



Western Australia

## **Local Government Amendment (Suspension and Dismissal) Act 2018**



## Local Government Amendment (Suspension and Dismissal) Act 2018

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Western Australia

# **Local Government Amendment (Suspension and Dismissal) Act 2018**

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**No. 31 of 2018**

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

*[Assented to 19 November 2018]*

The Parliament of Western Australia enacts as follows:

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**1. Short title**

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

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**3. Act amended**

This Act amends the *Local Government Act 1995*.

**4. Section 2.22 amended**

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

**5. Section 2.25 amended**

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

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

**6. Section 2.32 amended**

After section 2.32(da) insert:

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



**7. Section 2.36 amended**

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

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

- (2) At the end of section 2.36 insert:

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

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

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

**8. Section 2.37A amended**

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

or 8.25(1),

**9. Section 4.14 amended**

In section 4.14 delete “section 8.25” and insert:

section 8.25(1)

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**10. Section 5.117 amended**

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

section 8.30B applies to the member.

**11. Section 8.14 amended**

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

to —

- (a) the local government concerned; and
- (b) if the council of the local government is suspended — each council member; and
- (c) if a council member is suspended — that member.

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

report, as required under subsection (1),

- (3) After section 8.14(3) insert:

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

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

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

**12. Section 8.15 amended**

In section 8.15(1):

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

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

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

section 8.14(3) or (4)

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

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

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

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

**14. Section 8.15C amended**

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

the order within the time specified in the order.

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

After section 8.15C insert:

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

**8.15D. Terms used**

In this Subdivision —

***disqualification offence*** means —

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

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

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

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

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

- (1) If satisfied that it is appropriate to intervene under this section, the Minister may, by order, do either or both of the following —
  - (a) suspend a council member;
  - (b) require a council member to undertake any remedial action specified in the order within the time specified in the order.
- (2) The Minister can only be satisfied that it is appropriate to intervene under this section if one or more of the following factors exist —
  - (a) the member has been charged with a disqualification offence;
  - (b) the Departmental CEO has, under Part 5 Division 9, made an allegation to the State Administrative Tribunal that the member has committed a serious breach or a recurrent breach, as those terms are defined in section 5.102A;
  - (c) the circumstances set out in subsection (3) have occurred.
- (3) The circumstances referred to in subsection (2)(c) are that —
  - (a) the Departmental CEO has advised the Minister in writing that the Departmental CEO suspects on reasonable grounds that at least one of the following apply —
    - (i) the member has failed, or is failing, to perform the member's role, functions or duties under this Act;

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- (ii) the member's conduct has adversely affected, or is adversely affecting, the ability of another person to perform their role, functions or duties under this Act;
    - (iii) the member's conduct has adversely affected, or is adversely affecting, the ability of the local government to comply with the principles that apply to it under section 5.40;
  - and
  - (b) the Minister is satisfied that the seriousness or duration of the suspected failure or conduct requires intervention under this section.
- (4) An order made under subsection (1) must specify —
- (a) each paragraph of subsection (2) that sets out a factor on which the order is based; and
  - (b) if subsection (2)(c) is a factor on which the order is based — each subparagraph of subsection (3)(a) that sets out a type of failure or conduct about which the Minister has received advice from the Departmental CEO.
- (5) Before making an order under subsection (1) the Minister must —
- (a) give to the member written notice of the proposed order that provides a description of the facts of —
    - (i) each factor on which it is proposed that the order be based; and
    - (ii) if relevant, each type of failure or conduct on which it is proposed that the order be based;
- and

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

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

- (1) An order under section 8.15E(1) suspending a council member ceases to have effect on whichever of the following occurs first —
  - (a) the term of office of the member ends, or the member's office becomes vacant;
  - (b) the member is reinstated by the Minister;
  - (c) if section 8.15E(2)(a) or (b) is a factor on which the order is based — the matter is resolved as described in subsection (2);
  - (d) if section 8.15E(2)(c) is the only factor on which the order is based — the period of suspension described in subsection (3) expires.
- (2) A matter is resolved for the purposes of subsection (1)(c) when —
  - (a) if section 8.15E(2)(a) is a factor on which the order is based — one of the following has occurred in respect of each charge for a disqualification offence —
    - (i) the member is convicted of the offence and any appeal has been determined, or any period for appeal has expired;
    - (ii) the member is acquitted of the offence and any appeal has been determined, or any period for appeal has expired;

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- (iii) the prosecution for the offence is discontinued;
- (b) if section 8.15E(2)(b) is a factor on which the order is based — one of the following has occurred in respect of each allegation to the State Administrative Tribunal that the member has committed a serious breach or a recurrent breach —
  - (i) the Tribunal makes an order described in section 5.117 and any appeal has been determined, or any period for appeal has expired;
  - (ii) the Tribunal decides that the member did not commit the breach and any appeal has been determined, or any period for appeal has expired.
- (3) The period of suspension for the purposes of subsection (1)(d) is —
  - (a) the period of not more than 6 months specified in the order, or if no period is specified in the order, the period of 6 months from when the order was made; and
  - (b) if the period of suspension has been extended by an order under section 8.15G(1) (an ***extension order***), the additional period of not more than 6 months specified in the extension order, or if no period is specified in the extension order, the additional period of 6 months.



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

- (1) The Minister may, by order, extend the suspension of a council member who is already suspended by an order (the *original order*) under section 8.15E(1) if section 8.15E(2)(c) is the only factor on which the order is based where —
  - (a) an inquiry is being conducted under Division 1 or 2 into any failure or conduct on which the original order was based; and
  - (b) the Departmental CEO has advised the Minister that, in the CEO's opinion, the original order suspending the member will cease to have effect under section 8.15F(1)(d) and (3)(a) before the inquiry is completed; and
  - (c) the Minister is satisfied that each type of failure or conduct on which the original order was based still exists.
- (2) For the purposes of this Act, the extended suspension of a member the subject of an order under subsection (1) is to be taken to have effect under the original order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (2) 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.

**16. Section 8.19A inserted**

After section 8.19 insert:

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

- (1) Before or after appointing an Inquiry Panel to conduct an inquiry and make a report about a local government, the Minister may, by order, suspend a member of the council of the local government if the Minister thinks that the conduct of the inquiry would be likely to be seriously prejudiced if the member were not suspended.
- (2) If an Inquiry Panel has not been appointed when the suspension under an order made under this section takes place the Minister is to appoint one within 6 months after the suspension.
- (3) Before making an order under subsection (1) the Minister must —
  - (a) give to the member written notice of the proposed order and the reasons why the Minister thinks that the conduct of the inquiry

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

**17. Section 8.22 amended**

- (1) In section 8.22(2):
- (a) in paragraph (b) delete "reinstated." and insert:  
  
reinstated; or
  - (b) after paragraph (b) insert:
    - (c) if subsection (2A) applies, that a council member be dismissed; or
    - (d) that a council member who has been suspended be reinstated.

(2) After section 8.22(2) insert:

- (2A) The Inquiry Panel can only recommend that a council member be dismissed if the Inquiry Panel is satisfied, on reasonable grounds, that —
- (a) at least one of the following apply —
    - (i) the member has failed, or is failing, to perform the member's role, functions or duties under this Act;
    - (ii) the member's conduct has impeded, or is impeding, the ability of another person to perform their role, functions or duties under this Act;
    - (iii) the member's conduct has impeded, or is impeding, the ability of the local government to comply with the principles that apply to it under section 5.40;
  - and
  - (b) the seriousness or duration of that failure or conduct make it inappropriate for the member to continue to be a member of the governing body of the local government.

**18. Section 8.23 amended**

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

- (1) If the Minister receives a report from an Inquiry Panel under section 8.22(3), the Minister is to give a copy of the report to —
- (a) the local government concerned; and

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

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

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

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

A council member who is suspended, or who is a member of a council that is suspended,

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

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

**19. Section 8.24 amended**

- (1) In section 8.24(2):

- (a) in paragraph (a) delete “the advice of the local government; or” and insert:

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

- (b) in paragraph (b) delete “section 8.23(4)” and insert:

section 8.23(4) or (5)



- (2) In section 8.24(4)(b) delete “section 8.28,” and insert:

section 8.28(3),

- (3) After section 8.24(4) insert:

- (4A) If, and only if, the Inquiry Panel has recommended that a council member be dismissed, the Minister may recommend that the Governor dismiss the member, but the Minister does not have to so recommend.
- (4B) If a council member has been suspended the Minister —
- (a) must, by order, reinstate the member if the Inquiry Panel has not recommended the member’s dismissal; and
  - (b) may, by order under section 8.30D, reinstate the member even if the Inquiry Panel has recommended the member’s dismissal.
- (4C) Subsection (4B)(a) does not apply in respect of a member the subject of an order under section 8.15G(1) unless there is also a duty to reinstate the member under section 8.15H.

- (4) In section 8.24(5):

- (a) delete “any of its council members” and insert:

any member of its council

- (b) delete “the council” and insert:

the council, or the member,

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**20. Section 8.25 amended**

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

(1) The Governor

(2) At the end of section 8.25 insert:

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

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

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

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

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

**and council members**

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

At the beginning of Part 8 Division 3 insert:

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

**23. Section 8.28 amended**

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

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

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

may by order, if the Minister

**24. 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.

**25. Part 8 Division 3 Subdivision 2 inserted**

After section 8.30 insert:

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

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

- (1) An order under section 8.15I(1) or 8.19A(1) suspending a council member has effect for the period, not exceeding 2 years, specified in the order or, if no period is so specified, for the period of 2 years from when the order was made.
- (2) An order under section 8.15I(1) or 8.19A(1) suspending a council member ceases to have effect on whichever of the following occurs first —
  - (a) the period of suspension expires;
  - (b) the term of office of the member ends, or the member's office becomes vacant;
  - (c) the member is reinstated by the Minister under section 8.24(4B) or 8.30D.

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

- (1) While a council member is suspended, the powers and duties of the member cannot be performed by the member.
- (2) The suspension of a council member does not prevent the term of office of the member from continuing to run while the member is suspended.
- (3) The suspension of a council member does not affect —
  - (a) the application of Part 4 Divisions 3 and 4, in relation to the member's office; or
  - (b) the eligibility of the member to be a candidate to be elected as a member of a council,

including to fill the office vacated by the member.

- (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
  - (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.

**8.30C. Continuing effect of suspension**

- (1) This section applies if —
- (a) an order under Division 1A Subdivision 2 or section 8.19A(1) suspending a council member ceases to have effect under section 8.15F(1)(a) or 8.30A(2)(b) because —
    - (i) the term of office of the member ended under the Table to section 2.28; or
    - (ii) the member's office became vacant under section 2.32(b), (e) or (f), 2.36A(1) or 2.37(1) or (2);and
  - (b) the suspended council member is elected as a member of a council, including to fill the office vacated by the suspended member.
- (2) Despite anything else in this Act —
- (a) an order described in subsection (1)(a) is taken to continue to have effect in respect of the

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suspended council member as if the term of office of the member had not ended or the office of the member had not become vacant; and

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

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

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

**26. Part 8 Division 3 Subdivision 3 heading inserted**

Before section 8.31 insert:

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

**27. Section 8.31 amended**

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

section 8.25(1)

**28. Part 8 Division 3 Subdivision 4 inserted**

After section 8.34 insert:

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

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

- (1) A council member cannot be dismissed otherwise than under section 8.15L or 8.25(2).
- (2) Subsection (1) does not affect the operation of section 2.36A or 2.37.

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

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

**Note:**

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

*councils and members of councils; and*

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