

**LOCAL GOVERNMENT AMENDMENT (SUSPENSION AND DISMISSAL) BILL 2018**

*Consideration in Detail*

Resumed from 14 June.

**Clause 15: Part 8 Division 1A Subdivisions 2 and 3 inserted —**

Debate was adjourned after the clause had been partly considered.

**Mr A. KRSTICEVIC:** It is great to be back here again, going through the Local Government Amendment (Suspension and Dismissal) Bill 2018. We will try to get through this as quickly as we can. My first question is on proposed section 8.15K(2)(a)(ii), which refers to “best interests”. I am wondering whether the minister can explain that to me, because the provision seems very broad. Could it be used in the case of personality clashes between council members and/or council staff? I also want to know why the grounds on which the minister can recommend dismissal differ from the grounds on which an inquiry panel can recommend dismissal.

**Mr D.A. TEMPLEMAN:** If the member casts his mind back to last week and our very positive exchange, we addressed this matter of best interests during that debate. The best interests of the local government has to be a qualifying aspect with regard to the seriousness of what has occurred and advice that it is in fact in the best interests of the local government that action be taken. Ultimately, though, it is essentially a value judgement, but it is influenced by reference to factual matters that are provided through advice. Again, I remind the member that a clear transparency mechanism is needed under this clause to require the publishing of a report that will, of course, include the reasons for arriving at that decision. The report highlights all those reasons, so it is a clear and transparent mechanism for justification.

**Mr A. KRSTICEVIC:** The second point is about the grounds. The grounds for that are actually different from the grounds for an inquiry panel. I am wondering why the grounds are different. The grounds for dismissal are different for an inquiry panel under this proposed section.

**Mr D.A. TEMPLEMAN:** The grounds for the dismissal of an individual elected member by a panel inquiry mirrors those for the dismissal of an entire council.

**Mr A. KRSTICEVIC:** In respect of the grounds, there is reference to the fact that under the panel one of the following applies: the member is impeding the local government from performing its functions; or it is in the best interests of the local government that the member be dismissed, and there is also reference to the seriousness of the situation, whereas the grounds on which the minister proposes dismissal I thought were slightly different. Is the minister saying that the grounds are exactly the same for the minister and the inquiry panel?

**Mr D.A. TEMPLEMAN:** The grounds for dismissal of an individual elected member by a panel inquiry mirrors that of the dismissal of an entire council.

**Mr J.E. McGRATH:** I will leave it to the shadow minister to go through the nuts and bolts of this legislation, but I would like the minister to explain something, not just to me but to the Parliament. What is the most severe penalty—a dismissal or a suspension? If I were a council member being dealt with as an individual, which this bill that the opposition is supporting is trying to do, I can be either dismissed or suspended. Which would I prefer?

**Mr D.A. TEMPLEMAN:** I would hope neither, quite frankly, and I would not expect that the member would be, given his background of exemplary behaviour. It needs to be highlighted here that the dismissal ultimately leads to the person being accountable to their community, if they decide to recontest, for the community to give consideration. At the end of the day, the mechanisms in this bill, be they the suspension option that could lead ultimately to a recommendation for dismissal, are very serious. One would hope that if it is sought to change or improve the behaviour of an individual through an order, for example, which could lead to a suspension and then, at the highest end of the scale, a recommendation for dismissal, that person can choose to stand again, but we would expect that the public nature of what that person has had to endure would be a consideration. Of course, they are not guaranteed re-election, and if they choose to stand again, some may see it as a public humiliation, essentially. Those things would all be issues or matters that the individual would need to consider. To answer the member’s question bluntly, all of them are serious.

**Mr J.E. McGrath:** Yes, but a dismissal is the end—the most severe penalty.

**Mr D.A. TEMPLEMAN:** Dismissal is certainly the most final, but, again, remember that a high benchmark still needs to be reached before a dismissal can be recommended and ultimately carried out. Natural justice prevails all through that process, but I would certainly expect that no-one would see a dismissal as a badge of honour. Normal people would not see it as something they would like to endure.

**Mr J.E. McGRATH:** Pardon me for labouring this, but I think we should put it in layman’s terms. If I am a councillor, and a complaint about my behaviour has been made to the department, and the department decides to

refer it to the panel, I am then suspended while the panel deliberates. As a result of the panel's deliberation, I could then be dismissed as a councillor. Is that right?

**Mr D.A. TEMPLEMAN:** Is the member referring to the standards panel?

**Mr J.E. McGrath:** The standards panel, yes.

**Mr D.A. TEMPLEMAN:** The standards panel does not have any power in this context at all. I think the member is talking about an inquiry panel. Again, remember that there would be a process of recommendation.

**Mr J.E. McGrath:** But am I suspended while the inquiry is taking place?

**Mr D.A. TEMPLEMAN:** Yes, and it could take up to two years. Remember that a suspension is still a temporary measure, because there is a time line. The councillor might be suspended for three months or longer, if there is an inquiry.

**Mr J.E. McGrath:** But you'd definitely be stood down while the inquiry is taking place.

**Mr D.A. TEMPLEMAN:** That is right, as is the case when a whole local government council is suspended. In other words, the roles, responsibilities, remuneration and allowances et cetera are all suspended.

**Mr J.E. McGrath:** While I am suspended, I cannot run at an election, but later on, if I am dismissed, I can then run.

**Mr D.A. TEMPLEMAN:** You can, but remember back to our conversation prior to the debate on this bill last week. If a councillor is suspended and is up for re-election—let us say a councillor is suspended in August, and there is an election in October at which the councillor's term comes to an end, and they stand again —

**Mr J.E. McGrath:** And there is an ongoing inquiry.

**Mr D.A. TEMPLEMAN:** That is right; even if the councillor is re-elected, they would still need to serve out the balance of that suspension period.

**Mr V.A. CATANIA:** I refer to proposed section 8.15K(2)(a)(ii), which states —

it is in the best interests of the local government that the member be dismissed;

That is quite an open area, because a councillor could be trying to do the right thing by the council in making sure that the Local Government Act is being followed, due diligence is being practised and good governance is being pursued. In a scenario in which there are seven councillors, and one councillor is questioning the CEO, the president and other councillors, that one councillor could be made out to be the person who is disrupting the council.

**Mr J.E. McGrath:** He might be the only good one.

**Mr V.A. CATANIA:** He might be the only good one, who is actually asking the right questions, but there may be a clique led by the president that controls the five other councillors as well as the CEO, and that one person could be made out to be the problem. The actual real problem is potentially the CEO, the president and the other councillors not doing their duty as a local government representing the people. Does the minister see that this could potentially be a problem that could arise, whereby the problem councillor could be the person who is trying to do what is right and going against the clique, the faction or whatever you want to call it, who are not appropriately adhering to the Local Government Act or good governance, and could convey the name of that one councillor to the Department of Local Government, Sport and Cultural Industries as the problem person? Could that person be captured under proposed section 8.15K(2)(a)(ii)?

**Mr D.A. TEMPLEMAN:** We have actually canvassed this a little previously, but I am happy to repeat some key points. Firstly, remember that the reference to best interests is very much the best interests of the local government, so we are focused on whatever is in the best interests of the local government, not the best interests of other councillors or individuals. Indeed, the minister of the day would need to be convinced, including through appropriate evidence, that there is a requirement or a need to take action that is in the best interests of the local government in question. Also embedded in this is the need for due process and natural justice. I reiterate that local government council chambers are robust places. Nothing has changed about that. There will always be councillors who put their case robustly. A councillor can put their case robustly and persuasively without ultimately disrupting or undermining the overall function of the local government. That is the consideration. I do not want to see, for example, people suddenly say, "I'm not going to speak, because the others might think that I'm just being difficult." A body of evidence needs to be prepared and presented to support action being taken against a local government. The problem—this goes to the root of this bill, essentially—is that often interventions are not taken early enough to prevent what may be a corrosive environment that ends up affecting the overall function of the local government. This clause is focused on what is in the best interests of the local government. That is something that the minister of the day would have to weigh up, looking at the supporting evidence, and ensure that the principles of natural justice are always in play, before that intervention decision would be made. Again, this mirrors the current situation, in which we look at a whole council in terms of the same process. I want to underline that this bill is not designed to stifle robust and persuasive debate. We want that to continue.

**Mr V.A. CATANIA:** Can the minister elaborate on who will be on the inquiry panel? Who will that be made up of?

**Mr D.A. TEMPLEMAN:** If a decision is made under the appropriate section to commission an inquiry panel, the key elements are that the inquiry panel can be made up of one to three persons. If it is more than one person, the chair needs to have legal expertise. The panel will have the powers of a royal commission, as is the case with the panel inquiring into local government in total. Those are the key components—a legal practitioner, and one, two or three persons. In the case of the inquiry into the City of Perth full council, there is one inquirer, who is a senior legal practitioner, and he has the capacity to draw in resources and supporting officers to carry out the inquiry for its duration.

**Mr V.A. CATANIA:** Proposed section 8.15K refers to a member who is impeding the ability of the local government to perform its functions and duties under the act. Can the minister give some examples of instances in which the department will start the process of an inquiry into that council or councillor? What are the trigger points to get there? It may be a dysfunctional council that is not adhering to the Local Government Act, there are question marks about tenders or about infrastructure that is being built, ratepayers' money is going astray, and there is corruption—you name it. A concerned ratepayer might write to the department. What is the process after that? Does the department write to the council? Does the department observe a council meeting? Can the minister explain how the department would start an inquiry into a councillor or council, and what are some of the issues that the department might inquire into?

**Mr D.A. TEMPLEMAN:** That is quite a loaded question, because there is a range of matters, and they also relate to specific circumstances. Broadly, there is a range of actions, reports and outcomes that may influence a decision to inquire or look more closely at the behaviour, conduct and function of an individual. Under this bill, it may be a referral from the CCC. It may be a referral or an adverse finding by a parliamentary committee. It may be a criminal action or prosecution that has been initiated. It may be advice received from an authorised inquiry that has been established by the department that leads to the gathering of evidence that suggests that action should be taken. A range of inputs may lead to an individual becoming the subject of consideration for action under this bill. It may be an Auditor General's report. It will depend on the situation, member, to be honest. It is a little hard to respond to all the hypotheticals. However, I need to remind the member that dismissal and suspension are not the only mechanisms under this bill to deal with the behaviour and/or conduct and/or capacity or incapacity of an elected member to contribute to the best interests of the local government. I would expect that in many cases, the first port of call would be a request or order for remedial action, which of course might include mediation or some additional training. That would normally be the first port of call. We do not jump to dismissal, an inquiry panel authorisation or, indeed, even suspension, initially. Those would be triggered by the seriousness of the particular matter, not just because someone has complained about councillor A. There needs to be substantiation and evidence to suggest that in the best interests of the local government, action is required. I would expect that when this bill becomes law, as I hope it will, it will provide a mechanism to require appropriate conduct. The State Solicitor will be one mechanism of advice. Even with regard to the decision to suspend the council of the City of Perth, benchmarks needed to be reached and satisfied before that course of action could be taken, and that was a very serious course of action. I hope I have reassured the member that the nature of what occurs and its seriousness and the reference from other entities, be they the Corruption and Crime Commission or other entities, will allow the minister of the day to form an opinion that might lead to more severe action than simply a remedial order.

**Mr V.A. CATANIA:** I refer to proposed section 8.15M(2), which states —

Despite subsection (1), the Minister may withhold the report, or any part of its contents, to the extent that the Minister considers that making it available might prejudice a matter that is likely to come before a court of law or to be the subject of an allegation to the State Administrative Tribunal.

I want some clarity on this. Let us say that the minister's department is conducting an inquiry into a local government. Would he be aware of a potential CCC investigation as well? There could be two inquiries basically running parallel and the eventual report could coincide with an investigation by the CCC. Does that mean that the minister would potentially withhold the report if an investigation by another body suggested that corruption had occurred? Would he hold back on finalising that report because another body was looking at the local government? Is there any support for the Department of Local Government, Sport and Cultural Industries providing information to the CCC to help an investigation? I am wondering how that will work.

**Mr D.A. TEMPLEMAN:** First of all, would I be aware of a CCC investigation? No, that is not normal. I understand that there may be requests for information from the department, and the department would respond to that. The member referred initially to proposed section 8.15M and the issue of the report and why information might be withheld in the publication. The only information that can be withheld or removed is that which might prejudice legal proceedings. That is a standard process that exists currently and it is consistent with current practice. Obviously, information in the final report may potentially prejudice legal proceedings before a court or even before the State Administrative Tribunal. They would be the grounds on which information might be withheld.

**Mr V.A. CATANIA:** I do not know whether it comes under this clause, but what reporting mechanisms does the department have if it finds during its inquiry into a councillor or a local government that alleged corruption has taken place? If alleged corruption is uncovered during the investigation, is that reported to the police or the CCC? Are the appropriate authorities alerted straightaway of that potential corruption or does the department wait until the report is finalised?

**Mr D.A. TEMPLEMAN:** My understanding is that the process is and continues to be that if any evidence of potential corruption is uncovered by the department, that is referred to the appropriate agency, which of course is the CCC.

**Mr V.A. Catania:** Immediately?

**Mr D.A. TEMPLEMAN:** Yes. It is a legal requirement of the department to do so.

**Mr A. KRSTICEVIC:** I want to reflect on one point. We have talked about suspension as opposed to dismissal. Ultimately, the suspension of a re-elected councillor is a much harsher punishment than their dismissal, because obviously if they are dismissed and are then re-elected, they continue to get paid and it is all good. However, if they are suspended, the suspension can carry forward into their next term. During that discussion, the minister said that being suspended is a greater insult than being dismissed. That is my understanding of what the minister said. I just want to reconfirm that if a councillor is suspended and they are re-elected, they must still serve out the term of their suspension. However, there is a much higher benchmark to be met if they are to be dismissed. It is much worse for someone to be sacked from a job than it is to be told to take three weeks off without pay because they have been a naughty boy and then to come back. I am trying to understand, because people will say that, as a penalty, dismissal is much harsher than suspension. Can the minister clarify that, rather than just saying that it is a reputational thing? I am not sure that that means a lot to some people in terms of their reputation. It might be easier just to go the other way.

**Mr D.A. TEMPLEMAN:** There are a couple of points. This is a repeat of previous comments. First, these mechanisms will ensure that someone does not use resignation as a way of abrogating what they may have been suspended for and/or as a mechanism to short circuit and then go to another election. Resignation should not be an option to try to circumvent the suspension. Second, most suspensions will not necessarily go over an election period; it will depend on the timing. The dismissal option is, if you like, laced with very important benchmarks for advice and is very serious in its nature. Any move to suspend or dismiss should very clearly highlight the seriousness of the action taken. I expect that most people would try to avoid that. That is why we would have capacity to do the early intervention mechanisms, which of course include orders, mediation et cetera. I do not think an elected member who is not doing the right thing will look at this bill and say, "I'll just go for option A because it'll be easier and less confronting." Those two measures are confronting.

**Mr J.E. McGrath:** They don't have a choice.

**Mr D.A. TEMPLEMAN:** That is right. I think a normal person would seek to avoid those measures. It would be a very interesting character who decided to thumb their nose at their responsibilities and embark upon a self-imposed decision that might see them dismissed. I just cannot see it. Elements of natural justice are built into the legislation that ensure people are not targeted just because they might have a different opinion.

**Mr J.E. McGRATH:** Another hypothetical: if a councillor saw that there was about to be an inquiry into their conduct and decided to just resign from the council, could the inquiry continue and some action still be taken?

**Mr D.A. TEMPLEMAN:** I think it is a good question. It may be that the person weighs up the situation and they self-impose that the best option for them is to no longer continue as a councillor. That would be a decision for them to make. Again it is hypothetical but that may occur.

**Mr J.E. McGrath:** For the sake of openness and accountability, the department might decide to continue to hold the inquiry to let people know that these things will not be tolerated.

**Mr D.A. TEMPLEMAN:** Again, that probably would depend on the circumstance. It may depend on the nature of the actual behaviour and/or conduct. It is a little bit circumstantial but, essentially, unless it was of a particularly serious nature that may have some implications, I expect that most of the time, the course of action would no longer be required because the person would no longer be an elected member and they would have made the decision to resign.

**Mr J.E. McGrath:** That would be a public statement. People would know.

**Mr D.A. TEMPLEMAN:** I will give an example. There was the Shire of Ningaloo situation when a number of councillors—this is the case in a number of other places—decided to resign.

**Mr V.A. Catania:** Maybe they were pushed a little bit.

**Mr D.A. TEMPLEMAN:** I do not know about that. The decision was made to resign. That affected the functionality of the local government; in other words, there were not enough councillors around the table to form a quorum. Therefore, that triggers a process that leads to a new election. Some councillors do make decisions to resign for a range of reasons. Some might be related to whether they feel that their capacity to contribute and/or their capacity to impact on the effectiveness of the local government is impeded if they stay.

**Mr V.A. CATANIA:** Is the minister saying that if a councillor who is under investigation resigns, the investigation will go away? Is the minister saying that if either a shire president or a mayor who has something of a greater decision-making capacity than a councillor in terms of functions with the CEO on a day-to-day basis and the operation of the council, was being investigated by the department and suddenly resigned, yet clearly there may be some issues with the president or mayor who has delegated authority to the CEO, the inquiry will no longer take place, or can the inquiry continue into corruption?

**Mr D.A. Templeman:** I know what the member is saying. Essentially, it is about the circumstances. It may be that the inquiry will continue or if there is a Corruption and Crime Commission process that would be out of my hands. There would be no abrogation of potential responsibility if a legal process were currently underway. That would not be the case. Ultimately, the benchmark questions are: Has an offence been committed? Is the inquiry looking at a broader issue? It may be and that may be influenced by the conduct of the person who might have resigned but they cannot have resigned away their involvement if a broader issue is under investigation.

**Mr V.A. CATANIA:** We can see that on the other hand, if there is an inquiry and the pressure gets to the councillor or president or whoever and they decide to resign because of the pressure and the inquiry stops because it is not a matter of public interest anymore, for argument's sake, that inquiry would always hang over the councillor's head because it would not have been finalised and all the assumptions could be made by the public that the person is guilty and that is why they resigned. We can see how there are a lot of —

**Mr D.A. TEMPLEMAN:** The issue of whether it is in the public interest is also an important consideration. At the end of the day, the mechanisms and continuum of what actions might be taken are there. I cannot second-guess what a person's decision may be. The reality is that, quite honestly, due to the nature of investigations, people react to them differently. For some people, it is a very stressful situation and they may decide that they prefer not to continue in the position. That is a decision for them to make depending upon the circumstances and the issue and/or issues that are being looked at. Ultimately, the test is: is it in the best interests to continue to pursue if there has been no criminal action or no action that will get an outcome because it is not considered in the best interests to continue the pursuit? All of those are predicated on the circumstance. We could come up with lots of hypotheticals tonight and into the early hours that we can debate but, essentially, provisions of natural justice remain in the Local Government Amendment (Suspension and Dismissal) Bill 2018 and in the spirit of the bill's intent.

**Mr A. KRSTICEVIC:** I want to talk about proposed section 8.15M, "Report setting out grounds to be made available to the public". I cannot remember whether we discussed it last week. How will the report be released publicly? Will it be online or in the newspaper? How will people know it is available; in what format and where will it be made available?

**Mr D.A. TEMPLEMAN:** My advice is that, ultimately, it is up to the minister's discretion. But of course "public", means public so it might include tabling in this place. The minister of the day might determine how best that report might be made available to the public, and there are various methods by which that can be done. For example, inquiry panel reports have traditionally been tabled in Parliament. Because of the nature of "public", I expect the minister of the day will form the view that the best means to ensure that the report is publicly available and highlighted to the public will include those measures. For example, it may be that if Parliament is not sitting and a report comes down—we still have tabling of parliamentary papers and reports even when we are not sitting—the minister may decide at the end of the day that there is a variety of means at their disposal to make it public.

**Mr A. Krsticevic:** So it will definitely be made public, just the format may differ based on the circumstances?

**Mr D.A. TEMPLEMAN:** Absolutely, yes. That is on the same day of the order. There you go. There is a very clear process.

**Mr J.E. McGRATH:** At the beginning of the process when the inquiry panel is commissioned to look into this conduct or a complaint has been laid against an individual member, will the public be made aware that an inquiry has started?

**Mr D.A. TEMPLEMAN:** Just let me clarify: an inquiry panel is very rare. Inquiry panels are not given away a dime a dozen. Even in terms of councils, we have had five inquiry panels in the last 20 years. An inquiry panel is not constituted after one complaint. By its nature, it is a very serious course of action that requires the minister to reach a threshold and be satisfied that it is necessary. There are legal implications if the minister frivolously embarks upon an inquiry panel, because it can be found that that was not necessarily the best course of action.

**Mr J.E. McGrath:** So if there was something less serious and some work with an individual councillor was to be undertaken—mediation or training or something like that—that would probably not be made public?

**Mr D.A. Templeman:** No, because there is no report required; whereas with an inquiry panel the end product is a report. If Councillor McGrath —

**Mr J.E. McGrath:** A very good councillor!

**Mr D.A. Templeman:** It would be gazetted, but there would not be an in-depth report. The order would be gazetted. It might simply detail that Councillor McGrath —

**Mr J.E. McGrath:** Would the councillor be named in the gazettal?

**Mr D.A. Templeman:** Yes, they would. So it would be gazetted that Councillor McGrath has been required to undertake mediation, or an order has been made for Councillor McGrath to carry out a period of training. But an inquiry panel is a very different element and is a very legal process because it involves the panel inquirers to investigate in great depth. Indeed, they have powers similar to a royal commission, which are very, very high-level powers. And it is expensive. It is in the best interests that we avoid getting to that potential end result.

**Mr J.E. McGrath:** The way I read this clause, quite possibly not many councillors will get their name in the *Government Gazette*. A lot of these things will not reach that stage because they will be seen to be fairly trivial, or the department might be able to sort them out. There could be a lot of complaints. The minister said before that we know what councils are like. Members of Parliament have lots of councillors coming to us to complain about other councillors. But at the end of the day the department will have to sift through a lot of those things—I guess they do now. I guess they deal with a lot of complaints.

**Mr D.A. Templeman:** Can I just again caution that it is not about complaints. If I think Councillor McGrath —

**Mr J.E. McGrath:** Can you find another councillor, please? It's getting embarrassing!

**Mr D.A. Templeman:** Maybe somebody has it in for somebody else. It will not be related to complaints. A body of evidence will need to be accessed or supplied on the impact of the person's behaviour on the council.

**Mr J.E. McGrath:** Surely there has to be a complaint though.

**Mr D.A. Templeman:** Looking back on my council time, there was a councillor—I will not name him—who was an interesting person. He questioned everything, argued and did not necessarily say nice things about some of us. But he would not have been captured in this because he conformed to governance procedures with regard to conduct at meetings. He was pretty forthright in his debates and would slam us down if we did not agree with his point of view or whatever. But did he consistently disrupt meetings? No. Did he threaten anyone? Did he do anything that was going to impact on the best interests of the local government?

**Mr J.E. McGrath:** So he was just a thorn in the side?

**Mr D.A. Templeman:** He was, and good on him because we need people like him in local government. They are everywhere, which is fine. It is when that behaviour and/or conduct begins to impede the capacity of the local government to function, is not in its best interests and is supported by enduring evidence that the Local Government Amendment (Suspension and Dismissal) Bill 2018 is available as a mechanism. In the first instance, some mediation may be required because that person may upset and get under the skin of one or more councillors and they respond. Because of the benchmarks of natural justice, that guy—even though he was a; I cannot say it, it might be unparliamentary—was not disrespectful to the mayor, he did not impede the conduct of the meeting, he followed the procedure of debate and understood the standing orders.

**Mr J.E. McGrath:** He didn't toe the party line?

**Mr D.A. Templeman:** Probably not—I do not know about that! But this bill would not capture him, and it is not designed to.

**Mr A. Krsticevic:** Proposed new section 8.15M(2) provides that the minister may withhold information from the public if it is likely to prejudice a legal case before the State Administrative Tribunal, as the minister earlier said. In all cases will the minister seek State Solicitor's Office advice about leaving things out of the report?

**Mr D.A. Templeman:** Absolutely.

**Mr A. Krsticevic:** You answered that sitting down—that is fantastic!

**The ACTING SPEAKER (Mr S.J. Price):** Sorry, member, you cannot speak twice, mate, so someone has to come back to you.

**Mr D.A. Templeman:** In answer to the member's question, absolutely that is the appropriate and required course of action.

**Mr A. Krsticevic:** I understand the purpose of these reports is accountability, especially in case of elections. If a councillor is not subject to a disqualification period, they can choose to run again, as we said before. If

information is redacted from the report, how can voters get the full picture and make an informed decision about whether they want to vote for someone again? For example, say a councillor has gone through the process and been dismissed or suspended and the minister has taken half of the report out because of the advice received and that councillor goes up for re-election. If I look at the report and there is nothing in there, I know the guy was dismissed but for some reason most of the key information has been taken out, so as an elector I cannot make an informed decision; I just know the minister has not released some stuff.

**Mr D.A. TEMPLEMAN:** Just to make sure the member is very clear, the only reason for withholding information in the report would be if there is a legal requirement or that it would prejudice legal proceedings.

**Mr A. Krsticevic:** Legal proceedings?

**Mr D.A. TEMPLEMAN:** Yes, legal proceedings.

**Mr A. Krsticevic:** But what if there are no proceedings? Are you redacting before the proceedings?

**Mr D.A. TEMPLEMAN:** I have just told the member that that is the only reason that there would be that necessity. Essentially, that would be advice that the minister would require or request. Of course, included in that is whether, if there were likely to be some legal proceedings, it would prejudice them. Again, that would depend on the circumstances. If a person seeks to stand again, I would hope that electors would seek various means and forms to inquire about the qualities or otherwise of a person putting themselves forward, even though there is a question over them because of a particular inquiry. I suppose someone going through a redacted report might come to the conclusion that that is a possible indication that there are matters that might be of a legal nature that could come under consideration in the future, but as the member would be aware, this mechanism is not new or different. It has some firm legal basis. The minister would have to, under advice of course, come to a decision that those matters or elements of the report need to be either redacted and/or withheld because there is either an investigation current or criminal potential or that including them in the report may prejudice possible legal action and proceedings.

**Mr A. KRSTICEVIC:** The minister said “if there were likely to be some legal proceedings”. If a report has been produced and it is negative, with adverse findings, one could presume that every single report could be subject to legal action. What is to stop someone challenging the report? When reports are tabled and decisions are made whether one will be legally challenged and one will not be, is there some mechanism to determine that and that those that go through a legal process have to be redacted and those that are not can be released as is because no further action will be taken? I am wondering how the decision of whether someone will take legal action or not is made. Sometimes it depends whether they have any money. If they have no money, they probably will not; if they do have money and can afford to go to the courts and pay \$1 million to go through the process, they might. I thought I would just double-check that.

**Mr D.A. TEMPLEMAN:** It is not them taking legal action, it is potential legal action against them that would influence. What they choose to do is their choice. That will be influenced by advice from the State Solicitor and also possible advice and/or information from the prosecuting authority. Those legal elements would be required.

**Clause put and passed.**

**Clause 16: Section 8.19A inserted —**

**Mr A. KRSTICEVIC:** This clause refers to the minister having the power to suspend the council while an inquiry panel is in place. I believe it is similar to existing section 8.19, which enables the minister to suspend the council while the inquiry panel conducts its inquiries. In what circumstances would a council member or members be suspended before or during an inquiry?

**Mr D.A. TEMPLEMAN:** Again, it would depend upon certain circumstances. One example might be a potential issue around fraud and a requirement to suspend while an inquiry is carried out and it might be required so as not to impede any investigation. Suspending a person would essentially preclude them from accessing information as an elected member while they are suspended and they can then not potentially interfere, destroy and/or get rid of any potential evidence that might be pertinent to any future investigation. That might be an example of why it would be in the best interests of the investigation for that person not to continue carrying out their duties while the inquiry or investigations are taking place.

**Clause put and passed.**

**Clause 17: Section 8.22 amended —**

**Mr A. KRSTICEVIC:** This clause amends section 8.22 to insert a new power for an inquiry panel to make a recommendation for the dismissal or reinstatement of an individual councillor. Proposed section 8.22(2A) sets out the grounds on which the inquiry panel can recommend to the minister that a council member be dismissed. I just want to double-check that the grounds for an inquiry panel for dismissal are different from the ones under proposed section 8.15K. Can the minister explain and go to proposed section 8.15K?

**Mr D.A. Templeman:** Can you just explain exactly what you are after?

**Mr A. KRSTICEVIC:** The grounds that an inquiry panel can recommend that a council member be dismissed list things such as “the member has failed”. I think the minister said previously that that is exactly the same as proposed section 8.15K. I just wanted to double-check that. Proposed section 8.15K(1) states that it can occur if the minister is satisfied it is appropriate to intervene. Proposed section 8.15K(2) states things such as “is of the opinion, based on the advice in writing”, “the member is impeding the ability” and “it is in the best interests”. Proposed section 8.15K lists certain criteria for a person to be dismissed, and the grounds for an inquiry panel to dismiss someone are different. The proposed section relevant to the inquiry panel being able to dismiss council members lists a whole range of things, and the proposed section relevant to the minister being able to do so lists different things.

**Mr D.A. TEMPLEMAN:** In terms of the comparison and when there is mirroring, I refer the member to proposed section 8.22(2A)(a)(ii). It is the same as proposed section 8.15K(2)(a)(i). That is where the mirroring is.

**Mr A. Krsticevic:** What about proposed subsections (1) and (3)?

**Mr D.A. TEMPLEMAN:** The clause relating to best interests is in addition, if you like. That is an additional “different”. The member asked where they are the same. That is the reference I made to both of those clauses.

**Mr A. Krsticevic:** I suppose I am more concerned about the difference. Obviously, the inquiry panel can only recommend if the member has failed, is failing, or the member’s conduct has impeded. That impeding one seems to be similar-ish and “failed, or is failing” does not seem to be there at all under proposed section 8.15K as opposed to proposed subsection (2A). The minister can see the difference.

**Mr D.A. TEMPLEMAN:** Exactly, and that comes to the discretion aspect. The minister of the day can suspend on the grounds outlined. The minister can dismiss an —

**Mr A. Krsticevic:** They are both dismissals in this case.

**Mr D.A. TEMPLEMAN:** I will make this clear: the minister can suspend on those grounds and the inquiry panel can dismiss because the inquiry panel is led by a legal authority or individual. The minister’s powers to dismiss ultimately is at a higher level and is referenced by recommendation.

**Mr A. KRSTICEVIC:** So there is a difference between the two. If I am hearing the minister correctly, he is saying that the benchmark for dismissing a councillor is higher for the minister to dismiss them than it is for the inquiry panel.

**Mr D.A. Templeman:** Yes.

**Mr A. KRSTICEVIC:** If someone has committed an offence and that is referred to the inquiry panel, they might get dismissed, but if the offence stays with the minister, they might not get dismissed because the benchmark is different. I am trying to gauge how the benchmark is different. The same offence could be committed under the same circumstances but be looked at by the inquiry panel as opposed to the minister. It could be up to the minister’s discretion whether it goes to the inquiry panel or whether the minister does it. If one minister says, “Send it to the inquiry panel”, the requirements around that are different. Another minister may say, “I’ll keep it myself.” The same circumstances could end up with two different decisions based on whether one is done by the minister and the other one is done by the inquiry panel. Is it the case that the same set of circumstances could be viewed differently based on those criteria, depending on which way it was assessed?

**Mr D.A. TEMPLEMAN:** The member is referring to “offence”. He needs to be reminded that any offences ultimately are referred to police for action. If it is a prosecutable offence, that is the course of action that is undertaken.

**Mr A. Krsticevic:** I am just talking about when it is a dismissal, that is all.

**Mr D.A. TEMPLEMAN:** The member used the term “offence”, which is not correct.

**Mr A. Krsticevic:** I should not use the word “offence”—committed an indiscretion, whatever, resulting in dismissal.

**Mr D.A. TEMPLEMAN:** On advice, the course of action will still be influenced by advice received, including, of course, advice and decision that relates to a dismissal.

**Mr A. Krsticevic:** But the two things are obviously different. The point I am trying to make is that they are different, so therefore the same set of circumstances could be assessed differently because the grounds are different in those two clauses. If the grounds are different, how can the minister judge the same offence and get the same outcome in both cases?

**Mr D.A. TEMPLEMAN:** The member keeps using the word “offence”.

**Mr A. Krsticevic:** Sorry, not offence.

**Mr D.A. TEMPLEMAN:** At the end of the day, a wise mind will come to a determination. Sometimes a wise mind may in fact differ from another wise mind. But I just caution the member about using the word “offence”.

**Mr A. Krsticevic:** Sorry; the criteria —

**Mr D.A. Templeman:** It blurs the intent.

**Mr A. Krsticevic:** If someone goes before the inquiry panel or someone goes before the minister for a dismissal—there may be a valid reason why they are different, but I do not understand why that is the case. I would have thought in both instances we would be looking at the same grounds, just that in one case the minister would make a decision and in another case it needs to go to an inquiry panel but the grounds are the same. At the end of the day both have the power to dismiss. It is really about saying the reason for dismissal is being judged on the same grounds in both circumstances. Like I said, because the grounds are different where this can happen, could they not have been the same in both cases, whether the minister is doing it or the inquiry panel?

**Mr D.A. Templeman:** I just remind the member that the inquiry panel has the powers of a royal commission, which are significant. That needs to be borne in mind when the process involves an inquiry panel process.

**Mr A. Krsticevic:** Why is a council member who is interfering with the ability of a local government to comply with the employment principles—section 5.40—sufficient for an inquiry panel to recommend dismissal when this is separately listed as a trigger for a lesser suspension or remedial action provision in proposed section 8.15E? An inquiry panel can make a harsher decision as opposed to under proposed section 8.15E for the same set of circumstances.

**Mr D.A. Templeman:** Ultimately, it is a threshold question in terms of the nature of the action as it relates to the seriousness of it. It is very much an element of seriousness in terms of the potential course of action.

**Clause put and passed.**

**Clause 18: Section 8.23 amended —**

**Mr A. Krsticevic:** Obviously, clause 18 amends section 8.23 to require the minister to give a copy of the inquiry panel report to the local government, each council member of a suspended local government, and any suspended council member. The report is also to be made public by the minister under section 8.23(2), but the minister may withhold parts of the report subject to that. Why in this case is it the inquiry panel that makes the decision about what may prejudice a legal matter as opposed to proposed section 8.15M, in which case the decision lies with the minister?

**Mr D.A. Templeman:** In short, because the inquirer is a legal authority. Again, they have unfettered powers, as the member knows, in terms of their capacity under royal commission-type powers. They may seek further advice from the State Solicitor to inform them of their ultimate recommendations.

**Clause put and passed.**

**Clause 19: Section 8.24 amended —**

**Mr A. Krsticevic:** Proposed subsection (4A) states that the minister may recommend to the Governor that a council member be dismissed only if recommended by the inquiry panel. It also states that the minister does not have to do so. Can the minister please explain why this would be an outcome and how it would be dealt with if that occurred?

**Mr D.A. Templeman:** If, and only if, the inquiry panel has recommended the dismissal of a council or an individual council member can the minister recommend to the Governor that an individual be dismissed. But it is true that the minister does not have to accept the inquiry panel's recommendation. It is true that that capacity exists, and there may be varied reasons why that might be the case. Again, the minister would need to be convinced that it would be an appropriate action—or inaction, in this case—to not follow or not accept the inquiry panel's advice. It is important that the outcome includes an opportunity for the minister to not accept the inquiry panel's recommendation, but it would certainly be under circumstances that would need to be justified. The member asked upon what circumstances; it may ultimately, for specific reasons, not be in the best interests of the council to pursue a recommendation of the inquiry panel.

**Mr A. Krsticevic:** Can you give an example of why that might be the case? I'm just wondering: an inquiry panel with royal commission powers does all the work; legal people should be dismissed, here's all the evidence. One would assume that they wouldn't lightly come to that conclusion.

**Mr D.A. Templeman:** Leading up to that process there may have been a resignation; the individual may have made the decision to resign. Again, based upon the inquiry panel and a weighing up of the circumstances, it may be seen that it is not in the best interests of the council to pursue it because the individual has taken a course of action that has resulted in resignation. I suppose we can look historically at past experience with councils for examples; there are the four examples that we can look to as past experience. From memory, all of them resulted in the dismissal of the councils involved, a process that ultimately led to reinstatement of the councils through an

election sometime afterwards. This mechanism allows the minister to weigh up those interests, including whether it is in the council's best interests to pursue that ultimate outcome.

**Mr A. KRSTICEVIC:** Under proposed section 8.24(4B), if a council member is suspended by the minister, a range of things are listed, but if an inquiry panel has not recommended that a council member be dismissed, is the minister prohibited from instigating separate action after the fact to dismiss the individual councillor? If the inquiry panel has gone through the process and said, "Nothing to see here; all good", can the minister say, "Actually, I might re-look at this now myself"? Does the minister have the power to do that once it has already been looked at by the inquiry panel?

**Mr D.A. TEMPLEMAN:** The ultimate decision would have to be assessed under a previous provision, proposed section 8.15K, but it would be a pretty brave soul who acted in that way, given the potential nature of what has been determined. Proposed subsection (4B) provides that the minister must reinstate the suspended member if the inquiry panel has not recommended the member's dismissal, and may reinstate the suspended member even if the inquiry panel has recommended the member's dismissal. Again, there is an element there of a weighing up of the circumstances. There is a public transparency issue here and when things are required to be made public, that is important.

**Clause put and passed.**

**Clauses 20 to 23 put and passed.**

**New clause 23A —**

**Mr D.A. TEMPLEMAN:** I move —

Page 21, after line 4 — To insert —

**23A. Section 8.29 amended**

After section 8.29(4) insert:

(5) Despite Part 5 Division 8 —

- (a) while a council member is suspended that member is not entitled to be paid any fee or allowance to which they would otherwise be entitled to be paid under Part 5 Division 8; and
- (b) if a local government pays an annual allowance or annual fee under Part 5 Division 8 to the member in advance then section 5.102AB applies in respect of that member as if the member had, during the period of suspension, ceased to hold the office to which the allowance or fee relates.

The intention of this clause, as is outlined, is that while a council member is suspended, that member is not entitled to be paid any fee or allowance to which they would otherwise be entitled to be paid under part 5, division 8. If a local government pays an annual allowance or annual fee under part 5, division 8, to the member in advance, then section 5.102AB applies in respect of that member as if the member had, during the period of suspension, ceased to hold the office to which the allowance or fee relates.

This is based upon the premise that a council member is not entitled to be paid any allowance or sitting fee et cetera for the duration of their suspension because, of course, they are not during that suspension carrying out their duties as a councillor; they have effectively had those duties suspended for that period. The clause also allows for the recovery by the local government of any fee or allowance that may have been paid in advance to the member, so there is capacity to recover moneys that may have been paid in advance. The premise is that if they are suspended, they are unable to carry out their duties and therefore there is no entitlement to payment of allowances or sitting fees.

**Mr A. KRSTICEVIC:** With regard to mayors and the Lord Mayor, their remuneration is determined by the Salaries and Allowances Tribunal. Councillors have a sitting fee and it is a separate category of payment for councillors. I think the mayors get the same payment on top of their Salaries and Allowances Tribunal payments. Obviously, the Salaries and Allowances Tribunal determines pay for lots of different officers, of which mayors are just one category. Under the same circumstances of remuneration, a mayor has received income and is now suspended, but other officers who are also covered by the Salaries and Allowances Tribunal will continue to get paid if they are suspended from their duties. I am trying to work out how, under the instructions of the Salaries and Allowances Tribunal, there are two different ways of treating people who are covered by that legislation. In one case we are saying a person is covered by the Salaries and Allowances Tribunal but is not going to get paid because they are suspended, and other people in the same category of the Salaries and Allowances Tribunal might also get suspended in the course of their duties—a judge, a politician or whoever—but they will

continue to get paid. Is that the case, and is there any discrimination in the categories of people who come under the SAT?

**Mr D.A. TEMPLEMAN:** I remind the member of the definition of “salary”, if he is making a comparison with members in this place. We receive a salary. We do not receive, as a council member receives, a sitting fee or an allowance that is designated to be for carrying out the duties of a councillor. The sitting fees are not a retainer or anything of that nature; they are specifically for those purposes. While an elected council member is suspended, this clause prevents that person receiving any of those payments for the duration of the suspension. It also includes a capacity for the local government to retrieve any of those fees and/or allowances that have been paid in advance, because, essentially, the councillor has been unable, due to the suspension, to carry out their duties. This is a very important clarification, because I always remind councillors or any members who refer to council remuneration as a salary that it is not a salary. Any premise based on eligibility to receive remuneration during a suspension is false.

**Mr A. KRSTICEVIC:** Obviously, in today’s world a mayor’s role is effectively a full-time position. There are a lot of mayors for whom it is a full-time position. They obviously get paid a reasonably good allowance, as mayors, with all the bits and pieces that get added on. If their pay is suspended, technically they may not be able to pay their mortgage or feed their kids et cetera. Will the scenario for mayors be that their pay will be cut off on every occasion? If they are suspended, they will automatically lose their pay, without doubt. The other issue there is, as we have discussed before, that if a suspended mayor is found to be innocent of any offence, having been suspended for six months and gone through the process—it is their only income, they cannot pay their bills and they are behind in their mortgage—there is nothing to see here, it is all good, and the mayor is reinstated, there is no back pay; they may have lost their house, but that is just bad luck. Has that been taken into account in the case of the mayors in most metropolitan councils, for whom that is the only job they have; that is the only position they fill? I know a lot of mayors for whom that is their only income. I am a bit concerned about the financial hardship, especially if it is proven that there is nothing there to see, or is that just bad luck, and that is the risk that people take if they are suspended.

**Mr D.A. TEMPLEMAN:** I understand where the member is coming from, and it is a legitimate concern, but it also reminds us all that these positions are very privileged and important, with remuneration that is not a salary, and, therefore, in many respects it could be argued that it is not related to a job. The member refers to it as being a job. In some respects, it is a course of action that people take. Some councillors would argue that they work full time. In a band 4 council, for example, which would be many of our very small councils, the minimum remuneration is \$508 annually, with a maximum of up to \$19 864, for a mayor or a president. I am just talking mayor or president numbers here. A number of councils in the band process endorse the highest rate, or the maximum. Others set their payments midway on the band, rounded to the nearest \$1 000.

**Mr A. Krsticevic:** Where do most of them sit—at the top end or in the middle?

**Mr D.A. TEMPLEMAN:** I think it varies, to be honest. This is probably a good question that we could refer to in the third reading debate. It is probably some information I can come back with. It is at the discretion of the council to decide. Ultimately, though, a councillor is paid if they are able to carry out the functions of a councillor. If they are suspended, the premise is that, as they are no longer carrying out the responsibilities and requirements as an elected member, they should not receive payment. The member might see this as unfair, but the reality is that, when this is in place, that is a consideration for all councillors. Might it have an influence on their behaviour or their conduct? Possibly. Is that a good thing? Possibly. The reality is that this clause determines that if a person is not carrying out the duties, they are not to receive the relevant payment.

**Dr M.D. NAHAN:** Following up on that argument, I guess it has to do with the legal definition of the allowances paid to mayors, and our concern is with only those whose remuneration is determined by the Salaries and Allowances Tribunal. SAT covers the remuneration of a range of people, including members of Parliament. Being a member of Parliament is a privilege. It is a vocation, if you wish. That is a word that the minister might have used, without putting words in his mouth, for a mayor. If a member of Parliament is suspended, they cannot carry out the functions that they are being paid to do. Our concern is, are we setting up an inequity with this decision, relative to other people whose income is determined by SAT? Many are in important positions, such as judges, senior bureaucrats, members of Parliament and others. I guess it would hinge upon the legal definition of the allowance paid to the mayor. In some cases, the allowance is not large—it is probably not their sole income. However, in most of the large metropolitan cities, mayor is effectively a full-time position. I am trying to understand why we are treating mayors in a different way from people who hold other equally important positions and whose salaries are also determined by SAT.

Another issue is a mayor or councillor who is suspended. The council of the City of Canning is in my electorate. That council was suspended or sacked for a long time—it went on for a number of years, unfortunately. It was not the fault of everyone on that council. I think the minister is trying to address that in more detail in this bill. Some

of those councillors were just fallout. The mayor called it all upon himself. However, that is a different issue. Let us say a mayor was suspended, based on accusations of an important nature, and it turned out that was not justified. That person was not able to perform their task for the period of the suspension, even though they might have wanted to do so. The investigation that followed found that the mayor should be reinstated. Compare that with a member of Parliament who was suspended following accusations. That member of Parliament would continue to be paid. We are not against the docking of pay. We are just trying to work through these irregularities, because if we leave irregularities in decision-making, they often lead to problems. I think it hinges upon what the minister implied—namely, that mayoral pay is different; unlike the situation of members of Parliament, it is not a salary. Could the minister give us a description of why it is different?

**Mr D.A. TEMPLEMAN:** I thank the Leader of the Opposition for the question. This goes to the crux of why it is not appropriate in many respects to compare an elected councillor at the local government level with a member elected to this place. We have procedures and privileges, and standing orders, that designate a course of action. A member may be suspended from this place. However, that does not mean the member is suspended from carrying out their duties as a member of Parliament. A member may be suspended from this place for a period and continue to carry out their duties in their electorate. There is no suspension of their electorate office—they are able to carry out their electorate duties. Therefore, I do not buy the argument of comparison. I think it is very different. We receive a salary and we receive allowances associated with that salary. It is up to this place to take a range of actions if we breach the privilege of being in this place, depending upon the seriousness of the breach. That range of actions is set down by us, ultimately, and determined by us. That is not the case for an elected member of local government—that is set by this place, actually, through an act of Parliament. That is the difference. If the Leader of the Opposition were to carry on with that argument and make a comparison with this clause, it would become very complicated and would in fact be comparing apples with oranges, when there is no similarity. That is where I come from in terms of the proviso.

The other fact, Leader of the Opposition, is that it comes back to the principle of what is an allowance and/or sitting fee, as opposed to a wage, and any conditions and allowances that sit along with that wage. They are completely different. In this case, I think this would satisfy the view of the public. I think the view of the public would be that an elected councillor is different from an elected member of Parliament, be it federal or state, and is also different from a salaried officer or salaried person. We are dealing specifically with the circumstances as they impact on a councillor. I am not a gambler, but I reckon the member would find that the general public would be of the view that a councillor who was suspended and not able to carry out their duties and be part of the decision-making body while they are suspended—which would be a serious course of action—should not receive any remuneration during that period.

**Dr M.D. NAHAN:** I have not polled, but my guess is that the general public would also be of the view that if an elected member of this place were suspended, even if that person were to work in their electorate office, they should not be paid.

**Mr D.A. Templeman:** The general public probably thinks you and I should not be paid either!

**Dr M.D. NAHAN:** I agree!

**Mr D.A. Templeman:** I think they all think we are grossly overpaid and do not do anything.

**Dr M.D. NAHAN:** Many people still think that we have a pension that goes on.

**Mr D.A. Templeman:** Yes, and of course we could fix that if you wanted to work together!

**Dr M.D. NAHAN:** The Premier is not here. The police minister is not here. Let us do it! You are in charge, minister!

**Mr D.A. Templeman:** Quick! Get me a draftsman, quickly!

**Dr M.D. NAHAN:** I think we would get a positive vote on that tonight!

**Mr D.A. Templeman:** We would be pilloried out there in the public. They do not think we deserve anything.

**Dr M.D. NAHAN:** We do not have to tell them, right?

I divert. Can the minister address the issue of a mayor who is suspended and whose allowances are docked or not paid, and after the fact the cause was found to be inadequate and the mayor was reinstated? That person did not undertake the tasks of mayor during that period, by definition. The minister is right—there is a difference between being in this house and being in the electorate, although a member cannot be a good local member if they are not in this house, I might add.

**Mr D.A. Templeman:** Some might be more effective if they were not in here!

**Dr M.D. NAHAN:** That is why the minister is here!

**Mr D.A. Templeman:** I walked into that one—touché!

**Dr M.D. NAHAN:** Can the minister address the potential inequity of a person who is suspended and has their pay docked but is then reinstated? We want the best people in local government. Sometimes a mayor is suspended not because of things they have done but because of people around them. There is sometimes a large amount of excessive behaviour, as we saw yesterday in the City of Swan when the mayor was hit on the head with a microphone by an over-excited person. If a person is suspended and their allowance is stopped for the period of the suspension, and they are then reinstated, does the minister have the ability to say, “Okay; we will pay the allowance that would have been due if you had not been suspended”?

**Mr D.A. TEMPLEMAN:** First of all, I think the recent events in the City of Perth show that the community supports the proviso that they should not be paid. I refer to what the Leader of the Opposition said on ABC Radio Perth when this matter came up. This was on 26 April this year, so it is very recent —

The WA Liberals say the Government’s promise to close a legal loophole that would prevent Perth Lord Mayor Lisa Scaffidi from receiving her salary while suspended should be extended to all elected officials;

The proviso is that they are different but, from that, I read that the Leader of the Opposition agrees that the Lord Mayor should not receive any payment while she is under suspension.

**Dr M.D. Nahan:** I am looking for equity in the treatment of Lord Mayors versus everybody else determined by the SAT. We are trying to explore why we are treating Lord Mayors differently from judges or ourselves. You have gone some way to explaining that.

**Mr D.A. TEMPLEMAN:** It is because they are different and they are not receiving a salary. I suppose that is my answer to the Leader of the Opposition. The other thing is that, effectively, they have been suspended, so they are not performing their duties or functions.

**Dr M.D. Nahan:** But you could say that of a judge.

**Mr D.A. TEMPLEMAN:** Yes, but they receive a salary. My understanding is that some salaried people can be suspended with pay or without pay. Police and teachers are examples, but they receive a salary. They do not receive an allowance and/or a sitting fee for attending the classroom or the station. I think that is the difference. I understand where the Leader of the Opposition is coming from and I am not antagonistic to where he is coming from.

**Dr M.D. Nahan:** I think we are going to agree to this new clause. I am just trying to explore whether there are anomalies in it. You have just said—from memory it is true—that people who are at a certain level under SAT can be suspended with or without pay. That is up to the discretion of whoever is doing the suspensions. Is that true?

**Mr D.A. TEMPLEMAN:** I would not like to answer that and be incorrect. It is something that I might be able to respond to during the third reading debate.

**Dr M.D. Nahan:** Okay. Could you address the issue of some being suspended —

**Mr D.A. TEMPLEMAN:** Reinstatement?

**Dr M.D. Nahan:** Yes.

**Mr D.A. TEMPLEMAN:** In this case, there is no power for the minister to order back pay if reinstated. There is not that capacity. Again, it comes back to the premise that duties have not been performed; therefore, sitting fees and/or allowances have not been earned.

**Dr M.D. NAHAN:** Has the minister sought legal advice from someone on whether back pay not being provided would lead that person to pursue remedy in court? I think they would have the right to pursue it in court.

**Mr D.A. TEMPLEMAN:** My advice is that, yes, that advice has been sought and this legislation would override any other aspect. Again, I am not being picky but in the Leader of the Opposition’s response, he referred to “pay”. Again, that is not what these are; they are allowances and sitting fees.

**New clause put and passed.**

**Clause 24: Part 8 Division 3 Subdivision 2 inserted —**

**Mr D.A. TEMPLEMAN:** I move —

Page 22, after line 10 — To insert —

(4) Despite Part 5 Division 8 —

(a) while a council member is suspended that member is not entitled to be paid any fee or allowance to which they would otherwise be entitled to be paid under Part 5 Division 8; and

**Extract from *Hansard***

[ASSEMBLY — Tuesday, 19 June 2018]

p3573b-3586a

Mr Tony Krsticevic; Mr David Templeman; Mr John McGrath; Mr Vincent Catania; Dr Mike Nahan

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- (b) if a local government pays an annual allowance or annual fee under Part 5 Division 8 to the member in advance then section 5.102AB applies in respect of that member as if the member had, during the period of suspension, ceased to hold the office to which the allowance or fee relates.

Again, this amendment underpins the principle of an elected member not receiving payment of fees and/or allowances while they are not carrying out their duties or functions because of suspension.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 25 to 27 put and passed.**

**Title put and passed.**