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Audit Office of NSW

Endorsed by LGNSW Board
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By email: 000600280@audit.nsw.gov.au

LGNSW draft submission: Audit Office of NSW audit of regulation and monitoring of local government

As the peak body for local government in NSW, representing NSW general purpose councils and related entities, Local Government NSW (LGNSW) welcomes the opportunity to provide brief comment to the Audit Office of NSW audit of regulation and monitoring of local government.

LGNSW is also grateful for the flexibility of the Audit Office in extending the deadline for submissions to this audit for all stakeholders.

This is a draft submission and is subject to review and approval of the LGNSW Board. Any changes will be advised at the earliest opportunity.

Audit scope and exclusions

LGNSW notes that the audit will consider governance arrangements, strategic planning and performance monitoring to support the regulatory approach and activities of the Office of Local Government (OLG). The audit will also consider the policies, procedures and sector engagement activities used to monitor and respond to risks and issues relating to council compliance and performance.

Notably, the audit will not examine the councillor misconduct framework, which LGNSW appreciates is under separate review by Mr Gary Kellar PSM.

Comment

The OLG's Improvement and Intervention Framework seeks to provide a graduated approach to ensuring that councils comply with relevant legislation and standards, significant risks facing the council are addressed and that councils are able to exercise their core functions. The Framework encompasses encouragement and assistance, before escalating to orders, interventions and sanctions to ensure councils to comply with relevant legislation or requirements.

As a general comment, it is the view of LGNSW that the OLG requires significantly greater resourcing to enable it to effectively monitor and respond to risks or issues relating to council compliance and performance.

In 2020, the LGNSW Annual Conference resolved to call on the NSW Government to:

... ensure that the Office of Local Government has adequate resources to assist local councils if they encounter serious problems and respond to complaints in a timely manner. (Resolution 112 of 2020).

Since this resolution was passed, LGNSW has continued to receive feedback from councils suggesting that the OLG is not sufficiently resourced to best support and regulate the local government sector.

To be clear, LGNSW comments in this regard are not a reflection on individual staff within the OLG. Indeed, as peak body for local government, LGNSW has in recent times enjoyed a strong and increasingly collaborative and cooperative relationship with the OLG. LGNSW's comments here refer instead to the significant regulatory demands on, and opportunities for, the OLG and the limited resourcing available to the OLG with which to meet these.

LGNSW would prefer more resourcing to the OLG to allow for a graduated approach to regulation, with particular emphasis on advice, guidance and continuous improvement towards best practice. This support should enable councils to voluntarily resolve problems *before* they evolve into more serious concerns.

In the worst-case scenario, we have in recent times seen councils being placed in administration, depriving communities of local and democratically elected leadership. Councils must not be suspended or placed into administration except for in the most extraordinary circumstances and where the graduated approach to support and regulation has not achieved necessary outcomes.

Example – second regulator for local government

It is illustrative to refer to the recent example of a new NSW Government regulator taking on responsibility for monitoring and compliance of council operations, replicating the role that the OLG could already undertake, were it better resourced.

In October 2022, Cemeteries and Crematoria NSW (CCNSW) announced a new licensing scheme for all cemetery operators in NSW, which includes new maintenance requirements, pricing transparency and customer service standards. An earlier, draft iteration of the licensing scheme would have also introduced a requirement for cemetery operators to ringfence funds to ensure sufficient resourcing was available for perpetual maintenance of cemeteries.

Council cemeteries provide around 50 per cent of interments in NSW, and during extensive consultation as the CCNSW scheme was being developed, LGNSW submitted to CCNSW that councils already had a regulator with powers to ensure financial sustainability, suitable asset maintenance and pricing transparency for council fees and charges, and that to duplicate these existing requirements would be unnecessarily burdensome.

However, LGNSW understood from the consultation that the OLG was not sufficiently resourced to monitor these aspects of council operations, and so a second regulator (that is, CCNSW) would be required.

While LGNSW and councils would have preferred more streamlined arrangements with a single regulator (being the OLG), a consequence of the OLG's resourcing constraints is an increased compliance and reporting burden on this aspect of council operations.

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Ultimately, while the OLG has available to it a broad and graduated framework for the regulation and monitoring of local government, it is the view of LGNSW that far greater resourcing should be provided to the OLG to enable it to make best use of this framework. This would work to the benefit of communities and local democracy across NSW.

For further information in relation to this submission, please contact me on 02 9242 4063 or at damian.thomas@lgnsw.org.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Damian Thomas', with a stylized flourish extending to the right.

Damian Thomas
Director Advocacy