

STANDING COMMITTEE ON LEGISLATION

LOCAL GOVERNMENT AMENDMENT (REGIONAL SUBSIDIARIES) BILL 2010

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 10 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 10.00 am

MATHEWS, MS JENNIFER

Director General, Department of Local Government, sworn and examined:

FOWLER, MR TIM

Special Advisor, Legislation and Reform, Department of Local Government, sworn and examined:

NAZER, MS VICKY

Acting Manager, Legislation and Reform Policy, Department of Local Government, sworn and examined:

The CHAIRMAN: On behalf of the committee I would like to welcome you to this hearing. Before we begin, I will just introduce myself and the other committee members so that you know who is here. I am Michael Mischin, chairman of the committee. To my left is Hon Sally Talbot, who is the deputy chair of the committee and to her left is Hon Alison Xamon. To my right are Hon Donna Faragher and Hon Mia Davies; and immediately to my left is Alex Hickman, legal adviser to the committee, and other staff members. At the back of the room is Hon Max Trenorden, MLC, who is the member who introduced the bill. This is a public hearing, but just by way of explanation, we think it sensible, since he is going to be giving evidence as to the bill after you, that he have an opportunity to hear what you have to say about it so that he can answer any matters that he thinks require his comment.

I ask you each to identify yourselves and to take either an oath or affirmation.

[Witnesses took the oath or affirmation.]

The CHAIRMAN: You will have sighted and signed a document entitled “Information for Witnesses”. Have you all 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, could you please quote the full title of any document to which you refer during the course of the hearing so that they can properly identify it for the record. Please be aware of the microphone in front of you and try to talk into the microphone. Ensure that you do not cover the microphones with papers or make any loud noises near them. It would also assist if, when you address the committee if you could do so in turn so that there is not one witness talking over the other. 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 media and public 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 and that 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 you like to make an opening statement to the committee?

[10.15 am]

Ms Mathews: Just to thank you for the invitation to appear before the committee. You have met my colleagues from the Department of Local Government: Mr Tim Fowler and Vicky Nazer. I would also just make reference to the submissions that have been made to this committee by Minister Castrilli, and also by the department, including an attachment that was actually made to that

submission by the minister, entitled “Regional Local Government Entities: Models for Regional Collaboration in Remote Areas”. We would be happy to provide clarification on any of those matters.

The CHAIRMAN: Thank you. For my part, I found it was quite a comprehensive submission. I should explain that the reference of the bill to this committee does not include a licence to consider the policy behind the bill, so our main objective is to discern what the policy of the bill is and to weigh that against whether it affects that policy. In this case we have, from the second reading speech and the text of the bill and references in the second reading speech to certain South Australian legislation, and also from some correspondence with Hon Max Trenorden, distilled what we understand to be the policy objectives behind the bill. Those have been reduced to seven points. We have asked Hon Max Trenorden this morning whether he agrees that those identify the policy considerations underlying the bill, and he has agreed that they do, and those were supplied to you just a few minutes ago. Have you had a chance to consider those?

Ms Mathews: Yes, briefly.

The CHAIRMAN: If you need any more time—do you require any more time to think them through?

Ms Mathews: I think we can handle them as best we can in this forum.

The CHAIRMAN: All right. If you have any problems, by all means let us know.

Ms Mathews: Yes. Obviously, if we need a bit more time, we can take some things on notice, if required.

The CHAIRMAN: Okay. Thank you. In the light of those particular paragraphs that identify the policy of the bill, do you consider that—perhaps we will go back a stage and just look at the second reading speech, because you have had a chance to consider that in more detail. Do you think the bill carries into effect the policy of the bill as set out in the second reading speech?

Ms Mathews: I think that fundamentally it does, in that the bill purports to establish a head of power within the act to allow two or more local governments to establish a regional subsidiary—an entity called a regional subsidiary—for the purpose of enabling them to perform functions jointly. So, at that fundamental level, the bill does provide that. We note that the bill then goes on to suggest that much of the detail in terms of how that entity might operate in regard to accountability and governance is to be set out in regulations. I guess you could say that the bill takes a pretty minimalist approach in terms of that head of power within the act, with the rest of the detail going into the regulations. I note that in, I think, both our ministerial submission and the departmental submission we did suggest that consideration be given to putting a bit more detail in the actual act itself rather than leaving it all to regulations, and in particular to perhaps differentiate between what is intended, what sits behind a regional subsidiary compared with some of the other options that are already available to local governments under the act, and in particular that of a regional local government. In that way it sort of balances it out and outlines some of the key features that are proposed with a regional subsidiary. Reference is made, for example, to the fact that a regional subsidiary would be a body corporate—that is important; that it is not a local government, unlike a regional local government—I think that is an important point; that membership of the board of management may include people external to council—that is another important differentiating point; and that the regional subsidiary would be fundamentally reporting back to the constituent councils, so, again, quite a difference with the regional local governments. I guess we thought that there should be some key features of the regional subsidiary actually outlined in the body of the act, in the same way that is done for a regional local government, and I think in the same way—if you look at the South Australian legislation, a lot of that is actually contained in the schedule, which in essence, therefore, is in the body of the act as opposed to the regulations. That was, I guess, a key comment. Perhaps I will leave it at that point at the moment.

The CHAIRMAN: That was with reference to the second reading speech, but presumably the same comments apply to the policy as articulated in the document that we provided you earlier today.

Ms Mathews: Yes. I think, in particular 4.1.1: I would perhaps make an additional comment there. As you are probably aware, and as reflected in both submissions, in terms of allowing local governments to come together to perform various functions, just to make note that there are a range of options already available under the act, and they are outlined in that models paper that we circulated. Some of these things can be achieved through different models, partnership agreements. The regional local government that is available under the act now, and incorporated associations—neither of those two models are available to local governments in South Australia. That is quite an important point.

The CHAIRMAN: If I understand it, you are saying that there should be something articulated in the bill to show how this differs from the other options that are available, either by way of providing additional flexibility, opportunities, scope for operations or restricting it in comparison with the other options available under the act to local governments.

Ms Mathews: I think that would be advisable.

The CHAIRMAN: A number of the submissions that we have received have identified either a need or a desire for the legislation to balance flexibility and service delivery in two or more local governments through this proposed regional subsidiary model against suitable accountability and oversight. What is the department's view on whether the bill achieves that balance? Is there sufficient within the bill to achieve that balance between flexibility and accountability?

Ms Mathews: I think that that is a very important point, and that is certainly something that we have emphasised through both the submissions and also in that models paper. It is about putting out different models to local governments. It is a question of, I guess, balancing the need for potentially greater flexibility in performing some of these functions and performing functions jointly, but also balanced with, and weighed against, a risk management approach to that, so that there is appropriate governance and accountability around that. At the moment, as we read the bill, those accountability arrangements are very much left to regulations. So it will depend to some extent on what is actually contained in the regulations and also in the charter, which, I guess really is the key document that sets up and establishes the regional subsidiary.

The CHAIRMAN: From a departmental point of view, because presumably, it will be the department that will be advising the minister as to what regulations may be required, do you find enough guidance in either the second reading speech, the supplementary statement of the policy of the bill that we have been talking about, or in the bill itself as to how to frame some regulations?

Ms Mathews: I think most of the key elements are contained within that in terms of what the regulations may provide for. The bill does set out quite clearly a range of different areas that will need to be covered by regulations. They are quite wide, but they do cover, I think, the key areas.

The CHAIRMAN: They provide the regulation-making power —

Ms Mathews: They provide the power.

The CHAIRMAN: — but what I am driving at is: are you able to discern enough to be able to craft regulations that will provide this right balance of accountability against flexibility that Hon Max Trenorden has in mind? Are you able to get enough of his mind on this from the materials that you have—the bill, the second reading speech and perhaps reference to the South Australian legislation?

Ms Mathews: In one of our submissions I think we actually made reference to possibly elaborating and developing those a little bit further. Tim, can you perhaps elaborate on that, the detail?

Mr Fowler: I think the reference to the South Australian legislation gives some guidance to, I guess, the content of the regulations and how they might be framed. But, certainly, when you refer in the bill to terms like governance, management and general terms of that sort, all those details, of

course, in relation to how local governments function, or regional local governments, are set out in the Local Government Act, which is an inch thick, in relation to all the different issues that are identified there. So, certainly, if we were to be preparing regulations and, I guess, identifying where regional subsidiaries would have less compliance and less accountability, issues of that sort would be going through this document, the Local Government Act, to actually work that through. I guess the guidance we have been given is the arrangements that apply in South Australia. I guess that is what we would then be looking to if there was a government policy view to implement the South Australian model.

The CHAIRMAN: But, by the same token, the legislation—the bill, I should say—does not necessarily limit you or guide you towards South Australia itself. The department can do something radically different. Given that there is only a reference—a desire—in the second reading speech to reflect that scheme, there is no requirement that you reflect that scheme.

Mr Fowler: No. The bill very much leaves it to the government of the day to determine what the content would be. As Jenny mentioned, certainly in the Local Government Act at the moment, the general provisions about how local governments operate are contained in the act; similarly, in relation to regional governance, there are pages there that identify which parts of the Local Government Act apply and which do not, and issues of that sort. So I guess, conceivably, it would be possible for a future government to use this in a way that would give it some significant flexibility in how that might operate.

The CHAIRMAN: And it could actually retain all the governance provisions in the Local Government Act that may restrict the flexibility that the member hopes to achieve by this bill.

Mr Fowler: Absolutely. Until one goes through and does that task of identifying the particular compliance arrangements that would be appropriate, it is difficult to know. I guess at this stage how that would be completed in relation to the final content, one would need to go through and do that work to then have a comparison between what is available now and what would be available under this new model.

The CHAIRMAN: Do you agree that there is no requirement in the bill that regulations actually be made?

[10.30 am]

Mr Fowler: Certainly, it is dependent on the government to proclaim this legislation to bring it into operation. Obviously, one would not want to do that until one had the regulations ready to be gazetted, I would think, at the same time.

The CHAIRMAN: Given that there is no requirement that regulations are actually made under the current section 3.69(2), but a discretion that regulations be made, is there any contemplation that regulation be made, or have you not had the chance to turn your minds to that, assuming the bill was passed?

Ms Mathews: Assuming the bill was passed and there was obviously a policy decision to progress that, certainly from a departmental perspective, it would be appropriate to ensure that there were regulations and the policy work around the regulations had been completed, because that will underpin, I think, the way the policy is to be implemented going forward. So, yes, the body of work would need to be done and thought through.

The CHAIRMAN: All right. I will just stop there for a moment and give other members of the committee an opportunity to ask questions should they have any.

Hon SALLY TALBOT: Ms Mathews, you made a comment earlier that many of the benefits or opportunities that this bill would make available to local governments are available under other existing models. You did say “many” of them. Can you identify any areas that are currently not available to local governments that would become available if this bill was passed?

Ms Mathews: To put it simply, probably not. Certainly, with the options that are available currently under the act in the form of either the regional local governments, incorporated associations or partnership agreements, they are all slightly different, obviously, in terms of whether they involve a body corporate and the tone of their complexity. Fundamentally, if two local governments wanted to come together and perform a range of functions, they could do so under any of those models. The difference lies perhaps more in the flexibility that this model might offer as opposed to regional local governments. It is not about the functions. If you are talking about the range of functions that might be envisaged, as, for example, in South Australia through the regional subsidiary model, whether you are talking about sharing back-office functions or taking a more regional approach to service delivery functions such as waste management, which is a key function that is performed by regional subsidiaries in South Australia, they can be performed currently under the act by one or more local governments. We see that now; for example—I think a number of examples are provided in the papers that you have—the Eastern Metropolitan Regional Council, which consists of six local governments coming together for a range of functions. Waste management is one of those, but there is a range of other areas as well, like economic development and tourism. Certainly, in terms of the actual functions, they can be performed by the models that are currently available under the act. I guess the regional subsidiary, as it is constructed or outlined in this bill, would potentially offer more flexibility in the way they perform those functions in that there could be more flexibility around what is in the charter and also what goes in the regulations. But all of that, I guess, will depend upon the content and the level of prescription that is actually in both the regulations and the charter. The flexibility issue is one. I think that is potentially a point of difference. There are a couple of other points of difference, and one is that under a regional subsidiary, it would be accountable and report to the constituent councils, whereas a regional local government is accountable essentially to itself and the department; it has all the same compliance requirements that are currently applied to an individual local government. There is scope with the regional subsidiary model to reduce that, but that will depend on, obviously, the content of the regulations and the charter.

Hon SALLY TALBOT: Can you just clarify that? There is scope to reduce it. I understood you as saying that there is more accountability in that a regional council is accountable only to itself, but under this model that we are considering, the accountability would be directly to the constituent councils.

Ms Mathews: I will clarify that. Under the act, a regional local government is treated as a local government for the purposes of the act. Essentially, it has the same compliance requirements as a local government; it needs to comply with the same financial reporting and other requirements that any local government would need to comply with under the act, including, for example, submitting to the department on an annual basis annual financial returns, reports and budgets et cetera. Essentially, it is subject to the same requirements as a local government, and that is embodied in the act. There is scope through regulation to reduce those, but at the moment that is the way it stands under the act. I guess what I am saying is that with a regional subsidiary, the level of prescription and compliance that will apply to a regional subsidiary would depend on what goes into the regulations and also, potentially, what goes into the charter. So there is scope to reduce that, and that would potentially be an attractive aspect of the model. I guess this is where this is around a policy decision in terms of that balance between how much flexibility you provide to that regional subsidiary to operate and how much accountability you require around that. At the end of the day, there does need to be an appropriate balance achieved, because the councils that set up the regional subsidiary would be accountable and would be liable for any sorts of issues or failings that come up with the regional subsidiary. The local councils themselves would want to ensure that there is appropriate governance and compliance around it. But the detail would be, obviously, and the level of prescription would be, in a sense, a policy decision that would go in the regulations.

Hon SALLY TALBOT: I have just one more question, if you could clarify it for me. It has been suggested to us, I think perhaps in a submission that you have not seen, that there has been limited take-up of the opportunity of incorporated associations by local governments. Do you have an explanation for that? The one that I know very well is PEDU in Peel, and that seems to work quite well. I am just wondering if you could elaborate on it.

Ms Mathews: I think that is a very good point, and I think one of the issues might be, from our perspective, to raise awareness out there in the sector of what an incorporated association might be used for. Essentially, it can be used for a wide range of purposes depending on what it is set up for. Again, it will be set up by a charter and that would identify what its key objects are. But you can actually adapt those to suit the particular purposes of the association. I guess the key point and the key potential limitation of an incorporated association is that any profit or revenue generated out of its activities would need to be channelled back into the association; it cannot be distributed out to its constituent members. That could be seen as a limitation. Again, it depends on what it is to be used for. I think that is probably the key issue that will need to be addressed in any of these models: What is it for? What is the purpose? Rather than creating structures, what is the point of it? And then work back and say, “Is there a structural model available to do that?” Certainly, incorporated associations have some application, and we have been doing quite a lot of work exploring how they might be used more widely, but that is one potential limitation. One other benefit of an incorporated association is that you can actually bring in external members on its board of membership, and that is also proposed as part of the regional subsidiary model. That is currently not available under the regional local government model. So that is another point of difference between the models that are available, which could be seen as quite an important one. Tim, did you want to add anything to that?

Mr Fowler: The only other major issue would be that an incorporated association does not have the powers of a local government. It does not have all the executive functions to perform a whole range of traditional activities of local governments where you do need certain powers to implement those particular functions on the ground. Obviously, it would not have all of that, but I guess what it would have, though, is the same ability as any other person or company that would be engaged by a local government to carry out certain services. Local governments engage private firms to do road maintenance, their accounting and a whole range of other activities. So it would be conceivable that a group of local governments could come together, form a non-profit association and carry out certain services for which you do not need specific powers; they would be basically just a service function, as a private enterprise would be. Certainly, that is an issue that was raised with us when, in particular, the south east Avon regional council group was promoting this particular type of regional subsidiary. We were referring to that as a way of using this type of South Australian legislation to deliver services of that sort so that the benefit would come from those local governments creating that unit and, if it did gain revenue from it, that would be used ultimately as a benefit for those local governments rather than necessarily going out to the private sector.

Hon DONNA FARAGHER: I will pick up on probably the first question that was put by Hon Sally Talbot. I understand what is being proposed in this bill in terms of the differences with the regional councils and the like. I suppose my question is perhaps a little bit difficult to answer in part because of your response that it all depends on the level of prescription, the charter and the like. I suppose what I am really wanting to get an understanding of—perhaps when Hon Max Trenorden appears before us, he will also be able to put forward some suggestions—is how this would actually work if we could see a practical example. For example, if a number of councils wanted to share a range of services, how is this model—the term “flexibility” keeps on coming up in relation to everything that is said in the submissions and the like—better than, say, regional councils, through something such as an EMRC, seeking to share the ranger services to make it more efficient and the like? As I say, it is difficult because we do not actually have it specifically prescribed and the like. I would like your view in terms of how—I will take ranger services as an example—this model may

provide better opportunities for those councils as opposed to doing the same thing through a regional council context? Does that make sense?

[10.45 am]

Ms Mathews: Certainly in the example of ranger services, a regional subsidiary could be used for that purpose and I guess obviously it could also be carried out currently with a regional council. I guess we have a single purpose like that, and it might be ranger services or something else. If you have got a group of councils, it might be easier to have a slightly arm's length entity which actually has a single purpose and can focus on that, and then report back to its constituent councils. Again, depending on the level of compliance that you put on that particular regional subsidiary, it would not have the same level of compliance as a regional local government carrying out that purpose. So I think, ultimately, it does depend on the level of compliance and prescription that is actually imposed on the regional subsidiary. The other benefit of a regional subsidiary doing that potentially is having external people sitting on the board of management who might be able to bring particular expertise to that service delivery function, so you might get someone with a particular independent expertise externally being able to come on. It is slightly arm's length from a formal regional council sitting around and having to debate ranger services. Having said that, there is the Murchison vermin regional council, which deals with a single purpose function, which is managing the vermin-proof fence in the Murchison, so that is a constituted regional council which comes together, meets and deals with that particular single-purpose issue. It does that. They do make a point that even though they focus on that particular single issue, they still have to comply with, currently under the act, the same reporting requirements as an EMRC. The reporting requirements are less, in the sense that they are doing less, so they are not particularly onerous, but they are there. I guess you could argue that by having a slightly arm's length entity, you could, potentially, through the charter and through the regulations, give it a bit more flexibility in the way it actually reports back to its constituent councils and the reporting and compliance requirements that apply to it. You might be able to simplify them, because it is a single-purpose one. So there is scope, with a regional subsidiary, to perhaps adapt the charter and give it a little bit more flexibility within that to deal with these sorts of issues, but ultimately I think it will depend on each one requiring, of course, ministerial approval, and the charter would require ministerial approval to determine whether that balance is achieved between flexibility and risk management. So I think in some respects it might be a case-by-case basis.

Mr Fowler: The example I gave before of accounting services, road maintenance and the particular physical services and activities that are carried out, appear to lend themselves well to this type of proposal. The issue of ranger services possibly has other complications. What occurs to me is the issue of rangers normally out there, issuing infringement notices. They are out there, possibly, running prosecutions and things of that sort. The Local Government Act is framed in a way where local governments have those powers to go and perform those type of policing functions through the community, so I guess the issue would be, in identifying that issue, to what extent these regulations, if they were to be prepared, to what extent you would have regional subsidiaries running prosecutions.

The CHAIRMAN: To cover the delegations of authority and the like, and whether that delegation would be valid on behalf of —

Mr Fowler: Absolutely. And so that is a matter that would need to be addressed, I think, in framing regulations that we would consider to be appropriate.

The CHAIRMAN: Perhaps developing that theme a little bit, you have had the opportunity to look at the South Australian model. Is there anything in the bill that is inconsistent with what South Australians have done in this area?

Ms Nazer: I think your question is: is there anything in the bill that is not in the South Australian —

The CHAIRMAN: Perhaps I will put the point that I am leading up to and that would be a better way of doing it. On the assumption that the bill is fairly thin in terms of direction as to how the regional subsidiary model in WA is to be structured, the things to be prescribed under regulations are broad, and it provides an awful lot of flexibility, is there any merit in adopting, either by way of a schedule or incorporating in the bill the elements of South Australia—simply transferring those, putting them into the bill in order to flesh it out, and is what is in South Australia inconsistent with what you understand to be the policy or terms of this bill? Or are there any other practical considerations that would militate against doing something like that? Would you prefer, as a department—bearing in mind the member's intentions and the policy behind it—something of that nature, rather than simply leaving it open to regulation of the government of the day?

Ms Nazer: There are a couple of points that were made in the submissions from the department and the minister, focused on key aspects which were not — As you conceded, the bill itself is quite minimalist, with a lot being left to regulations. It does, however, flag a few key matters that it suggests would be addressed in regulations, and I notice it has a catch-all provision—something like any other matter that is considered important; something like that. Nonetheless, looking at the South Australian legislation, there are two or three aspects which are addressed, either in the schedule or elsewhere in the act, that are considered important and should preferably either be in the act or foregrounded as a matter for regulation, and one is the prudential requirements that apply to the board members of the subsidiary. The South Australian legislation makes it clear that board members are subject to the same prudential requirements as elected members. I think the South Australian legislation mentions, in a couple of places, matters to do with potential conflicts of interest that may arise for an elected member of a constituent council who finds himself or herself sitting as a board member of the subsidiary; conflicts of interest can arise and the South Australian legislation addresses that to minimise difficulty.

The CHAIRMAN: Can I just interrupt you there? I do not want to throw you off, but you are talking about situations, in essence, where the member representing the local government ought to be acting in the interests of the regional subsidiary as opposed to the local government he or she is representing, resolving that problem.

Ms Nazer: Yes.

The CHAIRMAN: And that is something that arises from time to time whenever there are representatives from constituent bodies like the Subiaco Redevelopment Authority—do the government representatives on it represent the interests of the local government, or do they divorce themselves from those who work in what they see to be the interests of the authority?

Ms Nazer: I think with the subsidiary, because it is an incorporated body, aspects of the Companies (Administration) Act apply to the board members and so it is just something we flagged.

The CHAIRMAN: Any other matters?

Ms Nazer: The other matters we thought would be helpful to flag in regulations as being important and needing to be addressed were provisions about liabilities incurred or assumed by a regional subsidiary and provisions about protection from liability for board members of subsidiaries.

The CHAIRMAN: Any other matters?

Mr Fowler: If I could add maybe another issue that the committee might want to think about, when it comes to the operation of other laws of the state, in relation to freedom of information, the State Records Act and defining a public office for the purposes of the Criminal Code, it would often be part of our function, if we were putting together an act of this sort, to organise other consequential amendments to other acts of that type, to make sure that those acts applied to the types of entities, I guess, that are being created under the Local Government Act.

The CHAIRMAN: I suppose also the local government financial management regulations and audit regulations would need to be adapted to the purpose.

Mr Fowler: That is right, and that is something that we could do through the regulation-making powers, but in relation to amending other acts, you cannot normally do that through regulation-making powers, unless they might have particular provisions in those acts to do that, so when you do look at the schedules of those other acts, you do find references to local government and regional local government, but you would not find there references to a regional subsidiary.

The CHAIRMAN: The Corruption and Crime Commission Act—would that need some attention?

Mr Fowler: It could well be, so there would need to be some research given to what other acts might be impacted by this, and that is something that is an issue that might need to be addressed in adding other things into the act or other acts about those types of matters.

Hon MIA DAVIES: I would just like to go back to a question that Hon Sally Talbot raised at the beginning around the differences between regional local governments and incorporated associations, and what regional subsidiaries offer. I firstly just wanted to clarify that within incorporated associations, you need to have at least five members—is that correct? That requires five local government representatives—is that correct?

Mr Fowler: That is an issue that has been raised with us. There is nothing stopping an organisation from having multiple members, so you could have two members from each of the local governments, which will get you over the five, if you have multiple —

Hon MIA DAVIES: Okay, so it is the membership of the incorporated association in total, not the individual councils? It does not have to be five councils forming that?

Mr Fowler: That is right; you can have multiples. You can have two local governments coming together, and they can have three members each, which would bring it to six on the board.

Hon MIA DAVIES: And the regional local governments—I think there has been some discussion around flexibility. From my reading, the flexibility is almost being equated to less compliance, but I think, from my reading and discussions, there has also been the possibility of regional subsidiaries being formed with a regional council; it is the same group of councils together all the time—is that correct? So they meet, and once you form a regional council, you are part of that regional council, so you have to participate in activities with those councils as part of that regional council.

Ms Mathews: That is correct, under the establishment agreement. So basically it is defined by the establishment agreement who are to be members of that regional council, and they then need to meet on a regular basis in that format.

Hon MIA DAVIES: Yes. Can you be, as a local government, a member of more than one regional council?

Mr Fowler: Yes.

Hon MIA DAVIES: You can? Okay. I think some of the flexibility that has been talked about in South Australia has been the fact that you can be a member of more than one regional subsidiary, and that the length and definition of that regional subsidiary is not prescribed, so that if there is a specific activity that you want to partake in, you can enter a regional subsidiary for that period of time with a number of your neighbours, but you may also be participating in another one for other purposes alongside. So do you agree that that may be the flexibility that some of the councils are looking for, that does not get served by regional councils?

Ms Mathews: Certainly, local governments can be members of more than one regional council. Again, depending on what sort of arrangements are required in terms of establishing the charter and what is in the charter and the regulations for regional subsidiaries, it is possible to make that process more flexible and more streamlined in terms of setting up regional subsidiary arrangements under the current arrangements for regional local governments. They need to go through a process of having an establishment agreement that is approved by the minister, and if they want to change their activities or amend them, they need to formally amend the establishment agreement, again with the

approval of the minister. But that is not to say that that might not apply to the charters of a regional subsidiary, so again it just depends a little bit on how this is fleshed out.

Hon MIA DAVIES: In your investigation of looking at the South Australian act, is that what has happened? Have you seen that some councils are moving into groupings for specific purposes? Are they multiple members of different subsidiaries, or did you have looked that closely?

Ms Mathews: From what I can see, the test would be that because the regional subsidiaries do not have the regional local government council model available in South Australia, they are using the regional subsidiaries for similar purposes as to what the regional local governments are being used for here.

Hon MIA DAVIES: For more multiple purposes rather than single purposes?

[11.00 am]

Ms Mathews: A mixture of both single purpose and multiple purpose; again, waste management appears to be a key function that they have come together for in South Australia as part of the regional subsidiary model. There are certainly similarities in the types of functions that are performed by the regional subsidiary in South Australia and regional councils here in WA.

The CHAIRMAN: Just to clarify, you have identified a number of areas that you think could be useful to include in the act by way of guidance or prescription. What is the department's position on replicating in effect, given some tweaking in order to accommodate local circumstances, section 48 of the South Australian Local Government Act 1999, which deals with the prudential requirements for certain activities. Do you have a copy of that handy? Have you had a look at that?

Ms Nazer: We did look at that with the submissions and my view was that would be—I should not be saying what my view is —

The CHAIRMAN: Your departmental —

Ms Nazer: That is right. The department felt that it would be desirable to have a similar provision to that section of the South Australian act.

The CHAIRMAN: And likewise with schedule 2 of the South Australian act, what is the department's view as to the suitability or otherwise of including those matters in the bill rather than by way of regulation? Is that going to be over-prescriptive, suitable or preferable? How do you see it?

Hon DONNA FARAGHER: Sorry, just picking up on that, though, if you were going to say, "Well, it could be done through regulations" under the current bill at proposed section 3.69(2) it says "regulations may" rather than "shall". I think you see a difference there. In terms of if it was to be kept in regulations, as suggested, would you see that it would be more appropriate that it say "shall" to actually make it require it?

Ms Mathews: To answer the first question, I think we have identified that there are certainly a number of areas from the South Australian schedule that ought to be reflected in the body of the act rather than left to regulation. I think we have highlighted some of those in our submission, particularly to balance out treatment of regional subsidiaries versus regional local government so that on reading the act you at least get a sense of essentially what is being proposed, what are the core elements of this proposed entity within the act itself. I think it probably remains for us to do some further work around just what would need to be brought into the act and what would need to be embodied in regulations from South Australia, but certainly there are many elements within the South Australian model that could be brought across, including the areas around compliance and accountability. I think South Australia, as I understand, has actually moved a bit further to, I think, tighten up some of the compliance and accountability applying to regional subsidiaries. That is interesting that they have done that.

The CHAIRMAN: Are you aware of any particular problems in South Australia—any misfeasance or failures of a particular regional subsidiary?

Ms Nazer: We referred to one in the submission. Generally, the reporting from South Australia is that the regional subsidiary model has worked well over a number of years. We were informed that it works even better when certain conditions are fulfilled—obvious ones such as the constituent councils all being on the same page. But the occasions where the model falters—all models will falter, nothing is perfect, but occasionally the model will falter—if constituent councils find it difficult to combine or to act, to come to a uniform approach, where there is a difficulty on the management of the subsidiary. I think the South Australian department mentioned it just had to step in gently at one point where there was a question about tender provision management and it was just a difficulty of the constituent councils not speaking with one voice there. But that should not necessarily undermine the model because even local governments have difficulties at times.

Ms Mathews: And it is a similar situation with regional local governments, if I might add, here. I mean there is always an issue where you have got a number of local governments trying to come together and solve a problem quickly.

The CHAIRMAN: It is not a problem that can be solved by prescription in legislation; it is a practical —

Ms Mathews: It is a practical. If I could add to Vicky's comment, another feedback from South Australia was that the model works well when you have got good collective will and a good common purpose. So, I think that this is all founded on, I suppose, having good working relationships and a clear goal and clear outcomes in terms of what is to be achieved by coming together and —

The CHAIRMAN: And something in the charter presumably.

Ms Mathews: And that would need to be outlined very clearly in a charter and you would have an agreed set of goals and objects in the charter. The other feedback that is quite important probably to note from South Australia is that the model works well there; the relevant local governments have the capacity to manage the regional subsidiary. The capacity issue was an important one that we have received feedback on from South Australia, and I think we have alluded to that being an important issue also in contemplating this model going forward and how it might work. The capacity of the local governments coming together to actually—their individual capacity to govern, to manage, is the important thing that we need to look at.

The CHAIRMAN: There has been mention of being a body corporate. Can you just clarify for me: does that mean that it would, as a matter of course, be subject of certain provisions under the commonwealth Corporations Act?

Ms Mathews: My understanding is that it is a body corporate as distinct from a corporation. That is another model that is being, I guess, floated and mooted and we are also doing some work on, and that is around local government enterprises that would be a corporation and —

The CHAIRMAN: With limited liability.

Ms Mathews: Yes, so that is another body of work that is going on but as distinct from this particular model, which is a body corporate which would be governed by the Local Government Act as distinct from the Corporations Act.

The CHAIRMAN: Also, some of the submissions to us made mention of community consultation before a regional subsidiary is set up. I think the department states that there should be some addressing of the need for community consultation from business plans and the like. What is the department's view in general on community consultation before a regional subsidiary is established; would it be required in all cases or not?

Ms Mathews: That is something that is under discussion, and I think we have reflected in our submissions that it would be, probably should be, a component of whether or not local governments proceed to set up a regional subsidiary. It is drawn in part from what happens in other states with similar models; they often do go through a process of community engagement to, I guess, get community views and community support for setting up a body like this and around what particular functions or purposes it might perform. It is consistent with the approach we are taking to really encouraging local governments to engage with their communities on a whole range of different issues, and this has been accompanied by our introduction of a whole new strategic integrated planning framework around putting in place proper strategic community plans which reflect good process of community engagement, so that has certainly been flagged as something that needs to be looked at.

The CHAIRMAN: But no particular view at the moment as to whether it ought to be prescribed either by way of legislation act or by regulation as to community consultation, or would it be something that would tend to be a factor that you would think the minister would take into account whether to approve the charter?

Ms Mathews: I think it can be dealt with both ways potentially. We need to explore that. I mean, it is a policy direction on how the minister wants to proceed with that one, but just reflecting on the regulations we are putting in place for the new integrated planning framework, community engagement will be prescribed. So, in other words, the strategic community plan that they will be required to have in place is to reflect meaningful community engagement, so I am just, I suppose —

The CHAIRMAN: It depends, I suppose, on whether you want flexibility on the one hand and leave it to the ministerial discretion and the guideline, or whether it is something that is prescribed, you have got no particular view on it.

Ms Mathews: That will need to be, I think, discussed further, yes.

Hon DONNA FARAGHER: I just go back to the question that I asked about the regulations and the “may” as opposed to “shall”. I am getting clearly from your evidence that the preference would be that a number of these matters would actually be set out in the legislation rather than left to regulations, but I suppose my question, though, is: if that was to not happen, would it be the preference at the very least by the department that it would say “regulations shall” as opposed to “may”, so there is some requirement obviously that these regulations are made?

The CHAIRMAN: And address certain issues.

Ms Mathews: I think that would be now the preferred point, to be honest. I do not think this can proceed without the detail required in regulations, particularly if we are looking at the balance we talked about around flexibility and compliance. I think it is important that the regulations do contain a certain element of detail around that, so it is difficult to see how this could progress without appropriate regulations in place covering those matters.

Ms Nazer: Mr Chairman, may I ask a question about the word “shall” and the lawyers in the room can answer this. If the word shall is used, does that circumscribe what can be in the regs? I mean, can you add other things as well as what is listed that you shall include?

The CHAIRMAN: I would have thought that that would prescribe the minimum matters that need to be addressed by the regulations.

Hon DONNA FARAGHER: You would have another, probably an all-encompassing, catchment at the end, I would think, to say “in any other matter”, you know, whatever.

The CHAIRMAN: I think there is a catch-all that may be included, as regulations may also be made for any other matter that is convenient for them or required. But the department will have to get its own legal advice on that, of course. I suppose what we are concerned about is whether there are certain things that should appear in the act, particularly if the areas that are being left to

regulatory discretion are going to be limited by other provisions in the act because they cannot be inconsistent with them, so if there is to be some qualification, say, of the prudential requirements or of governance requirements then I would have thought that it ought to be in the act rather than simply leaving it to regulations where there may be a problem, but that is just a tentative view of mine. You have identified several things that you feel should be in the legislation as opposed to simply left to regulatory discretion. Is that a fair summary?

Ms Mathews: Yes.

Ms Nazer: Yes.

[11.15 am]

The CHAIRMAN: In light of the issues raised by Hon Donna Faragher, if you could turn to the bill and the proposed section 3.69(2)(c). It commences that regulations may, and we have had the debate—well not the debate, but we have questioned whether it should be “shall” or “may”—and (c) says —

provide for the establishment, corporate status and powers and duties of a regional subsidiary;

Does anything turn on the use of the word “provide” as opposed to “prescribe”? The word “provide” is used in a number of other paragraphs as well. I would like you to give some thought to that as to whether it will, but if you cannot offer an opinion at this stage, then that is fine. But it may be a question as to whether the regulations simply touch on it or whether they have to detail those matters.

Ms Mathews: They certainly need to be, obviously, covered appropriately in regulation. I think that is something that we would probably consult with the office of parliamentary counsel in terms of just a drafting matter and what would be the correct terminology for that and, I guess, how much detail would need to be in there.

The CHAIRMAN: “Provide” seems to be a less—mandatory, I guess. We are talking about regulations that may regulate, require and the like, and provide, rather than prescribe in some detail. But anyway, that may be an interpretive issue.

Ms Mathews: It may well be.

The CHAIRMAN: I just want to turn to whether regional subsidiaries may exercise functions conferred by other acts. At the moment the bill simply refers to the performance of a function jointly under 3.69(1). Questions have been raised by some submissions as to whether it means “a function” as opposed to more than one function being conducted by a particular regional subsidiary. I am inclined to the view that the Interpretation Act would be singular—applies the plural and the like. So we will leave that aside. But is your understanding from the intent of the bill, the policy behind the bill that the functions may include functions that go beyond those of the Local Government Act and may involve functions prescribed by other legislation and are you able to comment on the department’s view as to whether that is desirable or sufficiently met by the terms of the bill? For example, if there happens to be a policing function under the fisheries act or some planning function under the state planning legislation. Do you see the bill as extending that far to give local governments the opportunity to form these subsidiaries to perform those sorts of functions or not?

Ms Mathews: It really would be—it probably would be—and I guess, coming back to the intent of the Local Government Act itself, in which the tier of local government is created, and individual local governments are created, and they are created with the power of general competence to perform a range of functions for the betterment of their communities and for the good governance of the district. Of course, local governments perform a range of functions under a number of different—some of which is delegated under other legislation; some of which is not. It is quite

broad. I would not be envisaging that this would be limited only to those under the act, but it would depend on the charter.

Mr Fowler: And I think the drafting of the head of power, because if you do look at the head of power for regional local governments, under the act, the sections starting 3.61 through to 3.66—section 3.66 quite clearly makes it apparent that local governments can carry out functions under other acts in relation to regional local governments. The drafting of this bill does not appear to go to that extent. Mind you, when I read this I was just assuming that it was intended that it be limited to things under the Local Government Act, but I am not sure what the original intent is of how far this would go. Certainly, regional local governments, the statutory ones, do need to have powers about waste management, health, and issues of that sort. That is why it has been extended specifically to other acts. Only in this case it is not there.

The CHAIRMAN: The Waste Avoidance and Resource Recovery Act 2007 is one that has been drawn to our attention. Your view originally was that it would not extend so far as to embrace the performance of functions under that act, but there is the argument that it can. Would some clarity be desirable as to whether these functions go beyond the functions prescribed under the Local Government Act or —

Mr Fowler: I think that you would need to get advice about drafting the bill about that. But it may be that the intent is to limit it to things under the Local Government Act when it comes to the more service delivery-type things; if that is the intention. Certainly, if the intention is that they go beyond that, and require the functions of other acts, you need to get advice to see if the drafting is sufficient.

The CHAIRMAN: Assuming that the policy is not to extend the scope of regional subsidiaries to functions either delegated or prescribed by other acts: would that, in your mind, affect the effectiveness of the proposed model? Should it extend to that as a general rule in order to make them worthwhile?

Ms Mathews: Well it would potentially, certainly, limit its potential to really just more back-office service sharing arrangements around things like IT, HR and back-office functions that I am not—I think it goes to the intent of what is proposed with this regional subsidiary. If you look at the South Australian model, certainly that is intended to be much wider than just the act itself and goes way beyond that and is more aligned with the purpose and intent of the regional local governments set up under the Local Government Act. So I think it goes to the intent of the actual concept proposal. But, whichever it is, probably does need to be clarified. It would be helpful to have it clarified within the body of the act itself.

The CHAIRMAN: And the use of the word “function” or “functions”: you do not see that presenting any sort of problems? You would assume from the departmental point of view that it would be more than one function and —

Ms Mathews: Yes. I mean it is just an interpretation matter.

Mr Fowler: Just to add to that: I think the drafting of our act is just self-explanatory. In our act we refer to functions all the way through for consistency. The South Australian one refers to functions on the one hand, but then refers to services and activities as well. I am not quite sure if there is a dispute that they are trying to distinguish in some ways.

The CHAIRMAN: Our act uses the plural throughout.

Mr Fowler: The term “functions” consistently through—

The CHAIRMAN: Function.

Mr Fowler: Function—yes.

The CHAIRMAN: Function: all right, we are agreed.

I think that we have covered the question of—maybe we have not! Are you able to offer a view as to the—we have, I guess, touched on it—the question of the prudential provisions that are currently in the South Australian act. You have said that it would be preferable to be some reference to that in our act rather than left to regulation. Is that right?

Ms Mathews: Yes.

The CHAIRMAN: Are you able to say at this stage which provisions of the Local Government Act or to continue to apply to regional subsidiaries established under our legislation?

Ms Mathews: I guess that stems from the general premise and the status of a regional subsidiary as opposed to a local government. That needs to be set out quite clearly in the act, in that a regional subsidiary council is not intended to be a local government. So a local government act applies and governs local governance, as does a regional local government and that is why those compliance requirements kick in. Essentially, a regional local government is subject to all the same compliance requirements as a local government with some modifications that we have put in place in response to local government saying, “Your compliance requirements are too high. We are comprised of a set of individual local governments; we are individually subject to all the requirements of the act: why double?” So we have taken some steps already to modify the compliance requirements that apply to regional local governments. But regional subsidiaries are not intended to be a local government; they are a body corporate, so as a result of that, I think it is all the more important why we articulate what they are subject to. And that is why we would need to, as in the South Australian model, integrate or incorporate the relevant required elements of prescription, whether it is the prudential requirements or indeed other reporting requirements. We have alluded to that in our submissions. Given that the constituent councils will be responsible for the regional subsidiary, we will need to build in appropriate financial and reporting requirements. But, again, on the basis that it is a body corporate —

The CHAIRMAN: We have got to be careful.

Ms Mathews: Exactly that.

Hon SALLY TALBOT: Can you just clarify for me please: wouldn't you just be able to extend the compliance provisions relating to incorporations, or incorporated associations, to a regional subsidiary model?

Ms Mathews: Incorporated associations are governed by a separate piece of legislation, the incorporated associations act, which is a very separate piece of legislation that deals solely with the establishment, the governance and compliance requirements that apply to incorporated associations.

Hon SALLY TALBOT: Because the Local Government Act does not have compliance provisions for incorporated associations as they relate to local government.

Ms Mathews: Correct; it only creates a head of power. Within our Local Government Act there is simply a head of power to allow local governments to establish an incorporated association set up, and that definition then references the incorporated associations act.

The CHAIRMAN: And so we do not prescribe what the governance provisions are for one of these incorporated associations—sorry a corporate body of this particular time because there is no other legislative prescription, and we have to be careful about the potential for Henry VIII clauses that might modify legislative requirements or qualify legislative requirements.

Does anyone have any further questions?

Hon ALISON XAMON: I am aware that this question is not here, but I do not think we have it adequately covered.

Could you expand upon the statement, on page 4 of the department's submission, that the need for a regional subsidiary model may be more imperative in South Australia than Western Australia and

how do Western Australian local government zone groupings fulfil the matters set out in the submission?

The CHAIRMAN: It refers to page 4 of your —

[11.30 am]

Ms Nazer: Yes, on page 4 we are talking about South Australia. In South Australia we have noticed that the purposes of a number of the regional subsidiaries mirror what the WALGA zones do in Western Australia. We have had a look at it but not in depth. We suspect the way the local government association operates in South Australia is somewhat different from WA and hence there has been a need for regional subsidiaries to carry out some of the roles that the WALGA zones already do—regional advocacy, for example. Ms Xamon, I did not quite hear the question.

Hon ALISON XAMON: I suppose the question is: if you are looking at the comparison between the two models, do you feel that the WALGA zone groupings adequately fulfil the matters set out in the submission?

Ms Nazer: I believe that the WALGA zone groupings in Western Australia adequately fulfil a number of the purposes that are satisfied by regional subsidiaries in South Australia.

Hon ALISON XAMON: You have mentioned advocacy. What other sorts of functions would you be referring to?

Ms Nazer: It is mainly advocacy, and liaising with state and federal governments.

Mr Fowler: There is also a waste management role.

Ms Nazer: The waste management role is mainly carried out by regional local governments in Western Australia whereas in South Australia it is carried out by regional subsidiaries. There seems to be some purposes that in South Australia could not be met without the subsidiary model but here in the west they can be met in other ways at the moment, which is not to say that the regional subsidiary model would not add something. We made the point in our submission that the need for it does not appear such a strong imperative.

Hon ALISON XAMON: This is the crux of what we are trying to get to the bottom of—exactly what the regional subsidiary model would add in WA and in our context, which simply is not made available. Talking about flexibility, at the moment it sounds like the main flexibility that would be offered would be flexibility from stringent reporting requirements. I am trying to get my head around what additional flexibility options would be provided.

Ms Mathews: That is essentially the point of difference because around that potential, the greater flexibility of the way a regional subsidiary operates subject to what is in its charter goes into the regulations but there is scope to provide a regional subsidiary in WA with more flexibility to deal with particular issues. On the advocacy side of things, some of the regional councils in WA also play an advocacy role.

Hon ALISON XAMON: I am aware.

Ms Mathews: For example, the EMRC plays an advocacy role and performs functions that are certainly wider than just waste management.

Hon ALISON XAMON: A series of functions actually.

Ms Mathews: Exactly, a series of functions. They are an example of a regional council operating very well. They are not a single purpose regional council. They are operating very effectively across a range of areas.

Hon ALISON XAMON: Taking an example like the EMRC, if the EMRC decided to change its structure but it still operates the same six councils and the like and becomes a subsidiary, apart from

changing the reporting requirements, what additional functions would you see it would be able to perform that it currently cannot perform?

Ms Mathews: None.

Ms Nazer: It could have external board membership. In terms of the actual functions it can perform, there is no limit on the range of functions, services and roles that it can perform. It is only limited by virtue of its establishment agreement, which can be amended and adjusted depending on what it might want to do. It can evolve but that would be subject to agreement by member councils and also the minister. Presumably with a regional subsidiary, the same process would apply in order to amend or evolve its functions. The simple answer is that if the EMRC were to morph into a regional subsidiary, there is potentially no change to the nature of its functions because it has a range of functions. There would be very little change to the way it operates. It would be a separate entity. It would not operate as a council. It would not be a local government. It would be a separate entity reporting back to the constituent councils and accountable to those constituent councils as opposed to being a local government operating as a local government under the act and being accountable as a local government under the act.

Hon ALISON XAMON: I just want to explore this a little. If the EMRC became a regional subsidiary, my understanding from earlier comments is that they would also then have the capacity to opt out of particular reporting arrangements back to those local councils as well. Is that correct? Not only would they not be accountable as the EMRC currently is but they could opt out of even that accountability back to the local councils if they so choose in relation to the initial set-up.

Ms Mathews: Yes, potentially, subject to the approvals of the minister. We have flagged as a requirement that before a regional subsidiary can be set up, there would need to be ministerial approval from that. That would be approving a particular charter, in line with and including the various accountability of government requirements that go with it as embodied in the regulations.

Ms Nazer: Within the charter would be the understandings about the reporting requirements. The constituent councils would make sure that reporting requirements were set out in the charter.

Hon ALISON XAMON: I am assuming that even though the reporting requirements would be set out initially in that charter, they can be amended at any point by the member councils. They can be tightened up or loosened as the case may require.

Ms Nazer: We have suggested in our submission that provisions about the amending charters be flagged as something to be included in regulations. At the moment it talks about reporting requirements but it does not flag how the charter would be changed.

Hon ALISON XAMON: Also noting that some local governments have provided submissions to the committee that state that community consultation should occur before a regional subsidiary is set up. The department states on page 1 that the charter of the regional subsidiary should address the need for community consultation for business plans. What is the department's view about the need for this before the subsidiary is set up?

The CHAIRMAN: We have covered that.

Hon ALISON XAMON: I did not feel that we really did.

The CHAIRMAN: The integrated planning framework that you are setting up requires some community consultation as one of its principles but the acts apply.

Ms Mathews: I assume there would need to be community consultation prior to it being set up.

Mr Fowler: I also note in the South Australian legislation that when they set these up, they are then required to prepare a business plan. The business plan does not have to be prepared until six months after it has been set up. In our case, we might want to see the business plan in advance so we have some idea as to what the nature of it is and what the likely success is of the planning as well. They

are issues that we really flagged in the submission—that the minister would want to look at the capacity of the local governments to engage in this type of activity. It would be good to know whether there is a sound business plan behind the whole proposal as well.

Hon DONNA FARAGHER: So South Australia does not need to provide that business plan until six months after.

Mr Fowler: That is right. That is an issue that would be a policy matter.

Hon ALISON XAMON: Regional councils as they currently exist also do not need to supply a business plan before being established. If they are not producing a business plan at the time of the community consultation, that is not inconsistent with higher practice in WA in relation to the councils.

Mr Fowler: As Jenny has flagged, all these provisions about the capacity of local governments and regional local governments to carry out activities is up for public discussion.

Hon ALISON XAMON: Is there a suggestion that you are going to be looking at amendments that a business case must be put beforehand?

Mr Fowler: There has been no discussion about that as yet. We are moving to establish a long-term planning framework for local governments on issues like this that arise.

Ms Mathews: The idea of engaging with communities early on in this sort of issue is also consistent with requirements that are currently in place under the Local Government Act. If a local government wants to engage in a major land transaction or a business transaction, it does need to put it out to the community. It does that through public notices and through inviting public submissions. It is about transparency. At the end of the day, you are dealing with local governments setting up a body. Local governments are obviously essentially funded through ratepayer funds. That is what is underpinning a lot of the discussion today. It is about public money and ratepayers' funds. I would be thinking that there would need to be a degree of community consultation prior to a regional subsidiary being set up. We need to do some more thinking around that.

Mr Fowler: Another issue you might be interested in is the fact that when the act deals with regional councils, it limits regional councils in respect of some activities. In particular, it makes it clear that regional councils can not impose rates and borrowings or loans that were beyond the capacity of member local governments to support. That is in the act and that is a limit. In relation to this bill, it provides the capacity for regulations to determine those types of issues.

The CHAIRMAN: Given that, by definition, they are not regarded as local governments, they would not ordinarily be limited to that prescription under the act. It may not give them the power to impose rates and the like and borrow but that would be essentially a matter for the minister to decide by way of regulation. That leads to my last question on the subject. There appears to be nothing preventing a regional subsidiary from being set up as a profit-making organisation. Would that be right, under the terms of the bill?

Ms Mathews: Yes.

The CHAIRMAN: Is there a limitation for regional governments in that they cannot be profit-making organisations or trading corporations?

Ms Mathews: That is right. Essentially, they are set up to act as a local government. Anything that is generated out of their activities would be returned to their constituent councils.

The CHAIRMAN: But nothing like that specifically in the act may or may not be covered by regulation and it may or may not be subject of ministerial approval in a charter.

Mr Fowler: That is right. Section 3.62 of the Local Government Act prevents councils from forming companies unless regulations allow it. Regulations have been made to allow them to form a

non-profit organisation. It would depend on the capacity in the regulation-making powers in the bill to come up with something different to that limitation.

The CHAIRMAN: Would it be desirable from a department's point of view that the intent be reflected in the act rather than being left at large in regulations?

[11.45 am]

The CHAIRMAN: Is it reflected in the South Australian legislation, to your recollection?

Hon MIA DAVIES: Just to clarify; my understanding is that the subsidiaries are subservient to council, so under all the things we just talked about in terms of financial reporting and all the rest of it, they are always subject to the Local Government Act because they are subservient to the local governments that they are being formed by. Does that not mean that they are —

Mr Fowler: My understanding is that it is only to the extent that that is reflected in the regulations. The regulations can be flexible about that issue.

Hon ALISON XAMON: My understanding—if I am incorrect, I would love to be corrected—is that there does remain the power to opt out of a whole range of reporting mechanisms both to the local governments that establish the entity and that by the nature of it being a subsidiary, it is not answerable under the Local Government Act in the same way that a regional council is.

Ms Mathews: That is where the potential lies to streamline a lot of those compliance requirements, subject to what is in the regulations or the charter. I think, as a policy matter, they will require ministerial approval, so the minister would be looking to approve the establishment of a regional subsidiary that achieves that appropriate balance between, I guess, flexibility, governance and accountability.

Hon ALISON XAMON: Except that we have also already identified that it is silent on the matter of amendment of the charter and, potentially, the reporting mechanisms, so you could have a scenario whereby local councils set up an entity, particularly with reporting mechanisms, that are signed off by the minister but then it is altered. Can I determine at this point whether it is foreseeable that the minister would then not have the capacity to sign off on any alterations to that charter?

Ms Mathews: I would be envisaging that the minister would want to.

Hon ALISON XAMON: I did not ask whether the minister would want to—I imagine the minister would too—I asked whether it would be possible for that to occur without the minister's approval.

Ms Nazer: In submissions we have flagged that if many aspects are left to regulation, the bill should foreground that matters to do with amending the charter should be flagged as something to be covered in regulation, how charters will be amended. That is quite important.

The CHAIRMAN: Are there any other matters that you feel you need to or would like to raise?

The Witnesses: No.

The CHAIRMAN: Thank you very much for your assistance and your evidence.

Hearing concluded at 11.48 am
