

LG302*

LOCAL GOVERNMENT ACT 1995**LOCAL GOVERNMENT (ELECTIONS) AMENDMENT REGULATIONS 1998**

Made by the deputy of the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Local Government (Elections) Amendment Regulations 1998*.

Principal regulations

2. In these regulations the *Local Government (Elections) Regulations 1997** are referred to as the principal regulations.

[* *Published in Gazette 14 February 1997, pp. 905-1008.*

For amendments to 9 October 1998 see 1997 Index to Legislation of Western Australia, Table 4, p. 169.]

Application

3. These amendments to the principal regulations apply to elections that are to take place on or after 1 May 1999.

Regulation 3 amended

4. Regulation 3 of the principal regulations is amended in paragraph (c) of the definition of "election papers" by inserting after "election" the following—

“ , other than 'disclosure of gifts' forms completed due to the operation of Part 5A

”.

Part 5A inserted

5. After regulation 30 of the principal regulations the following Part is inserted—

“

PART 5A—DISCLOSURE OF GIFTS**'Gift' defined—s. 4.59(a)**

30A. (1) In this Part—

“**gift**” means a disposition of property, or the conferral of any financial benefit, made by one person in favour of another.

(2) A gift can include a gift of money, a gift which is non-monetary but of value, a gift in kind, the payment of an inadequate financial consideration or the receipt of a discount (where the difference or discount is more than \$200 worth), financial or other contribution to travel, the provision of a service for no consideration or for inadequate consideration, and a firm promise or agreement to give a gift at some future time.

(3) A gift can be made with or without an instrument in writing, without consideration in money or money's worth passing from one person to another, and in the present or sometime in the future.

(4) A gift is only relevant if—

- (a) the value of the gift is \$200 or more; or
- (b) the value of the gift is less than \$200, but the gift is one of 2 or more gifts, with a total value of \$200 or more, made by one person at any time during the period set out in regulation 30C.

(5) A gift does not include—

- (a) a gift by will;
- (b) a gift by a 'relative' (as defined in section 5.74(1) of the Act);
- (c) a gift that the candidate would have received notwithstanding his or her candidature; or
- (d) the provision of volunteer labour.

Candidates to disclose gifts C 4.59

30B. (1) A candidate must disclose to the CEO a gift promised or received during the period set out in regulation 30C.

Penalty: \$5 000

(2) A candidate must make a disclosure to the CEO in the manner set out in regulation 30D(1), and within the time set out in regulation 30D(2).

Penalty: \$5 000

(3) A candidate must identify the source of a gift in the manner set out in regulation 30E.

Penalty: \$5 000

(4) A candidate must provide the information set out in regulation 30F(1) relating to a gift, and the candidate must ensure that the information provided is not false or misleading.

Penalty: \$5 000

Disclosure period

30C. (1) For the purposes of regulation 30B(1), the period commences 6 months before the relevant election day, and concludes—

- (a) three days after the election day, for unsuccessful candidates; or
- (b) on the start day for financial interest returns for successful candidates under section 5.74 of the Act.

(2) Where a delay results from a declaration from the Court of Disputed returns the period of delay is to be added to the 6 month period set out in subregulation (1).

Manner and time of disclosure

30D. (1) For the purposes of regulation 30B(2), a disclosure is to be made by completing Form 9A and lodging it with the CEO.

(2) For the purposes of regulation 30B(2), a disclosure is to be made—

- (a) within 3 days of the receipt (or promise) of the gift, once nominations are made; or
- (b) within 3 days of nomination, for gifts received (or promised) between the commencement of the period set out in regulation 30B and the day of nomination,

unless the CEO is satisfied that the lodging of a disclosure has occurred outside the time period in paragraph (a) or (b) due to circumstances beyond the candidate's control.

Source of gift

30E. For the purposes of regulation 30B(3), a candidate must identify the true source of a gift, if known, or state on the 'disclosure of gifts' form that the true source of the gift is unknown to the candidate.

Information to be provided

30F. (1) For the purposes of regulation 30B(4), a disclosure is to contain the following information—

- (a) a description of the gift;
- (b) the date the gift was received or promised;
- (c) the value of the gift; and
- (d) the information required under regulation 30E.

(2) If a candidate is unable to provide some or all of the information set out in subregulation (1), the candidate does not commit an offence under regulation 30B(4) if, on the 'disclosure of gifts' form, the candidate—

- (a) provides as much of the information as is available to the candidate;
- (b) indicates what of the required information has not been provided; and
- (c) sets out the reasons for not being able to provide the information.

(3) In subregulation (2)—

“reasons” must be, in the opinion of the CEO, sufficient and appropriate.

Register

30H. (1) The CEO is to establish and maintain an electoral gift register.

(2) The CEO is to ensure that all 'disclosure of gifts' forms completed by candidates and received by the CEO are placed on the electoral gift register—

- (a) upon receipt by the CEO; and
- (b) in a manner that clearly identifies and distinguishes the candidates.

(3) When the period under regulation 30C has concluded in relation to any election, the CEO is to remove any 'disclosure of gifts' forms completed by an unsuccessful candidate from the electoral gift register, and retain those forms separately for a period of at least 2 years.

(4) When a successful candidate completes the term of office resulting from an election, the CEO is to remove any 'disclosure of gifts' forms completed by that person for that election from the electoral gift register, and retain those forms separately for a period of at least 2 years.

Public to have access to electoral gift register

30I. The electoral gift register is to be kept at the appropriate local government offices.

Offence to publish information in certain cases

30J. (1) A person must not publish—

- (a) any information derived from an electoral gift register unless that information constitutes a fair or accurate report or summary of information contained in the register and is published in good faith; or

(b) any comment on the facts set forth in an electoral gift register unless that comment is fair and published in good faith.

Penalty: \$5 000.

(2) In subregulation (1)—

“publish” has the same meaning in relation to any information or comment referred to in that subregulation as it has in sections 348 and 349 of *The Criminal Code* in relation to the publication of defamatory matter.

Regulation 43 amended

6. Regulation 43(1) of the principal regulations is amended by inserting after paragraph (b) the following paragraph—

(ba) information to the effect that the electoral gifts register is available for inspection, by any voter prior to the election, at the relevant local government offices;

Schedule 1 amended

7. (1) Schedule 1 to the principal regulations is amended in the “List of Forms” by inserting after item 9 the following item—

“ 9A. Disclosure of Gifts s. 4.59 ”.

(2) Schedule 1 to the principal regulations is amended by inserting after Form 9 the following form—

Local Government Act 1995
Local Government (Elections) Regulations 1997

[s. 4.59]
[r. 30D]

Form 9A
DISCLOSURE OF GIFTS

Details of Candidate

Surname Other names.....

Complete and sign the declaration at the end of the Form

Details of Gifts (Money or value above \$200)

Name and Address of Donor.....

Date gift promised or received.....

Value of gift

Description of gift.....

Note:

THE DONOR IS THE ORIGINAL SOURCE OF THE GIFT. THE DONOR MAY OR MAY NOT ACTUALLY BE THE PERSON WHO DELIVERS THE GIFT.

IF YOU ARE UNABLE TO PROVIDE THE INFORMATION REQUIRED BY THIS FORM, SET OUT THE REASONS FOR NOT PROVIDING IT IN THE SPACE BELOW.

It is declared that all information and details provided are true and correct, and no known, relevant information is omitted.

Signature Date

By Command of the deputy of the Governor,

ROD SPENCER, Clerk of the Executive Council.