



New South Wales

Local Government Amendment (Miscellaneous) Regulation 2001

under the

Local Government Act 1993

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

HARRY WOODS, M.P.,
Minister for Local Government

Explanatory note

This Regulation:

- (a) amends the *Local Government (Financial Management) Regulation 1999* to make transitional provision regarding the application of an amendment made by the *Local Government Amendment Act 2000* to the manner in which a council's general income is calculated, and
- (b) amends the *Local Government (General) Regulation 1999* so as:
 - (i) to prescribe the form for the making of returns disclosing the pecuniary interests of councillors and designated persons and to prescribe the interests that must be disclosed in those returns (being the same form of return and interests that were set out in the *Local Government Act 1993* until its amendment by the *Local Government Amendment Act 2000*), and
 - (ii) to make transitional provision regarding the application of amendments made by the *Local Government Amendment Act 2000* regarding draft plans of management, and

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- (c) amends the *Local Government (Meetings) Regulation 1999* as a consequence of an amendment made by the *Local Government Amendment Act 2000* requiring a councillor with a pecuniary interest in a matter before the council to leave any meeting at which that matter is being considered, and
- (d) amends the *Local Government (Orders) Regulation 1999* to insert a note in relation to the provisions of the *Local Government Act 1993* requiring notice to be given of a proposal to exercise the council's power of entry, and
- (e) amends the *Local Government (Tendering) Regulation 1999* as a consequence of an amendment made by the *Local Government Amendment Act 2000*, as a result of which a council is permitted to tender for any work, service or facility for which it has invited tenders.

This Regulation is made under the *Local Government Act 1993* (as amended by the *Local Government Amendment Act 2000*) including section 748 (the general regulation-making power), item 19A of Schedule 6 to the Act, which authorises the making of regulations for or with respect to the disclosure of pecuniary interests and clause 1 of Schedule 8, which authorises the making of savings and transitional regulations.

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1 Name of Regulation

This Regulation is the *Local Government Amendment (Miscellaneous) Regulation 2001*.

2 Commencement

This Regulation commences on 1 April 2001.

3 Amendment of Regulations

Each Regulation specified in Schedule 1 is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

1.1 Local Government (Financial Management) Regulation 1999

Clause 25A

Insert after clause 25:

25A Application of amendment made by Local Government Amendment Act 2000 to annual reports

The amendment made to section 505 of the Act by Schedule 3 [18] to the *Local Government Amendment Act 2000* does not apply to the calculation of a council's general income for the financial year commencing on 1 July 2000.

1.2 Local Government (General) Regulation 1999

[1] Clause 23A

Insert after clause 23:

23A Application of amendments made by Local Government Amendment Act 2000 to draft plans of management

The amendments made to sections 40 and 40A of the Act by Schedule 3 [4]–[6] to the *Local Government Amendment Act 2000* do not apply to proposed plans of management amended or adopted after the commencement of those amendments that had been placed on exhibition before the commencement of the amendments.

[2] Part 5A

Insert after clause 40:

Part 5A Pecuniary interests to be disclosed in returns

Division 1 Preliminary matters

40A Definitions

In this Part and Schedule 2:

address means:

- (a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or
- (b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is incorporated, or
- (c) in relation to any real property, the postal address of the property or particulars of title of the property.

disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- (a) the allotment of shares in a company,
- (b) the creation of a trust in respect of property,
- (c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property,
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property,

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- (e) the exercise by a person of a general power of appointment over property in favour of another person,
- (f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

gift means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the donee to the donor, unless it is a financial or other contribution to travel.

interest means:

- (a) in relation to property—an estate, interest, right or power, at law or in equity, in or over the property, or
- (b) in relation to a corporation—a relevant interest (within the meaning of section 9 of the *Corporations Law*) in securities issued or made available by the corporation.

occupation includes trade, profession and vocation.

professional or business association means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

property includes money.

public company means a company of which the shares are listed for quotation on the stock market of a stock exchange in New South Wales.

travel includes accommodation incidental to a journey.

40B The return date for certain returns

- (1) A reference in this Part or in Schedule 2 to the return date for a return made by a person under section 449 (1) of the Act is a reference to the date on which the person became the holder of a position required to make such a return.

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- (2) A reference in this Part or in Schedule 2 to the return period for a return by a person under section 449 (3) of the Act in a particular year is a reference to:
- (a) if the last return made by the person was a return under section 449 (1) of the Act, the period commencing on the first day after the return date and ending on 30 June in that particular year, or
 - (b) if the last return made by a person was a return under section 449 (3) of the Act, the period commencing on the expiration of the period to which that return relates and ending on 30 June in that particular year.

40C Matters relating to the interests that must be included in returns

- (1) **Interests etc outside New South Wales**
A reference in this Part or in Schedule 2 to a disclosure concerning a corporation or other thing includes a reference to a disclosure concerning a corporation incorporated, or other thing arising or received, outside New South Wales.
- (2) **References to interests in real property**
A reference in this Part or in Schedule 2 to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.
- (3) **Gifts, loans etc from related corporations**
For the purposes of this Part and Schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of the *Corporations Law* are all given, made or supplied by a single corporation.

Division 2 Interests to be included in returns

40D Real property

- (1) A person making a return under section 449 (1) of the Act must disclose:
 - (a) the address of each parcel of real property in which he or she had an interest on the return date, and

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- (b) the nature of the interest.
- (2) A person making a return under section 449 (3) of the Act must disclose:
 - (a) the address of each parcel of real property in which he or she had an interest at any time since the last return under Part 2 of Chapter 14 of the Act was made, and
 - (b) the nature of the interest.
- (3) An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
 - (a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
 - (b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to his or her duties as the holder of a position required to make a return.
- (4) In this clause, interest includes an option to purchase.

40E Gifts

- (1) A person making a return under section 449 (3) of the Act must disclose:
 - (a) a description of each gift received since the last return under Part 2 of Chapter 14 of the Act was made, and
 - (b) the name and address of the donor of each of the gifts.
- (2) A gift need not be included in a return if:
 - (a) it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less, or
 - (b) it was a political contribution disclosed, or required to be disclosed, under Part 6 of the *Election Funding Act 1981*, or
 - (c) the donor was a relative of the donee.
- (3) For the purposes of this clause, the amount of a gift other than money is an amount equal to the value of the property given.

40F Contributions to travel

- (1) A person making a return under section 449 (3) of the Act must disclose:
 - (a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person since the last return under Part 2 of Chapter 14 was made, and
 - (b) the dates on which the travel was undertaken, and
 - (c) the names of the States and Territories, and of the overseas countries, in which the travel was undertaken.
- (2) A financial or other contribution to any travel need not be disclosed under this clause if it:
 - (a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
 - (b) was made by a relative of the traveller, or
 - (c) was made in the ordinary course of an occupation of the traveller that is not related to his or her functions as the holder of a position requiring the making of a return, or
 - (d) did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12 month period or less, or
 - (e) was a political contribution required to be disclosed under Part 6 of the *Election Funding Act 1981*, or
 - (f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales or to enable the traveller to represent the party within Australia.
- (3) For the purposes of this clause, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

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40G Interests and positions in corporations

- (1) A person making a return must disclose:
 - (a) the name and address of each corporation in which he or she had an interest or held a position (whether remunerated or not) on the return date (in the case of a return under section 449 (1) of the Act) or at any time since the last return under Part 2 of Chapter 14 of the Act was made (in the case of a return under section 449 (3) of the Act), and
 - (b) the nature of the interest, or the position held, in each of the corporations, and
 - (c) a description of the principal objects of each of the corporations, except in the case of a public company.
- (2) An interest in, or a position held in, a corporation need not be disclosed if the corporation is:
 - (a) formed for the purpose of providing recreation or amusement or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
 - (b) required to apply its profits or other income in promoting its objects, and
 - (c) prohibited from paying any dividend to its members.
- (3) An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.

40H Positions in trade unions and professional or business associations

A person making a return must disclose:

- (a) the name of each trade union, and of each professional or business association, in which he or she held any position (whether remunerated or not) on the return date (in the case of a return under section 449 (1) of the Act) or at any time since the last return under Part 2 of Chapter 14 was made (in the case of a return under section 449 (3) of the Act), and

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- (b) a description of the position held in each of the unions and associations.

40I Dispositions of property

- (1) A person making a return under section 449 (3) of the Act must disclose particulars of each disposition of real property by the councillor or employee, at any time since the last return under Part 2 of Chapter 14 of the Act was made, under which he or she wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
- (2) A person making a return under section 449 (3) of the Act must disclose particulars of each disposition of real property to another person, since the last return under Part 2 of Chapter 14 of the Act was made, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.

40J Sources of income

- (1) A person making a return must disclose:
 - (a) in the case of a return under section 449 (1) of the Act—each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
 - (b) in the case of a return under section 449 (3) of the Act—each source of income received by the person since the last return under Part 2 of Chapter 14 of the Act was made.
- (2) A reference in subclause (1) to each source of income received, or reasonably expected to be received, by a person is a reference to:
 - (a) in relation to income from an occupation of the person:
 - (i) a description of the occupation, and
 - (ii) if the person is employed or the holder of an office, the name and address of his or her employer or a description of the office, and

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- (iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
 - (b) in relation to income from a trust, the name and address of the settlor and the trustee, or
 - (c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
- (3) The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.

40K Debts

- (1) A person making a return must disclose the name and address of each person to whom the person was liable to pay any debt:
 - (a) in the case of a return under section 449 (1) of the Act—on the return date, or
 - (b) in the case of a return under section 449 (3) of the Act—at any time since the last return under Part 2 of Chapter 14 of the Act was made.
- (2) A liability to pay a debt must be disclosed by a person in a return whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time since the last return under Part 2 of Chapter 14 of the Act was made, as the case may be.
- (3) A liability to pay a debt need not be disclosed by a person in a return if:
 - (a) the amount to be paid did not exceed \$500 on the return date or at any time since the last return under Part 2 of Chapter 14 of the Act was made, as the case may be, unless:
 - (i) the debt was one of two or more debts that the person was liable to pay to one person on the return date or at any time since the last return was made, as the case may be, and

- (ii) the amounts to be paid exceeded, in the aggregate, \$500, or
- (b) the person was liable to pay the debt to a relative, or
- (c) in the case of a debt arising from a loan of money the person was liable to pay the debt to a bank, building society, credit union or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender, or
- (d) in the case of a debt arising from the supply of goods or services:
 - (i) the goods or services were supplied in the period of 12 months immediately preceding the return date or were supplied since the last return under Part 2 of Chapter 14 of the Act was made, as the case may be, or
 - (ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to his or her duties as the holder of a position required to make a return.

40L Discretionary disclosures

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Part.

Division 3 Form of return

40M Form of return

For the purposes of section 449 of the Act, the form set out in Schedule 2 is prescribed.

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Schedule 1 Amendments

[3] Schedule 2

Insert after Schedule 1:

Schedule 2 Form of return—disclosure of interest

(Clause 40M)

Local Government Act 1993

Disclosures by Councillors and Designated Persons Return

- 1 The pecuniary interests and other matters to be disclosed in this return are prescribed by Part 5A of the *Local Government (General) Regulation 1999*.
- 2 If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, do not complete Parts C, D and H of the return. All other Parts of the return should be completed with appropriate information as at the return date, that is, the date on which you attained that position.

If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevant return period since the last return, that is, the period from the return date of the last return to 30 June in this year or the period from the end of the last return period to 30 June in this year (whichever is appropriate).
- 3 The particulars required to complete this form are to be written in block letters or typed.
- 4 If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.
- 5 If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word “NIL” is to be placed in an appropriate space under that heading.
- 6 “*” means delete whichever is inapplicable.

Important information

This information is being collected for the purpose of compliance with section 449 of the *Local Government Act 1993*. You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular. Complaints made about contraventions of these requirements may be referred to the Local Government Pecuniary Interest Tribunal.

The information collected on this form will be kept by the General Manager at the council chambers in a register of returns. Everyone is entitled to inspect the register of returns free of charge. You may correct or update the information contained in the register of returns by submitting a fresh return at any time.

Disclosure of pecuniary interests and other matters

by
(full name of councillor or designated person)

*as at
(return date)

*in respect of the period from to
(return period)

.....
(councillor's or designated
person's signature)

.....
(date)

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A. Real Property		
Address of each parcel of real property in which I had an interest *at the return date/*at any time during the return period		Nature of interest
B. Sources of income		
1 *Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June: *Sources of income I received from an occupation at any time during the return period:		
Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
2 *Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June: *Sources of income I received from a trust during the return period:		
Name and address of settlor		Name and address of trustee
3 *Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June: *Sources of other income I received at any time during the return period: (Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)		
C. Gifts		
Description of each gift I received at any time during the return period		Name and address of donor

D. Contributions to travel			
Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken	
E. Interests and positions in corporations			
Name and address of each corporation in which I had an interest or held a position *at the return date/*at any time during the return period	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)
F. Positions in trade unions and professional or business associations			
Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) *at the return date/*at any time during the return period		Description of position	
G. Debts			
Name and address of each person to whom I was liable to pay any debt *at the return date/*at any time during the return period.			
H. Dispositions of property			
1 Particulars of each disposition of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.			

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2	Particulars of each disposition of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.
	I. Discretionary disclosures

1.3 Local Government (Meetings) Regulation 1999

Clause 24 Voting at council meetings

Omit the second sentence of clause 24 (1).

1.4 Local Government (Orders) Regulation 1999

Clause 25 Information to be included in orders

Insert at the end of the clause:

Note. Section 193 of the Act requires the council to give the owner or occupier of premises written notice before a person authorised to enter premises under Part 2 of Chapter 8 of the Act does so.

1.5 Local Government (Tendering) Regulation 1999

Clause 19 Acceptance of tenders

Insert at the end of clause 19 (2):

However, if the successful tender was made by the council (as provided for in section 55 (2A) of the Act), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.

BY AUTHORITY