

Local Government (Townsville City Council—Suspension of Mayor) Amendment Regulation 2024

Explanatory notes for SL 2024 No. 249

made under the

Local Government Act 2009

General Outline

Short title

Local Government (Townsville City Council—Suspension of Mayor) Amendment Regulation 2024

Authorising law

Sections 122 and 270 of the *Local Government Act 2009*

Policy objectives and the reasons for them

Chapter 5, part 1 of the *Local Government Act 2009* (LGA) outlines the actions the Minister can take if it is in the public interest for the Minister to take remedial action under the part. Remedial action is defined to include action that is in the public interest taken under division 2A or 3 of chapter 5, part 1 of the LGA. This includes suspension or dismissal of a councillor under section 122 of the LGA.

Section 120 of the LGA provides for preconditions the Minister must meet if the Minister proposes to exercise a power under division 3 of chapter 5, part 1 (i.e., to take remedial action).

In a circumstance where the proposed exercise of power is to make a recommendation to suspend or dismiss a councillor under section 122 of the LGA, the Minister is required to give the councillor a notice of the proposal to make a recommendation to suspend or dismiss the councillor unless certain conditions are met, such as the Minister considering that giving notice is likely to defeat the purpose of the exercise of the power.

The notice must state a reasonable time within which the councillor may make submissions to the Minister about the proposal to exercise the power.

The Minister must have regard to all submissions that are made by the councillor within the time specified in the notice. If the Minister receives no submissions from the councillor within the time specified in the notice, or the submissions from the councillor do not contain reasonable grounds to persuade the Minister not to exercise the power, the Minister may exercise the power without further notice to the councillor.

Section 122 of the LGA provides for situations in which the Minister may recommend a councillor be suspended or dismissed, including if the Minister reasonably believes it is ‘otherwise in the public interest’ (section 122(1)(e) of the LGA).

Section 122(2)(b) provides that the Minister may recommend the councillor be suspended for a period that is no longer than the period stated in the notice provided to the councillor under section 120 of the LGA.

Section 122(3) of the LGA provides that the Governor in Council may give effect to the Minister’s recommendation under a regulation.

On 1 October 2024, under section 120 of the LGA, the former Minister for Housing, Local Government and Planning and former Minister for Public Works (the former Minister), provided to Councillor Troy Thompson written notice, under section 120 of the LGA, of the former Minister’s proposal to recommend to the Governor in Council that the councillor be suspended from office for a period of 12 months, considering it to be in the public interest to do so.

The notice stated that any submission Councillor Thompson wished to make in relation to the proposed action should be made by close of business on 21 October 2024.

Under section 122(2) of the LGA, the Minister recommended that the Governor in Council suspend Councillor Thompson with full pay, for a period of 12 months.

Achievement of policy objectives

The policy objective of the *Local Government (Townsville City Council—Suspension of Mayor) Amendment Regulation 2024* (the Regulation) is to give effect to the Minister’s recommendation that Councillor Thompson be suspended with full pay, for a period of 12 months.

The Regulation inserts a new section under chapter 8, part 1, division 3 of the *Local Government Regulation 2012* to provide that the nominated councillor, Troy Thompson, is suspended from office as the mayor of the Townsville City Council, with pay, for the period of one year starting on 22 November 2024.

The section expires on 22 November 2025.

Consistency with policy objectives of authorising laws

The Regulation is consistent with the policy objectives of the LGA.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The benefits of the Regulation are to give effect to the Minister’s recommendation that Councillor Thompson be suspended, based on her reasonable belief that it is in the public interest to do so.

There are no anticipated significant costs of implementation.

Consistency with fundamental legislative principles

The Regulation is generally consistent with the fundamental legislative principles (FLPs). Potential breaches of FLPs set out in the *Legislative Standards Act 1992* (LSA) are addressed below.

Sufficient regard to the rights and liberties of individuals

The FLPs include requiring that legislation has sufficient regard to rights and liberties of individuals (section 4(2)(a) of the LSA).

Human rights

The amendments limit the following human rights: taking part in public life (section 23 of the *Human Rights Act 2019* (HR Act)) and privacy and reputation (section 25 of the HR Act). These limitations are addressed in the Human Rights Certificate, which concludes the rights are limited only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Natural justice

Whether legislation has sufficient regard to rights and liberties of individuals also depends on whether the legislation is consistent with principles of natural justice (LSA, section 4(3)(b)).

The principles of natural justice are principles developed by the common law. The first principle requires that something should not be done to a person that will deprive the person of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present the person’s case to the decision-maker. The second principle is that the decision-maker must be unbiased. Third, the principles require procedural fairness, involving a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case.

Any potential breach of the FLPs is considered justified because Councillor Thompson was given notice of the proposal to exercise the power to recommend the councillor be suspended and an opportunity to provide submissions in response to the proposal, as per the process provided for in section 120 of the LGA.

Proportion and relevance and reasonableness and fairness in the treatment of individuals

Legislation should be reasonable and fair in its treatment of individuals and should not be discriminatory. Any consequences imposed by legislation should be reasonably proportionate and relevant to the actions to which the consequences apply.

Taking remedial action in the form of a suspension from office is in the public interest and is in accordance with the purpose of the LGA and the local government principles.

Section 3 of the LGA provides that the purpose of the LGA includes to provide for a system of local government in Queensland that is accountable, effective, efficient and sustainable.

Section 4 of the LGA provides that the local government principles include transparent and effective processes and decision-making in the public interest and democratic representation, social inclusion and meaningful community engagement and good governance of, and by, local government.

Finally, noting section 122(1)(e) of the LGA provides either for the suspension or dismissal of councillors if the Minister reasonably believes it is in the public interest, suspending Councillor Thompson, with pay, is a less restrictive way to take remedial action under the section.

Privacy and confidentiality rights

The right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues have generally been identified as relevant to consideration of whether legislation has sufficient regard to individual's rights and liberties.

The right to privacy and reputation (section 25 of the HR Act) is addressed in the Human Rights Certificate which concludes the right is limited only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Consultation

Councillor Thompson was provided with a notice under section 120 of the LGA.