

Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021
– LG Employee Code of Conduct Explanatory Notes

Section in Amendment Act	Explanation
<p>5.51A – Code of Conduct for employees</p> <p>(1) The CEO must prepare and implement a code of conduct to be observed by employees of the local government.</p> <p>(2) The CEO may amend the code of conduct.</p> <p>(3) The CEO must publish an up-to-date version of the code of conduct on the local government’s official website.</p> <p>(4) Regulations may prescribe the content of, and other matters in relation to, codes of conduct under this section.</p> <p>(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).</p>	<p>Section 25 of the <i>Local Government Legislation Amendment Act 2019</i> inserts section 5.51A into the <i>Local Government Act 1995</i>, requiring the CEO of a local government to prepare and implement a Code of Conduct for employees.</p> <p>The <i>Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021</i> (Employee Code of Conduct Regulations) prescribe the minimum requirements in relation to gifts, conflicts of interests and disclosure. In addition, the regulations provide that an Employee Code of Conduct must deal with the following matters:</p> <ul style="list-style-type: none"> • Behaviour; • Disclosure of information; • The use of information and resources; and • Records keeping and dealing with misconduct. <p>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.</p> <p>A local government CEO is required to publish an up-to-date version of the code of conduct on the local government’s official website.</p> <p>Section 25 was proclaimed at the same time as the <i>Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2020</i>.</p>

	Regulation	Explanation
1	Citation	This provision sets out the citation title of the instrument.
2	Commencement	<p>These regulations come into effect as follows –</p> <ul style="list-style-type: none"> • Part 1 – on the day they are published in the Gazette (2 February 2021); • The rest of the regulations – on the day after they are published in the Gazette (3 February 2021)
3	<p>Part 2 – Local Government (Administration) Regulations 1996 amended</p> <p>Regulations amended</p>	<p>Part 2 amends the <i>Local Government (Administration) Regulations 1996</i> (Administration Regs).</p> <p>These new regulations are based on existing requirements at Part 9 - 34B & 34C, with the exception of the requirements for notifiable gifts. It is now at the discretion of local governments how they choose to manage acceptance and disclosure of gifts by employees that are not prohibited. Other amendments include the requirement that a CEO must address the following matters in an employee code of conduct:</p> <ul style="list-style-type: none"> • Personal behaviour • Handling of information, records keeping and communications • Fraudulent, corrupt and improper behaviour • Use of local government resources; and • Reporting of suspected wrongdoing. <p>These matters are in addition to requirements relating to gifts and conflicts of interests.</p>

	Regulation	Explanation
4	<p>Part 4A inserted</p> <p>After regulation 19A insert:</p> <p>Part 4A – Codes of conduct for local government employees (Act s.5.51A (4))</p>	<p>Regulation 4 deals with the content of codes of conduct for local government employees.</p> <p>The Employee Code of Conduct 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 – <i>Developing a code of conduct guide for local government</i>.</p> <p>Amendments have been made that enable a CEO to set a prohibited gift threshold lower than the prescribed amount (\$300) if they choose. In effect, a prohibited gift can have a limit of anywhere between nil and \$300.</p> <p>It is also a requirement that a local government's employee code of conduct sets out an employee's obligations in relation to gift disclosures under the prohibited threshold, and the local government's policy on the use and recording of information relating to those gifts.</p> <p>However, there is no longer any legislative requirements pertaining to notifiable gifts, other than the requirement that the employee code of conduct must deal with gift disclosures and how information related to employee gifts is recorded and managed. As a result, it is no longer a requirement for local governments to maintain and publish a register of notifiable gifts. Local governments should still maintain a gift register to record and manage gift declarations where an employee is permitted to receive a gift.</p>

	Regulation	Explanation
		<p>Changes to the requirements for gift disclosures where a gift is not prohibited, are based on feedback received from consultation with the local government sector.</p> <p>The intent of the changes to prohibited gifts 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 amount prescribed in regulations remain unchanged (\$300).</p>
	Division 1 – Terms used	
	<p>19AA. Terms used</p> <p><i>activity involving a local government discretion</i></p> <p><i>associated person</i></p> <p><i>code of conduct</i></p> <p><i>gift</i></p> <p><i>interest</i></p> <p><i>local government employee</i></p> <p><i>prohibited gift</i></p> <p><i>threshold amount</i></p>	<p>Division 1 describes each of the terms associated with the requirements for local government employee codes of conduct.</p> <p>The definition of “activity involving a local government discretion” has not changed.</p> <p>The definition of an associated person links a local government discretion with a prohibited gift, or where a gift is not prohibited, how acceptance of such a gift by an employee is managed by the local government.</p> <p>An associated person refers to a person who –</p> <ul style="list-style-type: none"> (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. <p>A code of conduct for the purposes of these regulations, refers to a code of conduct that must be prepared and implemented by the CEO and observed by employees of the local government in accordance with 5.51A of the <i>Local Government Legislation Amendment Act 2019</i>.</p>

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		<p>The definition of a gift under 5.57 of the Local Government Act still applies. There is also no change to the definition of an interest under 34C(1) of the <i>Local Government (Administration) Regulations 1996</i>.</p> <p>Gift exemptions remain unchanged, with the exception that a gift from LG Professionals Australia has been added to the list of gift exclusions.</p> <p>The definition of an interest has the same meaning as previously under regulation 34C(1) of the <i>Local Government (Administration) Regulations 1996</i>.</p> <p>The definition of a local government employee has been added to provide clarity and align with the definition used in the <i>Local Government (Model Code of Conduct) Regulations 2021</i>. A local government employee, for the purposes of these regulations also means contractors.</p> <p>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) under regulation 19AF. The time period that applies to multiple gifts has been increased from 6 months to 12 months to align with gift requirements for CEOs and elected members.</p> <p>The previous requirements for notifiable gifts have been removed from regulations. Instead a local government employee code of conduct must deal with requirements relating to the recording of gift disclosures and the use of information relating to gifts that may be accepted by local government employees.</p>

	Regulation	Explanation
	Division 2 – Content of codes of conduct	
	19AB. Prohibited gifts	<p>Division 2 deals with the content of codes of conduct.</p> <p>A local government's code of conduct must contain a requirement that employees do not accept a prohibited gift (as defined in regulation 19AA) from anyone in relation to a matter that involves (or it is reasonable to believe will involve) a local government discretion.</p> <p>19AB has been updated to reflect the reference to an associated person at 19AA.</p> <p>19AB(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 under the <i>Local Government Act</i>.</p>
	19AC. Recording, storing, disclosure and use of information relating to gifts	<p>The requirements for recording and managing gift disclosures under 19AC replace the requirements under 34B(3) (4) and (5) of the <i>Local Government (Administration) Regulations 1996</i>.</p> <p>There is no longer a legislative requirement for local government employees to disclose gifts that are not prohibited. However, local governments must set out an employee's obligations to the local government in the employee code of conduct in relation to gift declarations. Gift declarations are relevant where an employee is permitted to accept a gift that is, or it is reasonable to believe may be, linked with a local government discretion. It is up to local governments to determine how they deal with employee gift declarations and how they manage information related to gift declarations.</p>

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		<p>Local governments should continue to maintain a gift register for employees, however there is no longer a legislative requirement to publish a gift register online. While online publication is recommended, local governments may decide to keep an electronic register on their intranet or saved in their records management system and make it available on request.</p> <p>It is important for employees to consider the context within which a gift may be offered and if it is appropriate for them to accept.</p>
	19AD. Conflicts of interest	<p>An employee code of conduct must contain requirements that deal with interests and disclosure of those interests. The requirements incorporated into these regulations remain unchanged from the current requirements that deal with interests and disclosure of interests prescribed under 34C of the <i>Local Government (Administration) Regulations 1996</i>.</p> <p>Minor drafting improvements, to improve readability have been made to 19AD(3), (4) and (7).</p>
	19AE. Other matters code must deal with	<p>19AE deals with matters that are based on the Public Sector Commission's key integrity risks. An employee code of conduct must contain requirements relating to the expectation of behaviour in respect of:</p> <ul style="list-style-type: none"> • an employee's work related duties; • dealings with other employees and the community; • use and disclosure of information and the use of local government finances and resources. <p>A code of conduct must also deal with:</p> <ul style="list-style-type: none"> • 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

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		<ul style="list-style-type: none"> the way in which suspected breaches of the code by an employee and unethical, fraudulent, dishonest, illegal and corrupt behaviour is managed. <p>19AE requires that the local government's employee code of conduct deals with the matters prescribed above. Local governments must consider their statutory obligations and applicable laws when dealing with requirements under this clause. For example, under the <i>Corruption, Crime and Misconduct Act 2003</i> the principal officer of local government is required to notify the Public Sector Commission of suspected minor misconduct by employees and the Corruption and Crime Commission of suspected serious misconduct by employees.</p> <p>The Public Sector Commission's – <i>developing a code of conduct – guide for local government</i> provides useful guidance on developing a new code, or revising an existing code in response to these regulations.</p> <p>Public Sector Commission's - developing a code of conduct - guide for local government</p>
	Division 3 – Other matter in relation to codes of conduct	
	19AF. Determination of threshold amount	<p>Division 3 deals with other matters in relation to codes of conduct.</p> <p>19AF(1) provides a local government CEO with the ability to set a prohibited gift threshold lower than the prescribed amount of \$300. For the purposes of the definition of threshold amount in regulation 19AA, the threshold amount for a prohibited gift, means \$300 or a lesser amount (which may be nil) determined under regulation 19AF.</p>

	Regulation	Explanation
		<p>In effect, 19AF gives a local government CEO the ability to ban all gifts that are, or it is reasonable to believe may be associated with a local government discretion.</p> <p>19AF (2) requires any change made to the threshold amount to be published on the local government's website.</p>
5	Regulation 5 – Regulation 20B amended	Regulation 5 adds LG Professionals Australia to the list of entities that for the purposes of section 5.62(1B)(b) of the Local Government Act, a gift from the entity is considered an excluded gift.
6	Regulation 6 – Part 9 deleted	<p>Regulation 6 repeals Part 9 of the Administration Regulations.</p> <p>Many of the requirements under Part 9, 34B and 34C of the <i>Local Government (Administration) Regulations 1996</i> have been incorporated into the <i>Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2020</i>.</p>
	Part 3 — <i>Local Government (Audit) Regulations 1996</i> amended	
7	Regulations amended	Regulation 7 amends the <i>Local Government (Audit) Regulations 1996</i> .
8	Regulation 13 amended	Regulation 8 amends the Table of prescribed statutory requirements for compliance audits at Regulation 13 of the <i>Local Government (Audit) Regulations 1996</i> by including the head of power under section 5.51A.