

**Enquiries**

Contact Name  
Phone: (08) 9384 4003  
Our ref:  
Your ref:



14

19 July 2011

Ms Hannah Gough  
Committee Clerk  
Standing Committee on Legislation  
Legislative Council  
Parliament House  
PERTH WA 6000

Dear Ms Gough

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

Thank you for the invitation to provide a submission in relation to the above Bill. Due to the tight timelines, this submission is necessarily brief and has not been considered formally by the Western Metropolitan Regional Council.

It appears that the Bill provides for an body corporate to be established that is not governed by a Council under the *Local Government Act* 1995 ("the LG Act"), but might instead be governed by a Board. This would be a welcome advancement, and may permit some of the current activities of Regions of Councils to be better formalised, and thus better implemented. It might also overcome the current problem of where Councils feel they are liable for the failings of Regional Councils without having any control over the Regional Council's activities.

The Bill itself is quite general, merely enabling a structure that is to be subsequently defined under regulation. The Bill does not appear to give significant direction to the regulation. This is good in principle, as it leads to the creation of generic structure, though it defers many of the critical debates to the regulation setting process. Some of those debates may be very important in shaping how local government is to be governed, and may be more appropriately had in Parliament rather than in the more administrative setting of regulation making. This suggests that the Bill should be expanded a little to guide subsequent regulation by addressing the key principles.

For the Bill to be effective in creating an alternative to current models, the regulation should be light and propose a genuine alternative to governance under the provisions of the LG Act. It must be stressed that, for regional subsidiaries to be useful, regulations surrounding them must avoid replicating the currently heavy compliance load on Regional Councils.

## WESTERN METROPOLITAN REGIONAL COUNCIL



If regional subsidiaries are to be a viable alternative to Regional Councils, some of the compliance matters on Regional Councils would need to be alleviated. These compliance matters relate to areas such as:

- The Council governance structure. Regional Councillors can confuse their role on a Regional Council, believing that they are representing their local government when, in fact, their role is more akin to a director of the Regional Council. Councillors on the governing body is not a problem *per se* provided the governance structure is well designed and defined.
- Calling of meetings, agendas, minutes, attendance and so on.
- Setting fees and negotiating commercial arrangements.
- Procurement
- Record keeping

These compliance matters all serve their own purpose, however their replication for regional subsidiaries would make them unattractive as substitutes for Regional Councils.

Some of the matters to be considered in drafting regulations, and potentially even in the Bill, are:

- How to avoid regional subsidiaries being created to remove projects from the scrutiny expected of local government, whilst retaining the freedom of operation that justifies the existence of regional subsidiaries.
- Whether the local governments creating the regional subsidiary are ultimately responsible for the liabilities of the regional subsidiary, or the regional subsidiary is structured along the limited liability lines of a corporation.
- Whether the local governments creating the regional subsidiary have any form of control over the activities of the regional subsidiary, or the regional subsidiary is empowered to undertake the activities provided for in the charter. This is linked to how liabilities are dealt with; if liability is not limited, then local governments are likely to want more control to contain their ultimate exposure. A high level of control potentially reduces the effectiveness of regional subsidiaries.
- How the regional subsidiaries are to comply with National Competition Policy and successors. The structure should provide for a mechanism where local governments can gain benefits of working regionally without, by legislating a market for themselves, distorting the market for private sector providers of similar services

The Bill should provide some clarity on the requirements of regional subsidiaries in relation to commercial enterprises (s.3.59), incorporated companies (s.3.60) and Regional Councils (ss.3.61-3.67). That is, how a regional subsidiary enters into a commercial enterprise, acquires an interest in an incorporated company, or forms part of or is formed by a Regional Council.

## WESTERN METROPOLITAN REGIONAL COUNCIL



The Bill and regulations should also clarify the interaction of a regional subsidiary with legislation such as the Corporations Act. The Bill appears to be creating a model that has parallels in the Corporations Act, and thus could come under the significant body of case law relating to companies. The Bill should guard against regional subsidiaries being created to subvert requirements on corporations (potentially driven by the private sector).

As I am not familiar with the South Australian context, I cannot comment on how regional subsidiaries work there.

In closing, I support the idea of regional subsidiaries, and consider that the Bill appears to be a vehicle that could achieve the outcome of regional organisations that enable local governments to deliver improved services on a regional basis. The challenge will be in the implementation through regulation, and I will watch the passage of this Bill with great interest.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Johnson', written over the words 'Yours sincerely'.

ADAM JOHNSON  
CHIEF EXECUTIVE OFFICER