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Western Australia

Local Government (Regional Subsidiaries) Regulations 2017

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Local Government Act 1995

Local Government (Regional Subsidiaries) Regulations 2017

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Local Government (Regional Subsidiaries) Regulations 2017*.

2. Commencement

These regulations come into operation as follows —

(a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;

(b) the rest of the regulations — on the day on which the *Local Government Legislation Amendment Act 2016* section 9 comes into operation.

3. Terms used

In these regulations —

amend, in relation to a charter, means to amend the charter in accordance with section 3.70(1)(f);

charter means the charter prepared under section 3.70 in relation to a regional subsidiary;

financial management, of a regional subsidiary, means the financial management, planning, auditing and reporting to be undertaken by a regional subsidiary in accordance with its charter and section 3.70(1)(e);

general modifications has the meaning given in regulation 14;

participants means the 2 or more local governments that form, or propose to form, a regional subsidiary;

section means a section of the Act.

Part 2 — General

4. Community consultation about formation of regional subsidiary

(1) In this regulation —

significant change, in relation to the proposal to form a regional subsidiary, means —

(a) the inclusion of a further participant with the participants that propose to form the regional subsidiary; or

(b) the withdrawal of a participant from the participants that propose to form the regional subsidiary; or

(c) an amendment to the business plan prepared under subregulation (3) relating to the proposed functions of the regional subsidiary.

(2) Before applying to the Minister for approval for the formation of a regional subsidiary, the participants are required to consult with the community in their districts in accordance with this regulation.

(3) The participants must prepare a business plan that includes an overall assessment of the formation of the regional subsidiary and is to include details of —

(a) its expected effect on the provision of facilities and services by the participants; and

(b) its expected effect on other persons providing facilities and services in the participants' districts; and

(c) its expected financial effect on the participants; and

(d) its expected effect on matters referred to in each participant's current plan prepared under section 5.56; and

(e) the service that is proposed to be provided, or the activity that is proposed to be carried on, by the regional subsidiary; and

(f) why the regional subsidiary is proposed to be formed to provide that service or carry on that activity.

(4) Each participant must publish the business plan on its official website and make copies of the plan available for inspection at its office.

(5) Each participant must give local public notice of the proposal to form a regional subsidiary in accordance with a business plan, stating that —

(a) submissions about the proposal may be made to the participant before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given; and

(b) the business plan has been published on its official website and copies of it are available for inspection at its office.

(6) After the last day for submissions, each participant must consider any submissions made to the participant.

(7) If, having considered any submissions made, the participants decide to proceed with the proposal or with a proposal that does not involve a significant change in what was proposed, the participants may apply to the Minister for approval for the formation of the regional subsidiary, subject to compliance with section 3.70(2).

(8) If, having considered any submissions made, the participants decide to proceed with a proposal that involves a significant change in what was proposed, the participants must —

(a) prepare a revised business plan; and

(b) comply with this regulation in respect of the revised business plan and the new proposal.

5. Application for approval for formation of regional subsidiary

(1) An application for approval for the formation of a regional subsidiary must be made in a form approved by the Minister.

(2) The participants must supply the Minister with any further information about the application, including information about the charter forwarded to the Minister under section 3.70(2) with the application, that the Minister asks for.

(3) In considering whether or not to approve the formation of a regional subsidiary, the Minister must have regard to the following —

(a) the service that is proposed to be provided, or the activity that is proposed to be carried on, by the regional subsidiary;

(b) the estimated annual expenditure and the estimated annual revenue and income of the regional subsidiary;

(c) any other matters the Minister considers relevant to the application.

(4) If the Minister approves the formation of a regional subsidiary, the Minister may grant the approval subject to any conditions determined by the Minister.

(5) Any conditions determined by the Minister must be specified in the notice under section 3.69(2) declaring that the regional subsidiary is established.

6. Community consultation about amendment to charter

(1) In this regulation —

participant includes (except in the expression "further participant") a local government proposing to become a further participant with the participants that formed a regional subsidiary;

significant change, in relation to a regional subsidiary's charter, means —

(a) the inclusion of a further participant with the participants that formed the regional subsidiary; or

(b) the withdrawal of a participant from the participants that formed the regional subsidiary; or

(c) an amendment to the charter relating to the functions of the regional subsidiary.

(2) Before an application may be made under regulation 7 for approval for an amendment to a charter that would involve a significant change to the charter approved by the Minister, the participants are required to consult with the community in their districts in accordance with this regulation.

(3) Each participant must publish the proposal to amend the charter, and the reasons for the proposal, on the participant's official website and make copies of the proposal and reasons available for inspection at their offices.

(4) The participants must give local public notice in their districts of the proposal to amend the charter, stating that —

(a) submissions about the proposal may be made to the participants before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given; and

(b) the proposal, and the reasons for the proposal, have been published on the participants' official websites and copies of the proposal and reasons are available for inspection at their offices.

(5) After the last day for submissions, each participant must consider any submissions made to the participant.

(6) If, having considered any submissions made, the participants decide to proceed with the proposal or with a proposal that does not involve a significant change in what was proposed, the

participants may apply under regulation 7 for approval for the amendment to the charter.

(7) If, having considered any submissions made, the participants decide to proceed with a proposal that involves a significant change in what was proposed, the participants must comply with this regulation in respect of the new proposal.

7. Application for approval for amendment to charter

(1) The participants may apply to the Minister for approval for an amendment to a regional subsidiary's charter.

(2) The application must be made in a form approved by the Minister.

(3) The participants must supply the Minister with any further information about the application that the Minister asks for.

(4) Regulation 5(3) and (4) apply to an application under this regulation as if a reference in those provisions to approving the formation of a regional subsidiary were a reference to approving the amendment of a regional subsidiary's charter.

(5) If the Minister approves the amendment of a regional subsidiary's charter, the Minister must, by notice given to the participants and published in the *Gazette*, declare that the charter is amended on the date set out in the notice.

(6) Any conditions determined by the Minister under regulation 5(4), as applied by subregulation (4), must be specified in the notice under subregulation (5).

8. No capacity to commence trading undertaking or enter into land transactions

(1) In this regulation —

land transaction has the meaning given in section 3.59(1);

trading undertaking has the meaning given in section 3.59(1).

(2) A regional subsidiary cannot commence a trading undertaking or enter into a land transaction.

9. Matters to be dealt with in regional subsidiary's charter

For the purposes of section 3.70(1)(h), the following matters are required to be dealt with in a charter —

(a) the employment, appointment or engagement of staff by the regional subsidiary;

(b) the execution of documents by the regional subsidiary;

(c) a means of determining the procedures for meetings of the regional subsidiary's governing body and of any committees of the governing body;

(d) procedures for the participants to request information from the regional subsidiary and, if information is requested by only one participant, for determining whether the regional subsidiary must provide the information to each of the other participants;

(e) procedures for the participants to give directions to the regional subsidiary's governing body and the consequences of a failure to comply with a direction;

(f) a means of resolving disputes between participants as to matters relating to the regional subsidiary;

(g) in relation to the financial management of the regional subsidiary — details of any of the listed provisions (as defined in regulation 19(1) and applied by that subregulation to a regional subsidiary subject to its charter) that do not apply to the regional subsidiary, and the reasons why they do not apply;

(h) a means of determining the continuing financial contributions (if any) of the participants to the funds of the regional subsidiary;

(i) the way in which any profits produced by the regional subsidiary are dealt with;

(j) the circumstances (if any) in which the regional subsidiary may operate at a loss and, if it does operate at a loss, a means for preventing its insolvency;

(k) the circumstances in which the regional subsidiary is to be wound up and procedures for the winding up of the regional subsidiary;

(l) procedures for the withdrawal of a participant from the regional subsidiary;

(m) procedures for another local government being included in the charter as a further participant;

(n) procedures for the division of assets and liabilities between the participants in the event of the regional subsidiary being wound up or a participant withdrawing from the regional subsidiary;

(o) the way in which money may be invested by the regional subsidiary in accordance with the Act, as modified by regulation 22;

(p) procedures for the disposal of property;

(q) a means of developing a code of conduct (if any) for the employees of the regional subsidiary, for the members of the regional subsidiary's governing body or for the members of a committee of the governing body;

(r) the fees and charges (if any) that may be imposed by the regional subsidiary;

(s) the process for reviewing the charter.

10. Participants have access to information held by regional subsidiary

The participants can have access to any information held by a regional subsidiary that relates to the performance by the regional subsidiary of any functions under the Act or another written law.

11. Power to borrow

(1) A regional subsidiary may borrow money from one or more of the participants to enable the regional subsidiary to perform its functions.

(2) A regional subsidiary cannot borrow money otherwise than under subregulation (1).

Part 3 — Prescribed modifications

12. Act and regulations modified

This Part prescribes modifications to the Act and to other regulations made under the Act for the purposes of the application of the Act and those regulations in relation to a regional subsidiary.

13. Absolute majority

If —

(a) a provision of the Act, or of other regulations made under the Act, is applied to a regional subsidiary by a modification of the provision by this Part; and

(b) that provision has a requirement relating to an absolute majority,

the reference to an absolute majority is taken to be a reference to a majority comprising enough of the persons for the time being constituting the regional subsidiary's governing body for their number to be more than 50% of the number of offices (whether vacant or not) on that body.

14. General modifications

If it is stated in this Part that a provision of the Act, or of other regulations made under the Act, applies as if amended by the general modifications, the provision applies as if amended so that —

(a) any reference to a local government is a reference to a regional subsidiary; and

(b) any reference to a member, in relation to a council, is a reference to a member of a regional subsidiary's governing body; and

(c) any reference to a member, in relation to a committee, is a reference to a member of a committee of a regional subsidiary's governing body; and

(d) any reference to a council is a reference to a regional subsidiary's governing body; and

(e) any reference to a committee is a reference to a committee of a regional subsidiary's governing body; and

(f) any reference to the CEO is a reference —

(i) to the chief executive officer of a regional subsidiary; or

(ii) if a regional subsidiary does not have a chief executive officer, to the presiding member of the regional subsidiary's governing body or as otherwise provided for in the regional subsidiary's charter;

and

(g) any reference to the mayor or president is a reference to the presiding member of the regional subsidiary's governing body; and

(h) any reference to an employee is a reference —

(i) to a regional subsidiary's employee; or

(ii) in relation to a regional subsidiary that does not have employees, to a participant's employee.

15. Tenders for providing goods or services (application of modified section 3.57(1) and modified regulations)

(1) Section 3.57(1) applies in relation to a regional subsidiary as if amended as set out in subregulation (2).

(2) Section 3.57(1) is amended so that the reference to a local government is a reference to a regional subsidiary.

(3) The *Local Government (Functions and General) Regulations 1996* Part 4 Division 2 (except regulation 11(2)(a) and (ea)) and Division 3 and Part 4A apply in relation to a regional subsidiary as if amended as set out in subregulations (4), (5) and (6).

(4) The provisions referred to in subregulation (3) are amended so that —

(a) any reference to a local government (except in regulation 11(2)(e)) is a reference to a regional subsidiary; and

(b) any reference to a council is a reference to a regional subsidiary's governing body; and

(c) any reference to the CEO is a reference —

(i) to the chief executive officer of a regional subsidiary; or

(ii) if a regional subsidiary does not have a chief executive officer, to the presiding member of the regional subsidiary's governing body or as otherwise provided for in the regional subsidiary's charter;

and

(d) any reference to an employee is a reference —

(i) to a regional subsidiary's employee; or

(ii) in relation to a regional subsidiary that does not have employees, to a participant's employee.

(5) The *Local Government (Functions and General) Regulations 1996* regulation 24E(3)(a) is amended so that it refers to the entire district of each participant.

(6) The *Local Government (Functions and General) Regulations 1996* regulation 24F(4)(b) is amended so that it requires a copy of an adopted regional price preference policy to be made available at the office of a regional subsidiary.

16. No capacity to form or acquire control of body corporate (application of modified section 3.60)

(1) Section 3.60 applies in relation to a regional subsidiary as if amended as set out in this regulation.

(2) Section 3.60 is amended so that the reference to a local government is a reference to a regional subsidiary.

(3) In section 3.60 delete "except a regional local government unless it is permitted to do so by regulations".

17. Dissolution of regional subsidiary (application of modified section 3.63)

(1) Section 3.63 applies in relation to a regional subsidiary as if amended as set out in this regulation.

(2) Section 3.63 is amended so that —

(a) any reference to a regional local government is a reference to a regional subsidiary; and

(b) any reference to the establishment agreement is a reference to the charter.

18. Financial management (application of modified provisions of Act and modified regulation)

(1) Sections 5.53 and 6.2 apply in relation to the financial management of a regional subsidiary as if amended by the general modifications, the amendments set out in this regulation and any other necessary modifications.

(2) Delete section 5.53(2)(a), (e), (hb) and (i).

(3) Section 6.2(1) is amended so that it requires a regional subsidiary to prepare and adopt a budget for the relevant financial year in accordance with its charter.

(4) Section 6.2(2) is amended so that it requires a regional subsidiary to have regard to its business plan in preparing the detailed estimate referred to in that provision.

(5) Delete section 6.2(2)(b).

(6) Delete section 6.2(4)(b) and (f).

(7) The *Local Government (Administration) Regulations 1996* regulation 19B applies in relation to a regional subsidiary as if amended as set out in subregulation (8).

(8) The *Local Government (Administration) Regulations 1996* regulation 19B is amended so that —

(a) the reference to the annual report of a local government is a reference to a regional subsidiary's annual report; and

(b) the reference to the number of employees of the local government is a reference to the number of employees of the regional subsidiary.

19. Financial management (application of modified provisions of *Local Government (Financial Management) Regulations 1996*)

(1) The provisions of the *Local Government (Financial Management) Regulations 1996* listed in the Table (the ***listed provisions***) apply to the financial management of a regional subsidiary subject to its charter and as if amended by the general modifications, the amendments set out in this regulation and any other necessary modifications.

Table

r. 5A to 6	r. 11
r. 14 to 17A	r. 19
r. 22	r. 25 to 33A

r. 36	r. 41 and 42
r. 44	r. 48 and 49
r. 51	

(2) The listed provisions are amended so that any reference to the annual financial report is a reference to the annual financial report of a regional subsidiary.

(3) In regulation 22(1) of the listed provisions delete paragraphs (d), (e) and (f).

(4) Regulation 26(2) of the listed provisions is amended by deleting the reference to —

(a) all general rates; and

(b) each specified area rate; and

(c) each service charge.

(5) In regulation 27 of the listed provisions delete paragraphs (a), (b), (c), (g), (h), (i), (j) and (k).

(6) Regulation 29(d) and (e) of the listed provisions are amended so that the references to the power to borrow under section 6.20 are references to the power to borrow under regulation 11 of these regulations.

(7) In regulation 30(1) of the listed provisions delete paragraph (c).

(8) Regulation 30(1)(d) of the listed provisions is amended so that it refers only to regulations 27(i)(i), 27(j) and 29(f).

(9) In regulation 31(3) of the listed provisions delete paragraph (b).

(10) Regulation 33 of the listed provisions is amended so that a copy of the annual budget of a regional subsidiary is required to be submitted to each participant within the period provided for in the regional subsidiary's charter.

(11) Regulation 33A(4) of the listed provisions is amended so that a copy of the review and determination by a regional subsidiary's governing body is required to be provided to each participant.

(12) In regulation 36(1) of the listed provisions delete paragraphs (a) and (f).

(13) In regulation 36(2) of the listed provisions delete paragraphs (a) and (b).

(14) Regulation 36(2) of the listed provisions is amended so that the Table only includes the listed provisions mentioned in that Table.

(15) Regulation 42(2) of the listed provisions is amended by deleting the reference to —

(a) all general rates; and

(b) each specified area rate; and

(c) each service charge.

(16) Regulation 48 of the listed provisions is amended —

(a) so that the references in paragraphs (d) and (e) to the power to borrow under section 6.20 are references to the power to borrow under regulation 11 of these regulations; and

(b) in paragraph (f)(v) by deleting the reference to —

(i) general purpose grants; and

(ii) rates; and

(iii) service charges.

(17) Regulation 51(1) of the listed provisions is amended so that the reference to the annual financial report being audited in accordance with the Act is a reference to the annual financial report of a regional subsidiary being audited in accordance with the regional subsidiary's charter.

(18) Regulation 51(2) of the listed provisions is amended so that a copy of the annual financial report of a regional subsidiary is required to be submitted to each participant within the period provided for in the regional subsidiary's charter.

20. Disclosure of financial interests (application of modified Part 5 Division 6 of Act)

(1) Part 5 Division 6 of the Act applies in relation to a regional subsidiary as if amended by the general modifications, the amendments set out in this regulation and any other necessary modifications.

(2) Part 5 Division 6 of the Act is amended so that any reference to the election of a relevant person is a reference to the appointment of a relevant person.

(3) Delete section 5.60B(1)(a) and (b).

(4) Delete section 5.63(1)(b) and (2)(a) and (b).

(5) Delete section 5.65(3).

(6) Section 5.68(3) is amended so that the reference to the Minister is a reference to a regional subsidiary's governing body or participants, as provided for in the regional subsidiary's charter.

(7) Section 5.69 is amended so that any reference to the Minister is a reference to a regional subsidiary's governing body or participants, as provided for in the regional subsidiary's charter.

(8) After section 5.69(4) delete the Penalty.

(9) Section 5.69A is amended so that any reference to the Minister is a reference to a regional subsidiary's participants.

(10) After section 5.69A(4) delete the Penalty.

(11) Section 5.71 is amended by deleting the reference to Division 4.

(12) Section 5.74(1) is amended —

(a) in the definition of ***designated employee*** paragraph (b) by deleting the reference to Division 4; and

(b) in the definition of ***start day*** paragraph (a) so that that provision refers to the day on which a person became a member of a regional subsidiary's governing body.

(13) Section 5.79(1)(a) is amended so that that provision refers to the address of each parcel of real property located in the district of a participant or in an adjoining district.

(14) Section 5.86(1)(a) and (2)(a) are amended so that those provisions refer to real property located in the district of a participant or in an adjoining district.

21. Access to, and improper use of, information (application of modified sections 5.91, 5.92 and 5.93)

Sections 5.91, 5.92 and 5.93 apply in relation to a regional subsidiary as if amended by the general modifications.

22. Power to invest (application of modified section 6.14(1) and modified regulation)

(1) Section 6.14(1) applies in relation to a regional subsidiary as if amended as set out in subregulation (2).

(2) Section 6.14(1) is amended so that it confers power on a regional subsidiary to invest, in accordance with its charter, money that is not, for the time being, required by the regional subsidiary for any other purpose as trust funds may be invested under the *Trustees Act 1962* Part III.

(3) The *Local Government (Financial Management) Regulations 1996* regulation 19C applies in relation to a regional subsidiary as if amended as set out in subregulation (4).

(4) The *Local Government (Financial Management) Regulations 1996* regulation 19C is amended so that the reference to a local government is a reference to a regional subsidiary.

23. Fees and charges (application of modified Part 6 Division 5 Subdivision 2 of Act)

(1) If the imposition of fees and charges is authorised by a regional subsidiary's charter, Part 6 Division 5 Subdivision 2 of the Act applies in relation to the regional subsidiary as if amended as set out in this regulation.

(2) Part 6 Division 5 Subdivision 2 of the Act is amended so that —

(a) any reference to a local government is a reference to a regional subsidiary; and

(b) any reference to the annual budget is a reference to the annual budget of a regional subsidiary.

(3) In section 6.16(2)(c) delete "subject to section 5.94,".

(4) Delete section 6.17(3).

24. Scrutiny of affairs of regional subsidiaries (application of modified Part 8 Divisions 1 and 4 of Act)

(1) Part 8 Divisions 1 and 4 of the Act apply in relation to a regional subsidiary as if amended by the general modifications, the amendments set out in this regulation and any other necessary modifications.

(2) Part 8 Divisions 1 and 4 of the Act are amended so that any reference to local government property is a reference to anything, whether land or not, that belongs to, or is vested in, or under the care, control or management of, a regional subsidiary.

(3) Section 8.2(1) is amended so that, if written notice is given to a regional subsidiary under that provision (as applied by subregulation (1)), a copy of the notice must also be given to each of the participants.

(4) Section 8.14(1) is amended so that, if a copy of a report is given to a regional subsidiary under that provision (as applied by subregulation (1)), a copy of the report must also be given to each of the participants.

(5) Section 8.14(3) is amended so that, if the written advice setting out the things referred to in that provision (as applied by subregulation (1)) must be given to the Minister by the regional subsidiary, written notice setting out those things must also be given by the regional subsidiary to each of the participants.

(6) Section 8.15(1)(a) is amended so that it refers to the advice received by the Minister under section 8.14(3) (as applied by subregulation (5)).

(7) Section 8.15(2) is amended so that, in the stated circumstances, the Minister may, by order, direct the regional subsidiary to be wound up.

(8) Section 8.15A is amended so that, if paragraph (a) or (b) (as applied by subregulation (1)) of that section applies, the Minister may order the regional subsidiary or the participants to pay all or part of the costs of the inquiry and the regional subsidiary or the participants, as the case requires, must comply with that order.

(9) Section 8.41(3) and (4) are amended so that, if written notice is given to a regional subsidiary under either provision (as applied by subregulation (1)), a copy of the notice must also be given to each of the participants.

(10) Section 8.43(1) is amended so that, if an order has been made under section 8.42(1) against a council member who is personally liable to pay an amount misapplied to a local government, any disqualification from being a council member under section 8.43(1) also applies to being a member of a regional subsidiary's governing body.

(11) Section 8.43(1) is further amended so that, if an order has been made under section 8.42(1) (as applied by subregulation (1)) against a member of a regional subsidiary's governing body —

(a) who is personally liable to pay an amount misapplied to the regional subsidiary; and

(b) who is also a council member,

any disqualification from being a member of the regional subsidiary's governing body under section 8.43(1) (as applied by subregulation (1)) also applies to being a council member.

25. Certain persons protected from liability for wrongdoing (application of modified section 9.56)

(1) In this regulation —

prescribed, in relation to a regional subsidiary, means prescribed in the regional subsidiary's charter.

(2) Section 9.56 applies in relation to a regional subsidiary as if amended as set out in this regulation.

(3) Section 9.56(1) is amended so that a protected person for the purposes of section 9.56 is a person who is —

(a) a member of the governing body, or of a committee of the governing body, of a regional subsidiary; or

(b) an employee of a regional subsidiary; or

(c) a person appointed or engaged by a regional subsidiary to perform functions of a prescribed office or functions of a prescribed class.

(4) Section 9.56(4) is amended so that the reference in that subsection to the local government is a reference to the regional subsidiary.

(5) Section 9.56(5)(b) is amended so that the reference in that paragraph to the doing of anything by a protected person in a capacity described in section 9.56(1)(a), (b) or (c) is a reference to the doing of anything by a protected person in a capacity described in subregulation (3)(a), (b) or (c).

K. H. ANDREWS, Clerk of the Executive Council.