



Hon David Templeman MLA
Minister for Local Government; Heritage; Culture and the Arts

Our Ref: 66-07469

TO ALL LOCAL GOVERNMENTS

MINISTERIAL CIRCULAR No 03-2018

LOCAL GOVERNMENT AMENDMENT (SUSPENSION AND DISMISSAL) ACT 2018

The *Local Government Amendment (Suspension and Dismissal) Act 2018* has received Royal Assent with the amendments taking effect from 20 November 2018.

The Act was developed in consultation with the Western Australian Local Government Association and Local Government Professionals Australia (WA) in response to requests from the sector.

The amendments provide additional powers to the Minister for Local Government enabling tailored assistance to be given to a council member or council. The amendments are designed to protect the public interest and the system of local government by facilitating a timely intervention by the Minister.

Specifically, the Minister has the power to suspend and/or order an individual council member to undertake remedial action when the Minister is satisfied that it is inappropriate for the council member to continue to act as a member of council without intervention.

The triggers for an intervention are:

1. A council member is charged with an offence that (if convicted), will disqualify them from being a council member.
2. The Departmental Chief Executive Officer has referred an allegation or allegations of serious breach or recurrent breaches of the Act to the State Administrative Tribunal.
3. The council member is failing to perform their role, functions or duties as defined in the Act and the Minister is satisfied that the seriousness or duration of the suspected failure requires intervention.
4. The council member's conduct is adversely affecting the ability of another person, including employees or the local government itself, to perform their functions or duties and the Minister is satisfied that the seriousness or duration of the suspected conduct requires intervention.

Procedural fairness will be accorded the council member prior to the use of these powers and any of the other new powers, through a Show Cause process.

The Show Cause Notice will outline the grounds for the proposed use of the power and provide the council member with an opportunity to respond. The Minister must consider the member's response prior to any order being given.

Additionally, the powers of an Inquiry Panel are also expanded. An Inquiry Panel can now recommend the dismissal of an individual council member if the Inquiry Panel concludes:

- that the member has failed, or is failing, to perform their role, functions or duties under the Act, or
- the member's conduct has, or is, impeding the ability of another person to perform their role, functions or duties under the Act, or
- the member's conduct has, or is, impeding the ability of the local government to comply with the employment principles that apply to it under section 5.40, and the seriousness or duration of that failure or conduct make it inappropriate for the council member to remain a member of the council.

This allows more targeted action to be taken in lieu of the suspension or dismissal of an entire council. The amendments mirror the current provisions that apply to a council.

These amendments also remove the entitlement of a council member, mayor or president to receive any sitting fee or allowance under the *Local Government Act 1995* while they are suspended.

This applies when a council member is suspended by either the State Administrative Tribunal, or by the Minister, and whether suspended as an individual or as part of an entire council.

Regulations will be enacted under section 5.102AB of the *Local Government Act 1995* to provide for the recovery of any fees or allowance paid in advance to the member for the period of suspension.

Additionally, the Minister now has the ability to recommend dismissal if the Minister is satisfied that the council member is, or has:

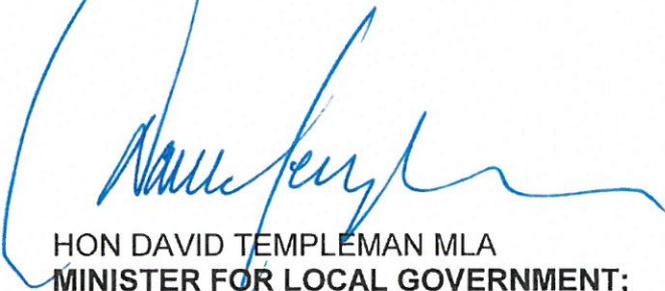
- impeded the ability of the local government to perform its functions and duties under the Act, and/or
- it is in the best interests of the local government that the member be dismissed, and the seriousness of the situation for the local government requires intervention.

The recommendation and, more importantly, the basis of the recommendation to dismiss by the Minister, will be open to public scrutiny through a requirement imposed upon the Minister to release the report on the day the order to dismiss takes effect.

The dismissed council member will not be prevented from re-standing for a position on council. This will provide the electors of the district with the opportunity to make an informed choice on whether that person is an appropriate person to be their representative.

A series of flow charts which provide an overview of how these new powers will operate are available on the Department of Local Government, Sport and Cultural Industries' (the Department) website alongside this circular.

For further information, please contact Mr Luke Stevens, Senior Legislation and Strategy Officer at the Department, by telephone on (08) 9492 9846 or via email to luke.stevens@dlgsc.wa.gov.au.



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20 NOV 2018