

## **Local Government (Administration) Amendment Regulations (No. 2) 2020**

### **Contents**

1.	Citation	1
2.	Commencement	1
3.	Regulations amended	1
<b>Part 1 — Preliminary</b>		
<b>Part 2 — Council and committee meetings</b>		
<b>Part 3 — Electors' meetings</b>		
<b>Part 4 — Local government employees</b>		
18A.	Vacancy in position of CEO or senior employee to be advertised (Act s. 5.36(4) and 5.37(3))	2
18B.	Contracts of CEOs and senior employees, content of (Act s. 5.39(3)(c))	3
18E.	False information in application for CEO position, offence	4
18F.	Remuneration and benefits of CEO to be as advertised	4
18FA.	Prescribed model standards for CEO recruitment, performance and termination (Act s. 5.39A(1))	4
18FB.	Certification of compliance with adopted standards for CEO recruitment (Act s. 5.39B(7))	5
18FC.	Certification of compliance with adopted standards for CEO termination (Act s. 5.39B(7))	5
18G.	Delegations to CEOs, limits on (Act s. 5.43)	6
19.	Delegates to keep certain records (Act s. 5.46(3))	6

19A.	Payments in addition to contract or award, limits of (Act s. 5.50(3))	6
	<b>Part 5 — Annual reports and planning</b>	
	<b>Part 6 — Disclosure of financial interests and gifts</b>	
	<b>Part 7 — Access to information</b>	
	<b>Part 8 — Local government payments and gifts to members</b>	
	<b>Part 9 — Codes of conduct for employees</b>	
	<b>Part 10 — Training</b>	
	<b>Schedule 1 — Forms</b>	
	<b>Schedule 2 — Model standards for CEO recruitment, performance and termination</b>	
	<b>Division 1 — Preliminary provisions</b>	
1.	Citation	9
2.	Terms used	9
	<b>Division 2 — Standards for recruitment of CEOs</b>	
3.	Overview of Division	10
4.	Application of Division	10
5.	Determination of selection criteria and approval of job description form	10
6.	Advertising requirements	11
7.	Job description form to be made available by local government	11
8.	Establishment of selection panel for appointment of CEO	11
9.	Recommendation by selection panel	11

10.	New process to be commenced if no suitable applicants	12
11.	Offer of appointment to position of CEO	13
12.	Appointment to position of CEO	13
13.	Recruitment to be undertaken on expiry of certain CEO contracts	14
14.	Confidentiality of information	15
	<b>Division 3 — Standards for review of performance of CEOs</b>	
15.	Overview of Division	15
16.	Performance review process to be agreed between local government and CEO	15
17.	Carrying out a performance review	15
18.	Endorsement of performance review by local government	16
19.	CEO to be notified of results of performance review	16
	<b>Division 4 — Standards for termination of employment of CEOs</b>	
20.	Overview of Division	16
21.	General principles applying to any termination	16
22.	Additional principles applying to termination for performance-related reasons	17
23.	Decision to terminate	17
24.	Notice of termination of employment	17



## **Local Government (Administration) Amendment Regulations (No. 2) 2020**

Made by the Governor in Executive Council.

### **1. Citation**

These regulations are the *Local Government (Administration) Amendment Regulations (No. 2) 2020*.

### **2. Commencement**

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Local Government Legislation Amendment Act 2019* section 22 comes into operation.

### **3. Regulations amended**

These regulations amend the *Local Government (Administration) Regulations 1996*.

*[The following text is the Local Government (Administration) Regulations 1996 showing proposed amendments in track changes. A formal amending instrument will be drafted at a later stage.]*

### **Part 1 — Preliminary**

*[There are no amendments to this Part.]*

### **Part 2 — Council and committee meetings**

*[There are no amendments to this Part.]*

### **Part 3 — Electors' meetings**

*[There are no amendments to this Part.]*

### **Part 4 — Local government employees**

*[Heading inserted: Gazette 26 Aug 2011 p. 3482.]*

#### **18A. Vacancy in position of CEO or senior employee to be advertised (Act s. 5.36(4) and 5.37(3))**

- (1) If a position of CEO, or of a senior employee, of a local government becomes vacant, the local government is to [give Statewide public notice of the position](#) ~~advertise the position in a newspaper circulating generally throughout the State~~ unless it is proposed that the position be filled by —
  - (a) a person who is, and will continue to be, employed by another local government and who will fill the position on a contract or contracts for a total period not exceeding 5 years; or
  - (b) a person who will be acting in the position for a term not exceeding one year.
- (2) [The Statewide public notice](#) ~~An advertisement referred to in subregulation (1)~~ is to contain —
  - (a) the details of the remuneration and benefits offered; and
  - (b) details of the place where applications for the position are to be submitted; and
  - (c) the date and time for the closing of applications for the position; and
  - (d) the duration of the proposed contract; and
  - (da) [a website address where the job description form for the position can be accessed; and](#)
  - (e) contact details for a person who can provide further information about the position; and

- (f) any other information that the local government considers is relevant.

*[Regulation 18A inserted: Gazette 31 Mar 2005 p. 1037-8; amended: Gazette 19 Aug 2005 p. 3872; 3 May 2011 p. 1594.]*

**18B. Contracts of CEOs and senior employees, content of (Act s. 5.39(3)(c))**

For the purposes of section 5.39(3)(c), a contract governing the employment of a person who is a CEO, or a senior employee, of a local government is to provide for a maximum amount of money (or a method of calculating such an amount) to which the person is to be entitled if the contract is terminated before the expiry date, which amount is not to exceed whichever is the lesser of —

- (a) the value of one year's remuneration under the contract; or  
(b) the value of the remuneration that the person would have been entitled to had the contract not been terminated.

*[Regulation 18B inserted: Gazette 13 May 2005 p. 2086.]*

~~**18C. Selection and appointment process for CEOs**~~

~~The local government is to approve a process to be used for the selection and appointment of a CEO for the local government before the position of CEO of the local government is advertised.~~

~~*[Regulation 18C inserted: Gazette 31 Mar 2005 p. 1038.]*~~

~~**18D. Performance review of CEO, local government's duties as to**~~

~~A local government is to consider each review on the performance of the CEO carried out under section 5.38 and is to accept the review, with or without modification, or to reject the review.~~

~~*[Regulation 18D inserted: Gazette 31 Mar 2005 p. 1038.]*~~

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**18E. False information in application for CEO position, offence**

A person must not, in connection with an application for the position of CEO of a local government —

- (a) make a statement, or give any information, as to academic, or other tertiary level, qualifications held by the applicant that the person knows is false in a material particular; or
- (b) make a statement, or give any information, as to academic, or other tertiary level, qualifications held by the applicant which is false or misleading in a material particular, with reckless disregard as to whether or not the statement or information is false or misleading in a material particular.

Penalty: a fine of \$5 000.

*[Regulation 18E inserted: Gazette 31 Mar 2005 p. 1038-9; amended: Gazette 19 Aug 2005 p. 3872; 4 Mar 2016 p. 650.]*

**18F. Remuneration and benefits of CEO to be as advertised**

The remuneration and other benefits paid to a CEO on the appointment of the CEO are not to differ from the remuneration and benefits advertised for the position under section 5.36(4).

*[Regulation 18F inserted: Gazette 31 Mar 2005 p. 1039.]*

**18FA. Prescribed model standards for CEO recruitment, performance and termination (Act s. 5.39A(1))**

Schedule 2 sets out model standards for local governments in relation to the following —

- (a) the recruitment of CEOs;
- (b) the review of the performance of CEOs;
- (c) the termination of the employment of CEOs.

**18FB. Certification of compliance with adopted standards for CEO recruitment (Act s. 5.39B(7))**

(1) In this regulation —

*adopted standards* means the standards adopted by a local government under section 5.39B or, if the local government has not adopted standards under that section, the standards taken under section 5.39B(5) to be the local government’s adopted standards.

(2) This regulation applies if —

(a) a local government appoints a person to the position of CEO of the local government; and

(b) the local government’s adopted standards in relation to the recruitment of CEOs apply to the appointment.

(3) At the time of appointing the person to the position of CEO, the local government must, by resolution\*, certify that the person was appointed in accordance with the local government’s adopted standards in relation to the recruitment of CEOs.

*\* Absolute majority required.*

(4) A copy of the resolution must be given to the Departmental CEO within 14 days after the resolution is passed by the local government.

**18FC. Certification of compliance with adopted standards for CEO termination (Act s. 5.39B(7))**

(1) In this regulation —

*adopted standards* has the meaning given in regulation 18FB(1).

(2) This regulation applies if a local government terminates the employment of the CEO of the local government.

(3) At the time of terminating the CEO’s employment, the local government must, by resolution\*, certify that the CEO was terminated in accordance with the local government’s adopted

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standards in relation to the termination of the employment of CEOs.

\* Absolute majority required.

- (4) A copy of the resolution must be given to the Departmental CEO within 14 days after the resolution is passed by the local government.

**18G. Delegations to CEOs, limits on (Act s. 5.43)**

Powers and duties of a local government exercised under the following provisions are prescribed under section 5.43(i) as powers and duties that a local government cannot delegate to a CEO —

- (a) section 7.12A(2), (3)(a) or (4); and
- (b) regulations 18C and 18D.

*[Regulation 18G inserted: Gazette 31 Mar 2005 p. 1039.]*

**19. Delegates to keep certain records (Act s. 5.46(3))**

Where a power or duty has been delegated under the Act to the CEO or to any other local government employee, the person to whom the power or duty has been delegated is to keep a written record of —

- (a) how the person exercised the power or discharged the duty; and
- (b) when the person exercised the power or discharged the duty; and
- (c) the persons or classes of persons, other than council or committee members or employees of the local government, directly affected by the exercise of the power or the discharge of the duty.

**19A. Payments in addition to contract or award, limits of (Act s. 5.50(3))**

- (1) The value of a payment or payments made under section 5.50(1) and (2) to an employee whose employment with a local

government finishes after 1 January 2010 is not to exceed in total —

- (a) the value of the person's final annual remuneration, if the person —
  - (i) accepts voluntary severance by resigning as an employee; and
  - (ii) is not a CEO or a senior employee whose employment is governed by a written contract in accordance with section 5.39;

or

- (b) in all other cases, \$5 000.

- (2) In this regulation —

***final annual remuneration*** in respect of a person, means the value of the annual remuneration paid, or payable, to the person by the local government which employed that person immediately before the person's employment with the local government finished.

*[Regulation 19A inserted: Gazette 31 Mar 2005 p. 1032; amended: Gazette 13 Jul 2012 p. 3218.]*

## **Part 5 — Annual reports and planning**

*[There are no amendments to this Part.]*

## **Part 6 — Disclosure of financial interests and gifts**

*[There are no amendments to this Part.]*

## **Part 7 — Access to information**

*[There are no amendments to this Part.]*

## **Part 8 — Local government payments and gifts to members**

*[There are no amendments to this Part.]*

**Part 9 — Codes of conduct for employees**

*[There are no amendments to this Part.]*

**Part 10 — Training**

*[There are no amendments to this Part.]*

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## Schedule 1 — Forms

[There are no amendments to this Schedule.]

### Schedule 2 — Model standards for CEO recruitment, performance and termination

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#### Division 1 — Preliminary provisions

##### 1. Citation

These are the [insert name of local government] *Standards for CEO Recruitment, Performance and Termination*.

##### 2. Terms used

(1) In these standards —

*Act* means the *Local Government Act 1995*;

*additional performance criteria* means performance criteria agreed by the local government and the CEO under clause 16(1)(b);

*applicant* means a person who submits an application to the local government for the position of CEO;

*contract of employment* means the written contract, as referred to in section 5.39 of the Act, that governs the employment of the CEO;

*contractual performance criteria* means the performance criteria specified in the CEO's contract of employment as referred to in section 5.39(3)(b) of the Act;

*job description form* means the job description form for the position of CEO approved by the local government under clause [5(2)];

*local government* means the [insert name of local government];

*selection criteria* means the selection criteria for the position of CEO determined by the local government under clause [5(1)] and set out in the job description form;

*selection panel* means the selection panel established by the local government under clause [8] for the appointment of a person to the position of CEO.

- (2) Other terms used in these standards that are also used in the Act have the same meaning as they have in the Act, unless the contrary intention appears.

**Division 2 — Standards for recruitment of CEOs**

**3. Overview of Division**

This Division sets out standards to be observed by the local government in relation to the recruitment of CEOs.

**4. Application of Division**

- (1) Except as provided in subclause (2), this Division applies to any recruitment and selection process carried out by the local government for the appointment of a person to the position of CEO.
- (2) This Division does not apply —
- (a) if it is proposed that the position of CEO be filled by a person in a class prescribed for the purposes of section 5.36(5A) of the Act; or
  - (b) in relation to a renewal of the CEO's contract of employment, except in the circumstances referred to in clause [13(2)].

**5. Determination of selection criteria and approval of job description form**

- (1) The local government must determine the selection criteria for the position of CEO, based on the local government's consideration of the knowledge, experience, qualifications and skills necessary to effectively perform the duties and responsibilities of the position of CEO of that particular local government.
- (2) The local government must, by a resolution of an absolute majority of the council, approve a job description form for the position of CEO which sets out —
- (a) the duties and responsibilities of the position; and
  - (b) the selection criteria for the position determined in accordance with subclause (1).

**6. Advertising requirements**

(1) If the position of CEO is vacant, the local government must ensure it complies with section 5.36(4) of the Act and the *Local Government (Administration) Regulations 1996* regulation 18A.

(2) If clause [13] applies, the local government must advertise the position of CEO in the manner referred to in the *Local Government (Administration) Regulations 1996* regulation 18A as if the position was vacant.

**7. Job description form to be made available by local government**

If a person requests the local government to provide to the person a copy of the job description form, the local government must —

(a) inform the person of the website address referred to in the *Local Government (Administration) Regulations 1996* regulation 18A(2)(da); or

(b) if the person advises the local government that the person is unable to access that website address —

(i) email a copy of the job description form to an email address provided by the person; or

(ii) mail a copy of the job description form to a postal address provided by the person.

**8. Establishment of selection panel for appointment of CEO**

(1) The local government must establish a selection panel to conduct the recruitment and selection process for the appointment of a person to the position of CEO.

(2) The selection panel must comprise —

(a) council members (the number of which is to be determined by the local government); and

(b) at least 1 person who is neither a council member nor an employee of the local government.

**9. Recommendation by selection panel**

(1) The selection panel must assess each applicant's knowledge, experience, qualifications and skills against the selection criteria.

**Local Government (Administration) Amendment Regulations (No. 2) 2020**

**Schedule 2** Model standards for CEO recruitment, performance and termination

**Division 2** Standards for recruitment of CEOs

**cl. 10**

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(2) Following the assessment referred to in subclause (1), the selection panel must —

(a) recommend to the local government one or more applicants who the selection panel considers are suitable for appointment to the position of CEO; or

(b) if the selection panel considers that none of the applicants are suitable for appointment to the position of CEO — advise the local government of that fact.

(3) If the selection panel considers that none of the applicants are suitable for appointment to the position of CEO, the selection panel may recommend to the local government the changes (if any) that the selection panel considers should be made to the duties and responsibilities of the position or the selection criteria.

(4) The selection panel must act under subclauses (1), (2) and (3) —

(a) in an impartial and transparent manner; and

(b) in accordance with the principles set out in section 5.40 of the Act.

(5) The selection panel must not recommend an applicant to the local government under subclause (2)(a) unless the selection panel has —

(a) assessed the applicant as having demonstrated that the applicant's knowledge, experience, qualifications and skills meet the selection criteria; and

(b) verified any academic, or other tertiary level, qualifications the applicant claims to hold; and

(c) whether by contacting referees provided by the applicant or making any other enquiries the selection panel considers appropriate, verified the applicant's character, work history, skills, performance and any other claims made by the applicant.

**10. New process to be commenced if no suitable applicants**

(1) If the selection panel advises the local government under clause [9(2)(b)] that the selection panel considers that none of the applicants are suitable for appointment to the position of CEO, the local government must carry out a new recruitment and selection process for the position in accordance with these standards.

(2) However, unless the local government considers that changes should be made to the duties and responsibilities of the position or the selection criteria —

(a) clause [5] does not apply to the new recruitment and selection process; and

(b) the job description form previously approved by the local government under clause [5] is the job description form for the purposes of the new recruitment and selection process.

#### **11. Offer of appointment to position of CEO**

(1) Any decision by the local government to make an offer of appointment to the position of CEO to an applicant must be made by a resolution of an absolute majority of the council.

(2) The resolution must approve —

(a) the making of the offer of appointment to the applicant; and

(b) the proposed terms of the contract of employment to be entered into by the local government and the applicant.

#### **12. Appointment to position of CEO**

(1) In this clause —

*negotiated contract* means the contract of employment referred to in paragraph (b) of the definition of *successful applicant*;

*successful applicant* means an applicant who —

(a) has been made an offer of appointment to the position of CEO under clause [11]; and

(b) has negotiated with the local government the terms of the contract of employment to be entered into by the local government and the applicant; and

(c) following that negotiation, has accepted the offer of appointment.

(2) Any appointment of a successful applicant to the position of CEO by the local government must be made by a resolution of an absolute majority of the council.

**Local Government (Administration) Amendment Regulations (No. 2) 2020**

**Schedule 2** Model standards for CEO recruitment, performance and termination

**Division 2** Standards for recruitment of CEOs

**cl. 13**

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(3) The resolution must —

- (a) endorse the appointment of the successful applicant to the position of CEO; and
- (b) approve the terms of the negotiated contract.

**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 (Administration) Amendment Regulations (No. 2) 2020* regulation [regulation inserting new r. 18FA] comes into operation.

(2) This clause applies if —

(a) upon the expiry of the contract of employment of the person (the *incumbent CEO*) who holds the position of CEO —

(i) 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

(ii) a period of 10 or more consecutive years has 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;

and

(b) the incumbent CEO has notified the local government that they wish to have their contract of employment renewed upon its expiry.

(3) Before the expiry of the incumbent CEO's contract of employment, the local government must carry out a recruitment and selection process in accordance with these standards to select a person to be appointed to the position of CEO after the expiry of the incumbent CEO's contract of employment.

(4) This clause does not prevent the incumbent CEO's contract of employment from being renewed upon its expiry if the incumbent CEO is selected in the recruitment and selection process referred to in subclause (3) to be appointed to the position of CEO.

**14. Confidentiality of information**

The local government must ensure that information provided to, or obtained by, the local government in the course of a recruitment and selection process for the position of CEO is not disclosed, or made use of, except for the purpose of, or in connection with, that recruitment and selection process.

**Division 3 — Standards for review of performance of CEOs**

**15. Overview of Division**

This Division sets out standards to be observed by the local government in relation to the review of the performance of CEOs.

**16. Performance review process to be agreed between local government and CEO**

(1) The local government and the CEO must agree on —

- (a) the process by which the CEO's performance will be reviewed; and
- (b) any performance criteria to be met by the CEO that are in addition to the contractual performance criteria.

(2) Without limiting subclause (1), the process agreed under subclause (1)(a) must be consistent with clauses [17], [18] and [19].

(3) The matters referred to in subclause (1) must be set out in a written document.

**17. Carrying out a performance review**

(1) A review of the performance of the CEO by the local government must be carried out in an impartial and transparent manner.

(2) The local government must —

- (a) collect evidence regarding the CEO's performance in respect of the contractual performance criteria and any additional performance criteria in a thorough and comprehensive manner; and

- (b) review the CEO's performance against the contractual performance criteria and any additional performance criteria, based on that evidence.

**18. Endorsement of performance review by local government**

Following a review of the performance of the CEO, the local government must, by a resolution of an absolute majority of the council, endorse the review.

**19. CEO to be notified of results of performance review**

After the local government has endorsed a review of the performance of the CEO under clause [18], the local government must inform the CEO in writing of —

- (a) the results of the review; and
- (b) if the review identifies any issues about the performance of the CEO — how the local government proposes to address and manage those issues.

**Division 4 — Standards for termination of employment of CEOs**

**20. Overview of Division**

This Division sets out standards to be observed by the local government in relation to the termination of the employment of CEOs.

**21. General principles applying to any termination**

- (1) The local government must make decisions relating to the termination of the employment of a CEO in an impartial and transparent manner.
- (2) The local government must accord a CEO procedural fairness in relation to the process for the termination of the CEO's employment, including —
- (a) informing the CEO of the CEO's rights, entitlements and responsibilities in relation to the termination process; and
- (b) notifying the CEO of any allegations against the CEO; and
- (c) giving the CEO a reasonable opportunity to respond to the allegations; and

- (d) genuinely considering any response given by the CEO in response to the allegations.

**22. Additional principles applying to termination for performance-related reasons**

- (1) This clause applies if the local government proposes to terminate the employment of a CEO for reasons related to the CEO's performance.

- (2) The local government must not terminate the CEO's employment unless the local government has —

- (a) in the course of carrying out the review of the CEO's performance referred to in subclause (3) or any other review of the CEO's performance, identified any issues (the *performance issues*) related to the performance of the CEO; and

- (b) informed the CEO of the performance issues; and

- (c) given the CEO a reasonable opportunity to address, and implement a plan to remedy, the performance issues; and

- (d) determined that the CEO has not remedied the performance issues to the satisfaction of the local government.

- (3) The local government must not terminate the CEO's employment unless the local government has, within the preceding 12 month period, reviewed the performance of the CEO under section 5.38(1) of the Act.

**23. Decision to terminate**

Any decision by the local government to terminate the employment of a CEO must be made by a resolution of an absolute majority of the council.

**24. Notice of termination of employment**

- (1) If the local government terminates the employment of a CEO, the local government must give the CEO notice in writing of the termination.

- (2) The notice must set out the local government's reasons for terminating the employment of the CEO.

**Local Government (Administration) Amendment Regulations (No. 2) 2020**

**Schedule 2** Model standards for CEO recruitment, performance and termination

**Division 4** Standards for termination of employment of CEOs

**cl. 24**

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Clerk of the Executive Council

Consultation Draft