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Local Government Update

A review of Local Government Law in Western Australia

Disqualification of Council Members through Non-Attendance at Council Meetings

Pursuant to section 2.25(4) of the Local Government Act 1995 (WA), a council member who is absent, without first obtaining leave of the council, throughout 3 consecutive ordinary meetings of the council is disqualified from continuing his or her membership of the council. In *Shire of Waroona v Fitzpatrick* [2007] WASAT 219, Western Australia's State Administrative Tribunal considered an appeal by a member who had been disqualified pursuant to section 2.25(4).

Background

The council member had been absent from three consecutive ordinary council meetings between February and April 2007 without seeking a leave of absence from the council, though on each occasion he had tendered his apologies.

The CEO of the Shire found himself bound to serve a notice on the council member given the mandatory provisions in section 2.27 of the Act. The council member then appealed against the disqualification to the State Administrative Tribunal.

Consideration by the Tribunal

The Tribunal noted that the absences by the council member were caused either by unforeseen circumstances or arose from overseas business commitments. The Tribunal also noted that although the council member did not seek a leave of absence, the minutes of the relevant council meetings recorded the council member's apologies.

In a letter to the Tribunal, the CEO of the Shire stated that the council member is:

"a Councillor of good standing and has represented the interest of the Shire locally and through much involvement at a regional level. It would be a loss for Council and Community for Councillor Fitzpatrick to be disqualified under these circumstances."

"...the object of section 2.25(4) is to impose an obligation on council members to attend meetings..."

The CEO also informed the Tribunal that apart from the possible loss of the council member there had been a further resignation, placing a further burden on remaining members.

The decision

In handing down its decision, the Tribunal reviewed the relevant provisions of the Act and, in the circumstances, held that the Tribunal had no discretion and was obliged to declare that the council member was disqualified.

The Tribunal noted that in the particular circumstances of this case, the outcome could cause considerable inconvenience to the Shire and was harsh on the council member. Furthermore, the Tribunal agreed with the council member's observation that a councillor would be disqualified where, having missed two consecutive previous meetings and some unavoidable event, such as sudden illness or a car accident, prevented attendance at the last minute of the third meeting then, given requirement that leave must be "first obtained", it would be too late for leave of absence to be granted at the third meeting.

The Tribunal also noted, however, that there was nothing in section 2.25 of the Act which requires the attendance of a council member at the meeting at which leave of absence for some future meeting is granted. Accordingly, the Tribunal considered that there would be nothing to prevent a council resolving to grant leave of absence to a council member in respect to the following meeting despite the absence of that council member at the time the motion was put and carried.

Conclusion

Although the Tribunal conceded that the object of section 2.25(4) is to impose an obligation on council members to attend meetings, the Tribunal was clearly concerned at effect of section 2.25 in the circumstances of this particular case. In view of those concerns, the Tribunal proposed to forward a copy of the decision to the Minister for Local Government, presumably with the understanding that its decision be considered and some thought given to importing a degree of flexibility into the Act.

Please contact Geoff Owen on 9383 3133 or gowen@mcleods.com.au if you have any queries regarding the issues raised in this article.

The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstance of each case.

