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

*Consideration in Detail*

Resumed from an earlier stage of the sitting.

**Clause 1: Short title —**

Debate was adjourned after the clause had been partly considered.

**Mr A. KRSTICEVIC**: Up-front, I want to indicate, as I have said before, that this legislation is very important. It is significant in the local government sector. As we have seen in recent weeks, a lot of questions have been raised by the Corruption and Crime Commission, the Department of Local Government, Sport and Cultural Industries, the standards panel and officers or CEOs. Consultation is an important part of this legislation, which I also mentioned earlier. Consultation is something I am very keen to do a lot of. In the context of the Local Government Amendment (Suspension and Dismissal) Bill 2018, I am very keen to make sure that the widest possible consultation took place, because that is important. I want to support the sector as much as possible and make sure that it is listened to and good outcomes are adhered to. A partnership agreement was signed in August 2017 and I expect the minister and the government to follow through on that partnership agreement, as do the Western Australian Local Government Association, Local Government Professionals Australia, the 139 local councils and 1 243 councillors. It is very important to not just give this legislation lip-service, but actually have done the hard yards of consultation. It is now June 2018. The government was elected in March 2017, so a huge amount of time has gone under the bridge. There has obviously been plenty of time for the minister to talk to the sector about this very important issue. The minister keeps talking about being a champion of the sector and communicating with it to find out what the concerns and issues are so he is then able to take them on board to make sure their capacity is increased and they are able to do their jobs better. On the basis of the fact that the minister is very supportive of that and that he was very keen and eager to sign this partnership agreement, I want to know what consultation took place with WALGA and the Local Government Professionals. Can the minister explain the process that he went through, the number of meetings he had, when those meetings took place, what was discussed at those meetings and whether any concerns were raised by WALGA or the Local Government Professionals? Can the minister give me the detail behind how he consulted with WALGA and the Local Government Professionals?

**Mr D.A. TEMPLEMAN**: I thank the member for the question. As I have highlighted previously, the Western Australian Local Government Association has a long history of supporting amending legislation to the Local Government Act that could address issues around giving capacity for an individual councillor or elected member's behaviour or conduct to be dealt with, dating back to the member's time in government—even as far back as 2010–11. As the member is well aware, or as I hope he is well aware, WALGA is a membership-based organisation. It is not influenced by me in terms of direction because it is a membership-based organisation that represents local governments in Western Australia, and it is a membership base in which councils decide to become members. To my knowledge there are only one or two councils that are not members; Nedlands is one, and I am not sure of the other. Essentially, councils make the decision to become members of WALGA.

As I would hope the member will be well aware, there is a democratic process dating back to 2011 with regard to WALGA's operation that includes a series of zones within which motions and discussions are raised and then brought to the peak body's state council. It is a very representative and democratic process. We have a number of zones, including numerous country zones and metropolitan zones. Members bring forth a range of recommendations and motions that are ultimately determined and responded to by the peak body's state council which is, as I hope the member is aware, made up of representatives from across all the zones of that organisation.

I have attended state council as the Minister for Local Government and since 2011 there has been a motion on the state council's books, reaffirmed as recently as February this year. I do not have the specific wording of the motion because, again, that is WALGA's business, but it endorses and requests the inclusion of provisions in the Local Government Act to deal with individuals. As I have said in this place, this dates back to 2011. Did the former government act on these recommendations? No, it did not. I have stated on numerous occasions since mid-2017, both in Parliament and in media responses, that the government intends to introduce legislation with regard to individuals. That is why this bill is before the house now.

The member for Carine has accused me of taking too long but then, in his contribution to the second reading debate yesterday, he said that he thought I should delay it because it should be part of the review. He is all over the place.

**Mr A. Krsticevic**: You said that as well.

**Mr D.A. TEMPLEMAN**: No, I did not. I am not taking for granted anything the member says about what I have said. He has not yet made an apology to two people and I hope he might do so before we conclude and rise this afternoon. I hope he will be honourable enough to do that, but that is his choice.

The consultation has continued over time; I have raised this in forums. I have highlighted it as a priority in zone meetings. I have to tell the member that I cannot think of any forum of councillors that I have attended at which someone has said that they do not agree with it. In fact, they vehemently agree with it and we have not had any correspondence from anyone to say that they disagree with it or any other form of contact to say that they do not want it. We have had extensive feedback from the peak bodies, including local government.

**Mrs M.H. ROBERTS**: I would like to hear more from the Minister for Local Government.

**Mr D.A. TEMPLEMAN**: We have also had feedback from local government professional organisations.

I have no idea why the member continues to raise this matter, given his performance in this house over the last three days. The consultation has been extensive and was re-endorsed in February. It is supported by the two key peak bodies that are representative of local governments in Western Australia, including officers. This is a good piece of legislation, and I would hope that the member will support its passage through the house.

**Mr A. KRSTICEVIC**: I noticed the minister said in his reply that the consultation—I assume he means by WALGA—has been extensive. I am wondering whether he could explain to me how WALGA undertook that consultation process and how it was able to come up with what the minister referred to as an extensive consultation process, and how it came up with the result that it did.

**Mr D.A. TEMPLEMAN**: Again, I do not influence the processes that WALGA —

**Mr A. Krsticevic**: You said that they were extensive.

**Mr D.A. TEMPLEMAN**: Yes, but I do not influence them. I want to make that very clear, because the member quite often does not get things. I am making it very clear to him, just so that he is very aware. He hears things but he does not seem to interpret them. Let me tell the member this: my understanding is that WALGA in its consultation process included a paper that was developed and then sent out for responses or comment from its member councils. That is my understanding. I think that is an appropriate way in which to consult. I would expect that that process of WALGA, which is independent of government, informed its re-endorsement decision back in February this year.

**The ACTING SPEAKER (Mr S.J. Price)**: Member for Carine, can I just remind you that we are on the short title here, so there may be other opportunities —

**Mr A. KRSTICEVIC**: That is correct. I am just trying to work out what consultation was gone through to get this title.

**The ACTING SPEAKER**: We are talking about the short title. There may be other opportunities that might be more relevant for you to pursue your line of questioning.

**Mr A. KRSTICEVIC**: Okay; I do not know that there is.

**The ACTING SPEAKER**: I have been quite indulgent in letting you carry on the way you have carried on, so if we could come back to the short title that would be great, thank you.

**Mr A. KRSTICEVIC**: I am looking at the Western Australian State Local Government Agreement that the minister signed and the paragraph heading "Consulting with Local Government". I will read it for the minister, because he obviously is not familiar with this part of it. It states —

> Local Government is a major stakeholder in many State Government decisions relating to legislation, policy and programs. As a party to the Agreement, the State Government, in good faith, will endeavour to consult with Local Government where it is appropriate to do so.

It says "consult with local government"—not just WALGA, but local government. It continues —

> Both spheres of government acknowledge circumstances where consultation may be limited or not possible.
>
> The State Government should consult with Local Government when developing, amending or reviewing State legislation and regulations, policies or programs that will significantly impact Local Government operations or resources.
>
> Where appropriate and practicable, consultation should be for:

- 12 weeks — for proposals that will have a significant impact on Local Government responsibilities or operations.

This seems to me like a piece of legislation that is going to have a significant impact. It continues —

Examples include:

- New legislation and amendments to existing legislation that will impact Local Government; and
- Proposals and policy decisions that will have an impact on Local Government expenditure.

To me, an important piece of legislation like this seems to fit under the criteria of that agreement in respect of giving them 12 weeks. If the minister had to bring this piece of legislation in urgently—he did not have any time; it was critical and time sensitive and there was some urgency to it—that would be understandable, but we are looking at 15 months since the election. I have talked to WALGA, Local Government Professionals Australia, councillors and mayors, and when I talk to mayors or councillors, they do not hold the same view as the minister. They do not think they have been consulted. I asked them, "Does WALGA speak for you?" They said, "No, WALGA does not speak for us; our council and the mayor of our council speak for themselves." If the City of Stirling has a view on a piece of legislation or something that is impacting on local government, it will speak on its own behalf. It is not going to let WALGA speak on its behalf. WALGA is one voice; it has a number of members and it has a view, but that does not necessarily mean that it speaks for everybody in the sector. I think the member for Balcatta mentioned yesterday that about 57 per cent of responses it got back voted for the suspension and dismissal bill. I do not know whether that is accurate; I am just going off what was said. That means that 43 per cent did not. But the question is: what question did the Western Australian Local Government Association ask? The association did not know what the government's bill was going to be or what the government's legislation is because, obviously, it was not developed in 2010 or 2011. It was developed right now.

**Mr D.A. Templeman**: You're a fool.

**Mr A. KRSTICEVIC**: The minister can say that but I am —

**Mr D.A. Templeman**: You don't understand.

**Mr A. KRSTICEVIC**: I do understand.

**Mr D.A. Templeman**: You don't even understand the principles of how WALGA operates.

**Mr A. KRSTICEVIC**: I understand that the government has an agreement here that states 12 weeks. The agreement says that the government will go through a 12-week process. Is this worth the paper it is written on? Is this a process that the government intends on following or are these just worthless words on this document? That is the question I ask. The reason I ask that question is that I know that I was told that WALGA had only two days to look at the legislation. That is what WALGA and Local Government Professionals Australia WA said when I had a meeting with them—they had two days.

**Mr D.A. Templeman**: When did you meet with them?

**Mr A. KRSTICEVIC**: Two days, they said.

**Mr D.A. Templeman**: When did you meet with them?

**Mr A. KRSTICEVIC**: I met with them and that is what they said—that they had two days and they wanted more time.

**Mr D.A. Templeman**: One can't trust your interpretation of any meetings, because you're wrong.

**Mr A. KRSTICEVIC**: But the minister will know because his advisers also said that they could not give them more time because of some cabinet-in-confidence—I cannot remember exactly all the details of the discussion but a reason was given why the government could not consult. I am sure the government could have at least in principle spoken to them about what was going on and allowed them to go out to the sector and email them. All I really want to focus on is this 12 weeks. Is this valid for this piece of legislation under the agreement; and, if it is valid, did the government use that consultation process that is in the agreement?

**Mr D.A. TEMPLEMAN**: The answer is yes. I am astounded by the assertions the member is making again. Let us look at the agreement because the member referred to it. Halfway down the second column on page 4 it states —

> When consulting at a State level, WALGA and LG Professionals should be the first point of contact. These two peak bodies are able, through formal and informal policy development processes, to develop representative responses and submissions on behalf of their respective memberships.

The member has to get with it. He does not get it. That is the problem with him. I would have thought that over the last three days he would have learnt something, but it seems that it is not getting through. Consultation with WALGA has been informed over a long period. We recognise through the partnership agreement that WALGA and LG Professionals are the first ports of call and the peak bodies. As has just been highlighted in the agreement, they have their capacities through the formal and informal policy development processes to seek comment and responses from their membership bodies. That is their responsibility and their process and that is enshrined in the partnership agreement. We are absolutely committed to the partnership agreement. The previous government was not. It did not have one. While it was attacking local governments over the last eight and a half years with its failed forced amalgamation policy for metropolitan councils, it did not even have the decency to treat local government properly, but we do. The member speaks hollow words in this place. I have heard him say a number of times, "They work hard—local government members." The history does not show that, mate. I am sorry; it does not show that. We are committed to the agreement. If WALGA or LG Professionals do not believe we have been adhering to the agreement and do not like it, they would have told us. I have a great relationship with them. We will not always agree. There will be some matters with the local government review process that we will not agree on, but it will be done through a respectful process. This has been done through a respectful process and in the spirit of the partnership agreement. The details of the partnership agreement highlighted that there will be times when, for a range of reasons, the timelines will not be met, but that is implicit in the agreement itself and as mentioned and stated in the agreement.

If the member is trying to delay this bill, because that is what he is doing now —

**Mr A. Krsticevic**: No, I'm not.

**Mr D.A. TEMPLEMAN**: The member is. He told me yesterday that he thought this would take about an hour and a half. He has spent 30 minutes of the debating time on the name of the bill—the short title.

It is pathetic, mate! He should have learnt something over the last three days but he has not. I challenge him to do this this afternoon: before I rise to adjourn this house, I will look to see whether the member is in the chamber and seek that he use that opportunity to make an apology to the two people he impugned earlier this year during his budget speech.

**The ACTING SPEAKER**: Member for Carine, before you start, I have given you a fair bit of leeway. We are on the short title. The opportunity for general debate was in the second reading stage, not in consideration in detail. We are talking about the short title. If you do not get it right this time, we will put the question and move on.

**Mr A. KRSTICEVIC**: Can the minister tell me when WALGA and LG Professionals first saw the completed bill? On what date did they see it? The minister also said that they then consulted with the sector. When did they see the bill, and did that give them enough time to consult with their members and what did their members say about the bill when it came back?

**Mr D.A. TEMPLEMAN**: On 20 January 2018, WALGA and LG Pro were fully briefed on the bill. It was nearly six months ago. For goodness sake; get it into your head! It was six months ago. They have processes of consultation. Do I direct them on how to consult? No, I do not. The member should get it into his mind that WALGA is an independent body. Get that in there!

**Dr D.J. Honey** interjected.

**Mr D.A. TEMPLEMAN**: The member for Cottesloe should replace him. He should get over there and take the chair because the member for Carine is not able to handle or understand this bill, nor the basic structural foundations of the local government sector.

Firstly, the answer to the member's first question is 20 January. Secondly, I do not direct how WALGA consults. That is its process, not mine. However, as I have said, we know that it has a zone process. Representative local governments feed in information that is then fed to the state council, which makes determinations. Its determination to support this bill, which deals with individual councillors or elected members was re-endorsed at a state council meeting in February. That answers the member's question. I do not know where he is going with this line of questioning but I think he should move on.

**Mr A. KRSTICEVIC**: I would like to thank the minister for telling me when they first saw the bill—20 January.

**The ACTING SPEAKER**: Member for Carine, it does not have anything to do with the short title. You have been given more than ample opportunity. We are discussing the short title and you have not once mentioned it so far. This is your absolute last time to try to chew up some time left in the chamber.

**Mr A. KRSTICEVIC**: I understand your comment, Chair. I just want to know whether the sector had seen the short title of the bill—whether it had seen the bill and whether it had time to make comment on the short title of bill.

**The ACTING SPEAKER**: You had the opportunity to ask those questions during the second reading debate and that never occurred. We are discussing the short title.

*Point of Order*

**Mr Z.R.F. KIRKUP**: I am trying to understand something; is this not the process that the member for Carine is going through—to scrutinise each line in the bill?

**The ACTING SPEAKER (Mr S.J. Price)**: Yes, and we need to be talking about the short title. If the member for Carine has an issue with the six words that are, let us talk about it. We are discussing the short title. The question is that the short title stand as printed. This is the last time.

**Mr A. KRSTICEVIC**: If you can just give me some direction, Mr Acting Speaker, you said that I am not allowed to ask questions on the bill, but it was in the second reading debate that I could ask questions.

**The ACTING SPEAKER**: I did not say that.

**Mr A. KRSTICEVIC**: That is what you said. You said the second reading debate was for asking questions, and consideration in detail is not for asking questions. I cannot ask questions now; that is what you said to me just now.

**The ACTING SPEAKER**: No, it is not.

**Mr A. KRSTICEVIC**: That is what I heard.

**The ACTING SPEAKER**: What I said to you is that we are discussing the short title. The question is that the short title stand as printed. You were raising questions regarding the process that led us to this particular point in time. The time for asking those questions was during the second reading debate, when you can put questions to the minister about what is going on, and he can respond, which he did, in the closing speech to the second reading debate. When you get to this particular stage, you are talking about what is printed in the bill. We are talking about the title—the short title of the bill. If you have an issue with it, say yes or no. Obviously, you have not said yes or no. We will pass that and move on to the next item, which is clause 2. As a particular part of the bill comes up that you have an issue with, that is when you ask the relevant question.

**Mr A. KRSTICEVIC**: Yes, so I am asking a question about the title of the bill, in a general question about whether the sector had a chance to look at this bill.

**The ACTING SPEAKER**: That has nothing to do with what we are discussing.

**Mr A. KRSTICEVIC**: Did they see the title of the bill, and did they support the title of the bill?

**The ACTING SPEAKER**: Member, I will give you one more go.

**Mr A. KRSTICEVIC**: Where can I ask a question about consultation?

**The ACTING SPEAKER**: You have the floor. Ask about what we are talking about.

**Mr A. KRSTICEVIC**: So I cannot ask questions—is that what you are saying—about consultation?

**The ACTING SPEAKER**: You can ask questions relevant to what the question is.

**Mr D.A. Templeman**: You have asked about six questions.

**Mr A. KRSTICEVIC**: Yes, but the minister has not answered. He started to answer the question. I want to know the answer to a simple question. Did the minister follow the partnership agreement? Did he give 12 weeks' formal notice?

**Mr D.A. TEMPLEMAN**: Yes.

**Mr A. KRSTICEVIC**: Did that go out, and did they consult?

**Mr D.A. TEMPLEMAN**: Yes.

**Mr A. KRSTICEVIC**: Okay, so the minister followed the partnership agreement.

**Mr D.A. Templeman**: For goodness sake! If you want to sit in the house until late tonight, I am happy to do so. We want to take this through consideration in detail before we close tonight. If you are just going to procrastinate and go on with this stupid questioning, that is fine. I am happy to keep the house late.

**Mr A. KRSTICEVIC**: I am not procrastinating.

**Mr S.K. L'ESTRANGE**: I sense some tension in the chamber. Can I suggest that the minister not verbal the member, so that we can move through this as quickly as possible and move on to the next clause?

**The ACTING SPEAKER**: There is no actual point of order, but I do agree that we should move through this quickly and get on to the next line.

*Debate Resumed*

**Mr A. KRSTICEVIC**: Thank you very much, Mr Acting Speaker. I am genuine; I do want to move through this quickly. I am asking very simple questions, and it is not that difficult. Did the minister use the 12-week process? The minister just said that he did. Is that correct? He used the process. The Western Australian Local Government Association had 12 weeks to go out and consult with the sector, get its feedback about the bill, and then give it to the minister. That is what the minister said has happened. Is that correct?

**Mr D.A. TEMPLEMAN**: WALGA had the bill nearly six months ago. How it consulted with its members is its own process. I am very confident that this fits within the spirit of the agreement, and indeed the consultation extends back into the time of the previous government, and I believe that there is strong and broad support for the intentions of this bill from the local government sector. This is an important reform in local government that I think should be supported by this house. If the member does not want to support it, he should vote against it. I am happy for him to do that, but I think it would be a silly move.

**The ACTING SPEAKER**: Member, can I just, I suppose, give you fair warning that, should you continue to ask questions that are not relevant to the short title, I will sit you down and put the question.

**Mr A. KRSTICEVIC**: Can I seek guidance from the Chair, then? Where can I ask about the consultation process that took place to establish this bill?

**The ACTING SPEAKER**: Not here.

**Mr A. KRSTICEVIC**: Which clause? If the Chair can point me towards a clause, I will ask it there.

**Mr D.A. Templeman**: It is not his role to do that.

**Mr A. KRSTICEVIC**: No, but he is saying I cannot do it here. It is a general question, and we can asked general questions in debate on the short title of the bill. If the Acting Speaker can point me to another clause, I will ask it there.

*Point of Order*

**Mr S.A. MILLMAN**: I refer to standing order 179, which reads —

> Debate will be confined to the clause or amendment before the Assembly and no general debate will take place on any clause.

I wonder whether the Chair can put the clause.

**Mr A. KRSTICEVIC**: Do you want to put the clause; do you want to gag debate?

**Mr D.A. Templeman**: He is just suggesting that the clause be put. There is no motion before the house.

**The ACTING SPEAKER**: Yes, there is a point of order in regards to relevance. To answer the member's other question, members cannot actually draw the Chair into debate, so I cannot answer the member's question in that regard. I can say that we are discussing the short title, and I have given the member for Carine fair warning, that if he continues to ask questions that are not relevant to the short title of the bill, which is what the question is, I will sit him down and put the question.

*Debate Resumed*

**Mr A. KRSTICEVIC**: Thank you, Mr Acting Speaker. I will take your guidance, and because I do not know, I suppose I can ask these questions on every single clause until I hit the right clause to get the answer to the questions that I am asking. I have not got much to go, so your patience would be greatly appreciated. It is not that complicated. The minister is working through WALGA. Does that mean that none of the 139 councils will ever be consulted directly by the minister about a piece of legislation that is coming through the Parliament? Will it only ever go through WALGA, and through its processes? This is important, because the councils out there need to get a message from the minister saying that they will be ignored, as the government is only going through the WALGA process. If a council is not engaged in WALGA, and if it does not participate or take that seriously, it will end up getting whatever WALGA gives it. I want to know whether, for the 139 councils and the 1 243 councillors, all the decisions will be made by WALGA, and will the councils have any say at all?

**Mr D.A. TEMPLEMAN**: Can I give the member an example? In regards to the auditing process, the audit regulations went out to all councils for feedback and information. I meet with councils and councillors, mayors

and shire presidents regularly in different forums, be they the annual general meeting of the WALGA, the Local Government Professionals convention, when I visit regional communities—a whole range of things. The conversations I have with them cover a wide variety of areas, including proposed legislation. As the member is aware, there is a current review process of the act, which has been consultative and detailed. We ask for responses from not just WALGA and LGP, but from all councils, including elected members and CEOs. It is a normal part of the process. Any imputation or innuendo that I have not or will not consult is wrong. The member's innuendo is wrong. This is a pattern in his behaviour. I remind him that ministerial circulars are sent out to every council, and they are available. Can I force someone to read something? No—can the member? No, but he should start reading a few more things himself because he has been making a few blues this week, and previously. There is a range of methods. If the member does not support this bill, he should say so. His colleagues support it, and so does the sector. As I said, I do not think we received any response from anyone, elected member or otherwise, saying that they do not support the intent of this legislation.

**Mr A. Krsticevic**: Did they send you a letter saying that they support it?

**Mr D.A. TEMPLEMAN**: Mate, I went to the wheatbelt zone forum and raised it there, and people said, "Yes, we want it." In individual comments and chats with people, they support it. It does not say anything in the agreement about how many weeks a piece of legislation is required.

**Mr A. Krsticevic**: New legislation, 12 weeks.

**Mr D.A. TEMPLEMAN**: Yes, it does not say that we must have the actual bill within X period of time. With new legislation, I can talk to them about a whole range of things. Again, I come back to 20 January—six months ago. I think that is more than 12 weeks.

**Mr A. Krsticevic**: No, you brought it in in March. That is less than eight weeks.

**Mr D.A. TEMPLEMAN**: If the member does not believe this is supported, I am surprised he has not asked a question in this place with regard to that. As we know, the member had conversations with various interesting people and then came into this place and made comment about other people, which of course, as we know from history in recent times, is incorrect and impugns them and gets them upset.

**Mr A. KRSTICEVIC**: I did not.

**Mr D.A. Templeman**: You did. I have seen the response from them. You did not even read the newspaper article you were claiming yesterday. It is a bit bizarre. Where does this guy come from? It is no wonder the finances of this state were in such terrible condition when we came into power—and this guy was an accountant!

Member, I have answered your question. Again, if you want to just sit here and delay this, I am happy to sit here until midnight to get this bill through.

**Mr A. KRSTICEVIC**: Thank you, minister. I want to say upfront that I do not want to delay this. I support the bill. I think it is a good bill. However, as the minister has said, there are other issues in the sector, like the code of conduct and other things, and, yes, it would be good to deal with those things together—I think anybody would say that, and I think the minister would say that—but we are doing it this way.

**Mr D.A. Templeman**: I did not say that mate, sorry. You are again saying I said something that I did not say.

**Mr A. KRSTICEVIC**: The minister said those other issues need to be fixed up as well.

**Mr D.A. Templeman**: Yes, but this issue is being dealt with separately, for good reason.

**Mr A. KRSTICEVIC**: I support this bill. If the minister thinks something is wrong with me asking him who he spoke to and who he consulted —

**Mr D.A. Templeman**: I have answered your question.

**Mr A. KRSTICEVIC**: Yes. The minister finally told me the date, which is fantastic—20 January. The minister has told me that he will consult councillors and councils. The reason I ask that is that I have spoken to councillors and mayors, and councils, and a lot of them are not aware of this. Whether they are reading their papers or whether someone is talking to them, that is an issue. To me, it is a concern if legislation is going through this Parliament that may impact on councillors and councillors do not know that this piece of legislation is happening and do not know the details of it.

**Mr D.A. Templeman**: I do not control that, mate. If they do not read it —

**Mr A. KRSTICEVIC**: I know that.

**Mr D.A. Templeman**: So why are you bringing this up?

**Mr A. KRSTICEVIC**: I am bringing it up because consultation is important. We need to go direct to the councils as well, not just through WALGA, for every piece of legislation, and consult with them.

**Mr D.A. Templeman**: That is not in the spirit of the agreement, which you are saying I must strictly adhere to.

**Mr A. KRSTICEVIC**: No. I am saying that is one thing. The City of Nedlands is not part of the agreement. Did the minister speak to the council of the City of Nedlands?

**Mr D.A. Templeman**: The City of Nedlands did not come to me.

**Mr A. KRSTICEVIC**: That is what I am saying. So how does it know what is going on?

**Mr D.A. Templeman**: Mayor Hipkins is a very experienced councillor.

**Mr A. KRSTICEVIC**: My point is—I am sure the minister would agree if I were sitting on that side—that consultation is important. The minister needs to talk to people and make sure they are aware of it. The minister needs to do the due diligence from that perspective. I am trying to make sure that has happened. The minister has given a degree of assurance, but I know that not all the councils were directly contacted. I am not sure how many councils got back to the minister with issues or concerns.

**Mr D.A. Templeman**: My understanding is none.

**Mr A. KRSTICEVIC**: It is a concern that no-one has got back to the minister, because what does that mean?

**Mr D.A. Templeman**: No negative opposition.

**Mr A. KRSTICEVIC**: Were there positives?

**Mr D.A. Templeman**: One of my advisers advises that three phone calls were made to the department to clarify matters around the legislation.

**Mr A. KRSTICEVIC**: What the minister is saying is they had the bill in their hand on 20 January this year to look at it and scrutinise it and to consult with the sector, and they did whatever they did, and they came back to the minister in February and said, "It's great; we love it; we support it; let's move on."

**The ACTING SPEAKER (Mr S.J. Price)**: Member for Carine, stay seated. I am talking to you. That question was not relevant. You have been warned before. This is your last opportunity.

**Mr A. KRSTICEVIC**: I am happy to move on.

**The ACTING SPEAKER**: Minister, you do not have to respond to that if you do not want to and I can put the question.

**Mr A. KRSTICEVIC**: I am happy to move on. I have got the answers, finally.

**Clause put and passed.**

**Clauses 2 to 6 put and passed.**

**Clause 7: Section 2.36 amended —**

**Mr A. KRSTICEVIC**: The proposed amendment to section 2.36 of the act deals with the dismissal of a council member, upon recommendation of the minister. The explanatory memorandum advises that a dismissal and subsequent vacancy would trigger an election. Can the minister tell me what process would take place once a councillor is dismissed?

**Mr D.A. TEMPLEMAN**: Essentially, an extraordinary election would be called. That would be the actual process. There is then a process of time, and notice must be given for that extraordinary election to be carried out.

**Mr A. KRSTICEVIC**: How much would that extraordinary election cost and who would be responsible for that cost?

**Mr D.A. TEMPLEMAN**: As the member is aware, local government pays for local government elections, so the same would apply.

**Mr J.E. McGRATH**: If a council member were to be dismissed and a fresh election was called, under what circumstances could that dismissed member run at that election?

**Mr D.A. TEMPLEMAN**: Essentially, they could nominate, if that was their choice, and it would be up to the electors to decide whether they would support the re-election of that member. If the dismissal was specific to a conviction, that would trigger a disqualification for that person to be eligible to stand for re-election. It needs to be with regard to a conviction.

**Mr J.E. McGrath**: Would it be just a dismissal from council, with no time period on it, and the only way in which the person could get back onto council would be by seeking re-election at a subsequent election?

**Mr D.A. TEMPLEMAN**: Yes, that is correct.

**Clause put and passed.**

**Clauses 8 to 10 put and passed.**

**Clause 11: Section 8.14 amended —**

**Mr A. KRSTICEVIC**: The proposed amendment to section 8.14 provides that when an inquiry takes place, the Department of Local Government and Regional Development chief executive officer must give a copy of the inquiry report to the local government and council members, including suspended members. It includes power for the minister to direct the departmental CEO not to provide a copy of the report to the listed parties under section 8.14(1) of the act. In what circumstances can the minister see himself issuing a direction for the CEO not to issue the report?

**Mr D.A. TEMPLEMAN**: That would relate to whether there is likely to be a prosecution. There would be reason not to release the report if a prosecution was likely. That is standard practice.

**Mr A. KRSTICEVIC**: If the minister were to decide that the report not be released, is there a requirement for that to be reported somewhere? Is advice given to councillors or the council, or others, that the minister has decided that the report will not be released and has been withheld?

**Mr D.A. TEMPLEMAN**: The report would likely be released, but it would be redacted to the extent of not impeding any legal process. The departmental CEO has the discretion to remove anything that could prejudice any legal action arising from the inquiry; could prejudice any inquiry that the minister may wish to institute under division 2, which relates to an inquiry panel; could be considered defamatory; or considers ought, for any other reason, to be removed. There will be a situation, and predominantly these are of a legal nature, in which there would be a need to be caution with the report.

**Mr A. KRSTICEVIC**: Who will make the decision on what aspects of the report are to be left out? Will the minister go to the State Solicitor's Office? Who will ultimately decide what is or is not included?

**Mr D.A. TEMPLEMAN**: Obviously, the legal advice from the state would inform the director general of the department.

**Mr A. Krsticevic**: Is that in all cases?

**Mr D.A. TEMPLEMAN**: That is true, yes.

**Mr A. KRSTICEVIC**: The clause also provides for copies to be provided to local government but does not explicitly state it should be supplied to every council member, except in the case in which the council is suspended. Is a local government, which is not suspended, under an obligation to share a report with all council members?

**Mr D.A. Templeman**: Can the member repeat the question, so that I can answer this correctly?

**Mr A. KRSTICEVIC**: The clause provides for copies to be provided to the local government, but it does not explicitly state that it should be supplied to every council member. It is given to the council, but not to every single council member, except in a situation in which the council is suspended. The council received the report, the CEO received the report and the council has not been suspended. Will every council member still get a copy of that report?

**Mr D.A. TEMPLEMAN**: Essentially, the local government is the council, and that includes the council members therefore, under the definition and the Local Government Act definition of "council", it means the council of a local government. Therefore, that is the members.

**Mr A. Krsticevic**: So they will all get a report?

**Mr D.A. TEMPLEMAN**: Yes.

**Mr A. KRSTICEVIC**: Can any of the recommendations of an inquiry still be followed through when and if the council members have not had an opportunity to review the report? I suppose what the minister is saying is that they will all get it anyway, so they will all get it, review it and then there are the recommendations. Will the minister expect that the council members will follow through on the recommendations of a report or will that be optional for the council? If a report is produced, will they have to do what it says if they are not suspended?

**Mr D.A. TEMPLEMAN**: As per the legislation, the report is sent to the council. A number of days is set in which to respond —

**Mr A. Krsticevic**: Thirty-five.

**Mr D.A. TEMPLEMAN**: Yes, and then the minister considers that response. There is a capacity under section 8.15 whereby the minister has the power to order the local government and any of its council members or employees to give effect to any one or more of the recommendations contained within the authorised person's report. There is that capacity to request response to recommendations that have been conducted in the report, but of course it all must comply within the 35-day process et cetera. Again, this is an example of natural justice, as well, with people having time to respond. Of course, as the member knows, in the act, the minister then has the power to suspend the council if it fails to comply.

**Mr A. KRSTICEVIC**: In this part of the act it gives 35 days for the council to respond, whereas in other parts it is 21 days. Why is there a difference in different circumstances to reply to a report?

**Mr D.A. TEMPLEMAN**: Essentially, the day limits, or the time line, has been made consistent with the existing provisions in the act that deal with councils.

**Mr A. KRSTICEVIC**: Does the minister see that changing with the act review so that there is consistency in the number of days that someone can reply, because someone has 35 days and someone else has 21 days? They have received a report and there does not seem to be any justification about why it is different time periods, apart from that it is in the act. I wonder whether the minister has a view on whether that needs to be consistent or not.

**Mr D.A. TEMPLEMAN**: I have no problem with this being canvassed as part of the second stage of the review. Arguments of consistency are good grounds for argument but, as I said, because we have an existing Local Government Act, because we want to make sure that this bill and its responsiveness to an individual or individuals is consistent with the current act when we are dealing with a council and for methods of consistency, that is why those number of days are there. However, I am very happy for it to be canvassed to make it the same, if the member likes, during the act review.

**Mr J.E. McGRATH**: Further to what the member for Carine just raised about the 21 days, and I gather that has been brought in because you are bringing in a new —

**Mr D.A. Templeman**: It is 28 days.

**Mr J.E. McGRATH**: Sorry, 28 days. Is it 28 or 29 days?

**Mr D.A. Templeman**: It is 28 days.

**Mr J.E. McGRATH**: In the case of an individual who is brought before the panel, or a complaint has been lodged, and the panel makes a finding, would all councillors get a copy of that report, or only the individual? Who else at the council would get a copy of that report from which the individual has 28 days to give a show-cause notice?

**Mr D.A. TEMPLEMAN**: It depends upon the process and who we are dealing with. I just want to get a bit more clarification from the member about exactly what the member wants to know. He wants to know that if a councillor has been suspended and then there is waiting of an outcome from a report on that, whether the outcome of that is shared once that determination of the suspension has been made.

**Mr J.E. McGrath**: No, at the point that the councillor is given a show-cause notice about why they should not be suspended.

**Mr D.A. TEMPLEMAN**: I need to make a correction. The member was correct about the 21 days, by the way. I was using a different formula, so I do apologise. When dealing with the move to suspend a council under the current Local Government Act, the notification or the—not the please explain—show-cause request from the minister goes to the council for consideration by the council as defined. In the case of an individual—hopefully I am answering this correctly—that show-cause, by the very nature that it is dealing with an individual, goes to the individual.

**Mr R.S. LOVE**: This provision seems to open up an individual to an inquiry by an authorised person, et cetera. This proposed amendment to section 8 changes with the development of entering the council member into this discussion as the subject of an inquiry. Is that how it works?

**Mr D.A. Templeman**: Is the member referring to section 8?

**Mr R.S. LOVE**: Clause 11 amends section 8.14, but does it consequentially affect the meaning and interpretation of all the previous provisions of section 8? Perhaps I will explain what I am talking about. For instance, section 8.5 gives powers to an authorised person, and during an inquiry that authorised person can ask for documents, evidence and all sorts of other things. Until now, that has been predicated on the basis that it is an inquiry into an organisation, not an individual. By changing the definition to include an individual, will all the personal matters of that individual be subject to section 8.5? In other words, can inquiries be conducted into every aspect of that individual's personal bank accounts, personal transactions and personal business simply because the inquiry is into an individual, not an organisation?

**Mr D.A. TEMPLEMAN**: Ultimately, the recommendation that comes from this process is essentially about the individual, not the council. The outcome of the inquiry might be that an individual is causing the issues that are impacting on the council's capacity to function. That may be an outcome of that.

The second part of the member's question was: does it impact on any other section? I think the member referred to section 8.5, "Powers of authorised person", which states —

> So as to perform his or her functions an authorised person may direct a person to do any one or more of the following …

It then lists paragraphs (a), (b), (c) and (d), which outline the —

**Mr R.S. Love**: For the minister's information, I am specifically inquiring about paragraphs (c) and (d) and their effect on the personal affairs of an individual who is the subject of the inquiry personally, rather than an organisation.

**Mr D.A. TEMPLEMAN**: No, it is not about personal affairs; it is about that person's involvement in the local government.

**Mr R.S. LOVE**: I am not sure that that is a sufficient answer.

**The ACTING SPEAKER (Ms J.M. Freeman)**: What is your question, member?

**Mr R.S. LOVE**: I am still talking about the effect on previous provisions, specifically the powers of an authorised person to gain access to an individual's information. If we are looking at an individual rather than a whole organisation, it fundamentally changes the nature of the investigation. There looks to be nothing in that provision that limits the investigation to only matters pertaining to that person's role on the council.

**Mr D.A. TEMPLEMAN**: Ultimately, this amendment is put forward in the spirit of the act in total, and that is implicit in what can or cannot be done. The powers in the Local Government Act can be used only for the purposes under the Local Government Act—I hope that is clear—and those activities relating to local government. The Local Government Act can give powers only in relation to local governments; it cannot give powers to investigate individuals outside their role in local government. Is that okay?

**Mr R.S. Love**: Okay; thank you.

**Clause put and passed.**

**Clauses 12 to 14 put and passed.**

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

**Mr A. KRSTICEVIC**: On page 56 of the marked-up version of the bill, I refer to the definition of "disqualification offence" under proposed section 8.15D. Can the minister explain how the government came up with that definition? I hate to slow down the progress of this bill because the minister has to keep answering questions, so in the interests of the speed of the process, why is it a disqualification offence only for offences with a penalty of more than five years' imprisonment? Why is it not for a shorter period? Does this align with any other similar legislation containing disqualification periods? How does this legislation compare with that in other jurisdictions in Australia? If the minister can cover all those, we will get through this quickly.

**Mr D.A. TEMPLEMAN**: Firstly, it is an offence under the Local Government Act when the person is liable to imprisonment for one year or a $5 000 fine. That is a serious local government offence. Examples may include a person acting as a member of council while being disqualified; the inappropriate use of information, which is addressed under section 5.93; or the failure to disclose a financial interest. I refer the member to section 2.22 of the Local Government Act, which deals with disqualifications because of convictions. I think that goes to the root of the member's question—I hope it does. That section details when or how a person can be disqualified from being a member of a council, and it is highlighted in paragraphs (a), (b) and (c). The imprisonment for more than five years' provision is actually found under that part of the act.

**Mr A. Krsticevic**: The minister also mentioned that for a serious offence it is imprisonment for one year.

**Mr D.A. TEMPLEMAN**: That is for local government offences, but in terms of disqualification, I refer the member to section 2.22, which specifically highlights the indictable penalty of imprisonment for more than five years. That is why five years is used in the context mentioned by the member. I hope that answers his question.

**Mr A. KRSTICEVIC**: Can the minister clarify something for me? He said that a serious local government offence with a penalty of imprisonment for more than one year would disqualify a person.

**Mr D.A. Templeman**: No. I am sorry if I have confused the member.

**Mr A. KRSTICEVIC**: Can the minister explain that to me? How does that compare with the legislation in other jurisdictions and does the five-year provision need to be reviewed in the act review?

**Mr D.A. TEMPLEMAN**: I was not part of the 1995 considerations that arrived at this. My understanding is that this is broadly consistent with similar local government acts in other states and territories. Is there a proposal or an opportunity to explore this in phase 2? I do not see why not. Again, we welcome submissions. If there were a burning desire to look at a change to that provision in regard to the penalty, I would not say, "No, I don't want you to look at that." Again, this consultative process in the review of the act is aimed at canvassing responses from a range of stakeholders who have an interest in the viability and effectiveness of local government in Western Australia, and I am keen to hear from people. If this is a matter of burning desire, I am happy for it to be considered.

**Mr J.E. McGRATH**: I need some clarification on this clause. I will give the minister an example. A development is approved and members of the community claim that a member of the council did not declare a conflict of interest because that person might, at some stage, have been a member of the same community board as the CEO of the company building the development. Would that trigger this sort of inquiry against an individual councillor? How serious is this issue of failure to declare conflicts of interest in local government as we see it today?

**Mr D.A. TEMPLEMAN**: I understand the member's question. My advice is that in isolation the situation to which the member referred is more likely to be covered by a complaint to the standards panel for its consideration. Again, I cannot determine whether that example is a serious breach without more information —

**Mr J.E. McGrath**: The standards panel would determine whether it was a serious breach.

**Mr D.A. TEMPLEMAN**: The standards panel has fairly confined responsibilities. If it was a serious breach, it would essentially be a matter for the Corruption and Crime Commission to investigate. Again, it is hypothetical in how the member has presented it. I understand what the member is saying.

**Mr J.E. McGrath**: This is a tricky area now for councillors because a lot of development —

**Mr D.A. TEMPLEMAN**: It is. The recommendation is always if a councillor is in doubt, they should declare. I expect that advice to be the best approach of a local council member. If there are any doubts, they should declare an interest, so it is transparent.

**Mr A. KRSTICEVIC**: Proposed section 8.15E outlines the circumstances in which the minister can suspend a council member or require remedial action, and five triggers are listed. Will State Solicitor's advice be considered in all circumstances before a suspension is made? Will the minister get the State Solicitor's advice?

**Mr D.A. TEMPLEMAN**: Seeking advice would be determined by the severity and complexity of the matter. The State Solicitor's advice would be sought, of course, in circumstances in which that advice is considered to be required. I cannot say to the member that the State Solicitor is going to be consulted for every consideration of a suspension. Under proposed section 8.15E(2), there may be a requirement. It may be a consideration to seek such advice. But I refer the member to proposed section 8.15E(3) under which it most certainly would be appropriate or important to seek such advice from that body.

**Dr D.J. HONEY**: Proposed section 8.15K(2)(a)(i) is pretty straightforward and it is clear why a council member could be dismissed. I am less sure about proposed section 8.15K(2)(a)(ii), which states —

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

If I could give the minister a tiny bit of background, I always go to the worst side of things. Let us imagine a minister and a chief executive officer of the local government authority were of like mind and their mind was completely opposite to one of the councillors. Imagine it is the City of Vincent, which we have been told is a Labor council, and there is that one sole Liberal councillor who is a pain in the neck; he is always raising points of order and writing —

**The ACTING SPEAKER**: Or she.

**Dr D.J. HONEY**: He or she—thank you very much. I appreciate that; I genuinely mean that. Imagine that he or she is being a complete pain in the neck all the time. I am concerned about what are the best interests. It may be that it is slowing down council business and it would work a lot better and faster if that person was not there. That was my concern. Is there some other definition around that? I am quite happy to be informed that I am missing the point if something else clarifies that more.

**Mr D.A. TEMPLEMAN**: The qualifying aspect of this is the seriousness of the nature of what has occurred. Again, I suppose this goes to the very centre of the high benchmark of ultimately reaching that decision to suspend and ultimately, if that is the process, to dismiss. The member has asked what the term "best interests" means. It is a value judgement; it is true. It is made by reference to factual matters. The minister of the day will need to use his or her judgement to balance the competing claims that may be presented. Again, I remind the member, as I did in

the earlier context of the second reading debate and in reference to the member for South Perth's question about how many councillors ultimately have been dismissed in the history of the current act, there have been only four dismissals. I hope that gives the member a sense of the difficulty in reaching the determination of a dismissal. It is a very high bar. Advice is taken and sought, then a judgement is inferred by, in this case, the CEO of the department for a dismissal. I want to reassure the member that the provisions in this act very clearly do not apply to someone who he referred to as just being a pain in the neck. This is not designed to address those people because I want there to be free and open debate in councils. There will be differences of opinion.

Another point that I need to remind members of is the additional transparency measure of having to publish the reasons for a dismissal. Members can imagine that a minister would not want to be ultimately recommending to the Governor the dismissal of an individual based on flimsy evidence in a flimsy report that they know will have to be published. That is another mechanism to ensure that the very high benchmark is reached—or breached, actually—for the decision of a dismissal to be carried out. History shows that it is rare for councils. I genuinely believe that the dismissal of an individual is going to be a rare event. It is intended to be a rare event because of the implicit provisions in the bill to ensure transparency and, ultimately, the reasons for a dismissal being published.

**Dr D.J. HONEY**: I hold the minister in the highest regard and I know that he would have the highest possible hurdle in there so it is more a question of when a person is disreputable or especially tribal —

**Mr D.A. Templeman**: I like you as a possible shadow spokesperson. You should shoehorn the other guy out!

**Dr D.J. HONEY**: I am happy with the current one.

This question is relevant to this clause only insofar as whether there is a right of appeal. The minister may have touched on this at some other stage, but what remedies does a dismissed member have, or is this really done and the member will have no remedy other than to stand for re-election?

**Mr D.A. TEMPLEMAN**: Essentially if they are dismissed and choose not to take up the judicial process that is open to them—a judicial process is open to them, which could be considered a way of seeking appeal—the other option, as I have highlighted, is to go back to the people and put forward their name again. They can argue during an extraordinary election that they should be re-elected. I think that is an important process. They have the capacity to go to the people and let the people decide, as long as they are not subject to a disqualification. We do it.

**Dr D.J. Honey**: I think that is a fair point, minister, because if it were a flimsy reason, that would be apparent in the transparent report, so I think it is a good answer.

**Mr W.R. MARMION**: The clause states that the minister would be acting based on advice in writing from the department's CEO. When I was Minister for Mines and Petroleum, the advice I would get from the department had options that the minister could choose, but sometimes it would not have a recommendation. Will the minister get a recommendation to dismiss a person, or will the advice say, "We've investigated and found out this stuff. You can do either A, B, C or D; it's your call"?

**Mr D.A. TEMPLEMAN**: In normal circumstances, the options would be presented but ultimately, there will be a recommendation for a course of action.

**Mr A. KRSTICEVIC**: A person can be suspended for up to two years or they can be dismissed. If someone is suspended for two years, and let us say that their term expires three months down the track, there is another election and they are re-elected; does their suspension continue or does it cease?

**Mr D.A. TEMPLEMAN**: Yes, in that case, the suspension would continue even if they were re-elected. If re-elected, they would have to serve out the balance of their suspension before they could take their seat as an elected member again or take part in local government activity.

**Mr A. KRSTICEVIC**: Can the minister tell me whether it is a greater penalty for someone to be suspended or dismissed? Which one is the more severe penalty to deliver: is it to suspend someone for two years, or to dismiss them?

**Mr D.A. TEMPLEMAN**: A two-year suspension determination can apply only to two key offences. The first is if they fail to comply with a remedial order so, in other words, if they have been given a remedial order and they fail to comply with it. The second is if there is an impending panel inquiry. They are the two circumstances in which that could apply. The other suspensions are for six months.

**Mr A. Krsticevic**: I think you can see my line of questioning.

**Mr D.A. TEMPLEMAN**: Yes. The other issues that impact on this are reputational and whether someone might see being suspended as being better or worse than a dismissal.

**Mr J.E. McGrath**: They might be a freedom fighter or something like that—Che Guevara!

**Mr D.A. TEMPLEMAN**: That person, if they were eligible, would have the capacity to go to the people and be endorsed for re-election. Essentially, a dismissal might ultimately be considered worse because it would involve the action of having to stand again.

**Mr J.E. McGrath**: Even if you get back in, you've still got to serve out your term.

**Mr D.A. TEMPLEMAN**: Yes, that is right.

**Mr A. KRSTICEVIC**: In the case of remedial action and if someone is suspended for two years one month out from an election, they can be re-elected and have 22 months to serve out their suspension. Does it not seem ridiculous that someone who was suspended and gets re-elected continues with their penalty as opposed to someone who was dismissed? I assume that if someone is dismissed, it is actually a more serious offence than if they were suspended. If someone is charged with what I consider to be a more serious offence and dismissed, they could automatically start work, get their pay, and get into it with no problems. If they have committed a lesser offence, the minister can say, "Well, it's a lesser offence so I don't think I want to dismiss you; I'm only going to suspend you for two years." If they are re-elected, that ward or council area will have no representation for the rest of that suspension period and that person will no longer get paid. It will almost be like, "Listen, minister; as opposed to suspending me for two years, why don't you just dismiss me because at least then when I get re-elected, because I know I will, it is not that much of a big deal in remuneration and representation in the area?" To me, it seems unbalanced.

**Dr D.J. Honey**: Just to clarify, minister, would it be possible —

**The ACTING SPEAKER (Ms J.M. Freeman)**: Members, through the Chair.

**Mr D.A. TEMPLEMAN**: I will deal with the member for Carine, then I will take the member for Cottesloe's question.

Firstly, can I just highlight the issue of remedial action. Remedial action is not seen as a punishment. It is a mechanism to allow a person to receive extra training or for a mediation process to be engaged in to improve their behaviour, conduct or capacity to participate. I do not want the member to think remedial action is seen as a punishment. If this amendment to the Local Government Act is used, it is probably in this area where we will see the most action. It will be a case of the minister of the day requiring some remediation to be responded to. Of course, there would be consequences if the person did not respond to it, and we have already covered that in previous questions, but the principle is that remedial action is not seen as a punishment but as a means of improving the capacity of an individual member to participate in a more productive and effective way in the council of which they are a member. If the minister is satisfied that the individual has carried out the remediation requirements, they will be reinstated. That is where I hope most of the referrals to this legislation will occur: remedial action takes place, training is provided or whatever it is, the person is reinstated and their capacity to contribute is enhanced and therefore the capacity of the local government to function properly is enhanced.

The member for Cottesloe highlighted the suspension issue. It is a case of, "If I'm in trouble, is it better that I get suspended or is it better that I'm dismissed?" That would depend on a whole range of things, including whether an inquiry panel process has been established. I will just double-check this, but the status of a person going through an inquiry panel does not change until that inquiry panel process has been concluded. If an elected member is subject to an inquiry panel, as is the case with the City of Perth as a total entity, there is no function of those suspended members until that inquiry panel has concluded. The same principle applies to an individual if they are subject to an inquiry panel in terms of their capacity to participate. If it goes over time lines and/or election cycles, there will obviously be an impact.

**Dr D.J. HONEY**: I wonder whether someone could practically be dismissed for a period longer than their remaining term. I would have thought that they could not because they do not have a term past their current term. I thought that might deal with the issue that was raised—that someone could only be dismissed for the length of their remaining term because after that they will have no position until they are re-elected.

**Mr D.A. TEMPLEMAN**: A dismissal is a dismissal is a dismissal.

**Dr D.J. Honey**: Yes, sorry, a suspension.

**Mr D.A. TEMPLEMAN**: Yes, I thought so. Say that in August 2019 an individual is suspended for six months and there is an election in October of the same year. To make this very clear: if that person chooses to stand while they are suspended, they will have August, September and October and they will have served nearly three months of that six-month suspension. If they get re-elected, they still have to serve out the balance of that six-month suspension. Member for Cottesloe, this is very important; I do not want to mislead the member. Let us say they have served nearly three months and they decide, "To get rid of my balance, I'll resign and I'll have a clean slate." No. The balance will still remain even if they are re-elected.

**Mr W.R. MARMION**: Further to that, what if the councillor decided to run for another council? They have been suspended from one council and they decide to go to the council next door.

**Mr D.A. TEMPLEMAN**: If they are suspended, they are suspended, no matter which council they might choose to attempt to hop to.

**Mr A. KRSTICEVIC**: I refer to the triggers under proposed section 8.15E(2)(a). One of the triggers the minister developed to suspend or to order remedial action is a situation in which a councillor is charged with a disqualification offence. Why is it only "charged" and not "convicted" of an offence? Just because someone has been charged does not mean that they are guilty.

**Mr D.A. TEMPLEMAN**: Essentially it is a provision of stand-down via open investigation and it involves a criminal investigation. It is an element of a stand-down provision to deal with that. Of course, if it is a criminal conviction, it is a serious offence and if the conviction is successful, it would then be an offence worthy of disqualification. That is the reasoning behind this particular provision.

**Mr A. KRSTICEVIC**: Is it just for a criminal offence or is it also for a serious local government offence? Disqualification offences cover both of those, not just criminal offences. How does that relate to a situation in which it takes a long time to be resolved because it is being dragged out through whatever process it is going through?

**Mr D.A. TEMPLEMAN**: To answer the first part of the question, yes, it can refer to both. With regard to a serious breach of the act, that is where the discretionary aspect of the minister's determination on that consideration comes into play. Again, there are clear benchmarks, if you like, that would advise the minister of that course of action.

**Mr A. KRSTICEVIC**: How long will the suspension last if there is a disqualification offence, especially if the process drags out for a long time? A good example is the case of the City of Perth Lord Mayor. Would the minister see that dragging out for years?

**Mr D.A. TEMPLEMAN**: The duration would be while the matter is being prosecuted. I really do not want to refer to the current case and the situation of the City of Perth Lord Mayor because, as the member would be aware, it is still subject to a final State Administrative Tribunal determination and it would not be appropriate for me to use that as an example because that matter is still before the State Administrative Tribunal.

**Mr A. KRSTICEVIC**: Without going into the details, the minister mentioned the SAT issue with the Lord Mayor. I do not want to focus on what SAT is currently determining, but that is an example in which the Corruption and Crime Commission found 45 offences. The Department of Local Government, Sport and Cultural Industries confirmed 45 offences was the right number. SAT issued a penalty in the first instance and that was challenged in the courts. The courts said, "Sorry, everybody's got it wrong—26 of those are not offences."

The reason I ask that question is that if someone had been accused of just those 26 offences, the CCC and the department have said these are the 26 offences and they are disqualified and they do not have the money to go to the court system, why is the system, in that instance, broken? Why did it not pick up those 26 offences? Why did the judge say that they were not offences? I am not asking for any reason other than clarification for myself to understand how someone can be charged with something and go through the whole process and be found guilty and at the last hurdle, if they can afford to go to the courts, which not many people can afford, the judge can then say those 26 are not actually offences, but without that particular detail.

**Mr D.A. TEMPLEMAN**: Again, I need to remind the member that I cannot comment on the current circumstances before SAT regarding the Lord Mayor or, as the member has asked me, comment on comparisons about what judges and legal teams may argue. It is not appropriate for me to do that. In fact, I am not allowed to do that whilst this process is underway and I will not do that.

**Mr R.S. LOVE**: I would like to go back to a point that the member for Carine made earlier about proposed section 8.15E(2) that the person had to be charged only with a disqualification offence. He raised the question of whether that would include a serious local government offence. I was a bit unsure about the minister's answer in that I do not think it provided any comfort or clarity that a person simply being charged with some sort of an offence under the Local Government Act would escape the provisions of proposed section 8.15E(2). I wonder why there is not a small insertion in proposed section 8.15E(2)(a) to the effect that that disqualification offence only relates to an offence against a law of the state, the commonwealth or a territory, as in proposed section 8.15D(b). I believe that the member for Carine raised a valid point and I think it should be clarified.

**Mr D.A. TEMPLEMAN**: First, I refer the member to the definition that relates to a disqualification offence because I think that advises the minister on determining offences that may fall within a disqualification category. For a serious breach of the Local Government Act there is a discretionary aspect to the minister's determination that the minister would consider in their course of action. I refer to the definition of "disqualification" under the act and highlight that when responding to a serious breach of the Local Government Act, there is a discretionary

element. Again, the minister of the day would need to assure themselves, after seeking appropriate advice, that the course of action was warranted.

**Mr A. KRSTICEVIC**: Proposed section 8.15E(2)(b) sets out the trigger for the minister to suspend or take other remedial action when the department has made an allegation to SAT that a council member has committed a serious offence or a recurrent breach. Why does this clause refer to SAT and not to the finding? Obviously, just being referred to SAT does not mean that you have done anything or will be found guilty of anything.

**Mr D.A. TEMPLEMAN**: This relates to a pending outcome of the proceeding. Again, a discretionary element is there for the minister to consider.

**Mr A. KRSTICEVIC**: My understanding is that if someone is referred to SAT, they will be suspended and will not be paid, as is currently the case with the City of Perth. Will councillors still continue to get paid if they are suspended or referred to SAT under this provision? If they are found to be innocent and not to have committed any offences, does the minister think it is appropriate for them not to be back paid if it was a frivolous claim or something that was not substantiated? I want to get the minister's opinion on that.

**Mr D.A. TEMPLEMAN**: As the member knows, there is an amendment before the house that addresses the issue of payment or non-payment during a period of suspension. Council members are paid in fees and allowances that are predominantly for the performance of their duties. If councillors are suspended, they will not be carrying out their duties. That is why the amendment, which I hope the opposition will support, has been drafted in that context. It concerns me a little bit when I hear people refer to remuneration for councillors as salary.

**Mr A. Krsticevic**: No, it's not.

**Mr D.A. TEMPLEMAN**: We know that it is not, but it is referred to as salary. I have heard people refer to it as salary on a number of occasions. As the member is aware, it is not. It is a payment in the form of allowances and sitting fees. Those fees and allowances have an obligation, particularly the sitting fees because they require the member to actually sit and attend. If an individual or an elected member is suspended and one of the reasons is that they were not attending and that is part of the decision that led to the suspension, they are not entitled to receive any recompense or remuneration—not salary—for that. Remember, again, if a decision is made to suspend, the amendment that is proposed on the notice paper deals with the issue of payment during that period of suspension. There is no provision, and there should not be, for back pay or anything of that nature because, to end up in the process of suspension, a series of reasons have to be given and actions taken to arrive at that decision. The implication is that a councillor will not receive any allowances or sitting fees because they are no longer, during that period, able to carry out their functions, because they are suspended.

**Mr A. KRSTICEVIC**: It is very clear in the case of councillors, but in the case of the mayors, for whom the Salary and Allowances Tribunal sets income, not sitting fees, if a mayor is suspended, would they be suspended without pay, and, if they are found to be innocent at the end of that process, when that process runs for six or 12 months, would they end up getting any back pay?

**Mr D.A. TEMPLEMAN**: To address that issue, which is addressed in the amendment, I would hope that the member will support the amendment.

**Mr A. Krsticevic**: Can you explain it now?

**Mr D.A. TEMPLEMAN**: It is better to discuss it at the point of the amendment being moved.

**Mr A. KRSTICEVIC**: I refer to proposed section 8.15E(3), the remaining trigger where the department is advised that a council member has failed in their duties, their conduct is adversely affecting another, or is affecting the ability of the council to comply with its employment obligations. The triggers under proposed section 8.15(3) relates to the conduct of the member or the failure of their duties. What education or training is currently provided to council members to ensure that they understand their obligations and responsibilities?

**Mr D.A. TEMPLEMAN**: As the member will be aware, a range of training is available, particularly through WALGA. Some councils seek professional development courses or opportunities for their councillors. I know councils that have set aside one or two days a year when they hold—I will not call it a love-in—a gathering over a period, and included in that they seek professional development from various providers. WALGA has a comprehensive training program available. As the member is aware, the issue of training for councillors has been raised on numerous occasions, and has been canvassed in phase 1 of the local government review process. The member and I, although we may not agree on all things, would support a universal training regime. I would hope that, when we bring in the amendments to the Local Government Act relating to training, a universal training process will be supported, which would address the issue that the member particularly referred to in this case. One of the mechanisms of remedial action in this bill is the capacity for the minister to request that appropriate training is carried out by an individual, if that is seen as addressing some of the issues of concern that the minister believes

need to be addressed. I hope that the member will support the potential universal training proposal, and the amendment on the notice paper about costs.

**Mr J.E. McGrath**: Good luck with getting them all to turn up to the training sessions. Some of them have nine-to-five jobs.

**Mr D.A. TEMPLEMAN**: Yes, but one of the things we want to do, which I think has been borne out during the consultation period, is that if a person wants to become an elected member —

**Mr A. Krsticevic**: There are obligations.

**Mr D.A. TEMPLEMAN**: There are some obligations, and that would include, I suppose, a standard of understanding. In terms of the education of potential councillors, we need to look at that broad education, when people might be considering becoming councillors. Some councillors do not realise the sometimes onerous time constraints until they are elected. We want people to go into this with their eyes wide open, and part of that is the education process and their understanding of the obligations they have and their role and responsibility. We would hope that when most people go into a council, they go in saying that they are prepared to commit, that they recognise there is a time requirement, and a requirement for them to have some basic knowledge of the act, of the roles and responsibility of mayors, elected members and CEOs, and their relationship with the staff. That would help them make a decision on whether to contribute as councillors. I was a schoolteacher when I was first elected to the Mandurah council. Prior to that, the council would meet during the day. I might need some help here.

**Mr J.E. McGRATH**: I would like to hear more from the minister.

**Mr D.A. TEMPLEMAN**: It is a bit of a worry when I get the help from that side! Thank you, member for South Perth. I have a great affection for him; he is a wonderful man.

Before I was elected to the council in 1994, council meetings were held during the day. This was the case with lots of councils, actually, and a lot of them have adjusted their sitting times to accommodate people who might hold down nine-to-five jobs. When I was elected as a councillor to the City of Mandurah in 1994, I was teaching full time, but the council had already changed its council meeting times to 5.00 pm. Previously, it had held the meetings at 10.00 am and, depending on how long the meeting went, you could be there all day. That was the reality. Those are the considerations that people make. Back in those times, I knew of people who did work nine to five, who took leave to attend council meetings. Back in those days, I can assure members that the sitting fee was very small, and it was a consideration, even from a financial perspective. They weighed up whether it was in their best interest, from a financial and family situation, to stand for council. I think things have changed since then, and the capacity of local governments to look at being much more flexible to accommodate greater diversity is a good thing, and many councils understand that. I think there are still some councils, perhaps in the jurisdiction of the member for Moore, that still hold daytime meetings. That is something I should assess.

**Mr R.S. Love**: Most of them still meet during the day.

**Mr D.A. TEMPLEMAN**: There may be good reasons for that. It would be interesting to know what the spread is, and how much is changing.

**Mr A. Krsticevic** interjected.

**Mr D.A. TEMPLEMAN**: That is very true, and that is a very important consideration.

**The ACTING SPEAKER**: Minister, can I bring you back to standing order 179, which states —

> Debate will be confined to the clause or amendment before the Assembly and no general debate will take place on any clause.

The question was about training.

**Mr D.A. TEMPLEMAN**: I was becoming nostalgic, remembering my own council period. I will take that very sage advice from the Acting Speaker and I will sit down.

**Mr R.S. LOVE**: The minister has raised a few matters to do with training. I was going to ask about proposed section 8.15E(1)(b), under which a council member is required to undertake remedial action specified in the order within the time specified in the order. Some of this training could be very expensive. Is the councillor expected to bear the full cost of that training? Is the council going to pick up the cost of that training? What is the expectation? How will the training material be sourced? I have a deep suspicion about some of the modules used by the Western Australian Local Government Association. It has trotted them out extensively throughout the local government industry, but I see more and more dysfunction occurring in councils and it does not seem to be working. It is very, very expensive. I am wondering what will be considered to be an appropriate training course for someone who is required to take remedial action.

[Quorum formed.]

**The ACTING SPEAKER**: Minister!

**Mr D.A. TEMPLEMAN**: I thought I was having a fireside chat there for a minute; I do apologise, Madam Acting Speaker. It has been a long week. I have worked hard this week, I must say. I have done bills and I have had to move motions!

**The ACTING SPEAKER**: Minister, can I draw your attention to standing order 179!

**Mr D.A. TEMPLEMAN**: I am being very nostalgic again—I am overwhelmed by nostalgia.

The member for Moore asked a good question. If the question on training relates to the provisions of this bill—in other words, training that might be required as part of the remedial action—then that would depend ultimately upon the behaviour and context and on the time, place and circumstances of that. It may be that the training is available from within a council's own resources. There are a range of options that the minister would have. It really depends upon the circumstances. It may be a mentoring process. There could be a range of things. If the member is referring to proposed universal training —

**Mr R.S. Love**: No, I'm not; I'm referring to the remedial actions.

**Mr D.A. TEMPLEMAN**: I just want to make it clear that in the context of universal training, that is for future consideration as part of the review.

**Mr R.S. LOVE**: I am glad that a consideration of time and space might be taken into account, but I was actually asking about the cost, not time and space.

**Mr D.A. TEMPLEMAN**: To answer the member's question, it does depend upon the circumstances. It may be that the local government will be willing to pay for some of the training that might be required, because it may recognise that that is in the best interests of the council in total that remedial action, which might involve training, takes place. Access to training could be provided by a variety of other providers. The department might be able to provide training if that is appropriate to the particular requirement of the minister. It could be the local government or the department within their own resources, depending upon the circumstances, or it could be other providers, including WALGA.

**Mr R.S. LOVE**: In relation once again to the remedial action, we spoke about training. What other forms of remedial action is the minister likely to order councils to undertake?

**Mr D.A. TEMPLEMAN**: Another method would be mediation. I will try to give an example that I could see happening. It might be a requirement that an individual member needs some assistance or remedial action with regard to their conduct at meetings, for example. Their conduct may be consistently unduly disruptive, causing the constant suspension of the standing orders to vacate the chamber or whatever. It may be a range of things. Mediation may be seen as the best or preferred method to address that particular behavioural conduct of the member. That mediation would be sought from external sources. I would expect it would be very obvious that it would not be provided by an officer of the council that the member is from, because that would not necessarily be appropriate.

**Mr R.S. Love**: Mediation would be between whom?

**Mr D.A. TEMPLEMAN**: If there is a breakdown in relationships, there may be mediation between two or more members or a member and a council.

**Mr R.S. Love**: In that case, would all the members have to have an order from the minister or would the minister expect that some would just come along? Why? How many people is the minister going to suspend individually—sorry, not suspend—require to undertake remedial action in a council?

**Mr D.A. TEMPLEMAN**: They are not being suspended.

**Mr R.S. Love**: Sorry, I used that word mistakenly; I then corrected myself.

**Mr D.A. TEMPLEMAN**: If mediation is determined to be the mechanism to address behaviour or conduct, the type of mediation and who does it will be determined according to the circumstances. I referred to the relationship between Victoria Park and Morawa. Let us say that there is a situation involving one councillor on either council. It may be possible that there would be a mediation process involving a sister council, if the member likes, or some expertise to assist. I again come back to the point that remediation is the first port of call. It is the first entree; suspension and other methods are at the other extreme or end of the continuum. There could be two councillors affected. If it was appropriate and/or determined, they may both be subject to the remedial order, particularly if it

related to a breakdown of a relationship. I think this remediation mechanism will potentially be very effective in addressing issues between one or two councillors in a jurisdiction.

**Mr R.S. LOVE**: Still on the process of remedial action, the minister has spoken about mediation. I am not too sure whom the minister will mediate with if he does not compel or require both parties to come to the mediation, in which case it brings in the other aspect that I have been trying to weave a way to talk about for a little while and now presents itself: the case of council employees. If there is breakdown between a councillor and the CEO of the organisation, which is perhaps behind the basis of some of the problems that have developed, what powers, if any, does the minister have to require the CEO to undertake some sort of remedial action? Maybe there is a bit of fault on both sides.

**Mr D.A. TEMPLEMAN**: I am not disagreeing that there may be a situation or a circumstance that either exists currently or could in the future. However, it is important to recognise that this legislation essentially deals with an individual councillor and is focused on their behaviour and/or conduct and how that may impact on the functionality of the council and of the local government.

**Mr R.S. Love**: Which includes the CEO. We all know they are a political figure in the council.

**Mr D.A. TEMPLEMAN**: Yes. The short answer is that this bill does not have any jurisdiction over CEOs because the employment of a CEO, under the current act, continues to be the responsibility of the council. There may be an occasion when the council, regarding a remedial order, may see issues that relate to the CEO or another officer. Ultimately, it would be up to the council to determine that or come to a consideration. But, again, the matters requiring remediation and/or suspension and/or ultimately dismissal are focused on the individual elected members. The issue—I think this comes to the crux of what a number of members raised during the second reading debate—is the relationship between local government CEOs and/or senior staff and elected members. As I have said, that is an issue that has been raised by members in this place, and, indeed, members of the other place have come to me with concerns. That discussion is part of the local government review because it is an issue that needs clarification and addressing. We need to look at what is the best enabling legislation that allows for clarification between roles and responsibilities and indeed what happens when there are grievances et cetera. We know that processes are currently in place about standards panels or others. It is an issue.

The spirit of this bill, though, is very much focused on when the circumstance or the problem has been identified as relating to the individually elected member and what we can do and what needs to happen to improve the capacity, or address some of those issues through a remediation order or a remediation requirement, so that we enhance that member's capacity to participate in a more functional way and not potentially corrode the overall operation of the council. If it comes out that an issue goes further than the elected member and/or relationships, that consideration would need to be addressed. But I think we will be able to address that by clarifying that whole role and responsibility issue through the review. I think that is all I have to say.

**Mr R.S. LOVE**: I thank the minister for that assurance that at some point down the track he might address that.

**Mr D.A. Templeman**: I encourage you to put in a submission.

**Mr R.S. LOVE**: Yes. In the sense of the need, though, for remedial action under this bill, I still think that there is a fundamental problem when a relationship exists amongst a group of councillors. Say seven councillors and the CEO are all together in that meeting room. They are all participating in the discussions and are all part of the decision-making process. They play different parts, but they are all part of that process. On many occasions friction exists between individual councillors and the mayor or the president, or amongst each other, but those same frictions exist with the CEO. The provision might lay all the fault for the poor performance of an individual at that one individual, but sometimes some other factors are going on that need to be addressed. I take the point that the CEO is an employee of the council, but they are carrying out a number of functions under the Local Government Act as well, basically on behalf of the council but on behalf of the state. A very serious issue here needs to be addressed. I am still not sure that the remedial actions that the minister is specifying, especially in terms of mediation, will be effective if he cannot ensure that the CEO plays their part as part of that political organisation.

**Mr D.A. TEMPLEMAN**: I will just correct the member. He did not infer that the CEO made decisions. Yes, he makes decisions about the operational nature of the council; he does not make the decisions of the council.

**Mr R.S. Love**: No, but they participate in the council.

**Mr D.A. TEMPLEMAN**: They may participate, but that is usually in the case of answering questions and advising the council. The councillors make the determination.

**Mr R.S. Love**: Come and sit in a few council meetings in my electorate and you might see a bit more active participation.

**Mr D.A. TEMPLEMAN**: That is a matter for the councillors. It comes back to them being well versed within their responsibilities versus the responsibilities of the CEO. If the member is seeing that as prevalent across his area, one would hope that maybe that is an issue that councillors themselves need to be very mindful of. I still remind councillors that if there are seven councillors and seven councillors are present when a decision is made, the only names that are recorded as having voted are the seven councillors. They make the decisions.

**Mr R.S. Love**: The staff make the recommendations.

**Mr D.A. TEMPLEMAN**: Absolutely, but nobody forces the council to either accept the recommendation, amend it or otherwise. The role of the local government CEO, as per the act, is ultimately to advise, and councillors, leaders, mayors and shire presidents need to be very aware of that so that if there are issues associated with conflict between individual members and CEOs, that is a matter for the council to determine, and to determine a course of action. It is the responsibility of those elected members to do it. I hope they would do it in the best interests of the residents and ratepayers of their particular municipality.

**Mr R.S. Love**: I will have one more go at a scenario, let the minister answer that and then leave him alone.

**Mr D.A. TEMPLEMAN**: Okay. However, bearing that in mind, as the member is well aware, the consideration by the council and councillors should always be based upon the fact that they are satisfied that they have the best information available to them, provided by officers—in the case of the CEO, if it is under his or her name, the CEO—because I want all councillors to be able to say that they made decisions based upon the best information available to them at the time.

**Mr R.S. LOVE**: Still on this point of remedial matters and actions required, I will point out a case that happened during my experience in local government when a younger person became a member of a council. A bunch of older people who had been there for a very long time—the chief executive officer had probably been there in excess of 10 years—had developed a nice comfortable club. They were not running things properly and when the young person brought it to their attention and tried to initiate change, they were bullied by the CEO who wanted things to remain as they were. That is not necessarily as uncommon as members might think. I can think of a circumstance where it is happening now. It is not necessarily the person who ends up being complained about who is in the wrong. If remedial actions address just one person and blame is laid at the foot of that person, then there will be problems when trying to mediate. I will leave that with the minister.

**Mr D.A. TEMPLEMAN**: We cannot legislate to make a person decent or what the member may define as decent. This is all about relationships. In this place, it is about relationships. Any democratically elected chamber or place is about relationships. Some people choose to be adversarial all the time and some people choose not to be adversarial all the time. I am always concerned when I hear about bullying aspects. Those are not covered in this bill. It is unfortunate when it happens. Other mechanisms are available to a member if they are aggrieved about bullying and other processes can address that, but it is not addressed in this bill specifically. The member mentioned young or new members who join local government. This is where particularly the experienced members of local government should have a capacity to be great mentors to councillors. Some of our more experienced and long-serving members have an underutilised capacity as someone who could assist in mentoring a younger man or woman who has been newly elected to a council and is still learning the ropes. I would encourage that. Ultimately, if the bullying issue involves potentially criminal matters, they need to be addressed as appropriate in that context. But this bill does not seek to address those sorts of things.

I am mindful of where the member is going in his discussion about someone being targeted through this bill when the behaviour and/or conduct is not of their doing—I understand that. But can I also highlight again that mechanisms in this bill provide safeguards in relation to one being satisfied with the intervention, whether it be remedial action, suspension or an inquiry panel process and/or ultimately dismissal. This is not about complaints or relationship breakdowns. It is not about someone complaining about councillor X at every council meeting to get him or her off the council. Someone may try to do that—some of them do it now. But essentially provisions in this act require a satisfaction that intervention is needed and then, depending upon the circumstances, what that intervention may be.

**Mr R.S. LOVE**: Again, I refer to remedial actions, training and mediation et cetera. The training still concerns me a little. I am a tad concerned about some of the training methodologies or modules out there. As I said earlier and in my contribution to the second reading debate, a lot of training has been undertaken that does not necessarily lead to more respectful relationships within councils. If the Department of Local Government, Sport and Cultural Industries is faced with a situation that has resulted in a breakdown of relationships in a council, would it give consideration to developing different training methods and materials that encourage better and more respectful relationships from that information on offer in the general market, and especially that information that is sent to councils through the Western Australian Local Government Association at the moment?

**Mr D.A. TEMPLEMAN**: I understand where the member is coming from. In past cases, the department has had tailored training programs available that are delivered by approved people for whole councils. That already has and does happen, which is important. I know of one particular council that has had some governance issues of recent times to which an experienced mayor from another council, for example, was asked to present to councillors issues that might be related to governance and the conduct of meetings. I know of particularly newly elected mayors or shire presidents who have gone to sit in on a council meeting conducted by an experienced mayor or shire president. They have watched how that mayor conducts a meeting. I encourage that and I think it is great. Then there are other opportunities. I have already used the example of two councils—one of which is in the member's jurisdiction—where there is an opportunity for greater two-way support and learning that can take place that improves, ultimately, the function of the council. I understand where the member is coming from in terms of the training. WALGA or the department should always be constantly assessing the quality of the training that is provided by looking at methods or the changing nature of community or society and responding to that in terms of training. One area of training that is badly required now is around the impact of social media. It is really important that all councillors and staff are aware of the impact of misuse, inappropriate use, and/or potentially illegal use of social media. That area really needs some exploration, and training will need to be part of that. Why? Because social media is a fairly recent phenomena. I do not know what the next phenomenon will be. We have Facebook, Twitter and Google or whatever it is—I do not know.

**Mrs M.H. Roberts**: We have Instagram.

**Mr D.A. TEMPLEMAN**: Yes, Instagram. I used to call it e-texting, but that was not appropriate. Those will be matters for training. Again, I refer to the review that will look at these matters.

**The ACTING SPEAKER**: The member for Carine has the call. Help me out here, member for Carine. I want to move it on from clause 15.

**Mr A. KRSTICEVIC**: I want to ask one question about the breakdown in relationships and the damage. The member for Girrawheen makes an interesting point because chief executive officers and directors—but mainly CEOs—have carried out investigations in which councillors have tried to use council resources behind the backs of the councillors and the CEO to run a legal investigation into finding evidence to send them to the Corruption and Crime Commission. When we talk about a breakdown in a relationship, we cannot get a bigger breakdown than a councillor going behind everyone's back, trying to find evidence to refer a chief executive officer to the Corruption and Crime Commission. That inquiry then finds out there is no evidence of corruption and that councillor walks away and does not even apologise.

**The ACTING SPEAKER (Ms J.M. Freeman)**: Sorry, member, can you take me to the clause you are talking about?

**Mr A. KRSTICEVIC**: I am talking about the clause that refers to remedial action and suspension. A councillor initiates that action and spends $30 000 of council funds to try to impute a CEO and find evidence for why they are corrupt, but it is found that there is nothing to answer, and the councillor walks away, does not say sorry and does nothing. Does that not show that the situation has got out of control, when a councillor can try to find evidence of corruption when there is nothing there? How do we fix that relationship? Does the minister think that in that case the councillor needs to say sorry?

**Mr D.A. TEMPLEMAN**: I am glad the member mentioned the word "sorry".

**Mr A. Krsticevic**: No-one cares about CEOs.

**Mr D.A. TEMPLEMAN**: I hope that when we do rise at probably about eight o'clock tonight, the member will indeed carry out what he has asked CEOs be required to do.

**Mr A. Krsticevic**: I am just saying. I am just asking.

**Mr D.A. TEMPLEMAN**: The member always says, "I am just saying."

**The ACTING SPEAKER**: Stop interjecting, member for Carine, or I will call you.

**Mr D.A. TEMPLEMAN**: The member is like the lawyer from *The Castle*. "It's the vibe of the thing", but he does not know what he is talking about.

**The ACTING SPEAKER**: Minister!

**Mr D.A. TEMPLEMAN**: The member may be alluding to a particular line of inquiry and it is appropriate that I do not comment on that. Again, the member is re-raising some hypothetical aspects. The member for Moore and the member for Carine's line of questioning is specifically about remedial interventions. Those remedial interventions will be arrived at depending on the conduct, the behaviour and the circumstances in the case. If an elected member or a staff member has taken criminal action, those are matters for the judiciary and the

responsibility of the prosecuting entity. It is purely hypothetical. The legislation does not gloss over the fact that this is a relationship business. It is about how people should work, could work and need to work to improve the capacity and capability of their local community to thrive, be they in rural and regional Western Australia or the metropolitan area.

This bill in its totality and the review of the Local Government Act are focused on improving the legislation so that it is far more responsive to modern changes to society and community in the context of local government responsibility. For everyone, whether it be elected members, staff, they are all in this in how we arrive at a better local government system underpinned by legislation that is modern, enabling, clear, focused on transparency and accountability and on delivering a better way for local government to function for the benefit of the people it needs to function for. That is not for CEOs. That is not for elected members. It is for the people. Those parties are working in the best interests of the people.

**The ACTING SPEAKER**: Member for Carine, I point out that standing order 97 states —

> A member who persists in irrelevance or tedious repetition, either of the member's own arguments or of the arguments used by other members, may be directed by the Speaker to discontinue the speech.

**Mr A. KRSTICEVIC**: The member for Moore asked 20 questions; I have asked only two questions.

**The ACTING SPEAKER**: Member for Carine!

**Mr A. KRSTICEVIC**: In terms of that remedial action, I am sure that the minister is aware —

**The ACTING SPEAKER**: Member for Carine, you have asked the question about remedial action and the minister has answered it.

**Mr A. KRSTICEVIC**: I could ask lots of questions about remedial action.

**The ACTING SPEAKER**: Is it a new question?

**Mr A. KRSTICEVIC**: If I could ask the question, that would be good.

**The ACTING SPEAKER**: Ask the question and I will say whether I think it is repetitious.

**Mr A. KRSTICEVIC**: If the minister talks to local government professionals, he will find out that CEOs are under attack from the sector like never before. Issues are going on out there. CEOs across the sector are very concerned.

**The ACTING SPEAKER**: Member for Carine, this is not an issue for debate. I refer to standing order 179.

**Mr A. KRSTICEVIC**: It is about remedial action of councillors —

**The ACTING SPEAKER**: Ask your question, member for Carine.

**Mr A. KRSTICEVIC**: What remedial action can be taken through this bill against councillors who harass, abuse, intimidate, berate or do any other negative action towards CEOs or elected members? That is a serious concern. There have been lots of examples of it in recent history.

**The ACTING SPEAKER**: That is your question, member for Carine.

**Mr A. KRSTICEVIC**: Could the minister explain that to me?

**Mr D.A. TEMPLEMAN**: Again, the premise of the bill is to address issues that are ultimately affecting a function of the council. If that function of the council includes some matters that impede elected members or officers from doing their job, that is a consideration of the bill. Essentially, we need to remember that other mechanisms are available to CEOs and others in a workplace-related matter. There are, unfortunately, some examples in which restraining orders may be put in place. I am not sure whether there are any current ones, but I understand that may be the case. There are those mechanisms.

Remember that Local Government Professionals Australia WA supports this bill, aside from those concerns that the member for Carine and it have raised. Those matters will be ongoing as part of the discussions in the review of the act as we go forward. Hopefully, they might be clarified by the roles and responsibilities aspects of the Local Government Act. If someone contravenes or breaches the Occupational Safety and Health Act, for example, there are implications and a process to go through. WorkSafe has a role. There are a couple of examples that I am aware of in which that that action has been carried out. I understand that it is an issue. Bear in mind, on the other hand, that a number of members, including Liberal members, highlighted that a lot of their concerns relate to the CEOs. We have to balance this out and make sure that there is clarity with how one can operate, be they a CEO or an elected member. The intent of this bill before us relates to addressing the issues around an individual councillor.

**Mr A. KRSTICEVIC**: The minister mentioned remedial action training. When it has identified that certain training will be required for certain councillors, who will determine the right provider for that training and how will that be determined? The reason I ask that is that people can go online.

**The ACTING SPEAKER**: That is your question. That is good.

**Mr A. KRSTICEVIC**: People can do a five-minute course or go to a very expensive area. At the end of the day, who will determine whether that training has been effective and the person has learned from that training and changed their behaviours? There are plenty of examples in which people have been to counselling and training and engaged in numerous other processes and have not changed anything at the end of the day.

**Mr D.A. TEMPLEMAN**: All of that is dependent on the time, the place and the circumstances in which that occurs and the appropriate response. If it is through a remedial action that includes training, it will depend on the type and duration of the training and their expertise. The minister of the day would obviously rely on advice from the department to inform them of the appropriateness of that action. As I said, some of that training may be able to be provided through reciprocal arrangements that may exist between councils and/or elements of the sector. It really depends on the circumstances. As minister, and, of course, as would any future minister, I would seek appropriate advice from the department on what needs to be tailored to address the issues that were identified as being in need of remediation.

**The ACTING SPEAKER (Ms J.M. Freeman)**: Minister, can I just make you aware that if the question is persistent, tedious repetition, or has been asked by another member, you also have the right not to answer.

**Mr A. KRSTICEVIC**: Minister, I know that nobody has asked this question yet.

**The ACTING SPEAKER**: Make it quick.

**Mr A. KRSTICEVIC**: All my questions are pretty quick; I never use up my five minutes!

**The ACTING SPEAKER**: Come on.

**Mr A. KRSTICEVIC**: The Acting Speaker should be happy with that!

Can a council member appeal a decision for remedial action?

**The ACTING SPEAKER**: That has been asked.

**Mr A. KRSTICEVIC**: Was it? I do not remember the answer.

**Mr D.A. TEMPLEMAN**: Ultimately, yes, they can through a judicial review process.

**Mr A. KRSTICEVIC**: When the minister says a judicial review, is he talking about the State Administrative Tribunal?

**Mr D.A. TEMPLEMAN**: No, the Supreme Court. If remedial action is proposed and a process of procedural fairness is exhausted and there is noncompliance in carrying out the required action, that will lead to a suspension notification, which has a process. Through that process, if a person is aggrieved, they may choose to take judicial action via the Supreme Court option, which was mentioned earlier.

**Mr A. KRSTICEVIC**: I assume that would be the same for a suspension because the minister said it goes from being a remedial action, and if that does not do it, then it becomes a suspension. Can a remedial action be challenged in the Supreme Court as well as a suspension?

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

**Mr A. KRSTICEVIC**: This clause also relates to advice from the department. Can the minister direct the department to investigate an individual councillor with a view towards suspension or remedial action; and, if so, would such a direction have to be published, and in what format?

**Mr D.A. TEMPLEMAN**: As the member is aware, for example in authorised inquiries, it is the determination of the department not the minister that an authorised inquiry must be carried out. Regarding the member's question, I will seek clarification.

**Mr A. Krsticevic**: You got excited for a second!

**Mr D.A. TEMPLEMAN**: I did! I thought I had a power that I did not know I had! I cannot direct the department. Section 8.3(3) of the Local Government Act states —

> The Minister may direct the Departmental CEO to authorise an inquiry under this section.

However, I cannot direct the outcome of that inquiry.

**Mr A. KRSTICEVIC**: The minister can direct the CEO of the department to undertake an inquiry. If he uses that power, will that information be made public or published anywhere to show that the minister has directed the CEO, or will it be a secret, undercover operation that nobody is allowed to know about?

**Mr D.A. TEMPLEMAN**: I am advised that there is no compulsion through the act for it to be published. However, it would be subject to the freedom-of-information process. I cannot see any reason I would want to hide it, as the member suggested. If the minister of the day decides that it is appropriate for an inquiry to be carried out, I would assume that the minister of the day would have reached that decision for a good reason and would be prepared to explain that in Parliament, publicly or otherwise.

**Mr A. KRSTICEVIC**: If someone who was under investigation by the department asked how the investigation started, would the department tell that councillor that the minister had initiated the action, or would they not be allowed to know that? At any stage, even at the end of the process, would it be publicly known that the minister had initiated the investigation? Again, we never know who the minister of the day might be. It may not be someone like the current minister; someone might want to use these powers inappropriately. What is the transparency and accountability of the process? At what stage would that be known, if at all?

**Mr D.A. TEMPLEMAN**: Because that line of inquiry by the member is not relevant to this bill—this bill does not address it—it is not appropriate for me to make comment in that context.

**Mr A. KRSTICEVIC**: When the minister says it is not relevant, he said that the department could look into someone on the direction of the minister —

**Mr D.A. Templeman**: I quoted from section 8.3(3) of the Local Government Act, not the bill.

**Mr A. KRSTICEVIC**: So from the act —

**Mr D.A. TEMPLEMAN**: I was quoting from the act, but the member's last question does not relate to this bill.

**Mr A. KRSTICEVIC**: It is not in the bill—okay.

I have a further question; proposed section 8.15E(3) states that the minister must be satisfied that the seriousness or duration —

*Point of Order*

**Mr W.J. JOHNSTON**: I am not quite sure what happened to the clock because I thought the member —

**Mr Z.R.F. KIRKUP**: Is this a point of order?

**Mr W.J. JOHNSTON**: Yes.

**Mr Z.R.F. KIRKUP**: What is the point of order?

**Mr W.J. JOHNSTON**: If you were not a dope, you would hear it. A member cannot speak twice. The member was already on his feet and had completed a question. He then went on to ask a second question and the clock started again. If the clock started again, that means he has spoken twice and he cannot speak twice in a row.

**The ACTING SPEAKER (Mr S.J. Price)**: Thank you, minister. You are correct in your point of order. Someone needs to speak briefly so that the member for Carine can get back up and get the call.

*Debate Resumed*

**Mr Z.R.F. KIRKUP**: Minister, I refer to proposed section 8.15L and dismissal by the Governor. I am keen to understand why the Governor was chosen to be able to dismiss a councillor.

**Mr D.A. TEMPLEMAN**: Because it is consistent with the current process when dealing with the dismissal of a full council.

**Mr A. KRSTICEVIC**: As I was saying before, proposed section 8.15E(3)(b) requires the minister to be satisfied that the seriousness or duration of the suspected failure or conduct requires intervention. Can the minister tell me what factors need to be considered with regard to seriousness and duration?

**Mr D.A. TEMPLEMAN**: It would depend upon the circumstances in which consideration of intervention is being made. They may be wide and varied. It really depends on the circumstances.

**Mr A. KRSTICEVIC**: There must be some experience in the department or some knowledge of the minister's in terms of what it means to be "serious"—what is "serious"? With regard to duration, what is the length of time? I understand the minister says that every circumstance is considered on its merits, but there needs to be a baseline to say what "serious" means and the sufficient duration. How do councillors know what "serious" is or is not? If it depends on the circumstances —

**Mr D.A. TEMPLEMAN**: I again ask the member to look at the parallel with regard to addressing and dealing with the council. There are a range of factors that ultimately inform the minister of the day that the trigger of the duration and seriousness of that intervention is required. The minister ultimately has to be satisfied that it is appropriate to intervene. There is a transparency element in this bill, as there is with regard to the current processes in terms of dealing with a local government. As the member will be well aware, that benchmark is still set very high and that is one of the reasons we have had only four dismissals of councils in the last 20 years, or since the 1995 act has been in place. Indeed, the mirroring, if you like, of the existing act and the consistencies that have been raised in terms of penalty times or periods of time have all been related back to the legislation that currently exists in relation to councils. These words are the same. There is nothing new here. There is nothing to hide. It is the same as is in the current act as it relates to issues dealing with the councils. I have to make this very clear to the member: the words are the same. Nothing has changed. The words have been taken and put there—the same. Nothing new. The minister of the day must of course still be satisfied that intervention is appropriate and that the words that are used for the suspension of a council are the same. The definition or the wording has not been arbitrarily changed in any way. It goes to the principle: because there are accountability aspects to this bill, as there are in the existing bill with regard to councils, there has to be a sense of satisfaction that intervention is appropriate. That is based upon whether or not that behaviour or conduct is impeding the ability of the local government to perform to the best of its capabilities. I am reassuring the member that there ain't nothing new here. I have not added new words. It is in the same flavour as the existing legislation as it addresses and deals with councils.

**Mr A. KRSTICEVIC**: I am asking these questions in all genuineness; I am not wasting the minister's time. Is that recommendation for seriousness and duration something that is given to the minister by the department? Does the CEO of the department give the minister a report to say that a matter is serious or is of significant duration? The reason I ask that is because if there are two or three ministers making that decision, when they are presented with the same circumstances they may make three or four different decisions. There is no consistency. Is there any standard or benchmark? How does it operate? I do not know how it operates and I want to make it clear for myself that, irrespective of who the minister of the day is, every circumstance will still be looked at in the same way, more or less.

**Mr D.A. TEMPLEMAN**: The minister of the day will ultimately be informed. There will be a process in which there is gathering of evidence and tests done to decide whether the evidence provides sufficient grounds for making a recommendation. Appropriate advice, including that of the State Solicitor, will be sought and that advice will be prepared for the minister's consideration. It is an age-old and important process, but it is ultimately a discretionary decision, given the nature of the advice prepared for the minister upon which to make a determination.

**Ms M.M. QUIRK**: From what the minister is saying, as I understand it, a minister will need to observe due process and natural justice in making these decisions. If he or she does not, it will be open to legal action such as a prerogative writ. What the member for Carine is saying is ill-informed in the sense that he is implying that a decision could be made by a minister without having the appropriate material and without due process and natural justice being extended. He is asking about the content of a decision when in fact he should be asking about the process. As the minister has already said, it needs to follow the age-old principles of natural justice. If a minister fails to do so, they will open themselves to proceedings such as a prerogative writ.

**Mr D.A. TEMPLEMAN**: I concur with what the member says.

**Mr A. KRSTICEVIC**: She explained it much better, but that is just my interpretation. Will the public be made aware of any suspensions or remedial action taken against council members? Will it be advertised if someone goes under remedial action? Is there a reporting requirement?

**Mr D.A. TEMPLEMAN**: The short answer is that the order is gazetted.

**Mr A. Krsticevic**: Will remedial action also be gazetted?

**Mr D.A. TEMPLEMAN**: There will be a gazettal of an order. The order, in terms of a remedial action, will be wording that will appear in a gazettal process, that is correct. That action would be specified in the order within the time specified in the order. Through the gazettal process, there is a process of making that order public, which is what I think the member is keen to know.

**Mr A. KRSTICEVIC**: Under proposed section 8.15J a council member must inform the CEO if charged with a disqualification offence. If the council member commits an offence and fails to advise the department that they have been charged with an offence, what is the penalty for failing to inform the CEO without delay for a disqualification offence? What are the possible outcomes and what will happen if the councillor is not convicted?

**Mr D.A. TEMPLEMAN**: The quick answer to that is that it is a default penalty under the act. If the council member does not notify the CEO, they will be committing an offence and the fine is up to $5 000. That is a general penalty under the act.

**Mr A. KRSTICEVIC**: Under proposed section 8.15K the minister may recommend that a council member be dismissed. This provides the minister with the power to recommend to the Governor that the council member be dismissed. The 21-day show-cause notice is part of this proposed section. Is this the best mechanism for dismissing a council member? Would it be more appropriate if this final decision rested with the State Administrative Tribunal?

**Mr D.A. TEMPLEMAN**: As the member would be aware, the SAT has limitations on its jurisdiction under the act. The elements in this bill include the discretionary capacity of the minister of the day. I remind the member again that built into this act are provisions of natural justice and processes that will ensure that natural justice prevails. For a dismissal, the transparent process will include the publishing of the reasons. That report will be public, which underpins the importance of the minister. The end product is a public process and the public report will be available. I highlight that the bar will be very high—just as it is currently for councils—and it will need to be reached before the minister can be satisfied to take a certain course of action.

**Mr A. KRSTICEVIC**: The explanatory memorandum states that the departmental CEO will be able to use any information as the basis for their advice to the minister. This seems to grant the departmental CEO with extraordinary discretion given that this is the most serious action that can be taken against a councillor.

**Ms M.M. Quirk** interjected.

**The ACTING SPEAKER**: Member for Girrawheen!

**Mr A. KRSTICEVIC**: The information sources that will be relied upon and confirmed—how will the minister know that those complaints are not vexatious complaints? Will the departmental CEO need to look at all information, or can they be selective, because this power gives them the opportunity to be selective if they so choose?

**Mr D.A. TEMPLEMAN**: The departmental CEO could base their advice on information from a number of sources, which is appropriate. Those sources may include reports, inquiries or recommendations or responses from a parliamentary inquiry, a department inquiry, an organisation such as WorkSafe, a finding or a recommendation or information provided by the Auditor General. There are a number of sources and it is important that the CEO has at their disposal a range of advice on which they can form an opinion. Remember that there will be a public disclosure process that will also inform the director general or the CEO's recommendation on a course of action.

**Ms M.M. QUIRK**: Just canvassing on that question by the member for Carine, would it be true to say that that provision under clause 15 states that the CEO is not limited in where they can get information from but that it goes without saying that the weight accorded to evidence will relate to its source, probative value and so on? It does not mean that two pieces of evidence will necessarily be given the same weight, but it is acting so as not to restrict the CEO in where they can source information.

**Mr D.A. TEMPLEMAN**: I concur with the member for Girrawheen in her comments.

**Mr A. KRSTICEVIC**: On that occasion the member for Girrawheen explained it much better than the minister, unlike the other occasion.

I understand that at the end of the day the minister will be under no obligation to follow the department's recommendation or the inquiry panel. What would happen if the minister chose to ignore the advice of the department or the inquiry panel and how would that be reported?

**Mr D.A. TEMPLEMAN**: If at the end of the day the minister decides not to take any action, no action will be taken.

**Mr A. KRSTICEVIC**: I understand that, but if it is determined in the report that action needs to be taken and the minister chooses not to take that action—because the minister has that discretion—how will that be reported? Will reasons be given? Will a report be made public that, for example, an inquiry panel has recommended dismissal but the minister has decided that no action needs to be taken at all? I am sure that will not happen but the minister will have the power to say, "I can ignore your advice. I don't need to do any of that. I can do whatever I like." In effect, the minister has the power to decide. If the minister wants to protect a particular councillor they can say, "That's my mate." Will there be a natural process to go through? Will a report need to be produced by the minister or a rationale for why the minister has gone against the advice of the inquiry panel? Will that need to be made public?

**Mr D.A. TEMPLEMAN**: I need to inform members that I will be adjourning the debate after this answer because I do not wish to keep people here who need to get home.

At the end of the day there are a range of scrutinies. If, after the process has been followed, the minister decides not to carry out or respond to the recommendation made by the CEO, remembering that the CEO makes

a recommendation only—that is important—there is no requirement for a report to be made. However, I expect that the fourth estate would be very interested in pursuing this and an effective and diligent opposition would also do that. An inquiry panel process that would ultimately lead to dismissal is very serious in its nature and would have been embarked upon in the first place only if the minister had determined through advice sought that that was an appropriate course of action.

We obviously will not vote on this clause now but I am happy to revisit this when we reconvene next Tuesday. I remind the member of his assertion earlier on this afternoon that this should not take too long. I am happy for it to continue, but I need to remind the member that I will expect to sit —

**Mr J.N. Carey** interjected.

**The ACTING SPEAKER (Mr S.J. Price)**: Member for Perth! Let the minister finish.

**Mr D.A. TEMPLEMAN**: The intention is that I would seek the opposition's assurance that we will conclude the consideration in detail before we rise next Tuesday night.

**Mr A. Krsticevic** interjected.

**Mr D.A. TEMPLEMAN**: The member's assertions are not always able to be relied upon. Because there is an amendment, we would not be able to deal with the third reading stage until Wednesday. If the member wants to prolong this on Tuesday, we will sit until the consideration in detail is determined.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.