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Local Government Operational Guideline

Regional Subsidiary Charters

March 2023

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Regional Subsidiary Charter Guidelines (March 2023)

Prepared by: Department of Local Government, Sport and Cultural Industries

For more information please contact:

140 William Street, Perth WA 6000, GPO Box R1250, PERTH WA 6844

Tel: (08) 6551 8700 Fax: (08) 6558 1555 Freecall: 1800 620 511 (Country Only)

Email: legislation@dlgsc.wa.gov.au Web: www.dlgsc.wa.gov.au

Translating and Interpreting Service (TIS) - Telephone: 13 14 50

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# Introduction

Two or more local governments have the ability to form a corporate entity for the purposes of carrying out joint services or activities in local government districts. This entity is known as a “regional subsidiary”.

The existence of a regional subsidiary is defined by two significant documents:

* the business plan by which the subsidiary is proposed
* the charter by which the subsidiary is governed.

This document provides drafting guidelines and a model charter to assist local governments in drafting the charter needed to form a regional subsidiary.

In assessing applications for a regional subsidiary, the DLGSC will refer to the model charter as the expected standard.

# Relevant legislation

## *Local Government Act 1995*

### 3.70. Regional subsidiaries to have charter

1. Local governments proposing to form a regional subsidiary must prepare a charter addressing the following matters –
2. the establishment and powers and duties of the regional subsidiary
3. the process for selecting and appointing members of the regional subsidiary’s governing body
4. the qualifications that members of the regional subsidiary’s governing body must have
5. the administration of the regional subsidiary, including the membership and procedures of its governing body, and the fees, allowances and expenses to be paid or reimbursed to the members of its governing body
6. the financial management, planning, auditing and reporting to be undertaken by the regional subsidiary
7. the process for amending the charter
8. the winding up of the regional subsidiary
9. any other matters required by the regulations to be dealt with in a charter.
10. The local governments must forward the charter to the Minister when applying for approval for the formation of the regional subsidiary.
11. A charter, and an amendment to a charter, are of no effect unless approved by the Minister.

## Local Government (Regional Subsidiaries) Regulations 2017

### 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 –

1. the employment, appointment or engagement of staff by the regional subsidiary
2. the execution of documents by the regional subsidiary
3. a means of determining the procedures for meetings of the regional subsidiary’s governing body and of any committees of the governing body
4. 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
5. 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
6. a means of resolving disputes between participants as to matters relating to the regional subsidiary
7. 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
8. a means of determining the continuing financial contributions (if any) of the participants to the funds of the regional subsidiary
9. the way in which any profits produced by the regional subsidiary are dealt with
10. 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
11. the circumstances in which the regional subsidiary is to be wound up and procedures for the winding up of the regional subsidiary
12. procedures for the withdrawal of a participant from the regional subsidiary
13. procedures for another local government being included in the charter as a further participant
14. 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
15. the way in which money may be invested by the regional subsidiary in accordance with the Act, as modified by regulation 22
16. procedures for the disposal of property
17. 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
18. the fees and charges (if any) that may be imposed by the regional subsidiary
19. the process for reviewing the charter.

# Guidelines

## Purpose of Charter

The charter of a regional subsidiary serves the following purposes:

* it sets out the agreement between the local governments forming the subsidiary
* it is the primary governance document for the subsidiary
* it is part of the mechanism by which the subsidiary is created as a legal entity.

## Content of Charter

The content of a regional subsidiary’s charter should be determined in the way that best fits the subsidiary’s circumstances.

This means the charter will need to take into account –

* the goals of the subsidiary
* the level of financial activity the subsidiary will conduct
* the complexity of the subsidiary’s business structure
* the unexpected circumstances with which a subsidiary may need to deal.

A charter does not need to anticipate every possible contingency, but it should provide the subsidiary with sufficient powers and mechanisms to deal with any situation.

A model charter has been prepared by DLGSC and can be found at Appendix 1.

Instead, if the member local governments desire a different charter, the following potential issues and questions can be used to guide the process.

### Powers and duties

* What are the subsidiary’s goals?
* What powers does it need to achieve them?
* If powers are needed, do they need to be limited in any way?
* Does the subsidiary need the ability to:
  + employ staff?
  + enter into contracts for goods and services?
  + advertise or distribute information?
  + operate a bank account?
  + acquire, own and dispose of real or personal property?
  + delegate matters to the CEO?

### Management board

* How many seats are on the board?
* How are the members of the board appointed?
* Are any qualifications required to be eligible for a position on the board?
* What outside experience is required to sit on the board?
* Will the local governments have a majority of board seats under their control?
* Is the board limited to councillors and local government employees?
* Will there be deputy members?
* When does a board member’s term of office begin?
* How can a term of office end?
* Can a board member be removed from their position and, if so, how and when should this occur?
* If certain qualifications or training are required to sit on the board, does this apply to all members equally?
* Will board members be paid fees, allowances or expenses?
* How will meeting procedures be determined?

### Planning and reporting

* What level of record keeping is needed, given the financial activities of the subsidiary?
* Is any additional level of financial reporting necessary beyond the minimum required by legislation?
* How will this information be provided to the board and the member councils?
* What auditing is required?

### Issuing directions

* How can the member councils issue directions to the regional subsidiary?
* What happens if a direction is not complied with?
* Under what circumstances should a direction be issued?
* Are there any situations where a board must request a direction from the member councils rather than taking action itself?

### Dispute resolution

* How are disputes to be solved between:
  + member councils?
  + a member council and the subsidiary?

### Financial contributions

* What contributions are required?
  + fixed amount?
  + to be determined periodically?
* Can obligations be changed and, if so, how?
* Do contributions differ between members?
* Can members make voluntary contributions and, if so, does this increase their personal equity in the subsidiary?
* Can emergency contributions be imposed and, if so, in what circumstances?
* What happens if contributions are required but not made?

### Use of revenue

* If the subsidiary obtains revenue, how should this revenue be used?
* Can revenue be distributed back to member councils and, if so, how should this distribution occur?
* Can revenue be used to further the subsidiary’s purpose and, if so, what uses may be permitted?
* Who will decide how the revenue is used?

### Prevention of insolvency

* Are there sufficient financial records and reporting to ensure that potential insolvency can be detected in advance?
* Can the subsidiary operate at a loss?
* What happens when potential or actual insolvency is detected?

### Winding up

* When does winding up have to occur?
* Does the subsidiary have a fixed lifespan?
* Does it have a fixed objective?
* How are assets liquidated and distributed?
* How are outstanding liabilities dealt with?

### Membership of the subsidiary

* How can members join?
* How can members leave?
* Can members be expelled and, if so, in what circumstances should this occur?
* If a member leaves the subsidiary, how is that member “paid out” for their equity in the subsidiary’s assets?
* Whose permission is required?

### Use of subsidiary funds

* Who makes the decision?
* Are there any limitations on how subsidiary funds can be used?
* Can subsidiaries use funds to purchase capital assets?

### Disposal of subsidiary assets

* Who makes the decision?
* Are there any limitations on when and how assets may be disposed of?
* What happens to the proceeds of sale?

### Code of Conduct

* Is there a code of conduct?
* Who creates this code of conduct?
* Is the code set in separate documents or policies?
* Can the code be amended and, if so, how?
* Does the code only apply to board members or does it apply to the subsidiary’s employees as well?

### Fees and charges

* What kind of fees and charges can the subsidiary impose, if any?
* Who is responsible for the decision to impose fees and charges?
* Are there any limits on how high fees and charges may be?
* Are fees and charges to be determined on a cost recovery basis?
* How can established fees and charges be amended?

### Review of charter

* How does this occur?
* How often does it occur?
* How is the review conducted and concluded?

## Public advertising of charter

A draft charter can be advertised to the public for comment, but there is no direct requirement for this to occur.

Local governments should be mindful any obligations imposed by the charter will need to be reflected in the business plan which is put out for consultation.

## Independent advice

While the Minister may intervene to investigate or wind up a subsidiary in extreme situations, the Minister will not be responsible for enforcing the charter or mediating disputes between member councils.

For this reason, it is highly recommended that:

* the charter is prepared or at least reviewed by a legal practitioner
* each local government should only endorse the charter after obtaining independent legal and financial advice.

This will ensure that the charter is viable, enforceable and does not compromise the interests of a member council.

## **Application to the Minister**

The charter will need to be submitted to the Minister as part of the application to establish the regional subsidiary.

The charter should be:

* endorsed by an absolute majority of each member council
* duly executed by each member council
* accompanied by all necessary supporting material.

## Preliminary assessment

While legally the charter does not need to be submitted until the point an application is made, there are benefits to providing the charter at an earlier stage.

This will allow the department an opportunity to carry out a preliminary check of the charter to determine:

* whether it appears to comply with legislation
* whether there are any obvious issues in the charter which the Minister is likely to view with concern.

If any issues are identified, the department will advise the member councils so that steps can be taken to rectify or mitigate these issues. This increases the possibility that the final application will be approved.

Any preliminary check conducted by the department will be in addition to any formal assessment conducted on the final application to the Minister.

# Appendix 1 - Model Charter

## Part 1 – Preliminary

Text in red should be deleted and relevant matters inserted as appropriate.

##### Name

The name of the Subsidiary is the [insert name] Regional Subsidiary

##### Commencement

This charter comes into effect on the day set in the notice under section 3.69(2)(a) of the Act.

##### Interpretation and Definitions

Applicants may include other definitions as legally appropriate and may change the title of the members of the board from “director” to other appropriate terms, likewise “Managing Director” to another appropriate title*.*

In this charter unless the context otherwise requires:

**Act** means the *Local Government Act 1995*

**Audit Regulations** means the *Local Government (Audit) Regulations 1996*

**Board** means the board of the Subsidiary established under Part 4 of this charter

**business plan** means the business plan of the Subsidiary prepared in accordance with the Regional Subsidiaries Regulations

**Chair of the Board** means the person elected as presiding member of the board pursuant to   
clause 30 and includes a person authorised by this charter to act in place of the Chair

**CEO** means the chief executive officer of a participant

**council member** has the meaning given to it in the Act

**director** means a member of the Board

**district** means district as that term is defined in the Act

**Functions and General Regulations** means the *Local Government (Functions and General) Regulations 1996*

**local government** means a local government constituted under the Act

**financial year** means a year beginning on 1 July in each year and ending on 30 June of the following year

**Managing Director** means the managing director of the Subsidiary appointed in accordance with clause 34

**meeting** includes both ordinary and special meetings of the Board

**Minister** means the Minister for the time being responsible for the administration of the *Local Government Act 1995 (WA)*

**participant** means a local government that is a member of the Subsidiary named in clause 6

**participant’s share** refers to the share held by the participating local government under this charter

**region** means the joint districts of the participants

**Regional Subsidiary Regulations** means the *Local Government (Regional Subsidiaries) Regulations 2017*

**Subsidiary** means the [insert name of Regional Subsidiary] Regional Subsidiary.

## Part 2 – Establishment, Purpose and Powers

##### Establishment and purpose

The Subsidiary is established in accordance with Section 3.69 of the Act to [insert functions].

*Example: The Subsidiary is established in accordance with Section 3.69 of the Act to construct, maintain, operate and manage the Great Southern Airport for the benefit of the region’s community.*

*Example: The Subsidiary is established in accordance with Section 3.69 of the Act to construct, maintain, operate and manage waste facilities for the benefit of the region.*

##### Powers

* 1. The Subsidiary has all the powers it needs to achieve its purpose under this charter, subject to the limitations prescribed in the Act, Regulations and this charter.
  2. In particular, the Subsidiary has the power, including but not limited to:
     1. subject to regulation 8 of the Regional Subsidiary Regulations, acquire, hold, deal with, and dispose of any real or personal property
     2. open and operate bank accounts
     3. subject to regulation 22 of the Regional Subsidiary Regulations, invest its money in accordance with this charter
     4. borrow money upon such terms and conditions as the Subsidiary thinks fit, in accordance with regulation 11 of the Regional Subsidiary Regulations
     5. subject to regulation 11 of the Regional Subsidiary Regulations, give such security for the discharge of liabilities incurred by the Subsidiary as the Subsidiary thinks fit
     6. employ such persons and appoint such agents to transact any business of the Subsidiary on its behalf as are necessary and desirable
     7. enter into any other contract it considers necessary or desirable to achieve its purpose.
  3. Despite subclause (1), [insert any restrictions on the powers of the Subsidiary]

*Example: The Subsidiary does not have the power to enter into contracts exceeding $1,000,000 without the approval of the participants.*

## Part 3 – Participants

### Division 1 – Participants’ Rights

##### Participants

* 1. The participating local governments are:

|  |  |
| --- | --- |
| **Name of Local Government** | **Participant’s Shares** |
| [insert name] | [insert shares] |
| [insert name] | [insert shares] |
| [insert name] | [insert shares] |

*Note: A Regional Subsidiary may be owned in different shares as agreed by the participants, this may be based upon the amount of money invested by the different participants, or for historic reasons.   
Any difference in shares should be explained in the application to the Minister.*

##### Application to participate

* 1. Where another local government applies to become a participant:
     1. the Board shall consider the application and decide if to recommend it to the participants for consideration
     2. subject to all participants agreeing to proceed to admit the new participant, prepare a new business plan and conduct the community consultation required by the Regional Subsidiaries Regulations.
  2. Subclause (1) does not derogate from the right of the participants to apply to the Minister to amend the charter to include a new participant without the consent of the Board in accordance with the Act and Regional Subsidiary Regulations.

##### Payment for original shares

Each participant is required within seven (7) days of this charter becoming effective to make payment of $[insert price per share] for each share into the bank account of the Subsidiary as the initial contribution for the Subsidiary’s establishment.

*Note: This clause is optional; however, there does need to be an arrangement for the raising of the funds for the establishment of the Subsidiary, this may be by whatever method is suitable for the Subsidiary.*

##### Withdrawal of participant

* 1. A participant may apply to withdraw from the Subsidiary, in accordance with this clause.
  2. To commence the withdrawal process, a participant must provide notice of a desire to withdraw to the other participants and the Subsidiary.
  3. The participants must endeavour to negotiate a withdrawal agreement with the withdrawing participant.
  4. A withdrawal agreement requires the unanimous agreement of all participants and the approval of the Minister to amend this charter to remove that participant under regulation 7 of the Regional Subsidiary Regulations.
  5. Prior to applying to the Minister to amend this charter to remove the participant seeking to withdraw, that participant must have paid all outstanding liabilities due and payable to the Subsidiary.
  6. A participant remains a participant regardless of any attempt to withdraw and remains liable for all contributions and other obligations until such time as the Minister approves an amendment to the charter to remove that member.
  7. Where the withdrawal of a participant would leave only one participant, the Subsidiary must be dissolved under clause 51.

##### Direction by participants

*Option 1: For subsidiaries with a smaller to moderate number of participants.*

* 1. The participants may direct the Subsidiary by a resolution passed by a majority of participants in accordance with this clause (**participants’ resolution**).
  2. A participants’ resolution must be:
     1. in the form of a motion to be considered by the Council of a participant
     2. accompanied by reasons
     3. proposed by a council member from one participant
     4. lodged with the Chair of the Board at least fifteen (15) working days before the first council meeting at which it would be considered.
  3. Upon receipt of a proposed participants’ resolution, the Chair of the Board must promptly provide it to the CEO of each participant to enable its presentation to the next council meeting of each participant.
  4. The Subsidiary must provide to the CEO of each participant information regarding the relevant and material facts and circumstances pertaining to the proposed participants’ resolution on matters such as:
     1. policy
     2. budget
     3. law

which must be included in the report of the CEO in response to the proposed participants’ resolution to that Council.

* 1. The CEO of a participant must advise the Chair of the Board of the result following its consideration by the council of the participant.
  2. A participants’ resolution must be carried by an absolute majority at a council meeting to be considered passed by that participant.
  3. A participants’ resolution is carried and binding on the Subsidiary if it is:

Pick one of the following:

* + 1. Passed by a majority of participants by number
    2. Passed by a majority of participants by shares
    3. Passed by all participants.
  1. The Subsidiary must promptly arrange to implement a participants’ resolution.

*Option 2: For subsidiaries with a larger number of participants.*

The participants may direct the Subsidiary by a resolution passed by a majority of the delegates at a General Meeting.

##### Consequences for failure to follow direction of participants

If the Subsidiary fails to follow the direction of the participants given through a participants’ resolution/general meeting, then the participants may, through a participants’ resolution/general meeting resolve to declare vacant all seats on the Board, except the Managing Director, and make fresh appointments to the Board.

##### Provision of information to participants

* 1. A participant may request information from the Subsidiary by:  
     1. a request from the participant’s CEO
     2. a resolution of the participant’s council.
  2. Requests for information are to be made to the Managing Director and information will be provided to the CEO of the participant for distribution.
  3. The Managing Director, where they consider that the information requested affects more participants than the requesting participant, must provide the information simultaneously to all participants through their CEO.

### Division 2 – Participants’ Obligations

##### Liability of participants

If the Subsidiary is:

* + 1. to be dissolved
    2. insolvent

and there remains any liability or debt in excess of the realised property and assets of the Subsidiary then the liability or debt is to be met by each of the participants in the proportions set out in the following formula:

##### Levy of participants

* 1. The Subsidiary cannot operate at a loss.
  2. This clause applies if:
     1. a budget deficit is disclosed in the annual budget of the Subsidiary
     2. a deficit is disclosed in the annual financial report of the Subsidiary
     3. an anticipated exception deficit is determined by the Subsidiary.
  3. The Board, by absolute majority, may determine, where a deficit is identified, to levy the participants.
  4. A levy must be uniform among the participants and expressed on a per share basis.
  5. The levy shall be calculated by the following formula:

where deficit is the total deficit and share is the share of each participant in the Subsidiary.

* 1. When a levy is determined, the Managing Director must promptly give notice of the levy and the due date for payment to the participants.
  2. A participant must pay the levy to the Subsidiary within 60 days of notice being given of the levy, unless the participant lodges an objection.
  3. A participant that objects in writing to the imposition of the levy within 30 days of the date of the notice shall be exempt from payment of the levy until its objection is considered at a meeting of the Board.
  4. The Board must, after consideration of the objection of a participant to a levy, by absolute majority, confirm, vary, or cancel the levy.
  5. Where a participant fails to pay its contribution by the due date, the contribution owed accrues interest, compounded daily at the overdraft rate of the Subsidiary’s bank account until paid.

##### Special Contribution by participants

* 1. Where it is necessary to achieve the business plan, the Board may, with the support of a majority of participants through [a participants’ resolution or general meeting], levy a special contribution.
  2. A special contribution must be uniform among the participants and expressed on a per share basis.
  3. The contribution shall be calculated by the following formula:

where funding is the total funding required and share is the share of each participant in the Subsidiary.

* 1. When a special contribution is levied, the Managing Director must promptly give notice of the special contribution and the due date for payment to the participants.
  2. A participant must pay the contribution levied by the Subsidiary within 60 days of notice being given of it being levied.
  3. Where a participant fails to pay its contribution by the due date, the contribution owed accrues interest, compounded daily at the overdraft rate of the Subsidiary’s bank account until paid.

##### Dividends to participants

* 1. Where there is a profit arising from the activity of the Subsidiary, the Subsidiary may:
     1. retain the profit or part of the profit and invest it or expend it in accordance with its budget
     2. pay the profit or part of the profit as a dividend to the participants in accordance with this clause.
  2. The Board may, by absolute majority, determine to pay a profit or part of profit to the participants as a dividend and determine the manner and timing of the payment of that dividend.
  3. The dividend shall be distributed to the participants in accordance with the following formula:
  4. In paying any dividend, the Board should have due regard to the prudent management of the cash of the Subsidiary, its other financial requirements and any other relevant matters.

### Division 3 – Dispute Resolution

##### Negotiation

The participants agree to attempt in good faith to resolve through negotiation any dispute arising under or in relation to this charter.

##### Mediation

* 1. If, after 28 calendar days from commencing negotiations, the participants are still unable to reach agreement, the participants must endeavour to reach agreement by mediation, which is to be conducted (over a period not more than 28 days) by:
     1. a mediator independent of the parties, appointed by agreement of the parties
     2. failing agreement, by a person appointed by the Institute of Arbitrators and Mediators Australia.
  2. The mediation must be conducted in accordance with, and subject to, the mediation rules of the Institute of Arbitrators and Mediators Australia.
  3. Each participant must each appoint two representatives to participate in the mediation.
  4. Unless otherwise agreed by the participants, the costs incurred in the mediation are to be borne equally by the participants.

##### Arbitration

* 1. Where the participants are unable to resolve a dispute through negotiation or mediation:
     1. any participant may notify the others in writing (**arbitration notice**) that it requires the dispute to be referred to arbitration
     2. the dispute (unless meanwhile settled), on receipt of the arbitration notice by the recipients, is taken to be referred to arbitration under and in accordance with the provisions of the *Commercial Arbitration Act 2012 (WA).*
  2. The participants agree to be bound by the decision of the appointed arbitrator and will endeavour to work together in good faith in the implementation of that decision.
  3. The costs of arbitration shall be borne equally by the participants involved in the arbitration.
  4. The arbitrator’s award shall be final and binding on the participants.
  5. Nothing in this charter shall prevent a participant from obtaining any urgent injunctive, declaratory or other interlocutory relief from a court which may be required in respect of a dispute.

## Part 3A – General Meetings

*This Part is only intended for Subsidiaries with a large number of members.*

##### General Meetings

1. A general meeting of the Subsidiary shall be held at least once annually.
2. A special general meeting of the Subsidiary may be held where requested by a Council resolution of 25 per cent of the participants by number or by shares.
3. The quorum of a general meeting shall be:

Select one option:

* + 1. a majority of participants by number; and/or
    2. a majority of participants by shares.

1. Each participant must appoint up to [insert number] persons as delegates for general meetings of the Subsidiary.
2. The delegates of the participant shall each have the number of votes that local government has as shares divided between them and where this number is not evenly divisible between the number of delegates, any excess vote will be allocated to each delegate in order of appointment.
3. The Chair of the Board shall preside at a General Meeting; in their absence the Deputy Chair of the Board shall preside; in the absence of both, the General Meeting, by resolution, shall appoint another person to preside.
4. The Board may determine procedures for general meetings, which include how participants propose resolutions.
5. A vote at a General Meeting shall be carried by a majority of shares and/or a majority of participants voting.

## Part 4 – The Board

##### Establishment of Board

* 1. The governing body of the Subsidiary is the Board.
  2. The Board is responsible for all the functions and affairs of the Subsidiary and has the power to do all things necessary or convenient to be done for the proper management of the functions and affairs of the Subsidiary, subject to the Act, Regional Subsidiary Regulations and this charter.

##### The Directors

The Board of the Subsidiary shall consist of [insert number of directors] Directors made up of:

* + 1. [insert number of directors] appointed by the participants in accordance with clause 23
    2. [insert number of directors] appointed by the Board of the Subsidiary as Independent Directors
    3. The Managing Director

##### Appointment of Participant Directors

*Option 1: For subsidiaries with a smaller number of participants.*

Each participant may appoint participant directors by council resolution carried by an absolute majority up to the number set out in the below table:

|  |  |
| --- | --- |
| **Local Government** | **Number of Directors** |
| [insert name] | [insert number of directors] |
| [insert name] | [insert number of directors] |
| [insert name] | [insert number of directors] |

*Option 2A: For subsidiaries with a moderate number of participants.*

The participants may appoint or remove a participant’s director by participants’ resolution in accordance with clause 8 of this charter.

*Option 2B: For subsidiaries with a large number of participants.*

The participants may elect or remove a participant’s director/s at a General Meeting of the Subsidiary in accordance with clause 18.

##### Appointment of Independent Directors

* 1. The Board, by absolute majority, may appoint independent directors in accordance with the procedures adopted by the Board for the recruitment and selection of independent directors.
  2. In calculating the absolute majority under sub-clause (1), where the motion is to reappoint an existing member, the position of that existing member is not counted.

##### Appointment of Deputy Directors

*The inclusion of deputy directors is optional.*

*Option 1: For subsidiaries with a small number of participants.*

For each director that a participant appoints, that participant may appoint another person as a deputy director to act in the place of that participant’s director if that director is unable to be present at a meeting of the Board.

*Option 2: For subsidiaries with a moderate number of participants.*

The participants, by participants’ resolution, may appoint a person as a deputy director to act in the place of another director if that director is unable to be present at a meeting of the Board.

*Option 3: For subsidiaries with a large number of participants.*

The participants may elect a person as a deputy director to act in the place of another director if that director is unable to be present at a meeting of the Board at a general meeting.

*Include in all instances*

* 1. In the absence of a director, a deputy director has all the rights and responsibilities of a director.
  2. The term of a deputy director is the same as a director under clause 24.

##### Qualifications of Directors

* 1. A director must be qualified to be a director of a company under the *Corporations Act 2001 (Cth).*
  2. If a director:
     1. is a council member or employee of a participant; and
     2. is appointed as a participant’s director; and
     3. they cease to be a council member or employee of a participant,

they cease to be a director.

* 1. Additionally, the following qualifications for directors apply:
     1. [insert relevant qualifications]
     2. one independent director must have suitable qualifications in financial management.

*Example: A majority of the members of the Board cannot be council members or employees of the participants.*

*Example, the Subsidiary is established to manage ICT service: Two members of the Board must have relevant experience in Information Technology.*

* 1. The participants and Board must endeavour to achieve diversity in making appointments to the Board.

##### Duties of directors

* 1. Each director, whether within or outside the State of Western Australia —
     1. must at all times act honestly in the performance of the functions of a director
     2. must at all times exercise the degree of care and diligence in the performance of the functions of a director that a reasonable person in that position would reasonably be expected to exercise in the Board’s circumstances
     3. must at all times act in the best interests of the Subsidiary and give precedence to the interests of the Subsidiary over the interests of any person appointing or electing a director
     4. must not make improper use of information acquired by virtue of the position of director to gain, directly or indirectly, an advantage for any person or to cause detriment to the Subsidiary
     5. must not make improper use of the position of director to gain, directly or indirectly, an advantage for any person or to cause detriment to the Subsidiary.
  2. Nothing in subclause (1) affects —
     1. any other duty a director may have under any other law
     2. the operation of any other law in relation to such a duty.

##### Term of appointment of Directors

* 1. The term of appointment of a director who is a Council member is from the day of their appointment until the next ordinary election day.
  2. The term of appointment of any other director, other than the Managing Director, is two years.
  3. The term of appointment of the Managing Director is as per their contract of employment, which cannot exceed five (5) years without renewal.
  4. A director, other than the Managing Director, cannot be appointed to serve on the Board for more than three terms without 12 months having lapsed since the end of their last term.

Subclause (4) may be omitted by applicants if sourcing directors is likely to be difficult for the Subsidiary; however, a rotation of directors over time is encouraged.

##### Removal of board member

*Note: This clause should be based on the means of appointment of the director, based on the notion that the people that appoint a director should have the power to remove them.*

* 1. A director appointed by a participant may be removed by the participant by council resolution carried by an absolute majority at any time.

or

* 1. A director appointed by a participants’ resolution may be removed by a participants’ resolution at any time.

or

* 1. A director elected at a general meeting may be removed by a resolution at a general meeting.

*Note: The following should be included in all cases.*

* 1. A director appointed by the Board, other than the Managing Director, may be removed by a resolution carried by 75 per cent of the Board members, with the vote of the director being removed to be disregarded in calculating the 75 per cent required.
  2. The Managing Director may be removed by the Board, by termination of their employment, in accordance with the Managing Director’s contract of employment.
  3. If a director, other than the Managing Director, fails to attend three (3) consecutive meetings without a leave of absence, their office may be declared vacant by the Chair of the Board.

##### Chair and Deputy Chair of the Board

* 1. The Board shall elect a director, other than the Managing Director, to be the Chair of the Board.
  2. The Board shall elect another director, other than the Managing Director, to be the Deputy Chair of the Board.
  3. The elections shall be conducted by the Managing Director as though they were the election of the Mayor and Deputy Mayor of a local government by the council in accordance with the Act.
  4. The election of a Chair or Deputy Chair is for a two year term.
  5. Where the position of Chair or Deputy Chair falls vacant, a meeting of the Board shall be convened by the Managing Director to elect a new Chair or Deputy Chair.

##### Meetings of the Board

* 1. That Board shall meet regularly for the dispatch of its business, at such intervals as it may from time to time determine, and the Managing Director shall ensure all resolutions and proceedings are recorded in a minute book kept for that purpose.
  2. The quorum of a meeting of the Board is 50 per cent of the number of offices of director, whether vacant or not, and where that number is not a whole number, it shall be rounded up to the nearest whole number.
  3. A special meeting of the Board may be called by:
     1. the Chair
     2. by any [insert number] Board members
     3. a request from a council of a participant.
  4. At a meeting of the Board, the Chair of the Board shall preside; or in their absence, the   
     Deputy Chair of the Board; in the absence of both, the Board shall choose one of the directors present to preside.
  5. At a meeting of the Board, each director has one (1) vote, and a motion shall be carried by a majority of votes cast, except where a higher majority is prescribed in this charter, the Act or Regulations.
  6. In the event of a tie, the person presiding shall exercise a casting vote.
  7. The Board may otherwise determine the procedures of its meetings, including the ability to meet electronically.

##### Committees of the Board

* 1. The Board may establish such committees, and appoint such persons as members of those committees, as it may deem necessary for the performance of its functions.
  2. Each committee shall have a term of reference that shall include, amongst such other things, the membership, quorum, chair, roles, functions, powers and frequency of meetings of such committees.

##### Fees and allowances

* 1. The fees and allowances payable to directors, other than the Managing Director, shall be [insert method of determination]

*Example: The maximum annual attendance fees payable to a council member of a Tier 3 Local Government as determined by the Salaries and Allowances Tribunal.*

*Example: The fees and allowances payable to members of the Board shall be determined at the General Meeting of the Subsidiary/by participants’ resolution annually.*

* 1. The total reward package of the Managing Director shall be determined by the Board but cannot exceed [insert maximum]

*Example: The maximum total reward package payable to the CEO of a Tier 3 Local Government as determined by the Salaries and Allowances Tribunal.*

* 1. The fees and allowances payable to members of a Committee of the Board who is not a director may be determined by the Board, provided it does not exceed the amount payable to a director.
  2. The Subsidiary may, in accordance with procedures adopted by the Board, reimburse reasonable expenses to directors and members of committees of the Board.

## Part 5 – Administration

##### The Managing Director

* 1. The Board must employ a suitably qualified natural person to be the Managing Director of the Subsidiary.
  2. The Board must adopt procedures regarding the recruitment, performance management and termination of the Managing Director, having regard to the model standards for CEO recruitment, performance and termination contained in Schedule 2 of the *Local Government (Administration) Regulations 1996*.
  3. A contract of employment for the Managing Director cannot be for longer than five years.
  4. The Managing Director is the CEO of the Subsidiary as well as a director.
  5. Subject to the control of the Board, the Managing Director is responsible for, and has the necessary powers to administer, the day-to-day operations of the Subsidiary including but not limited to:
     1. coordinating the professional advice and assistance necessary for all directors to enable the Board to perform its functions
     2. facilitating the implementation of Board decisions
     3. ensuring functions and decisions of the Subsidiary are managed prudently on behalf of the Subsidiary
     4. managing the effective delivery of the services, operations, initiatives and functions of the Subsidiary
     5. providing timely and accurate information and advice to all directors
     6. overseeing the compliance of the operations of the Subsidiary with State and Commonwealth legislation on behalf of the Board
     7. implementing and maintaining systems to enable effective planning, management, and reporting on behalf of the Board.

##### The Employees

* 1. Section 5.40 of the Act applies to the Subsidiary.
  2. The power to engage and manage the employees of the subsidiary is vested in its Board, acting through the Managing Director.

##### Delegation

* 1. The Board may, by absolute majority, delegate any of the Subsidiary’s functions to a committee of the Board, the Managing Director, or an employee except:
     1. this power of delegation
     2. the power to borrow
     3. the power to levy the participants
     4. any decision which requires an absolute or higher majority of the Board.
  2. The Managing Director may delegate any of their functions, including functions delegated to them by the Subsidiary, to a committee or an employee except this power of delegation.
  3. All delegations made under subclauses (1) and (2) are to be recorded in a register and reviewed at least once every four years.
  4. Written records must be kept of the exercise of any delegation.
  5. Sections 58 and 59 of the *Interpretation Act 1984* apply to delegations.

## Part 6 – Financial Management and Accountability

##### Budget

The Subsidiary, having regard to the Business Plan and this charter, must adopt an annual budget in accordance with the Regulations.

##### Budget deficiency

The method of addressing a budget deficiency is dealt with in clause 14.

##### Fees and Charges

The Subsidiary may levy fees and charges for the services it provides for participants or users of its services as it sees fit, subject to any requirements of the Regional Subsidiary Regulations.

##### Borrowing of Money

* 1. The Subsidiary may borrow money in accordance with the Act and the Regional Subsidiary Regulations with the consent of the participants by [participants’ resolution/general meeting].
  2. The Subsidiary may not borrow money in the place of levying the participants to address a deficit under clause 14.

##### Accounts and records

* 1. The Subsidiary must:
     1. ensure that there are kept, in accordance with any requirements of the Act and Regional Subsidiary Regulations, proper accounts and records of the transactions and affairs of the Regional Subsidiary
     2. keep the accounts and records up to date and ready for inspection at any time by persons authorised to do so under the Act, Regional Subsidiary Regulations or another written law.
  2. All payments from bank accounts operated by the Subsidiary must be approved by at least two persons from among the signatories to the accounts, appointed by the Subsidiary.

##### Financial reporting

The Subsidiary must comply with the financial reporting requirements required by the Act and the Regional Subsidiary Regulations and no modification is made under regulation 9(g) of the   
Regional Subsidiary Regulations.

Note: Additional financial reporting requirements can be imposed if considered appropriate by the participants.

Note: Certain financial reporting requirements under the Regional Subsidiary Regulations may be removed through the charter; however, reasons they do not apply must be provided.

##### Purchasing

* 1. The Board must adopt a purchasing policy consistent with the requirements of the Act, Functions and General Regulations and Regional Subsidiary Regulations.
  2. The Subsidiary may incur liabilities and enter into contracts for goods and services in accordance with the Act, Functions and General Regulations, Regional Subsidiary Regulations and its purchasing policy.

Note: Additional purchasing can be imposed as are considered appropriate by the participants, provided they are consistent with the Act and its Subsidiary legislation.

##### Investment

* 1. The Subsidiary has the power to invest money in accordance with Regional Subsidiary Regulation 22.
  2. Before exercising the power to invest, the Board must adopt an investment policy setting out the permissible investments, controls on investment activities and how investment risks are to be managed.
  3. The Subsidiary’s investments and the policy adopted in accordance with subclause (2) are subject to any provision of the Act or regulations regarding investments which applies to a Regional Subsidiary.

##### Business Plan

* 1. The Business Plan is the principal strategic planning document of the Subsidiary.
  2. The Board is to review the business plan annually.

##### Disposal of property and other assets

* 1. The Subsidiary may dispose of property and other assets.
  2. Before exercising the power to dispose of property, the Subsidiary must adopt a disposal of assets policy setting out the process to be followed to dispose of property.
  3. The Subsidiary’s disposal of property and the policy adopted in accordance with subclause (2) are subject to any provision of the Act or regulations regarding disposal of property which applies to a Regional Subsidiary.

Note: As an alternative to a disposal of assets policy a charter could set those procedures out in full.

##### Trading Undertakings and Land Transactions

* 1. The Subsidiary cannot commence a trading undertaking.
  2. The Subsidiary cannot enter a land transaction except where:
     1. the leasing or purchase of an interest in land, if the lease or purchase is necessary to further a purpose specified in the Subsidiary’s charter
     2. the sale of an interest in land, if the sale is necessary to wind up the Subsidiary or to further a purpose specified in the Subsidiary’s charter

and

* + 1. the unanimous consent of the participants has been obtained.
  1. In subclause (2), purpose does not include a purpose that authorises the Subsidiary to enter into commercial land transactions for profit or gain.

##### Execution of documents and Common Seal

* 1. The Subsidiary shall have a common seal in the following form:

[insert common seal]

* 1. The use of the Common Seal to execute documents must be authorised by resolution of the Board and witnessed by two directors.
  2. The common seal shall be kept in the custody of the Managing Director or such other person as the Subsidiary may from time to time decide.
  3. The Subsidiary must maintain a record of each document to which the common seal is affixed.
  4. The Subsidiary may execute documents, other than by common seal, in accordance with such procedures as it determines.

##### Auditor and Audit Committee

* 1. In accordance with the Act, the Auditor of the Subsidiary is the Auditor General and the audit of the Subsidiary is to be conducted in accordance with the requirements of the Act, Audit Regulations and Regional Subsidiary Regulations.

*The below clauses are optional but would be strongly encouraged in a Subsidiary that is likely to have a turnover greater than $1,000,000 per annum.*

* 1. The Board must establish an Audit Committee to make recommendations to the Board in relation to:
     1. the adequacy of the Subsidiary’s corporate reporting processes and internal control framework
     2. whether the Subsidiary’s financial statements reflect the understanding of the committee members of, and otherwise provide a true and fair view of, the financial position and performance of the Subsidiary
     3. the appropriateness of the accounting judgements or choices exercised by management in preparing the entity’s financial statements
     4. the appointment or removal of any internal auditor
     5. the fees payable to the internal auditor for audit and non-audit work
     6. the scope and adequacy of any internal audit
     7. the independence, objectivity and performance of the internal auditor.
  2. The Chair of the Audit Committee must be either:
     1. an independent director
     2. a person who is not a director or employee of the Subsidiary or an employee or council member of a participant

and cannot also be the Chair of the Board.

* 1. A majority of the members of the Audit Committee must be:
     1. independent directors
     2. persons who are not directors or employees of the Subsidiary or an employee or council member of a participant

and cannot also be the Chair of the Board.

##### The Code of Conduct

The Board is to adopt a code of conduct for directors and employees of the Subsidiary which addresses:

* + 1. the performance of the director or employee’s duties
    2. dealings with directors, employees and the broader community
    3. the management of conflicts of interests of directors and employees
    4. the disclosure and management of gifts received by directors and employees in their capacity as a director or employee
    5. the use and disclosure of information acquired by the director or employee in the performance of their duties
    6. the use of the resources of the Subsidiary
    7. the use of the Subsidiary’s finances
    8. how the records of the Subsidiary are to be kept
    9. the reporting by directors and employees of suspected breaches of codes of conduct and suspected unethical, fraudulent, dishonest, illegal or corrupt behaviour
    10. the way in which suspected breaches of the code of conduct and suspected unethical, fraudulent, dishonest, illegal or corrupt behaviour of a director or employee of the Subsidiary are to be managed.

## Part 7 – Review of Charter and Dissolution of Subsidiary

##### Review of Charter

* 1. The Subsidiary and participants are to review this charter every four (4) years.

Note: Applicants can amend this review requirement as appropriate; four years was suggested to align with the general cycle of a local government.

* 1. Any amendment to this charter resulting from a review is to be dealt with in accordance with Regulation 7.

##### Dissolution of the Subsidiary

The Subsidiary may be wound up unanimous agreement of the participants or by the Minister in accordance with the Regional Subsidiary Regulations.

##### Distribution of assets and liabilities upon dissolution

The assets or liabilities of the Subsidiary will be distributed to each participant, upon dissolution in accordance with the following formula: