, or where there are no panel members with the skills and experience



identified as necessary by the Local Government. If approval is to be required, the process must be clear and efficient.

Conflicts of interests

There would be a benefit in requiring all members of the independent persons panel to complete conflicts of interest training. However, the requirement that an independent member with an impartiality interest withdraw from a selection panel may be unworkable. The nature of the Local Government sector in WA makes it highly likely that one or more candidates may be known to an independent panel member in some way. Impartiality interests are very broad, requiring only a reasonable perception that impartiality could be affected. This could arise from common membership of a committee or other body, or a close personal relationship. Instead of automatic disqualification it may be appropriate to require that an impartiality interest be disclosed and allow the Council to decide whether the interest is significant enough that the independent person should be disqualified. In any case, the process for managing conflicts of interest should be simple, consistent and streamlined. Members requested further support and clarification from DLGSC in the application of the conflicts of interest requirements.

Indicative Member comments

"Very little detail has been provided as to the candidate profile for the independent persons panel. It is difficult to fairly consider this proposal without knowing the criteria the Department is considering for selection to the panel."

"What is proposed is unnecessary and will not add much value to options already for Council. What is the evidence that suggests this change is warranted?"

Recommendation 3: Independent persons panel

3. That WALGA advise the Department of Local Government Sport and Cultural Industries to:

- a. Reconsider the need for a mandatory appointment from the panel of independent persons, as the current system is functioning effectively and the proposal introduces red tape, creates the potential for delay and undermines the general competency of Local Governments.*
- b. If proceeding with the requirement to appoint from the independent persons panel to CEO selection panels:*
 - i. Revise the commencement date to no earlier than 1 July 2026.*
 - ii. Provide Local Governments with further information regarding the process and criteria for selection of members of the panel of independent persons, the composition of the panel, and terms and conditions of appointment.*
 - iii. Ensure that there are sufficient available and suitable members of the panel to avoid delays to CEO recruitment.*

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- iv. *Provide a clear and efficient process for Local Governments to appoint an independent person from outside the panel.*
- v. *Require that an independent person appointed to a CEO recruitment panel disclose any impartiality interests and allow Council to decide whether the person should be disqualified.*

2.3. Certification, recruitment and termination

Relevant Draft Regulations

Under the current r. 18FB of the *Local Government (Administration) Regulations 1996* (the Administration Regulations), following a CEO selection process the Council is required to certify that a person has been employed in accordance with the Model standards for CEO recruitment, performance and termination (the CEO Standards), found in Schedule 2 of the Administration Regulations. Draft Regulation 18FBA will require a separate certification if the recruitment process results in the renewal of the contract of the incumbent CEO.

The Draft Regulations will also insert new clauses in the CEO Standards. A replacement clause 13 will clarify that the contract of a CEO who has held the position for 10 years or more cannot be varied to extend their contract term, or renewed unless they are the successful candidate following a selection process. It is noted that this replacement clause no longer specifies that a selection process must be conducted before the expiry of the incumbent CEO's contract.

A new clause 15A provides for the following information to be provided as part of a performance criterion (contractual or agreed):

- The relevant aspect of the CEO role
- The indicator to be used to assess performance
- The target to be achieved
- The evidence to be used

This requirement to include a target for each performance criterion underpins the requirements for performance review statements. It is noted that no transitional provisions are provided for existing contractual performance criteria which may not meet these requirements.

A new clause 25 will provide that some clauses of the CEO Standards will not apply to termination during the probation period, if the contract provides for a probation period and probationary review, and those contractual requirements are met.

Comment

There were divided views on the requirement for separate certification, but support for the retention of a requirement to conduct a selection process before contract expiry, the option to include additional information in a performance criterion and the proposed modification of the CEO Standards in relation to termination during probation.



Certification of renewal

A new regulation (Draft Regulation 18FBA) imposing a separate requirement to certify that a contract renewal was in accordance with the CEO Standards may be an unnecessary duplication. A renewal of the CEO's contract under those circumstances would still be employing a person in accordance with the CEO Standards. If specific reference to renewal is considered necessary, a clarification could be incorporated in the existing r.18FB so that an appropriate certification can be made whether a renewal or a new appointment has occurred.

Recruitment prior to contract expiry

Members confirmed that the new clause 13 should continue to specify that a recruitment and selection process must be conducted before the expiry of the incumbent CEO's contract.

Information included in performance criteria

Members agreed that an additional subclause should provide for the inclusion of any additional information agreed to by the Council and CEO.

Termination during probation

Some members expressed concerns regarding the modification of the CEO Standards in relation to termination during probation. Others noted that contractual and employment law requirements will continue to apply. The draft subclause 25(a) appears to have the effect that the CEO Standards will apply in full to termination during the probation period if the CEO has ever been an employee of the Local Government before becoming CEO. Employment that may have occurred a significant time ago, or in a significantly different role, seems irrelevant to the probationary performance of a CEO. This subclause should be deleted.

Recommendation 4: Certification, recruitment and termination

4. That WALGA advise the Department of Local Government Sport and Cultural Industries to:

- a. Incorporate certification of renewal of a CEO contract in the existing Administration Regulation 18FB rather than introducing a separate requirement.*
- b. Where a recruitment and selection process is required as the incumbent CEO has held the position for more than 10 years, retain the requirement to conduct the process prior to the expiry of the incumbent CEO contract.*
- c. Insert an additional subclause in the new Clause 15A to provide for any additional information the Local Government and CEO agree to be included in the performance criterion.*



d. Delete draft subclause 25(a) so that past employment at a Local Government does not affect the application of the CEO Standards to termination during the probationary period.

3. Registers

3.1. General considerations

Summary of Draft Regulations

Draft Regulation 29E provides that the CEO will be required to keep registers on and from 1 July 2025. Registers must be up to date on that date and updated at intervals of no more than 3 months.

The Grants and Sponsorships Register (Draft Regulation 29G) must include grants and sponsorships provided in the last 5 years. The Development contributions register (Draft Regulation 29H) must include any unexpended contributions (regardless of when payment was originally made) and any that were exhausted in the last 5 years. The Leases of land register (Draft Regulation 29F) and Contracts register (Draft Regulation 29I) require current leases and contracts to be included (subject to the definitions and requirements specified), regardless of when they were entered into. Each register is required to contain different information, including individual names and addresses.

Comment

Local Governments expressed a range of concerns that are applicable to all registers, including the administrative burden, unreasonable commencement and retrospectivity, lack of clarity and difficulty in applying the requirements, and the implications of the *Privacy and Responsible Information Sharing Act 2024* (the PRIS Act).

Administrative burden

Local Governments already have significant disclosure and reporting requirements. In many cases the proposed registers at least partially duplicate existing requirements. The imposition of additional compliance requirements imposes an administrative burden on Local Governments with little demonstrable benefit. While the stated aim of the registers is to increase community understanding through enhanced transparency, Members assert that this is not what community wants. The resources required to fulfill these obligations will detract from service delivery and genuine efforts to build capacity and improve governance. This is particularly the case where broad definitions and application will require a high number of register entries for matters of little value or significance.

Commencement

The proposed commencement date of 1 July 2025 is unworkable and should be extended until at least 1 July 2026 for all registers. Responses emphasised the unreasonable resource demand in compiling and preparing these registers, as well as establishing new systems and processes to support the ongoing updates. A number identified the need for additional resources, or an anticipated cost to service delivery should the proposed commencement date be maintained. A delayed commencement date would also enable

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DLGSC to develop templates and supporting resources and test their suitability with Local Governments.

Retrospectivity

The retrospective aspect of the registers generates much of the administrative burden as well as significant privacy and confidentiality concerns. The identification and extraction of historic information is unnecessarily onerous. Members expressed concern that requirements for retrospectivity appeared arbitrary, imposed excessive red tape, and an administrative burden disproportionate to any public benefit. Submissions expressed the view that it is difficult to identify the public interest in redundant information that does not reflect an ongoing relationship. Further, the third parties involved in these historic transactions had no knowledge of the potential publication of their information when they entered the transaction. This heightens concerns regarding privacy and confidentiality, as well as posing a significant reputational risk for Local Governments. Affected parties may reasonably expect to be notified prior to publication, and this will be another burden for Local Governments.

Revising all registers to only include agreements entered *after* the commencement date would significantly reduce the administrative burden, allow Local Governments to implement systems to capture the necessary information, and inform third parties about the way in which their information will be used.

Unclear application

Members expressed concern that the Draft Regulations lack clarity, and their application is difficult to understand. Local Governments have requested that templates and supporting resources be provided to reduce the burden on individual Local Governments. To demonstrate the practical application of the Draft Regulations, these templates should be populated with example data and tested with Local Governments of different size and scale.

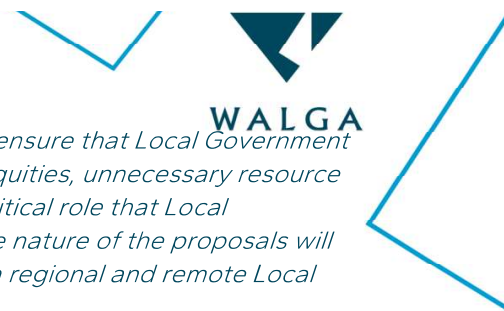
PRIS Act Implications

The 2022 Reform Proposals pre-date the PRIS Act, which was assented to on 6 December 2024 and is expected to fully come into effect in 2026. Once in effect, it will govern the collection, use, disclosure and handling of personal information by Local Governments and across the public sector. The PRIS Act includes provisions relating to public registers, and the rights of individuals in relation to registers kept in accordance with a written law. Local Governments are required to undertake extensive preparation for their PRIS Act responsibilities. The imposition of these new register requirements will add to the complexity of Local Government implementation of the PRIS Act. Rather than each Local Government identifying the PRIS Act implications of the proposed registers and developing systems to fulfil their responsibilities, DLGSC should conduct the required analysis and provide practical advice to all Local Governments.

Indicative Member Comments

"Part of the reform agenda justification centred on the elimination of unnecessary "red tape" and in the absence of valid justification retrospective compliance represents the imposition of red tape on the local government sector."

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"Systems, policies and templates need to be put in place to ensure that Local Government remains effective, and these proposals do not introduce inequities, unnecessary resource demands and operational inefficiencies, or undermine the critical role that Local Government plays within the community. ... the retrospective nature of the proposals will place an unreasonable and unnecessary resource burden on regional and remote Local Governments."

Recommendation 5: Registers general considerations

5. That WALGA advise the Department of Local Government Sport and Cultural Industries to:

- a. *Revise the commencement date for the keeping of registers under the Draft Regulations to no earlier than 1 July 2026.*
- b. *Remove all requirements for retrospectivity in the keeping of registers, as they impose an unreasonable and unnecessary regulatory burden and heighten privacy and confidentiality concerns.*
- c. *Develop and provide, in consultation with Local Governments, supporting documentation including templates for each register with examples completed.*
- d. *Undertake an analysis of the application and implications of the Privacy and Responsible Information Sharing Act 2024 for the proposed public registers and provide practical advice to all Local Governments.*

3.2. Lease register

Summary of Draft Regulations

Draft Regulation 29F requires a register to include all current leases to which the Local Government is a party (as lessee or lessor). Leases which have expired, and those that are of less than 1 month duration (including any option to extend) are excluded. The register is to contain a range of information, including:

- the names of parties, except where the lease is a residential tenancy
- the address of the land
- the use, period and rent payable under the lease.

The term "lease" is defined extremely broadly, as follows:

lease means a lease, licence or agreement under which a person has a right to occupy or use land over a period —

(a) whether the occupation or use of the land is on an exclusive basis or otherwise; and

(b) whether the occupation or use of the land is continuous over the period or otherwise; and

(c) whether the period is a fixed period or otherwise;

The DLGSC consultation paper states that this register is for "public understanding of what the local government is using the community's property for". On that basis it is unclear why the register applies where Local Governments lease property from other parties. Local

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Governments note that information regarding property income and disposals is already disclosed in budget documents, and as required under section 3.58 of the *Local Government Act 1995* (the Act). It is unclear how this general objective has been translated into the specific requirements in the Draft Regulation, which do not appear to reflect the public interest.

Comment

Submissions expressed considerable concerns with the application of this draft regulation. Issues include the breadth of the lease definition, safety and confidentiality for residents and community groups, commercial in confidence information and the ability of Local Governments to generate best value from assets, whether through commercial returns or community benefits.

Lease definition

The DLGSC consultation paper refers to "leases, licences to occupy and tenancy agreements" as being captured by this register. However, the definition of lease is so broad, it also appears to include:

- Regular sports court, reserve or community hall/venue hire
- Permits issued under local laws or regulations such as alfresco, street trading or obstruction permits
- Gym memberships
- Contracts for the provision of streetside advertising benches and signs, bus shelters or EV charging stations
- Long term caravan park stays

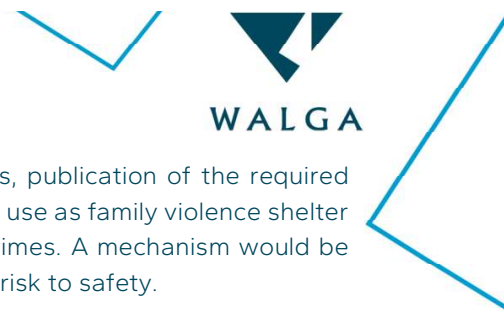
Any of the above may provide the right to occupy or use land for periods of over 1 month, noting that the use of the land does not need to be continuous or exclusive. In contrast, the requirements for property disposals under s.3.58 of the Act exclude anything provided by the Local Government (for a fee or otherwise) in performance of a function under law, disposals in the course of a trading undertaking, and low value disposals.

The current lease definition would capture an extremely high volume of information, posing a significant challenge to Local Governments. This volume is also likely to minimise any transparency benefit as any significant leases would be lost in the pages of irrelevant information.

Privacy and confidentiality

While the names of residential tenants would not be included in the register, publication of the address and rent payable may undermine the protection of the identity, privacy and security of tenants. This is particularly the case in small communities, and in relation to housing provided to Local Government employees where it may be easy to connect an individual with the published address. Where housing is a component of employment contracts, the publication of this information exposes confidential employment information, and may affect staff attraction and retention in regional areas. This could be avoided if residential tenancies were excluded from the register entirely.

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Similarly, where properties are leased to community groups, publication of the required details may cause safety concerns, for example in relation to use as family violence shelter or by a community group that may be vulnerable to hate crimes. A mechanism would be required to enable exclusion of information that may pose a risk to safety.

Finally, the register may require the disclosure of information that would ordinarily be commercial in confidence, or subject to confidentiality clauses under the lease agreement. For future transactions, this may impair Local Governments' ability to act commercially and generate revenue, or achieve competitive terms when leasing property.

As noted above, all concerns in relation to privacy and confidentiality are exacerbated if the publication requirement applies to leases already in effect. Those tenants (and lessors) had no opportunity to consider or consent to publication. This may pose significant risks to those parties, as well as reputational, legal and financial risks to the Local Government.

Alternatives

Given the significant issues with this register, WALGA's view is that it should not proceed at this time. Members suggest alternative options to achieve scrutiny of Local Government leases, including:

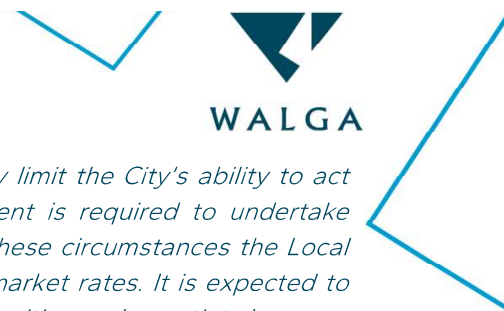
- Publishing a register that consolidates the already public information about disposals made in accordance with s.3.58 of the Act. This would exclude exempt disposals, such as residential leases (including to employees), and disposals to not for profit organisations. Further analysis would be required in relation to publication of any commercial information that was not already in the public domain. This approach would contribute to public understanding of the use of Local Government property without including low value transactions, or those that would put individuals or groups at risk.
- Requiring a register of leases to be provided as a confidential report to the Audit/Audit Risk and Improvement Committee, or to the Local Government Inspector. With the upcoming requirement for external members of Audit Risk and Improvement Committees, this would enable objective scrutiny of these agreements without publishing confidential information.

Indicative Member comments

"Council strongly objects to the disclosure of the location of any land subject to a residential tenancy agreement to help protect the identity, privacy and security of Shire employees and other tenants."

"Compared with future lessees (who will have the ability to make an informed decision on leasing with the City knowing what will become public information), existing lessees may be compromised by the release of their data. Additionally, had those lessees have known the level of their information which is required to be published they may have opted not to lease with the local government."

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"The City is concerned the proposed regulation will greatly limit the City's ability to act commercially. In certain circumstances, a Local Government is required to undertake commercial negotiations, tenders and evaluations. Under these circumstances the Local Government is expected to achieve value for money and market rates. It is expected to have the ability in all negotiations to protect its commercial position and negotiate leverage for the benefit of all ratepayers."

Recommendation 6: Lease register

6. That WALGA advise the Department of Local Government Sport and Cultural Industries to

- a. *Not proceed with the lease register as proposed.*
- b. *Engage with Local Governments to identify more appropriate and targeted options for achieving the stated objective of community understanding of use of Local Government property.*
- c. *As a minimum, if proceeding with a lease register:*
 - i. *Provide an improved definition of "lease" to exclude low value, high volume and insignificant agreements*
 - ii. *Exclude all residential tenancies*
 - iii. *Provide for redaction of personal, confidential or commercial in confidence information.*

3.3. Grants and sponsorship register

Summary of Draft Regulations

Draft regulation 29G requires the CEO to keep a register of all grants and sponsorships made by the Local Government in the last 5 years with a value of \$500 or more. The value includes the monetary equivalent of any non-monetary component, and includes the value of any other grant or sponsorship to the same recipient for substantially the same purpose. There is no specified time limit for this cumulative value calculation. This appears to require local governments to consider any grant ever made to the recipient when determining whether a proposed grant has a cumulative value of \$500 or more. The register must include the date, purpose and value of the grant or sponsorship, the name of the recipient, the final report date (if any) and whether any required reports have been made.

The DLGSC consultation paper states that the register:

- provides transparency about spending "that does not always result in a return for the local government"
- "addresses some of the matters arising from the Inquiry into the City of Perth"
- "assumes that local governments are undertaking prudent governance measures in managing their grants and sponsorships" including written agreements with reporting and acquittal requirements.



The Inquiry into the City of Perth identified concerns regarding Council Member relationships with beneficiaries, the provision of tickets and associated benefits, and governance arrangements including approvals and acquittals.

It is suggested that the DLGSC could more directly achieve the identified objectives by providing guidelines to support Local Governments in ensuring that grant and sponsorship programs demonstrate benefits to the community, and include appropriate governance arrangements. If issues were identified that required further intervention, targeted measures could be implemented.

Comment

A small number of Local Governments expressed general support for the register, subject to the exclusion of retrospectivity. However the majority of submissions identified concerns regarding the value threshold, privacy and confidentiality, and a lack of clarity in the calculation of value.

Value Threshold

The \$500 threshold appears arbitrary and not a material figure. Such a low value increases the administrative burden for Local Governments, while undermining effective transparency through disclosure of insignificant information. Members suggested more appropriate thresholds ranging from \$1000 to \$20,000, while some proposed a tiered arrangement. WALGA considers that \$5000 is an appropriate threshold amount.

Retrospectivity

As in relation to other registers, Members noted the unreasonably onerous burden of retrospectivity, with some stating that it was beyond their current capacity. Several submissions pointed out that the 5-year period would include the height of the COVID pandemic, when many Local Governments (with the encouragement of the State Government) provided increased monetary and non-monetary support to their communities.

Privacy and confidentiality

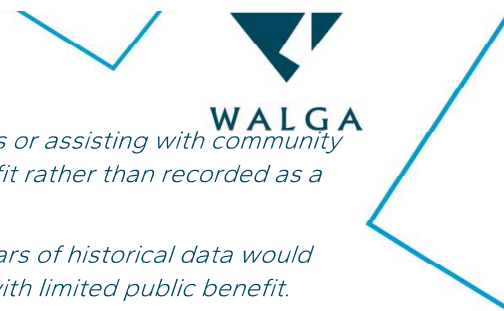
The publication of the name of the recipient poses a privacy concern for grants to individuals, particularly children. Members also identified confidentiality concerns for other entities, including where details of the grant or sponsorship may be commercial in confidence, subject to other funding or pending public announcement.

Lack of clarity

There are also concerns regarding the lack of meaningful definitions for grant and sponsorship, the complexity of establishing cumulative value, and the monetary equivalent of in-kind support. Submissions also queried whether waived or concessional fees and charges (in accordance with s.6.12(1)(b) of the Act) would constitute a grant.

Indicative Member comments

"The amount of \$500 is not considered significantly material enough to justify the maintenance of the register. The commencement threshold should be \$5,000 to avoid trivialising the accountability requirement."



"In-kind support, such as preparing ovals for school carnivals or assisting with community events, has historically been provided as a community benefit rather than recorded as a formal transaction.

With staff turnover and limited resourcing, retrieving five years of historical data would place a significant administrative burden on small councils with limited public benefit. Instead, an effective date moving forward should be applied."

Recommendation 7: Grants and sponsorship register

7. That WALGA advise the Department of Local Government Sport and Cultural Industries to

- a. Provide improved definitions of grant and sponsorship that distinguish between the two categories and exclude concessional fees and charges
- b. Provide guidance on valuation of in-kind support
- c. Increase the threshold amount to \$5000 with no cumulative calculation
- d. Exclude grants to individuals/natural persons from the register
- e. Provide for redaction of personal, confidential or commercial in confidence information

3.4. Development contributions register

Summary of Draft Regulations

Draft regulation 29H requires the CEO to keep a register of all development contributions received by the Local Government, excluding any that were exhausted (fully applied or refunded) more than 5 years ago. Development contribution is defined to include money received via development contribution plans (DCPs) as well as payments in lieu of parking, public open space or other compliance requirement.

The register must include:

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

The DLGSC consultation paper states that the register "promotes good recordkeeping and transparency for the public and applicants in knowing that such money is being appropriately kept and spent."

Comment

The majority of submissions expressed concerns regarding the administrative burden with limited improvements in transparency and oversight of Developer Contributions Plan (DCPs) than is currently provided for under the state planning framework. This burden is exacerbated by the retrospectivity and short implementation timeframe. Those Local Governments with a high number of DCPs advise that this is likely to lead to delays and

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increased costs in the administration of DCPs. Privacy considerations and practical issues with the calculation of interest for individual contributions, and the list of items and percentage of expenditure were also identified.

Duplication of Reporting

The proposed register requirements duplicate existing reporting obligations, creating unnecessary administrative burdens without adding value. All Local Governments with formal DCPs already maintains detailed records and registers for development contributions as part of their reporting requirements under State Planning Policy 3.6 and Local Planning Scheme. The proposed registers would replicate information, particularly the Cost Apportionment Schedules and Annual Status Report, already documented and published on Local Government websites, leading to redundant efforts and potential confusion. This duplication creates an unnecessary burden on Local Government resources and increases the risk of incorrect or contradictory information being published.

Retrospective Application

The requirement to retrospectively apply the register to all development contributions that have yet to be exhausted is seen as highly problematic due to the significant resources required. As DCPs can be active over a long period, this may involve records dating back over 20 years. Members highlighted that implementing the proposed register retrospectively could necessitate the employment of additional staff. This cost would ultimately be passed onto property owners within the DCP area, ultimately increasing the cost of land and housing. Additionally, historical data on interest calculations may not be available or in a usable format, complicating compliance with the new requirements. Members expressed concerns about the significant workload involved in collecting and collating data retrospectively, suggesting that there should be no retrospectivity in relation to register entries.

Implementation Timeframe

The proposed timeframe for implementing the register is unrealistic given the considerable resources needed to assemble the required information. WALGA does not support the proposed timeframe, as the resources needed to gather and report on historical contributions are substantial. This would likely require additional staff and significant administrative efforts, which are not feasible within the proposed timeframe.

Privacy Considerations

Publishing individual names and addresses of contributors raises significant privacy issues, especially when contributors are private individuals rather than companies, which is common. A number of Local Governments raised concerns about the privacy implications of publishing individual names and addresses of contributors and WALGA shares these concerns. Publishing individuals' names provides limited additional public transparency over DCP and other planning contributions, and the potential impact of this likely outweighs the limited benefit.

Interest Calculation

Calculating and assigning interest to individual contributions will be administratively burdensome and potentially inaccurate. Several Local Governments outlined that it is difficult to assign interest earned to each separate contribution as contributions are often

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pooled and invested collectively, making it challenging to track interest for individual contributions accurately. This complexity could lead to significant administrative burdens and increased costs. Again, it is highlighted that calculating interest attributable to specific contributions would involve a significant administrative burden, the cost of which would be passed on to developers, ultimately increasing the cost of land and housing.

List of items contribution was spent on

At the highest level, all contributors pay for all pieces of infrastructure within the DCP according to the extent of their land ownership. However, once sufficient funds are collected to deliver the highest priority project, the available monies will be used accordingly. At that point in time, 100% of a contribution could be recorded as having been spent on an item. However, as further contributions are received and applied to other items, this would change. Once the DCP is exhausted, all contributions could be recorded as having been proportionally applied to all items. As a result, the information recorded in the register at any point in time may be meaningless and likely to cause confusion.

Indicative Member comments

"A DCP for a particular area will usually include contributions received at different times over a long period. The amount of interest each contribution has earned will be difficult to discern (as opposed to the amount of interest accrued to the DCP overall)."

"It might be notionally more appropriate for the requirement to be included within the Planning & Development Act (2005) as the head of power for the establishment of developer contributions, instead of the Local Government Act."

Recommendation 8: Development contributions register

8. That WALGA advise the Department of Local Government Sport and Cultural Industries to:

- a. *Not proceed with the contributions register as proposed.*
- b. *Engage with Local Governments to identify ways that any new requirements for publication of development contributions could be aligned with existing reporting obligations, ensuring consistency and reducing administrative burden.*
- c. *As a minimum, if proceeding with a development contributions register:*
 - i. *Limit reporting to new contributions moving forward.*
 - ii. *Implement measures to protect the privacy of contributors by ensuring that individual names and addresses are not published.*
 - iii. *Provide clear guidelines for the calculation of interest and attribution of contributions to items.*



3.5. Contracts for goods and services register

Summary of Draft Regulations

Draft Regulation 29I requires the CEO to keep a register of contracts under which goods or services are to be supplied (i.e. active/current contracts). Contracts are excluded if the total of the consideration already paid by the Local Government and the expected consideration remaining to be paid is less than \$50,000. When calculating this total, Local Governments must also consider any other active contracts with the same supplier for substantially the same purpose. It appears that this cumulative value only considers contracts that are active at the same time, not those under which no further good or services are to be supplied (i.e. expired, discharged or terminated contracts).

The register must include:

- the name of the supplier,
- the procurement method,
- the date the contract was made
- any fixed period for the supply of the goods or services, and if extended, the fixed period as extended
- a summary of the goods and services and of each variation,
- the amount of consideration that has been paid, the expected amount remaining to be paid and the sum of those two values.

The DLGSC consultation paper aligns the \$50,000 threshold with a recommendation from the Inquiry into the City of Perth. WALGA notes that the reform proposal in 2022 specified a threshold value of \$100,000.

The consultation paper states that the register "promotes good recordkeeping, transparency for the public and allows potential suppliers and service providers sufficient time to plan when big contracts are advertised for tender."

While the register will alert potential suppliers to the fixed period for each contract, it is noted that this is not a reliable indicator of when Local Governments will advertise for tenders. Many Local Governments proactively inform the market of upcoming tenders, and this approach could be encouraged with appropriate guidance.

Comment

All submissions that commented on the contract register expressed a range of concerns, including the administrative burden associated with the unreasonably low threshold value and duplication of existing reporting requirements. Members raised heightened fraud risks, and issues relating to commercial in confidence information. There is also a lack of clarity regarding the definition of contract and contract value.

Administrative burden

Members face significant resource challenges to implement and maintain a register for contracts over \$50,000, given existing systems are not designed for this purpose. Smaller Local Governments lack existing capacity, while larger Local Governments with a high

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number of contracts over this value would need to introduce new reporting processes. Members highlighted concerns with reporting variations in some circumstances. For example, where a contract is awarded without a lump sum. Similarly, the regular updating of payments made, and calculation of expected payments pending would require considerable effort. If it is considered necessary to report both anticipated and actual spend, the total spend could be recorded at the end of the contract rather than progressively updated.

Duplication of reporting

Local Government already provide transparency regarding contracts and payments via the tenders register and monthly payment reporting to Council. The proposed register overlaps significantly with existing transparency measures, leading to duplicated efforts. This is particularly the case for contracts above the tender threshold, which would appear on both the contract and tenders registers. Instead, contracts arising from a public tender should be excluded from the contract register.

Low value threshold

The \$50,000 value threshold is a primary cause of the unreasonable administrative burden. This threshold would require a high volume of reporting on low value contracts, with minimal transparency benefits. Members advised that this figure is not material and should be revised to \$250,000, or at a minimum, the \$100,000 proposed on 2022. It is noted that the Inquiry into the City of Perth was commenced in 2018 and reported in 2020. The proposed threshold does not reflect current market conditions. A value threshold of \$250,000 (exclusive of GST) would limit reporting to significant contracts, in alignment with the tenders register. This would provide a transparency benefit in reporting high value tender exempt procurement, which may not currently be published.

Fraud risk

Members advised that the online publication of more detailed information regarding current contracts would heighten the risk of fraud and cybercrime targeting Local Governments and their contractors. Providing a target list of suppliers with active contracts, and information about both past and future payments may assist criminals to fraudulently impersonate either the Local Government or the supplier to the other party. The removal of cumulative and pending payment information could reduce some of this risk.

Commercial information and disadvantage

Members raised concerns regarding confidentiality clauses in existing contracts, as well as the potential to deter suppliers from contracting with Local Government. There are also concerns that increased access to contract details could allow competitors to manipulate pricing strategies, creating an anti-competitive environment and potential financial disadvantages for Local Governments.

Definition of Contract

Members have expressed concerns regarding a lack of clarity regarding what constitutes a contract for the purposes of the register. In particular, Members queried whether purchase orders, service arrangements, and the supply of utilities should be included.

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Contract value

Significant confusion was reported regarding the calculation of contract value, with reference to financial years, total contract term, and aggregating value across multiple contracts. It appears that the Draft Regulations only require active contracts with a supplier to be considered when calculating cumulative value, but this should be clarified. Rather than referring to the sum of consideration paid and expected amount of consideration still to pay, the draft regulation should require a contract to be included in the register "if the consideration under the contract is, or is expected to be, more, or worth more, than \$250 000". This is the familiar language from the *Local Government (Functions and General) Regulations 1996*.

Indicative Member comments

"The requirements for the register seem to point greater attention to the status of contracts which could elevate the risk of fraud. If the register were to not include the constant updates, it could alleviate the risk."

"Surely the procurement processes that local governments are audited on should be enough without having to duplicate by having a register that requires creation and maintenance."

Recommendation 9: Contracts for goods and services register

9. That WALGA advise the Department of Local Government Sport and Cultural Industries to

- a. Increase the threshold value for inclusion in the contracts register to \$250,000 exclusive of GST, to restrict reporting to material contracts and avoid unnecessary administrative burden.*
- b. Exclude contracts entered into following a public tender from the contract register to avoid duplication.*
- c. Remove requirement to regularly update payments made and payments pending.*
- d. Provide a clear definition of contract, addressing concerns raised by Local Governments.*
- e. Clarify the requirements for aggregating contract value, ensuring they are not unreasonable for Local Governments to apply.*



4. Recommendations

Recommendation 1: General

1. *That WALGA advise the Department of Local Government Sport and Cultural Industries to:*
 - a. *Ensure that all amendment regulations support the stated aim of reducing red tape, increasing consistency and simplicity.*
 - b. *Consider Local Government reporting responsibilities holistically, aligning any new requirements with existing obligations to avoid duplication and achieve efficiency.*
 - c. *Consider the cumulative burden of the full suite of reforms to be implemented, upcoming elections, and variation in systems, size and scale.*
 - d. *Ensure there is no retrospectivity of requirements as this creates unreasonable compliance obligations.*
 - e. *Review the Draft Regulations to improve clarity and plain English drafting.*

Recommendation 2: Publishing performance criteria and reports on performance review

2. *That WALGA advise the Department of Local Government Sport and Cultural Industries to:*
 - a. *Reconsider the publication of CEO performance reviews due to the identified risks, and available alternatives for reporting on organisational performance.*
 - b. *If proceeding with publication of CEO performance reviews:*
 - i. *Include an option to state that a target was "substantially" or "partially" achieved; and*
 - ii. *Remove the requirement for a statement of whether all, more than 50% or less than 50% of targets were achieved.*
 - c. *Allow categories of contractual and agreed performance criteria to be excluded from publication by a general direction from the Departmental CEO.*
 - d. *Provide a clear process for Council to request a performance criterion be excluded from publication and receive a response from the Departmental CEO within a prescribed timeframe.*
 - e. *Commit to a review of the impact of publication requirements within 3 years with reference to community perception, Council and CEO satisfaction and CEO recruitment and retention.*



Recommendation 3: Independent persons panel (CEO recruitment)

3. That WALGA advise the Department of Local Government Sport and Cultural Industries to:
 - a. Reconsider the need for a mandatory appointment from the panel of independent persons, as the current system is functioning effectively and the proposal introduces red tape, creates the potential for delay and undermines the general competency of Local Governments.
 - b. If proceeding with the requirement to appoint from the independent persons panel to CEO selection panels:
 - i. Revise the commencement date to no earlier than 1 July 2026.
 - ii. Provide Local Governments with further information regarding the process and criteria for selection of members of the panel of independent persons, the composition of the panel, and terms and conditions of appointment.
 - iii. Ensure that there are sufficient available and suitable members of the panel to avoid delays to CEO recruitment.
 - iv. Provide a clear and efficient process for Local Governments to appoint an independent person from outside the panel.
 - v. Require that an independent person appointed to a CEO recruitment panel disclose any impartiality interests and allow Council to decide whether the person should be disqualified.

Recommendation 4: Certification, recruitment and termination

4. That WALGA advise the Department of Local Government Sport and Cultural Industries to:
 - a. Incorporate certification of renewal of a CEO contract in the existing Administration Regulation 18FB rather than introducing a separate requirement.
 - b. Where a recruitment and selection process is required as the incumbent CEO has held the position for more than 10 years, retain the requirement to conduct the process prior to the expiry of the incumbent CEO contract.
 - c. Insert an additional subclause in the new Clause 15A to provide for any additional information the Local Government and CEO agree to be included in the performance criterion.
 - d. Delete draft subclause 25(a) so that past employment at a Local Government does not affect the application of the CEO Standards to termination during the probationary period.

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Recommendation 5: Registers general considerations

5. That WALGA advise the Department of Local Government Sport and Cultural Industries to:
- a. Revise the commencement date for the keeping of registers under the Draft Regulations to no earlier than 1 July 2026.
 - b. Remove all requirements for retrospectivity in the keeping of registers, as they impose an unreasonable and unnecessary regulatory burden and heighten privacy and confidentiality concerns.
 - c. Develop and provide, in consultation with Local Governments, supporting documentation including templates for each register with examples completed.
 - d. Undertake an analysis of the application and implications of the Privacy and Responsible Information Sharing Act 2024 for the proposed public registers and provide practical advice to all Local Governments.

Recommendation 6: Lease register

6. That WALGA advise the Department of Local Government Sport and Cultural Industries to:
- a. Not proceed with the lease register as proposed.
 - b. Engage with Local Governments to identify more appropriate and targeted options for achieving the stated objective of community understanding of use of Local Government property.
 - c. As a minimum, if proceeding with a lease register:
 - i. Provide an improved definition of "lease" to exclude low value, high volume and insignificant agreements
 - ii. Exclude all residential tenancies
 - iii. Provide for redaction of personal, confidential or commercial in confidence information.

Recommendation 7: Grants and sponsorship register

7. That WALGA advise the Department of Local Government Sport and Cultural Industries to:
- a. Provide improved definitions of grant and sponsorship that distinguish between the two categories and exclude concessional fees and charges.
 - b. Provide guidance on valuation of in-kind support.
 - c. Increase the threshold amount to \$5000 with no cumulative calculation.
 - d. Exclude grants to individuals/natural persons from the register.
 - e. Provide for redaction of personal, confidential or commercial in confidence information.



Recommendation 8: Development contributions register

- 8. That WALGA advise the Department of Local Government Sport and Cultural Industries to:*
- a. Not proceed with the contributions register as proposed.*
 - b. Engage with Local Governments to identify ways that any new requirements for publication of development contributions could be aligned with existing reporting obligations, ensuring consistency and reducing administrative burden.*
 - c. As a minimum, if proceeding with a development contributions register:*
 - i. Limit reporting to new contributions moving forward.*
 - ii. Implement measures to protect the privacy of contributors by ensuring that individual names and addresses are not published.*
 - iii. Provide clear guidelines for the calculation of interest and attribution of contributions to items.*

Recommendation 9: Contracts for goods and services register

- 9. That WALGA advise the Department of Local Government Sport and Cultural Industries to:*
- a. Increase the threshold value for inclusion in the contracts register to \$250,000 exclusive of GST, to restrict reporting to material contracts and avoid unnecessary administrative burden.*
 - b. Exclude contracts entered into following a public tender from the contract register to avoid duplication.*
 - c. Remove requirement to regularly update payments made and payments pending.*
 - d. Provide a clear definition of contract, addressing concerns raised by Local Governments.*
 - e. Clarify the requirements for aggregating contract value, ensuring they are not unreasonable for Local Governments to apply.*