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*Shire of Dardanup*

Administration Centre Eaton  
P.O. Box 7016 - 1 Council Drive  
EATON WA 6232  
Tel: 9724 0000 Fax: 9724 0091  
[www.dardanup.wa.gov.au](http://www.dardanup.wa.gov.au)  
ABN: 57 305 829 653

Our Ref: GRO2 0072  
MLC:cmp  
☎: 9724 0006  
[cathy@dardanup.wa.gov.au](mailto:cathy@dardanup.wa.gov.au)

13 July 2011

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

Dear Ms Gough

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

I refer to your correspondence of the 7<sup>th</sup> July 2011 seeking comments on the proposed Regional Subsidiaries Bill 2010.

Whilst the opportunity to comment is appreciated, as with most legislation, the detail is unknown until the regulations are drafted, this Bill carries this same dilemma, the implications and consequences of how the legislation will operate in a practical sense is unknown.

In response to your dot points I offer the following:

1. It is unclear what arrangements would be permitted or if they would need to follow the Regional Council requirements of Section 3.61, in which case, 3.69 would be superfluous.

Example a)

Two or more local governments desire to form a partnership to operate a landfill site, would the Regional Subsidiaries legislation allow this to occur?

We do not know what the Minister would require; at minimum the 2 local governments would need some form of legal agreement to protect them in terms of public liability, financial risk, and environmental risk. One of the 2 may own the site, but how does that one share the burden of contaminated site legislation if in the future there were proven to be damage to the environment from the site operations?

Example b)

Two or more local governments share a group of IT professionals, each or the local governments contribute an agreed sum on an hourly rate to the cost of the service. The IT staff are employed by one or more of the participating local governments.

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The arrangements are in place governed by a Memorandum of Understanding, a semi formal arrangement.

In this scenario it would seem unnecessary to make any more formal arrangements; however, will the Regional Subsidiaries legislation require a more formal legal agreement?

The Shire of Dardanup has this arrangement in place with Harvey and Donnybrook-Balingup, it would be unfortunate if the new legislation complicated this style of cooperation between local governments.

In terms of forming a Regional Council as enabled by Section 3.61 of the LGA 1995, The complications relate to the development of the Establishment Agreement and the detail that is required that satisfies each of the member Councils. Matters of the level of financial contribution, representation and penalties for withdrawing from the Regional Council once it is set up are the most difficult to resolve. The requirement for the Minister for Local Government to sanctify the Agreement adds further complication as the Department may have a view that differs from the members Councils, therefore the proposal bounces back for further discussion and deliberation. In essence the members Councils are not in control of their objectives, the Department and the Minister are.

2. Matters of interpretation of the Bill and whether the Bill sufficiently distinguishes between the arrangements referred to in the Bill and Section 3.61 (formation of regional councils).

Without specific examples of what the Bill gives power to do, i.e. the sorts of activities and functions proposed, and without the regulations, the question cannot be answered.

On the face of it, the establishing local governments remain obligated to comply with the Local Government Act 1995 (as amended) and other relevant legislation, therefore matters of proper governance and compliance as with any local government remain unchanged, whether the local government is a partner in a Regional Subsidiary, a Regional Council, or involved in a public/private partnership to deliver a service or function.

3. Specific Regulations that will be required.

As stated in 2 above, the Regional Subsidiary arrangement would not absolve a participating local government or the Regional Subsidiary from compliance with the Local Government Act or any other legal obligation. To have regulations that effectively allow a local government to step outside of the Local Government Act would create confusion and encourage opportunists to look for avenues to avoid scrutiny.

Governance and financial provisions need to be in compliance with the Local Government Act 1995 and associated regulations.



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The Regional Subsidiary corporate status should remain as it applies to local governments, the participating local governments continue to be local governments and should not be given authority to choose when to set that aside. Provisions of Section 2.5 of the Local Government Act should continue to apply.

Local Governments that agree to form a Regional Subsidiary should be required to have an Absolute Majority decision of their Council with the Council also adopting a charter that fully explains the functions of the Regional Subsidiary, the voting rights of the Regional Subsidiary members and the financial arrangements for the operations.

Regulations should also require a reporting mechanism back to the member local governments and set out the representation if it is intended that the Regional Subsidiary functions either as a joint committee of the member Councils or similar to a Regional Council with elected members having oversight of the policies and budget.

If flexibility is the objective, then the regulations ought to state that the member Councils can agree to form a Regional Subsidiary to undertake a particular activity in partnership with other local governments and leave it to the Chief Executive Officer to implement the project in cooperation with the other member Council CEO's. In this case, no committee or elected member group is required; the project can proceed as an operational objective (similar to our IT shared service outlined above).

4. The South Australian Local Government Act (Section 43 and Schedule 2) provides for local governments to form Regional Subsidiaries.

I make no comment on the effectiveness or suitability of the South Australian legislation as I am not aware of how it operates or what the successes and failures of it are.

In closing, I advise I do not intend applying to appear before the Committee to present my submission.

Thank you for the opportunity to comment.

Yours sincerely

A handwritten signature in purple ink, appearing to read "Mark L Chester".

**MR MARK L CHESTER**  
Chief Executive Officer