



Inquiry into the Local Government Amendment (Regional Subsidiaries) Bill 2010

Legislative Council Standing Committee on
Legislation:
City of Mandurah Submission

July 2011

Introduction

The City of Mandurah welcomes the opportunity to provide a submission to the Legislative Council Standing Committee on Legislation's *Inquiry into the Local Government Amendment (Regional Subsidiaries) Bill 2010*. It is understood that the Committee is seeking input into the practical effect of the Bill if enacted, including the potential impacts on, and benefits for Western Australian Local Governments and their communities.

The City of Mandurah is pleased to provide comment on the Bill. The City recently provided a similar submission to the Department of Local Government's March 2011 discussion paper - *Regional Local Government Entities: Models for Regional Collaboration in Remote Areas*.

The City of Mandurah is broadly supportive of the proposed *Regional Subsidiaries* model proposed by the Hon. Max Trenorden MLC. However, whilst the City recognises the model as an effective means for Councils to collaboratively engage in a single economic activity, the model is limited in that it does not permit Councils to engage in a range of economic activities without Ministerial consent for each specific activity.

The City therefore supports an alternative model - the *Local Government Enterprise* (LGE) model – as an effective means of enhancing the financial capacity of rapid-growth Councils. The LGE model in its purest form currently operates successfully in both Queensland and New Zealand, as an effective economic tool that empowers Councils to reduce their reliance on State and Federal Government grants, whilst also broadening their ability to achieve improved community outcomes.

Nonetheless, whilst the City of Mandurah favours the LGE model for its particular circumstance, it considers that all WA Councils should be given a choice of which regional collaboration model to adopt, based upon their individual situation and long-term sustainability needs. A 'one-size-fits-all' approach should not be applied to Local Government regional collaboration in Western Australia. Rather, each Council should be free to choose its preferred model, whether it be a Regional Local Government, Regional Subsidiary or Local Government Enterprise.

Department of Local Government Discussion Paper

In March 2011, the Department of Local Government released a discussion paper - *Regional Local Government Entities: Models for Regional Collaboration in Remote Areas*. The discussion paper outlined the WA Government's commitment to achieving structural reform in Western Australia, noting that its reform program seeks to achieve fewer but stronger Local Governments that are sustainable in the long term and are more regionally focussed.

The discussion paper noted that, while the primary focus of structural reform has been on voluntary amalgamations, the WA Government recognises that amalgamation is generally not the preferred option in rural and remote areas due to the challenges of serving a range of differing sized communities widely dispersed over vast distances. The paper observed that remote area Local Governments have therefore been encouraged to form Regional Collaborative Groups (RCGs) that would work together to identify functions and services that could be better delivered through a regional approach.

The DLG discussion paper outlined six potential regional collaboration models for WA Councils; Partnership Agreements, Incorporated Associations, Regional Local Governments, Voluntary Regional Organisations of Councils, Local Government Enterprises, and Regional Subsidiary Models.

The discussion paper advised that the *Regional Subsidiary Model*, as provided for under South Australian legislation, allows two or more Local Governments to establish a Regional Subsidiary to perform a variety of roles, for example, waste management, and regional strategic planning and coordination.

The paper noted that the *South Australian Local Government Act 1999* does not provide for the formal establishment of regional Local Governments in the same way that the Western Australian Act does, nor does it accommodate Local Government involvement in incorporated associations. It advised that legislative change would be required to facilitate the Regional Subsidiary model in WA.

The paper observed that a Regional Subsidiary is a body corporate, and can hold property on behalf of its participants. Its Board of Management may include persons who are not Elected Members of a Council. It can acquire, deal with and dispose of property, and it can invest funds and borrow money, subject to approval by an absolute majority of participating Councils.

A Regional Subsidiary is established under a Charter; it has the powers and functions assigned by the Charter; and may undertake a range of commercial activities as provided for in the individual Charter. Charters may be amended by unanimous resolution of participating Councils; however, membership changes require the approval of the Minister.

A Regional Subsidiary is closely directed and supervised by – and is accountable to – its constituent Councils, which are ultimately liable for its activities. Its accountabilities and transparency requirements are outlined in its Charter. Also, the proportions to which constituent Councils are responsible for the liabilities of a Regional Subsidiary in the event of its insolvency or winding up, are specified in the Charter.

The DLG discussion paper also contained an Attachment – *Functional Characteristics of Regional Models* that outlined various potential models for a range of Local Government functions. The attachment indicated that the majority of traditional Local Government functions e.g. waste management, corporate services, asset management and planning could be successfully undertaken by any of the Regional Local Government, Partnership or Incorporated Association models.

However, it also observed that, for ‘non-traditional economic activity’ e.g. manufacture and sale of transportable housing, provision of affordable housing, and mixed-use property development, the Local Government Enterprise, Regional Subsidiary, Incorporated Association or Partnership models could be used.

South Australian Subsidiary Model

The City subsequently undertook further research on the South Australian Regional Subsidiary model. In South Australia, there are two types of Subsidiary models; Subsidiaries established by a single Council under Section 42 of the *Local Government Act 1999*, and Regional Subsidiaries established by two or more Councils under Section 43 of the Act.

Schedule 2 of the South Australian Local Government Act 1999 – Provisions Applicable to Subsidiaries - outlines the approval process, corporate status, Charter obligations, Board of Management role, business plan and budget obligations, reporting procedures, liabilities and winding-up procedures of Subsidiaries and Regional Subsidiaries.

South Australian legislation allows the formation of Subsidiary models, with Ministerial approval. Each Subsidiary is governed by a Charter, which outlines its purpose, activities, duties, liabilities and powers. However, because Subsidiaries are empowered by legislation to perform a single function only, Ministerial approval is required for a Subsidiary to undertake a new function not already covered by its Charter.

There are currently five single-Council Subsidiaries in South Australia, and 22 Regional Subsidiaries. Seven of South Australia's existing Subsidiaries operate commercial waste management services, whilst six operate a type of 'Regional Council Association' model. Other Subsidiaries include parks and cemeteries management, heritage and commercial precinct management, business development, environmental health services, mobile library and community transport services, livestock sales, and floodplain and water management.

Whilst some South Australian Subsidiaries operate on a predominantly commercial basis, others provide non-profit provide community services, environment and heritage protection, environmental health, business and strategic planning, or a Regional Council Association function. The entitlement of a Subsidiary to return a profit – and the allocation of any profits/surpluses - is determined by its Charter.

From this research, the City of Mandurah contends that the Regional Subsidiary model could benefit groupings of Councils that wish to collectively engage in a single economic activity e.g. waste management, cemetery management etc. However, for regional Council groupings that seek to improve the effectiveness of their community service delivery, but do not necessarily wish to engage in an economic activity, the City concurs with the DLG discussion paper that the Regional Local Government model may provide the best option for regional collaboration.

Nonetheless, whilst the Regional Subsidiary Model provides an effective method for Councils to engage in a single economic activity, it does not permit them to engage in a range of economic activities e.g. property development, urban regeneration, parking stations, waste management and resource recovery, youth facilities, tourism projects and renewable energy generation. The Local Government Enterprise model, on the other hand, can effectively fulfil this function in Western Australia.

Local Government Enterprises

In July 2010, the City of Mandurah provided a submission to a discussion paper released by the Western Australian Local Government Association (WALGA) - *Local Government Enterprises as a means of improving Local Government*. The City of Mandurah supported WALGA's position that Western Australian Local Government should be empowered – with the consent of its community through a detailed consultation process – to establish Local Government Enterprises, governed by directors appointed for their relevant expertise, to manage and develop assets using normal commercial arrangements.

The City's submission contended that, so long as the LGE is established and operated at arm's-length from the day-to-day operations of Council; is preceded by the development of a comprehensive business plan; and involves community consultation and public accountability, then there is no reason why LGEs should not be permitted in Western Australia. The City called upon the Western Australian Government to introduce amendments to the *Local Government Act 1995* that would facilitate the use of Local Government Enterprises by WA Local Governments.

The DLG's March 2011 discussion paper advised that the LGE model would allow larger Councils to make better use of their assets, including land holdings, and would also provide a mechanism for regeneration of established older urban areas where the project scale is inappropriate for commercial companies or State agencies. It noted that the primary aim of this concept is to leverage Council ownership of land and private investment to achieve enhanced community outcomes.

The DLG discussion paper noted advised that legislative changes would be necessary to implement LGEs in Western Australia. It observed that the adoption of LGEs in WA would require amendment to the *Local Government Act 1995* to accommodate the creation of 'arm's length' local government enterprises that could undertake commercial activities including property development.

The DLG paper noted that Local Governments can currently engage in commercial enterprises under existing legislation. However, they are subject to the business plan requirements for major trading undertakings and major land transactions, and to other provisions of the Act relating to the borrowing of funds and the inability to mortgage assets.

The paper also observed that, before contemplating any legislative change to allow LGEs, the State Government would need to be satisfied that Local Governments already have in place the necessary rigorous integrated strategic community and asset management planning frameworks to deal successfully with an LGE. It noted that, even if LGEs are permitted, they are likely to be limited to those Councils with demonstrable capability. The paper also noted that the proposed *Local Government Performance Measurement Framework* will enable identification of Local Governments that are performing at the level of maturity required to undertake an LGE.

The DLG paper advised that an LGE in Western Australia would be a body corporate, able to undertake any commercial activity as defined under the 'enterprise powers' that would be added to the Act. An LGE could open and operate bank accounts, and hold, deal with and dispose of property in its own name. The Business Plan requirements of the Act for major land or trading transactions would not apply for each activity, although an initial Business Plan would be required prior to the establishment of an LGE.

An LGE could invest and borrow money, give securities against the financial contributions of its participants, and mortgage particular Local Government assets that would be defined as 'non-significant' under the Act. The LGE's governing body (Board of Directors) would include external members, appointed on the grounds of expertise, as well as qualified representatives from participating Local Governments.

The paper noted that appropriate governance arrangements for an LGE would need to be put in place to ensure accountability and to minimise risk. For example, in the case of market failure, a Council's financial liability would need to be limited to the amount of funds or assets, such as land, that it had contributed to the enterprise.

The City of Mandurah concurs that rigorous accountability and transparency measures should be established to ensure the integrity of LGEs. It also concurs that only Councils with demonstrable capability should be permitted to engage in LGEs, to reduce the risk of market failure.

Mandurah – a Tale of Two Cities

Despite a recent slowdown in its population growth, the City of Mandurah remains one of Australia's fastest growing cities. Mandurah has experienced phenomenal long-term growth over the past half-century, growing from a seaside village with less than 2000 people in 1954 to a city with more than 70,000 residents in 2010.

Mandurah's current 5-year average growth rate (2005-2010) is 4.3%, whilst the current WA average is 2.6%, and national average is 1.8%.¹ Mandurah's population is forecast to continue growing at a steady rate, to reach almost 100,000 by 2021, and between 105,000 and 116,000 by 2031².

Because of its long-term rapid growth, Mandurah is faced with a range of challenges. These include a large and ageing population and a low proportion of young people, declining environmental and waterways sustainability, and limited education and employment outcomes including high unemployment and low industry diversity. Because of these challenges, and the diverse nature of Mandurah's demographic, it is often referred to as a 'tale of two cities'. Despite these challenges, the City is making gradual progress in establishing itself as a self-sufficient regional city, under its *Southern City Strategy*.

Adopted by Council in November 2008, the City of Mandurah's *Southern City Strategy* is designed to reverse Mandurah's historically high unemployment levels, primarily by diversifying its employment base and enhancing its education opportunities. The Strategy aims to ensure that Mandurah residents can continue to live, learn and work locally, by enhancing secondary and tertiary education opportunities, and creating new industries and 'high-end' local jobs within Mandurah and the wider Peel Region.

¹ Australian Bureau of Statistics; *Regional Population Growth, Australia 2009-10*; April 2011

² Informed Decisions; *City of Mandurah Population Forecast*; March 2009; Western Australian Planning Commission; *South Metropolitan and Peel Sub-Regional Structure Plan*; June 2009

Apart from its industry attraction and creation role, the *Southern City Strategy* involves facilitating industry collaboration, and advocacy on strategic issues, including Local Government sustainability. The establishment of LGEs by the City of Mandurah would greatly enhance the City's financial sustainability, its ability to create new industries and jobs, and its capacity to provide much needed community infrastructure and services – without having to rely on government grants and election commitments.

LGEs – a Sustainability Opportunity

In addition to its socio-economic challenges, Mandurah's sustained rapid population growth has placed continuous pressure on the City to maintain infrastructure and service provision for its rapidly growing community. Had Mandurah's population grown at only normal levels (State average growth), the City would have had many more years in which to reach - and provide infrastructure for - its current population. It also would have received many additional years' worth of rates revenue and grant income, as well as having significantly greater borrowing capacity than it has under its high-growth reality.

The City contends that Western Australian Councils (with demonstrable capability) should be permitted to undertake commercial enterprises that both enhance their financial capacity, and benefit their local community and/or reverse economic decline, particularly in regional and rural areas that do not receive the same level of service and infrastructure support as metropolitan LGAs.

Previous studies, including the 2006 Local Government Advisory Board Report, *Ensuring the Future Sustainability of Communities*; the 2008 WALGA *Systemic Sustainability Study of Local Government*; the 2008 Commonwealth Productivity Commission report, *Assessing Local Government Revenue Raising Capacity*, and the 2011 Australian Centre of Excellence for Local Government (ACELG) report, *The Henry Review of Australia's Future Tax System: Implications for Local Government*, have all highlighted the need for Local Governments to find ways to improve their financial capacity and long-term financial sustainability. This reinforces the need for a range of regional collaboration models - including Local Government Enterprises - to be sanctioned by the Western Australian Government.

As outlined in the DLG discussion paper, the primary aim of an LGE is to help Councils to 'respond more quickly and flexibly to changing economic circumstances', and to 'leverage specified Local Government assets to broaden its scope to achieve community outcomes'. This includes giving Councils greater freedom to engage in a range of non-traditional economic activities, including property development and urban renewal.

LGEs - Property Development and Urban Renewal

Western Australian Local Governments are currently constrained in their ability to efficiently develop their assets under the existing provisions of the *Local Government Act 1995*. For the City of Mandurah, the need to participate and influence the scale and design of urban redevelopment within Mandurah is a pressing priority. Any moves to provide an environment in which the City can play an active role, and at the same time provide an economic return for its community should be welcomed and encouraged.

WALGA's June 2010 discussion paper observed that urban development in Western Australia is largely constrained by the *Local Government Act 1995*, and that planning instruments alone are often insufficient to deliver sustainable development outcomes. The paper asserted that there is a legitimate role for Local Government to participate in the property market where it is beyond the capacity (or willingness) of the private market, and below the scale required by State agencies.

The March 2011 DLG discussion paper also outlined scope to 'make better use of their assets, including land holdings, as well as engaging in 'regeneration of established older areas, where the project scale is inappropriate for commercial companies or State agencies'. WALGA's discussion paper referred to a potential role for Local Government in the property sector, to achieve both urban regeneration and commercial benefits. Potential areas include:

- Directly undertaking selected development projects
- Joint ventures with private owners
- Underwriting of specific aspects of development projects
- Aggregation of sites.

WALGA's discussion paper noted potential or perceived conflicts of interest over Local Government's involvement in the property sector, but observed that the creation of an arm's-length vehicle such as a wholly-owned company or an investment trust would serve to avoid conflicts of interest.

The City of Mandurah concurs that Local Government should be able to play an active role in the creation of sustainable developments, beyond its traditional planning and regulatory function. Councils should be able to partner directly with developers – via an arm's length LGE – to deliver urban renewal that promotes economic, social and environmental sustainability.

Council LGEs that participate in property development should also be permitted to use their land assets as security for borrowings. This would allow the LGE to leverage greater funds to make better use of its land assets, allowing it to engage in community enhancement projects such as property development, urban regeneration, and affordable housing. Of particular importance to rapid-growth cities such as Mandurah is the provision of affordable housing.

Government housing affordability programs, such as the Australian Government's \$100 million *Building Better Regional Cities* program are focussed on helping Local Governments and developers to provide more affordable housing for local communities. The City of Mandurah was named in 2010 as one of 47 Councils eligible to apply for funding under the *Building Better Regional Cities* program, which will provide up to \$15 million for each successful Council to build new affordable homes for their community.

Successful Councils will be able to spend funds on local infrastructure projects that support new housing developments, such as connecting roads and bridges, drainage upgrades and community centres. Participating Councils will be required to deliver more affordable homes over the next three years, featuring good urban design, environmental improvements and appropriate planning benchmarks. The program will target working families living in regional areas who are suffering from cost of living pressures, and newly arrived residents who want to move into regional areas.

However, whilst it is understood that the Australian Government will partner with successful Local Governments to implement the *Building Better Regional Cities* program, it is yet unclear whether Local Governments in turn will be able to partner with the private sector to deliver the program. Further, because of the varying statutory arrangements between Australia's States, some Councils may be permitted to undertake LGEs to deliver the program, whilst participating Western Australian Councils will not.

LGEs - Other Commercial Enterprises

In addition to land and property development, WA Councils should be permitted to engage in a range of public-private partnerships through LGEs including parking stations, waste management and resource recovery, youth facilities, tourism projects, affordable housing, renewable energy provision and shared services. Not only would this strengthen the viability of local communities, but it would also increase the overall productivity of the State, and reduce the need for Councils to rely on other levels of government for infrastructure and services support.

The ability to establish LGEs that can deliver a range of shared services to not only a group of Councils, but potentially to other agencies and companies would also be highly advantageous. A number of shared services examples in other states, including records management, IT systems, plant and equipment hire, regulatory functions (e.g. building approvals) etc could not only deliver economy-of-scale benefits, but also potential profits from delivering those services to other agencies and companies. An excellent example of this is the Hunter Valley in NSW, where an LGE provides records management services to not only 10 Local Government districts, but also to other government agencies including Health and Education.

LGEs – Ensuring Regional Sustainability

The Legislation Committee's Inquiry is timely, as Councils across Western Australia increasingly find themselves caught in a four-way squeeze between rising community expectations, widespread cost-shifting by State Government, an inability to autonomously set Council fees and charges for services provided, and a blanket ban on the use of corporate structures by Councils. This situation is even more pronounced in regional growth areas with rapid population growth and high infrastructure demands.

These combined factors severely limit the ability of Western Australian Councils to create and maintain sustainable communities. As one of Australia's fastest growing cities, the City of Mandurah is acutely aware of the difficulties of funding infrastructure and service provision for a rapidly growing community with non-stop growth over the past half-century. It is only through a combination of targeted rate setting, borrowings, capital works programs and judicious long-term financial planning that the City has managed to keep its house in order.

The City of Mandurah supports WALGA's position that Western Australian Local Government should be empowered – with the consent of its community through a detailed consultation process – to establish Local Government Enterprises, governed by directors appointed for their relevant expertise, to manage and develop assets using normal commercial arrangements. Provided that the LGE is established and operated at arm's-length from the day-to-day operations of Council; is preceded by the development of a comprehensive business plan; involves community consultation and public accountability; and that the participating Council possesses demonstrable capability, then there is no reason why LGEs should not be permitted in Western Australia.

It appears somewhat contradictory that the WA Government allows itself to engage in State Government Enterprises, through such entities as LandCorp, the Water Corporation and its various Port Authorities, yet expressly prohibits the same conduct by Local Governments. By its actions, the State is effectively decreeing that WA Councils should *'do as I say, not as I do'*.

It should also be noted that LGEs are permitted (in varying forms) in the majority of Australian States and in New Zealand. In Queensland and New Zealand, Councils are provided with (respectively) 'enterprise powers' and 'power of general competence' to undertake a broad range of commercial activities. In New South Wales, Victoria and South Australia, Councils are permitted to engage in corporate structures with the consent of the Minister.

It is well past time for the Western Australian Government to catch up to its interstate and New Zealand counterparts, and to sanction the use of various collaborative models - including LGEs - that allow Councils to develop a self-sustaining financial capability, that in turn empowers them to provide for the social, economic, environmental and cultural wellbeing of the communities they serve.

Conclusion

The Regional Local Government model proposed by the March 2011 DLG discussion paper appears to provide an effective regional collaboration model for regional and rural Councils that seek to improve the effectiveness of their community service delivery, but do not necessarily wish to engage in economic activities. This includes rural and remote Local Governments that seek to engage in shared-service-delivery of Council resources, services and infrastructure.

The Subsidiary model proposed by the DLG discussion paper provides an effective model for Councils that wish to engage in a single economic activity, either on a standalone or regional grouping basis. The Subsidiary model has the advantage of permitting the utilisation of external expertise on management boards, which in turn reduces the likelihood of a Council Subsidiary experiencing financial difficulties due to a lack of commercial or management expertise.

However, the discussion paper's Local Government Enterprise model would provide by far the most effective model for Councils that wish to engage in a range of economic activities, and that possess the demonstrable capability to do so. Provided that measures are in place to ensure accountability and transparency, Councils should be permitted to create Local Government Enterprises to ensure their long-term financial sustainability, just as the WA Government utilises State Government Enterprises to ensure its own sustainability.

Regional 'sea-change' Councils such as Mandurah invariably face considerable challenges, including rapid population growth, growing infrastructure demands, and socio-economic disadvantage. These challenges cannot be overcome via traditional revenue-raising avenues (e.g. rates, FAGs, fees and charges etc) alone.

Fast-growing Councils such as Mandurah need help to help themselves. They must be empowered to create revenue streams that both increase their financial autonomy and enhance their ability to respond to their communities' needs. The old Chinese proverb – *'Give me a fish and I eat for a day; teach me to fish and I eat for a lifetime'* – is especially relevant to Local Government sustainability in Western Australia.

So long as WA Councils remain reliant on rates, fees and charges as their primary revenue source, as well as State and Federal largesse in the form of grant programs (e.g. *Royalties for Regions*, *Regional Infrastructure Fund*, FAGs etc), they will never be sustainable and self-reliant in their own right, and incapable of effectively responding to their communities' growing needs.

It is all well and good to claim that amalgamation alone will ensure the future sustainability of Western Australian Councils; however, the experience of other States indicates that this is not so. Whilst the City concurs that the number of Western Australian Councils does need to be reduced, amalgamation alone will not ensure the adequacy of Local Government's revenue-raising ability, and its long-term sustainability.

The choice of regional collaboration models to be utilised should be a matter for each Council to determine, based upon the individual needs and objectives of the Council and its community, rather than relying upon a 'one-size-fits-all' approach. Each Council should be given a choice of which model – Regional Council, Regional Subsidiary or Local Government Enterprise – best suits its long-term sustainability needs. In certain circumstances, more than one model may be appropriate.

The Western Australian Government's commitment to strengthening the economic, social and structural viability of Local Government via structural reform and capacity-building is commendable. Whilst amalgamation, and the creation of Regional Local Governments and Regional Collaborative Groups will help achieve the structural reform objective, the introduction of Subsidiaries and Local Government Enterprises will help achieve the capacity-building objective, which in turn will greatly enhance the future sustainability of Local Government in Western Australia.



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