

STANDING COMMITTEE ON LEGISLATION

**LOCAL GOVERNMENT AMENDMENT
(REGIONAL SUBSIDIARIES) BILL 2010**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 10 AUGUST 2011**

SESSION TWO

Members

Hon Michael Mischin (Chairman)

Hon Sally Talbot (Deputy Chair)

Hon Donna Faragher

Hon Mia Davies

Hon Alison Xamon

Hearing commenced at 11.56 am

TRENORDEN, HON MAXWELL WAYNE
Member of Parliament, examined:

The CHAIRMAN: Hon Max Trenorden takes the stand. Welcome. Please advise the capacity in which you are attending the hearing.

Hon MAX TRENORDEN: I am here in my capacity as a member of Parliament.

The CHAIRMAN: You have sponsored, or at least introduced, the Local Government Amendment (Regional Subsidiaries) Bill 2010. I am not sure how many of the formalities I need to take you through but you have sighted and received a document about “Information for Witnesses”. Would that be right?

Hon MAX TRENORDEN: No; I have not, but I understand that well.

The CHAIRMAN: You understand the procedures?

Hon MAX TRENORDEN: Yes, I understand them very well.

The CHAIRMAN: As you are probably also aware—I will not go through it in detail—Hansard is recording the evidence. A copy of the transcript will be provided to you, and you need to clarify and identify the documents that you refer to. The transcript will become a matter for the public record. If you wish to make a confidential statement, alert us to that. If your request is granted, anyone else will be excluded from the hearing and, of course, you know not to make your transcript public until it has been settled.

Would you acknowledge that you received earlier today before the commencement of the first evidence a document that is not titled, but is a series of seven paragraphs by which the committee hoped to distil the policy behind the bill; is that right?

Hon MAX TRENORDEN: I have it here; yes I have received that.

The CHAIRMAN: I think you indicated to us earlier that you were content with that as an articulation of the policy that the bill promotes?

Hon MAX TRENORDEN: I confirm that, Mr Chairman.

The CHAIRMAN: Thank you. Just so that you understand, two of the departmental witnesses who were here earlier, Ms Nazer and Mr Fowler, are at the back of the hearing room, presumably so they can report back to their department what you are going to say. Do have you any objection to that taking place?

Hon MAX TRENORDEN: I totally support an open process, Mr Chairman.

The CHAIRMAN: Thank you. Would you like to make an opening statement regarding the bill? I remind you that we are not looking into the policy of the bill. There may be aspects of the policy that will become relevant in being able to compare what the bill says as against what is prescribed for other forms of local government cooperation, but we are concerned more with whether the bill reflects the policy that you are promoting.

[12.00 noon]

Hon MAX TRENORDEN: Thank you, Mr Chairman. Yes, I would like to do that; in fact, I think it is pretty important. Being a chairman of a committee over many years myself, I understand the separation of policy and function of the bill, but I do think much of the conversation this morning did relate around policy depending on how you define “policy”. If you define it as party policy, then

it did not; but in terms of administrative policy, it did. I think there are a couple of very important things to state about this. You have examined the South Australian act. The South Australian Local Government Act is an open act. Our act is a constrictive act. Our act is very, very prescriptive. The operating models of both acts could not be further apart. So there is some difficulty in translating the intent of those two acts, but my intent is to put a function that occurs in South Australia into a Western Australian act. Much of the complaint about the Western Australian act, and many of you will have experienced this yourselves as local members—I was there as a member of Parliament when the current act was brought in, and I voted for it—is that some of the descriptive nature of the current act is the problem with local government currently. We dot every i and cross every t. The South Australian act just does not do that. So the question is: when you take a function in South Australia and drop it into a Western Australian act, do you take the attitude of the South Australians and have an open act, or do you take the attitude of, currently up to now in Western Australia, having a closed act? I think that is one of the matters that you need to put on your board, not as a major issue in your deliberations, but as one of the considerations.

The other matter here in Western Australia, in general—I agree, not in total, but in general—is that every time we have moved to do something in this area we have formed something that operates outside of the current local government. It is very important to understand that this model operates inside local government, not external to it. Does it need its own powers? There all those questions. It draws all its powers and its provisions from two sources—the act and the parent councils, which are responsible to the act. Questions were raised about prudential requirements. Prudential requirements and conflict of interest provisions are currently in the act. Conflict of interest is currently in the act. The three issues that were put to you this morning are currently in the act.

The CHAIRMAN: I think one of them was prescription as to liabilities that occurred or were assumed by local governments.

Hon MAX TRENORDEN: That is right. Everything this model does, requires that for every act they do, they must report back to their head councils. They draw all their authority and all their power from the head authority. They do not draw from provisions of the current act or the South Australian Act or my amending bill. Hon Alison Xamon, there is no ducking. Everything that a council does is compliant with the councils that they form, so they cannot duck provisions; they cannot duck accountability. All the measures of the act are there. It is important to clearly understand that I am not attempting to—and the South Australian model does not—create an entity that acts externally of the councils. They are actually subordinate to the head councils in all manner. I think that is an important point. In those terms—increases about acting to other acts and all those sorts of issues—the Western Australian Local Government Act, in terms of subordinate councils, is paramount; it is the document. As has been already pointed out to you this morning, it is an inch thick; it is very descriptive. All the provisions of the act will apply to subsidiary councils. They, I think, are the important starting points. The whole thrust of local governments that approached me some time ago—many councils talked to me about this—is not for a provision to duck anything at all. It is about the capacity to move nimbly within prescribed boundaries and to be able to act on a specific issue in a time frame given under the corporate agreement, and that has to be agreed with. As you have already said, the matters in which the subsidiary council will operate are in the head agreement.

The CHAIRMAN: Okay; are there any other things you want to touch on at this stage?

Hon MAX TRENORDEN: No; I presume we will go through similar questions, and I am happy to meet those, Mr Chairman, as we go.

The CHAIRMAN: Thank you for that. Just picking up on a couple of points that you have made, you mentioned that the philosophy in South Australia is, essentially, different and that the policy here is that it be a subsidiary body or subordinate body, as it were, to the councils that make the arrangements. Where do we draw from the bill the conclusion that the regional subsidiary is

required to be subordinate to and answerable to a local authority? If I can just expand on that, currently we have got regulations that may be prescribed —

Hon MAX TRENORDEN: That is right.

The CHAIRMAN: — with a variety of things such as a charter regulating governance and management and leaving it to the minister to approve the formation of a subsidiary, but where does the bill make it plain that this separate body corporate is answerable to the local governments that have constituted it, and the level of that accountability to those local governments, given that it would appear that the body corporate itself would not have the status of a local government and so would not ordinarily be governed by any of the prudential and governance requirements under the Local Government Act for local governments themselves?

Hon MAX TRENORDEN: Two points: one is that I would immediately agree that if this bill had come through a department it would be a different bill. This bill has come through a private member, with all the capacity and the massive amount of resources that local members have! So I would agree that argument is a reasonable argument, but I would also state that the powers to do the opposite are what I do not take out of the local government bill via an amending bill. This is an amending bill; it takes certain functions away from the current act; it does not add functions to the act. The charter is all-important. Under this model, the way the charter operates is critical. What would happen is that two or more councils would come together in agreement to carry out certain functions. That would have to be put into a legal charter. Of all the people in this room, Mr Chairman, you would understand that. That charter would be a legal, binding agreement like all other legal contracts. But the other issue is that it has to be put to the minister for approval. That was the bit I spoke about some time ago when you first asked me about the seven objectives. When looking at that, it is important that it does have approval of the minister because the minister can then decide, with the charter that is put forward and the provision of his act, that all the requirements that as a minister that he or she is required to carry out, these subsidiary councils come up do comply with all the matters required in the Local Government Act.

Hon ALISON XAMON: Can I confirm, understanding that it is not the role of this committee to comment on the policy of the bill, but you are confirming that it was always the intended policy behind your bill to make sure that all the safeguards and obligations that currently exist within the Local Government Act pertaining particularly to the prudential requirements, conflict of interest and liabilities assumed, were always going to be adopted by any regional subsidiary?

Hon MAX TRENORDEN: Yes.

Hon ALISON XAMON: You are confirming that was always intended to be the policy.

Hon MAX TRENORDEN: That was always my intention.

Hon ALISON XAMON: Can I just confirm then that, if through the course of this inquiry, this committee were to be presented with clear legal advice that that was not actually achieved through this bill, but, clearly, it has already been determined that that was intended to be the policy, you would not see an objection to a proposed amendment to ensure that that would reflect the intended policy?

Hon MAX TRENORDEN: To put it another way; if you were to say to me that a bill written by Hon Max Trenorden is a superb piece of legislation, I would immediately disagree with that point of view! I would happily take clear advice on improvement. My intention here is to bring a degree of flexibility to local government. I point out again, going back to my original statement, the reason that the South Australian bill makes comments about the issues that you and others raised in the previous hearing, is that their bill is silent on some of those matters, whereas our bill is not.

The CHAIRMAN: Do you mean their act?

Hon MAX TRENORDEN: Their act, sorry. Their act is silent on some of those matters; it is an open act.

The CHAIRMAN: That is the head act.

Hon MAX TRENORDEN: The head act, yes. There is a difference in the head act in South Australia to the act in Western Australia. Ours is very prescriptive.

Hon ALISON XAMON: I was just going to confirm that, as we are not questioning the policy, if that were deemed to be a deficit in the current bill, an amendment to reflect what is intended would not be objectionable.

Hon MAX TRENORDEN: Definitely not. You will be very, very surprised to hear that I am a very strong supporter of your types of committees and the work that your committees do. I am highly unlikely to react violently to any suggestions you put forward.

Hon ALISON XAMON: But it is your contention that the current bill as it is drafted, to the best of your understanding, does actually reflect the current —

Hon MAX TRENORDEN: My intention was not to remove any of the provisions of the current act. My intention was to put into the Local Government Act a function that is not available in Western Australia.

The CHAIRMAN: There is something I want to test on that, but I think Hon Sally Talbot has the —

Hon SALLY TALBOT: Just to continue that same theme—you may want to answer this question now, which I suspect would probably cut short some other avenues of question, or you may want to leave it to the end so that you can conclude it as part of your summary—you have heard, I think in the previous hearing a number of suggestions about what should be included in the bill to make sure that the regulatory powers are in line with the intention of the piece of legislation. One that I remember was about the bill including reference to the amendments to a charter that they would have to have ministerial approval for, for example.

Hon MAX TRENORDEN: There would be no question that should happen.

[12.15 pm]

Hon SALLY TALBOT: In the light of what you have heard this morning, would you be prepared to take those suggestions on board, or were there things you heard this morning that you thought were way beyond or different from your intention?

Hon MAX TRENORDEN: It would definitely be my intention to take those points of view on board, but I would overlay that attitude to a very prescriptive attitude to this bill. This is a very simple bill; it does not do much. It could not be much simpler, and that is why you and your Chairman are saying to me, “What does this bill intend”, because it is really simple. I would personally, if I were the minister—which I am not and never will be—not be seeking to complicate the issue. I would argue very strongly that the current act, the head act, has all the concerns that you raised in it. All we need to make sure is that when these entities go out there and start operating, they operate within the confines of the act. There is no intention on my part, or the many councils that have approached me and prodded me along this direction, to operate outside of the current act—I should have said in terms of prudential requirements, reporting requirements, liability requirements and all of those type of issues.

The CHAIRMAN: That excites my mind on one aspect of it, which is that I understood that there are other mechanisms, other vehicles under the act, such as regional councils that would reflect —

Hon DONNA FARAGHER: Partnership agreements?

The CHAIRMAN: That lost me anyway. If a regional subsidiary is to be a body corporate, but with all the prudential and government requirements prescribed under the Local Government Act

applicable to local governments applying also to the regional subsidiary, where is the distinction between that and a regional council, and how would a regional subsidiary then be more “flexible” than a regional council?

Hon DONNA FARAGHER: To add to that, the question that I posed to the department previously—take, for example, ranger service; I am saying “ranger service” just for one particular aspect. Drawing on what the Chair has asked, how do you see that would be more flexible through a regional subsidiary approach as opposed to the regional council?

Hon MAX TRENORDEN: The answer goes back to the first thing I said. One is an entity within local government; the other is an entity outside local government, a whole new creation, a whole raft of regulations and rules, in most cases elected by a whole duplicated system of what currently exists. That is administratively a nightmare, structurally a nightmare, limited in function, because it is a new entity operating outside of the current council. This is about councils getting together and putting together a charter that describes a function. I would see no problem with a range of activities under this model, because the head council would always have to make sure that compliance occurred. The subsidiary would not have that power.

The CHAIRMAN: The head councils, because you have to have at least two.

Hon MAX TRENORDEN: No—councils, but they would have to be in the process of what happened in the charter. The regional subsidiary could go into all the operating processes in terms of rangers—making sure the rangers could go across boundaries, perhaps carrying out other functions and those sorts of things, but the power to prosecute remains with local government.

The CHAIRMAN: Can I just —

Hon ALISON XAMON: I have a question on the same point.

The CHAIRMAN: Likewise. I want to develop that a little more because I am still a little confused as to how this is going to be different, other than the name, from a regional council which will be set up by two or more councils coming together and saying, “Here’s some functions that we think are better explored and executed by a regional council—another sort of corporate body, in effect—with the same status as a local government, the same powers and responsibilities, prudential government obligations as we individual local governments have. We have set that one up to do this job.” What would be more attractive about a regional subsidiary with the same provisions that are applying to it? Where is the flexibility in that?

Hon MAX TRENORDEN: A regional council has to have elections and all the functions of the Local Government Act under your subsidiaries; they all apply, whereas, in this case, the members on the subsidiary are appointed by the councils. In the operation of this in South Australia, many of those people are not councillors because they cannot make and do things that are not bound by the charter, and all the decisions that they make have to go back to the head councils—everything has to go back to the head councils. They can deal with precise matters, whereas if you form a regional council, what you do is replicate a current council and put it out there, and it has the capacity, just A to Z, in its functions, whereas a regional subsidiary has a defined role by the charter.

The CHAIRMAN: I am just trying to clarify that.

Hon ALISON XAMON: So am I.

The CHAIRMAN: I am sorry; I am not trying to stifle you, but we are maybe on the same track here. I understood a regional council could be provided with limited functions that it is performing, like waste management and the like and waste processing, which is what you are talking about with the regional subsidiary. You are talking about elections, and I do not think that regional councils are elected bodies.

Hon MAX TRENORDEN: They would have to have councillors.

The CHAIRMAN: True, but councillors are appointed to it —

Hon ALISON XAMON: I understand that the chair is elected.

The CHAIRMAN: No-one elects a regional council.

Hon MAX TRENORDEN: They are elected members. If you go back to what is already there —

The CHAIRMAN: What you are talking about is a distinction, then, that you can appoint non-councillors to a regional subsidiary.

Hon MAX TRENORDEN: To carry out a function. If you are looking at water and you want to bring a water expert onto your grouping, you have the capacity to do it. If you are dealing with waste management and you want to bring on a person with particular capacities in that area, you can bring them on. If you are dealing with social issues in the community, you can bring community members onto the group to do that, and they just have that precise function. Hon Sally Talbot has a big interest in the regional councils. I would not be suggesting that a massive function like they are, that you would do any different than they have. I would not suggest that was the case, but if Mosman Park, Claremont and the like want to put a function of meter reading into a process, you would not go to all the massive effort to form a regional council for that one function. I want to make this clear, Chairman. I am not saying this is the only thing that should be. My bill does not remove all those other options out of local government; it just adds this one in—that is not true; it just takes away provisions that do not allow regulation to aid this one.

Hon ALISON XAMON: We are starting to get to the crux of how it is envisaged that regional councils are going to be different from regional subsidiaries. Effectively, we have determined that there is an election process with regional councils—we do know that, particularly for the chair—that there is no capacity at the moment to bring in external expertise, if that is deemed to be appropriate, and of course the reporting mechanisms are different; they go up rather than down to the representative councils. Presuming that we have resolved all the concerns around the reporting requirements, that is the fundamental difference. What I would like to pick up on is that the previous evidence that was tendered indicated that in addition to the regional councils there are other models which are currently able to be exercised under the Local Government Act, in particular, the establishment of partnerships and the creation of incorporated associations, as I understood it. What I am trying to understand is, considering that there already exists a range of different models that can be accessed in order to undertake any number of functions, and picking up on the points raised by Hon Mia Davies before, it also means that an individual local council can be involved with any different grouping of councils as they deem appropriate to undertake functions, and what is the current gap that exists in the entirety of options that are currently available under the act, which this is seeking to fill?

Hon MAX TRENORDEN: If you look at some of the matters that particularly the smaller councils are trying to deal with, you will see why they support this model. I am not saying this is the case; it is just to give an example. If you were the Shire of Wiluna and you wanted a partnership with the Shire of Cambridge to use the services that are in Cambridge, which are not in Wiluna, and you had a longstanding working agreement, this is the perfect way to do it—uncomplicated, simple, able to be established in a short time frame, able to be ceased when that function breaks down.

Hon ALISON XAMON: For example, how is that different under this model to what can currently be achieved, perhaps under a partnership model?

Hon MAX TRENORDEN: It is significantly simpler.

Hon ALISON XAMON: Simpler than a partnership model?

Hon MAX TRENORDEN: It allows the two or more head councils to come to an agreement about the function, so that function is defined in this model, whereas in most of the other arrangements the functions are an open process. Under this model what is being carried out can be as simple as

shared services within a council, particularly for small councils that just do not have health inspectors, planning officers and all of those sorts of issues, to the situation that you heard earlier in which SEAVROC want to put a number of councils together and combine services from those councils in that prescribed manner. Under this subordinate model, that is a described function, so it is clearly outlined as to what is to occur; whereas, under the other models, that is all open.

Hon ALISON XAMON: I am giving the member the opportunity to make the case, if you like, but I am trying to get to the bottom of this and what are the current barriers of that creation. We have gone through the differentiations between regional councils and regional subsidiaries, so we are starting to see some distinction there; and that is good, but I am still trying to get an idea of where it is different to partnerships and the like.

Hon MAX TRENORDEN: Most of the other models are complicated and difficult to put into place. They are difficult to administer, particularly for small councils. There was some discussion earlier on about the Department of Local Government being concerned about the capacity of local councils. This is designed to increase the capacity of councils by allowing councils to use their existing staff members across a range of councils, instead of in a single council. Therefore, you can do that within a corporate model without externally setting up a whole cumbersome, I would argue, model—whichever model you are going to pick—which are very descriptive in the way they can happen. SEAVROC, which is the South East Avon councils, can actually describe their full list of employees and officers to function across five councils in a prescribed manner, which each of these councils totally understand. It is a legal agreement in which they operate. That is not available in any of the other models.

[12.30 pm]

But just to keep extending that out—the whole point about the South Australian model, and I think the problem with some of our argument here is, you are arguing that we need to be descriptive. I am trying to argue that we need to be less descriptive. We should be more open to allowing democratically elected people to get on with their business. Again, it goes back to my argument earlier. Again, Mr Chairman, the question is how you define policy. But we do have a policy in Western Australia, if you take the politics out of it, of a descriptive model; a tightly, closely held model, whereas South Australia does not do that.

The CHAIRMAN: Alright, well, bearing in mind that the legislative philosophy in the way that we drew our legislation is maybe different in South Australia to Western Australia's, if I can just understand this: as far as you are concerned, the intent was that the formation of a regional subsidiary—a body corporate regional subsidiary—would be subject to the same governance as would be applicable to a local government; correct?

Hon MAX TRENORDEN: In all ways subordinate to the head council.

The CHAIRMAN: So, if there were an amendment introduced into the bill to that effect—that it be subject to the same liabilities, responsibilities and privileges of a local government—that would reflect their intention?

Hon MAX TRENORDEN: It would, and I have got no doubt that you can improve my bill, Mr Chairman!

The CHAIRMAN: Well, I do not know about that! Because what I noticed in your submission was your intention, and I am looking at the penultimate paragraph, which says that you reiterate your intention of introducing this bill to enable local government in Western Australia to form a regional subsidiary and it includes flexibility and charters as the regulatory source, and you take that regulatory source in addition to what is required under the Local Government Act for local governments and an appropriate level of compliance and regulatory burden again, over the top of what is required in the Local Government Act, not in derogation of what is required.

Hon MAX TRENORDEN: I would argue about the second one; maybe I put that incorrectly. In the last point I have no intention to give subordinate councils any additional powers over and above local government.

The CHAIRMAN: What about the regulatory burden upon them?

Hon MAX TRENORDEN: Well, the regulatory burden, I did actually put in my bill. They are the ones that not only crossed my mind; they are the ones that I took from SEAVROC, and Parliamentary Counsel. When I first started this process I drafted the bill by myself and in the later hours I did get, and I am very appreciative of, the assistance of Parliamentary Counsel.

The CHAIRMAN: It has all the elegance of a haiku poem, as the saying goes! Sorry, I will pass it over, but I just want to clarify a couple of other little bits. In proposed section 3.69(2), we have had this debate as to whether regulations may or whether regulations should prescribe these things. Do you have a particular position on that?

Hon MAX TRENORDEN: Yes, in that that is normally the way bills are put. I have been sitting around bills for a long, long time and I have listened to the argument of “may” and “shall” for 25 years and where I stand on that question of “may” and “shall” in terms of a parliamentary debate. I fall on the line of “may”, which many parliamentarians and many legal people argue is actually “shall”. But I do not wish to get into that debate here, Mr Chairman; it is simply that point.

The CHAIRMAN: Any comment about distinction between provide and prescribe? Same thing?

Hon MAX TRENORDEN: Same argument, Mr Chairman.

The CHAIRMAN: Let us assume that the committee takes a slightly different view as to what ought to apply to a regional subsidiary and the like and the sort of governance and prudential requirements should be applicable through the Local Government Act. Do you have any comment on either the prescription of some things that are in the South Australian legislation into your bill as being desirable or undesirable?

Hon MAX TRENORDEN: Well, personally, I think they are undesirable because if you go to the argument I put to you, what I believe should happen is that a subsidiary council should be subordinate to the head councils in every manner. So, all the requirements of our act—the Western Australian act—to the head councils should be applicable to the subsidiary council. And I would say—you have excellent staff and legal staff. So if you have a look at the South Australian act and look at our act, you will see, I think, some of those reasons why the South Australians have described things as they have, which is because of either real or perceived deficiencies in those descriptions in their enabling act.

The CHAIRMAN: One final point of distinction: you mentioned that currently under regional councils you cannot have, say, an expert on waste management or water being appointed to the board. Why is that important? Given another local government is represented, why can they not merely draw on the expertise or engage expertise if they do not have it themselves within their council to provide advice? Why is it important that you have someone on the governing body corporate being appointed from out of the council?

Hon MAX TRENORDEN: The other models are still there, so if councils wish to do the other models, they can. The argument here is that this is actually a function, it is not a body, and the whole idea is to create a function with the council and not to create another body that has another raft of reasons to exist and a whole raft of provisions in requiring it to exist. I would like to try to put to you as clearly as I can that this tries to enable councils to carry out an amalgamation of functions. So, when an expert comes on the committee, it is not that that expert actually changes the policy of the council; he does not have the ability to do so. The only ability that that person has, or the people sitting on the subsidiary model or on the subsidiary council, is to run the functions that have been delegated to them from the head council, but the head council always has to approve their outcomes.

The CHAIRMAN: If you do not have a body corporate, are you not then establishing a governing board over that body corporate that has responsibilities to the body corporate independent of the councils that appoint them? That is where the conflict of interest dilemma arises. If, for example, the five of us establish the Legislative Council regional subsidiary and two of us are appointed to govern that, are we representing the individuals, the bodies, or are we representing the interests of the body corporate? How are we held accountable to the people who have appointed us, especially assuming that we are not councillors ourselves, but are appointees, delegates?

Hon MAX TRENORDEN: I would say that you are representing neither. I mean the whole purpose of it is to carry out a function. If we have a problem with waste management, how do we fix that up? Having decided how we fix that up, we take that to our head councils for the decision. That is the purpose of it. There will be other purposes for it. You did hear a little earlier, and I think that it is probably important for me to raise this too, that in South Australia, these councils do actually carry out the function of what we see as WALGA. They do not have zones and the same sort of structure that we have at WALGA; they actually use subsidiary councils and carry out political functions in terms of local government politics. They do all of the things that WALGA does—that the zones do. There is a South Australian local government association, but they carry out all those functions. So, people in South Australia are using these bodies for things as simple as, “How do we handle the agenda of the South Australian local government association?” to “How do we spend \$50 million that the federal government has just granted this region?”

The CHAIRMAN: Do you feel then that if the substance of, say, section 48 of the South Australian Local Government Act, and/or the schedule to that—schedule 2 I think it is—were to be reflected in your bill that it would defeat the purpose of your bill?

Hon MAX TRENORDEN: No, I do not.

The CHAIRMAN: Or answer the purpose?

Hon MAX TRENORDEN: Frankly, I am very happy for the five reviewers and your staff to deliver that matter and come to a conclusion. What I am seeking to do here is to make the system uncomplicated, not to complicate it. What I am seeking to do here is to release some of the administrative burden of councils—not accountability or reporting responsibility of councils, but some of the administration burden where councils elect to do it. I have never, ever said, Mr Chairman, that this should be a stand-alone provision. All the other models should stay there, including amalgamation. That is not my issue. I have done this and you would have no doubt had a look at the report that the Hon Nigel Hallett and I have done; we have had a good look at the way local government operates, and I think that there is a clear advantage for those councils that wish to take that advantage to use this particular model. There will be many councils that will look at this model and decide that it is not for them; that is really not the issue. I think, going back to your previous question, Mr Chairman, which I only half answered, I would suspect the corporate model is really more about the charter than about local government. You need a process, and you would be able to argue this far better than I; you need to make sure the charter is a very solid legal document.

Hon ALISON XAMON: Can I just confirm, was it the intention of the policy of the bill that in terms of any alteration of the charter that that would also be run past the minister in the same way that the establishment of the charter is?

Hon MAX TRENORDEN: Most definitely, but if you think about how these function, these function as an agreement. So, if you have got four councils that are operating a charter, that charter is not going to be changed without some fairly solid debate. It goes back to the issue also that you have been raising about whether the community is advised about the formation of one of these entities. Well, I would argue this is no different than the whole of the functioning of local government. That is a decision for policy for each council, but it would be a foolish council that does not communicate with its constituency.

Hon ALISON XAMON: But you do not see a necessity for that to be incorporated within the regulations, for example, as a requirement to establish these bodies?

Hon MAX TRENORDEN: No, I would not, but I err on the side of that I am very strong believer, after 25 years of politics, in people power. Councils that try to be secretive and non-descriptive tend to get beaten up and end up unelected.

Hon SALLY TALBOT: I am interested in what you say about the political agendas that are run in South Australia, and I wondered if you had considered the possibility of a large number of councils coming together, not three or four, but maybe 21. I am thinking for example of the 21 local government authorities that we have got interested in the Swan River in some way; they have got the foreshore to maintain or drainage problems or whatever. Have you envisaged a situation where that might become quite a political force, that was perhaps not supported by the government, of which the minister is required to do the assessment application for the establishment of the regional subsidiary? You might object. Have you considered scenarios like that?

[12.45 pm]

Hon MAX TRENORDEN: Most definitely and am very supportive of it. I had not thought about the 21 councils that are around the Swan River, but that is a perfect function, in my view, of what should happen. Can I just give an example why this is—I will choose my words a bit better—strongly supported in the central Wheatbelt? This is local politics, but it is an example of what happens. You have the town of Northam. You take the town of Northam, town of Merredin, town of Katanning, all little councils around them, all hate each other intensely, cannot deal with each other, and so forth. But what this actually allows you to do in the Northam model—this is actually a part of SEAVROC's view and I am not doing this just for SEAVROC, but SEAVROC's view is: if we are able to do this, then our combined might is equal to Northam's. Then we are equal and at some stage we should do another subsidiary council with Northam and with York and Toodyay and so forth because we are all equal and, therefore, you could have 30 councils in the central Wheatbelt with a charter—not all the functions of local government—that deals with those matters they think they should. I think that would be a very wonderful thing and would bring into the real light of the capacity of local government because if you had 21 councils from Perth looking at the river, you have the capacity of the staff of those 21 councils that deal with that issue. Now, if that gets too heavy for the government of the day, frankly that does not worry me at all. We all deal with those issues as members of Parliament on a daily basis. So, if I could get 30 councils or 40-odd councils—as Hon Mia Davies would know, it is 44 or whatever the number is in the Central Wheatbelt—having a single charter on a range of agreed issues, that would be a very wonderful thing, in my view.

Hon SALLY TALBOT: Can you just clarify for me or remind me exactly who is eligible to become a member of the subsidiary body? Presumably it is elected councillors, but it is also staff, is it?

Hon MAX TRENORDEN: Yes, just appointed by the head council. Many staff members are on these models in South Australia.

Hon SALLY TALBOT: Okay. Then the body has the power to co-opt experts for a finite period of time or have them as full members of the body?

Hon MAX TRENORDEN: Yes.

Hon SALLY TALBOT: Either?

Hon MAX TRENORDEN: Either. Understand that this model does not allow for a decision-making process. They have to pass all that up to the head councils.

Hon ALISON XAMON: I just want to be clear, you are firmly of the view that the models which are currently available, in addition to the regional council model, would not be able to be utilised to effect that outcome?

Hon MAX TRENORDEN: If you look at the example I just gave you of 44 councils in the Wheatbelt deciding to work collaboratively on a range of agreed issues, how do you fit that into a regional model?

Hon ALISON XAMON: But you could have 44 councils working in a partnership on an agreed outcome.

Hon MAX TRENORDEN: But I was saying on a local matter where council agree with people, the fact that you set this up—perhaps if I give you an example. I was asked to go down and see Waroona a few months ago and they said to me, “We would love to do your model.” First of all they are terrified of being amalgamated with surrounding councils, but they say, “Our issues are: we would love to have an agreement with Mandurah to run the ocean frontage that we both share side by side. We would love to have an arrangement with Mandurah so that we could have an agreement that our councils work with each other; our staff, our councils, our attitude about planning and all those issues to do with the frontage of the ocean, we would like to do that. We would also like to deal with Pinjarra. No issues with the ocean because Pinjarra does not have any ocean, but Pinjarra is actually our dominant neighbour. So we would like to have a working relationship with Pinjarra on a whole range of business issues that are of benefit to each constituency given that Pinjarra is the dominant commercial council. But more importantly we would really like to deal with the people to the east of us because they are the ones we like and they are the ones that are the same size as us and they are the ones with the same view as us. So we would like to have a model that enabled us to work collaboratively with a range of people to our east.” Therefore, this model allows them to have that stack of three activities all happening all at the same time, but all concise and defined in the functions through the charter.

Hon ALISON XAMON: I am still trying to get my head around, though, why that cannot be achieved with three different partnership arrangements.

Hon MAX TRENORDEN: Perhaps what you should do and if you want to get me back in again—you will do this. I should not say “you should do”, because you are at the beginning of the process—is just look at the arrangements of those entities, but I will also make the point again: I am saying there should be an additional tool in the box.

Hon ALISON XAMON: What I am keen to confirm is that it actually is an additional tool that is not actually available, because what I am trying to determine is whether the current legislation actually has the existing flexibility, because I am also drawn—I mean, previous evidence has just been tendered to say that the current act is flexible enough to allow those kinds of arrangements. They are not called “regional subsidiaries”, but they effectively exist in the way that you have described in different models. Part of this committee’s job is to find out whether that is actually the case or not, because it may not be the case. So that is where I am trying to draw that out and what I would like to know, for example, and perhaps now is not the time to ask, but I am flagging —

Hon MAX TRENORDEN: I am here.

Hon ALISON XAMON: — where what you have described, for example, would be different to potentially what would be available in a partnership model and whether it would be different in terms of government’s arrangements or whether it would be different in terms of—actually pretty much that is the main thing that I suppose I am trying to ask. Maybe I am the only one on the committee who has that question.

Hon MAX TRENORDEN: What I would say to you is: you could do all the things that you can do in the subsidiary model in some of these other arrangements, but some of them are cracking a

walnut with a sledgehammer. You are putting in an enormous amount of administration and effort to carry out a very precise and simplistic argument.

Hon ALISON XAMON: That is actually the answer to my question then. If I can just paraphrase, what you are saying then—tell me if I am wrong—is that the fundamental difference between a regional subsidiary and a partnership model is that it would have different administrative requirements, as you see it. I am keen to find out what those different administrative requirements are.

Hon MAX TRENORDEN: You will do that in the course of your deliberations, but in a partnership model you can define it. The strength of the South Australia model—it has been working over a decade and the reason why it works well is the charter is very defined. The charter is very precise about what they are seeking to do but also—I know I keep on saying this—you need to come back to the point they are not a decision-making entity. They have still got to go back to the head councils to get approval of anything at all—in a serious matter; I should not say “anything at all”. In terms of raising money, reporting, fiduciary issues—all of those issues never leave control of the head councils. Some of those other models, they actually go with the model. I would suggest some of the questions put to the group for me actually does some of the things you were concerned about more than this model, because if you set up another model and put it outside of council, well, it is outside of council. Even if it has councillors and so forth and so on it is still outside of council doing another function. This operates internal to councils.

Just on my notes here from the previous meeting, Mr Chair, can I just raise a couple of issues that occurred to me during that?

The CHAIRMAN: Sure.

Hon MAX TRENORDEN: I would argue that the charter is more important than the regulations. So, we need to look at and if you look at my bill, the regulations that I talk about there are about the charter. So I would ask you to pay attention to that issue. It is different to anything that happens in this state currently. Just have a look at what that actually does and how tight a charter can be and how legal it is, and you have a lot of advice around you that can tell you about that. I think the strength of the model is around the charter and being very defined. Almost in every case, two councils do not get together easily. Local government is local government and we all deal with local government. We may love them to bits, but they are still difficult. Two or more councils are not going to get together unless there is a concise benefit for them. That would be spelled out in the charter, and I believe the charter is something we have to pay more attention to than actually the regulations, although I do agree that the regulations here are important.

The CHAIRMAN: Touching on that, you have said that the idea is not to create a new body but to find a way of executing a function. Why then does it need to be created as a corporate body? Why cannot two councils under the current regime say, “Listen, I have got rubbish trucks; you have got rubbish. You contribute a little dough to us to pay us for collecting rubbish from your council area as well, sign over your trucks to us as part of that and we will have a contract for five years to execute rubbish collection. Why do you need to form a corporate body to —

Hon MAX TRENORDEN: I have absolutely no idea.

The CHAIRMAN: It is your bill.

Hon MAX TRENORDEN: I would happily take advice from the committee on that issue. I have assumed a range of issues, Mr Chairman, as I said earlier, that maybe that relates to questions of the charter. That is —

The CHAIRMAN: Why do you need to form a subsidiary body at all? Why can you not enter into a contractual —

Hon SALLY TALBOT: Does that reflect the South Australian legislation?

Hon MAX TRENORDEN: I have asked that question of operatives in South Australia and the reply was that the charter is all important. So, councils have got to be able to sue each other or whatever the requirement is of agreeing to that legal agreement.

The CHAIRMAN: What is wrong with a contract? Why cannot say the City of Stirling and City of Wanneroo say—a partnership, as it were, or a contract between the two of them in order to execute the function. I can understand there may be a little bit of difficulty, perhaps, with rangers, but again I suppose you could create a contract between cities to say one of them is going to hire rangers and vest authority in them and the other one says, “All right; they are on your payroll but we will vest authority in them as well,” or some joint—I don’t know. Why is it that you need to form a separate subsidiary body as such in order to perform a function jointly?

[1.00 pm]

Hon MAX TRENORDEN: Well, some of the issues will come in with some of the questions you will ask later. These entities would have a capacity to be for-profit bodies. They would have the capacity to receive state and federal grants and act on the requirements of those grants, but always being required to be fully accountable to the head councils. Those matters I cannot answer. I would only argue that over a decade of operation in South Australia somebody has decided that a corporation’s word goes. That is not a part of my argument. I have just taken a particular operation in South Australia, which I have seen to be successful and have assumed that has been tested over a range of years in its operation. And it is successful, as your previous witness has said. There is no argument about how successful the South Australian model is, but again, it does not apply to every council in South Australia; it is an option. I keep saying it: it is an option. When you speak to the minister’s office in South Australia and to local government itself, they will tell you that they are constantly expanding the horizon of their model. But why a corporate entity is there, I cannot explain that to you, Mr Chairman. If there is a manner of doing it as successfully, without conflict and the like, then I am open to suggestion. What I am trying to do is to allow councils to agree on a common outcome, to pool resources for a common benefit, to give a greater benefit to the constituency and do that all within the realms of the current act and not operate outside of the current bodies.

The CHAIRMAN: Just lastly, from my point of view, in South Australia, as I understand it, a single council can set up a regional subsidiary. That is not part of your philosophy, because you do not see that as being any point to it. The idea is to pool resources.

Hon MAX TRENORDEN: To me this is about —

The CHAIRMAN: Achieving cooperation and economies of scale and the like.

Hon ALISON XAMON: Collaborative.

Hon MAX TRENORDEN: A collaborative effort. Despite all the arguments that may be put forward in a political argument, Mr Chairman, I have a desire to assist local government. My view is that, if you have capacity to allow local government to work together and find that they can work together and find they can have good outcomes working together, then they may want to do other things like amalgamate and other issues. I just see that the capacity of councils to pool their resources, to increase the capacity is a good thing. I am not saying they cannot do it in other models; they can. I would argue, and I think if you read—I should not say that, because you will—your own submissions from councils, you will find that a lot of councils are looking for this process but particularly those councils that really lack the services themselves, that do not have a full-time health officer, have difficulty with planning, building, health issues, road construction, bridge construction—all those issues of 139, or whatever the number of councils there are out there, all struggle with.

In reality, the bigger councils of Perth may not have an interest in this, but they might. They might decide that they will have a function of Swan River. And I would say, “Why not?” I see this as a

capacity building effort. That is what I am trying to do: to build capacity within local government, to build capacity and enable people to work together, to have an understanding of each other. If you go back to the report that Nigel Hallett and I wrote, it was very clear to me that it was important. Your previous hearing pointed this out as well: that the culture of the people who were going to get together is critical. In South Australia they say that these things do not work because the culture of the people is wrong. There is an argument around Port Adelaide, where there is a green, leafy suburb with a working-class suburb, where every time they meet, all they want to do is fight. They told you itself. Issues of infrastructure—one council we went to had significant issues of a high water table, with costs of shoring up buildings and issues around evident water, which the neighbouring people are paying for. There is an issue about, “Why should we as one community be paying for a problem of another community?” So if they agree that they should be doing that, that is fine. I cannot remember them off the top of my head, but if you look at one of those reports, I do say that we were pointed out clearly there are five issues that should be brought into account before councils do these things. This is not an attempt to bash people’s heads together and say, “You need to do whatever the function is better.” This is about trying to get councils to agree we have some common benefit here, some common interest, and working together to get that outcome—combining their resources to get that outcome and choosing to do so.

Frankly, Mr Chairman, if this legislation goes through, much improved by your committee, it would not worry me at all if some councils did pick this issue up. That is not my issue. My issue is to expand capacity and help people to get objectives. Again, I have had a lot of councils write to me. In fact, I think of whatever the number of councils is in Western Australia, I have had over 100 councils write to me, in varying forms, agreeing with my bill. I think that is not about trying to duck anything at all, but it is trying to add capacity to their functions.

Hon SALLY TALBOT: I would be very interested in teasing out the other option to incorporation. This is by way of a comment, I suppose, rather than a question: it has become very clear to me now that what your objective is is not to set up another body with the powers of local government. That is where the flexibility comes in. But, at the same time, you do not want diminished accountability. You have got to have compliance mechanisms in place.

Hon MAX TRENORDEN: One of the clear issues, member, is that federal governments of both sides of politics have been saying for some time, “We want to fund regional groupings, even if that is Perth.” Perth gets described as a regional grouping. A group of councils might gather together for the one function of receiving a substantial grant from the federal government to carry out the function of that grant.

Hon SALLY TALBOT: Never get between a local government and a pot of money!

Hon MAX TRENORDEN: And state government! One of the drivers of my own personal motivation towards this bill is that I do think councils, collectively, whether metropolitan or country, can go to the federal government with this sort of model and say, “We wish to apply for this grant”, whatever the grant is, and receive that grant with all the rules of that grant in place, and that becomes the charter. They can carry that out for the period of that grant, which may only be a year. It is not likely, of course to be that long; it is likely to be longer than that if it is a federal grant, but nevertheless, the life of this entity could be quite short.

The CHAIRMAN: Just on that subject, I notice that the South Australian legislation provides, I think it is at schedule 2, that the charter agreed upon between the local governments must be gazetted. I take it you have got a philosophy of accountability and the like. You would see no objection to a requirement that that —

Hon MAX TRENORDEN: In fact, I strongly support that, Chairman. That goes back to what is in my mental picture of reporting to a minister. Gazetting of the charter and those sorts of things would be desirable. There is no intention in whatever I put forward about secrecy.

The CHAIRMAN: I understand. It is not something that is covered currently by —

Hon MAX TRENORDEN: No, and frankly it did not enter my mind, but in terms of going to a minister, gazettal is, I would argue, a very important matter, and I did not address it.

Hon SALLY TALBOT: There was one other quick thing. I notice that you made copious notes in the earlier hearing. At one stage there you started going through them. Is there anything else there that you wanted to—just to save time later.

Hon MAX TRENORDEN: If I just flick through these notes, just so the question is answered, consequential amendments of other acts, I would have thought, would flow out of the current head act, the Local Government Act. I would not have thought that was a difficulty. If that is not the case, then you would need to deal with it, but I would have thought that would have been the case and that would be my preferred position, that the Local Government Act drives all matters.

The CHAIRMAN: Just on that subject, the idea of members of this subsidiary body, assuming it is a body corporate—you would regard them as being public officers of the purposes of the Criminal Code and other provisions.

Hon MAX TRENORDEN: All of that. The intention is to increase function, not to —

The CHAIRMAN: Diminish accountability.

Hon MAX TRENORDEN: Agreed. I make this point a couple of times in my notes. This model is not about the new entity; it is about a function within councils. I would like to just keep on making that point. Again, basically the same thing—a subsidiary council should draw its powers and its functions from the head council. That comes through the charter. To me, in terms of the models that exist, most of the models exist. This is an internal model versus an external one. I would again say that the question about requirements in South Australia, South Australia does require this model to run its own WALGA equivalent—the South Australian local government association. That is way they have drawn it up. I think that has little to do with the functions of the bill and their bill. It is just one of the things that is consequential to that. And I just made the point here too, in terms of community consultation, that in many of the South Australian cases, the community are on the subsidiary council. One of the issues—and it should not be ducked, and I have no intention to duck it—and one of the reasons why many councils support this model is the capacity to be involved in profit-making activities. I think that is something that has been on our current minister's mind for a while and on the previous minister's mind for a while. But what this would allow to be done in the current act, if this was put into the current act, is it would allow councils to go about a prescribed profit-making activity with the minister's tick.

The CHAIRMAN: All right. Thanks very much.

Hon MAX TRENORDEN: I have appreciated the opportunity, Mr Chairman.

The CHAIRMAN: We will discuss the matter further. If there are any other areas that we need clarification from, we will contact you and give you the opportunity to —

Hon MAX TRENORDEN: It is an interesting dimension being on this side of the table as opposed to yours. I do thank you for your time and for your interest. I am, as you already know, a very enthusiastic supporter of it. I will also just reiterate it: this has been written by a private member whose legal capacities are very limited. My staff members are even more limited. Now I will not be able to go home and talk to them, because they will have a shot at me!

I think one of things that I like about our system is that I can bring in a private member's bill and a group of members like yourselves can look at the legal capacity of bill. I support that argument totally. I have little doubt that you can improve my bill. But I would continually argue, though, try not to be caught into over-prescribing activities. That would be my only comment.

The CHAIRMAN: Thanks very much.

Hon MAX TRENORDEN: Thank you for giving me the time.

Hearing concluded at 1.15 pm
