



## HON. MAX TRENORDEN MLC

Member for the Agricultural Region

Hon Michael Mischin MLC  
Chair, Standing Committee on Legislation  
Legislative Council  
Parliament House  
PERTH WA 6000

Dear Michael

### **Inquiry into Local Government Amendment (Regional Subsidiaries) Bill 2010 (Bill)**

Thank you for your letter of 18 July 2011 inviting me to provide a response and clarity to a number of issues that have been identified within Local Government Amendment (Regional Subsidiaries) Bill 2010 (the Bill).

You comment that during my Second Reading Speech I advised the House that the purpose of the Bill is to enable local governments to establish regional subsidiaries "in a way that is consistent with" the regional subsidiary model operating in South Australia. I confirm that it was my intention that the regional subsidiary model operating in Western Australia would have the following features, including that:

- regional subsidiaries be bodies corporate;
- the application for Ministerial approval for formation of a regional subsidiary be accompanied by a charter establishing the corporate status, powers and duties of the regional subsidiary;
- regional subsidiaries be "subservient to the member councils"; and
- the Bill provide for "good local governance".

In my response outlined in the table attached to this letter I have made some specific comments in regard to the above matters.

I note your comment that the Bill relies on these features being implemented by way of regulation making power.

Whilst this may be a criticism of the Bill, it is noted that much of the legislation in Western Australia relies on the regulation making power. As a consequence I saw nothing wrong with that approach. I also consciously adopted, in recognition of the Bill being a Private Members Bill, a minimalist approach to its drafting.

In the first instance I drafted a Bill myself but was fortunate to be able to refer this draft together with more detailed drafting instructions to Mr Greg Calcutt AM SC who was acting on behalf of Parliamentary Counsel. The Bill as presented to the House was the final version of the Bill drafted by Mr Calcutt.

You have also sought clarification on the intended degree of consistency between the Bill and the South Australian model.

In my view the difference between the South Australian model of regional subsidiary and what is being proposed in the Bill is one of drafting style as it was always my intention that, notwithstanding a different manner to describe the regional subsidiary, the principles embodied in the *Local Government Act 1999 (SA)* would apply to Western Australia. The legislation would of necessity have different wording but clearly that was my intent.

The report submitted by the Hon Nigel Hallett MLC and myself following our visit to South Australia (SA) in September 2010 implies that the SA provisions about regional subsidiaries are found in section 43 and Schedule 2 of the *Local Government Act 1999 (SA)*. Following a discussion with the Parliamentary Counsel during the drafting of the Bill it was identified that this is not the case and in fact there are many other provisions applying to regional subsidiaries specifically or to regional subsidiaries generally. It was for this reason that section 3.69(2)(g) was included in the Bill.

The way I read section 3.69(2)(g) of the Bill it allows for regulations to be made to provide that certain provisions of the *Local Government Act 1995* can by regulation be applied to a regional subsidiary. This, to me, is somewhat similar (but in reverse) to section 3.66(5) of the *Local Government Act 1995* that provides certain provisions of that Act do not apply to a regional local government if prescribed by regulation. I am advised that there has been little appetite for such regulations to be enacted.

I acknowledge that in my Second Reading speech I advised the House that the Bill "has one clause saying the minister cannot unreasonably withhold approval" of an application to form a regional subsidiary. In my original notes I intended to incorporate this provision however after discussion with Parliamentary Counsel they suggested that such a clause was not necessary. I accepted their view and agreed to place my trust in the Minister of the day to "do the right thing" in regard to any application but regrettably did not update my notes.

In your letter you note that various sections of the *Local Government Act 1995* refer to doing things, functions or activities "under this Act or any other Act" when regulating the full ambit of things, functions or activities that may be performed by a local government.

You also note that proposed section 3.69(1) speaks of "functions" without reference to functions conferred by other Acts. You have asked if it is proposed section 3.69(1) is intended to restrict establishment of regional subsidiary bodies to the functions conferred by the *Local Government Act 1995*?

It was always my intention that a regional subsidiary would be able to undertake functions conferred by other Acts, particularly with respect to planning and health matters. I think that the inclusion of some additional words under proposed section 3.69(1) to extend the scope of the functions to include "under this Act or any other Act" would enable this to be simply achieved.

The Committee has also invited me to provide details of any other matter that will assist on the practical effect or interpretation of the Bill.

In January 2009 a report entitled "Feasibility Study of Regional Collaborative Models for SEAVROC Local Governments" was prepared by Mr Neil Douglas for the local governments that form the South East Avon Voluntary Regional Organisation of Councils

On page 39 of the report Mr Douglas commented:

*Of all the models of other jurisdictions that have been reviewed in this report, the elements of the 'regional subsidiary' model under the Local Government Act (SA) are by far the most compatible with what I understand to be the wishes of SEAVROC members.*

He further commented on p40:

*The major difficulty with the regional subsidiary model for SEAVROC members is that it would require legislative intervention to enable a similar model to be established and operate in WA. In my view, this could not be achieved by amendments to the Local Government (Functions and General) Regulations; it would require a change to the Local Government Act itself.*

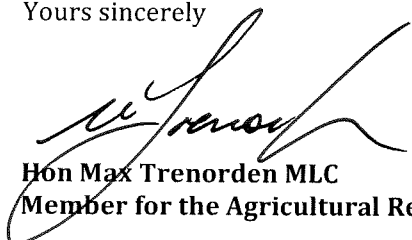
After having reviewed the various potential models available for the establishment of a regional subsidiary, I concur with Mr Douglas that the SA model appears to be the most effective way of achieving the outcome I desire.

I hope the above clarifies any questions you might have on the Bill. I am happy to provide further information should you deem that appropriate.

In closing, I reiterate that my intention of introducing this Bill was to enable local government in Western Australia to form a regional subsidiary that includes flexibility, charters as the regulatory source and an appropriate level of compliance and regulatory burden. The Bill is intended to be an enabler for good and effective local governance.

I'm keen to see the results of your deliberations. Trust your inquiry will go well.

Yours sincerely



**Hon Max Trenorden MLC**  
**Member for the Agricultural Region**

26 July 2011

| Matter                            | Bill  | <i>Local Government Act 1999</i><br>(SA)  | Hon Max Trenorden MLC Comment   |
|-----------------------------------|---|---|---|
| Corporate status                  | Clause 8 - proposed section 3.69(2)(c) - whether or not a regional subsidiary is to be a corporation is to be decided by regulations (regulations <i>may</i> be made that provide for corporate status) | <p>Schedule 2, item 19(a) - express statement in the primary legislation that a regional subsidiary is a corporation</p> <p>Section 43(3) - express statement that establishment of a regional subsidiary is dependent on Ministerial approval of corporate status under the Act.</p> | <p>It was always my intention that every regional subsidiary would have as of right corporate status.</p> <p>My understanding of section 3.60 of the <i>Local Government Act 1995</i> is that as it currently stands it would prohibit a regional subsidiary being a corporate body, without a specific regulation for each regional subsidiary that may be formed. The proposal in clause 5 of the Bill enables the regional subsidiary, as a matter of right, subject to a general regulation under section 3.69(2)(c) to be a corporate body.</p> <p>I also believe the amendment provides a clear distinction between a regional local government and a regional subsidiary. This ensures the conferral of corporate status was not dependent on a regulation to allow each and every regional subsidiary to be formed.</p> <p>I note the Committee's comment in the letter "<i>Is there uncertainty as to whether corporate status is appropriate? Is it intended that some regional subsidiaries will be corporations whereas others will not?</i>". As mentioned above it was the intention for every regional subsidiary to have corporate status.</p> <p>If in the Committee's view the <i>Local Government Act 1995</i> can be appropriately amended to provide a corporate status as of right to a regional subsidiary without implying it is a regional council then this would remove the need to make a regulation and give certainty to the corporate status of a regional subsidiary.</p> |
| Application for approval requires | Clause 8 - proposed section 3.69(2)(a) and (b) - whether or not an  | Schedule 2, item 17(2) - application <i>must</i> be accompanied by a copy of the  | <p>It was my intention that an application for approval would be accompanied by a Charter as a basic requirement.</p> <p>I acknowledge the legal uncertainty that regulations may create in regard to the requirement for</p>   |

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| <p><b>charter</b></p>                        | <p>application for approval is to be accompanied by the Charter is to be decided by regulations (regulations <i>may</i> be made regarding the procedure for applying for approval of a regional subsidiary and <i>may</i> require a charter be provided when applying for approval). (Compare with section 3.61(2) and (3) of the <i>Local Government Act 1995</i>, which state that an application for approval of a regional local government “<i>is to be</i>” accompanied by a copy of the establishment agreement.)</p> | <p>proposed Charter.</p>   | <p>a Charter and that section 3.61(2) and (3) of the <i>Local Government Act 1995</i>, as it relates to a regional local government, is very clear in its intent that an establishment agreement is required to accompany the application.</p> <p>If in the Committee’s view greater legal certainty would be achieved for a regional subsidiary if a new subsection was included in proposed section 3.69 of the Bill then I would support this approach.</p> <p>I would think it would have wording similar to section 3.61(2)(a) of the <i>Local Government Act 1995</i>.</p> |
| <p><b>Subordinate to member councils</b></p> | <p><b>Clause 8 - proposed section 3.69(1)</b> - uses the word “<i>subsidiary</i>” to describe regional subsidiaries but proposes no mechanism for the relationship between the</p>   | <p>The Act establishes the relationship between the different legal entities. For example:</p> <p><b>Schedule 2, item 26</b> - express statement that the regional subsidiary is subject</p> | <p>Relationship between the various entities is an important component of the creation of a regional subsidiary. I am, however, of the view that the relationship can be created within the Charter with the requirements being outlined within regulations.</p>   |

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|  | different legal entities, while providing power to confer broad local government "functions" on the subsidiary. | <p>to the joint direction and control of the constituent councils</p> <p><b>Schedule 2, item 27</b> - the regional subsidiary must provide information or records to its constituent councils on written request, with the councils to determine whether confidentiality sufficient to prevent disclosure</p> <p><b>Schedule 2, item 28</b> - the regional subsidiary must provide annual reports to the constituent councils containing specified information</p> <p><b>Schedule 2, item 18(1)(d)</b> - the regional subsidiary holds property on behalf of constituent councils</p> <p><b>Schedule 2, item 22(2)(c)</b> - constituent councils to be advised of any development that affects the financial or</p> |  |
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|  |  | operating capacity of the regional subsidiary  |  |
|  |  | <p><b>Schedule 2, item 24</b> - regional subsidiary's business plan to be prepared in consultation with the constituent councils - joint responsibility on regional subsidiary and councils to prepare within 6 months. Plan can only be altered after consultation with constituent councils.</p> <p><b>Schedule 2, item 25(2)(d)</b> - regional subsidiary's budget must be approved by constituent councils</p> <p>In addition, by <b>Schedule 2, item 19</b>, the Charter "<i>must address</i>"</p> <ul style="list-style-type: none"> <li>- the regional subsidiary's obligations to report on its operations, financial position and other relevant matters to the constituent councils</li> <li>- the process or mechanism</li> </ul> |  |

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|                       |  | <p>by which the regional subsidiary will be subject to direction by constituent councils</p> <p>- the manner in which disputes between the constituent councils relating to the subsidiary will be resolved</p> <p>(This is not a complete list of relevant provisions)</p>  |  |
| Good local governance | <p><b>Clause 8 - proposed section 3.69(2)(d) and (g)</b> - governance matters to be decided by regulations (regulations may regulate the governance and management of the regional subsidiary and may provide that provisions of the <i>Local Government Act 1995</i> apply to a regional subsidiary).</p> | <p>The Act provides minimum governance standards, including the accountability mechanisms noted above and:</p> <p><b>Schedule 2, item 17(3)</b> - public notice of establishment of regional subsidiary</p> <p><b>Schedule 2, item 22</b> - specific functions of the regional subsidiary's Board, including meeting plans, targets, systems and practices required by the constituent councils, for accuracy of</p> | <p>Similar to the previous item I am of the view that these matters can be provided for within the Charter with the requirements being outlined within regulations.</p> <p>Again I am satisfied that all of these matters can be dealt with through regulations.</p> |



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|  |  | <p>information provided to the constituent councils</p> <p><b>Schedule 2, item 23</b> - express obligation for Board members to act with reasonable care and diligence, with specified obligations</p> <p><b>Schedule 2, item 24</b> - obligation to prepare business plans containing performance targets, statement of resources required to meet targets and measures to monitor and assess performance against targets</p> <p><b>Schedule 2, items 25 and 30</b> - specific obligations in respect of budgets and audits</p> <p><b>Schedule 2, item 17(4)</b> - publication of Charter</p> <p><b>Schedule 2, item 19</b> - 21 specific governance and accountability matters the Charter must address.</p> |  |
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