

# LOCAL GOVERNMENT AMENDMENT (SUSPENSION AND DISMISSAL) BILL 2018

## EXPLANATORY MEMORANDUM

### OVERVIEW OF THE BILL

The *Local Government Act 1995* (LG Act) provides the framework for local governments within Western Australia, including mechanisms to scrutinise the affairs of local governments and to regulate the conduct of officials within a local government.

Although the Minister's powers include the ability, through the Governor, to suspend or dismiss an entire council, there is no ability to suspend or dismiss an individual council member. This Bill addresses these limitations.

#### *Suspension*

This Bill gives the Minister the power to suspend and/or order an individual council member to undertake remedial action. The Minister has to be satisfied that it is inappropriate for the council member to continue to act as a member of council without intervention. The triggers for this are:

1. A council member is charged with an offence that would disqualify them from being a council member if found guilty; or
2. The Departmental Chief Executive Officer (CEO) has referred an allegation of serious or recurrent breach of the LG Act to the State Administrative Tribunal; or
3. The council member is failing or has failed to perform their role, functions or duties as defined in the LG Act; or
4. The council member's conduct is adversely affecting or has adversely affected the ability of another person (including the local government) to perform their role, functions or duties; or
5. The council member's conduct is adversely affecting or has adversely affected the ability of the local government to comply with the employment principles in the LG Act.

The purpose of this reform is designed to protect the public interest and the system of local government by facilitating a timely intervention by the Minister. 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.

Currently, under the LG Act, an Inquiry Panel can be appointed by the Minister to investigate into and report on an aspect of a local government, its operations or affairs. An Inquiry Panel has the powers of a Royal Commission. Before or during an Inquiry, the Minister may currently, by order, suspend the entire council if the Minister believes that the seriousness or duration of the suspected failure of the council to ensure that the local government functions properly, or any other factors the Minister thinks relevant, make it inappropriate for the council to continue to act as the governing body of the local government.

This Bill expands those powers by enabling the suspension of an individual council member if the Minister thinks that the conduct of the inquiry would be likely to be seriously prejudiced if the member was not suspended.

Additionally, this Bill will 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 will apply 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.

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.

### *Dismissal*

This Bill also enables an Inquiry Panel to recommend the dismissal of an individual council member if the Inquiry Panel concludes:

- that the council member has failed, or is failing, to perform their role, functions or duties under the LG Act; or
- the council member's conduct has impeded or is impeding the ability of another person (including the local government) to perform their role, functions or duties under the LG Act; or
- the council member's conduct has impeded or is impeding the ability of the local government to comply with the employment principles that apply to it under section 5.40 of the LG Act;

and the seriousness or duration of that failure or conduct make it inappropriate for the council member to remain a member of the council.

The Minister can, but is not required to, recommend that the Governor dismiss the member. This is similar to the existing provisions regarding the dismissal of a council at the end of an Inquiry Panel investigation.

Procedural fairness is accorded with a Show Cause Notice being given to the council member advising of the proposed dismissal, suspension and/or issue of a remedial action order with the opportunity to respond before the decision is made to proceed with the order.

In recognition that circumstances may arise where it is clear that the dismissal of a council member is warranted unrelated to an Inquiry Panel, this Bill vests a power directly in the Minister to recommend the dismissal to the Governor.

The Minister will be able to recommend dismissal, if satisfied on the basis of written advice from the Departmental CEO, it is appropriate to intervene when:

- the council member is impeding the ability of the local government to perform its functions and duties under the Act; and/or
- it is otherwise 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 Departmental CEO will have the ability to use any information source available as a basis for that advice.

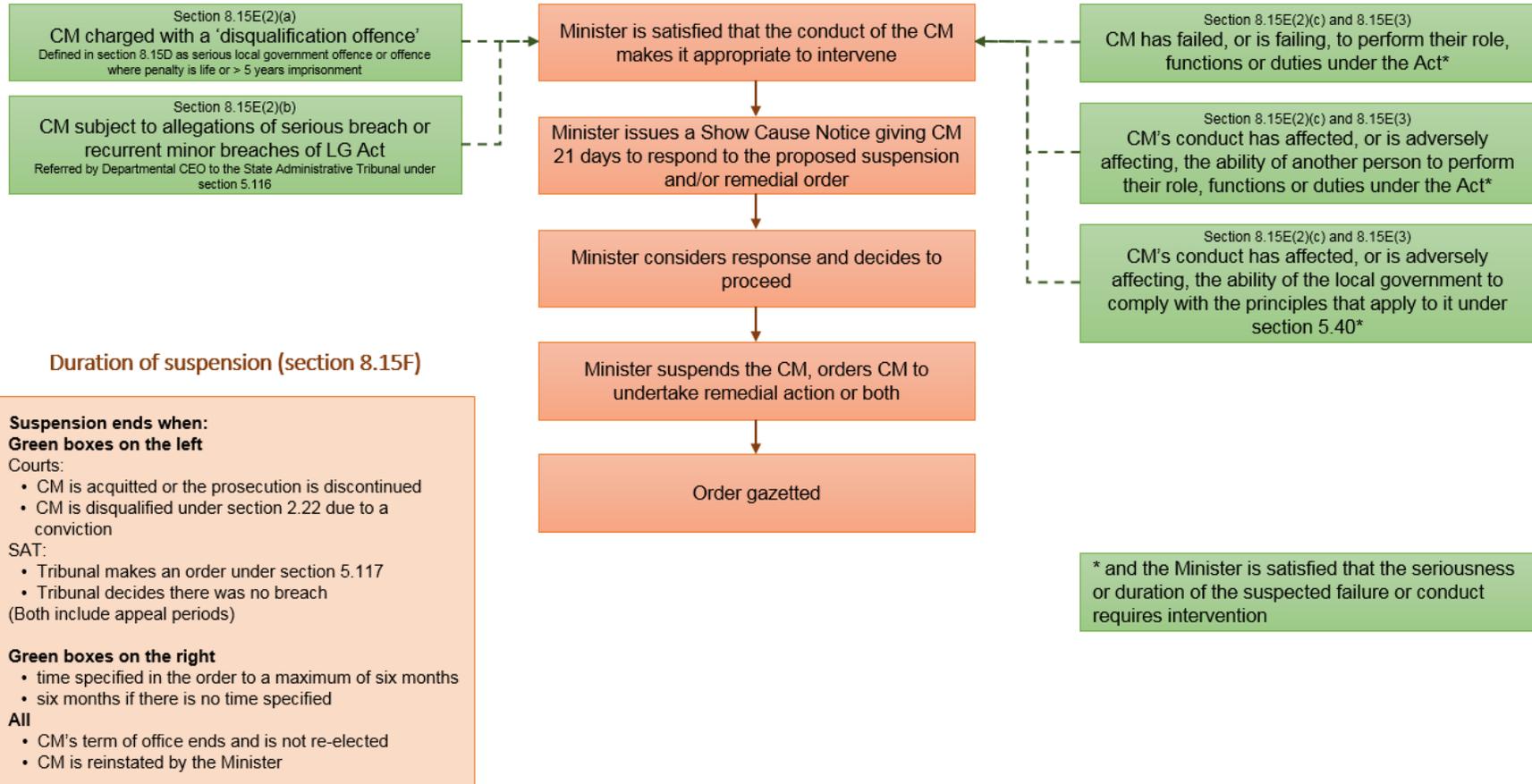
Accountability for both the Minister and the council member is provided through a requirement placed upon the Minister to publish the report outlining the grounds for dismissal on the day the dismissal takes effect. Parts of the report that might prejudice a matter that is likely to come before a court or the State Administrative Tribunal can be withheld.

There is no disqualification period for a council member that is dismissed under these amendments. As such, the council member is eligible to stand for re-election to the vacated (or other) position, with the report providing a basis for their constituents to make an informed decision.

The following flow charts provide an overview of the new suspension and dismissal powers and associated processes.

# Suspension or remedial action order

## Suspension or remedial action order against a Council Member (CM) under section 8.15E



### Duration of suspension (section 8.15F)

**Suspension ends when:  
Green boxes on the left**

**Courts:**

- CM is acquitted or the prosecution is discontinued
- CM is disqualified under section 2.22 due to a conviction

**SAT:**

- Tribunal makes an order under section 5.117
- Tribunal decides there was no breach

(Both include appeal periods)

**Green boxes on the right**

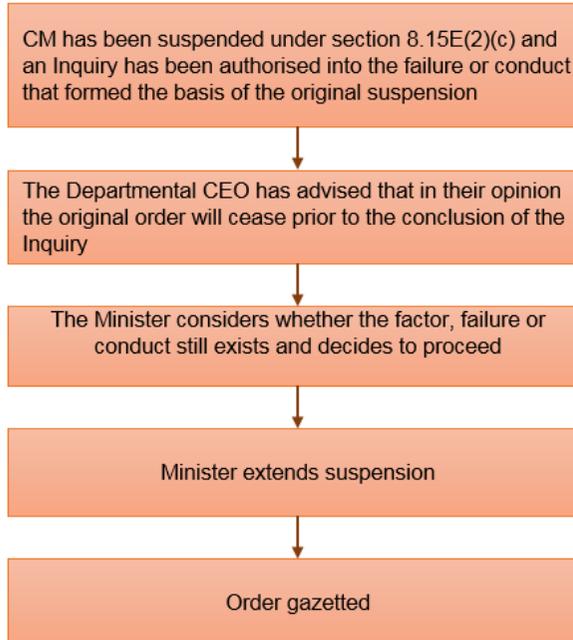
- time specified in the order to a maximum of six months
- six months if there is no time specified

**All**

- CM's term of office ends and is not re-elected
- CM is reinstated by the Minister

**Suspension of certain CMs may be extended**  
(in limited circumstances)

**Suspension extended under section 8.15G**



**Duration of suspension (section 8.15F and 8.15H)**

- Suspension ends when:**  
(earliest of)
- the Departmental CEO advises the Minister that they will not be referring any allegations to the SAT or prosecuting the CM
  - time specified in the order to a maximum of six months
  - six months if there is no time specified

## Other suspension powers

### Inquiry Panel suspension order under section 8.19A

Minister has appointed, or is about to appoint, an Inquiry Panel and Minister thinks the conduct of the Inquiry would likely be seriously prejudiced if CM were not suspended.

### Failure to comply with a remedial order suspension under section 8.15I

CM fails to undertake remedial action ordered under sections 8.15C(2)(d) or 8.15E(1)(b) within the time specified in the order

Minister issues Show Cause Notice giving CM 21 days to respond to intention to suspend

Minister considers response and decides to proceed

Minister may order a suspension for a maximum of 2 years

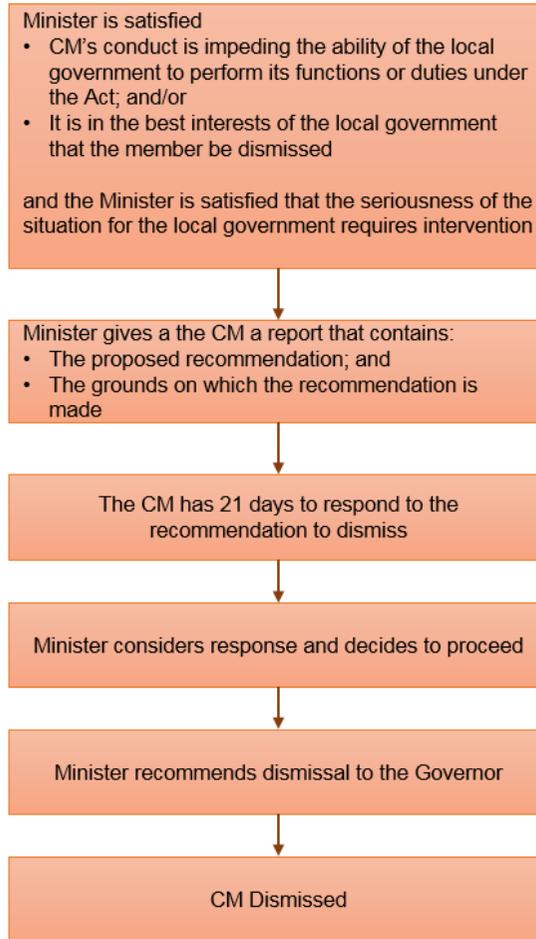
Order gazetted

### Duration of suspension (section 8.30A)

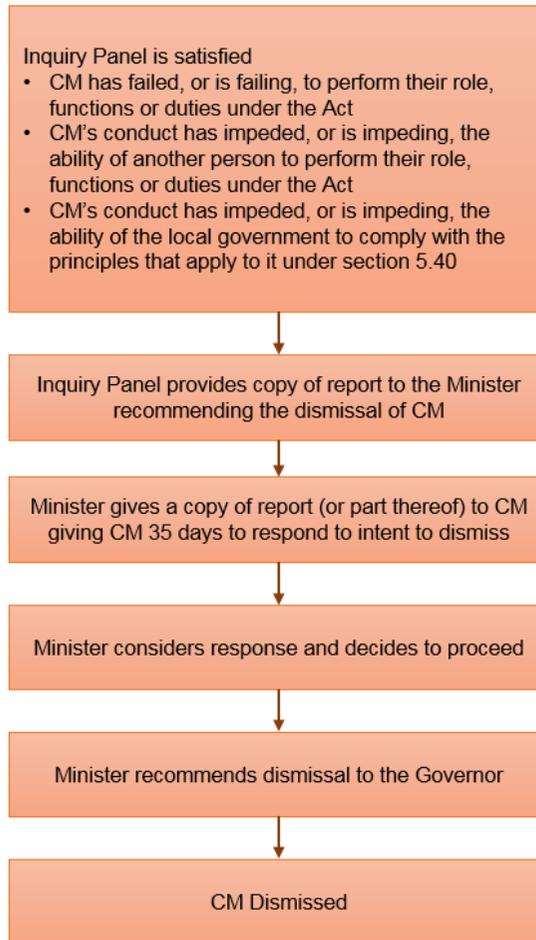
#### Suspension ends when:

- Inquiry Panel reports and does not recommend dismissal, prosecution or referral to SAT
- CM's term of office ends and is not re-elected
- CM is reinstated by the Minister

## Dismissal Provisions for a council member under section 8.15L



## Dismissal Provisions for a council member under section 8.25(2)



## CLAUSE NOTES

Contained below is a brief description of each clause contained in the Local Government Amendment (Suspension and Dismissal) Bill 2018 (the Bill).

### **Clause 1 - Short title**

Clause 1 cites the short title of the *Local Government Amendment (Suspension and Dismissal) Act 2018* (the Act).

### **Clause 2 - Commencement**

This clause provides that section 1 and 2 will commence on the day on which the Act receives Royal Assent. The remainder of the Act will commence on the day after assent.

### **Clause 3 – Act amended**

This clause provides that the Bill amends the *Local Government Act 1995* (LG Act).

### **Clause 4 – Section 2.22 amended**

Clause 4 of the Bill removes the word ‘indictment’ from subsection (1)(c).

This word has been removed to ensure that there is no ambiguity when a council member (or candidate) is disqualified from being (or nominating to be) a member of a council.

This clarifies that it is the offence which leads to the disqualification, rather than the court in which the matter was heard. Disqualification occurs when the council member is convicted of an indictable offence which has a penalty of more than five years or life imprisonment.

### **Clause 5 – Section 2.25 amended**

Clause 5 of the Bill is a consequential amendment to insert the words “Part 8” in section 2.25 of the Act which deals with disqualification for failure to attend meetings.

This is required to ensure that a council member cannot be disqualified for failing to attend council meetings as a result of a suspension ordered by the Minister under the new sections 8.15E, 8.15G, 8.15I and 8.19A which will be inserted by clauses 15 and 16 of this Bill.

### **Clause 6 – Section 2.32 amended**

Clause 6 of the Bill is a consequential amendment to include dismissal by the Governor under sections 8.15L or 8.25(2) as a method that a council member’s seat can become vacant. Dismissal by the Governor will be inserted by clauses 15 and 20 of this Bill.

**Clause 7 – Section 2.36 amended**

Clause 7 of the Bill amends section 2.36 which deals with vacancies on dismissal of a council to incorporate vacancies caused by the dismissal of an individual council member as per subsection (2). The heading of the section is also being amended.

It provides that where a council member is dismissed the office of the member becomes vacant. This triggers an election.

**Clause 8 – Section 2.37A amended**

Clause 8 of the Bill is a consequential amendment to section 2.37A to reflect the amendments being made to section 8.25 of the LG Act by clause 20 of this Bill. It changes the reference to section 8.25 to 8.25(1).

**Clause 9 – Section 4.14 amended**

Clause 9 of the Bill is a consequential amendment to this section to reflect the amendments being made to section 8.25 of the LG Act by clause 20 of this Bill. It changes the reference to section 8.25 to 8.25(1) and relates to the date of an election.

**Clause 10 – Section 5.117 amended**

Clause 10 of the Bill is a consequential amendment to this section to reflect the insertion of a new section 8.30B into the LG Act by clause 24 of this Bill.

Section 8.30B provides for the effect of the suspension of the council member. The amendment to section 5.117 applies these same effects to a suspension of a council member by the State Administrative Tribunal; that is, they cannot perform the powers and duties of an elected member but they remain eligible to be a candidate in a local government election.

**Clause 11 – Section 8.14 amended**

Under section 8.3 of the LG Act the Departmental CEO can authorise a person to inquire into and report on any aspect of a local government or its operations or affairs.

Subsection (1) amends section 8.14(1) to require the Departmental CEO (unless the Minister directs otherwise) to give a copy of the authorised person's report produced as a result of such an inquiry to:

- the local government concerned; and
- if the council of the local government is suspended to each council member; and
- if a council member is suspended to that member.

Subsection (2) is a consequential amendment to this section to recognise that there are a range of recipients of the report covered in subsection (1).

Subsection (3) inserts subsection 8.14(4) to give the suspended member 35 days to provide written advice on the recommendations in the authorised person's report. The Minister may allow a longer time to respond.

The heading of section 8.14 is amended to 'Copies to be given to local government and to suspended council members'.

***Clause 12 – Section 8.15 amended***

Clause 12 contains consequential amendments to this section to include reference to the changes made to section 8.14 of the LG Act by clause 11 of this Bill. It incorporates recognition that advice can come from a suspended member as well as from the local government.

***Clause 13 – Part 8 Division 2A heading replaced***

The heading for Division 2A is being renumbered and amended to become Division 1A. The heading has been renumbered to align with current drafting policy and the title has been amended to reflect the amended Division's structure.

The heading for Division 1A is amended to 'Intervention by the Minister in certain circumstances'.

Due to the nature of the amendments made to the Division, Division 1A has been divided into subdivisions.

The heading for Subdivision 1 is inserted — 'Council may be suspended or required to undertake remedial action'.

***Clause 14 – Section 8.15C amended***

Section 8.15C provides for the suspension of a council or the issue of an order for remedial action to be undertaken by the council. This clause adds the words 'within the time specified in the order' to set a clear time frame for the ordered remedial action to be completed.

A time frame is required to activate the Minister's power to suspend under section 8.15I, if a council member fails to complete the actions ordered.

### **Clause 15 – Part 8 Division 1A Subdivisions 2 and 3 inserted**

The new Subdivision 2:

- enables the Minister to suspend a council member or require a member to undertake remedial action;
- sets the length of the suspension under section 8.15E;
- enables the Minister to extend a council member’s suspension in certain circumstances pending the outcome of an Inquiry;
- establishes when a council member with an extended suspension is to be reinstated;
- provides the Minister with a power to suspend a council member if the member fails to undertake the remedial action ordered; and
- creates a requirement upon a council member to notify the CEO if charged with a disqualification offence.

The heading for Subdivision 2 is inserted —‘Council member may be suspended or required to undertake remedial action’.

#### **Section 8.15D - Terms used**

Section 8.15D defines the terms used in this Subdivision.

The term ‘disqualification offence’ is used for the purposes of sections 8.15E and 8.15F, and means a serious local government offence as defined in section 2.22(3) of the LG Act or an offence against a law of this State, the Commonwealth, another State or a Territory where the indictable penalty is imprisonment for more than five years or life imprisonment. A conviction for any of these offences disqualifies a person from being a member of a council.

The term ‘on which the order is based’ is used for the purposes of sections 8.15E, 8.15F and 8.15G and means the factor or type of failure or conduct that forms the basis of an order made by the Minister under the new section 8.15E(1). This will be the paragraph in section 8.15E(2), or the subparagraph in subsection 8.15E(3)(a) where relevant, that sets out the type of behaviour or conduct on which an order is based.

The term ‘reinstatement’ is used to define the sections which require the reinstatement of a council member in set circumstances (8.15H and 8.24(4B)) and 8.30D which provides the Minister with the ability to reinstate a suspended council member at any time.

## **Section 8.15E - Minister may suspend council member or require member to undertake remedial action**

This section gives the Minister the power to order the suspension of a council member and/or order a council member to undertake remedial action. Prior to this power being used the Minister must be satisfied that because of the existence of one or more factors listed in subsection (2) it is appropriate for the Minister to intervene.

The factors that can form the basis of an order under subsection (1) are:

- the member is charged with a disqualification offence as defined in section 8.15D;
- the Departmental CEO has made an allegation or allegations to the State Administrative Tribunal that the member has committed a serious or recurrent breach as defined by section 5.102A of the LG Act;
- if the Departmental CEO has advised the Minister in writing that the CEO suspects on reasonable grounds that the council member:
  - (i) has failed or is failing to perform the member's role, functions or duties under the LG Act; or
  - (ii) has engaged or is engaging in conduct which adversely affected or is adversely affecting the ability of:
    - the council to perform its role under the LG Act; or
    - one or more other members to perform their role, functions or duties under the LG Act; or
    - the local government's CEO or any other local government employee to perform their role, functions or duties; or
    - the local government to perform its functions properly ; or
    - the local government to comply with the employment principles which apply to it under section 5.40

and the seriousness or duration of the member's suspected failure or conduct requires the Minister to intervene.

The term 'function' is to be interpreted in accordance with section 5 of the *Interpretation Act 1984*. This includes powers, duties, responsibilities, authorities and jurisdictions.

The term 'person' is to be interpreted in accordance with section 5 of the *Interpretation Act 1984*. This includes a public body, company, or association or body of persons, corporate or unincorporated. It therefore also includes the local government itself.

Any Ministerial order issued under subsection (1) requiring a member to undertake remedial action will specify the action to be taken and the time frame in which the remedial action is to be completed.

Subsection (4) provides an order made under this section must specify the factor upon which the Minister has based the order; that is, the order must specify which of the factors in 8.15E(2) and, where relevant, the subparagraph in 8.15E(3).

Subsection (5) provides that before making an order, the Minister must give a written notice to the council member that provides a description of the facts of each factor, failure or conduct the Minister is considering as the basis for the order.

The council member has 21 days (or longer if the Minister allows) to show cause as to why the Minister should not make the proposed order.

If the council member responds the Minister is to consider the member's response prior to making an order.

The term 'council member' is used in this section and throughout this Bill. This term is to be interpreted according to the definition of 'member' as defined in section 1.4 of the LG Act. This term includes councillors, councillor mayors or presidents and elector mayors or presidents.

#### **Section 8.15F - Period of suspension: order under section 8.15E**

Subsection (1) provides the circumstances that will lead to the cessation of a suspension order made under section 8.15E. A suspension ends when one of the following occurs (whichever occurs first):

- the member's term of office ends;
- the member is reinstated;
- if the member is charged with a disqualification offence or referred to the State Administrative Tribunal when the matter has been finally resolved (as defined in subsection (2)); or
- if the member has been suspended only based on the advice of the Departmental CEO when the circumstances listed in subsection (3) have occurred.

Subsection (2)(a) provides that a suspension on the basis that a council member has been charged with a disqualification offence will cease when one of the following occurs:

- the member is convicted of the offence;
- the member is acquitted of the disqualification offence; or
- the prosecution for the offence is discontinued.

The suspension will remain in place during any appeals or until the appeal period has expired.

Subsection (2)(b) provides that a suspension based on an allegation or allegations to the State Administrative Tribunal by the Departmental CEO will cease when one of the following occurs with respect to each allegation:

- the Tribunal has made an order described in section 5.117 (punishment for a serious or recurrent breach); or
- the Tribunal has decided that the council member did not commit a breach.

The suspension will remain in place during any appeals or until the appeal period has expired.

Subsection (3)(a) provides that an order only made under section 8.15E(2)(c) is to be for a period not longer than six months or, if no period is specified, six months.

Subsection (3)(b) provides that if the period of suspension has been extended under section 8.15G(1) the additional period of suspension is to be for a period not longer than six months or, if no period is specified, six months.

### **Section 8.15G - Suspension of certain council members may be extended while inquiry conducted**

Subsection (1) provides the Minister with the power to extend a suspension ordered under subsection 8.15E(2)(c) if:

- an inquiry has been commenced under the LG Act into any failure or conduct on which the original suspension order was based; and
- the Departmental CEO has advised the Minister that they believe the original order will cease to have effect before the Inquiry has concluded; and
- the Minister is satisfied that the failure or conduct on which the suspension order was based still exists.

Subsection (2) provides that a suspension order made under this section is to be taken to have been made under the original order.

The maximum period for an extension to the original order is six months and this can be done once only.

### **Section 8.15H - Reinstatement of council member whose suspension was extended under section 8.15G**

This section states that the Minister must reinstate a council member that has had their suspension extended under the section 8.15G(1) if the Departmental CEO has advised the Minister that the CEO considers it not appropriate to either:

- charge the council member with an offence; or
- make an allegation to the State Administrative Tribunal under section 5.116(2) of a serious breach.

### **Section 8.15I - Minister may suspend council member if member fails to undertake remedial action as ordered**

Subsection (1) provides that the Minister may order the suspension of a council member if the Minister is satisfied that the council member has failed to comply with the terms of a remedial order issued pursuant to sections 8.15C(2)(d) or 8.15E(1)(b).

Subsection (2) provides that before the Minister makes an order under this section the Minister must provide notice in writing to the council member providing information and, if available, evidence as to why the Minister is satisfied that the order has not been complied with.

The council member has 21 days (or longer if the Minister allows) to show cause as to why the Minister should not make the proposed order.

If the council member responds, the Minister must consider the member's response prior to making an order.

Subsection (3) provides that if a member is already suspended, the order made under this section extending that suspension is to be taken as a new suspension order made under section 8.15I. This has the effect of changing the period of the order.

Under section 8.30A(1) the suspension can be for a period of up to two years.

### **Section 8.15J - Council member must inform CEO if charged with disqualification offence**

Subsection (1) creates a requirement upon a council member to notify the local government CEO without delay that they have been charged with a disqualification offence as defined in section 8.15D.

Subsection (2) requires the local government CEO to notify the Departmental CEO in writing as soon as practicable after becoming aware that a council member has been charged with a disqualification offence.

This notification will allow the suspension provisions to be activated.

The heading for Subdivision 3 is inserted —'Council member may be dismissed'.

### **Section 8.15K - Minister may recommend that council member be dismissed**

This section gives the Minister the power to recommend to the Governor the dismissal of a council member.

The Minister will be able to recommend dismissal if satisfied, based on the written advice of the Departmental CEO, that because of the existence of either or both of the factors listed in subsection (2) it is appropriate to intervene.

The Minister must form an opinion that:

- the council member is impeding 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 be satisfied that the seriousness of the situation for the local government requires intervention by way of dismissal.

The Departmental CEO will have the ability to use any information source available as a basis for that advice.

The term 'function' is to be interpreted in accordance with section 5 of the *Interpretation Act 1984*. This includes powers, duties, responsibilities, authorities and jurisdictions.

Natural justice is provided in subsection (3). Before making a recommendation the Minister must give the council member a report that contains the proposed recommendation and sets out the grounds on which the recommendation is proposed to be made.

The council member has 21 days (or longer if the Minister allows) to show cause as to why the Minister should not make the proposed recommendation.

If the council member responds, the Minister is to consider the member's response prior to making an order.

Subsection (4) clarifies that the power conferred under this section does not affect the operation of the power in section 8.24(4A) with respect to the Minister's ability to recommend the dismissal of a council member if an Inquiry Panel has recommended their dismissal.

### **Section 8.15L - Governor may dismiss council member on recommendation of the Minister**

This section provides the Governor with the power to dismiss a member of council if the Minister has recommended their dismissal under section 8.15K(1).

### **Section 8.15M - Report setting out grounds to be made available to the public**

Subsection (1) places a requirement upon the Minister to make the report on which the grounds for dismissal was based available to the public on the day that the Governor makes the order to dismiss. The Minister may make the report available in any manner that the Minister thinks fit.

Subsection (2) allows the Minister to withhold the report or any part of the report if the Minister considers that making the information available may prejudice a matter likely to go before a court of law or to be subject of an allegation to the State Administrative Tribunal.

This provision will allow members of the community to form their own opinion on the grounds for dismissal and the council member's suitability to represent them.

***Clause 16 – Section 8.19A inserted***

This section provides a power similar to the power to suspend a council under section 8.19 of the LG Act while an inquiry is held.

Subsection (1) provides the Minister with a power to suspend a council member before or after the appointment of an Inquiry Panel if the Minister thinks that the conduct of the inquiry will be seriously prejudiced if the member were not suspended.

Subsection (2) provides that if an Inquiry Panel has not been appointed at the time that the suspension order is made, the Minister has six months to appoint an Inquiry Panel.

Subsection (3) provides that before the Minister makes an order under this section the Minister must provide notice in writing to the council member, outlining the reasons why the Minister thinks that the conduct of the inquiry would be likely to be seriously prejudiced if the member was not suspended.

The council member has 21 days (or longer if the Minister allows) to show cause as to why the Minister should not make the proposed order.

If the council member responds the Minister must consider the member's response prior to making an order.

Subsection (4) provides that if a member is already suspended, an order made under this section extending that suspension is to be taken as a new suspension order made under this section.

***Clause 17 – Section 8.22 amended***

Subsection (1) amends section 8.22(2) to provide that an Inquiry Panel can make recommendations regarding the dismissal or reinstatement of an individual council member.

Subsection (2) inserts subsection (2A) which provides the basis for the Inquiry Panel's recommendation.

An Inquiry Panel can only recommend a council member be dismissed if the Panel is satisfied on reasonable grounds that the council member:

- (i) has failed or is failing to perform the member's role, functions or duties under the LG Act; or

(ii) has engaged or is engaging in conduct which has impeded or is impeding the ability of:

- the council to perform its role, functions or duties under the LG Act; or
- one or more other members to perform their role, functions or duties under the LG Act; or
- the local government's CEO or any other local government employee to perform their role, functions or duties; or
- the local government to perform its functions properly; or
- the local government to comply with the employment principles which apply to it under s 5.40 of the LG Act;

and the seriousness or duration of that failure or conduct, makes it inappropriate for the member to continue to be a member of the governing body of the local government.

The term 'function' is to be interpreted in accordance with section 5 of the Interpretation Act 1984. This includes powers, duties, responsibilities, authorities and jurisdictions.

The term 'person' is to be interpreted in accordance with section 5 of the *Interpretation Act 1984*. This includes a public body, company, or association or body of persons, corporate or unincorporated. It therefore also includes the local government itself.

#### **Clause 18 – Section 8.23 amended**

Subsection (1) amends section 8.23(1) to require the Minister to give a copy of the Inquiry Panel report to:

- the local government concerned; and
- if the council of the local government is suspended to each council member; and
- if a council member is suspended to that member.

Subsection (2) amends section 8.23(3) to allow the Minister to withhold an Inquiry Panel report or information contained within an Inquiry Panel report if the Inquiry Panel considers that making the information available may prejudice an allegation that is likely to come before the State Administrative Tribunal. Section 8.23(3) already provides for the withholding of information if it might prejudice a matter likely to come before a court of law.

Subsection (3) amends section 8.23(5) to also give the suspended member 35 days to respond to the Inquiry Panel report.

The heading of section 8.23 is amended to 'Copies to be given to local government, and suspended council members, and made available to public'.

### **Clause 19 – Section 8.24 amended**

Subsection (1) is a minor amendment which provides that advice may come from the local government or an individual council member to the Minister for consideration in deciding what action to take on an Inquiry Panel's report.

Subsection (2) is a minor amendment that does not affect the substance of the provision and has been made for drafting consistency.

Subsection (3) inserts subsections (4A), (4B) and (4C). Subsection (4A) provides that the Minister may recommend to the Governor that a council member be dismissed if and only if, the Inquiry Panel has made a recommendation for dismissal of that council member to the Minister.

Subsection (4B) further provides that the Minister:

- must reinstate the suspended member if the Inquiry Panel has not recommended dismissal of that member; and
- may reinstate the suspended member even if the Inquiry Panel has recommended they be dismissed.

Subsection (4C) covers the situation where the council member is subject to an extended suspension under section 8.15G(1) because there is an inquiry being conducted into that person's failure or conduct and there is no requirement to reinstate under section 8.15H because the matter has been dealt with. In that case the requirement to reinstate the member under this section does not apply.

Subsection (4) amends section 8.24(5) which allows the Minister to order a council or its council members or employees to give effect to the recommendations of an Inquiry Panel. This provides that the order does not apply to council members that are suspended.

### **Clause 20 – Section 8.25 amended**

Clause 20 of the Bill amends section 8.25 by inserting subsection (2) which provides the Governor with the power to dismiss a member of council if the Minister has recommended their dismissal under the new subsection 8.24(4A) – on the recommendation of the Inquiry Panel.

The heading of section 8.25 is amended to 'Dismissal of council or council member by Governor'.

### **Clause 21 – Part 8 Division 3 heading amended**

The heading for Division 3 is amended to 'General provisions about suspension and dismissal of councils and council members'.

### **Clause 22 – Part 8 Division 3 Subdivision 1 heading inserted**

The heading for subdivision 1 is inserted — 'Provisions about suspension of councils'.

### ***Clause 23 – Section 8.28 amended***

Clause 23 of the Bill provides two minor amendments that do not affect the substance of the provision and have been made for drafting consistency. The first recognises that reinstatement of a council can occur under section 8.28(3) or section 8.24(4)(a).

The second reflects current drafting best practice in not referring to a Minister by gender.

### ***Clause 24 – Section 8.29 amended***

Section 8.29 provides the effect of a suspension on an entire council.

New subsection (5)(a) provides that a suspended council member is not entitled to be paid any fee or allowance under Part 5 Division 8 during the period of their suspension. Part 5 Division 8 deals with sitting fees and other allowances payable to council members.

New subsection (5)(b) deems section 5.102AB applies (Repayment of advance payments if recipient ceases to hold office) to a suspended council member if the local government has paid the council member an annual fee or allowance in advance under Part 5 Division 8.

This amendment clarifies that if a council member is not performing their role, they are not entitled to be paid any fees or allowances during the suspension period. Further any advance payment that has been made is recoverable.

### ***Clause 25 – Part 8 Division 3 Subdivision 2 inserted***

The heading for subdivision 2 is inserted — ‘Provisions about suspension of council members’.

### **Section 8.30A - Period of suspension: orders under sections 8.15I and 8.19A**

Subsection (1) provides the duration of a suspension under section 8.15I(1) (for failure to undertake remedial action) or 8.19A(1) (while an Inquiry Panel is in place) is to be for a period not longer than two years or, if no period is specified, two years.

Subsection (2) provides that a suspension under sections 8.15I(1) or 8.19A(1) will cease to have effect when one of the following circumstances occur:

- the period of suspension ends;
- the council member’s term of office ends or the member’s office becomes vacant; or
- the member is reinstated by the Minister.

### **Section 8.30B - Effect of suspension of council member**

Subsections (1) and (2) are substantially the same as subsections (1) and (2) of section 8.29 of the LG Act dealing with suspension of a council and are intended to perform the same function. Subsection (4) mirrors 8.29(5) inserted above.

Subsection (1) provides that while a council member is suspended their powers and duties cannot be performed by the member.

Subsection (2) provides that the council member's term of office continues to run and is unaffected by a suspension.

Subsection (3) provides that a suspension does not affect the application of Part 4 Divisions 3 and 4 (Ordinary and Extraordinary Elections) in relation to the suspended member's office. Nor does it limit the suspended member's ability to run as a candidate in an election to refill their vacancy or any other vacancy within any council.

Subsection (4)(a) provides that a suspended council member is not entitled to be paid any fee or allowance under Part 5 Division 8 during the period of their suspension. Part 5 Division 8 deals with sitting fees and other allowances payable to council members.

Subsection (4)(b) deems section 5.102AB applies (Repayment of advance payments if recipient ceases to hold office) to a suspended council member if the local government has paid the council member an annual fee or allowance in advance under Part 5 Division 8.

### **Section 8.30C - Continuing effect of suspension**

This section applies where a council member is suspended under Division 1A Subdivision 2 (the new suspension provisions) or section 8.19A(1) (because of an Inquiry Panel). This provision applies where the member's suspension ceases to have effect because their term of office has ended or their office becomes vacant and they are elected to fill that office or another office at that or another council. The member's office could become vacant for a number of reasons including because they have resigned.

Subsection (2) provides that if the suspended member is re-elected as a member of any council, the suspension that was in place prior to the election will continue to be in force against the member after their re-election for the duration of the suspension as originally ordered.

A suspension does not prevent a person standing as a candidate in a local government election, but if they are elected they need to serve the remaining period of their suspension.

This prevents council members from potentially resigning and re-standing for the same office to avoid the effects of a suspension.

### **Section 8.30D - Reinstatement of suspended council member**

This section provides the Minister with the power to reinstate a council member when the Minister thinks fit. For example, this could be used to reinstate the council member after they have undertaken training.

***Clause 26 – Part 8 Division 3 Subdivision 3 heading inserted***

The heading for subdivision 3 is inserted — ‘Provisions about dismissal of councils’.

***Clause 27 – Section 8.31 amended***

Clause 27 of the Bill is a minor amendment to this section to reflect the amendments being made to section 8.25 of the LG Act by clause 20 of this Bill.

***Clause 28 – Part 8 Division 3 Subdivision 4 heading inserted***

The heading for subdivision 4 is inserted — ‘Provisions about dismissal of council members’.

**Section 8.34A - No dismissal of council member except on recommendation of Minister or Inquiry Panel**

Subsection (1) provides that a council member cannot be dismissed unless ordered by the Governor under sections 8.15L (on recommendation of the Minister) or 8.25(2) (following an Inquiry Panel report).

Subsection (2) provides that the operation of the section does not affect the operation of section 2.36A (the power to declare offices vacant if a district is abolished) or section 2.37 (the power to declare offices vacant when more than half of the offices of members of council are vacant).

**Section 8.34B - When dismissal of council member takes effect**

This clause provides that an order dismissing a council member takes effect from the day specified in the order.

Subsection (b) of the note at the beginning of Part 8 is amended to ‘suspending and dismissing councils and members of councils; and’.