Local Government Amendment (Suspension and Dismissal) Bill 2018

Second Reading Speech

It gives me great pleasure to deliver an important local government reform of the McGowan Government with the introduction of the Local Government Amendment (Suspension and Dismissal) Bill 2018.

As members are aware, local governments are the closest tier of government to the community performing a vital role within our society through the provision of essential services to the community.

The *Local Government Act 1995* provides the framework within which local governments operate. The Act is based on the principle of general competence; that is, that local governments are in the best position to make decisions for their local community and should be given the autonomy to do so. There are, however, clear limitations on this power in a number of areas.

In 2012, Parliament gave the Minister the power to suspend a council or require members to undertake remedial action where the seriousness or duration of a suspected failure of a local government to perform its functions properly made it inappropriate for the council to continue to act.

The Minister does not, however, have the ability to suspend an individual council member whose conduct is disruptive, is creating health and safety issues for staff members, or is undermining the local government itself. This Bill addresses these situations.

As many of you know from being former elected members of local governments yourselves, the majority of council members are hardworking representatives of our community that give up their time with the aim of improving their local area. Sometimes, however, dysfunctional behaviour can degrade the reputation of local governments and deter good people from nominating to be members.

The State Government is duty bound to ensure that the community is given the local government that they expect and deserve, and good governance.

This Bill will give the Minister 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 this intervention are:

1. a council member is charged with an offence that if convicted will disqualify them from being a council member; or

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; or

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; or

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.

The purpose of this reform is to protect the public interest and the system of local government by facilitating a timely intervention by the Minister. The existing methods of dealing with misbehaviour in the longer term, such as through the courts or the State Administrative Tribunal, will underpin the new suspension powers.

By also creating an avenue for the Minister to order a council member to undertake training, mediation or other remedial action, the council member can be assisted in providing effective and appropriate service to the community. This can be done in conjunction with a suspension order or as a standalone order.

Currently under the Act, an Inquiry Panel can be appointed by the Minister to investigate and report on a local government's operations or affairs. Before or during an Inquiry, the Minister may currently suspend the entire council if the Minister believes that the seriousness or duration of a suspected failure of the council to ensure that the local government performs its functions properly warrants the Minister's intervention.

This Bill will enable the Minister to suspend an individual council member if the Minister thinks that the conduct of the Inquiry would be likely to be seriously prejudiced if the member were not suspended.

These amendments will facilitate a tailored approach which will result in cost savings for the local government as commissioners may not need to be appointed.

Additionally, this Bill will remove the entitlement of a council member to receive any sitting fee or allowance under the *Local Government Act 1995* while they are suspended.

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

The Bill also ensures that a local government will recover any fees or allowance paid in advance to the member for the period of suspension.

Currently the Act allows an Inquiry Panel to recommend the dismissal of an entire council, but not an individual council member.

This Bill will enable an Inquiry Panel to 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.

Procedural fairness will be accorded the council member through a Show Cause process prior to the Minister making any orders to suspend, dismiss or order a council member to undertake remedial action. This will provide the council member with notice of the proposed order and the reasons why that action is proposed.

The council member will have 21 days, or such longer period as the Minister allows, to respond to the proposal to suspend or order remedial action. The Minister is to consider the member's response before making a decision on the order.

This Bill includes an amendment which will require an elected member to inform the local government CEO if the member is charged with an offence that could disqualify them from holding office. This advice is then to be provided to the Departmental CEO.

There is currently no ability to dismiss an individual council member when it is clear that they should not remain in office. This Bill will provide the Minister with the power to recommend dismissal when the Minister is satisfied on the advice of the Departmental CEO 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.

Procedural fairness will be accorded the council member through the provision of the report that outlines the grounds for the proposed dismissal. The council member will have 21 days, or such longer period as the Minister allows, to respond to the proposal to dismiss.

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 is not prevented from re-standing for a position on council. This process will give voters the opportunity to make an informed choice on whether that person is an appropriate person to be their representative.

These are important amendments which provide the Minister with the ability to intervene to address issues involving individual council members that impact adversely on the ability of the local government, its elected members and its staff to carry out their respective roles under the Local Government Act. It has the potential to provide greater public confidence in local government and protects the reputation of the sector generally from the actions of an individual.

Pursuant to Standing Order 126(1), I advise that this Bill is not a uniform legislation Bill. It does not ratify or give effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party. Nor does this Bill, by reason of its subject matter, introduce a uniform scheme or uniform law throughout the Commonwealth.

I commend the Bill to the House.