



Minister for Local Government; Community Services; Seniors and Volunteering; Youth

Our Ref: 57-01026

TO ALL LOCAL GOVERNMENTS

MINISTERIAL CIRCULAR N° 01-2017

LOCAL GOVERNMENT (REGIONAL SUBSIDIARIES) REGULATIONS 2017

I am pleased to announce the introduction of the regional subsidiary model in Western Australia. This is a mechanism that local governments have sought for many years and the necessary changes have now been enacted.

In 2016, the *Local Government Act 1995* was amended to permit two or more local governments to form a corporate entity known as a 'regional subsidiary' for the purposes of carrying out joint activities in their districts.

Regional subsidiaries are a semi-independent collaborative mechanism with flexible financial reporting and reduced regulatory compliance. Each subsidiary will be governed by a charter as agreed by the participants. The model is a compromise between the strictly regulated Regional Local Government model and the variable nature of a Voluntary Regional Organisation of Councils.

The new mechanism can be used as a collaborative means of providing existing local government services such as waste collection, public facilities or maintenance of council land.

The model also provides new opportunities for collaboration between local governments, for example:

- ✓ regional aged care and support;
- ✓ local child care services;
- ✓ supply procurement;
- ✓ building management;
- ✓ shared office services (e.g. accounting, payroll or IT support); and
- ✓ advocacy groups for local tourism.

The new sections of the Act were activated by the Governor's proclamation on 20 January 2017. The proclamation is accompanied by the publication of the *Local Government (Regional Subsidiaries) Regulations 2017*.

The Regulations prescribe several matters that are necessary for the successful operation of regional subsidiaries. This includes:

- (a) the level of public consultation that must occur when forming a subsidiary;
- (b) a list of issues that a regional subsidiary's charter must address; and
- (c) several statutory rights provided to local governments to ensure the subsidiary remains within their control.

The Regulations also restrict a regional subsidiary from pursuing speculative investments, commercial enterprises or taking out financial loans except from a participant local government. This will ensure that these entities remain low risk and non-commercial as Parliament intended.

A detailed list of the Regulations are attached for your consideration, along with a comparison table of how a regional subsidiary compares to the existing Regional Local Government model.

The Regulations are the result of consultation with the local government sector and other stakeholders. I take this opportunity to thank all the local governments and peak organisations who assisted in this process.

Guidelines and supporting information are being prepared to assist local governments who may wish to take advantage of the new model. These documents will be released once my Department of Local Government and Communities has consulted further with stakeholders on appropriate content.

If you have questions regarding the Regulations, please contact Mr Steven Elliott, Senior Legislation Officer at my Department, on 6552 1642 or alternatively by email to steven.elliott@dlgc.wa.gov.au.



HON PAUL MILES MLA
MINISTER FOR LOCAL GOVERNMENT; COMMUNITY SERVICES;
SENIORS AND VOLUNTEERING; YOUTH

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Local Government (Regional Subsidiaries) Regulations 2017 – Summary

Regulation 1

This Regulation sets out the citation title of the instrument.

Regulation 2

This Regulation sets out the commencement date of the Regulations, being the same day that the regional subsidiary provisions of the *Local Government Act 1995* were proclaimed.

Regulation 3

This Regulation sets out several definitions which are necessary to ensure that the regulations are interpreted correctly.

Regulation 4

This Regulation establishes a consultation process which must be carried out by local governments prior to applying for Ministerial approval to establish a regional subsidiary.

The process will involve:

- (a) the issuing of local public notice in the affected districts;
- (b) the business plan for the subsidiary being made available for public comment for a period of no less than six weeks;
- (c) a copy of the proposal being published on the local governments' websites; and
- (d) the local governments considering any submissions received during that period.

If the local governments decide to proceed with a proposal that is significantly changed from the original proposal, the consultation process must be repeated in each district.

The Regulation defines '**significant change**' to mean any change in the proposed membership or functions of the subsidiary.

Regulation 5

This Regulation establishes how local governments should apply to the Minister for approval to form a regional subsidiary.

When the Minister considers an application, the Minister must have regard to:

- (a) the proposed service or activity;
- (b) the estimated annual expenditure and income of the subsidiary; and
- (c) any other matter deemed relevant.

The Minister's approval may be granted subject to conditions. Any conditions imposed by the Minister must be specified in the gazettal notice declaring the subsidiary's establishment.

Regulation 6

This Regulation provides that public consultation must occur if the member councils wish to make an amendment to the regional subsidiary's charter which constitutes a 'significant change'.

If consultation is required, the process is similar to that provided under Regulation 4. If an amendment to the charter would involve an additional local government joining the subsidiary, the community of the new district must be included in the consultation.

Regulation 7

This Regulation sets out the process of applying for Ministerial approval to amend a regional subsidiary's charter.

If the Minister approves the amendment, a notice to this effect must be given to the participants and published in the Government Gazette. The notice must include any additional conditions imposed by the Minister.

Regulation 8

This Regulation provides that a regional subsidiary may not commence a commercial enterprise, being a trading undertaking or a land transaction as defined in section 3.59 of the Act.

Regulation 9

This Regulation provides a list of matters that must be addressed in the charter of a regional subsidiary before it can be approved.

The Regulation only lists matters which must be considered, rather than specifying how they must be dealt with. The specific details are to be agreed between the local governments.

The matters that must be addressed include:

- (a) employment of staff;
- (b) execution of documents;
- (c) how any meeting procedures will be determined;
- (d) how information should be requested from a subsidiary;
- (e) how member councils can issue directions to the subsidiary's board;
- (f) dispute resolution between member councils;
- (g) financial reporting;
- (h) financial contributions by member councils;

- (i) how profit may be used or distributed;
- (j) whether the subsidiary can operate at a loss and, if so, how insolvency will be prevented;
- (k) any situations where winding up must occur;
- (l) withdrawal of existing members;
- (m) entry of new members;
- (n) division of assets and liabilities during winding up;
- (o) investment of funds;
- (p) disposal of property;
- (q) how any code of conduct will be determined;
- (r) whether the subsidiary may impose fees and charges; and
- (s) review of the charter.

Regulation 10

This Regulation enshrines a statutory right for participant local governments to access any information held by their regional subsidiary if the information relates to the subsidiary's functions.

This right is in addition to any obligations that might be imposed on the subsidiary by the Act or the subsidiary's charter.

Regulation 11

This Regulation provides that a regional subsidiary may only borrow money from one or more of its participant local governments to enable the subsidiary to perform its functions.

Regulation 12 to 14

These Regulations are technical in nature and relate to the interpretation of the remaining regulations beyond this point.

Regulation 15

This Regulation provides that section 3.57 of the Act applies to regional subsidiaries as if they were local governments. Regional subsidiaries will be subject to the usual tendering requirements and the normal tendering thresholds will apply.

Regulation 16

This Regulation provides that section 3.60 of the Act applies, meaning that a regional subsidiary cannot form or acquire control of another body corporate.

Regulation 17

This Regulation provides that section 3.63 of the Act in relation to the dissolution of regional local government applies with necessary amendments. This means a regional subsidiary may be wound up in accordance with the subsidiary's charter or by the order of the Minister.

Regulation 18

This Regulation provides that sections 5.53 and 6.2 of the Act apply to a regional subsidiary as if it were a local government. All regional subsidiaries are required to prepare annual reports and annual financial statements. Any additional reporting beyond that point will be as determined by the charter.

The Regulation also makes modifications to these sections to account for the fact that a subsidiary has no power to impose council rates or compulsory service charges.

Regulation 19

This Regulation provides that certain provisions in the *Local Government (Financial Management) Regulations 1996* will apply to a regional subsidiary unless otherwise provided for in the charter.

These provisions are set out in the table contained in the Regulation. By choosing which provisions apply, the financial reporting obligations can be tailored to suit the complexity of the subsidiary's financial arrangements.

The Regulations make further modifications so a regional subsidiary is exempt from reporting on matters that do not apply to a subsidiary (e.g. rates and service charges).

Regulation 20

This Regulation provides that Part 5 Division 6 of the Act applies to a regional subsidiary subject to modification. The result is that regional subsidiaries will be covered by the provisions of the Act relating to the disclosure of financial interests.

The Regulations further modify section 5.69 so that the participant councils will have the power to decide whether:

- (a) a member of a subsidiary's board may participate in discussions after disclosing an interest on the matter being discussed; and
- (b) a committee of a subsidiary should be exempt from part or all of its obligations to disclose interests.

Regulation 21

This Regulation provides that sections 5.91, 5.92 and 5.93 of the Act apply to a regional subsidiary as if it were a local government. This means regional subsidiaries are subject to the same rules as local governments regarding access and use of information.

Regulation 22

This Regulation provides that regional subsidiaries are subject to the same restrictions on local government investment imposed on local governments. This includes section 6.14(1) of the Act and regulation 19C of the *Local Government (Financial Management) Regulations 1996*.

Regulation 23

This Regulation provides that if a regional subsidiary has the power to impose fees and charges for the supply of goods and services, Part 6 Division 5 Subdivision 2 of the Act will apply. The charter will address whether a subsidiary has the power to impose any fees or charges.

Regulation 24

This Regulation provides that a regional subsidiary is subject to Part 8 Divisions 1 and 4 of the Act. This means that a regional subsidiary can be subject to investigation if the Minister becomes aware of improper conduct by the subsidiary or its board members.

Participant local governments will be notified if their subsidiary is under investigation. If the Minister requires a subsidiary to take action and the subsidiary refuses to do so, the constituent councils will have an opportunity to intervene and resolve the matter using their powers under the charter.

The Regulations also provide that a person who misappropriates funds from a local government or its subsidiary will be disqualified from sitting on local government councils or subsidiary management boards.

Regulation 25

This Regulation provides that the protections afforded under section 9.56 of the Act will also apply to regional subsidiaries as if they were a local government.

The board members, employees and appointees of a regional subsidiary will be protected from civil legal action in situations where:

- (a) the legal action relates to the individual's functions under the Act; and
- (b) the functions were performed in good faith.

Regional Subsidiary and Regional Local Government - Comparison of Collaborative Models

Comparison	Regional Subsidiary	Regional Local Government (Regional Council)
Activities	Delivery of services and back office functions	Any activity that an individual local government may perform
Public consultation required to establish	Yes	Yes – if major land transaction or trading activity is involved
Ministerial approval required to establish	Yes	Yes
Disclosure of interest	Internal enforcement	Ministerial enforcement
Compulsory financial reporting	Annual budget and annual financial statement required	Full reporting obligations apply
Land transactions and trading undertakings	No	Yes
Restriction on investment	Yes	Yes
Financial loans	From member councils only	Yes
Tender requirements	Yes	Yes
Board restricted to council members/ local government employees	No	Yes
Legal protection for actions taken in good faith	Yes	Yes
Board meetings	As prescribed in charter	<i>Local Government Act 1995 – Part 5 Division 2</i>
Committee meetings	Prescribed in charter	<i>Local Government Act 1995 – Part 5 Division 2</i>

Comparison	Regional Subsidiary	Regional Local Government (Regional Council)
Employment of staff	As provided in charter	<i>Local Government Act 1995 – Part 5 Division 4</i>
Minimum benefits for long service leave and superannuation	As provided in charter	Long Service Leave and Superannuation Regulations apply to all staff
Member councils may request information	Statutory right	As provided in Establishment Agreement
General public access to information	Prescribed in charter	<i>Local Government Act 1995 – Part 5 Division 7</i>
Freedom of Information legislation applies	Yes	Yes
Payments and gifts	Prescribed in charter	<i>Local Government Act 1995 - Part 5 Division 8</i>
Conduct of officials	Prescribed in charter	<i>Local Government Act 1995 – Part 5 Division 9</i>
Fees for goods/services	Yes	Yes
May be subject to Ministerial inquiry	Yes	Yes
Decisions subject to administrative review	No	<i>Local Government Act 1995 – Part 9</i>