

Parliament of Western Australia
Legislative Council - Standing Committee on
Legislation

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

A submission by

Raymond James Davy

20 July 2011

1. Identity of Submitter and Nature of Interest

My name is Raymond James Davy, and I currently reside at Unit 8, 65 Wittenoom Street, East Perth. I practice as a professional consultant specialising in advice to national, state and local governments in Australia and New Zealand on mechanisms for the efficient delivery of services and utilisation of assets, mainly (but not exclusively) in relation to property and infrastructure. Through my Company, Conway Davy Pty Ltd, I currently provide or have recently provided advice to more than 20 local governments and groups of local governments in Western Australia on matters relevant to this submission and the Bill under consideration.

Of specific relevance, I am the author of the report entitled *Local Government Enterprises as a Means of Improving Local Government Efficiency* which has been quoted extensively in the submission to this Committee by the Western Australian Local Government Association (WALGA), and of the suggested legislative amendments appended to that submission. Previously I was the principal author of a report for the former Department for Planning and Infrastructure on the potential use of local government corporate entities as delivery mechanisms for localised urban regeneration that formed part of the WALGA response to the Systemic Sustainability Study into local government in Western Australia.

I also have personal experience of establishing and serving as an independent director of a number of local government-owned trading enterprises in New Zealand, known as Council Controlled Organisations established under that country's *Local Government Act 2002*, and I believe that experience has relevance to the deliberations of the Committee.

Finally, I have a passionate and abiding interest in the sustainability of rural and regional communities, and in the measures needed to ensure the survival of many of these communities in the 21st Century. I believe that a great deal of the answer to those challenges lies in new thinking about service delivery through local government.

2. Benefits of a Regional Subsidiary Model

The Bill before the Committee is the *Local Government Amendment (Regional Subsidiaries) Bill 2010*. This Bill introduces the concept of a Regional Subsidiary model under which two or more local governments may establish a regional subsidiary to perform a variety of roles. The model is presumably intended to mirror similar provisions used in South Australia as a vehicle for shared service delivery by local governments. Under this concept, Regional Subsidiaries are established

as separate legal entities formulated by a charter which sets out the Regional Subsidiary's purpose, functions and powers.

The intention is that matters such as the objects, functions, board representation, financial management and membership mechanisms of a Regional Subsidiary would be specified by its charter. Having a charter as the principle regulatory mechanism provides flexibility which is not currently afforded to Regional Local Governments under the *Local Government Act 1995*.

The South Australian experience suggests there are substantial benefits that can potentially flow to communities from a Regional Subsidiary model, including the ability to establish special purpose entities with a flexible governance structure. This flexibility is a consequence of having Regional Subsidiaries governed by the terms of their individual charter rather than the regulatory and compliance burden that local governments must bear under the Local Government Act. Whether those benefits will exist under the model contemplated for Western Australia will depend entirely on the detail that does NOT appear in the Bill, but which is intended to be dealt with by Regulation. I shall refer to this later in my submission.

There are two key philosophical issues inherent in this model:

- The notion that the form and function of a service delivery entity should be tailored to the specific nature of the circumstances that give rise to its existence, and
- The notion that service delivery by local governments is a matter that can properly be separated from the policy framework under which the services are to be delivered.

In any other sphere of activity, including Government, neither of these is particularly remarkable and I wholeheartedly endorse them. In particular, the idea that policy formulation and political accountability should be separated from service delivery is deeply embedded in the structure of national and State government and yet it is effectively prohibited in the case of local government in this State. The idea that greater efficiency flows from tailoring solutions to local circumstances – especially in rural and regional areas – is also regarded as almost axiomatic and yet again the administration of local government in Western Australia insists on a “one size fits all” model that is unable to respond to local needs and circumstances.

However, as much as I support the concepts underlying the proposed Regional Subsidiary model, I am concerned that the prevailing philosophy of this Government and the Department of Local Government in relation to giving local governments the tools they need to deal with contemporary problems will

emasculate the concept to the point that the passage of this Bill will prove to have had minimal effect on the situation.

I am also moved to ask the most obvious question arising from the Bill, namely – if the features presumably intended for a Regional Subsidiary are considered to enhance the capability of local governments to deliver services to their communities, why would the Parliament want to limit these benefits only to service delivery by groupings of two or more local governments? Why would you not want to extend those benefits to service delivery by a single local government?

3. The Bill and Regulations in Detail

As noted above, I am concerned that the Bill gives no indication of whether Regional Subsidiaries are likely to be able to function effectively, given that all of the key detail is intended to be dealt with by Regulation. I place on record my view that the *Local Government Act 1995* is the most backward-looking, paternalistic and obstructive local government legislation in Australasia. Accordingly, if the Regulations to give effect to this Bill were to reflect the broader philosophy of the Act then local communities will see none of the potential benefits of this model.

In my submission, the Act requires far more fundamental reform if local government is to operate efficiently. This reform should as a minimum address the current prohibition on corporate subsidiaries, the unworkable limitations on raising debt and the unnecessarily onerous consultation provisions regarding dealing with assets (including assets held purely for investment purposes).

The relevance of that observation to the Bill is to make the point that Regional Subsidiaries must, as a minimum, be exempted from those particular restrictions if there is to be any point to this exercise.

I have had the benefit of being briefed on the nature of the submission by WALGA and I do not intend to replicate the matters and recommendations set out in that submission in any detail. However, I place on record my endorsement of WALGA's representations regarding the following matters in particular:

- the need for Regulations controlling the establishment and operation of Regional Subsidiaries to be kept minimal in the interests of maximum flexibility;
- the need for community consultation prior to the establishment of a Regional Subsidiary;
- the matters that need to be addressed in the Regulations;

- the need for Regional Subsidiaries to be bodies corporate with the ability to hold assets, borrow money and employ staff on normal commercial terms; and
- the need for Regional Subsidiaries to prepare and adopt a strategic plan, a business plan and a budget all reviewed annually

I would add a specific recommendation regarding the appointment of directors to the Board of a Regional Subsidiary, namely that all such directors (whether they are elected members of the constituent local governments or independent directors) must be appointed on the basis of their specific qualifications and experience for the role.

4. Local Government Enterprises

As noted above, it is worth asking why the benefits of arms-length service delivery, flexible governance and the capacity to operate on normal commercial terms should apply only to joint enterprises of two or more local governments and not to any single local government. To that end, I urge the Committee to examine the benefits of what is described in the WALGA submission as the Local Government Enterprises model. This model would allow individual local governments to form wholly owned commercial enterprises similar to the New Zealand 'Council Controlled Organisations' (CCOs). This model 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.

A Local Government Enterprise (LGE) differs significantly from a Regional Subsidiary in that a LGE operates in most respects as a normal company while the role of the shareholding local government is purely that of an investor. Specific accountability provisions are put in place to ensure that the Board, while operating commercially, remains accountable to the local government and the community. In this respect it mirrors at a local level the manner in which State governments already provide certain functions through State corporations (such as, in Western Australia, the Water Corporation or the various Port Authorities).

Examples of functions that could be undertaken by a LGE include urban regeneration on a localised scale and commercial activities in regional centres where low financial returns might be justified in pursuit of broader social objectives to mitigate or reverse declining populations. There are many examples from New Zealand where CCOs carry out a broad range of functions where (in the opinion of the shareholding local authorities) the efficiency of delivering such functions is enhanced by the creation of professionally governed entities established for the specific functional purpose.

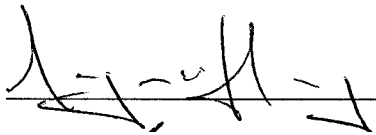
Among the benefits of the Local Government Enterprises model are commercial efficiency, a flexible governance structure which ensures directors with commercial experience and function-specific expertise are appointed, the removal of commercial decisions from the political realm and a greater level of oversight and accountability than if the functions were delivered by a department contained within a local government.

I recommend that the Committee examine this model in detail as a preferable means of delivering the benefits that the *Local Government Amendment (Regional Subsidiaries) Bill 2010* seeks to achieve.

5. Status of this Submission and Appearance Before the Committee

I do not wish this submission to remain confidential and consent to it being published.

I wish to appear in person before the Committee in support of this submission.

A handwritten signature in black ink, appearing to read 'Raymond Davy', written over a horizontal line.

Raymond Davy

20 July 2011