**Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2020**

**– LG Employee Code of Conduct Explanatory Notes**

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| **Section in Amendment Act** | **Section in LG Act** | **Topic** |
| **Section 25** | **5.51A –**  **Code of Conduct for employees**  (1) The CEO must prepare and implement a code of conduct to be observed by employees of the local  government.  (2) The CEO may amend the code of conduct.  (3) The CEO must publish an up-to-date version of the code of conduct on the local government’s official  website.  (4) Regulations may prescribe the content of, and other matters in relation to, codes of conduct under this section.  (5) A code of conduct under this section is of no effect to the extent that it is inconsistent with regulations made for the purposes of subsection (4). | **Code of Conduct – Employees**  Section 25 of the *Local Government Legislation Amendment Act 2019* inserts section 5.51A into the *Local Government Act 1995*, requiring the CEO of a local government to prepare and implement a Code of Conduct for employees.  5.51A also provides the head of power for a CEO to amend the code of conduct. Regulations may prescribe the content of, and other matters in relation to, codes of conduct under this section.  A local government CEO is required to publish an up-to-date version of the code of conduct on the local government’s website.  Section 25 will be proclaimed at the same time as the Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2020. |
| **Regulation** | **Amends** | **Explanation** |
| **Part 2**  Regulation 3 –  Regulations amended | Part 2 amends the Local Government (Administration) Regulations 1996. | Part 2 amends the Local Government (Administration) Regulations 1996 (Administration Regs).  These new regulations are based on the existing requirements at Part 9 - 34B & 34C, they also include the additional requirement for a CEO to address the following topics in a code of conduct:   * Personal behaviour * Handling of information, records keeping and communications * Fraudulent, corrupt and improper behaviour * Use of local government resources; and * Reporting of suspected wrongdoing.   These matters are in addition to requirements relating to gifts and conflicts of interests. |
| **Part 4A** inserted  Regulation 4 – After regulation 19A insert:  **Part 4A – Content of codes of conduct for employees**  **(Act s.5.51A (4))** | Part 4A replaces Part 9 of the Local Government (Administration) Regulations 1996. | Regulation 4 deals with the content of codes of conduct for local government employees.  These regulations amend the current provisions regarding gifts and conflicts of interest, while requiring at a minimum, that additional matters are included in the Code based on the Public Sector Commission’s guidelines: ‘Developing a code of conduct guide for local government’.  New provisions have been included in the regulations that enable a CEO to set a prohibited gift threshold lower than $300 if they choose. In effect, a prohibited gift can have a limit of anywhere between nil and $300.  Amendments to the gift provisions are based on feedback from the Public Sector Commission (PSC). The intent of these changes is to provide a local government CEO with the ability to set a value for gifts lower than what is already prescribed in regulations. If a CEO does not determine a lower gift threshold, the amounts prescribed in regulations remain unchanged. |
| **Part 4A – Content of codes of conduct for employees**  **19AA. Terms used**  In this Part —  ***activity involving a local government discretion*** means  an activity —  (a) that cannot be undertaken without an authorisation from the local government; or  (b) by way of a commercial dealing with the local government;  ***associated person*** means a person who —  (a) is undertaking or seeking to undertake an activity involving a local government discretion; or  (b) it is reasonable to believe is intending to undertake an activity involving a local government discretion;  **code of conduct** means a code of conduct under section 5.51A;  **gift** has the meaning given in section 5.57 except that it  does not include —  (a) a gift from a relative as defined in  section 5.74(1); or  (b) a gift that must be disclosed under the Local Government (Elections) Regulations 1997 regulation 30B; or  (c) a gift from a statutory authority, government instrumentality or non-profit association for  professional training; or  (d) a gift from WALGA, the Australian Local Government Association Limited (ABN 31 008 613 876) or the Local Government Professionals Australia WA (ABN 91 208 607 072);  ***interest*** –  (a) means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest;  and  (b) includes an interest arising from kinship, friendship or membership of an association;  ***prohibited gift***, in relation to an employee, means —  (a) a gift worth the threshold amount for a prohibited gift or more than the threshold amount; or  (b) a gift that is one of 2 or more gifts given to the employee by the same person within a period of 1 year that are in total worth the threshold  amount for a prohibited gift or more than the threshold amount;  ***threshold amount,*** for a prohibited gift, means $300 or a lesser amount (which may be nil) determined by the CEO. | Part 4A replaces Part 9 of the Local Government (Administration) Regulations 1996.  Regulation 19AA replaces 34B(1) and 34C(1). | The definition of a gift at 5.57 of the Local Government Act still applies. Gift exemptions also remain unchanged. The definition of an interest at 34C(1) of the Local Government (Administration) Regulations 1996 also applies.  The current threshold amount for a gift that requires notification is set between $50 and $300. The amendments at 19AA and 19AB give a local government CEO the ability to determine lower thresholds for gifts, or ban gifts altogether, by determining a threshold amount of nil.  The value of a prohibited gift (or two or more gifts received within a period of 12 months) is still set at $300 or more and is linked with local government discretion. However, a CEO may decide to set a lower value threshold for a prohibited gift or gifts (which may be nil). The time period for multiple gifts has been increased from 6 months to 12 months to align with gift requirements for CEOs and elected members.  The reference to notifiable gifts has been removed. However, 19AD deals with gifts that require notification in the same way. The requirement to disclose receipt of a gift valued at over $50 still applies. Additionally, amendments have been incorporated to account for gift thresholds lower than $300.  If a CEO decides to set a prohibited gift threshold of less than $50, there is no requirement to provide notice of acceptance of such a gift (or gifts, if the value of multiple gifts received from the same person over a 12 month period is less than $50). This is consistent with the current requirement.  The definition linking local government discretion with a prohibited gift has been applied to an *associated person*. An associated person refers to a person who –   1. Is undertaking or seeking to undertake an activity involving a local government discretion; or 2. It is reasonable to believe is intending to undertake an activity involving a local government discretion. |
| **19AB. Determinations**  (1) The CEO may determine an amount for the purposes of the definition of ***threshold amount*** in regulation 19AA.  (2) A determination made under subregulation (1) must be  published on the local government’s official website. | Part 4A replaces Part 9 of the Local Government (Administration) Regulations 1996.  Regulation 19AB is a new provision. | 19AB(1) provides a local government CEO with the ability to set a prohibited gift threshold lower than $300.  19AB(2) requires any change made to threshold amounts to be published on the local government’s website.  Publication of the threshold in the gift register (if the threshold is not less than $50) would satisfy this requirement. |
| **19AC. Prohibited gifts**  (1) In this regulation —  employee does not include the CEO.  (2) A code of conduct must contain a requirement that an employee not accept a prohibited gift from an associated person. | Part 4A replaces Part 9 of the Local Government (Administration) Regulations 1996.  19AC replaces 34B(2). | There is no change from the current prohibited gift requirements set out at 34B of the Local Government (Administration) Regulations 1996. A local government’s code of conduct must contain a requirement that employees do not accept a prohibited gift (as defined at 19AA) from anyone in relation to a matter that involves (or it is reasonable to believe will involve) local government discretion.  19AC has been updated to reflect the reference to an associated person at 19AA.  19AC(1) clarifies that the requirement for prohibited gifts does not apply to the local government CEO. Gift provisions for CEO’s are dealt with separately in the Local Government Act. |
| **19AD. Notification of acceptance of gifts.**  (1) In this regulation —  employee does not include the CEO.  (2) This regulation applies if the threshold amount for a prohibited gift is $50 or more.  (3) A code of conduct must contain a requirement that an employee notify the CEO within 10 days after accepting from an associated person any of the following gifts —  (a) a gift worth more than $50 and less than the threshold amount for a prohibited gift;  (b) a gift that is 1 of 2 or more gifts given to the employee by the same associated person within a period of 1 year that are in total worth  between $50 and the threshold amount for a prohibited gift.  (4) A code of conduct must contain a requirement that the notification be in writing and include —  (a) the name of the associated person who gave the gift; and  (b) the date on which the gift was accepted; and  (c) a description, and the estimated value, of the gift; and  (d) the nature of the relationship between the employee and the associated person; and  (e) if the gift is 1 of 2 or more gifts given to the employee by the same associated person within a period of 1 year, each of the following in respect of each of the gifts accepted within the 1-year period —  (i) a description;  (ii) the estimated value;  (iii) the date of acceptance. | Part 4A replaces Part 9 of the Local Government (Administration) Regulations 1996.  19AD replaces 34B(3) and (4). | The requirements for notifiable gifts at 19ADare based on the requirements at 34B of the Local Government (Administration) Regulations 1996. However, 19AD links the threshold for a gift that requires notification with the threshold for a prohibited gift. If no change is made to the threshold amount for a prohibited gift, the threshold remains at $300.  In effect, any gift (other than a prohibited gift) received by an employee with a value between $50 and $300 must be disclosed to the local government CEO unless a determination is made at 19AB to set a lower threshold.  There is no legislative requirement for local government employees to disclose gifts valued at less than $50, unless multiple gifts are received from the same person within a 12 month period.  19AD also details the information that needs to be recorded including:   * The name of the associated person who gave the gift; * The date on which the gift was received; * A description of the gift and its estimated value; * The nature of the relationship between the employee and the associated person; and * If the gift is one of 2 or more gifts given to the employee by the same person within a 12 month period –   + A description of each gift;   + The estimated value; and   + The date of acceptance. |
| **19AE. Register of gifts**  A code of conduct must contain a requirement that the CEO —  (a) keep a register of gifts; and  (b) record in the register details of notifications given to comply with a requirement made under regulation 19AD(2); and  (c) publish an up-to-date version of the register on the local government’s official website. | Part 4A replaces Part 9 of the Local Government (Administration) Regulations 1996.  Regulation 19AE replaces 34B(5). | The requirements pertaining to notifiable gift registers as outlined at 34B(5) of the Local Government (Administration) Regulations 1996 still apply.  The reference to notifiable gifts has been amended. 19AE instead refers to a register of gifts. The requirements set out at 19AE otherwise remain unchanged from 34B(5). |
| **19AF. Conflicts of interest**  (1) A code of conduct must contain a requirement that an employee who has an interest in any matter to be discussed at a council or committee meeting attended by the employee disclose the nature of the interest —  (a) in a written notice given to the CEO before the meeting; or  (b) at the meeting immediately before the matter is discussed.  (2) A code of conduct must contain a requirement that an employee who has given, or will give, advice in respect of any matter to be discussed at a council or committee meeting not attended by the employee disclose the nature of any interest the employee has in the matter —  (a) in a written notice given to the CEO before the meeting; or  (b) at the time the advice is given.  (3) A code of conduct must exclude from a requirement made under subregulation (1) or (2) an interest referred to in section 5.60.  (4) A code of conduct must excuse an employee from a requirement made under subregulation (1) or (2) to disclose the nature of an interest if —  (a) the employee’s failure to disclose occurs because the employee did not know that the employee had an interest in the matter; or  (b) the employee’s failure to disclose occurs because the employee did not know that the matter in which the employee had an interest would be discussed at the meeting and the employee discloses the nature of the interest as soon as possible after becoming aware of the discussion of a matter of that kind.  (5) A code of conduct must require that if, to comply with a requirement made under subregulation (1) or (2), an employee makes a disclosure in a written notice given to the CEO before a meeting then —  (a) before the meeting the CEO must cause the notice to be given to the person who is to preside at the meeting; and  (b) immediately before a matter to which the disclosure relates is discussed at the meeting  the person presiding must bring the notice and its contents to the attention of the persons present.  (6) Subregulation (7) applies if —  (a) to comply with a requirement made under subregulation (1), the nature of an employee’s interest in a matter is disclosed at a meeting; or  (b) a disclosure is made as described in subregulation (4)(b) at a meeting; or  (c) to comply with a requirement made under subregulation (5)(b), a notice disclosing the nature of an employee’s interest in a matter is brought to the attention of the persons present at a meeting.  (7) The nature of the interest must be recorded in the minutes of the meeting. | Part 4A replaces Part 9 of the Local Government (Administration) Regulations 1996.  Regulation 19AF replaces 34C. | The requirements pertaining to conflicts of interest as outlined at 34C of the Local Government (Administration) Regulations 1996 still apply.  There are no new requirements outlined at 19AF.  The terminology in reference to a local government employee has been simplified. |
| **19AG. Other matters**  A code of conduct must contain requirements relating to —  (a) the behaviour expected of an employee in relation to each of the following—  (i) the performance of the employee’s duties;  (ii) the employee’s dealings with other employees and the broader community;  (iii) the use and disclosure of information acquired by the employee in the performance of the employee’s duties;  (iv) the use by the employee of the local government’s finances and resources; and  (b) the way in which the records of the local government are to be kept by an employee; and  (c) matters relating to —  (i) the reporting by an employee of  suspected breaches of codes of conduct and unethical, fraudulent, dishonest, illegal and corrupt behaviour; and  (ii) the way in which suspected breaches of the code of conduct by an employee and unethical, fraudulent, dishonest, illegal  and corrupt behaviour of an employee is to be managed. | **19AG** Introduces new provisions relating to employee:  Behaviour;  Record keeping;  Reporting of suspected breaches; and  How suspected breaches of the code are managed. | 19AG deals with matters that are based on the Public Sector Commission’s guidelines. An employee code of conduct must contain requirements relating to the expectation of behaviour in respect of:   * an employee’s work related duties; * dealings with other employees and the community; * use and disclosure of information and use of local government finances and resources.   A code of conduct must also deal with:   * the way in which records of the local government are to be kept by an employee; and matters relating to reporting of suspected breaches of the code and unethical, fraudulent, dishonest, illegal and corrupt behaviour; and * the way in which suspected breaches of the code by an employee and unethical, fraudulent, dishonest, illegal and corrupt behaviour is managed. |
| Regulation 5 – deletes Part 9. | Regulation 5 repeals Part 9 of the Local Government (Administration) Regulations 1996. | Regulation 5 repeals Part 9 of the Administration Regulations. Requirements at Part 9, 34B and 34C of the Local Government (Administration) Regulations 1996 have been incorporated into the Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2020. |
| **Part 3** — ***Local Government (Audit) Regulations 1996 amended***  Regulation 6 - Regulations amended | Regulation 6 amends the Local Government (Audit) Regulations 1996. | Regulation 6 amends the Local Government (Audit) Regulations 1996. |
| Regulation 7.  Regulation 13 amended  In regulation 13 in the Table under the heading ***“Local Government Act 1995”*** after the item for s.5.46 insert: **s. 5.51A** | Regulation 7 Amends Regulation 13 of the Local Government (Audit) Regulations 1996. | Regulation 7 amends the Table of prescribed statutory requirements for compliance audits at Regulation 13 of the Local Government (Audit) Regulations 1996by including the head of power at section 5.51A. |