

Earlier this month, the WA Supreme Court upheld an application made by the Town of Cambridge (Town) against Local Government Minister David Templeman (Minister), to prevent the Minister suspending the Town's Council.

Our firm acted for the Town of Cambridge.

This case sets legal precedent on the powers of the Minister and the entitlements and structure of a local government. Critically, this decision has significant policy implications for the Minister, the Department for which he is responsible and the State Government, as it seeks to reform the Local Government Act.

How far can a Minister go in seeking to control a local government and where are the brakes on his power?

Authorised Inquiry and Show Cause Notice

The Town of Cambridge has been subject to an ongoing Authorised Inquiry by Department of Local Government, Sport and Cultural Industries (DLGSC) since April 2018. The Town is one of many local governments to have been the subject of scrutiny by the current Minister, who has overseen the implementation of 12 inquiries in the first term of the McGowan government.

On 26 May 2020, the Minister issued the Town with a show cause notice (Notice) under s 8.15B of the Local Government Act 1995 (WA) (LG Act), giving notice of the Minister's intention to exercise the power in s 8.15(C) of the LG Act to suspend the Town's duly elected council and require all its members to undertake governance training in the responsibility and functions of a council.

The Notice was issued in the absence of any published report into the Authorised Inquiry, nor any other supporting documentation from the Department.

Legal Framework

The action brought in respect of section 8.15(c) was untested law.

Section 8.15(c) gives the Minister the power to suspend a council or require one or more of its members to undertake specified remedial action.

Before the power in s 8.15(c) is enlivened, the Minister must reach the conclusion that it is inappropriate for a council to act, or to continue to act, without intervention under the section, as the governing body of a local government.

The Town of Cambridge was the first WA council to injunct the Minister to prevent him from taking such an action. In order to win, the Town had to demonstrate unusually difficult grounds of review, including legal unreasonableness, in a very short timeframe before the Minister's decision to suspend was made.

Supreme Court Decision

Having established to the satisfaction of the Court that the Minister's intention to suspend the council would be disproportionate and, therefore, unreasonable, the Town was successful in its application for injunctive relief, resulting in the Court restraining the Minister from his proposed course of action. In reaching his decision, his Honour made it clear that the Minister's actions were without foundation, noting that none of the factors considered individually nor cumulatively were sufficient to sustain the Minister's conclusion and warrant intervention in the council:

"I am satisfied that the Minister's discretion to make an order under s.8.15C(2) has not been enlivened because the jurisdictional fact upon which the existence of the discretion depends is not capable of being established' [146]

We were engaged by the Town shortly after the announcement of the Authorised Inquiry. As noted in his Honour's decision, the Town had proactively written to the Department many times over a three-year period, to advise of the many governance, administrative and workplace reforms it had undertaken.

The Town's success in this case raises the prospect that other WA councils which have been subjected to authorised inquiries may wish to evaluate how they manage these inquiries. There are a number of potential scenarios arising from authorised inquiries, including Ministerial intervention. The outcome of this case encourages local governments to think strategically, and plan accordingly, should they become the subject of Department or Ministerial scrutiny. It is not a standard nor risk-free process.

We have a pre-eminent team of specialist lawyers, uniquely experienced in areas of public law, regulatory policy and local government in Western Australia. For further information regarding the matters raised in this alert, please contact Margie Tannock.

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