

Premier Baird isn't a magician, he has no secret powers to sack councils

David Shoebridge October 30, 2015

Legal advice obtained by The Greens makes it clear that neither the Premier nor the Minister for Local Government have secret powers to sack or suspend councils to force amalgamations. The independent barrister's advice confirms that the Local Government Act seriously constrains the ability of the government to undertake a political sacking or suspension of councils to appoint tame administrators that agree to amalgamations.

The advice draws a number of important conclusions:

[Legal advice](#) obtained by the Greens NSW

1. If a council stands firmly with its residents to oppose council amalgamation this forces the government to send proposals for amalgamations through a rigorous process that must involve the independent Boundaries Commission. Unlike IPART's Fit for the Future assessment, this process is governed by an established set of statutory criteria that are not rigged in favour of amalgamations.
2. There are clear remedies available to councils and councillors, such as injunctions and orders, if the government attempts to misuse the Local Government Act.
3. The IPART findings and report cannot be used as a substitute for the legislative process and inquiries required under the Local Government Act.
4. There is real legal doubt as to whether or not IPART had the legislative authority to conduct the investigation it did into local government.
5. If a council gives in to the Premier's bullying and resolves to 'voluntarily' amalgamate, the only legal effect of this is to prevent the amalgamation proposal being reviewed and commented on by the Boundaries Commission.

See further reporting in the Sydney Morning Herald below. When reading this it is important to note that the views of Leichhardt Mayor Darcy Byrne appear to be either uninformed or to have misunderstood the legal framework.



If a council was improperly sacked then there are two methods whereby the rights of the community and councillors could be vindicated and proceedings continued in court to reinstate the council. They are:

- A number of councils have already passed resolutions providing that legal proceedings are to be immediately commenced by the council to reinstate the council if it is sacked and an administrator appointed. If the new administrator seeks to discontinue these proceedings then individual councillors and community groups can seek their own advice on being joined to those proceedings and pressing the case, even if council does not.
- In a number of councils where this resolution (to legally challenge the appointment of an Administrator) has been agreed to, a rescission motion to overturn this decision has been put and defeated. Under the Local Government Act once a rescission motion has been lost this prevents the decision being reviewed or reconsidered by the council for a minimum period of three months. In such councils, even if the Administrator wanted to overturn the decision to prosecute the proceedings, the failed rescission motion would prevent this happening.

Greens MP and Local Government Spokesperson David Shoebridge said:

“IPART was not qualified, either in terms of its experience or in its legislative remit, to conduct the investigation it did into local government.

“The IPART process was an experience and ultimately futile dead end for the Baird Government. The findings of IPART cannot be used as a legal basis to move against any council, and it is quite astonishing the Premier has not realised this.

“This advice makes it clear the Minister can’t just dissolve or amalgamate councils at his whim. The NSW Constitution provides that the government cannot subvert the process that has been laid down by Parliament.

“The Baird government is trying to bully councils into ‘voluntary’ amalgamations because they know that the alternative is a long drawn out inquiry with the Boundary Commission.

“Many councils and councillors are feeling that the government has some secret power to force them to agree to so-called voluntary amalgamations or face the sack.

“What this shows is that the Premier isn’t a magician, he doesn’t have secret powers and the law severely limits what he can do to local councils,” Mr. Shoebridge said.

As reported by the Sydney Morning Herald:

According to NSW Greens MP David Shoebridge, the party has advice that councils could seek an injunction in the face of attempts to dismiss councils and install administrators as a

way of forcing amalgamations.

The Local Government Act gives the Minister wide powers to dismiss a council for the purposes of the administration of the act. But generally, councils have been dismissed because of infighting that renders them dysfunctional, serious financial problems, or because of corrupt conduct findings against councillors or senior officers.

The Greens' advice suggests that dismissing councils because they do not agree to an amalgamation could be an "excess of jurisdiction" by the Minister.

But Labor mayor of Leichhardt Darcy Byrne said while such a course was feasible, in practice the administrator, once appointed, would immediately suspend any legal action, undermining the ability of the council to fight amalgamations.

Cr Byrne has recommended Leichhardt begin discussions with neighbours Marrickville and Ashfield over a possible merger, rather than be forced into an amalgamation.

<http://davidshoebridge.org.au/2015/10/30/premier-baird-isnt-a-magician-he-has-no-secret-powers-to-sack-councils/>