

# LOCAL GOVERNMENT LEGISLATION AMENDMENT BILL 2014

## EXPLANATORY MEMORANDUM

### OVERVIEW OF THE BILL

The *Local Government Legislation Amendment Bill 2014* makes several legislative changes to the *Local Government Act 1995* (the Act) and a number of other pieces of legislation. These will contribute to the reduction of red tape.

The key amendments:

1. provide the Local Government Standards Panel with the discretionary power to dismiss frivolous, trivial or vexatious complaints;
2. provide for the withdrawal of complaints made to the Standards Panel;
3. remove the electoral offence relating to defamatory statements during elections from the *Local Government Act 1995*;
4. clarify aspects relating to elected member fees and allowances;
5. ensure consistency in provisions which limit the termination payments of local government Chief Executive Officers and officers to a maximum of one year's remuneration;
6. provide for the establishment of a regional subsidiary model for local governments and to make consequential amendments to other Acts;
7. make amendments that allow the Department of Health to exercise, or continue to exercise, power over Rottnest Island and Class A reserves by means of local laws made under the *Local Government Act 1995*; and
8. make other amendments, including to the local law making process at the request of the Joint Standing Committee on Delegated Legislation.

## CLAUSE NOTES

Contained below is a brief description of each clause contained in the *Local Government Legislation Amendment Bill 2014*.

### **Part 1 – Preliminary**

This Part contains the title and the relevant commencement provisions.

#### ***Clause 1 - Short title***

Clause 1 cites the short title of the Act.

#### ***Clause 2 - Commencement***

This clause provides that Part 1 and 2 will commence on the day on which the Act receives Royal Assent. The rest of the Act will commence on a day fixed by proclamation, and different days may be fixed for different provisions.

### **Part 2 — *Local Government Act 1995* amended**

This Part contains amendments to the *Local Government Act 1995*.

#### ***Clause 3 – Act amended***

This clause provides that the Bill amends the *Local Government Act 1995*.

#### ***Clause 4 – Section 1.4 amended***

Section 1.4 provides definitions used throughout the Act.

Clause 4 of the Bill inserts two new definitions into section 1.4 to clarify that the term ***regional local government*** means a regional local government established under section 3.61; and the term ***regional subsidiary*** has the meaning given in section 3.69 (see Clause 9 – Sections 3.69 to 3.72 inserted).

#### ***Clause 5 – Section 3.12 amended***

This clause inserts a new subsection after section 3.12(1) – Procedure for making local laws.

This amendment provides that a local law will not be invalidated if the local government has substantially complied with the procedure for making local laws.

The Joint Standing Committee on Delegated Legislation recommended the amendment to provide for flexibility in circumstances where there has been substantial compliance with the local law making procedure.

### **Clause 6 – Section 3.60 amended**

Section 3.60 restricts the capacity of local governments to form or acquire control of a corporate body except where the body is a regional local government or regulations allow a local government to do so.

Clause 6 of the Bill amends section 3.60 to include a regional subsidiary in the exception to this restriction.

### **Clause 7 – Part 3 Division 4 heading amended**

Clause 7 of the Bill amends the heading to Part 3 Division 4 of the Act to include reference to regional subsidiaries.

### **Clause 8 – Section 3.68 amended**

Section 3.68 provides that a local government's ability to make arrangements to perform a function either for or jointly with another local government is not affected by the specific powers contained in the Act in respect of regional local governments.

Clause 8 of the Bill amends section 3.68 by deleting the words 'this Division' and inserting 'section 3.61 to 3.67'. This is a consequential amendment arising from the insertion of new powers within the Division relating to regional subsidiaries.

### **Clause 9 – Sections 3.69 to 3.72 inserted**

Clause 9 of the Bill inserts new sections 3.69 to 3.72 into the Act to provide local governments with powers related to regional subsidiaries.

### **Section 3.69 Regional subsidiaries**

This new section contains four subsections:

- New subsection (1) enables two or more local governments to form a subsidiary body (a **regional subsidiary**) under which they are to perform a service or carry out an activity jointly, with the approval of the Minister. The phrase 'provide a service or carry on an activity' is used in new section 3.69(1) to clarify that the regional subsidiary model is designed to assist local governments in delivering local government services and activities. It does not pertain to the broad range of higher level 'functions' which are more appropriately the remit of a local government governed by an elected council.
- New subsection (2) provides that if the Minister approves the formation of a regional subsidiary, the Minister must, by notice in the *Government Gazette*, declare the date the regional subsidiary is established and its name.

- New subsection (3) provides that a regional subsidiary is a body corporate and is to have a governing body consisting of members appointed in accordance with processes outlined in its charter (as approved by the Minister).
- New subsection (4) allows a governing body to include non-local government members. Enabling non-local government participants to be members of the governing body will ensure the subsidiary's board of management can include, if required, independent people with skills and expertise relevant to the activities of the regional subsidiary.

### **Section 3.70 Regional subsidiaries to have charter**

This new section contains three subsections:

- New subsection (1) provides that local governments proposing to form a regional subsidiary will be required to prepare a charter addressing the following:
  - a) the establishment, powers and duties of a regional subsidiary;
  - b) the process for selecting and appointing members of the governing body;
  - c) the qualifications that members of the governing body must have;
  - d) the administration of a regional subsidiary, including the membership and procedures of the governing body, the fees, allowances and expenses paid to, or reimbursed to, the members of the governing body;
  - e) the financial management, planning, auditing and reporting requirements of a regional subsidiary;
  - f) the process for amending the charter;
  - g) the winding up a regional subsidiary; and
  - h) any other matters required by regulations to be dealt with in the charter.
- New subsection (2) provides that local governments must forward the charter to the Minister when applying to form a regional subsidiary.
- New subsection (3) provides that a charter and an amendment to a charter is of no effect unless approved by the Minister.

### **Section 3.71 Regulations about regional subsidiaries**

This new section provides for the regulation-making powers in relation to regional subsidiaries. Specifically, regulations may provide for:

- a) the procedure for applying to the Minister for approval to form a regional subsidiary;

- b) the form and extent of consultation required to be undertaken when a regional subsidiary is proposed;
- c) specific provisions of the Act to be prescribed as applicable to regional subsidiaries; and
- d) other matters may be provided for or regulated as necessary.

### **Section 3.72 Other provisions and arrangements not affected**

This new section contains two subsections.

- New subsection (1) clarifies that the provisions contained within section 3.69 are in addition to and do not derogate from the provisions contained in the Division related to regional local governments.
- New subsection (2) is the equivalent of section 3.68 for regional local governments. It clarifies that a local government's ability to make arrangements to perform a service or carry on an activity either for or jointly with another local government, is not affected by the specific powers contained under new section 3.69.

### **Clause 10 – Section 4.88 amended**

This clause amends section 4.88 so that it will no longer be an offence under the *Local Government Act 1995* to print misleading, false or defamatory statements during an election period. The offence relating to the printing, publishing or distribution of deceptive material is retained.

This amendment has been requested by the Western Australian Electoral Commission.

Legal advice has been received that section 4.88 may violate the implied freedoms of political communication provided by the State and Federal Constitution. It is highly likely that the clause is invalid and would not survive a legal challenge.

It is also arguable that section 4.88 is no longer necessary, as defamation now falls under more contemporary legislation such as the *Defamation Act 2005*.

The heading is also amended.

### **Clause 11 – Section 5.49 amended**

Clause 11 of the Bill amends section 5.49(1) by including reference to a regional subsidiary in the definition of **eligible body**.

This allows a regional subsidiary to participate in the group self-insurance arrangement established by the Western Australian Local Government Association.

### **Clause 12 – Section 5.63 amended**

Section 5.63(1)(c) refers to 'an interest relating to a fee, reimbursement of an expense or an allowance to which sections 5.98, 5.98A, 5.99, 5.99A, 5.100 or 5.101(2) refers.'

Clause 12 of the Bill amends section 5.63(1)(c) to include reference to sections 5.100A (**Gifts to council members**) and 5.101A (**Regulations about payment of expenses**).

Both of these sections were added to the Act in 2009, but section 5.63(1)(c) was not updated at the time to include these sections in the list of interests that are not required to be disclosed. Both sections refer to gifts or payments made by the local government itself.

### **Clause 13 – Section 5.99A amended**

This clause amends section 5.99A by making minor technical changes and inserting a new subsection.

A local government will now only have the power to pay an annual meeting fee to eligible council members.

The new subsection provides that a council member is only eligible for an annual allowance under this section where:

- (a) if the allowance is paid in advance, it is reasonably likely that the council member will incur expenses of that type during the period to which the allowance relates;  
or
- (b) if the allowance is not paid in advance, the council member has actually incurred expenses of that type during the period to which the allowance relates.

The purpose of this amendment is to ensure that local governments will only pay annual meeting fees to council members in reasonable and justifiable circumstances. This is complemented by additional amendments set out in clause 14 below.

This change has been made at the request of the Salaries and Allowances Tribunal.

**Clause 14 – Section 5.102AA to 5.102AC inserted**

This clause inserts several new sections into Part 5 Division 8.

Section 5.102AA provides that the Salaries and Allowances Tribunal may make determinations that provide for proportional payments of allowances or fees in circumstances where a person only holds office for part of the year to which the payment relates.

Section 5.102AB provides that Regulations may be made relating to the recovery of advance payments of annual allowances or annual fees made to a person who subsequently ceases to hold office during the period to which the payment relates.

Section 5.102AC provides that Part 5 Division 8 applies to regional local governments and is to be taken as having always applied in that manner.

The primary purpose of this amendment is to provide further clarity to the powers of the Salaries and Allowances Tribunal to regulate the payment of elected member fees and allowances by local governments.

It is intended that this will ensure that elected member fees and allowances are paid by local governments in a reasonable manner and recovered from elected members where appropriate.

The amendment is also designed to remove any ambiguity as to whether Part 5 Division 8 of the Act applies to regional local governments.

**Clause 15 – Section 5.110A inserted**

This clause inserts a new section into Part 5 Division 9 which deals with the conduct of certain officials.

New section 5.110A provides that a person who makes a complaint to the Local Government Standards Panel can withdraw the complaint at any time prior to the Panel concluding its investigation under section 5.110 of the Act.

New section 5.110A also provides for the following:

- a withdrawal of a complaint must be in writing and must be sent to the appointed member of the primary standards panel;
- if the complaint is withdrawn, a written acknowledgement must be sent to the person withdrawing the complaint and the council member to whom the complaint relates;
- the withdrawal of a complaint will release the panel from any legislative obligation to investigate the matter to which the complaint relates;

- the withdrawal of a complaint will prevent the making of any further complaint regarding the same subject, unless the appointed member is satisfied that it is appropriate to do so;
- where a complaint has been withdrawn, the appointed member has the discretion to have the standards panel deal with the complaint as if it had not been withdrawn; and
- in the event that the panel continues to deal with a withdrawn complaint, the appointed member must notify the parties and the complaints officer.

Prior to this amendment the panel was required to fully investigate a complaint even when it had been subsequently withdrawn. This led to significant strain on the panel's resources and time.

As a result of the amendment, the panel will now have the discretion not to investigate complaints after they have been withdrawn. The panel will retain the discretion to investigate such complaints if circumstances deem it appropriate.

**Clause 16 – Section 5.110 amended**

This clause amends section 5.110 so that:

- (a) the Local Government Standards Panel may refuse to deal with a complaint if the Panel is satisfied that the complaint is frivolous, trivial, vexatious, misconceived or without substance; and
- (b) if the Local Government Standards Panel refuses to deal with a complaint, it must give notice of its reasons for doing so.

Prior to this amendment, the Local Government Standards Panel was required to fully investigate complaints even where it was subsequently determined that the complaint was not genuine. The purpose of this amendment is to provide the Standards Panel with increased discretion regarding the matters that it chooses to investigate.

**Clause 17 – Section 6.23 amended**

This clause inserts a new subsection into section 6.23 which deals with the powers of receivers with respect to regional local governments.

New subsection (4) provides for receivers to have the same powers with regards regional subsidiaries as currently exist for regional local governments under section 6.23(3).

Clauses 18 to 22 deal with infringement notices issued under the *Local Government Act 1995* for offences under regulations or local laws.



The effect of the amendments made by clauses 18 to 22 are so that the person who issues the infringement notice is not also the person to whom the payment is made, the person who may withdraw the notice or the person who may extend the time for payment.

An infringement notice may be issued by an authorised person but the CEO of the local government is to receive payment, withdraw the notice or extend the time for payment.

**Clause 18 – Section 9.15 amended**

Clause 18 amends the definition of **authorised person** used in Subdivision 2 – Infringement notices.

Section 9.15 of the Act defines an authorised person to be a person appointed under 9.10(1) by the local government to be an authorised person for the purposes of the giving of infringement notices.

**Clause 19 – Section 9.17 amended**

Section 9.17 provides for the content of an infringement notice.

This clause replaces ‘an authorised person’ with ‘the CEO of the local government’ in section 9.17(1)(b) and amends 9.17(1)(c) so that ‘authorised person’ is removed.

**Clause 20 – Section 9.19 amended**

Section 9.19 provides for an extension of time to be allowed on the payment of a modified penalty.

This clause replaces ‘An authorised person’ with ‘the CEO of a local government’ in section 9.19.

**Clause 21 – Section 9.20 amended**

Section 9.20 provides for the withdrawal of an infringement notice.

This clause replaces ‘an authorised person’ with ‘the CEO of the local government’.

**Clause 22 - Section 9.23 deleted**

Section 9.23 provides that a person who is authorised to give infringement notices under section 9.16 is not eligible to be an authorised person for the purposes of Sections 9.17, 9.19 or 9.20.

This clause deletes section 9.23 as this is now provided for by the amended sections.

### **Clause 23 – Schedule 2.1 clause 11 amended**

This clause amends Schedule 2.1 clause 11 by inserting a new subclause.

The amendment provides for the maximum amount of compensation that may be paid to local government employees who have their contract of employment terminated or varied as the result of an order under Schedule 2.1 of the Act and aligns this with the existing termination provisions in the Act.

As a result of the amendment, an employee to which clause 11 applies will be entitled to the following amounts:

- (a) where the employee's employment is governed by a written contract in accordance with section 5.39 and this employment is terminated - the lesser of the value of one year's remuneration under the contract or the value of the remainder of the contract;
- (b) in any other case where an employee is terminated - the value of the person's final annual remuneration as calculated in accordance with regulation 19A of the *Local Government (Administration) Regulations 1996*;
- (c) in the case where a person's contract of employment is varied – the lesser of the amount that the person would have been entitled to if the person's contract of employment had been terminated before the expiry date; or
- (d) the value of the person's final annual remuneration for the year ending on the date of the variation, calculated in accordance with regulation 19A of the *Local Government (Administration) Regulations 1996* as if the person's contract of employment had terminated on that date.

This clause also provides that the total value of compensation required to be made to a person includes all amounts the person is entitled to as an employee of the local government.

Combined with the existing provisions in the Act and the *Local Government (Administration) Regulations 1996*, this amendment will ensure that termination payment provisions are consistently applied under the Act.

### **Clause 24 – Schedule 2.1 clause 12 inserted**

This clause inserts new clause 12 - Registration of documents.

The new clause has been included to simplify the process for the transfer of property from one local government to another, where Governor's orders have been made dealing with such issues.

The request for the inclusion of the clause was made by the Department of Lands and is of a procedural matter.

The new clause provides for the meaning of a **relevant official** and that a relevant official is to record and register documents as necessary to show the effect of the order.

### **Clause 25 – Schedule 9.3 Division 3 inserted**

This clause will amend Schedule 9.3 by inserting a new Division.

Division 3 provides for transitional matters relating to the implementation of the Bill and consists of four new sections (sections 45 – 48):

- New section 45 provides the definition of '**amending Act**' for the purposes of this Division. This is the *Local Government Legislation Amendment Act 2014*.
- New section 46 provides that sections 5.110A and 5.110 of the Act will apply to any complaint to the standards panel whether made before or after clause 15 of the Bill comes into operation.
- New section 47 provides that:
  - (a) an infringement notice given under section 9.16 before clause 19 of the Bill comes into operation, is not invalid just because it did not state who the authorised persons receiving the payment of the modified payments were;
  - (b) any extension of time to pay given under section 9.19 before clause 20 of the Bill comes into operation is to be taken as having been given by the CEO of the relevant local government; and
  - (c) any withdrawal of an infringement notice made before clause 21 of the Bill comes into operation is to be taken as been done by the CEO of the relevant local government.
- New section 48 provides that Schedule 2.1 clause 11(5A) and (5B) apply to any termination or variation of a contract of employment whether the contract was entered into before or after clause 23 of the Bill comes into operation.

The purpose of these amendments is to ensure that the legislative changes will apply to the sector in a uniform manner, irrespective of whether a particular event occurred prior to the commencement of the Bill or not.

## **Part 3 – Amendments to other Acts in relation to local government powers**

This Part contains amendments required to other pieces of legislation.

Part 3 makes amendments to the *Land Administration Act 1997* and the *Rottnest Island Authority Act 1987*. Both Acts are being amended to give the Executive Director, Public Health the ability to make local laws under the *Local Government Act 1995* over Rottnest Island and Class A reserves in relation to public health matters.

Such laws will override local laws made by a local government to the extent of any conflict or inconsistency.

The agencies responsible for these pieces of legislation and the Department of Health have been consulted and support this approach.

## **Division 1 – *Land Administration Act 1997* amended**

### ***Clause 26 – Act amended***

This clause provides that the Bill amends the *Land Administration Act 1997* (the Lands Act).

### ***Clause 27 – Section 53A inserted***

Clause 27 of the Bill inserts new section 53A into the Lands Act. The purpose of this amendment is to allow the Executive Director, Public Health and all persons authorised by him to exercise and perform all or any of the powers and duties of a local government over designated land, being Class A reserves, under the Lands Act. To enable this to occur, new section 53A contains five new subsections:

New subsection (1) provides that the meaning of the ***Executive Director, Public Health*** has the meaning given in the *Health Act 1911* and explains that ***public health*** means the health of individuals in the context of the wider community and the combination of safeguards, policies and programs to promote and improve the health of individuals and their communities.

New subsection (2) provides that for the purposes of protecting, promoting and improving public health in relation to any Class A reserve, the Executive Director has all the power and authority of a local government under the *Local Government Act 1995*.

New subsection (3) provides that the Executive Director's powers will include the power to make and enforce local laws under the *Local Government Act 1995*.

New subsection (4) provides that prior to the making of a local law, the Executive Director must consult with the managing body of the reserve, or if there is no management body, the Minister; and to consider any advice provided. When making a local law the Executive Director is to have it published in the *Government Gazette* and inform the public of the purpose and effect of the local law. This subsection also provides that the local law comes into effect 14 days after being published and that the Executive Director can repeal local laws.

New subsection (5) provides that if there is a conflict or inconsistency between a local law made by the Executive Director and one made by a local government under the *Local Government Act 1995* or any other Act, the local law made by the

Executive Director, Public Health will prevail to the extent of the conflict or inconsistency.

## **Division 2 – Rottnest Island Authority Act 1987 amended**

### **Clause 28 – Act amended**

This clause provides that the Bill amends the *Rottnest Island Authority Act 1987* (the Rottnest Act).

### **Clause 29 – Section 45 replaced**

Clause 29 of the Bill deletes section 45 of the Rottnest Act and replaces it with a new section. The purpose of this amendment is to allow the Executive Director, Public Health and all persons authorised by him to exercise and perform all or any of the powers and duties of a local government over land designated under the Rottnest Act. To enable this to occur, new section 45 contains five new subsections:

New subsection (1) provides that the meaning of the **Executive Director, Public Health** has the meaning given in the *Health Act 1911* and explains that **public health** means the health of individuals in the context of the wider community and the combination of safeguards, policies and programs to promote and improve the health of individuals and their communities.

New subsection (2) provides that for the purposes of protecting, promoting and improving public health in relation to Rottnest Island, the Executive Director has all the power and authority of a local government under the *Local Government Act 1995*.

New subsection (3) provides that the Executive Director's powers will include the power to make and enforce local laws under the *Local Government Act 1995*.

New subsection (4) provides that prior to the making of a local law, the Executive Director must consult with the Rottnest Island Authority; and must consider any advice provided. When making a local law the Executive Director is to have it published in the *Government Gazette* and inform the public of the purpose and effect of the local law. This subsection also provides that the local law comes into effect 14 days after being published and that the Executive Director can repeal local laws.

New subsection (5) provides that if there is a conflict or inconsistency between a local law made by the Executive Director and one made by a local government under the *Local Government Act 1995* or any other Act, the local law made by the Executive Director, Public Health will prevail to the extent of the conflict or inconsistency.

## **Part 4 – Amendments to other Acts in relation to regional subsidiaries**

This Part contains a list of the consequential amendments required to other pieces of legislation in relation to regional subsidiaries.

The Bill provides for 33 other Acts to be amended so that regional subsidiaries are treated by those Acts in the same way as local governments and regional local governments are currently.

### **Division 1 – *Biosecurity and Agriculture Management Act 2007* amended**

#### ***Clause 30 – Act amended***

This Division amends the *Biosecurity and Agriculture Management Act 2007*.

#### ***Clause 31 – Section 6 amended***

Clause 31 of the Bill amends the definition of **public authority** in section 6 of the *Biosecurity and Agriculture Management Act 2007* to include regional subsidiaries in paragraph (d).

This amendment allows regional subsidiaries to assist in the control of declared pests and to assist the Agriculture Authority with various matters.

### **Division 2 – *Building Act 2011* amended**

#### ***Clause 32 – Act amended***

This Division amends the *Building Act 2011*.

#### ***Clause 33 – Section 125 amended***

Section 125 provides the Minister administering the Building Act the power to delegate any power or duty of the Minister under section 124(2)(a) or (b) of the Building Act to a public body or an office holder in a public body.

Clause 33 of the Bill amends section 125(2) to provide that a regional subsidiary does not constitute a **public body** for the purposes of that section.

This amendment does not allow the delegation of power to regional subsidiaries.

### **Division 3 – *Building Services (Registration) Act 2011* amended**

#### **Clause 34 – Act amended**

This Division amends the *Building Services (Registration) Act 2011*.

#### **Clause 35 – Section 3 amended**

Clause 35 of the Bill amends the definition of **public authority** in section 3 of the *Building Services (Registration) Act 2011* to include regional subsidiaries in paragraph (c), together with local governments and regional local governments.

This amendment excludes regional subsidiaries from the prohibition against advertising or carrying out prescribed building services without being registered.

### **Division 4 – *Business Names (Commonwealth Powers) Act 2012* amended**

#### **Clause 36 – Act amended**

This Division amends the *Business Names (Commonwealth Powers) Act 2012*.

#### **Clause 37 – Section 3 amended**

Clause 37 of the Bill amends the definition of **government body** in section 3 of the *Business Names (Commonwealth Powers) Act 2012* to include regional subsidiaries in paragraph (b).

This amendment aligns regional subsidiaries with a local government and a regional local government with regards business names and exemptions from certain restrictions under this Act.

### **Division 5 – *Child Care Services Act 2007* amended**

#### **Clause 38 – Act amended**

This Division amends the *Child Care Services Act 2007*.

#### **Clause 39 – Section 3 amended**

Clause 39 of the Bill amends the definition of **public authority** in section 3 of the *Child Care Services Act 2007* to include regional subsidiaries in paragraph (c).

This amendment applies to regional subsidiaries with regards to the licence application processes and administration of child care services.

## **Division 6 – *Children and Community Services Act 2004* amended**

### **Clause 40 – Act amended**

This Division amends the *Children and Community Services Act 2004*.

### **Clause 41 – Section 3 amended**

Clause 41 of the Bill amends the definition of **public authority** in section 3 of the *Children and Community Services Act 2004* to include regional subsidiaries in paragraph (c).

This amendment provides that regional subsidiaries are able to assist in matters concerning the wellbeing of children, other individuals, families and communities.

## **Division 7 – *Civil Judgements Enforcement Act 2004* amended**

### **Clause 42 – Act amended**

This Division amends the *Civil Judgements Enforcement Act 2004*.

### **Clause 43 – Section 63 amended**

Section 63 makes provisions in relation to determining a judgement debtor's interest in property.

Clause 43 of the Bill amends the definition of **public authority** in section 63(1) to include regional subsidiaries.

### **Clause 44 – Section 107 amended**

Section 107 provides for the appointment of bailiffs.

Clause 44 of the Bill amends section 107(2)(b) to enable a natural person employed by a regional subsidiary, with the consent of their employer, to be appointed as a bailiff.

## **Division 8 – *Civil Liability Act 2002* amended**

### **Clause 45 – Act amended**

This Division amends the *Civil Liability Act 2002*.



### **Clause 46 – Section 5U amended**

Section 5U provides for the meaning of terms within Part 1C of the *Civil Liability Act 2002*, which relates to liability relating to a public function.

Clause 46 of the Bill amends the definition of **public body or officer** in section 5U to include regional subsidiaries in paragraph (f).

This amendment provides that a regional subsidiary may have liability relating to a public function (functions exercised by the public body or officer are determined by reference to the broad range of its activities).

### **Division 9 – Commissioner for Children and Young People Act 2006 amended**

#### **Clause 47 – Act amended**

This Division amends the *Commissioner for Children and Young People Act 2006*.

#### **Clause 48 – Section 5 amended**

Clause 48 of the Bill amends the definition of **government agency** in section 5 of the *Commissioner for Children and Young People Act 2006* to include regional subsidiaries in paragraph (c).

This amendment provides that the Commissioner for Children and Young People may monitor and/or request information from regional subsidiaries when carrying out their functions.

### **Division 10 – Community Protection (Offender Reporting) Act 2004 amended**

#### **Clause 49 – Act amended**

This Division amends the *Community Protection (Offender Reporting) Act 2004*.

#### **Clause 50 – Section 3 amended**

Clause 50 of the Bill amends the definition of **public authority** in section 3 of the *Community Protection (Offender Reporting) Act 2004* to include regional subsidiaries in paragraph (b).

This amendment provides that a regional subsidiary is to provide the Commissioner of Police (under the *Police Act 1892*) with certain information, if directed to do so.

## **Division 11 – *Corruption, Crime and Misconduct Act 2003* amended**

### **Clause 51 – Act amended**

This Division amends the *Corruption, Crime and Misconduct Act 2003*.

### **Clause 52 – Section 3 amended**

Clause 52 of the Bill amends the definitions of **minor misconduct** and **public authority** in section 3 of the *Corruption, Crime and Misconduct Act 2003* to include regional subsidiaries.

This amendment provides that the Corruption and Crime Commission may investigate regional subsidiaries.

## **Division 12 – *The Criminal Code* amended**

### **Clause 53 – Act amended**

This Division amends *The Criminal Code*.

### **Clause 54 – Section 446 amended**

Section 446 provides for the cost of cleaning graffiti.

Clause 54 of the Bill amends the definition of **public property** in section 446(1) to include a regional subsidiary in paragraph (d).

Public property means property owned by, vested in or under the control or management of a regional subsidiary. This amendment allows the Court to order that a regional subsidiary is compensated for removing graffiti.

## **Division 13 – *Duties Act 2008* amended**

### **Clause 55 – Act amended**

This Division amends the *Duties Act 2008*.

### **Clause 56 – Section 3 amended**

Clause 56 of the Bill amends the definition of **local government** in section 3 of the *Duties Act 2008* to include regional subsidiaries in paragraph (b).

This amendment exempts regional subsidiaries from the payment of duty.

## **Division 14 – *Emergency Management Act 2005* amended**

### **Clause 57 – Act amended**

This Division amends the *Emergency Management Act 2005*.

### **Clause 58 – Section 3 amended**

Clause 58 of the Bill amends the definition of **public authority** in section 3 of the *Emergency Management Act 2005* to include regional subsidiaries in paragraph (c).

This amendment allows regional subsidiaries to be prescribed to carry out certain functions related to emergency management.

## **Division 15 – *Fines, Penalties and Infringement Notices Enforcement Act 1994* amended**

### **Clause 59 – Act amended**

This Division amends the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

### **Clause 60 – Section 70 amended**

Section 70 relates to determining an offender's interest in property.

Clause 60 of the Bill amends the definition of **public authority** in section 70(1) to include regional subsidiaries.

This amendment allows the Sheriff to request information in respect of property from a regional subsidiary.

## **Division 16 – *Freedom of Information Act 1992* amended**

### **Clause 61 – Act amended**

This Division amends the *Freedom of Information Act 1992*.

### **Clause 62 – Glossary amended**

Clause 62(1) of the Bill amends the definition of **principal officer** in the Glossary to provide that a principal officer for the purposes of that Act, in relation to a regional subsidiary, is taken to be the person who manages the affairs of the regional subsidiary.

Clause 62(2) of the Bill amends the definition of **public body or office** to include regional subsidiaries in paragraph (d).

This amendment provides for regional subsidiaries to provide for public access to documents in compliance with the Freedom of Information Act.

#### **Division 17 – *Industrial Relations Act 1979* amended**

##### ***Clause 63 – Act amended***

This Division amends the *Industrial Relations Act 1979*.

##### ***Clause 64 – Section 7 amended***

Clause 64 of the Bill amends section 7 to provide that unless a contrary intention appears in the Act, a regional subsidiary does not constitute a **public authority** for the purposes of that Act.

#### **Division 18 – *Interpretation Act 1984* amended**

##### ***Clause 65 – Act amended***

This Division amends the *Interpretation Act 1984*.

##### ***Clause 66 – Section 5 amended***

Section 5 provides for the meaning of terms within the *Interpretation Act 1984* and any other written law.

Clause 66 of the Bill inserts a definition of **regional subsidiary** into section 5 to provide that where the term ‘regional subsidiary’ is used in any written law, unless a contrary intention appears, it means a regional subsidiary established under the *Local Government Act 1995*.

#### **Division 19 – *Liquor Control Act 1988* amended**

##### ***Clause 67 – Act amended***

This Division amends the *Liquor Control Act 1988*.

##### ***Clause 68 – Section 37 amended***

Section 37 provides pre-requisites for the granting of a liquor licence, including any conditions which may be placed on a licence.

Clause 68 of the Bill amends the definition of **public body** in section 37 to include regional subsidiaries in paragraph (c).

This amendment will enable a regional subsidiary, if appropriate, to apply for a licence under the Liquor Control Act.

#### **Division 20 – Lotteries Commission Act 1990 amended**

##### **Clause 69 – Act amended**

This Division amends the *Lotteries Commission Act 1990*.

##### **Clause 70 – Section 19 amended**

Section 19 provides for the terms used in Part 4 of the *Lotteries Commission Act 1990*, which relates to financial provisions.

Clause 70 of the Bill amends section 19 to include regional subsidiaries as an **eligible organisation**.

This amendment enables regional subsidiaries to receive grants and/or payments from the Commission.

#### **Division 21 – Magistrates Court (Civil Proceedings) Act 2004 amended**

##### **Clause 71 – Act amended**

This Division amends the *Magistrates Court (Civil Proceedings) Act 2004*.

##### **Clause 72 – Section 3 amended**

Clause 72 of the Bill amends the definition of **public authority** in section 3 of the *Magistrates Court (Civil Proceedings) Act 2004* to include regional subsidiaries in paragraph (c).

This amendment provides for a regional subsidiary to appear before the Court.

## **Division 22 — *Medicines and Poisons Act 2014* amended**

### **Clause 73 - Act amended**

This Division amends the *Medicines and Poisons Act 2014*.

### **Clause 74 - Section 95 amended**

Clause 74 of the Bill amends section 95(1)(c) of the *Medicines and Poisons Act 2014* to include a regional subsidiary.

This amendment provides for a regional subsidiary to be designated an investigator for the purposes of the Act

## **Division 23 — *Mental Health Act 2014* amended**

### **Clause 75 - Act amended**

This Division amends the *Mental Health Act 2014*.

### **Clause 76 - Section 572 amended**

Clause 76 of the Bill amends the definition of **State authority** in section 572(1) of the *Mental Health Act 2014* to include regional subsidiaries in paragraph (d).

This amendment provides for the Agency's CEO to disclose or request relevant information from regional subsidiaries. Relevant information may include the planning for, and evaluation of, mental health services and the implementation and evaluation of programs for the purpose of coordinating the care and support of people who have mental illness.

## **Division 24 – *Minerals Research Institute of Western Australia Act 2013* amended**

### **Clause 77 – Act amended**

This Division amends the *Minerals Research Institute of Western Australia Act 2013*.

### **Clause 78 – Section 11 amended**

Clause 78 of the Bill amends the definition of **public authority** in section 11 of the *Minerals Research Institute of Western Australia Act 2013* to include regional subsidiaries in paragraph (c).

This amendment provides for a regional subsidiary to assist the Minerals Research Institute with its functions which include the fostering and promoting of minerals research for the benefit of the State.

#### **Division 25 – *Parliamentary Commissioner Act 1971* amended**

##### **Clause 79 – Act amended**

This Division amends the *Parliamentary Commissioner Act 1971*.

##### **Clause 80 – Section 4A amended**

Section 4A provides for what constitutes an **authority** for the purposes of the *Parliamentary Commissioner Act 1971*.

Clause 80 of the Bill amends section 4A(1)(a) to include regional subsidiaries as an **authority**.

This amendment provides that a regional subsidiary may be subject to investigation by the Commissioner.

#### **Division 26 – *Pay-roll Tax Assessment Act 2002* amended**

##### **Clause 81 – Act amended**

This Division amends the *Pay-roll Tax Assessment Act 2002*.

##### **Clause 82 – Section 40 amended**

Section 40 relates to wages exempt from pay-roll tax.

Clause 82 of the Bill amends section 40(2)(g) to provide that wages paid or payable by a regional subsidiary during an assessment year are exempt from pay-roll tax.

#### **Division 27 – *Public Interest Disclosure Act 2003* amended**

##### **Clause 83 – Act amended**

This Division amends the *Public Interest Disclosure Act 2003*.

##### **Clause 84 – Section 3 amended**

Clause 84 of the Bill amends the definition of **public authority** in section 3 of the *Public Interest Disclosure Act 2003* to include regional subsidiaries in paragraph (d).

This amendment provides that a disclosure of public interest information can be made to, or in relation to, a regional subsidiary.

### **Division 28 – *Public Sector Management Act 1994* amended**

#### **Clause 85 – *Act amended***

This Division amends the *Public Sector Management Act 1994*.

#### **Clause 86 – *Section 102 amended***

Section 102 provides that public sector employees are not to be employed outside Government without permission from their employing authority.

Clause 86(1) of the Bill inserts a new subsection (1A) into section 102 to clarify that the phrase ***any local government or regional local government*** includes any regional subsidiary, and the phrase ***council of a local government or regional local government*** includes the governing body of a regional subsidiary.

Clause 86(2) of the Bill amends section 102(3) to include a reference to regulations made under section 3.69(4)(f) of the *Local Government Act 1995*. This has the effect that membership of the governing body of a regional subsidiary is not to be regarded as an office that is covered by the section 102 restriction.

#### **Clause 87 – *Schedule 1 amended***

Schedule 1 lists entities which are not considered organisations. This has the effect of removing those organisations from the ambit of the Act.

Clause 87 of the Bill inserts a new item into Schedule 1 to provide that a regional subsidiary, including a regional subsidiary governing body, is not an organisation.

### **Division 29 – *Road Traffic (Administration) Act 2008* amended**

#### **Clause 88 – *Act amended***

This Division amends the *Road Traffic (Administration) Act 2008*.

#### **Clause 89 – *Section 4 amended***

Clause 89 of the Bill amends the definition of ***public authority*** in section 4 to include regional subsidiaries in paragraph (c).



This amendment brings vehicles parked outside premises owned or occupied by a regional subsidiary, other than residential premises, within the ambit of the Road Traffic Act.

### **Division 30 – Stamp Act 1921 amended**

#### **Clause 90 – Act amended**

This Division amends the *Stamp Act 1921*.

#### **Clause 91 – Section 4 amended**

Clause 91 of the Bill amends the definition of **local government** in section 4 to provide that unless the contrary intention appears, it also means a reference to a regional local government or regional subsidiary.

This amendment exempts regional subsidiaries from the payment of duty.

### **Division 31 – State Records Act 2000 amended**

#### **Clause 92 – Act amended**

This Division amends the *State Records Act 2000*.

#### **Clause 93 – Schedule 1 amended**

Schedule 1 lists Government organisations, which has the effect of those organisations being bound by the relevant provisions of the Act.

Clause 93 of the Bill amends item 12 in Schedule 1 to include regional subsidiaries.

This amendment provides for regional subsidiaries to comply with the State Records Act in relation to the keeping of, control of and access to records.

### **Division 32 – Western Australia Land Authority Act 1992 amended**

#### **Clause 94 – Act amended**

This Division amends the *Western Australian Land Authority Act 1992*.

#### **Clause 95 – Section 16 amended**

Section 16 provides for the functions of the Western Australian Land Authority.

Clause 95 of the Bill amends section 16(1)(c) to provide for the Authority to be an agency through which regional subsidiaries may dispose of land in accordance with the *Local Government Act 1995*.

**Clause 96 – Section 17 amended**

Section 17 provides for the powers of the Western Australian Land Authority.

Clause 96 of the Bill amends section 17(5) which provides the meaning of terms within the section to include regional subsidiaries within the definition of **person**.

The effect of this amendment allows the Authority to enter into any contract or arrangement with a regional subsidiary.

**Division 33 – Western Australian Tourism Commission Act 1983 amended**

**Clause 97 – Act amended**

This Division amends the *Western Australian Tourism Commission Act 1983*.

**Clause 98 – Section 3 amended**

Section 3 provides for the meaning of terms within the *Western Australia Tourism Commission Act 1983*.

Clause 98 of the Bill amends the definition of **local government** in section 3 to include regional subsidiaries.

This amendment provides for the Commission to liaise with regional subsidiaries when performing any of its functions related to the promotion and support of tourism in Western Australia.