

Local Government Amendment (Suspension and Dismissal) Bill 2018

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Western Australia

LEGISLATIVE ASSEMBLY

**Local Government Amendment (Suspension and
Dismissal) Bill 2018**

A Bill for

An Act to amend the *Local Government Act 1995*.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Local Government Amendment (Suspension and*
3 *Dismissal) Act 2018*.

4 **2. Commencement**

5 This Act comes into operation as follows —

6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;

8 (b) the rest of the Act — on the day after that day.

9 **3. Act amended**

10 This Act amends the *Local Government Act 1995*.

11 **4. Section 2.22 amended**

12 In section 2.22(1)(c) delete “on indictment”.

13 **5. Section 2.25 amended**

14 In section 2.25(5)(b)(iiia) delete “section 5.117(1)(a)(iv); or”
15 and insert:

16

17 section 5.117(1)(a)(iv) or Part 8; or

18

19 **6. Section 2.32 amended**

20 After section 2.32(da) insert:

21

22 (db) is dismissed under section 8.15L or 8.25(2); or

23

1 **7. Section 2.36 amended**

2 (1) In section 2.36 delete “If a council is dismissed under
3 section 8.25” and insert:

4
5 (1) If a council is dismissed under section 8.25(1)

6
7 (2) At the end of section 2.36 insert:

8
9 (2) If a council member is dismissed under section 8.15L
10 or 8.25(2) the office of the member becomes vacant
11 from the time when the order dismissing the member
12 takes effect.

13
14 Note: The heading to amended section 2.36 is to read:

15 **Vacancies on dismissal of council or council member**

16 **8. Section 2.37A amended**

17 In section 2.37A(1) delete “or 8.25,” and insert:

18
19 or 8.25(1),

20
21 **9. Section 4.14 amended**

22 In section 4.14 delete “section 8.25” and insert:

23
24 section 8.25(1)

25

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1 **10. Section 5.117 amended**

2 In section 5.117(8) delete “section 8.29 applies to the member
3 as if the council had been suspended.” and insert:

4
5 section 8.30B applies to the member.
6

7 **11. Section 8.14 amended**

8 (1) In section 8.14(1) delete “to the local government concerned.”
9 and insert:

10
11 to —

- 12 (a) the local government concerned; and
13 (b) if the council of the local government is
14 suspended — each council member; and
15 (c) if a council member is suspended — that
16 member.
17

18 (2) In section 8.14(2) delete “report to the local government” and
19 insert:

20
21 report, as required under subsection (1),
22

23 (3) After section 8.14(3) insert:
24

25 (4) A council member who is suspended or who is a
26 member of a council that is suspended may, within
27 35 days after receiving the report or such longer period
28 as the Minister allows, give the Minister written advice
29 setting out the member’s comments on the
30 recommendations in the report.
31

1 Note: The heading to amended section 8.14 is to read:

2 **Copies to be given to local government and suspended council**
3 **members**

4 **12. Section 8.15 amended**

5 In section 8.15(1):

6 (a) in paragraph (a) delete “the local government’s advice;
7 or” and insert:

8
9 advice under section 8.14(3) or (4); or

10
11 (b) in paragraph (b) delete “section 8.14(3)” and insert:

12
13 section 8.14(3) or (4)

14
15 **13. Part 8 Division 2A heading replaced**

16 Delete the heading to Part 8 Division 2A and insert:

17

18 **Division 1A — Intervention by the Minister in**
19 **certain circumstances**

20 **Subdivision 1 — Council may be suspended or required to**
21 **undertake remedial action**

22

23 **14. Section 8.15C amended**

24 In section 8.15C(2)(d) delete “the order.” and insert:

25

26 the order within the time specified in the order.

27

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1 **15. Part 8 Division 1A Subdivisions 2 and 3 inserted**

2 After section 8.15C insert:

3

4 **Subdivision 2 — Council member may be suspended or**
5 **required to undertake remedial action**

6 **8.15D. Terms used**

7 In this Subdivision —

8 ***disqualification offence*** means —

- 9 (a) a serious local government offence, as defined
10 in section 2.22(3); or
- 11 (b) an offence against a law of this State, the
12 Commonwealth, another State or a Territory,
13 for which the indictable penalty, as defined in
14 section 2.22(3), is —
- 15 (i) imprisonment for life; or
16 (ii) imprisonment for more than 5 years;

17 ***on which the order is based***, in relation to —

- 18 (a) a factor — means a factor set out in
19 section 8.15E(2) specified in an order in
20 accordance with section 8.15E(4)(a); and
- 21 (b) a type of failure or conduct — means a type of
22 failure or conduct set out in section 8.15E(3)(a)
23 specified in an order in accordance with
24 section 8.15E(4)(b);

25 ***reinstatement***, of a member, means the reinstatement
26 of the member under section 8.15H, 8.24(4B) or 8.30D.

1 **8.15E. Minister may suspend council member or require**
2 **member to undertake remedial action**

3 (1) If satisfied that it is appropriate to intervene under this
4 section, the Minister may, by order, do either or both of
5 the following —

- 6 (a) suspend a council member;
7 (b) require a council member to undertake any
8 remedial action specified in the order within the
9 time specified in the order.

10 (2) The Minister can only be satisfied that it is appropriate
11 to intervene under this section if one or more of the
12 following factors exist —

- 13 (a) the member has been charged with a
14 disqualification offence;
15 (b) the Departmental CEO has, under Part 5
16 Division 9, made an allegation to the State
17 Administrative Tribunal that the member has
18 committed a serious breach or a recurrent
19 breach, as those terms are defined in
20 section 5.102A;
21 (c) the circumstances set out in subsection (3) have
22 occurred.

23 (3) The circumstances referred to in subsection (2)(c) are
24 that —

- 25 (a) the Departmental CEO has advised the Minister
26 in writing that the Departmental CEO suspects
27 on reasonable grounds that at least one of the
28 following apply —
29 (i) the member has failed, or is failing, to
30 perform the member's role, functions or
31 duties under this Act;

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- 1 (ii) the member's conduct has adversely
2 affected, or is adversely affecting, the
3 ability of another person to perform
4 their role, functions or duties under this
5 Act;
- 6 (iii) the member's conduct has adversely
7 affected, or is adversely affecting, the
8 ability of the local government to
9 comply with the principles that apply to
10 it under section 5.40;
- 11 and
- 12 (b) the Minister is satisfied that the seriousness or
13 duration of the suspected failure or conduct
14 requires intervention under this section.
- 15 (4) An order made under subsection (1) must specify —
- 16 (a) each paragraph of subsection (2) that sets out a
17 factor on which the order is based; and
- 18 (b) if subsection (2)(c) is a factor on which the
19 order is based — each subparagraph of
20 subsection (3)(a) that sets out a type of failure
21 or conduct about which the Minister has
22 received advice from the Departmental CEO.
- 23 (5) Before making an order under subsection (1) the
24 Minister must —
- 25 (a) give to the member written notice of the
26 proposed order that provides a description of
27 the facts of —
- 28 (i) each factor on which it is proposed that
29 the order be based; and
- 30 (ii) if relevant, each type of failure or
31 conduct on which it is proposed that the
32 order be based;
- 33 and

- 1 (b) give the member the opportunity to show cause
2 in writing, within 21 days of receiving the
3 notice or such longer period as the Minister
4 allows, as to why the Minister should not make
5 the proposed order; and
6 (c) take into consideration the member's response,
7 if any.

8 **8.15F. Period of suspension: order under section 8.15E**

- 9 (1) An order under section 8.15E(1) suspending a council
10 member ceases to have effect on whichever of the
11 following occurs first —
12 (a) the term of office of the member ends, or the
13 member's office becomes vacant;
14 (b) the member is reinstated by the Minister;
15 (c) if section 8.15E(2)(a) or (b) is a factor on which
16 the order is based — the matter is resolved as
17 described in subsection (2);
18 (d) if section 8.15E(2)(c) is the only factor on
19 which the order is based — the period of
20 suspension described in subsection (3) expires.
- 21 (2) A matter is resolved for the purposes of
22 subsection (1)(c) when —
23 (a) if section 8.15E(2)(a) is a factor on which the
24 order is based — one of the following has
25 occurred in respect of each charge for a
26 disqualification offence —
27 (i) the member is convicted of the offence
28 and any appeal has been determined, or
29 any period for appeal has expired;
30 (ii) the member is acquitted of the offence
31 and any appeal has been determined, or
32 any period for appeal has expired;

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- 1 (iii) the prosecution for the offence is
2 discontinued;
- 3 (b) if section 8.15E(2)(b) is a factor on which the
4 order is based — one of the following has
5 occurred in respect of each allegation to the
6 State Administrative Tribunal that the member
7 has committed a serious breach or a recurrent
8 breach —
- 9 (i) the Tribunal makes an order described
10 in section 5.117 and any appeal has
11 been determined, or any period for
12 appeal has expired;
- 13 (ii) the Tribunal decides that the member
14 did not commit the breach and any
15 appeal has been determined, or any
16 period for appeal has expired.
- 17 (3) The period of suspension for the purposes of
18 subsection (1)(d) is —
- 19 (a) the period of not more than 6 months specified
20 in the order, or if no period is specified in the
21 order, the period of 6 months from when the
22 order was made; and
- 23 (b) if the period of suspension has been extended
24 by an order under section 8.15G(1) (an
25 *extension order*), the additional period of not
26 more than 6 months specified in the extension
27 order, or if no period is specified in the
28 extension order, the additional period of
29 6 months.

1 **8.15G. Suspension of certain council members may be**
2 **extended while inquiry conducted**

- 3 (1) The Minister may, by order, extend the suspension of a
4 council member who is already suspended by an order
5 (the *original order*) under section 8.15E(1) if
6 section 8.15E(2)(c) is the only factor on which the
7 order is based where —
- 8 (a) an inquiry is being conducted under Division 1
9 or 2 into any failure or conduct on which the
10 original order was based; and
 - 11 (b) the Departmental CEO has advised the Minister
12 that, in the CEO's opinion, the original order
13 suspending the member will cease to have
14 effect under section 8.15F(1)(d) and (3)(a)
15 before the inquiry is completed; and
 - 16 (c) the Minister is satisfied that each type of failure
17 or conduct on which the original order was
18 based still exists.

- 19 (2) For the purposes of this Act, the extended suspension
20 of a member the subject of an order under
21 subsection (1) is to be taken to have effect under the
22 original order.

23 **8.15H. Reinstatement of council member whose suspension**
24 **was extended under section 8.15G**

25 The Minister must, by order, reinstate a council
26 member the subject of an order under section 8.15G(1)
27 if the Departmental CEO advises the Minister in
28 writing that, taking into account the recommendations
29 in the report on the outcome of the inquiry, the CEO
30 considers that it is not appropriate —

- 31 (a) that the member be charged with a serious local
32 government offence, as defined in
33 section 2.22(3); or

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- 1 (b) to make an allegation to the State
2 Administrative Tribunal under section 5.116(2)
3 that the member has committed a serious
4 breach.

5 **8.15I. Minister may suspend council member if member**
6 **fails to undertake remedial action as ordered**

- 7 (1) If the Minister is satisfied that an order by the Minister
8 under section 8.15C(2)(d) or 8.15E(1)(b), requiring a
9 member of a council to take remedial action, has not
10 been complied with according to its terms, the Minister
11 may, by order, suspend the member.
- 12 (2) Before making an order under subsection (1) the
13 Minister must —
- 14 (a) give to the member written notice of the
15 proposed order and provide information, and if
16 available, evidence as to why the Minister is
17 satisfied that the order has not been complied
18 with; and
- 19 (b) give the member the opportunity to show cause
20 in writing, within 21 days of receiving the
21 notice or such longer period as the Minister
22 allows, as to why the Minister should not make
23 the proposed order; and
- 24 (c) take into consideration the member's response,
25 if any.
- 26 (3) If a member is already suspended, then an order may
27 be made under subsection (1) extending the suspension
28 of the member and, for the purpose of this Act, such an
29 order is to be taken to be an order suspending the
30 member made under this section.

1 **8.15J. Council member must inform CEO if charged with**
2 **disqualification offence**

- 3 (1) A member of a council of a local government who has
4 been charged with a disqualification offence and does
5 not advise the CEO of the local government in writing
6 of the charge without delay commits an offence.
- 7 (2) If a CEO receives a notice under subsection (1), or
8 becomes aware by other means that a council member
9 has been charged with a disqualifying offence, the
10 CEO must, as soon as is practicable, give the
11 Departmental CEO written notice that the member has
12 been so charged.

13 **Subdivision 3 — Council member may be dismissed**

14 **8.15K. Minister may recommend that council member be**
15 **dismissed**

- 16 (1) If satisfied that it is appropriate to intervene under this
17 section, the Minister may recommend that the
18 Governor dismiss a council member.
- 19 (2) The Minister can only be satisfied that it is appropriate
20 to intervene under this section if the Minister —
- 21 (a) is of the opinion, based on the advice in writing
22 of the Departmental CEO, that either or both of
23 the following apply —
- 24 (i) the member is impeding the ability of
25 the local government to perform its
26 functions and duties under this Act;
- 27 (ii) it is in the best interests of the local
28 government that the member be
29 dismissed;
- 30 and

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- 1 (b) is satisfied that the seriousness of the situation
2 for the local government requires intervention
3 under this section.
- 4 (3) Before making a recommendation under subsection (1)
5 the Minister must —
- 6 (a) give to the member a report that contains —
7 (i) the proposed recommendation; and
8 (ii) the grounds on which the Minister
9 proposes to make the recommendation;
10 and
11 (b) give the member the opportunity to show cause
12 in writing, within 21 days of receiving the
13 report or such longer period as the Minister
14 allows, as to why the Minister should not make
15 the proposed recommendation; and
16 (c) take into consideration the member's response,
17 if any.
- 18 (4) The power conferred on the Minister under
19 subsection (1) is in addition to, and does not derogate
20 from, the power conferred on the Minister under
21 section 8.24(4A) to take action in respect of an Inquiry
22 Panel's report under Division 2.

23 **8.15L. Governor may dismiss council member on**
24 **recommendation of the Minister**

25 The Governor may, by order made on the
26 recommendation of the Minister under
27 section 8.15K(1), dismiss a member of a council.

28 **8.15M. Report setting out grounds to be made available to**
29 **the public**

- 30 (1) On the day an order dismissing a council member
31 under section 8.15L takes effect, the Minister is to

1 make available to the public in any manner that the
2 Minister thinks fit a report that contains the grounds on
3 which the Minister made the recommendation to
4 dismiss the member under section 8.15K(1).

5 (2) Despite subsection (1), the Minister may withhold the
6 report, or any part of its contents, to the extent that the
7 Minister considers that making it available might
8 prejudice a matter that is likely to come before a court
9 of law or to be the subject of an allegation to the State
10 Administrative Tribunal.
11

12 **16. Section 8.19A inserted**

13 After section 8.19 insert:
14

15 **8.19A. Suspension of council member while inquiry is held**

16 (1) Before or after appointing an Inquiry Panel to conduct
17 an inquiry and make a report about a local government,
18 the Minister may, by order, suspend a member of the
19 council of the local government if the Minister thinks
20 that the conduct of the inquiry would be likely to be
21 seriously prejudiced if the member were not
22 suspended.

23 (2) If an Inquiry Panel has not been appointed when the
24 suspension under an order made under this section
25 takes place the Minister is to appoint one within
26 6 months after the suspension.

27 (3) Before making an order under subsection (1) the
28 Minister must —

29 (a) give to the member written notice of the
30 proposed order and the reasons why the
31 Minister thinks that the conduct of the inquiry

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- 1 would be likely to be seriously prejudiced if the
2 member were not suspended; and
- 3 (b) give the member the opportunity to show cause
4 in writing, within 21 days of receiving the
5 notice or such longer period as the Minister
6 allows, as to why the Minister should not make
7 the proposed order; and
- 8 (c) take into consideration the member’s response,
9 if any.
- 10 (4) If a member is already suspended, then an order may
11 be made under subsection (1) extending the suspension
12 of the member and, for the purpose of this Act, such an
13 order is to be taken to be an order suspending the
14 member made under this section.
15

16 **17. Section 8.22 amended**

- 17 (1) In section 8.22(2):
- 18 (a) in paragraph (b) delete “reinstated.” and insert:
19
20 reinstated; or
21
- 22 (b) after paragraph (b) insert:
23
- 24 (c) if subsection (2A) applies, that a council
25 member be dismissed; or
- 26 (d) that a council member who has been suspended
27 be reinstated.
28

1 (2) After section 8.22(2) insert:
2

3 (2A) The Inquiry Panel can only recommend that a council
4 member be dismissed if the Inquiry Panel is satisfied,
5 on reasonable grounds, that —

6 (a) at least one of the following apply —

7 (i) the member has failed, or is failing, to
8 perform the member's role, functions or
9 duties under this Act;

10 (ii) the member's conduct has impeded, or
11 is impeding, the ability of another
12 person to perform their role, functions
13 or duties under this Act;

14 (iii) the member's conduct has impeded, or
15 is impeding, the ability of the local
16 government to comply with the
17 principles that apply to it under
18 section 5.40;

19 and

20 (b) the seriousness or duration of that failure or
21 conduct make it inappropriate for the member
22 to continue to be a member of the governing
23 body of the local government.
24

25 **18. Section 8.23 amended**

26 (1) Delete section 8.23(1) and insert:
27

28 (1) If the Minister receives a report from an Inquiry Panel
29 under section 8.22(3), the Minister is to give a copy of
30 the report to —

31 (a) the local government concerned; and

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- 1 (b) if the council of the local government is
2 suspended — each council member; and
3 (c) if a council member is suspended — that
4 member.
5

6 (2) In section 8.23(3) delete “law.” and insert:
7

8 law or to be the subject of an allegation to the State
9 Administrative Tribunal.
10

11 (3) In section 8.23(5) delete “If the council is suspended each
12 council member” and insert:
13

14 A council member who is suspended, or who is a member of a
15 council that is suspended,
16

17 Note: The heading to amended section 8.23 is to read:

18 **Copies to be given to local government and suspended council**
19 **members, and made available to public**

20 **19. Section 8.24 amended**

21 (1) In section 8.24(2):
22 (a) in paragraph (a) delete “the advice of the local
23 government; or” and insert:

24 advice under section 8.23(4) or (5); or
25

26
27 (b) in paragraph (b) delete “section 8.23(4)” and insert:
28

29 section 8.23(4) or (5)
30

- 1 (2) In section 8.24(4)(b) delete “section 8.28,” and insert:
2
3 section 8.28(3),
4
- 5 (3) After section 8.24(4) insert:
6
- 7 (4A) If, and only if, the Inquiry Panel has recommended that
8 a council member be dismissed, the Minister may
9 recommend that the Governor dismiss the member, but
10 the Minister does not have to so recommend.
- 11 (4B) If a council member has been suspended the
12 Minister —
- 13 (a) must, by order, reinstate the member if the
14 Inquiry Panel has not recommended the
15 member’s dismissal; and
- 16 (b) may, by order under section 8.30D, reinstate
17 the member even if the Inquiry Panel has
18 recommended the member’s dismissal.
- 19 (4C) Subsection (4B)(a) does not apply in respect of a
20 member the subject of an order under section 8.15G(1)
21 unless there is also a duty to reinstate the member
22 under section 8.15H.
23
- 24 (4) In section 8.24(5):
- 25 (a) delete “any of its council members” and insert:
26
27 any member of its council
28
- 29 (b) delete “the council” and insert:
30
31 the council, or the member,
32

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1 **20. Section 8.25 amended**

2 (1) In section 8.25 delete “The Governor” and insert:

3

4 (1) The Governor

5

6 (2) At the end of section 8.25 insert:

7

8 (2) The Governor may, by order made on the
9 recommendation of the Minister under
10 section 8.24(4A), dismiss a member of a council.

11

12 Note: The heading to amended section 8.25 is to read:

13 **Dismissal of council or council member by Governor**

14 **21. Part 8 Division 3 heading amended**

15 In the heading to Part 8 Division 3 after “**councils**” insert:

16

17 **and council members**

18

19 **22. Part 8 Division 3 Subdivision 1 heading inserted**

20 At the beginning of Part 8 Division 3 insert:

21

22 **Subdivision 1 — Provisions about suspension of councils**

23

24 **23. Section 8.28 amended**

25 (1) In section 8.28(2)(c) delete “subsection (3),” and insert:

26

27 subsection (3) or section 8.24(4)(a),

28

1 (2) In section 8.28(3) delete “may, if he or she” and insert:

2

3 may by order, if the Minister

4

5 **24. Part 8 Division 3 Subdivision 2 inserted**

6 After section 8.30 insert:

7

8 **Subdivision 2 — Provisions about suspension of**
9 **council members**

10 **8.30A. Period of suspension: orders under sections 8.15I**
11 **and 8.19A**

12 (1) An order under section 8.15I(1) or 8.19A(1)
13 suspending a council member has effect for the period,
14 not exceeding 2 years, specified in the order or, if no
15 period is so specified, for the period of 2 years from
16 when the order was made.

17 (2) An order under section 8.15I(1) or 8.19A(1)
18 suspending a council member ceases to have effect on
19 whichever of the following occurs first —

20 (a) the period of suspension expires;

21 (b) the term of office of the member ends, or the
22 member’s office becomes vacant;

23 (c) the member is reinstated by the Minister under
24 section 8.24(4B) or 8.30D.

25 **8.30B. Effect of suspension of council member**

26 (1) While a council member is suspended, the powers and
27 duties of the member cannot be performed by the
28 member.

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- 1 (2) The suspension of a council member does not prevent
2 the term of office of the member from continuing to
3 run while the member is suspended.
- 4 (3) The suspension of a council member does not affect —
- 5 (a) the application of Part 4 Divisions 3 and 4, in
6 relation to the member’s office; or
- 7 (b) the eligibility of the member to be a candidate
8 to be elected as a member of a council,
9 including to fill the office vacated by the
10 member.

11 **8.30C. Continuing effect of suspension**

- 12 (1) This section applies if —
- 13 (a) an order under Division 1A Subdivision 2 or
14 section 8.19A(1) suspending a council member
15 ceases to have effect under section 8.15F(1)(a)
16 or 8.30A(2)(b) because —
- 17 (i) the term of office of the member ended
18 under the Table to section 2.28; or
- 19 (ii) the member’s office became vacant
20 under section 2.32(b), (e) or (f),
21 2.36A(1) or 2.37(1) or (2);
- 22 and
- 23 (b) the suspended council member is elected as a
24 member of a council, including to fill the office
25 vacated by the suspended member.
- 26 (2) Despite anything else in this Act —
- 27 (a) an order described in subsection (1)(a) is taken
28 to continue to have effect in respect of the
29 suspended council member as if the term of
30 office of the member had not ended or the
31 office of the member had not become vacant;
32 and

- 1 (b) for that purpose, the order is taken to extend to
2 the member holding office as a member of a
3 council, as described in subsection (1)(b).

4 **8.30D. Reinstatement of suspended council member**

5 The Minister may by order, if the Minister thinks fit,
6 reinstate a suspended council member with effect from
7 the time specified in the order.
8

9 **25. Part 8 Division 3 Subdivision 3 heading inserted**

10 Before section 8.31 insert:
11

12 **Subdivision 3 — Provisions about dismissal of councils**
13

14 **26. Section 8.31 amended**

15 In section 8.31(1) delete “section 8.25” and insert:
16

17 section 8.25(1)
18

19 **27. Part 8 Division 3 Subdivision 4 inserted**

20 After section 8.34 insert:
21

22 **Subdivision 4 — Provisions about dismissal of**
23 **council members**

24 **8.34A. No dismissal of council member except on**
25 **recommendation of Minister or Inquiry Panel**

- 26 (1) A council member cannot be dismissed otherwise than
27 under section 8.15L or 8.25(2).

s. 27

1 (2) Subsection (1) does not affect the operation of
2 section 2.36A or 2.37.

3 **8.34B. When dismissal of council member takes effect**

4 An order dismissing a council member has effect from
5 the day specified in the order.
6

7 Note:

8 The note at the beginning of Part 8 is to be altered in paragraph (b) by
9 deleting "*councils; and*" and inserting:
10 *councils and members of councils; and*

11
