

STANDING COMMITTEE ON LEGISLATION

LOCAL GOVERNMENT AMENDMENT (REGIONAL SUBSIDIARIES) BILL 2010

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 17 AUGUST 2011**

SESSION ONE

Members

Hon Michael Mischin (Chairman)

Hon Sally Talbot (Deputy Chair)

Hon Donna Faragher

Hon Mia Davies

Hon Alison Xamon

Hearing commenced at 10.13 am

SCHEGGIA, MR WAYNE

Deputy CEO, Western Australian Local Government Association, sworn and examined:

BROWN, MR TONY

Executive Manager Governance and Strategy, Western Australian Local Government Association, sworn and examined:

The CHAIRMAN: If I could just give you an outline of what we propose: we have three sets of witnesses this morning and in order to save time and to assist with the process the committee proposes that we will hear from the witnesses representing the Western Australian Local Government Association first. Those witnesses representing the Forum of Regional Councils will give evidence second and the Shire of Cunderdin will give evidence third. This is a public hearing anyway, so you are quite entitled to come in and listen to the evidence of the preceding witnesses, but it might be helpful both to the committee and to yourselves if you do more than just have the option, that you actually do sit in and listen, because you may be asked to address the same issues and it may be that you agree with large slabs of the evidence that has been given that precedes you, and that might save time down the track. You also might have some comments to make about that evidence where you disagree with it and that we may not pick up on otherwise. I understand that there may be a representative from the Department of Local Government as well; is that right? Okay thanks. Again, if there is something that excites your attention, perhaps you could pass a message through to the clerks and we will hear further from you on that or consider whether to hear further from you on that.

On behalf of the committee I would like to welcome you all to this hearing. Before we begin, I will ask witnesses to take either an oath or an affirmation, but before we do that I will just introduce ourselves. My name is Michael Mischin and I am the Chair of the committee. To my left is Mr Alex Hickman, who is a legal adviser to the committee; to his left is Hon Sally Talbot, who is Deputy Chair of the committee; to her left is Hon Alison Xamon, committee member; to my right is Hon Donna Faragher; and to her right is Hon Mia Davies. If each of the witnesses could take an oath or affirmation and in doing so state your full name, your contact address and the capacity in which you appear before us for Hansard's records.

[Witnesses took the oath or affirmation].

The CHAIRMAN: You will have sighted and signed a document entitled "Information for Witnesses". Have you read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, when you quote from a document, please identify the document by its full title. Please be aware of the microphones. In fact, if one of the clerks could please fix up the microphones so that they are facing the right direction so they will pick up the witnesses' comments. But, could you be conscious of them and talk into them. Ensure that you do not cover them with papers or make any loud noises near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be

excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. The publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Would either of you like to make an opening statement to us?

Mr Scheggia: Perhaps, Chair, just briefly and not extensively. I think, firstly, we would like to acknowledge you, the Deputy Chair and the members of the committee and thank you for the opportunity to be here today to present to you our thoughts on the issues of your terms of reference. The Western Australian Local Government Association represents all of the local governments in the state of Western Australia; all councils are members of our organisation. We have consulted extensively with them over a long period of time about their thoughts on regional subsidiaries, the capacity for councils to share services and the mechanisms that are sought by them in order to facilitate the best ways of doing so. So, there has been a substantial local government contribution to the position that we have put forward in our submission for you. I think we should also formally acknowledge the establishment of the committee. We were supporters of the bill presented to the Parliament; we are also supporters of the formation of the committee to expand and examine what it is that the bill should incorporate. So, thank you for enabling this process to take place. Our case, I think, simply put is relatively straightforward. We support the inclusion of regional subsidiary provisions within the Local Government Act. We also certainly support the simplification of the current provisions within the act that deal with the establishment of regional councils. Can I make a point of clarification at this stage? When the term “regional council” is used it can be confused sometimes, because it is used not only to refer to regional councils in the formal structure of those entities, but in conversation “regional council” often refers to the geographic regionality of local governments. So, I want to make it clear that when we talk about regional councils in the context of our submission, we are talking about councils coming together to form a formal entity of the regional council.

[10.20 am]

The CHAIRMAN: One within the meaning of the Local Government Act?

Mr Scheggia: That is correct.

The CHAIRMAN: That is how we will be using the term as well.

Mr Scheggia: Okay. But in addition to those two things, we also support the inclusion of local government enterprises for dealings within the act, which are elaborated on in our submission. I refer you to a document we have provided to the secretariat and that we table here today, which is the full background on the establishment of local government enterprises.

The CHAIRMAN: Just by way of clarification, the committee’s brief is to report on the bill, not to descend into the policy behind the bill. In essence, we are not looking at whether or not regional subsidiaries are a good idea or a bad idea in principle. Our task is to look at the bill to see whether it gives effect to the policy underlying the bill, and that is reflected in the second reading speech and from the terms of the bill itself; whether the bill satisfactorily puts that policy into effect; and whether there are things that ought to be included in the bill or taken out of the bill or some tweaking done to the bill to properly give effect to that policy and proper principles underlying acts of Parliament. So, I ask you to be conscious of that, that we are not looking into a general review of local government or the Local Government Act or the other forms of local government cooperation. We are looking specifically at the bill and whether it gives effect to the intent behind it. In that regard we have extracted some of what we understand to be the policy behind the bill. Some of it is explicit in the second reading speech and other comments were made by Hon Max Trenorden, the private member who introduced the bill as a private member’s bill, and we have produced a document headed “Policy Statement”. Have you been provided with a copy of that? It consists of seven points. Have you seen that before now?

Mr Scheggia: I have not; no.

The CHAIRMAN: Perhaps a copy could be distributed to the other witnesses in the committee room. Just take a moment and have a look through those. I think much of it you would have found from the second reading speech anyway, but there is a bit of fine-tuning that has been done.

Mr Scheggia: Perhaps, Chairman, just to conclude those opening comments, we are vitally interested in certainly how you improve good local governance and how you enhance the capacity of councils to deliver on regional service delivery objectives, as are required of them, so I do not think that our submission is in any way inconsistent with the policy principles that you are espousing here. I think we can still have a quite informed and interesting discussion around what the options are for Parliament in considering how to take the bill forward in its current form. Can I ask whether the submission that we have made is taken as read; you do not actually require me to read it to you?

The CHAIRMAN: No, we do not require that; please do not. I do want to get out of here some time this year! No, it is very comprehensive and thank you very much for that, but there is no need to go through it. To a very large extent there is no need to speak to it. We do have some specific issues that we would like to explore, however. I should add that the policy statement that we have just provided you has been adopted by Hon Max Trenorden, so he agrees that that is what he intends to achieve by the bill. And, as I said, much of that is probably no surprise to you. You would have gleaned that from the second reading speech in any case. But is there anything you wish to add or expand upon that is in your written submission in the light of that refined policy statement? And bear in mind what I have said about us not focusing on the policy in the bill generally but simply whether the bill gives effect to that policy.

Mr Scheggia: I think, Chairman, we would be happy to respond to the issues and questions that the committee feels it wants to explore, and I think if other issues arise as a consequence of that discussion, I think it is good to go into them then.

The CHAIRMAN: What are your views on the policy statement itself?

Mr Scheggia: In terms of direct response to this document here, I think our view would be that a specific focus on the South Australian subsidiaries model is important in terms of what I understand Hon Max Trenorden's objectives to be in putting forward the bill. I do not think there is any dispute about that. I think from local government perspectives, the importance of embracing an opportunity with the passage of legislation within the Parliament to address what the needs of the sector are more broadly in relation to capacity to deliver regional services is also important. So, whilst I appreciate that having a discussion specifically around the subsidiaries model is important, I think it is also important that somewhere in this discussion it be acknowledged that there are other mechanisms that will empower local governments to deliver on regional services objectives that sit above and beyond specifically the regional subsidiaries provisions and then fill gaps that the regional subsidiaries model does not. That is important in terms of the capacity to provide for good local governance in regional areas in WA.

The CHAIRMAN: Leading on from that, to what extent does the bill reflect the South Australian model? Are you able to give us guidance on that?

Mr Brown: Thanks, Mr Chair. It does reflect the South Australian model and we are supportive of the bill. The bill is basically saying that local government should be able to form regional subsidiaries and then regulations will be prescribed, so we are supportive of the act. In respect to the regulations, we would then like to see that kept at a minimum, if you like, and that most of the functions of the subsidiary be in the charter. So, we are happy with the head of power. What is to go in regulations would be the detail, and if it is similar to South Australia, then that is good; that is where the detail is. But we would like to see that kept to a minimum and most of the activity of the regional subsidiary be in the charter.

The CHAIRMAN: The South Australian legislation seems to be quite expansive and goes into quite a bit of detail as to the model of a regional subsidiary and the governments that surround that subsidiary, who it is accountable to, how it deals with conflicts of interests and the like. Have you any comment to make about that in respect of the bill that is currently before us?

[10.30 am]

Mr Brown: We would prefer this: if there is a criticism of the South Australian bill, it is too prescriptive.

The CHAIRMAN: Why is that?

Mr Brown: The ability for local governments in the subsidiary needs to be determined by that community, so they just need to be given the ability to form one, then when they come up through their charter with what the purpose is, the accountability lies with the Minister for Local Government being able to then approve it; so there is an approval required from the minister. We think that is adequate for what is required.

The CHAIRMAN: Does it leave too much discretion with the minister? Or, another way of putting it, does it give him enough guidance to be able to know what the parameters ought to be for a regional subsidiary, and enough guidance also then to the local authorities to be able to say the minister ought to be focussing on these things and not on other things? Is there not a risk that the minister will reduce to regulations many of the prescriptions that are currently in South Australia or make them even more stringent?

Mr Brown: That it is a risk? I do not think there is a risk for the minister in respect of the accountability of the proposals, because the proposals require the local governments to do community consultation—with the charter—so there is the community input there. You will have community input and the council's input and, basically, the minister should have the safety that it has gone through that process. In respect of placing too much in regulation, in our submission we wanted to make sure that the regulations get consultation with the sector, because we are very keen that it has not been over-prescriptive.

The CHAIRMAN: You mentioned community consultation; where do you get that from in the bill?

Mr Brown: Not in the bill, but just in the process of my understanding with the subsidiary, there is consultation from a local government's perspective.

The CHAIRMAN: Should there be a prescription in the bill that there be community consultation before local governments form a regional subsidiary, or would that be too prescriptive?

Mr Brown: I think that is too prescriptive, because what we are trying to do is give local governments the autonomy to work out what services they require to be delivered on a regional basis. To me the regional subsidiary goes back to the individual local governments and what they require.

The CHAIRMAN: I will leave that for the moment and go to one other area and then I will throw it open for other members of the committee to ask questions before we move on. On the question of governance, should the accountability-in-governance provisions be included in regulation as well, or should some parameters be set by legislation; and what do you have to say about the issue of whether the governance provisions in the Local Government Act that ordinarily apply to regional councils and to local governments generally should apply to regional subsidiaries; and if not why not?

Mr Brown: The major criticism of why local governments have not formed a lot of formal regional local governments is because they are treated as a local government. We have a number of regional local governments in WA, but we have a vast number of voluntary regional organisation of councils. They are choosing that because they are finding the regional council bureaucracy too

much. It defeats the purpose of going to regional entities if they have to do all the bureaucracy of normal local government, so they have become voluntary regional councils which gives them no legal ability to do anything. When they come together to do services, a local government has to be the host council for managing that project legally with finance and all that sort of thing. This is why the regional subsidiary is so favoured by local governments because it has less bureaucracy and enables them to really take the benefits of the regional service delivery by not having to get waylaid with administrative burden.

The CHAIRMAN: When you say “voluntary regional councils” are you talking in the technical sense or about partnership-type agreements?

Mr Brown: A lot of councils have come together—four or five local governments—and they call themselves a voluntary regional organisation of councils. Basically, they want to be a regional council and want to share services and things, but they do not want the bureaucracy.

Hon ALISON XAMON: Can I ask —

The CHAIRMAN: I just want to ask one question, because I am on the subject. Hon Max Trenorden said to us in evidence that as far as he was concerned all the governance provisions in the Local Government Act ought to apply to these regional subsidiaries. Could I have your comment on that?

Mr Brown: I think that would be too prescriptive. That is the main reason why the local governments want the subsidiary. They want a legal entity to be able to share services and carry out services without being overly prescribed. That is the attraction to the regional subsidiary, rather than the formal regional council.

The CHAIRMAN: I would like to hear more as to what you think ought not to be prescribed and what they ought not to be subject to in a moment, but Hon Mia Davies has a question.

Hon MIA DAVIES: I wanted to pick up on voluntary regional councils. Would you have a view on whether there are more or less of those sorts of arrangements in non-metropolitan compared with metropolitan areas?

Mr Brown: They are mainly non-metropolitan. There are a couple, or one, in the metro area, but they are mainly non-metropolitan.

Hon MIA DAVIES: What is your view on why they tend to pick the voluntary model in non-metropolitan areas?

Mr Brown: It is purely the bureaucracy and compliance around the formal regional council.

Hon MIA DAVIES: Is it because of the staff availability or are you talking about resourcing from the non-metro councils?

Mr Brown: Because they would become a local government in their own right and they have to have a CEO and go through every bit of compliance for a local government. But what they want is specifically to do whatever that service is; they are not interested in all the other things. That is why they have stayed in a voluntary form.

Hon MIA DAVIES: You would say that metropolitan councils are better resourced to manage the administrative burden, even though it is not welcome.

Mr Brown: Also in the metropolitan area a lot of their projects are a lot larger; they relate to regional group resource recovery operations and those sorts of things.

Mr Scheggia: You would need to have a closer understanding of what a VROC does in the context that it operates in. My experience of VROCs is that they largely come together to have policy level discussion so they can facilitate a joint approach to a specific set of subject matters; and that might be aligning their views on building policies and other administrative policies to facilitate some activity between them. The dilemma for councils is when they come together and wish to carry out

a substantial business activity. In the metropolitan area, you see entities like the metropolitan regional council being established, entities that are running multimillion dollar waste management and transfer scenarios; they are running a business, in essence. Then you have to ask yourself what is the structure that councils can use to run, in that metropolitan circumstance, that multimillion dollar business. The options that are open to them are establishing a formal regional council, in other words, a local government, to run this multimillion dollar business. A question that is really relevant is: is that the best structure to be running a multimillion dollar business under? I think the answer that comes resoundingly to us from councils is probably no. Indeed, if they could have access to other structures in order to be able to operate those activities, they would be more successful, better run and there would be a better outcome for the community and the councils as the shareholders in those large operating activities.

If you go to the regional scenario where you have a number of councils that might be trying to do similar, but arguably less value activities, the same circumstance applies, where they come together simply to employ somebody. For example, to establish a regional building surveying service, you cannot do that as a VROC. A VROC does not have any capacity to employ. It has no legal standing as an entity, so it cannot receive grants or employ people in its own right. Then you are forced into a situation where a single member of that regional group has to take on the administrative burden, the financial responsibility, on behalf of the other councils, and you essentially get down to a relationship of trust between the members in making that succeed. There are plenty of examples where that has succeeded for its purpose in the past. Where voluntary cooperation always comes unstuck, of course, is when the relationship within the voluntary association starts to deteriorate and then the willingness of people to cooperate for service delivery diminishes and eventually that structure falls away. Whereas, if you were running that business service more like a business with an independent structure administering it and governing it, then the capacity for that to be successful in a longer-term scenario is much more likely.

Hon ALISON XAMON: I am very much interested in exploring this issue of where regional councils are simply deemed to be inappropriate to deal with what is intended with the regional subsidiaries. From what I am hearing you say, the evidence that you are tendering is that the primary concern is around the governance arrangements. I am interested to know whether you have any other examples of regional collaboration in delivery of services which have not been able to be undertaken by the use of other available models, such as partnership agreements between local governments, incorporated associations and regional collaborative groups. Could you please explain why those are deemed to be inadequate and why you think that regional subsidiaries would fill a gap in regard to those areas?

Mr Brown: Certainly. The problem with the incorporated association is, firstly, it is limited: You have to have more than five members. We have lots of local governments that might want an arrangement of two, three or four, so that will take them out. There are also issues in what activities the incorporated association can do. It cannot do any statutory functions.

The CHAIRMAN: When you say “more than five members” —

Hon ALISON XAMON: More than five councils.

The CHAIRMAN: — it has to be five local governments and it cannot be five people appointed by local government?

Mr Brown: I understand it is not. In respect to our association, we have 140 members at the moment and they are all local governments.

Hon ALISON XAMON: Can I just clarify that, because as I recall we had evidence tendered last week—maybe I am not remembering this correctly—that five members would be five people who would, effectively, be on the board, and that could be made up of any number of councils, potentially even just two. I wonder if other members have a different recollection.

The CHAIRMAN: That was my understanding. That is the reason I asked the question.

Hon ALISON XAMON: Could you please elaborate on that?

Mr Brown: I stand corrected if that is right, but I suppose the major issue is in respect of a statutory function. We have local governments out there that want to do planning, building and health on a regional basis, so they are not going to use that incorporated association.

The CHAIRMAN: Why would that be?

Mr Brown: Because it is statutory function. Each local government has to —

Hon ALISON XAMON: So if they still wanted to undertake those particular activities they could still do it under a council at the moment, but they do not want to do that primarily because of the perceived onerous governance requirements; is that what you see?

Mr Brown: What is happening at the moment is where there are statutory functions done on a regional basis—the most common one is environment health—a host council will look after that. If that same region wants to do something else, then another council might look after the joint building program or whatever. It is just not an ideal situation, and we have seen voluntary regional councils where it ends up becoming too cumbersome. So they need their own legal entity with less bureaucracy than a current regional council.

Hon ALISON XAMON: I listed some other possible ways this could be undertaken, such as partnership arrangements. I am aware that when we interrupted you were starting to go through them. There was the issue of an incorporated association. What about partnership agreements between local governments?

Mr Scheggia: It goes to the status of the partnership and what the purpose would be, and to what extent they exceed the legal capacity of a VROC. One might argue that a VROC is, in effect, a partnership between the various players, but a VROC still does not have that legal entity status in order to receive grants, funding and finance in its own right and it does not have the capacity to employ in its own right. When you are looking at delivering something like regional building surveyors, planning services, health services, you actually need those two specific capacities in order to deliver.

[10.45 am]

Hon ALISON XAMON: So is it envisaged that regional subsidiaries, for example, might actually be able to establish centres of excellence, almost? I am thinking, say, if a group of councils decided to get together to create a certain level of expertise in road engineering, is it envisaged that this entity as a regional subsidiary would be able to then effectively compete potentially with the private sector, be able to market itself out to other regional councils? How would a scenario like that play out?

Mr Scheggia: I think there is a range of possibilities that could be explored by that and it really depends on the set of circumstances. I think there is a base level, if you like, requirement from councils that are looking at their own inability to adequately service themselves. While some are looking at their spare capacity and what they could do with that, creating a regional entity enables them to maximise the capacities that are existent within their respective organisations and get the best outcomes for their local communities at the least cost, so that is a baseline and fairly entry-level approach to service delivery. I think there are a lot of councils that are actually at that point in considering regional subsidiaries about maximising the revenues and opportunities that they have.

Hon ALISON XAMON: And you are suggesting that those options are currently not available under the —

Mr Scheggia: Councils do not have the capacity to become regional entities and they do not have the capacity to establish a body other than a formal local government under the regional provisions in the act in order to create that employment status.

Hon ALISON XAMON: Have any of your members actually indicated that they are keen to set up the sorts of private entities that I am talking about? That is a little bit different to that which was envisaged in the bill, which was, as I understand it, almost a collaborative arrangement amongst councils, as opposed to what I am describing, which is effectively creating a commercial entity.

Mr Brown: If I may, what you are describing is what we have been advocating for in respect to we deem it a local government enterprise; in New Zealand it is called a council-controlled organisation. That is a stand-alone separate entity to carry out some business activity, whether it is a land development or some business that is not being provided for by the private sector. So that is a stand-alone entity and we think that there should be an option for that. For example, for some of these big business regional councils in the metropolitan area that might be a better approach, so we think that should be offered. We believe the stand-alone private company should be allowed as well as the regional subsidiary, which is the more representative model.

Hon ALISON XAMON: So that you would see what I have described in terms of a commercial entity as being over and above the regional subsidiary model as it is described in this bill?

Mr Scheggia: Definitely.

Mr Brown: Yes.

Hon DONNA FARAGHER: So from your perspective, you do not actually see that the model that is proposed in this bill would in effect enable, if I can put this, a profit-making exercise and allow the regional subsidiary to move into areas that would normally be dealt with by the private sector? You have said that it could be a situation where it is not provided by the private sector, but I suppose the question that I have, and I think where Hon Alison Xamon is going, is where you would actually directly compete with the private sector. Do you see that this bill would actually allow that opportunity?

Hon ALISON XAMON: This bill, not the —

Hon DONNA FARAGHER: Yes, the bill.

Mr Brown: This bill would allow it. We think there is a better model out there that could do both. This bill would enable local governments to, you know, if they wanted, in respect of the example in road construction, compete with the private sector; they could do it. We have proposed that there is another model that might be better where you have got more of a skills-based board looking after that business rather than a representative model. We see this as a good opportunity and we certainly support it, but we have been talking about other models that should also be made available.

Hon ALISON XAMON: So just in relation to a skills-based board, what safeguards are there to the ratepayers in terms of ensuring that this board is actually operating within the mandate of the council members?

Hon DONNA FARAGHER: Particularly if you want it less prescribed than what is there in South Australia.

Hon ALISON XAMON: Yes.

Mr Brown: So we are on regional subsidiaries not —

Hon ALISON XAMON: Yes, look it is all —

Mr Brown: Well, the regional subsidiary is controlled by the local government, so the responsibility is with the local government as to who it decides should be on that board, and then the community have input to the local government, so there is adequate protection.

Hon ALISON XAMON: Okay, so to be very clear then: in terms of the profit-making ventures that would be operated by a skills-based board, that is not part of what we are talking about today?

Mr Brown: No.

Hon ALISON XAMON: It is not part of the bill?

Mr Brown: No.

Hon ALISON XAMON: So we can park that.

Mr Brown: Yes.

Hon MIA DAVIES: Just a question of clarification, though: my understanding is that with a regional subsidiary you can invite non-council-elected members or staff members onto that particular body?

Mr Brown: Yes, that is correct; that is right, so the subsidiary certainly can do the role.

The CHAIRMAN: Where does the bill say that the local governments that form the subsidiary are responsible for it in terms of accountability if the regional subsidiary goes off the rails and starts doing things that the local councils do not necessarily agree with? Where does the bill tell us how it should be dealt with?

Mr Brown: The bill is referring to that in regulations, from my understanding.

The CHAIRMAN: Well, it says regulations may be made to cover these things; it does not say they must.

Mr Scheggia: This question would be with the Parliament, I would imagine.

The CHAIRMAN: Okay, well, how do you think it should work out? Going back just a step, should a single local government be able to form a regional subsidiary?

Mr Scheggia: Yes, we would see yes, certainly.

The CHAIRMAN: Because at the moment the bill prescribes that two or more should, but South Australia I think says that one can. Do you think that it should be that even one should be able to form it? South Australia prescribes a variety of ways of dealing with conflicts and the like where the people that form the regional subsidiary and run its board may encounter some issue where they have to look at the subsidiary's interests over and above those of the local government which they represent. Do you say that should be prescribed by regulation as well or should it be governed by the provisions in the Local Government Act generally?

Mr Scheggia: I think the position is not to say that they should not be dealt with; the question is where they should be dealt with. Our advocacy is that the charter should be the major enabling and repository for the detail of the operation of the regional subsidiaries. So we would argue things like dispute resolution should be part of the regional charter and should therefore set out the process there; others may feel that you need to actually regulate specifically processes like that and yet others might want to put them as a clause or a subclause within the legislation as part of the general head of power. Our view is that you adopt a process whereby you minimise the legislative approach, you utilise the regulatory approach and you maximise the charter approach, so that it becomes as efficient in operation and as appropriate and flexible for local circumstances as possible. But that is our perspective.

The CHAIRMAN: Okay. You said that you represent all local governments in Western Australia: How many are there? Do you represent also formal regional councils? Can you tell us how many of these local governments that you represent are metropolitan and how many are not metropolitan?

Mr Scheggia: I will stand corrected; I believe there to be 138 mainland local governments at the present time. There are also the Cocos (Keeling) and Christmas Islands, which are under the jurisdiction of the Local Government Act, although they are commonwealth territories, so they

constitute local governments in Western Australia. They are also members of the WA Local Government Association, so that is 140. They are the principal and primary members of the association; we also have an associate member status, which is available to regional local governments and other entities, business operations, that see a benefit in having access to the service delivery of the association.

The CHAIRMAN: Okay, I remember seeing that on a website somewhere—it could be something to do with the local government website—saying there were 161 local governments in WA, but I take it that is not right.

Mr Scheggia: No, there were 141 at one point a few years ago.

The CHAIRMAN: How many of these are, I suppose, metropolitan and how many are —

Mr Brown: We have 30 metropolitan local governments, which includes Serpentine–Jarrahdale, and the remainder are rural and regional.

Hon SALLY TALBOT: You started off your evidence by saying that you believe that it might be possible to make changes to the way regional councils are established and operate. In indicating your support for the bill, I think you said that you believed that it might also be possible to tweak those regs in relation to regional councils. Could you outline for the committee what you mean by those changes to the existing arrangements?

Mr Brown: Certainly. The existing arrangements that we referred to were in respect to the formal regional council. The feedback that we get from local governments across the state is that there is too much bureaucracy and they would like a review of the compliance requirements for a regional council. The current act does allow for approval by regulations to exempt a regional council from certain activity, but that task in doing that has not been taken up by many local governments; they have not taken that opportunity. I think they see the process is too cumbersome, so they have not sought that, but the general feedback from all is that they would like to see the act reviewed to specifically take them out, rather than having to ask for them to be taken out of each individual—you know, 30 regional councils write in and say, “We want to be exempt from this, this and this.” They want the act to say that regional councils are not required to do A, B, C, D.

Hon SALLY TALBOT: Right, so is that something that you have made submissions about in the past—changing the compliance and reporting?

Mr Brown: We have certainly advocated to the Minister for Local Government on this issue for a number of years, yes.

Hon SALLY TALBOT: I guess what I am trying to get a feel for is whether you are supporting this bill because you think that it is not going to be possible to get significant changes in other areas of the act, the areas of the act relating to, for instance, formal regional councils.

Mr Brown: No, we support this bill; we are saying it needs both. So we absolutely support the regional subsidiary bill and we are saying also, in addition, we need to have a good look at the regulatory requirements of a formal regional council as well.

Hon SALLY TALBOT: So if I can just be absolutely clear: what you are not saying is that the same outcome could be achieved with a review of the existing arrangements; you are saying that you definitely need, you are advocating for, this option to be added to the list and then at some other stage there is a review of the other requirements? So if this were added to the list, would you see that as changing substantially? I mean, one of the things that we have looked at is the fact that in South Australia they do not have the regional council option. Clearly, that is one of the reasons why the subsidiary model works there. Is that what you might be working towards in the long term?

Mr Brown: It may be in the long term if you added a couple more options in. Again, I know we are not talking about local government enterprises but, for example, if you have not got local

government enterprises, then there are some councils that prefer the formal regional government structure to the subsidiary, so that should still be there. We are saying we want both.

[11.00 am]

Mr Scheggia: Yes, but I think our perspective is that at a primary level, government says it wants a system of good governance for local communities across Western Australia, so you take that perspective and you say, “Well, what’s the best way to get the greatest range of capacities and options so that the best governance arrangements exist at that local level?” Our view is that rather than dictate a single model of approach, which certainly gives you consistency, but it does not necessarily give you the best outcome, you put a range of acceptable options within a framework that councils can then choose in order to suit the circumstance that best applies, first, to the proposal that they are trying to deal with and the particular business pursuit that they are trying to undertake, and also the peculiarities that might exist within their regional community and their local area. So in that circumstance, if you had options under the Local Government Act which included the existing provisions, or be they refined, which included regional subsidiaries, which included local government enterprises, you would give the local community then the option to explore which of those models best suits the circumstance and the pursuit that they are trying to undertake, and to make a decision that exists within a framework of control of the state and still has to meet certain state expectations dependent on which model and which rules are in place, but gives the capacity for the local community to choose ultimately what best suits their circumstance. So in the situation that we hypothesised before about a regional building service, for argument’s sake, certainly we see the regional subsidiaries model as being able to facilitate very adequately something like that. It may be—this is hypothetical—that a community for whatever reason does not want to choose that model but would prefer to deliver that same service under a local government enterprise arrangement. Our view is that as long as the model is established within a framework where there are reasonable controls and rules of operation, the appropriateness of that choice should best be left to the local community and they should be able to choose the model that is an acceptable model to higher levels of government under which to operate their service, instead of at the moment whereby to operate that service they have to establish effectively a regional council with all the incumbent rules, regulations and processes which are not actually relevant to the direct service delivery function that they are trying to pursue. It seems to us to be quite a simple and appropriate way of going about providing a range of solutions for a local community.

Hon SALLY TALBOT: I see. So your view is not that any of the existing options are broke and unworkable, but that adding regional subsidiaries to the list would increase the flexibility and the capacity to respond to local contexts?

Mr Scheggia: Perhaps not that they are broke, but the limited range of options currently available are perhaps inappropriate in a vast range of circumstances and therefore are quite restrictive. I think that is evidence, as Tony said before, of the fact that a lot of councils have not explored some of the options that might be available now because they just are not appropriate mechanisms for what they wish to pursue.

Hon SALLY TALBOT: Just one last question. You have given us this paper on local government enterprises. Are you anticipating perhaps in the future that we look at a second bill that would add local government enterprises to the list as well as regional subsidiaries?

Mr Scheggia: We would hope that the Parliament would see the appropriateness of taking that step now. Obviously it is at the discretion of the Parliament. But we would advocate, if you are going to make an amendment to the Local Government Act now or create a power now for the establishment of a mechanism, it seems to us that now is the time to make a vaster range of initiatives available to the councils.

Hon SALLY TALBOT: If we lived in an ideal world, would you be proposing amendments to the bill under consideration today to add your proposals?

Mr Scheggia: Yes, we would.

Hon SALLY TALBOT: Thank you.

The CHAIRMAN: Can I just take you to your submission, please. At pages 12 and 13, you go into some of the disadvantages, as I understand it, of where the governing body of the organisation or the entity consists of members of the participating councils. This proposed model is not entirely clear, but if it reflects the South Australian scheme it allows the appointment of board members who are not members of councils, although the bill does not explicitly say that that is an option. Can you give us some examples of where problems have been encountered by only having members of the local councils on the governing body of either a regional council or some other entity or other cooperative scheme between councils?

Mr Brown: I suppose we see the advantage in the independent director as being able to bring the skills belonging to whatever the service delivery you are about to do, bringing that into the group, as well as the elected member representative, can only make the entity stronger. There are a number of bigger organisations, big regional councils, that I think would benefit from having outside expertise other than the elected members on the board.

The CHAIRMAN: Cannot that be achieved by having advisers from the particular councils, or even external advisers employed by one or other of the councils and assigned to a regional council or the other partnership arrangement—the other cooperative arrangement, I should say?

Mr Brown: And that is pretty much what happens at the moment. The local government's officers sit and advise. But we think it can only add value to actually have a board member who has the expertise around that particular service.

Mr Scheggia: I think it is fair to say that the example would be true in all spheres of business, not just in the local government hypothetical. The point is to say what is the business model that appears to be the most appropriate for running business-type activities. We think clearly that rather than just invitation only, that indeed the capacity for a structure that is proven in the business world to deliver best business outcomes is the one that should be available—not mandated, but available—within the range of selections for local governments to look at depending on the circumstance they are trying to address.

The CHAIRMAN: Unlike the South Australian legislation, our bill does not explicitly permit or require people who are non-council members to be on the governing body. But would you say that that can be mandated either in the charter or by regulation if it was within the “spirit” of what a regional subsidiary should do?

Mr Scheggia: In the context of this discussion, I do not see why it could not.

The CHAIRMAN: But there is nothing that requires the minister to put his or her mind to that and allow it?

Mr Scheggia: From our perspective, I guess that is a deliberation for the committee. But, again, what we are effectively saying is that there needs to be an expansive range of options. There are circumstances where only elected member representative-type board activity will be appropriate, there will be times when advisers will be appropriate in that process, and there will be times when indeed formal board members independent will be appropriate.

The CHAIRMAN: I understand that.

Mr Scheggia: There is a range of structures that will facilitate that. We think regional subsidiaries is one. But when you get to a point where you are genuinely looking at a business-type activity that actually requires that independent expertise, perhaps that is the time when you need access to the local government enterprise model.

The CHAIRMAN: I understand that. I suppose what I am driving at is, is it desirable, given what is and what is not in the bill, that things like that ought to be prescribed in the bill for the guidance of the minister—that the governing body of the regional subsidiary may or may not include certain categories of people?

Mr Scheggia: I think, in being consistent about our perspective, which is fair, open and flexible arrangements, the short answer would be yes; some capacity for expanding that representation is not inconsistent with our philosophy.

The CHAIRMAN: One of the drawbacks of regional local governments that has been pointed out is the potential for the regional council, when it is comprised of a number of councils, to override the wishes of the individual councils that make it up. Would not a regional subsidiary have the same problem?

Mr Brown: No. The subsidiary differs, in that the subsidiary goes back to the individual council having control.

The CHAIRMAN: Well, what if there are two councils? Which one would have control?

Hon ALISON XAMON: Sorry, but are you suggesting that there actually may be more accountability for local governments with a subsidiary than with a council?

Mr Brown: No.

Hon ALISON XAMON: Because the implication there was almost that you do not go back to the local councils in the same way with a regional council as you do with a regional subsidiary, so I would just like you to clarify that.

Mr Brown: The members on a regional council are responsible for that regional council, so they do not need to go back to their member local governments to make decisions for that regional local council.

Hon ALISON XAMON: What about a regional subsidiary?

Mr Brown: With a regional subsidiary, it is more of a representative model, where the local councils have more input.

The CHAIRMAN: All right, but if, let us say, two or three local councils set up a regional subsidiary, they have set up a charter, it is given corporate status, so it has its own legal status, it has a series of functions and responsibilities and the like under its charter, what happens when, let us say, all of us are representing five different councils, and an issue arises as to the performance of the functions under our charter: do we have regard to our charter and its functions, or do we convey the views of our individual local governments? How does it work?

Mr Scheggia: It is the same as any board would work, and you would convey your purpose as per your charter, and then individual local governments might have a perspective, and they have every right to express a perspective and to make representations to their regional entity about those perspectives, but I do not see that as any different or any more complex than indeed any situation that exists right now in any council or indeed in any business.

The CHAIRMAN: What is the difference, then, between the way a regional council operates and how the regional subsidiary would operate in that respect?

Mr Scheggia: In terms of making a decision?

The CHAIRMAN: We have been told that regional councils are not directly answerable and responsive to their constituent councils. You are saying that would be the same position for a regional subsidiary. Is that correct?

Mr Scheggia: I do not detect it as being any different. Our complaint, if you like, about regional councils is not specifically around their capacity to make decisions; it is the attendant administration and bureaucracy that goes with the operation.

Hon MIA DAVIES: My understanding of a regional council is that once the regional council is formed, they as a group can turn their mind to whatever issue they wish to discuss, attend to, and set a course, and that may change over the period of time. So the way that you get to the way the council is doing its business is different to the way you get to the way a regional subsidiary is doing its business, because the regional subsidiary is bound by the charter, which is set for a specific purpose by the membership councils, so they can only turn their mind to that particular issue that is set out in its charter. Can you clarify for me that that is correct, because you are going to have a discussion about how you acquit the charter of the regional subsidiary, but you do not get to go on and have a wide-ranging discussion about various other issues at that same point?

Mr Brown: That is right. You are controlled by your charter. A regional council is also set up that has a purpose, so whatever activity it does, it still has to be within its purpose, but it is not as specific as a charter would be.

Hon MIA DAVIES: Right, and my understanding is that there are some regional councils that are single-purpose specific. One was mentioned last week, the Murchison Regional Vermin Council, but they are essentially their own local government, whereas if a regional subsidiary were doing that—correct me if I am wrong—they would be specifically responsible to their councils but without the administrative burden required of a separate local government, because they are managed by their membership.

Mr Brown: Absolutely correct.

Hon ALISON XAMON: Very clearly put!

The CHAIRMAN: You mention at page 18 of your submission that the Australian Centre of Excellence for Local Government argues that the South Australian legislation may be overly prescriptive, which may act as a disincentive for local governments to establish regional subsidiaries, and that Western Australia should adopt a lighter regulatory regime, leaving the bulk of the regulatory and governance requirements of regional subsidiaries to the individual regional subsidiary charters. Can you give us some examples of where the South Australian legislation has been a disincentive to the formation of a regional subsidiary in that state?

[11.15 am]

Mr Scheggia: It is a bit of a case of arguing that you do not know what you do not know. How do you know who has not done stuff because of an inability or a perceived complication? I do not think it is really in our province to speculate about who may or may not have done something because of the perceived complication, other than to say that the Australian Centre of Excellence for Local Government has pointed out that that is a prospect based on their research. It might be appropriate to get ACELG to give evidence in relation to that.

The CHAIRMAN: I understand, and you have put it as an argument that they have raised. I was just curious as to whether or not—

Mr Scheggia: Based on their research and their assertion.

The CHAIRMAN: Just turning to, on a similar subject, page 11 of your submission, where you mention there may be concerns. In the second last paragraph it says that the relatively light regulation of the regional subsidiary model entails an unacceptable degree of risk. However, in South Australia, where the model has been utilised for many years, there are significant regulatory requirements placed on regional subsidiaries by the South Australian Local Government Act. Do you think the bill strikes an appropriate balance between flexibility and suitable accountability or at

least guidance to the government of the day as to what ought to be the accountability and governance?

Mr Brown: We certainly do. We think the bill is doing its purpose in enabling the subsidiary and then the detail and control in regulations and further in the charter. We think that is the adequate way.

The CHAIRMAN: As I mentioned earlier, in his evidence Hon Max Trenorden stated that it was his intention that regional subsidiaries be subject to all the safeguards and liabilities of councils as contained in the Local Government Act—the government's provisions there. On the face of it the bill does not appear to provide for this. Your view is that, contrary to Hon Max Trenorden's view about whether it should —

Mr Scheggia: I do not know that we are qualified to comment on specifically Hon Max Trenorden's assertions, because we are not actually party to the broader discussion that fed those, but to the extent that he seems to be implying that appropriate regulation and appropriate accountabilities need to be in place, our perspective is that the majority of those should sit within the charter. Our perspective has always been not an unfettered and free range for councils in whatever they want to do, but the pursuit of reasonable objectives within a framework that the Parliament is satisfied it is appropriate for local government to operate in. We think that emphasis on the charter as the main repository for the specific accountabilities that will be relevant to the local level project is the best way to go, giving the accountability the Parliament will need and the flexibility that the council will need in adapting to its specific challenge.

The CHAIRMAN: And any sanctions or other controls that may be necessary for enforcing the charter should be, what, in regulations?

Mr Scheggia: We would say things like dispute resolution, if that is what you are referring to, ought to be a charter specified process. If you breach the law, then I imagine there are other mechanisms that come into play as to how they are remedied.

The CHAIRMAN: You mention on page 13 of your submission another benefit of the regional subsidiary model is the increased accountability provided by the model in comparison to the traditional local government service delivery approach. What do you mean by that? The bill does not seem to say anything about accountability. You have said that it should be left at large for the minister to formulate, either prescribed by regulation or be governed by whatever charter is put out by the government. How does it address accountability?

Mr Brown: That is right. Just to explain that statement, that is about the accountability, because you have the subsidiary board members working on that specific regional service delivery, as opposed to a council that is looking at a vast array of issues. This would be specific to the charter. Where we are talking about accountability, we are talking about the attention of the board is specific to the charter rather than to wide-ranging issues that a local government has at the moment.

The CHAIRMAN: Turning to the act and the regulations, at the top of page 19 of your submission you mention that in South Australia there is legislative detail that guides the establishment and function of subsidiaries rather than in regulation. But you say then that the effect of the regulation in South Australia and the proposed legislation in Western Australia is much the same. Why do you say that, given that the South Australian legislation is quite detailed in expanding on how these things are meant to work and the parameters within which they work? The Western Australian one leaves it all up to regulations without any guideline as to the form that those regulations should take or the direction they should take, and otherwise leaves it up to the charter and a ministerial discretion at large as to whether to approve a charter.

Mr Brown: That statement is made in terms of legislation and regulation together. We think in legislation and the regulations then there are similarities. Whereas, you are quite right: in South

Australia there are lots in legislation. That is where we would differ. We would still promote that there should be more in regulation and then the charter.

The CHAIRMAN: So it is not so that it is much the same, but could be much the same.

Thank you very much, gentlemen. Is there anything that you wish to add that questioning has revealed, that you feel that we may not understand fully or that has reminded you of something?

Mr Scheggia: I think in closing, Chairman, the point I would probably like to emphasise is that local governments do not pursue this power, this new regime, for the purpose of competing substantially in the private sector market. That is not the motivation for local governments in this circumstance. Councils are desperately concerned about their capacity for service delivery and about mechanisms that will facilitate improved service delivery and cost reduction within a regional set of circumstances. Their motivation is based around service delivery improvement, not profit generation. I just wanted to make that point and make it clear that that is the motivation that is coming from here. I think if people have concerns about the potential for impact on private sector operations, I think that is something that needs to be discussed and explored, because that is not the motivation.

Net of that, I think all we would like to do is, again, reinforce our appreciation for the process, our thanks for your time and consideration and our best wishes that you will come out with appropriate and good recommendations that go forward.

The CHAIRMAN: Thank you very much, gentlemen.

Hearing concluded at 11.24 am
