



**Western Australian Local Government Association**

## **SUBMISSION**

**Legislation Committee  
Legislative Council  
Parliament of Western Australia**

***Local Government Amendment  
(Regional Subsidiaries) Bill 2010***

**Submission to:**

Legislation Committee  
Legislative Council  
Parliament of Western Australia

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## Executive Summary

Local Governments play a crucial role in Australia's democracy by providing local democratic representation, services and infrastructure to local communities. Local Governments in Western Australia are diverse, demonstrated by the very different communities that make up the state. The role Local Governments play in service delivery is also diverse and is continuing to evolve: once confined to roads and waste management, Local Governments now also provide medical and other human services.

Local Government's increase in responsibilities is in conflict with a drive for improved efficiency, both from successive State Governments and from Local Governments with an ongoing desire to do more with less.

Regional shared service delivery mechanisms provide an opportunity for Local Governments to generate efficiencies by achieving economies of scale appropriate to particular services. The focus on shared services is due, in part, to the recognition that wholesale amalgamations of Local Governments do not necessarily generate significant efficiency dividends.

In Western Australia, Local Governments are limited in their ability to establish shared service structures by the legislative provisions of the *Local Government Act 1995*. Under the Act, Local Governments are able to establish Regional Local Governments to deliver services on behalf of member Local Governments. Regional Local Governments carry a significant compliance burden because, for regulatory and compliance purposes, a Regional Local Government is treated as if it were a Local Government. Local Governments are also able to establish incorporated associations but there has been limited take up by Local Governments of this model.

There are a number of other shared service models available to Local Governments in other states of Australia and New Zealand that have applicability to Western Australia. A key model, which is the subject of the *Local Government Amendment (Regional Subsidiaries) Bill 2010* and this submission, is the Regional Subsidiary model in operation in South Australia.

Under this model, two or more Local Governments are able to establish a regional subsidiary to undertake a shared service function on behalf of its constituent Local Governments. The model provides increased flexibility when compared to the Regional Local Government model because regional subsidiaries are primarily governed and regulated by a charter rather than legislation. While the regional subsidiary model's governance structure is primarily representative, the model also allows independent and commercially focussed directors to be appointed to the board of management. This is

another benefit of the regional subsidiary model in comparison to the Regional Local Government model which utilises a wholly representative governance structure. Another benefit of the regional subsidiary model is the increased oversight provided by a singly-focussed board in comparison to a Council with a multitude of concerns and responsibilities.

Regional subsidiaries have been operating successfully in South Australia for many years and one example worthy of examination is the Eastern Health Authority (EHA). The EHA provides environmental health services to its five constituent councils in Adelaide's inner northern and eastern suburbs. The EHA provides financial and non-financial benefits to the Local Governments involved which translates to more effective and more efficient services for the Local Governments' communities. The regional subsidiary model is also applicable to Western Australia provided the legislative setting is appropriate.

A key advantage of the regional subsidiary model is the use of a charter, as opposed to legislation, as the primary governance and regulatory instrument. Accordingly, the legislative provisions governing the establishment of regional subsidiaries should be light leaving most of the regulation to the regional subsidiary charter, which can be adapted to suit the specific circumstances of each regional subsidiary.

Further reform of the *Local Government Act 1995* should also be considered. Firstly, the compliance burden associated with Regional Local Governments should be reduced. Secondly, the Act should be amended to allow Local Governments to establish Local Government Enterprises which are arms-length, Local Government owned corporations. Local Government Enterprises are utilised in Queensland and New Zealand (Council Controlled Organisations) to provide a range of Local Government services in a commercial and strategic way while separated from the Local Government's everyday operations. The Local Government Enterprises model provides more effective and efficient services for Local Governments with reduced risk and superior oversight and accountability from a skills based board.

Local Governments should be encouraged to enter into suitable shared service arrangements by an appropriate legislative and regulatory setting that balances the need for flexibility in service delivery with suitable accountability and oversight provisions. Amendment of the *Local Government Act 1995*, as proposed by the *Local Government Amendment (Regional Subsidiaries) Bill 2010*, to allow Local Governments to establish regional subsidiaries is an important step in the right direction and will provide Local Governments with an important tool for delivering effective and efficient services to their communities; however further legislative reform is required to encompass the Local Government Enterprises model and reduced compliance requirements for Regional Local Governments.

The *Local Government Act 1995* should be amended to provide Local Governments with the ability to select from a range of regional service delivery models appropriate to the service or services and particular circumstances.

## Background

### ***About WALGA***

The Western Australian Local Government Association (WALGA or “The Association”) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based organisation representing and supporting the work and interests of all 140 Local Governments in Western Australia.

The Association provides an essential voice for almost 1,400 elected members and over 12,000 employees of the Local Governments in Western Australia and Christmas Island and Cocos (Keeling) Island Councils. The Association also provides professional advice and offers services that deliver financial benefits to Local Governments and the communities they serve.

### ***About Local Government***

Local Governments play a key role in Australia’s system of government and provide a range of services to their respective communities which span the length and breadth of Western Australia.

Local Governments, in one form or another, have existed in Western Australia since the arrival of settlers from Britain in the nineteenth century. The first piece of legislation to weave the fabric of today’s Local Government sector was the *Towns Improvement Act of 1838*.<sup>1</sup> Today, Local Government is constituted and primarily regulated by the *Local Government Act 1995* but there are many other legislative instruments which impact the way Local Governments operate in their diverse array of activities.

Local Governments are a key democratic institution in Western Australia’s local communities and Councils have well-established relationships with the communities they serve and represent, local businesses and other local organisations as well as other spheres of government.<sup>2</sup>

Services provided by Local Governments in Western Australia include the traditional roads and waste collection but also now extend to recreation, medical services and other human services.<sup>3</sup>

In a State as socially, geographically and economically diverse as Western Australia, the scale and scope of Local Governments, the services they provide and their service

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<sup>1</sup> WALGA (2011)

<sup>2</sup> Aulich *et al*, (2011) Volume 2, p13

<sup>3</sup> PricewaterhouseCoopers (2006)

delivery capacity are almost as diverse as Western Australia itself. The challenge for policy-makers is to develop and administer a system of Local Government which provides flexibility for all Local Governments to best serve their communities in governance, democratic representation, service delivery and the provision of infrastructure.

All Local Governments throughout Western Australia continually strive to provide the highest quality services within the constraints of Local Government revenue streams, Australia's vertical fiscal imbalance and ongoing cost-shifting from other spheres of Government, all of which are well documented by the 2003 Hawker Report<sup>4</sup> and many reports on Local Government finances before and since.<sup>5</sup>

Given the considerable revenue and funding challenges that Local Governments confront, Local Governments, individually and collectively, innovate and aim to operate as efficiently as possible to ensure the continuation of services and infrastructure provision of a high standard.

It is therefore crucial for Local Governments to operate in a legislative setting which provides for the necessary flexibility for Local Governments to provide services and infrastructure efficiently and equitably.

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<sup>4</sup> House of Representatives Standing Committee on Economics, Finance and Public Administration, (2003)

<sup>5</sup> See also Aulich *et al* (2011) Volume 1



## Context

### *Shared Services*

One method for Local Governments to continue to improve their service delivery offering to their communities within tight funding constraints is to establish appropriately governed shared service platforms.

The trend towards Local Governments embracing shared services as means to improve efficiency and service standards has two key drivers.

The first driver is primal: Local Governments, due to budgetary constraints, increasing service demands and a highly competitive labour market, simply must find innovative ways to continue to provide the high quality services their communities expect and deserve. As stated in WALGA's Systemic Sustainability Study (SSS) final report, Local Government, by entering into a shared service arrangement "may be able to improve the quality and quantity of the services they provide to their communities."<sup>6</sup>

The second driver is related to a past focus on amalgamations. There is little evidence to suggest that amalgamations have brought about significant efficiency gains or wholesale cost savings for Local Governments.<sup>7</sup> Consequently, the focus of Local Government reforms has shifted towards shared service models as a means to achieve efficiency gains and economies of scale appropriate to particular municipal services.

There are a range of financial and non-financial benefits that shared services arrangements can produce. Research from South Australia contends that Local Government cooperation through shared service structures "can be a cost-effective way for councils to share experience and resources, tackle common tasks, or take advantage of economies of scale".<sup>8</sup> Other potential benefits include leveraging of technology investments, standardisation of services and greater concentration on strategic outcomes.<sup>9</sup>

Local Governments must be aware that shared services do not *necessarily* lead to significant efficiency gains. Arrangements can be ad hoc in nature and often the continuation of shared service activities rely on continuing support at the Elected Member and executive management level.<sup>10</sup> If enthusiasm dissipates or if key personnel

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<sup>6</sup> WALGA (2008) p18

<sup>7</sup> Dollery *et al* (2009)

<sup>8</sup> Financial Sustainability Review Board (2005)

<sup>9</sup> Dollery *et al* (2009) p210

<sup>10</sup> Aulich *et al* (2011) Volume 2, p21

leave, the shared service arrangement may lose support within the participating Local Governments and its continuation may come into question. Where Local Governments maintain commitment and establish enduring governance structures, shared service arrangements can deliver real and ongoing value.

To encourage and enable Local Governments to enter into a variety of shared service arrangements that can accommodate the diversity of Local Governments and the diversity of Local Government services, a range of shared service options with flexible and minimal compliance obligations should be available. It is also important that shared service governance structures ensure that the shared service arrangements are meaningful and enduring. A recent discussion paper produced by the Department of Local Government argues that flexibility balanced with appropriate governance and accountability mechanisms are desirable characteristics of shared service arrangements.<sup>11</sup>

### ***Legislative Context for Shared Services***

Local Governments in Western Australia are limited in their ability to enter into shared service arrangements by the *Local Government Act 1995*, although there are two key regional collaboration vehicles available. Firstly, Local Governments are able, with the Minister's approval, to establish a Regional Local Government to undertake Local Government functions on behalf of participating Local Governments. Secondly, Local Governments are able to establish an association incorporated under the *Associations Incorporation Act 1987*.

### **Regional Local Governments**

Regional Local Governments are formed under the *Local Government Act 1995* and operate under an 'establishment agreement'. The establishment agreement must be agreed to by the Regional Local Government participants as well as the Minister for Local Government. The establishment agreement must include the purpose, membership and representation, means of determining financial contributions and procedures for winding up the Regional Local Government.

Regional Local Governments are body corporates, can open and operate bank accounts, can invest and borrow money and have the ability to make local laws.

The governing body of a Regional Local Government consists of Elected Members from the member Local Governments only. There is no scope to appoint external expertise or independent directors to the governing body.

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<sup>11</sup> Department of Local Government (2011)

Regional Local Governments operate in a similar legislative and compliance environment to Local Governments. Section 3.66(1) of the *Local Government Act 1995* states:

- (1) *Except as otherwise stated in this section, this Act and any other Act under which anything can be done for the regional purpose apply in relation to a regional local government as if-*
- (a) *the participants' districts together made up a single district; and*
  - (b) *the regional local government were the local government established for that district.*

The rest of Section 3.66 of the Act then excludes particular parts of the *Local Government Act 1995* that do not apply to Regional Local Governments. Provisions that do not apply relate to districts and wards, elections, electors' meetings, rates and service charges and some other minor matters.

Consequently, most of the compliance and accountability requirements that apply to Local Governments also apply to Regional Local Governments.<sup>12</sup> This can become a significant disincentive for Local Governments to establish Regional Local Governments because any potential benefits from efficiency gains must significantly outweigh the costs associated with the Regional Local Government's compliance obligations.

### **Incorporated Associations**

Local Governments have the ability, under the *Associations Incorporation Act 1987*, to form or take part in forming an incorporated association.

An incorporated association, formed under legislation, is a legal entity which can open bank accounts, hold and dispose of property, invest money and give securities. The governance structure of the incorporated association is defined by its constitution and its board of management may include external members.

An incorporated association must have more than five members and the *Associations Incorporation Act 1987* limits the purposes for which incorporated associations can be established. Activities of a commercial nature such as regional road construction or waste management may not be acceptable purposes.

Any profits raised by the association cannot be distributed back to members and must be utilised by the association to progress its constitutional objectives.

Further, neither an incorporated association nor its employees would be able to exercise statutory functions which are currently given to Local Government employees by the *Local Government Act 1995* and other legislation.<sup>13</sup> This means that Local Government

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<sup>12</sup> Douglas (2009) p19

<sup>13</sup> Douglas (2009) p39

functions such as town planning, building and environmental health could not be undertaken by an incorporated association.

For these reasons the incorporated association model is not widely used by Western Australian Local Governments. Typically, where this model is used, it is for a narrow purpose such as economic development and promotion in a broad sense.<sup>14</sup>

### ***Legislative Constraints for Shared Services***

Under current legislative provisions, there are two key shared service vehicles that Western Australian Local Governments are currently restricted from establishing. The first model is the Regional Subsidiary model and the second is the Local Government Enterprises model.

The Regional Subsidiary model is the subject of this submission and will be addressed in detail below. Amendment of the *Local Government Act 1995* as per the provisions of the *Local Government Amendment (Regional Subsidiaries) Bill 2010* would allow Local Governments to enter into regional subsidiaries for the regional delivery of particular Local Government services or functions.

Further legislative change to allow Local Governments to establish arms-length corporations, known as Local Government Enterprises, should be considered. This model, which is available to Local Governments in other Australian states and in New Zealand, would allow Local Governments to provide services to their communities with increased commercial efficiency and reduced risk. The rationale for consideration of legislative change to allow Local Governments to establish Local Government Enterprises will be expanded upon in a later section.

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<sup>14</sup> Department of Local Government (2011)

## Regional Subsidiary Model

The Regional Subsidiary Model, which is the subject of the *Local Government Amendment (Regional Subsidiaries) Bill 2010*, allows two or more Local Governments to establish a regional subsidiary to perform a variety of roles. The model is utilised as a vehicle for shared service delivery by South Australian Local Governments.

Regional subsidiaries are established as separate legal entities and are formulated by a charter which sets out the regional subsidiary's purpose, functions and powers. Once adopted and approved, the Charter becomes the primary regulatory instrument of the regional subsidiary.

### ***Benefits of the Regional Subsidiary Model***

Evidence from South Australia suggests there are substantial potential benefits that can flow to Local Governments and their communities from Local Governments forming a regional subsidiary. Primary benefits of the model include flexibility which leads to a relatively light compliance burden, a governance structure which enables independent members to be appointed to regional subsidiary boards of management and increased accountability when compared to the traditional Local Government service delivery approach.

#### **Flexibility**

The model offers flexibility and simplicity because the regional subsidiary's charter is its primary regulatory instrument.<sup>15</sup> This contrasts with Western Australia's Regional Local Government model which bestows most of the Local Government regulatory and compliance burden onto Regional Local Governments. The regional subsidiary model, therefore, provides the benefits of entering into a shared service arrangement but with a reduced compliance burden.

There may be concerns that the relatively light regulation of the regional subsidiary model entails an unacceptable degree of risk. However, in South Australia where the model has been utilised for many years, there are significant regulatory requirements placed on regional subsidiaries by the South Australian Local Government Act.

The *Local Government Act 1999 (SA)* requires Ministerial approval for a regional subsidiary to be established. Further, Schedule 2 of the Act requires a charter to be prepared and details what the charter must contain. The Act requires significant information to be contained in the charter including the subsidiary's purpose, the constitution and method of election or appointment of the board of management, the

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<sup>15</sup> Department of Local Government (2011) and Trenorden & Hallett (2009)

powers and functions of the subsidiary, details regarding staffing and the process for which the subsidiary can be directed by the constituent councils. The charter must be reviewed every four years and the regional subsidiary has significant reporting obligations to its constituent councils.

These legislative provisions are intended to balance the need for Local Government flexibility in regional service delivery with appropriate accountability mechanisms. While the legislative requirements regarding South Australian regional subsidiaries are less onerous than the legislative requirements for Western Australian Regional Local Governments, the Australian Centre of Excellence for Local Government (ACELG) contends that regional subsidiaries may be over-regulated.<sup>16</sup>

While the South Australian regional subsidiary model entails a regulatory burden to some extent, a number of Local Governments in Western Australia would enter into this model in preference to establishing a Regional Local Government. The reasons for this are twofold: first, the flexibility that can be achieved through the development of a charter designed for the particular requirements of the regional subsidiary and, second, the reduced compliance burden associated with a charter as opposed to the requirements of the *Local Government Act 1995* which apply to a Regional Local Government.

A study conducted for the South East Avon Voluntary Regional Organisation of Councils (SEAVROC) found that the regional subsidiary model was the *only* regional collaboration model that warranted serious consideration.<sup>17</sup> The primary reason cited was the model's flexibility due to the use of an individual charter as the primary regulatory instrument.

### **Governance Structure**

Another benefit of the regional subsidiary model, in comparison to the Regional Local Government model, is the ability for external and independent members to be appointed to a regional subsidiary board of management.<sup>18</sup> The appointment of independent board members can be beneficial to the functioning of the regional subsidiary. This is because independent directors, who are not linked to any of the constituent Councils, will be able to bring an independent, commercial perspective to board deliberations. This can also reduce the risks associated with a shared services arrangement.

The advantages associated with a governance structure able to incorporate independent directors are linked to flexibility. In some circumstances independent board members

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<sup>16</sup> Aulich *et al* (2011) Volume 2, p25

<sup>17</sup> Douglas (2009) p54, emphasis added

<sup>18</sup> Department of Local Government (2011)

would be advantageous to the regional subsidiary and in some circumstances independent board members would not be necessary. It is a key feature of the regional subsidiary model that there is flexibility regarding the governance structure depending on the purpose and function of each particular regional subsidiary.

### **Accountability**

Another benefit of the regional subsidiary model is the increased accountability provided by the model in comparison to the traditional Local Government service delivery approach. The regional subsidiary will generally be conducting a key Local Government service delivery function on behalf of a number of Local Governments and will be governed by, and accountable to, a board.

This contrasts with the traditional Local Government process in which the service delivery function's accountability channel is upwards through the Local Government hierarchy with ultimate responsibility residing in the Council which acts on advice from the Chief Executive Officer.

The Council has a myriad of responsibilities and concerns and oversight of any one particular service delivery function is dissipated amongst many other responsibilities. Consequently, accountability for a particular service to a singly-focused board leads to greater accountability than the traditional Local Government approach.

## Regional Subsidiaries in Practice

Regional subsidiaries can be established to undertake a number of different services and can also be used for regional planning. In South Australia, regional subsidiaries are often utilised for waste management across a number of Local Governments<sup>19</sup> but regional subsidiaries can also be used to perform other functions. A specific example, worthy of consideration, is the Eastern Health Authority (EHA), which provides a range of environmental health services in the eastern and inner northern suburbs of Adelaide on behalf of five Local Governments.<sup>20</sup>

### ***Eastern Health Authority, South Australia***

The Eastern Health Authority is a regional subsidiary established by its five Constituent Councils for the purposes of providing public and environmental health services primarily to and within the areas of the Constituent Councils.<sup>21</sup> The EHA has over 16 full time equivalent staff and performs functions mandated by several pieces of legislation on behalf of the Constituent Councils to over 150,000 residents.<sup>22</sup> Legislative functions undertaken by the EHA include Local Government responsibilities under the *Public and Environmental Health Act 1987 (SA)*, the *Food Act 2001 (SA)*, the *Supported Residential Facilities Act 1992 (SA)* and the *Environment Protection Act 1993 (SA)*.<sup>23</sup> Services performed by the EHA include immunisation, hygiene and sanitation control, licensing and monitoring of supported residential facilities and surveillance of food premises.<sup>24</sup>

The EHA's five Constituent Councils, located in Adelaide's eastern and inner northern suburbs, are:

- City of Norwood Payneham & St Peters
- City of Burnside
- Campbelltown City Council
- City of Prospect
- The Corporation of the Town of Walkerville

The EHA is governed by a Board of Management which consists of two Elected Member representatives from each of the Constituent Councils. The Board is responsible for managing the business and administrative affairs of the Authority and ensuring that it acts in accordance with its Charter.<sup>25</sup>

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<sup>19</sup> Department of Local Government (2011)

<sup>20</sup> See Aulich *et al* (2011) Volume 2, pp39-45

<sup>21</sup> Eastern Health Authority (2009)

<sup>22</sup> Eastern Health Authority (2010)

<sup>23</sup> Eastern Health Authority (2010), p2

<sup>24</sup> Aulich *et al* (2011), Volume 2, p40

<sup>25</sup> Eastern Health Authority (2010), p4



The EHA is primarily governed and regulated by its Charter which binds the Authority and its Constituent Councils. The Charter contains:

- The objects and purpose of the Authority
- Powers and functions
- Delegations
- Structure
- Provisions regarding the membership, functions and conduct of the Board
- Financial management and funding arrangements
- Dispute resolution
- Provisions regarding the addition and withdrawal of members

The Authority is also required to produce a business plan each financial year.<sup>26</sup>

A recent review by the Australian Centre of Excellence for Local Government found that the EHA is operating successfully as a regional subsidiary and the EHA is achieving financial and non-financial benefits for its Constituent Councils.<sup>27</sup>

The EHA provides direct financial benefits to its Constituent Councils due to its increased efficiency which is related to an appropriate economy of scale. There is also transparency regarding the Authority's operations and cost structures and an equitable and transparent funding formula has been developed. Consequently, the Constituent Councils are able to determine the direct costs and benefits of the EHA.

Non-financial benefits include efficient and effective service delivery, which is measured by community satisfaction surveys, and attraction and retention of qualified staff. The EHA also has significant strategic capacity in its specialist area, which translates to a more effective response to legislative or policy changes.<sup>28</sup>

Another benefit of the regional subsidiary structure of the EHA is its increased accountability. The EHA is arguably more accountable than a traditional Local Government environmental health department because the EHA answers directly to a Board of Management rather than up the Local Government hierarchy to a Council with a multitude of concerns and issues to deal with.

The ACELG review found that the EHA is operating effectively and providing benefits to its Constituent Councils. However, the model is not without challenges. In particular, the

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<sup>26</sup> Aulich *et al* (2011), Volume 2, p42

<sup>27</sup> Aulich *et al* (2011), Volume 2, pp39-46

<sup>28</sup> Aulich *et al* (2011), Volume 2

EHA has to work hard to maintain high levels of communication with its Constituent Councils to build understanding and shared ownership of its functions and services.<sup>29</sup>

Overall the Eastern Health Authority demonstrates that the regional subsidiary model has the potential to provide real benefits to Local Governments through shared service delivery.

### ***Applicability to Western Australia***

If enacted, the *Local Government Amendment (Regional Subsidiaries) Bill 2010* will provide Western Australian Local Governments with the opportunity to establish regional subsidiaries.

The ability for Local Governments to be able to establish regional subsidiaries will lead to benefits for Local Governments by increasing their capacity to deliver services to their communities. Currently Regional Local Governments are the only legislative mechanism available for Local Governments to provide services on a regional basis.

Regional Local Governments are viewed as Local Governments for the purposes of compliance and regulations. This contrasts with regional subsidiaries which are governed and regulated primarily by their charter.

Most of the Regional Local Governments that exist in Western Australia were established to provide waste management services on behalf of their member Local Governments. For regulatory and compliance purposes, these Regional Local Governments are treated as if they were Local Governments. There would be benefits if waste management services were able to be provided by a strategic, commercially driven, singly-focussed regional subsidiary that exists to provide waste management services on behalf of its member Local Governments.

Such a regional subsidiary would have its objects, functions, board representation and make-up, financial management and funding arrangements and provisions regarding member additions and withdrawals all specified by a charter.

Having a charter as the principle regulatory mechanism provides flexibility which is not afforded to Regional Local Governments which are primarily regulated by the *Local Government Act 1995*.

The application of regional subsidiaries is broader than waste management, however.

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<sup>29</sup> Aulich *et al* (2011) Volume 2

When considering which regional collaboration model would be most suitable for their purposes, SEAVROC determined that the regional subsidiary model, of all regional collaboration models available in all Australian states, would be the most useful and beneficial.<sup>30</sup>

The Regional Subsidiary model provides a suitable regional service delivery vehicle for groups of Local Governments looking to provide building, planning and environmental health services on a regional basis. Asset management is another Local Government function which could be provided by a regional subsidiary to a number of Local Governments. The regional subsidiary model would also be suitable for regional road construction.

The Association views the regional subsidiary model as complementary to, and not a replacement for, the ability of Local Governments to establish Regional Local Governments.

There may be some instances where Local Governments choose to establish a Regional Local Government in preference to a regional subsidiary. This is particularly likely to be the case if a broad range of services and functions are countenanced. For example, the six member Local Governments of the Eastern Metropolitan Regional Council (EMRC) may hold the view that the EMRC better serves their purposes than a regional subsidiary would.

The EMRC provides waste management services, environmental services and regional development policy and implementation on behalf of its six member Local Governments.

In other circumstances, a Local Government controlled organisation, referred to in this paper as a Local Government Enterprise, able to operate commercially and strategically would be the optimal model.

It is important that Local Governments are able to select and establish a regional shared service model appropriate to the service or services proposed to be delivered regionally and the needs and capabilities of the Local Governments concerned.

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<sup>30</sup> Douglas (2009)

## Regional Subsidiary Legislation

The *Local Government Amendment (Regional Subsidiaries) Bill 2010*, if enacted, would amend the *Local Government Act 1995* to allow two or more Local Governments to establish a regional subsidiary to perform specified Local Government functions.

The regional subsidiary model provides greater flexibility for Local Governments than current arrangements whereby Local Governments can form Regional Local Governments. Unlike Regional Local Governments which are regulated by the *Local Government Act 1995*, in much the same way that Local Governments are regulated, regional subsidiaries are primarily regulated by a charter.

### **Regulations**

The Bill defers significant detail to yet to be drafted regulations. It is important that careful consideration is given to the drafting of the regulations because the regulations will guide the establishment and operation of regional subsidiaries. There is a danger that over-regulation of regional subsidiaries leading to a large compliance burden would be a significant disincentive for Local Governments to establish regional subsidiaries.

In general, it is preferable for the regulatory requirements to be minimal, with the option to add provisions to a regional subsidiary charter if necessary, than to be overly prescriptive in regulations and negate the flexibility benefit which regional subsidiaries are designed to provide. The Australian Centre of Excellence for Local Government argues that the South Australian legislation may be overly prescriptive which may act as a disincentive for Local Governments to establish regional subsidiaries.<sup>31</sup> Consequently, Western Australia should adopt a lighter regulatory regime which avoids becoming overly prescriptive and leaves the bulk of the regulatory and governance requirements of regional subsidiaries to the individual regional subsidiary charters.

#### **Recommendation 1**

**Regulations regarding regional subsidiaries should be minimal with the majority of the regulatory and governance requirements contained in individual regional subsidiary charters**

Community support will be crucial for any Local Government to establish a regional subsidiary. Consequently, it is recommended that a thorough community consultation process be required to be undertaken prior to the establishment of a regional subsidiary.

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<sup>31</sup> Aulich *et al* (2011) Volume 2, p25

## **Recommendation 2**

### **A thorough community consultation process be required to be undertaken prior to the establishment of a regional subsidiary**

In South Australia, where regional subsidiaries have been established for some time, the legislative detail that guides the establishment and function of regional subsidiaries is contained in Schedule 2 of the *Local Government Act 1999 (SA)* rather than in regulations.

The effect of the legislation in South Australia and the proposed legislation in Western Australia is much the same. In the case of South Australia, regional subsidiaries are established by section 43 of the Act with the detail contained in Schedule 2. In Western Australia, regional subsidiaries will be established by the newly inserted section 3.69 of the *Local Government Act 1995* and the detail will be contained in regulations.

Regulations will need to be developed which define the contents of regional subsidiary charters. The Association contends, that for the full regional collaboration benefits to be realised, the content requirements of the charter should be minimal. There may be some circumstances where the charter would require greater detail than others. As a first principle, less regulation is preferable because further information can be added to the charter if necessary.

It is proposed that Ministerial approval will be required for a regional subsidiary to be established, which means that the Minister for Local Government could require additional provisions to be included in a charter in certain circumstances.

The Association recommends that the proposed regulations ensure that a regional subsidiary charter contains the following:

- i. The purpose of the subsidiary
- ii. The constitution of the subsidiary's board of management
- iii. The method of appointment of board members and details regarding terms of office
- iv. Details regarding proceedings of board of management meetings
- v. The powers, functions and duties of the subsidiary
- vi. The nature and scope of activities that will be undertaken
- vii. Staffing issues, including whether the subsidiary may employ staff and, if so, the process by which conditions of employment will be determined
- viii. Funding arrangements
- ix. Financial management arrangements
- x. Reporting obligations
- xi. Dispute resolution

- xii. The addition and withdrawal of members
- xiii. The extent to which constituent Local Governments are liable in the event of insolvency
- xiv. The manner in which property of the subsidiary will be distributed in the event of winding up
- xv. Any other matter as determined by the constituent Local Governments

**Recommendation 3**

**Regulations require the 15 matters, identified above, to be addressed in a regional subsidiary charter**

In terms of governance structures, it is proposed that the majority of a regional subsidiary board of management would be representatives from the subsidiary's constituent Local Governments. It is proposed that there should be flexibility to appoint independent directors, with appropriate skills and experience, to serve on the board in addition to the representative directors. This would enable an independent, strategic and commercially driven perspective to be brought to regional subsidiary deliberations. The ability to appoint independent directors is not currently available to Regional Local Governments and would be an advantage of the regional subsidiary model.

**Recommendation 4**

**A flexible governance structure, which allows independent directors to be appointed to the board of management, be adopted for regional subsidiaries**

There would need to be some detail in the regulations about the appointment of members to the board of management and the proceedings of board meetings. It may be preferable to leave the specific arrangements to individual regional subsidiary charters.

**Recommendation 5**

**The majority of requirements regarding appointment of board members and proceedings of board meetings be contained in regional subsidiary charters rather than regulations**

The Association contends that regional subsidiaries should be body corporates with the ability to hold property and employ staff, as is the case in South Australia.

**Recommendation 6**

**Regional subsidiaries be body corporates with the ability to hold property and employ staff**

In South Australia, it is a legislative requirement that a regional subsidiary's charter is reviewed every four years. The Association contends that this is a reasonable requirement and consistent with sound governance practice. Following the review, a proposed charter, if amended, should be forwarded to the Minister for Local Government for ratification.

**Recommendation 7**

**It be required in regulations that a regional subsidiary's charter must be reviewed every four years**

The Association also contends that, consistent with sound governance practice, regional subsidiaries should be required to develop a strategic plan which outlines their strategic direction and key objectives for a four to six year timeframe. The strategic plan should then inform a business plan which details financial and funding arrangements which will guide the development of the regional subsidiary's annual budget.

**Recommendation 8**

**Regional subsidiaries be required by regulations to adopt a strategic plan, a business plan and an annual budget**

Given the important role that the proposed regulations will play in the establishment, governance and operations of regional subsidiaries, it is recommended that the Association and the Local Government sector be involved in the development of the regulations through appropriate consultative arrangements.

**Recommendation 9**

**That the Association and the Local Government sector be involved in the development of regulations regarding regional subsidiaries through appropriate consultative mechanisms**

The importance of the regulations associated with this Bill is acknowledged and the Association would like to offer any assistance it can in the development of the proposed regulations.

## Further Legislative Reform

There are a number of options for further legislative reform worthy of consideration. It is clear, for Local Governments to embrace shared service opportunities and for efficiencies to be fully realised, that a variety of flexible shared service options with suitable accountability requirements must be available to Local Government.

Beyond the regional subsidiary model, there are two further reforms that should be pursued. Firstly, the compliance and red-tape requirements associated with Regional Local Governments should be reduced. Secondly, Local Governments should be able to establish Local Government Enterprises to undertake commercial activities.

### ***Regional Local Governments***

Local Governments currently have the ability, under the *Local Government Act 1995*, to establish Regional Local Governments. There are benefits that can be gained from the establishment of a Regional Local Government; however the benefits must more than offset the compliance and reporting requirements associated with a Regional Local Government.

Regional Local Governments have significant compliance and regulatory requirements because they are regarded, for compliance purposes, as a Local Government. Regional Local Governments are regulated as Local Governments except when the *Local Government Act 1995* makes specific reference to sections that do not apply. The sections that the Act currently excludes from applying to Regional Local Governments are minimal: generally only sections that cannot be applied to Regional Local Governments, such as provisions regarding elections or rating, are excluded.<sup>32</sup>

The *Local Government Act 1995* allows regulations to be made that exempt Regional Local Governments from provisions of the Act or would modify the effect of how particular provisions of the Act are applied to Regional Local Governments.<sup>33</sup> The capacity to implement regulations that would reduce the compliance burden applied to Regional Local Governments has only been utilised to a very limited extent.

The Association has consistently and strongly advocated for a reduction in the onerous compliance requirements associated with Regional Local Governments and it is proposed in this submission that a thorough review of the regulatory and compliance regime of Regional Local Governments be conducted.

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<sup>32</sup> Douglas (2009) pp48-49

<sup>33</sup> Douglas (2009) p43



### **Recommendation 10**

**A review, with the involvement of the Association and the Local Government sector, examining the regulatory and compliance burden of Regional Local Governments be undertaken**

Such a review would enable the compliance burden placed on Regional Local Governments to be reduced. This would make the establishment of Regional Local Governments a much more attractive proposition for Local Governments seeking to enter into a shared service arrangement.

### ***Local Government Enterprises***

Another model worthy of further consideration is the Local Government Enterprises model. This model is available to Local Governments in New Zealand where ‘Council Controlled Organisations’ (CCOs) are widely used for a variety of functions. The model allows Local Governments to form a wholly Local Government owned commercial enterprise. It has been argued that the establishment of Local Government Enterprises “will improve commercial efficiency and reduce risk to ratepayers, while enabling Local Government to achieve strategic outcomes that are extremely difficult to achieve under current statutory restrictions”.<sup>34</sup>

In other jurisdictions the assets controlled by a Local Government owned enterprise are sometimes valued at hundreds of millions of dollars.<sup>35</sup> Depending on the function and proposed undertaking, a Local Government Enterprise could be wholly owned by one Local Government or could be owned by a group of Local Governments, similar to a regional subsidiary.

The Local Government Enterprise model differs significantly from the Regional Subsidiary Model in its governance structure. A Regional Subsidiary utilises a representative governance structure in that the board of management will primarily consist of Elected Members from each of the constituent Local Governments. A Local Government Enterprise board is not representative and will consist entirely of directors appointed on the basis of skills. In some cases a Local Government Enterprise board will consist entirely of directors not associated with any of the enterprise’s controlling Local Governments.

The concept of a government owned commercial enterprise is not new; State Governments have been successfully operating commercial enterprises for many years. Western Australian State Government examples include the Water Corporation and LandCorp.

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<sup>34</sup> Conway Davy Pty Ltd (2010) p2

<sup>35</sup> Conway Davy Pty Ltd (2010), p8

Examples of functions that could be undertaken by a Local Government Enterprise include urban regeneration on a small, localised scale and commercial activities to reverse declining populations in regional centres where low financial returns might be justified in pursuit of broader social objectives.<sup>36</sup>

In New Zealand, Council Controlled Organisations are widespread and are employed “to carry out a broad range of functions where (in the opinion of the shareholding local authorities) the efficiency of delivering such functions would be enhanced by the creation of professionally governed entities established for the specific purpose and where the appropriate consultation and oversight measures are in place.”<sup>37</sup>

Questions naturally arise about Local Government involvement in commercial activities given ratepayer funds are at stake. Common concerns involve issues of risk, Local Government capacity and competence and the conflicts associated with a Local Government occupying regulatory and ownership functions.

It is proposed that Local Government involvement in commercial activities, such as urban regeneration projects, should be through arms-length entities that provide the necessary separation between Local Government’s regulatory responsibilities and its imperatives as an owner. An arms-length entity, under Local Government control, can provide greater accountability and transparency and greater strategic direction than can be achieved under current legislative constraints.<sup>38</sup> The Local Government Enterprises model strikes a balance between commercial efficiency and justified concerns regarding transparency and accountability in the public sector.

There are a number of benefits of the Local Government Enterprises model including a flexible governance structure which ensures directors with commercial experience are appointed. Further, the Local Government Enterprises model removes commercial decisions from the political realm which can lead to improved decision-making. The broad purpose and objectives of the Local Government Enterprise will still be set at the Council level. Risk can also be reduced under this model by quarantining ratepayers from legal liability and financial risk arising from commercial activities.<sup>39</sup> Another benefit is the increased oversight that a Local Government Enterprise provides relative to the traditional Local Government approach. The Local Government Enterprise board will provide greater oversight and accountability to the enterprise’s undertakings than if the

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<sup>36</sup> Conway Davy Pty Ltd (2010)

<sup>37</sup> Conway Davy Pty Ltd (2010) p5

<sup>38</sup> Conway Davy Pty Ltd (2010) p4

<sup>39</sup> Conway Davy Pty Ltd (2010) p8

functions were being undertaken by a department contained within a Local Government with oversight up the Local Government hierarchy to the Council.

The Association recommends that consideration be given to legislative reform to enable Local Governments to establish Local Government Enterprises. Full details of proposed legislative amendments to enable Local Governments to establish Local Government Enterprises is contained in Appendix 1 of this submission.

**Recommendation 11**

**The Local Government Act 1995 be amended in accordance with Appendix 1 of this submission to allow Local Governments to establish Local Government Enterprises**

Adoption of the Local Government Enterprises model would allow Local Governments the flexibility to pursue commercial objectives, currently passed up by the private sector, with appropriate accountability and transparency arrangements ensuring beneficial outcomes for the community.

## Conclusion

Local Governments play a key role in Australian democracy while performing a wide range of service delivery and infrastructure provision functions. The role of Local Governments has been expanding and evolving for decades and with this evolution, Local Governments have sought to achieve greater efficiency and effectiveness in everything they do.

Shared services with a regional and strategic focus provide a major vehicle for Local Governments to continue to provide high quality services and infrastructure for their communities in a more efficient and more effective manner.

It is fundamental that the legislative setting in which Local Governments operate is conducive to the selection of appropriate service delivery mechanisms suitable to the region, the shared service function proposed and the accountability required.

There are many service delivery models in operation in Australia. In Western Australia Local Governments are able to form Regional Local Governments which carry a heavy compliance burden under the *Local Government Act 1995*. For Regional Local Governments to be effective, this compliance burden must be reduced.

The Regional Subsidiary model, which is currently available in South Australia and is the subject of the *Local Government Amendment (Regional Subsidiaries) Bill 2010*, has the potential to provide significant benefits to Local Governments and their communities. The model has many benefits: the model is flexible, since it is governed by a charter instead of legislation, the model has a representative governance structure with the ability to appoint independent expertise, and the model provides greater accountability than the traditional Local Government service delivery model.

To ensure the Regional Subsidiary model fulfils its potential benefits, it is crucial that the regulatory approach is light. The focus of the regulatory requirements of regional subsidiaries should be on regional subsidiary charters with flexibility to adapt the charter to suit the specific purpose of each regional subsidiary.

Further legislative reform should also be considered. The compliance burden of Regional Local Governments should be reduced and the *Local Government Act 1995* should be amended to allow Local Governments to establish Local Government Enterprises which will provide Local Governments with the capacity to undertake commercially driven activities with reduced risk and appropriate accountability.

Local Governments should be empowered under the *Local Government Act 1995* to establish a range of regional service delivery vehicles to suit their needs and circumstances including regional subsidiaries, Local Government Enterprises, Regional Local Governments with reduced compliance requirements and incorporated associations.

The Association would be pleased to present to the Committee on this submission.

## Recommendations

### *Regional Subsidiary Regulations*

#### **Recommendation 1**

Regulations regarding regional subsidiaries should be minimal with the majority of the regulatory and governance requirements contained in individual regional subsidiary charters

#### **Recommendation 2**

A thorough community consultation process be required to be undertaken prior to the establishment of a regional subsidiary

#### **Recommendation 3**

Regulations require the 11 matters, listed below, to be addressed in a regional subsidiary charter:

- i. The purpose of the subsidiary
- ii. The constitution of the subsidiary's board of management
- iii. The method of appointment of board members and details regarding terms of office
- iv. Details regarding proceedings of board of management meetings
- v. The powers, functions and duties of the subsidiary
- vi. The nature and scope of activities that will be undertaken
- vii. Staffing issues
- viii. Funding arrangements
- ix. Financial management arrangements
- x. Reporting obligations
- xi. Dispute resolution
- xii. The addition and withdrawal of members
- xiii. The extent to which constituent Local Governments are liable in the event of insolvency
- xiv. The manner in which property of the subsidiary will be distributed in the event of winding up
- xv. Any other matter as determined by the constituent Local Governments

#### **Recommendation 4**

A flexible governance structure, which allows independent directors to be appointed to the board of management, be adopted for regional subsidiaries

**Recommendation 5**

The majority of requirements regarding appointment of board members and proceedings of board meetings be contained in regional subsidiary charters rather than regulations

**Recommendation 6**

Regional subsidiaries be body corporates with the ability to hold property and employ staff

**Recommendation 7**

It be required in regulations that a regional subsidiary's charter must be reviewed every four years

**Recommendation 8**

Regional subsidiaries be required by regulations to adopt a strategic plan, a business plan and an annual budget

**Recommendation 9**

That the Association and the Local Government sector be involved in the development of regulations regarding regional subsidiaries through appropriate consultative mechanisms

***Further Legislative Reform***

**Recommendation 10**

A review, with the involvement of the Association and the Local Government sector, examining the regulatory and compliance burden of Regional Local Governments be undertaken

**Recommendation 11**

The Local Government Act 1995 be amended in accordance with Appendix 1 of this submission to allow Local Governments to establish Local Government Enterprises

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## Appendix 1 – Local Government Enterprises: Proposed Legislative Amendments<sup>40</sup>

Suggested key amendments and/or insertions to sections of the *Local Government Act 1995* and the *Local Government (Functions and General) Regulations 1996* are set out below. Other consequential amendments may also be required, including amendments to some aspects of the *Local Government (Financial Management) Regulations 1996* as noted.

### **3.60 Establishment of a Local Government Enterprise** (*Replaces existing section 3.60*)

- (1) In this Act, “Local Government Enterprise” means:
  - (a) a company established under general corporations law in which one or more local governments hold 50% or more of the equity or a controlling interest; or
  - (b) a trust established primarily for the benefit of residents or ratepayers of one or more local government areas with the intention of holding assets formerly owned by those local governments
- (2) A local government may not form, or participate in forming, or exercise control of a Local Government Enterprise other than in accordance with this clause and the Regulations.
- (3) A Local Government Enterprise may not be established for the purposes of dealing with any regulatory function of a local government, and a local government may not delegate any regulatory function to a Local Government Enterprise.
- (4) A local government may not subscribe for shares in a Local Government Enterprise or propose to transfer assets to a Local Government Enterprise unless it first:
  - (a) carries out a consultative process as set out in section 3.60A; and
  - (b) thereafter decides\* to participate in the Local Government Enterprise.

*\* Absolute majority required*

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<sup>40</sup> From Conway Davy (2010) pp29-38

**3.60A Consultation in relation to participation in a Local Government Enterprise**  
*(Proposed new section)*

- (1) A local government may not participate in a Local Government Enterprise unless it first:
  - (a) prepares a Constitution, Statement of Intent and Business Plan for the proposed Local Government Enterprise; and
  - (b) prepares a statement of the reasons why it believes its participation in a Local Government Enterprise will result in an improved delivery of the functions proposed to be undertaken by the Local Government Enterprise including, where reasonable and appropriate to do so, a comparison of the anticipated financial outcomes (**statement of reasons**); and
  - (c) gives local public notice in accordance with subsection (2); and
  - (d) makes available for public inspection copies of the proposed Constitution, Statement of Intent, Business Plan and statement of reasons at the local government offices and at each local government library in the district.
  
- (2) The local public notice is to contain -
  - (a) notification that the local government proposes to participate in a Local Government Enterprise; and
  - (b) details of where and when the Constitution, Statement of Intent, Business Plan and statement of reasons for the proposed Local Government Enterprise may be inspected; and
  - (c) an invitation for submissions in relation to the proposed participation in the Local Government Enterprise to be made by members of the public within 42 days of the day on which local public notice was first given.
  
- (3) The Statement of Intent prepared under this section must comply with the requirements for a Statement of Intent under subsection 3.60E.
  
- (4) The Business Plan prepared under this section must contain such information as is specified in the Regulations.
  
- (5) The consultation required in subsection (1) may be undertaken as part of the local government's consultation in relation to the plan prepared pursuant to section 5.56
  
- (6) The local government must consider any submissions received in relation to the proposed participation in the Local Government Enterprise before deciding whether to proceed with the proposed participation.

- (7) Consultation carried out in accordance with this section shall be deemed to satisfy the requirements of section 3.58 in relation to the transfer of any property asset from a local government to a Local Government Enterprise.
- (8) Consultation carried out in accordance with this section shall be deemed to satisfy the requirements of section 3.59 in relation to the transfer of any property asset that would constitute a major land transaction, and in relation to the participation of the local government in a Local Government Enterprise being a major trading undertaking.

**3.60B Appointment of directors or trustees to a Local Government Enterprise**  
*(Proposed new section)*

- (1) Every local government, before considering participation in a Local Government Enterprise, must adopt a policy that sets out an objective and transparent process for –
  - (a) the identification and consideration of the skills, knowledge, and experience required of directors or trustees of a Local Government Enterprise; and
  - (b) the appointment of directors or trustees to a Local Government Enterprise; and
  - (c) the remuneration of directors or trustees of a Local Government Enterprise.
- (2) A local government may appoint a person to be a director or trustee of a Local Government Enterprise only if the person has, in the opinion of the local government, the skills, knowledge, or experience to -
  - (a) guide the Local Government Enterprise, given the nature and scope of its activities; and
  - (b) contribute to the achievement of the objectives of the Local Government Enterprise.

**3.60C Governance of a Local Government Enterprise** *(Proposed new section)*

- (1) The principal objective of a Local Government Enterprise is to -
  - (a) achieve the objectives, both commercial and non-commercial, of its shareholders as specified in the Statement of Intent; and
  - (b) be a good employer; and
  - (c) exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by

- endeavouring to accommodate or encourage these when reasonably able to do so; and
  - (d) conduct its affairs in accordance with sound business practice
- (2) All decisions relating to the operation of a Local Government Enterprise must be made by, or under the authority of, the board of the Local Government Enterprise in accordance with -
- (a) its Statement of Intent; and
  - (b) its Constitution

**3.60D Limitation on guarantees and lending** *(Proposed new section)*

- (1) A local government must not give any guarantee, indemnity, or security in respect of the performance of any obligation by a Local Government Enterprise.
- (2) A local government must not lend money, or provide any other financial accommodation, to a Local Government Enterprise on terms and conditions that are more favourable to the Local Government Enterprise than those that would apply if the local government were (without charging any rate or rate revenue as security) borrowing the money or obtaining the financial accommodation.

**3.60E Statements of Intent for Local Government Enterprises** *(Proposed new section)*

Every Local Government Enterprise must have a Statement of Intent that is in a form prescribed by the Regulations and is not inconsistent with the constitution of that Local Government Enterprise.

**3.60F Performance monitoring and reporting** *(Proposed new section)*

- (1) A local government that is a shareholder in a Local Government Enterprise must regularly undertake performance monitoring of that Local Government Enterprise to evaluate its contribution to the achievement of -
- (a) the local government's objectives for the Local Government Enterprise; and
  - (b) the desired results, as set out in the Statement of Intent; and
  - (c) the overall aims and outcomes of the local government
- (2) A local government must, as soon as practicable after a Statement of Intent of a Local Government Enterprise is delivered to it,
- (a) agree to the Statement of Intent; or

- (b) if it does not agree, take all practicable steps as provided for in the Regulations to require the Statement of Intent to be modified
- (3) Within 2 months after the end of the first half of each financial year, the board of a Local Government Enterprise must deliver to the shareholders a report on the operations of the Local Government Enterprise during that half year, setting out the information required by its Statement of Intent to be included in that report.
- (4) Within 3 months after the end of each financial year, the board of a Local Government Enterprise must deliver to the shareholders, and make available to the public, a report on the operations of the Local Government Enterprise during that year, setting out all of the information required to be included by -
  - (a) subsections 5 and [6](#); and
  - (b) its Statement of Intent
- (5) A report on the operations of a Local Government Enterprise under subsection 4 must -
  - (a) contain the information that is necessary to enable an informed assessment of the operations of that Local Government Enterprise and its subsidiaries (**group**), including -
    - (i) a comparison of the performance of the group with the Statement(s) of Intent; and
    - (ii) an explanation of any material variances between that performance and the Statement(s) of Intent; and
  - (b) state the dividend, if any, authorised to be paid or the maximum dividend proposed to be paid by the Local Government Enterprise for its equity securities (other than fixed interest securities) for the financial year to which the report relates.
- (6) A report on the operations of a Local Government Enterprise under subsection 4 must include -
  - (a) audited consolidated financial statements for that financial year for that group; and
  - (b) an auditor's report on -
    - (i) those financial statements; and
    - (ii) the performance targets and other measures by which performance was judged in relation to that group's objectives

**3.60G Audited accounts to be submitted to the Auditor General** (*Proposed new section*)

The audited accounts of a Local Government Enterprise and the consolidated group accounts of each local government participating in the Local Government Enterprise must be submitted to the Auditor-General within 3 months of completion of the audit.

**6.14. Power to invest** (*Proposed subsection (3) added to existing section*)

- (1) Subject to the regulations, money held in the municipal fund or the trust fund of a local government that is not, for the time being, required by the local government for any other purpose may be invested —
  - (a) in accordance with Part III of the *Trustees Act 1962*; or
  - (b) in an investment approved by the Minister on the advice and recommendation of the Treasurer.
  
- (2) Regulations in relation to investments by local governments may —
  - (a) provide for the manner in which an approval under subsection (1)(b) may be sought;
  - (b) prescribe classes of investment which may be made without the need to comply with subsection (1)(b);
  - (c) prescribe circumstances in which a local government is required to invest money held by it;
  - (d) provide for the application of investment earnings; and
  - (e) generally provide for the management of those investments.
  
- (3) This section does not apply to participation in a Local Government Enterprise established in accordance with this Act.

**6.21. Restrictions on borrowing** (*Proposed subsection (2)(b) added to existing section*)

- (1) Except in the case of:
  - (a) overdrawings on current account from a bank or other financial institution; and
  - (b) such other form of financial accommodation (if any) as is determined by the Treasurer and notified to local governments in the State,
 a local government is only to exercise a power under section 6.20(1) with the prior approval of the Treasurer or a person authorised in that behalf by the Treasurer.

- (2) Where, under section 6.20(1), a local government borrows money, obtains credit or arranges for financial accommodation to be extended to the local government that money, credit or financial accommodation is only to be secured by giving security over:
  - (a) the general funds of the local government; or
  - (b) land owned in freehold title by the local government.
  
- (3) The Treasurer or a person authorised in that behalf by the Treasurer may give a direction in writing to a local government with respect to the exercise of its power under section 6.20(1) either generally or in relation to a particular proposed borrowing and the local government is to give effect to any such direction.
  
- (4) In this section and in section 6.23 —  
“general funds” means the revenue or income from —
  - (a) general rates;
  - (b) Government grants which were not given to the local government for a specific purpose; and
  - (c) such other sources as are prescribed.

**Proposed inclusions in *Local Government (Functions and General) Regulations 1996* in relation to Local Government Enterprises**

**Part 8 – Local Government Enterprises** (*proposed new part and regulations*)

**39. Statements of Intent - s. 3.60E**

- (1) The purpose of a Statement of Intent is to:
  - (a) state publicly the activities and intentions of a Local Government Enterprise for the year and the objectives to which those activities will contribute; and
  - (b) provide an opportunity for shareholders to influence the direction of the organisation; and
  - (c) provide a basis for the accountability of the directors to their shareholders for the performance of the Local Government Enterprise.
  
- (2) The board of a Local Government Enterprise must deliver to its shareholders a draft Statement of Intent on or before 31 March each year.



- (3) The board must—
  - (a) consider any comments on the draft Statement of Intent that are made to it within 2 months of 31 March by the shareholders or by any of them; and
  - (b) deliver the completed Statement of Intent to the shareholders on or before 30 June each year.
  
- (4) The board may, by written notice, modify a Statement of Intent at any time if the board has first—
  - (a) given written notice to the shareholders of the proposed modification; and
  - (b) considered any comments made on the proposed modification by the shareholders or by any of them within -
    - (i) 1 month after the date on which the notice under paragraph (a) was given; or
    - (ii) any shorter period that the shareholders may agree.
  
- (5) Despite any other provision of the Act or of the constitution of any Local Government Enterprise, the shareholders of a Local Government Enterprise may, by resolution, require the board to modify the Statement of Intent by including or omitting any provision or provisions of the kind referred to in clause 8 (a) to (h), and the board must comply with the resolution.
  
- (6) Before giving notice of the resolution to the board, the shareholders must consult the board concerned as to the matters to be referred to in the notice.
  
- (7) A completed Statement of Intent and each modification that is adopted to a Statement of Intent must be made available to the public by the board within 1 month after the date on which it is delivered to the shareholders or adopted, as the case may be.
  
- (8) A Statement of Intent must, to the extent that is appropriate given the organisational form of the Local Government Enterprise, specify for the Local Government Enterprise and its subsidiaries (if any) (**group**), and in respect of the financial year immediately following the financial year in which it is required by subregulation 3(b) to be delivered and each of the immediately following 2 financial years, the following information:
  - (a) the objectives of the group; and
  - (b) a statement of the board's approach to governance of the group; and
  - (c) the nature and scope of the activities to be undertaken by the group; and
  - (d) the ratio of consolidated shareholders' funds to total assets, and the definitions of those terms; and

- (e) the policy of the board in relation to dividends; and
  - (f) the accounting policies of the group; and
  - (g) the performance targets and other measures by which the performance of the group may be judged in relation to its objectives; and
  - (h) the kind of information to be provided to the shareholders by the group during the course of those financial years, including the information to be included in each half-yearly report (and, in particular, what prospective financial information is required and how it is to be presented); and
    - (i) the board's estimate of the commercial value of the shareholders' investment in the group and the manner in which, and the times at which, that value is to be reassessed; and
    - (ii) any other matters that are agreed by the shareholders and the board.
- (9) If a Local Government Enterprise has undertaken to obtain or has obtained compensation from its shareholders in respect of any activity, this undertaking or the amount of compensation obtained must be recorded in:
- (a) the annual report of the Local Government Enterprise; and
  - (b) the annual report of the local government shareholder(s).
- (10) Any financial information, including (but not limited to) forecast financial information, must be prepared in accordance with the relevant Australian Accounting Standard as defined in the *Local Government (Financial Management) Regulations 1996*.

#### **40. Business Plans – s.3.60A**

- (1) The purpose of a Business Plan is to:
- (a) state publicly the proposed activities of a Local Government Enterprise in sufficient detail to enable persons wishing to make a submission in relation to section 3.60A of the Act to be properly informed of the anticipated financial affairs of the Local Government Enterprise and the effect of its establishment and operation on:
    - (i) the local government(s) proposing to participate in the Local Government Enterprise; and
    - (ii) any other entity performing similar functions to those of the proposed Local Government Enterprise;
  - (b) provide a basis for the accountability of the directors to their shareholders for the performance of the Local Government Enterprise.

- (2) A local government proposing to form or participate in a Local Government Enterprise must prepare a Business Plan in relation to the first 5 years of operation of the Local Government Enterprise prior to inviting public submissions on the proposal.
- (3) A Business Plan prepared in accordance with section 3.60A must, to the extent that is appropriate given the organisational form of the Local Government Enterprise, specify for the group comprising the Local Government Enterprise and its subsidiaries (if any), in respect of the first 5 financial years of its operations, the following information:
  - (a) the nature and scope of the activities to be undertaken by the group; and
  - (b) details of any assets proposed to be transferred from a local government to the Local Government Enterprise; and
  - (c) the proposed funding arrangements for the activities of the group (to the extent that these can reasonably be anticipated); and
  - (d) the following proforma financial reports:
    - (i) Profit and Loss Statement
    - (ii) Balance Sheet
    - (iii) Projected cashflow
- (4) If it is proposed that the Local Government Enterprise is to undertake functions currently provided by the local government(s), the Business Plan must state clearly:
  - (a) the rationale for the proposed transfer of those functions; and
  - (b) the anticipated the effect on the employment of staff currently employed by the local government(s) in performing those functions.
- (5) Any financial information and proforma financial reports must be prepared in accordance with the relevant Australian Accounting Standard as defined in the *Local Government (Financial Management) Regulations 1996*.

**Amendments to *Local Government (Financial Management) Regulations 1996* in relation to Local Government Enterprises**

A number of amendments will be required to the *Local Government (Financial Management) Regulations 1996* in relation to the accounting treatment of Local Government Enterprises in the accounts of local governments and the proposed financial reporting requirements. However, the drafting of these is a matter best dealt with after further evaluation of the proposed model.