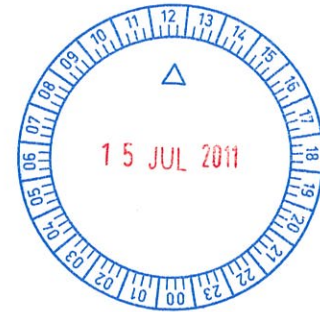


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12 July 2011



Ms Hannah Gough & Mr Mark Warner
Committee Clerk
Standing Committee on Legislation Committee
Legislative Council
Parliament House
PERTH WA 6000

Dear Hannah & Mark

RE LOCAL GOVERNMENT (REGIONAL SUBSIDIARIES) BILL 2010

Thank you for your letter dated 7 July 2011 seeking comments on the above.

Three different kinds of subsidiaries need to be considered, namely:

1. In the event of amalgamation the newly formed Council may wish to delegate specific limited powers to precinct groups or subsidiaries to ensure that those issues that relate solely to that precinct, may be delegated to the subsidiary for it to make recommendation to Council as if they were a Committee of Council. This is aimed at keeping the local in local government.

Council should also have the power to make financial contributions to such a precinct subsidiary to enable it to hold functions, or provide grants to the subsidiary, to enable it to provide and manage precinct facilities, and for the 'members' of the subsidiary to have the same protection as a Councillor if they act in good faith.

2. The second is a subsidiary to run particular facilities or to form joint ventures with other Councils to deliver particular services as a separate cost centre with a capacity to charge for any services it provides to Council, other Councils, or the public. They may have one specific task or a limited life, or multiple tasks and unlimited life.

These are obviously quite different to regional Councils when two or more Councils wish to act together for specific purposes which can involve quite complicated provisions including provisions as to how new member Councils join or existing member Councils leave, and role of elected members on the Regional Council.

3. The third kind is like private and public corporations that may have subsidiary companies that are the same as the company itself, but the shares and powers remain vested in the principle company.

This Bill only relates to when two or more local governments that agree to perform a function jointly, and need to determine what the subsidiary can do and what controls it is subject to, and what its powers and procedures are to be, and how they are governed by a 'Charter' or MOU.

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While that sounds simple enough, the regulations or Charter would need to be comprehensive and have provisions as to how Councils opt in or out, and winding up provisions, and how they are financed.

I note the regulations powers which are contained in 3.69.

My own view is that having to act within these regulations may unduly restrict how these subsidiaries operate. There is no good reason why Councils cannot simply form joint ventures, or companies with shares owned by the local governments, with the power to do anything a normal company or subsidiary company can do, subject to any restrictions in the joint venture agreement, or the company's articles.

The Board would be appointed by the respective Councils.

While the subsidiaries have to rely on a Charter, and abide by whatever conditions the Minister sees fit to include in the Regulations, I doubt that many such 'subsidiaries' will be created.

If the Charter and Regulations approach is used, I honestly believe it will be unnecessarily complicated and restrict what such subsidiaries can be used for.

For instance one wonders what happens if the Regulations are changed or the legislation is changed, what opting out provisions would apply if the change in regulations caused a Council to want to cease its involvement with the subsidiary.

Councils should have a general competence power to enter into joint ventures, or form business entities together.

I note that your Committee does not have the power to comment on the policy behind a Bill, but as far as practical due respect should be given to the third sphere of Government, and the more powers it is given, and how innovative it can be, should not be unduly restricted by primary or delegated legislation.

In the end, local governments will always be subject to an increasing level of control by the State Government, because they are creations of the State Parliament, and it is those controls which can be called upon, if there is any abuse of a general competence power or a power to form joint ventures, companies or subsidiaries, rather than through regional Councils or subsidiaries which are subject to separate regulatory powers to the local government authority itself.

If they are so limited, then it is hard to comprehend how a subsidiary would be different to a Regional Council unless it included a power to act through employed Executive staff rather than Councillors. That would have its own complications.

In general until the type of regulations are identified, and drafted, it is otherwise difficult to know how attractive or effective subsidiaries may be.

The Delegated Legislation Committee needs to conduct a similar review to your own when the Regulations or Charter are tabled.

Kind Regards



David Smith
MAYOR OF BUNBURY