

Western Australia

**Local Government (Functions and General)
Regulations 1996**

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Local Government (Functions and General) Regulations 1996

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Western Australia

Local Government Act 1995

Local Government (Functions and General) Regulations 1996

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Local Government (Functions and General) Regulations 1996*¹.

2. Commencement

These regulations come into operation on 1 July 1996.

Part 1A — Local laws

[Heading inserted in Gazette 11 Sep 1998 p. 4927.]

2A. Matters about which local laws are not to be made — s. 3.5

Local laws are not to be made —

- (a) requiring the payment of fees or charges for the parking of vehicles on any land under the care, control or management of a local government in any part of the district of Cottesloe west of Broome Street; or
- (b) enabling such a requirement to be imposed.

[Regulation 2A inserted in Gazette 11 Sep 1998 p. 4927.]

3. Notice of purpose and effect of proposed local law — s. 3.12(2)

For the purpose of section 3.12, the person presiding at a council meeting is to give notice of the purpose and effect of a local law by ensuring that —

- (a) the purpose and effect of the proposed local law is included in the agenda for that meeting; and
- (b) the minutes of the meeting of the council include the purpose and effect of the proposed local law.

[Regulation 3 inserted in Gazette 31 Mar 2005 p. 1057.]

Part 2 — Thoroughfares

4. Persons who are to be notified of road closure — s. 3.50

- (1) The persons prescribed for the purposes of section 3.50 of the Act are —
 - (a) any person providing a service by means of pipes, cables, or anything else under, on, or above the land used for the thoroughfare whose access for purposes connected with the provision of that service would be impeded by the proposed closure;
 - (b) the person having principal responsibility in the locality for ambulance services;
 - (c) the person having principal responsibility in the locality for fire services; and
 - (d) the occupier of land that will lose its access.
- (2) The land that is prescribed for the purposes of section 3.50 of the Act is land that will lose its access.
- (3) In this regulation —

land that will lose its access means land that abuts the thoroughfare at any point to which access would be precluded as a result of the closure.

5. Additional persons who are to be notified of certain other proposals — s. 3.51

The persons prescribed for the purposes of section 3.51 of the Act are —

- (a) if the land to which that section applies is occupied, the occupier; and
- (b) in relation to fixing or altering the level of, or the alignment of, a public thoroughfare, any person providing a service by means of pipes, cables, or anything else under, on, or above the land used for the thoroughfare.

6. Transitional provisions about road closures

- (1) If, when the Act comes into operation, a thoroughfare —
- (a) has been obstructed by a local government under the former section 331B; or
 - (b) has been temporarily closed under the former section 334 on the application of a local government,
- the local government is to be regarded as having ordered under section 3.50 that the thoroughfare be closed, either wholly or partially, as required to continue the obstruction or closure in effect as if the Act had not come into operation.
- (2) Subregulation (1) does not apply so as to continue the obstruction or closure beyond the time when it would have continued if the Act had not come into operation, nor so as to continue it beyond 30 June 2002.
- (3) The local government may, by local public notice, order that the closure be revoked or that it be varied in such a way as to be less restrictive.
- (4) In this regulation —
- former section* means a section of the *Local Government Act 1960* as in force before the day on which the *Local Government Act 1995* comes into operation².

Part 3 — Commercial enterprises by local governments (s. 3.59)

7. Minimum value of major land transaction

For a land transaction to be a major land transaction the total value of —

- (a) the consideration under the transaction; and
- (b) anything done by the local government for achieving the purpose of the transaction,

has to be more, or worth more, than either \$1 000 000 or 10% of the operating expenditure incurred by the local government from its municipal fund in the last completed financial year.

[Regulation 7 amended in Gazette 31 Mar 2005 p. 1054.]

8. Transactions that cannot be major land transactions

- (1) A land transaction is an exempt land transaction for the purposes of section 3.59 of the Act if the local government enters into it —

- (a) without intending to produce profit to itself; and
- (b) without intending that another person will be sold, or given joint or exclusive use of, all or any of the land involved in the transaction.

- (2) For the purposes of subregulation (1)(b) a person is given joint use of land if the land is to be jointly used for a common purpose by the local government and that person (whether or not other persons are also given joint use of the land).

- (3) A transaction under which a local government disposes of a leasehold interest in land is an exempt land transaction for the purposes of section 3.59 of the Act if —

- (a) all or any of the consideration to be received by the local government under the transaction is by way of an increase in the value of the land due to improvements

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that are to be made without cost to the local government;
and

- (b) although the total value referred to in the definition of “major land transaction” in that section is more, or is worth more, than the amount prescribed for the purposes of that definition, it would not be if the consideration were reduced by the amount of the increase in value mentioned in paragraph (a).

[Regulation 8 amended in Gazette 29 Aug 1997 p. 4867-8.]

9. Minimum expenditure involved in a major trading undertaking

- (1) For a trading undertaking to be a major trading undertaking the expenditure by the local government that —
 - (a) the undertaking involved in the last completed financial year; or
 - (b) the undertaking is likely to involve in the current financial year or the financial year after the current financial year,

has to be more than either \$500 000 or 10% of the lowest operating expenditure described in subregulation (2).

- (2) The lowest operating expenditure referred to in subregulation (1) is the lowest of —
 - (a) the operating expenditure incurred by the local government from its municipal fund in the last completed financial year;
 - (b) the operating expenditure likely to be incurred by the local government from its municipal fund in the current financial year; and
 - (c) the operating expenditure likely to be incurred by the local government from its municipal fund in the financial year after the current financial year.

[Regulation 9 amended in Gazette 31 Mar 2005 p. 1054.]

10. Other matters of which details to be given in business plan

- (1) If a local government is required to prepare a business plan because of a major trading undertaking or major land transaction that it is to carry on or enter into jointly with another person —
- (a) the business plan is to include details of the whole undertaking or transaction, even though the local government is not the only joint venturer; and
 - (b) the business plan is to include details of —
 - (i) the identity of each joint venturer other than the local government;
 - (ii) the ownership of, and any other interests in, property that is involved in, or acquired in the course of, the joint venture;
 - (iii) any benefit to which a joint venturer other than the local government may become entitled under or as a result of the joint venture; and
 - (iv) anything to which the local government may become liable under or as a result of the joint venture.

- (2) In subregulation (1) —

joint venture means the major trading undertaking or major land transaction that is to be jointly carried on or entered into;

joint venturer means the local government or another person with whom the local government is to carry on or enter into the joint venture.

Part 4 — Provision of goods and services

[Heading inserted in Gazette 2 Feb 2007 p. 244.]

Division 1 — Purchasing policies

[Heading inserted in Gazette 2 Feb 2007 p. 244.]

11A. Purchasing policies

- (1) A local government is to prepare or adopt, and is to implement, a purchasing policy in relation to contracts for other persons to supply goods or services where the consideration under the contract is, or is expected to be, \$100 000 or less or worth \$100 000 or less.
- (2) A purchasing policy is to make provision for and in respect of the policy to be followed by the local government for, and in respect of, entering into contracts referred to in subregulation (1).
- (3) A purchasing policy must make provision in respect of —
 - (a) the form of quotations acceptable; and
 - (b) the recording and retention of written information, or documents, in respect of —
 - (i) all quotations received; and
 - (ii) all purchases made.
- (4) Different requirements may be imposed under a purchasing policy in respect of different classes, or types, of any of the following —
 - (a) goods and services;
 - (b) suppliers;
 - (c) contracts;
 - (d) any other thing that the local government considers appropriate.

[Regulation 11A inserted in Gazette 2 Feb 2007 p. 245.]

Division 2 — Tenders for providing goods or services (s. 3.57)

[Heading inserted in Gazette 2 Feb 2007 p. 245.]

11. Tenders to be invited for certain contracts

- (1) Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$100 000 unless subregulation (2) states otherwise.
- (2) Tenders do not have to be publicly invited according to the requirements of this Division if —
 - (a) the supply of the goods or services is to be obtained from expenditure authorised in an emergency under section 6.8(1)(c) of the Act;
 - (b) the supply of the goods or services is to be obtained through the Council Purchasing Service of WALGA;
 - (ba) the local government intends to enter into a contract arrangement for the supply of goods or services where —
 - (i) the supplier is either —
 - (I) an individual whose last employer was the local government; or
 - (II) a group, partnership or company comprising at least 75% of persons whose last employer was that local government;
 - (ii) the contract —
 - (I) is the first contract of that nature with that individual or group; and
 - (II) is not to operate for more than 3 years;

- (iii) the goods or services are —
 - (I) goods or services of a type; or
 - (II) (in the opinion of the local government) substantially similar to, or closely related to, goods or services of a type, that were provided by the individual (or persons) whilst employed by the local government;
- (c) within the last 6 months —
 - (i) the local government has, according to the requirements of this Division, publicly invited tenders for the supply of the goods or services but no tender was submitted that met the tender specifications; or
 - (ii) the local government has, under regulation 21(1), sought expressions of interest with respect to the supply of the goods or services but no person was, as a result, listed as an acceptable tenderer;
- (d) the contract is to be entered into by auction after being expressly authorised by a resolution of the council of the local government;
- (e) the goods or services are to be supplied by or obtained through the government of the State or the Commonwealth or any of its agencies, or by a local government or a regional local government;
- (ea) the goods or services are to be supplied —
 - (i) in respect of an area of land that has been incorporated in a district as a result of an order made under section 2.1 of the Act changing the boundaries of the district; and
 - (ii) by a person who, on the commencement of the order referred to in subparagraph (i), has a contract to supply the same kind of goods or services to the local government of the district referred to in that subparagraph;

- (f) the local government has good reason to believe that, because of the unique nature of the goods or services required or for any other reason, it is unlikely that there is more than one potential supplier; or
- (g) the goods to be supplied under the contract are —
 - (i) petrol or oil; or
 - (ii) any other liquid, or any gas, used for internal combustion engines.

[Regulation 11 amended in Gazette 29 Apr 1997 p. 2145; 26 Jun 1998 p. 3447; 25 Feb 2000 p. 970-1; 29 Jun 2001 p. 3130; 31 Mar 2005 p. 1054-5; 2 Feb 2007 p. 245-6.]

12. Anti-avoidance provision

If a local government enters into 2 or more contracts in circumstances such that the desire to avoid the requirements of regulation 11(1) is a significant reason for not dealing with the matter in a single contract, tenders are to be publicly invited according to the requirements of this Division before entering into any of the contracts regardless of the consideration.

[Regulation 12 amended in Gazette 2 Feb 2007 p. 245-6.]

13. Procedure when local government invites tenders though not required to do so

If a local government, although not required by this Division to invite tenders before entering into a contract for another person to supply goods or services, decides to invite tenders, the tenders are to be publicly invited according to the requirements of this Division.

[Regulation 13 amended in Gazette 2 Feb 2007 p. 245-6.]

14. Requirements for publicly inviting tenders

- (1) When regulation 11(1), 12 or 13 requires tenders to be publicly invited, Statewide public notice of the invitation is to be given.

(2) If the CEO has, under regulation 23(4), prepared a list of acceptable tenderers, instead of giving Statewide public notice the CEO is required to give notice of the invitation to each acceptable tenderer listed.

(2a) If a local government —

- (a) is required to invite a tender; or
- (b) not being required to invite a tender, decides to invite a tender,

the local government must, before tenders are publicly invited, determine in writing the criteria for deciding which tender should be accepted.

(3) The notice, whether under subregulation (1) or (2), is required to include —

- (a) a brief description of the goods or services required;
- (b) particulars identifying a person from whom more detailed information as to tendering may be obtained;
- (c) information as to where and how tenders may be submitted; and
- (d) the date and time after which tenders cannot be submitted.

(4) In subregulation (3)(b) a reference to detailed information includes a reference to —

- (a) such information as the local government decides should be disclosed to those interested in submitting a tender;
- (b) detailed specifications of the goods or services required;
- (c) the criteria for deciding which tender should be accepted;
- (d) whether or not the local government has decided to submit a tender; and
- (e) whether or not the CEO has decided to allow tenders to be submitted by facsimile or other electronic means, and if so, how tenders may so be submitted.

- (5) After a notice has been given under subregulation (1) or (2), a local government may vary the information referred to in subregulation (3) by taking reasonable steps to give each person who has sought copies of the tender documents or each acceptable tenderer, as the case may be, notice of the variation.

[Regulation 14 amended in Gazette 29 Jun 2001 p. 3130.]

15. Minimum time to be allowed for submitting tenders

- (1) If the notice is published in the newspaper as part of giving Statewide public notice, the time specified in the notice as the time after which tenders cannot be submitted has to be at least 14 days after the notice is first published in the newspaper as part of giving Statewide public notice.
- (2) If the notice is given to a person listed as an acceptable tenderer, the time specified in the notice as the time after which tenders cannot be submitted has to be at least 14 days after the notice is given.

16. Receiving and opening tenders

- (1) The CEO is responsible for keeping any tender submitted including a tender submitted by facsimile or other electronic means in safe custody, and for ensuring that it remains confidential.
- (2) Tenders are not to be opened, examined, or assessed until the time after which further tenders cannot be submitted.
- (3) When tenders are opened —
- (a) at least one and, if practicable, more than one employee of the local government or one person authorised by the CEO to open tenders and, if practicable, one or more other persons, is required to be present;
 - (b) members of the public are entitled to be present; and

- (c) details of the tenders (other than the consideration sought in the tender) are to be immediately recorded in a register to be known as the tenders register.

*[Regulation 16 amended in Gazette 29 Jun 2001 p. 3131;
31 Mar 2005 p. 1055.]*

17. Tenders register

- (1) The CEO is responsible for keeping the tenders register and making it available for public inspection.
- (2) The tenders register is to include, for each invitation to tender —
 - (a) a brief description of the goods or services required;
 - (b) particulars of the making of —
 - (i) the decision to invite tenders; and
 - (ii) if applicable, the decision to seek expressions of interest under regulation 21(1);
 - (c) particulars of —
 - (i) any notice by which expressions of interests from prospective tenderers was sought;
 - (ii) any person who submitted an expression of interest; and
 - (iii) any list of acceptable tenderers that was prepared under regulation 23(4);
 - (d) a copy of the notice of the invitation to tender;
 - (e) the name of each tenderer whose tender has been opened; and
 - (f) the name of any successful tenderer.
- (3) The tenders register is to include for each invitation to tender the amount of the consideration or a summary of the amount of the consideration sought in the tender accepted by the local government.

[Regulation 17 amended in Gazette 29 Jun 2001 p. 3131.]

18. Choice of tender

- (1) A tender is required to be rejected unless it is submitted at a place, and within the time, specified in the invitation for tenders.
- (2) A tender that is submitted at a place, and within the time, specified in the invitation for tenders but that fails to comply with any other requirement specified in the invitation may be rejected without considering the merits of the tender.
- (3) If, under regulation 23(4), the CEO has prepared a list of acceptable tenderers for the supply of goods or services, a tender submitted by a person who is not listed as an acceptable tenderer is to be rejected.
- (4) Tenders that have not been rejected under subregulation (1), (2), or (3) are to be assessed by the local government by means of a written evaluation of the extent to which each tender satisfies the criteria for deciding which tender to accept and it is to decide which of them it thinks it would be most advantageous to the local government to accept.
- (4a) To assist the local government in deciding which tender would be the most advantageous to it to accept, a tenderer may be requested to clarify the information provided in the tender.
- (5) The local government may decline to accept any tender.
- (6) If a local government has accepted a tender but acceptance of the tender does not create a contract and within 6 months of the day on which the tender was accepted the local government and the successful tenderer agree not to enter into a contract in relation to the tender, the local government may accept from the other tenders the tender which it thinks it would be most advantageous to the local government to accept.
- (7) If a local government has accepted a tender and acceptance of the tender creates a contract and within 6 months of the day on which the tender was accepted the local government and the successful tenderer agree to terminate the contract, the local

government may accept from the other tenders the tender which it thinks it would be most advantageous to the local government to accept.

[Regulation 18 amended in Gazette 29 Jun 2001 p. 3131-2.]

19. Tenderers to be notified of outcome

The CEO is to give each tenderer notice in writing containing particulars of the successful tender or advising that no tender was accepted.

[Regulation 19 amended in Gazette 29 Jun 2001 p. 3132.]

20. Variation of requirements before entry into contract

- (1) If, after it has invited tenders for the supply of goods or services and chosen a successful tenderer but before it has entered into a contract for the supply of the goods or services required, the local government wishes to make a minor variation in the goods or services required, it may, without again inviting tenders, enter into a contract with the chosen tenderer for the supply of the varied requirement subject to such variations in the tender as may be agreed with the tenderer.
- (2) If —
 - (a) the chosen tenderer is unable or unwilling to enter into a contract to supply the varied requirement; or
 - (b) the local government and the chosen tenderer cannot agree on any other variation to be included in the contract as a result of the varied requirement,

that tenderer ceases to be the chosen tenderer and the local government may, instead of again inviting tenders, choose the tenderer, if any, whose tender the local government considered it would be the next most advantageous to it to accept.

- (3) In subregulation (1) —

minor variation means a variation that the local government is satisfied is minor having regard to the total goods or services that tenderers were invited to supply.

21. Limitation may be placed on who can tender

- (1) If a local government thinks that there is good reason to make a preliminary selection from amongst prospective tenderers, it may seek expressions of interest with respect to the supply of the goods or services.
- (2) There is good reason to make a preliminary selection if, because of —
 - (a) the nature of the goods or services required; or
 - (b) the cost of preparing plans, specifications or other information for the purpose of adequately describing the goods or services required,it would be advantageous to the local government if tenders were invited only from persons it considers to be capable of satisfactorily supplying the goods or services.
- (3) If a local government decides to seek expressions of interest before inviting tenders, Statewide public notice that expressions of interest are sought is to be given.
- (4) The notice is required to include —
 - (a) a brief description of the goods or services required;
 - (b) particulars identifying a person from whom more detailed information may be obtained;
 - (c) information as to where and how expressions of interest may be submitted; and
 - (d) the date and time after which expressions of interest cannot be submitted.

22. Minimum time to be allowed for submitting expressions of interest

The time specified in the notice as the time after which expressions of interest cannot be submitted has to be at least 14 days after the notice is first published in the newspaper as part of giving Statewide public notice.

23. Choice of acceptable tenderers

- (1) An expression of interest is required to be rejected unless it is submitted at a place, and within the time, specified in the notice.
- (2) An expression of interest that is submitted at a place, and within the time, specified in the notice but that fails to comply with any other requirement specified in the notice may be rejected without considering its merits.
- (3) Expressions of interest that have not been rejected under subregulation (1) or (2) are to be considered by the local government and it is to decide which, if any, of those expressions of interest are from persons who it thinks would be capable of satisfactorily supplying the goods or services.
- (4) The CEO is to list each of those persons as an acceptable tenderer.

[Regulation 23 amended in Gazette 29 Jun 2001 p. 3132.]

24. Persons expressing interest to be notified of outcome

The CEO is to give each person who submitted an expression of interest notice in writing —

- (a) containing particulars of the persons the CEO has listed under regulation 23(4) as acceptable tenderers;
- (b) advising that the local government has decided not to invite tenders because no expression of interest that it considered was from a person who it thinks would be capable of satisfactorily supplying the goods or services;
or

- (c) informing the person of any other outcome if neither paragraph (a) nor (b) is appropriate.

[Regulation 24 amended in Gazette 29 Jun 2001 p. 3133.]

Part 4A — Regional price preference

[Heading inserted in Gazette 25 Feb 2000 p. 971.]

24A. Application of this Part

The provisions of Part 4 may be varied in accordance with this Part, if the local government is located outside the metropolitan area and intends to give a regional price preference in accordance with this Part.

[Regulation 24A inserted in Gazette 25 Feb 2000 p. 971.]

24B. Interpretation

(1) In this Part —

regional price preference, in relation to a tender submitted by a regional tenderer, involves assessing the tender as if the proposed tender price were discounted in accordance with regulation 24D;

regional tenderer means a supplier of goods or services who satisfies the criteria in subregulation (2).

(2) A supplier of goods or services who submits a tender is regarded as being a regional tenderer for the purposes of this Part if —

- (a) that supplier has been operating a business continuously out of premises in the appropriate region for at least 6 months before the time after which further tenders cannot be submitted; or
- (b) some or all of the goods or services are to be supplied from regional sources.

[Regulation 24B inserted in Gazette 25 Feb 2000 p. 971.]

24C. Regional price preference may be given

A local government located outside the metropolitan area may give a regional price preference to a regional tenderer in accordance with this Part.

[Regulation 24C inserted in Gazette 25 Feb 2000 p. 971.]

24D. Price percentage within which preference may be given

- (1) A preference may be given to a regional tenderer by assessing the tender from that regional tenderer as if the price bids were reduced by —
 - (a) up to 10% — where the contract is for goods or services, up to a maximum price reduction of \$50 000;
 - (b) up to 5% — where the contract is for construction (building) services, up to a maximum price reduction of \$50 000; or
 - (c) up to 10% — where the contract is for goods or services (including construction (building) services), up to a maximum price reduction of \$500 000, if the local government is seeking tenders for the provision of those goods or services for the first time, due to those goods or services having been, until then, undertaken by the local government.

- (2) Although goods or services that form a part of a tender submitted by a tenderer (who is a regional tenderer by virtue of regulation 24B(2)(b)) may be —
 - (a) wholly supplied from regional sources; or
 - (b) partly supplied from regional sources, and partly supplied from non-regional sources,

only those goods or services identified in the tender as being from regional sources may be included in the discounted calculations that form a part of the assessments of a tender when a regional price preference policy is in operation.

- (3) Despite subregulation (1), price is only one of the factors to be assessed when the local government is to decide which of the tenders it thinks would be most advantageous to that local government to accept under regulation 18(4).

[Regulation 24D inserted in Gazette 25 Feb 2000 p. 972.]

24E. Preparation of policy

- (1) Where a local government intends to give a regional price preference in relation to a process, the local government is to —
- (a) prepare a proposed regional price preference policy (if no policy has yet been adopted for that kind of contract);
 - (b) give Statewide public notice of the intention to have a regional price preference policy and include in that notice —
 - (i) the region to which the policy is to relate;
 - (ii) details of where a complete copy of the proposed policy may be obtained; and
 - (iii) a statement inviting submissions commenting on the proposed policy, together with a closing date of not less than 4 weeks for those submissions;
- and
- (c) make a copy of the proposed regional price preference policy available for public inspection in accordance with the notice.
- (2) A regional price preference policy may be expressed to be —
- (a) for different regions in respect of different parts of the contract, or the various contracts, comprising the basis of the tender;
 - (b) for different goods or services within a single contract or various contracts;
 - (c) for different price preferences in respect of the different goods or services, or the different regions, that are the subject of a tender or tenders (subject to the limits imposed by regulation 24D),
- or for any combination of those factors.

- (3) A region specified under this Part —
 - (a) must be (or include) the entire district of the local government; and
 - (b) cannot include a part of the metropolitan area.
- (4) A policy cannot be adopted by a local government until the local government has considered all submissions that are received in relation to the proposed policy and, if that consideration results in significant changes to the proposed policy, then the local government must again give Statewide public notice of the altered proposed regional price preference policy.

[Regulation 24E inserted in Gazette 25 Feb 2000 p. 972-3; amended in Gazette 31 Mar 2005 p. 1055.]

24F. Adoption and notice of policy

- (1) A policy cannot be adopted by a local government until at least 4 weeks after the publication of the Statewide notice of the proposed policy.
- (2) An adopted policy must state —
 - (a) the region or regions within which each aspect of it is to be applied;
 - (b) the types and nature of businesses that may be considered for each type of preference; and
 - (c) whether the policy applies to —
 - (i) different regions in respect of different parts of the contract, or the various contracts, comprising the basis of the tender;
 - (ii) different goods or services within a single contract or various contracts;
 - (iii) different price preferences in respect of the different goods or services, or the different regions, that are the subject of a tender or tenders,

or to any combination of those factors.

- (3) An adopted policy cannot be applied until the local government gives Statewide notice that it has adopted that policy.
- (4) The local government is to ensure that a copy of an adopted regional price preference policy is —
 - (a) included with any specifications for tenders to which the policy applies; and
 - (b) made available in accordance with regulation 29 of the *Local Government (Administration) Regulations 1996*.

[Regulation 24F inserted in Gazette 25 Feb 2000 p. 973-4; amended in Gazette 31 Mar 2005 p. 1055.]

24G. Adopted policy applies

A local government that has adopted a regional price preference policy in relation to a certain type of contract may choose not to apply that policy to a particular tender in the future for a contract of that type but, unless it does so, the policy is to apply to all like tenders.

[Regulation 24G inserted in Gazette 25 Feb 2000 p. 974.]

Part 4B — Regional local governments

[Heading inserted in Gazette 28 Apr 2000 p. 2039.]

24H. Modification of section 6.21(2) of Act — s. 3.66(5)

Section 6.21(2) applies to a regional local government as if it were as follows —

“

- (2) Where, under section 6.20(1), a regional local government borrows money, obtains credit or arranges for financial accommodation to be extended to the regional local government that money, credit or financial accommodation is only to be secured —
- (a) by the regional local government giving security over the financial contributions of the participants to the regional local government's funds as set out or provided for in the establishment agreement for the regional local government;
 - (b) by the regional local government giving security over Government grants which were not given to the regional local government for a specific purpose; or
 - (c) by a participant giving security over its general funds to the extent agreed by the participant.
- (2a) Despite subsection (2)(a) and (c), security cannot be given over —
- (a) the financial contributions of a particular participant to the regional local government's funds; or
 - (b) the general funds of a particular participant,
- if the participant is not a party to the activity or transaction for which the money is to be borrowed by,

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the credit is to be obtained for, or the financial accommodation is to be extended to, the regional local government.

”.

[Regulation 24H inserted in Gazette 28 Apr 2000 p. 2039-40.]

24I. Modification of section 6.23(1) of Act — s. 3.66(5)

Section 6.23(1) applies to a regional local government as if it were as follows —

“

- (1) In relation to a regional local government a receiver is entitled to receive whichever of the following over which security has been given in a particular case —
 - (a) the financial contributions of the participants to the regional local government’s funds as set out or provided for in the establishment agreement for the regional local government;
 - (b) Government grants which were not given to the regional local government for a specific purpose;
 - (c) the general funds of a participant to the extent that those funds secure either money borrowed by, credit obtained for, or financial accommodation extended to, the regional local government.

”.

[Regulation 24I inserted in Gazette 28 Apr 2000 p. 2040.]

Part 5 — Owner onus and infringement notices

25. Form of notice to put onus on vehicle owner — s. 9.13

The form of a notice that may be given under section 9.13 of the Act to the owner of a vehicle that is involved in an offence against a regulation is the form set out in Form 1 in Schedule 1.

26. Form of infringement notice — s. 9.16

- (1) The form of an infringement notice that may be given under section 9.16 of the Act for a prescribed offence against a regulation is the form set out in Form 2 in Schedule 1.
- (2) Subregulation (1) applies whether the offence is made a prescribed offence by regulations or by a local law.

27. Form of withdrawal of infringement notice — s. 9.20

- (1) The form of the notice that may be given under section 9.20 of the Act to withdraw an infringement notice for a prescribed offence against a regulation is the form set out in Form 3 in Schedule 1.
- (2) Subregulation (1) applies whether the offence is made a prescribed offence by regulations or by a local law.

[28. *Omitted under the Reprints Act 1984 s. 7(4)(g).*]

Part 6 — Miscellaneous

29. Contraventions that may lead to impounding of goods — s. 3.37

- (1) A contravention of a regulation or local law made under the Act can lead to the impounding of goods involved in the contravention if —
- (a) it occurs in a public place; and
 - (b) either —
 - (i) the presence of the goods —
 - (I) presents a hazard to public safety; or
 - (II) obstructs the lawful use of any place;
 - or
 - (ii) where the regulation or local law prohibits or regulates the placement of the goods, the goods are located in a place contrary to that regulation or local law.
- (1a) A contravention of a regulation or local law made under the Act can lead to the impounding of goods that are animals (if they are involved in the contravention) whether or not the contravention takes place in a private or a public place.
- (2) In subregulation (1) or (1a) —
- public place** includes a place that is on private property that the public are allowed to use.

*[Regulation 29 amended in Gazette 29 Apr 1997 p. 2145;
25 Feb 2000 p. 974.]*

29A. Abandoned vehicle wrecks — s. 3.40A

For the purposes of the definition of “abandoned vehicle wreck” in section 3.40A(5)(c) —

- (a) the prescribed value is “\$200”; and

- (b) the prescribed manner in which that value is to be calculated is that the value is to be based on the local private sale value of a vehicle of the same, or a similar, model, year and condition.

[Regulation 29A inserted in Gazette 31 Mar 2005 p. 1058.]

30. Dispositions of property to which section 3.58 of Act does not apply

- (1) A disposition that is described in this regulation as an exempt disposition is excluded from the application of section 3.58 of the Act.
- (2) A disposition of land is an exempt disposition if —
 - (a) the land is disposed of to an owner of adjoining land (in this paragraph called *the transferee*) and —
 - (i) its market value is less than \$5 000; and
 - (ii) the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee;
 - (b) the land is disposed of to a body, whether incorporated or not —
 - (i) the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and
 - (ii) the members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions;
 - (c) the land is disposed of to —
 - (i) the Crown in right of the State or the Commonwealth;
 - (ii) a department, agency, or instrumentality of the Crown in right of the State or the Commonwealth; or

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- (iii) another local government or a regional local government;
 - (d) it is the leasing of land to an employee of the local government for use as the employee's residence;
 - (e) it is the leasing of land for a period of less than 2 years during all or any of which time the lease does not give the lessee the exclusive use of the land;
 - (f) it is the leasing of land to a "medical practitioner" (as defined in section 3 of the *Medical Act 1894*) to be used for carrying on his or her medical practice; or
 - (g) it is the leasing of residential property to a person.
- (2a) A disposition of property is an exempt disposition if the property is disposed of within 6 months after it has been —
 - (a) put out to the highest bidder at public auction, in accordance with section 3.58(2)(a) of the Act, but either no bid is made or any bid made does not reach a reserve price fixed by the local government;
 - (b) the subject of a public tender process called by the local government, in accordance with section 3.58(2)(b) of the Act, but either no tender is received or any tender received is unacceptable; or
 - (c) the subject of Statewide public notice under section 3.59(4), and if the business plan referred to in that notice described the property concerned and gave details of the proposed disposition including —
 - (i) the names of all other parties concerned;
 - (ii) the consideration to be received by the local government for the disposition; and
 - (iii) the market value of the disposition as ascertained by a valuation carried out not more than 12 months before the proposed disposition.
- (2b) Details (*see section 3.58(4) of the Act*) of a disposition of property under subregulation (2a) must be made available for

public inspection for at least 12 months from the initial auction or tender, as the case requires.

- (3) A disposition of property other than land is an exempt disposition if —
- (a) its market value is less than \$20 000; or
 - (b) it is disposed of as part of the consideration for other property that the local government is acquiring for a consideration the total value of which is not more, or worth more, than \$50 000.

[Regulation 30 amended in Gazette 25 Feb 2000 p. 974-5; 28 Apr 2000 p. 2041; 31 Mar 2005 p. 1055-6.]

31. Anti-avoidance provision about dispositions

If a local government disposes of property by means of 2 or more dispositions in circumstances such that the desire to exclude the application of section 3.58 of the Act is a significant reason for not dealing with the matter in a single disposition, the dispositions are not exempt dispositions.

32. Local government permitted to form incorporated association — s. 3.60

- (1) A local government may form or take part in forming an association that is to be incorporated under the *Associations Incorporation Act 1987* and may do things for the purpose of the incorporation of the association under that Act.
- (2) A local government may form or take part in forming a body corporate constituted under section 32 of the *Strata Titles Act 1985*.

[Regulation 32 amended in Gazette 4 Dec 1998 p. 6500.]

32A. Excluded “authorisations” — s. 9.2

- (1) The following are excluded from being authorisations for the purposes of the definition of “authorisation” in section 9.2 —

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- (a) an authority to carry out private works on local government property;
 - (b) an authority allowing the use of local government land or premises, or the use of local government goods or equipment.
- (2) Despite subregulation (1), an authority set out in paragraph (a) or (b) of that subregulation is to be regarded as an “authorisation” under section 9.2 if —
- (a) a local law, or regulation that is to operate as if it were a local law, states that a decision in relation to that authority is one to which Division 9 of the Act applies and that a person specified in it is an affected person for the purposes of that Division; or
 - (b) a person has —
 - (i) by virtue of that authority, a reasonable expectation of the enjoyment (or the continued enjoyment) of a right or interest conferred by that authority; or
 - (ii) by virtue of the usual circumstances surrounding the grant of an authority of that type, a reasonable expectation of successfully applying for the right or interest conferred by that authority.

[Regulation 32A inserted in Gazette 25 Feb 2000 p. 975-6.]

33. Objections made to local government — s. 9.5

- (1) The form in which an objection may be made under section 9.5 of the Act is the form set out in Form 4 in Schedule 1.
- (2) The manner in which the objection may, within the time permitted by section 9.5 of the Act, be lodged with the local government is by giving a copy of it to the CEO.

[34. Deleted in Gazette 30 Dec 2004 p. 7016.]

35. Certain persons protected from liability for wrongdoing — s. 9.56

The functions in the performance of which a person appointed or engaged by a local government is a protected person under section 9.56(1)(c) of the Act are —

- (a) any function expressly provided for in a written law that the person was appointed or engaged to perform; and
- (b) any function that the person is authorised to perform on behalf of the local government.

35A. Delegable functions of Minister — s. 9.66

The Minister's functions under the provisions of the Act that are listed in the Table to this regulation are delegable functions.

Table

s. 2.25(2)	s. 6.2(1)	s. 6.33(3)
s. 5.7(1) and (2)	s. 6.4(3)	s. 6.35(5)
s. 5.69	s. 6.14(1)(b)	s. 6.74
s. 5.69A	s. 6.28(1)	s. 7.5

[Regulation 35A inserted in Gazette 28 Jun 2002 p. 3082.]

36. Form of warrant to enter — s. 3.33(1) and 8.8(1)

The form in which a warrant may be granted under section 3.33(1) or 8.8(1) of the Act is the form set out in Form 6 in Schedule 1.

Part 7 — Other transitional provisions

[37. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

38. Adoption of former model by-laws as local laws

- (1) Unless a model local law dealing with the same subject matter has been published under section 3.9 of the Act, the text of a former draft model by-law may be adopted by a local law made under this Act.
- (2) Section 3.8(2) and (3) of the Act apply to the adoption of the text of a former draft model by-law.
- (3) In the text adopted, a description of, or reference to, a provision of the text is to be read as if it had been modified to accord with the adoption of the text by a local law.
- (4) In this regulation —
former draft model by-law means a draft model by-law published under section 258 of the *Local Government Act 1960* as in force before 1 July 1996.

Schedule 1 — Forms
Form 1

[reg. 25]

Local Government Act 1995

Local Government (Functions and General) Regulations 1996

NOTICE TO OWNER OF VEHICLE INVOLVED IN OFFENCE

Date/...../.....

City/Town/Shire of.....

To: ⁽¹⁾

of: ⁽²⁾

It is alleged that on /..... /..... at ⁽³⁾

at ⁽⁴⁾ your vehicle ⁽⁵⁾

was involved in the commission of the following offence —

.....

.....

.....

contrary to regulation of the ⁽⁶⁾

You are required under section 9.13 of the *Local Government Act 1995* to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.

If you do not prove otherwise, you will be deemed to have committed the offence unless —

(a) within 28 days after being served with this notice —

- (i) you inform the chief executive officer, or another authorised officer, of the local government as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; or
- (ii) you satisfy the chief executive officer that the vehicle had been stolen, or was being unlawfully used, at the time the offence is alleged to have been committed;

or

(b) you were given an infringement notice for the alleged offence and the modified penalty specified in it is paid within 28 days after the notice was given or such further time as is allowed.

Name and title of authorised person giving the notice.....

Signature

- (1) Name of owner or "owner of (*vehicle identification*)"
- (2) Address of owner (not required if owner not named)
- (3) Time at which offence allegedly committed
- (4) Place at which offence allegedly committed
- (5) Vehicle identification
- (6) Name of the regulations

Form 2

[reg. 26(1)]

Local Government Act 1995
Local Government (Functions and General) Regulations 1996

INFRINGEMENT NOTICE

Serial No

Date/...../.....

City/Town/Shire of.....

To: ⁽¹⁾

of: ⁽²⁾

It is alleged that on/...../..... at ⁽³⁾

at ⁽⁴⁾

you committed the following offence —

.....

.....

.....

contrary to regulation of the ⁽⁵⁾

The modified penalty for the offence is \$

If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty may be paid to an authorised person at ⁽⁶⁾ within a period of 28 days after the giving of this notice.

Name and title of authorised person giving the notice.....

Signature

- (1) Name of alleged offender [“owner of (*vehicle identification*)” suffices if notice given with a notice under section 9.13 of the Act]
- (2) Address of alleged offender [not required if notice given with a notice under section 9.13 of the Act]
- (3) Time at which offence allegedly committed
- (4) Place at which offence allegedly committed
- (5) Name of the regulations
- (6) Place where modified penalty may be paid

Form 3

[reg. 27(1)]

Local Government Act 1995

Local Government (Functions and General) Regulations 1996

NOTICE OF WITHDRAWAL OF INFRINGEMENT NOTICE

Serial No

Date/...../.....

City/Town/Shire of

To: ⁽¹⁾

of: ⁽²⁾

Infringement Notice No. dated/...../..... for the alleged
offence of

.....

.....

has been withdrawn.

The modified penalty of \$

- * has been paid and a refund is enclosed.
- * has not been paid and should not be paid.
- * Delete as appropriate

Name and title of authorised person giving this
notice.....

Signature

(1) Name of alleged offender to whom infringement notice was given

(2) Address of alleged offender

Form 4

[reg. 33(1)]

Local Government Act 1995
Local Government (Functions and General) Regulations 1996

OBJECTION UNDER SECTION 9.5 OF THE ACT

To the ⁽¹⁾
I, ⁽²⁾
of ⁽³⁾

hereby object to the ⁽⁴⁾
to ⁽⁵⁾

The grounds of my objection are as follows:

⁽⁶⁾
.....
.....

In support of my objection I attach the following:

⁽⁷⁾
.....
.....

Dated the day of 20.....
⁽⁸⁾

Person objecting

- (1) name of local government
- (2) full name of person objecting
- (3) postal address of person objecting
- (4) identify decision to which objection is made
- (5) give details of decision
- (6) give details of grounds of objection
- (7) plans, specifications, letters, notices, or other documents (if appropriate)
- (8) signature of person objecting

[Form 5 deleted in Gazette 30 Dec 2004 p. 7016.]

Form 6

[reg. 36]

Local Government Act 1995
Local Government (Functions and General) Regulations 1996

WARRANT TO ENTER

I, ⁽¹⁾
of ⁽²⁾
in the State of Western Australia, Justice of the Peace, being satisfied that the
entry is reasonably required but —
⁽³⁾ (a) entry has been refused or is opposed or prevented;
⁽³⁾ (b) entry cannot be obtained; or
⁽³⁾ (c) notice cannot be given under section ⁽³⁾ 3.32 / 8.6(3)(b) of the Act
without unreasonable difficulty or without unreasonably delaying
entry,
hereby authorise ⁽⁴⁾ ⁽³⁾ by its employees,
together with ⁽⁵⁾
or any police officer to enter ⁽⁶⁾
for the purpose of ⁽⁷⁾
using such force as is necessary.

Signed
Justice of the Peace
Dated

- (1) name of Justice of the Peace
- (2) address of Justice of the Peace
- (3) delete if not applicable
- (4) name of local government or authorised person to whom warrant is issued
- (5) name or description of any person authorised to assist in executing the warrant
- (6) address or description of land, premises, or thing to be entered
- (7) purpose for which entry may be made

Notes

- ¹ This is a compilation of the *Local Government (Functions and General) Regulations 1996* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Local Government (Functions and General) Regulations 1996</i>	24 Jun 1996 p. 2771-97	1 Jul 1996 (see r. 2)
<i>Local Government (Functions and General) Amendment Regulations 1997</i>	29 Apr 1997 p. 2144-5	29 Apr 1997
<i>Local Government (Functions and General) Amendment Regulations (No. 2) 1997</i>	29 Aug 1997 p. 4867-8	29 Aug 1997
<i>Local Government (Functions and General) Amendment Regulations 1998</i>	26 Jun 1998 p. 3447	26 Jun 1998
<i>Local Government (Functions and General) Amendment Regulations (No. 2) 1998</i>	11 Sep 1998 p. 4926-7	11 Sep 1998
<i>Local Government (Functions and General) Amendment Regulations (No. 3) 1998</i>	4 Dec 1998 p. 6500	4 Dec 1998
<i>Local Government (Functions and General) Amendment Regulations 2000</i>	25 Feb 2000 p. 970-6	25 Feb 2000
<i>Local Government (Functions and General) Amendment Regulations (No. 2) 2000</i>	28 Apr 2000 p. 2039-41	28 Apr 2000
Reprint of the <i>Local Government (Functions and General) Regulations 1996</i> as at 8 Sep 2000 (includes amendments listed above)		
<i>Local Government (Functions and General) Amendment Regulations 2001</i> ³	29 Jun 2001 p. 3129-33	29 Jun 2001
<i>Local Government (Functions and General) Amendment Regulations 2002</i>	28 Jun 2002 p. 3081-2	28 Jun 2002

Local Government (Functions and General) Regulations 1996

Citation	Gazettal	Commencement
<i>Local Government (Functions and General) Amendment Regulations (No. 2) 2004</i>	30 Dec 2004 p. 7016	1 Jan 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Local Government (Functions and General) Amendment Regulations 2005</i>	31 Mar 2005 p. 1054-6	1 Apr 2005 (see r. 2 and <i>Gazette</i> 31 Mar 2005 p. 1029)
<i>Local Government (Functions and General) Amendment Regulations (No. 2) 2005</i>	31 Mar 2005 p. 1057-8	7 May 2005 (see r. 2)
Reprint 2: The Local Government (Functions and General) Regulations 1996 as at 20 Jan 2006 (includes amendments listed above)		
<i>Local Government (Functions and General) Amendment Regulations 2007</i>	2 Feb 2007 p. 244-6	30 Mar 2007 (see r. 2)

² The *Local Government Act 1995* came into operation on 1 July 1996.

³ The *Local Government (Functions and General) Amendment Regulations 2001* r. 11 reads as follows:

“

11. Transitional

If a tender is invited under regulation 11, 12, or 13 of the *Local Government (Functions and General) Regulations 1996* before the commencement of these regulations, tenders submitted as a result of that invitation are to be dealt with as if these regulations had not come into operation.

”