

LOCAL GOVERNMENT AMENDMENT (REGIONAL SUBSIDIARIES) BILL 2014

EXPLANATORY MEMORANDUM (E83)

(Introduced by Mr Shane Love, MLA)

OVERVIEW OF PROPOSED AMENDMENTS

The *Local Government Amendment (Regional Subsidiaries) Bill 2014* is broken up into three parts. Part 1 contains the short title and commencement provisions, Part 2 contains the amendments to the *Local Government Act 1995* and Part 3 contains the consequential amendments to other legislation.

The provisions contained within the *Local Government Amendment (Regional Subsidiaries) Bill 2014* will strengthen the ability of local governments to deliver services to their communities by enabling two or more local governments to form a subsidiary body (a regional subsidiary) in order to perform a service or carry out an activity jointly, with the approval of the Minister for Local Government.

The proposed model will provide increased flexibility for local governments in providing shared services to their communities, with a less restrictive regulatory and compliance framework than the existing models.

In particular, by enabling the establishment of a charter rather than legislation as the governance and regulatory instrument of a regional subsidiary, the entities will be more readily adapted to its purpose.

Enabling non-local government participants to be members of the governing board will also ensure the subsidiary's board of management can include, if required, independent, commercially focused people with the appropriate skills and expertise.

CLAUSE NOTES

Outlined below is a brief description of each clause of the *Local Government Amendment (Regional Subsidiaries) Bill 2014*.

Part 1 – Preliminary

Part 1 contains the Short title and Commencement clauses.

Clause 1 – Short title

Clause 1 of the Bill cites the short title of the Act.

Clause 2 – Commencement

Clause 2 of the Bill provides for the commencement of sections 1 and 2 of the Act when the Act receives Royal Assent and the rest of the Act on such days as may be fixed by proclamation.

Part 2 – Local Government Act 1995 amended

Part 2 contains the amendments to the *Local Government Act 1995*.

Clause 3 – Act amended

This Part amends the *Local Government Act 1995*.

Clause 4 – Section 1.4 amended

Section 1.4 provides definitions for terms used throughout the Act.

Clause 4 of the Bill inserts two new definitions into section 1.4 to clarify that the term regional local government means a regional local government established under section 3.61; and the term regional subsidiary has the meaning given in section 3.69(1).

Clause 5 – Section 3.60 amended

Section 3.60 restricts the capacity of local governments to form or acquire control of a corporate body except where the body is a regional local government or regulations allow a local government to do so.

Clause 5 of the Bill amends section 3.60 to include participation in a regional subsidiary in the exception to this restriction.

Clause 6 – Part 3 Division 4 heading amended

Clause 6 of the Bill amends the heading to Part 3 Division 4 of the Act to include reference to regional subsidiaries.

Clause 7 – Section 3.68 amended

Section 3.68 provides that a local government's ability to make arrangements to perform a function either for or jointly with another local government is not affected by the specific powers contained in the Act in respect of regional local governments.

Clause 7 of the Bill amends section 3.68 by deleting the words 'this Division' and inserting 'section 3.61 to 3.67'. This is a consequential amendment arising from the insertion of new powers within the Division relating to regional subsidiaries.

Clause 8 – Section 3.69 inserted

Clause 8 of the Bill inserts new section 3.69 into the Act to provide local governments with the power to form regional subsidiaries. New section 3.69 contains six subsections.

New subsection (1) enables two or more local governments to form a subsidiary body (a regional subsidiary) under which they are to perform a service or carry out an activity jointly, with the approval of the Minister.

The phrase 'provide a service or carry on an activity' is used in new section 3.69 to clarify that the regional subsidiary model is designed to assist local governments in delivering local government services and activities. It does not pertain to the broad range of higher level

'functions' which are more appropriately the remit of a local government governed by an elected council.

New subsection (2) provides that a regional subsidiary is a body corporate and is to have a governing board consisting of members appointed in accordance with the charter on the basis of which the Minister approved the formation of the regional subsidiary or that charter as amended.

New subsection (3) allows a governing board, with the Minister's approval, to include non-local government members. Enabling non-local government participants to be members of the governing board will ensure the subsidiary's board of management can include, if required, independent people with skills and expertise relevant to the activities of the regional subsidiary.

New subsection (4) provides for the regulation-making powers in relation to regional subsidiaries. Specifically, regulations may provide for –

- the procedure for applying to the Minister for approval to form a regional subsidiary. Local governments proposing to form a regional subsidiary will be required to prepare, and include in their application, a charter addressing the matters required by the regulations;
- the requirement for local governments proposing to form a regional subsidiary to consult with the community as prescribed. Regulations may also specify the form and extent of consultation required;
- a regional subsidiary charter addressing the process for selecting and appointing members of the regional subsidiary's governing body and any other matters required to be addressed by the regulations;
- the charter to be forwarded to the Minister when applying for approval;
- the charter to be amended by agreement made, with the Minister's approval, by the local governments that form a regional subsidiary;
- the establishment, powers and duties of a regional subsidiary;
- the administration of a regional subsidiary;
- the financial management, planning, auditing and reporting requirements of a regional subsidiary;
- the method for winding up a regional subsidiary; and
- specific provisions of the *Local Government Act 1995* to be prescribed as applicable to regional subsidiaries.

New subsection (5) clarifies that the provisions contained within section 3.69 are in addition to and do not derogate from the provisions contained in the Division related to regional local governments.

New subsection (6) is the equivalent of section 3.68 for regional local governments. It clarifies that a local government's ability to make arrangements to perform a service or carry on an activity either for or jointly with another local government, is not affected by the specific powers contained under new section 3.69.

Part 3 – Other Acts amended

This Part contains a list of the consequential amendments required to other pieces of legislation. Thirty-three pieces of legislation require amendment.

Division 1 – Biosecurity and Agriculture Management Act 2007 amended

Clause 9 – Act amended

This Division amends the Biosecurity and Agriculture Management Act 2007.

Clause 10 – Section 6 amended

Clause 10 of the Bill amends the definition of **public authority** in section 6 of the *Biosecurity and Agriculture Management Act 2007* to include regional subsidiaries in paragraph (d).

Division 2 – Building Act 2011 amended

Clause 11 – Act amended

This Division amends the *Building Act 2011*.

Clause 12 – Section 125 amended

Section 125 provides the Minister administering the Building Act the power to delegate any power or duty of the Minister under section 124(2)(a) or (b) of the Building Act to a public body or an office holder in a public body.

Clause 12 of the Bill amends section 125(1) to provide that a regional subsidiary does not constitute a public body for the purposes of that section.

Division 3 – Building Services (Registration) Act 2011 amended

Clause 13 – Act amended

This Division amends the *Building Services (Registration) Act 2011*.

Clause 14 – Section 3 amended

Clause 14 of the Bill amends the definition of **public authority** in section 3 of the *Building Services (Registration) Act 2011* to include regional subsidiaries in paragraph (c).

Division 4 – Business Names (Commonwealth Powers) Act 2012 amended

Clause 15 – Act amended

This Division amends the *Business Names (Commonwealth Powers) Act 2012*.

Clause 16 – Section 3 amended

Clause 16 of the Bill amends the definition of **government body** in section 3 of the *Business Names (Commonwealth Powers) Act 2012* to include regional subsidiaries in paragraph (b).

Division 5 – *Child Care Services Act 2007* amended

Clause 17 – Act amended

This Division amends the *Child Care Services Act 2007*.

Clause 18 – Section 3 amended

Clause 18 of the Bill amends the definition of **public authority** in section 3 of the *Child Care Services Act 2007* to include regional subsidiaries in paragraph (c).

Division 6 – *Children and Community Services Act 2004* amended

Clause 19 – Act amended

This Division amends the *Children and Community Services Act 2004*.

Clause 20 – Section 3 amended

Clause 20 of the Bill amends the definition of **public authority** in section 3 of the *Child Care Services Act 2007* to include regional subsidiaries in paragraph (c).

Division 7 – *Civil Judgements Enforcement Act 2004* amended

Clause 21 – Act amended

This Division amends the *Civil Judgements Enforcement Act 2004*.

Clause 22 – Section 63 amended

Section 63 makes provisions in relation to determining a judgement debtors interest in property.

Clause 22 of the Bill amends the definition of **public authority** in section 63(1) to include regional subsidiaries.

Clause 23 – Section 107 amended

Section 107 provides for the appointment of Bailiffs.

Clause 23 of the Bill amends section 107(2)(b) to enable a natural person employed by a regional subsidiary, with the consent of their employer, to be appointed as a bailiff.

Division 8 – *Civil Liability Act 2002* amended

Clause 24 – Act amended

This Division amends the *Civil Liability Act 2002*.

Clause 25 – Section 5U amended

Section 5U provides for the meaning of terms within Part 1C of the *Civil Liability Act 2002*, which relates to liability relating to public function.

Clause 25 of the Bill amends the definition of **public body or officer** in section 5U to include regional subsidiaries in paragraph (f).

Division 9 – *Commissioner for Children and Young People Act 2006* amended

Clause 26 – *Act amended*

This Division amends the *Commissioner for Children and Young People Act 2006*.

Clause 27 – *Section 5 amended*

Clause 27 of the Bill amends the definition of **government agency** in section 5 of the *Commissioner for Children and Young People Act 2006* to include regional subsidiaries in paragraph (c).

Division 10 – *Community Protection (Offender Reporting) Act 2004* amended

Clause 28 – *Act amended*

This Division amends the *Community Protection (Offender Reporting) Act 2004*.

Clause 29 – *Section 3 amended*

Clause 29 of the Bill amends the definition of **public authority** in section 3 of the *Community Protection (Offender Reporting) Act 2004* to include regional subsidiaries in paragraph (b).

Division 11 – *The Criminal Code* amended

Clause 30 – *Act amended*

This Division amends The Criminal Code.

Clause 31 – *Section 446 amended*

Section 446 provides for the cost of cleaning graffiti.

Clause 31 of the Bill amends the definition of **public property** in section 446(1) to include a regional subsidiary in paragraph (d).

Division 12 – *Duties Act 2008* amended

Clause 32 – *Act amended*

This Division amends the *Duties Act 2008*.

Clause 33 – *Section 3 amended*

Clause 33 of the Bill amends the definition of **local government** in section 3 of the *Duties Act 2008* to include regional subsidiaries in paragraph (b).

Division 13 – *Emergency Management Act 2005* amended

Clause 34 – *Act amended*

This Division amends the *Emergency Management Act 2005*.

Clause 35 – *Section 3 amended*

Clause 35 of the Bill amends the definition of **public authority** in section 3 of the *Emergency Management Act 2005* to include regional subsidiaries in paragraph (c).

Division 14 – *Fines, Penalties and Infringement Notices Enforcement Act 1994* amended

Clause 36 – *Act amended*

This Division amends the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

Clause 37 – *Section 70 amended*

Section 70 relates to determining an offender's interest in property.

Clause 37 of the Bill amends the definition of **public authority** in section 70(1) to include regional subsidiaries.

Division 15 – *Freedom of Information Act 1992* amended

Clause 38 – *Act amended*

This Division amends the *Freedom of Information Act 1992*.

Clause 39 – *Glossary amended*

Clause 39(1) of the Bill amends the definition of **principal officer** in the Glossary to provide that a principal officer for the purposes of that Act, in relation to a regional subsidiary, is taken to be the person who manages the affairs of the regional subsidiary.

Clause 39(2) of the Bill amends the definition of **public body or office** to include regional subsidiaries in paragraph (d).

Division 16 – *Industrial Relations Act 1979* amended

Clause 40 – *Act amended*

This Division amends the *Industrial Relations Act 1979*.

Clause 41 – *Section 7 amended*

Clause 41 of the Bill amends section 7 to provide that unless a contrary intention appears in the Act, a regional subsidiary does not constitute a **public authority** for the purposes of that Act.

Division 17 – *Interpretation Act 1984* amended

Clause 42 – Act amended

This Division amends the *Interpretation Act 1984*.

Clause 43 – Section 5 amended

Section 5 provides for the meaning of terms within the *Interpretation Act 1984* and any other written law.

Clause 43 of the Bill inserts a definition of ***regional subsidiary*** into section 5 to provide that where the term ‘regional subsidiary’ is used in any written law, unless a contrary intention appears, it means a regional subsidiary established under the *Local Government Act 1995*.

Division 18 – *Liquor Control Act 1988* amended

Clause 44 – Act amended

This Division amends the *Liquor Control Act 1988*.

Clause 45 – Section 37 amended

Section 37 provides pre-requisites for the granting of a liquor licence, including any conditions which may be placed on a license.

Clause 45 of the Bill amends the definition of ***public body*** in section 37 to include regional subsidiaries in paragraph (c). This will enable a regional subsidiary, if required, to apply for a license under the Liquor Control Act.

Division 19 – *Lotteries Commission Act 1990* amended

Clause 46 – Act amended

This Division amends the *Lotteries Commission Act 1990*.

Clause 47 – Section 19 amended

Section 19 provides for the terms used in Part 4 of the *Lotteries Commission Act 1990*, which relates to financial provisions.

Clause 47 of the Bill amends section 19 to include regional subsidiaries as an ***eligible organisation***.

Division 20 – *Magistrates Court (Civil Proceedings) Act 2004* amended

Clause 48 – Act amended

This Division amends the *Magistrates Court (Civil Proceedings) Act 2004*.

Clause 49 – Section 3 amended

Clause 49 of the Bill amends the definition of **public authority** in section 3 of the *Magistrates Court (Civil Proceedings) Act 2004* to include regional subsidiaries in paragraph (c).

Division 21 – Minerals Research Institute of Western Australia Act 2013 amended

Clause 50 – Act amended

This Division amends the *Minerals Research Institute of Western Australia Act 2013*.

Clause 51 – Section 11 amended

Clause 51 of the Bill amends the definition of **public authority** in section 11 of the *Minerals Research Institute of Western Australia Act 2013* to include regional subsidiaries in paragraph (c).

Division 22 – Parliamentary Commissioner Act 1971 amended

Clause 52 – Act amended

This Division amends the *Parliamentary Commissioner Act 1971*.

Clause 53 – Section 4A amended

Section 4A provides for what constitutes an **authority** for the purposes of the *Parliamentary Commissioner Act 1971*.

Clause 53 of the Bill amends section 4A(1)(a) to include regional subsidiaries as an **authority**.

Division 23 – Pay-roll Tax Assessment Act 2002 amended

Clause 54 – Act amended

This Division amends the *Pay-roll Tax Assessment Act 2002*.

Clause 55 – Section 40 amended

Section 40 relates to wages exempt from pay-roll tax.

Clause 55 of the Bill amends section 40(2)(g) to provide that wages paid or payable by a regional subsidiary during an assessment year are exempt from pay-roll tax. This already applies for local governments and regional local governments.

Division 24 – Public Interest Disclosure Act 2003 amended

Clause 56 – Act amended

This Division amends the *Public Interest Disclosure Act 2003*.

Clause 57 – Section 3 amended

Clause 57 of the Bill amends the definition of **public authority** in section 3 of the *Public Interest Disclosure Act 2003* to include regional subsidiaries in paragraph (d).

Division 25 – Public Sector Management Act 1994 amended

Clause 58 – Act amended

This Division amends the *Public Sector Management Act 1994*.

Clause 59 – Section 102 amended

Section 102 provides that public sector employees are not to be employed outside Government without permission from their employing authority.

Clause 59(1) of the Bill inserts a new subsection (1A) into section 102 to clarify that the phrase **any local government or regional local government** includes any regional subsidiary, and the phrase **council of a local government or regional local government** includes the governing board of a regional subsidiary.

Clause 59(2) of the Bill amends section 102(3) to include a reference to regulations made under section 3.69(4)(f) of the Local Government Act 1995. This has the effect that membership of the board of a regional subsidiary is not to be regarded as an office that is covered by the section 102 restriction.

Clause 60 – Schedule 1 amended

Schedule 1 lists entities which are not considered organisations which has the effect of removing those organisations from the ambit of the Act.

Clause 60 of the Bill inserts a new item into Schedule 1 to provide that a regional subsidiary including a regional subsidiary governing board is not an organisation.

Division 26 – Rail Safety Act 2010 amended

Clause 61 – Act amended

This Division amends the *Rail Safety Act 2010*.

Clause 62 – Section 3 amended

Clause 62 amends the definition of **road manager** in section 3 of the *Rail Safety Act 2010* to include regional subsidiaries in paragraph (a).

Division 27 – Road Traffic (Administration) Act 2008 amended

Clause 63 – Act amended

This Division amends the *Road Traffic (Administration) Act 2008*.

Clause 64 – Section 4 amended

Clause 64 of the Bill amends the definition of **public authority** in section 4 to include regional subsidiaries in paragraph (c).

Division 28 – Stamp Act 1921 amended

Clause 65 – Act amended

This Division amends the *Stamp Act 1921*.

Clause 66 – Section 4 amended

Clause 66 of the Bill amends the definition of **local government** in section 4 to provide that unless the contrary intention appears, it also means in reference to a regional local government or regional subsidiary.

Division 29 – State Records Act 2000 amended

Clause 67 – Act amended

This Division amends the *State Records Act 2000*.

Clause 68 – Schedule 1 amended

Schedule 1 list Government organisations which has the effect of those organisations being bound by the relevant provisions of the Act.

Clause 68 of the Bill amends item 12 in Schedule 1 to include regional subsidiaries.

Division 30 – Swan and Canning Rivers Management Act 2006 amended

Clause 69 – Act amended

This Division amends the *Swan and Canning Rivers Management Act 2006*.

Clause 70 – Section 3 amended

Section 3 provides for the meaning of terms within the *Swan and Canning Rivers Management Act 2006*.

Clause 70 of the Bill amends the definition of **public authority** in section 3(1) to include regional subsidiaries in paragraph (b).

Division 31 – Water Services Act 2012 amended

Clause 71 – Act amended

This Division amends the *Water Services Act 2012*.

Clause 72 – Section 3 amended

Section 3 provides for the meaning of terms within the *Water Services Act 2012*.

Clause 72 of the Bill amends the definition of **public authority** in section 3(1) to include regional subsidiaries in paragraph (d).

Division 32 – *Western Australia Land Authority Act 1992* amended

Clause 73 – Act amended

This Division amends the *Western Australian Land Authority Act 1992*.

Clause 74 – Section 16 amended

Section 16 provides for the functions of the Western Australian Land Authority.

Clause 74 of the Bill amends section 16(1)(c) to provide for the Authority to be an agency through which regional subsidiaries may dispose of land in accordance with the *Local Government Act 1995*.

Clause 75 – Section 17 amended

Section 17 provides for the powers of the Western Australian Land Authority.

Clause 75 of the Bill amends section 17(5) which provides the meaning of terms within the section to include regional subsidiaries within the definition of **person**.

Division 33 – *Western Australian Tourism Commission Act 1983* amended

Clause 76 – Act amended

This Division amends the *Western Australian Tourism Commission Act 1983*.

Clause 77 – Section 3 amended

Section 3 provides for the meaning of terms within the *Western Australia Tourism Commission Act 1983*.

Clause 77 of the Bill amends the definition of **local government** in section 3 to include regional subsidiaries.