

LGNSW Submission to the Office of Local Government on Joint Organisations: Emerging Directions

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1. Introduction

Local Government NSW (LGNSW) is the peak body for NSW Local Government, representing all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council. In essence LGNSW is the ‘sword and shield’ of the NSW Local Government sector. LGNSW is a credible, professional organisation representing NSW councils and facilitating the development of an effective community-based system of Local Government in NSW. LGNSW represents the views of councils to NSW and Australian Governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community.

LGNSW is pleased to have an opportunity to make a submission to the Office of Local Government (OLG) on the *Joint Organisations: Emerging Directions* paper. LGNSW welcomes information on the progress of the Joint Organisation (JO) pilots/model being made available so that all councils can comment.

LGNSW has been actively contributing to the development of a JO model. LGNSW has made several submissions¹ during the reform process which have included comments on the concept of joint organisations. LGNSW has been a member of the Ministerial Advisory Group (MAG) since February 2015 and through this forum we have raised a number of issues about the Local Government reform program, including specific comments on the JO model.

LGNSW also attended the initial workshops for the five JO pilots held by the OLG in November and December 2014, the mid-pilot review workshop in July 2015 and the JO Workshop held on 8 October 2015. In addition, LGNSW has to date hosted two workshops in 2015 for councils to share and discuss their collaboration experiences².

The latter LGNSW workshop was held to assist all councils to better understand the proposed new JO model and to formulate their opinions on the content of the *Emerging Directions* paper. Representatives from all five JO pilots gave presentations. The workshop outcomes have contributed to the content of this submission.

This submission emphasises and builds on LGNSW’s contribution to the JOs proposal and the Local Government reform process to date.

The *Emerging Directions* paper accurately represents the outcomes and majority views of the councils involved in pilots, particularly in terms of principles, core functions and optional functions of JOs. However, the governance and accountability aspects, including voting, decision making and resourcing of JOs, are subject to debate in the broader Local Government community. A consistent message however is that the OLG should avoid unnecessary prescription on such matters.

¹ Refer to LGNSW submission to the Independent Local Government Review Panel’s Revitalising Local Government (April 2014) and a submission to the Legislative Council Parliamentary Inquiry into Local Government in NSW (July 2015).

² ‘Regional Collaboration & Shared Services: What Works?’ (29 – 30 April 2015) and ‘Joint Organisations: *Emerging Directions* for Regional Collaboration’ (11 September 2015).

LGNSW understands that the OLG is seeking feedback on a series of emerging directions for JOs, covering the following areas:

- Principles
- Core functions
- Regionally defined functions
- Entity and powers
- Governance and accountability
- Other considerations including boundaries, county councils and JO formed entities.

This submission contains comments on the above matters and also discusses a number of other key issues which LGNSW has identified from analysis of the paper, feedback from councils and attendance at JO forums. Attention should also be given to the further points raised in this submission which have not received consideration in the *Emerging Directions* paper including the involvement of Local Aboriginal Land Councils; associate memberships of JOs; and establishing JOs in metropolitan Sydney.

Broadly, this submission is structured to respond to the four parts of the *Emerging Directions* paper (refer to sections 3 - 6) and section 7 elaborates on further issues that require consideration. Section 2 of this submission contains some general remarks about Local Government reform and the JO pilot process, and section 8 provides conclusions and recommendations.

2. General Comments

Generally, the proposed Joint Organisations model represents a sound policy response to the recommendations of the Independent Local Government Review Panel (ILGRP) and the issues the Local Government sector has previously identified. LGNSW participated in the JO mid-pilot workshop, and considers the *Emerging Directions* paper accurately represents the outcomes and majority views of the councils involved in the pilots to date. However, as the JOs will be implemented across all of non-metropolitan NSW, any JO model needs to be flexible and adaptive to the views and circumstances of non-pilot councils.

Representatives from each of the pilot JOs presented at the LGNSW 'Joint Organisations: *Emerging Directions* for Regional Collaboration' workshop on 11 September 2015, and conveyed an optimism about the current progress of the JOs and satisfaction with the participation of state agencies. The pilot councils unanimously expressed a willingness to continue with the JO regional collaboration model in the future.

Local Government in NSW has a history of collaboration and "over 90% of NSW councils are members of a Regional Organisation of Councils (ROCs)".³ As JOs have the potential to introduce a new regional collaboration paradigm it is critical that the JO model recognises and builds on the successes of existing cooperative models and reflects the value of any current, well-functioning collaborative relationships. This includes Local Water Utility Alliances, regional library services and County Councils. Furthermore, there are successful models of Local and State Government collaboration, for example, voluntary regional waste groups have successfully been serving the regions of NSW, both strategically and on the ground, for decades. All of these groups already work collaboratively with the NSW Environment

³ LGNSW, *Regional Collaboration and Shared Services – Background Paper*, April 2015

Protection Authority and their member councils. The impacts of Joint Organisations on existing regional collaboration models such as these should be fully considered in their development.

It is acknowledged by the OLG that the pilot regions are those that “have demonstrated a strong history of effective collaboration⁴”. On the other hand, not all previous collaborative ventures around the state have been successful and some councils which have not been engaged in the pilot process may struggle to form an effective JO. In the absence of having JO pilots in regions which do not have a strong history of strategic collaboration, submissions to the *Emerging Directions* paper from non-pilot councils should be given particular consideration and their concerns tested by the pilot JOs where possible.

With this diversity in mind, the framework for JOs should avoid unnecessary centralised prescription and empower each JO to determine the detail of their own structure, governance, financial, and staffing arrangements. Tools and guidelines, however, could and should be developed to facilitate common understanding and to maximise the success of JOs.

One of the primary purposes of JOs is to “provide a platform for councils and the State to work together at the regional level⁵”. JOs therefore provide the opportunity to not only change the way councils collaborate regionally, but to reform the way the State Government interacts with Local Government. Protocols for State Government participation in JOs should be established to help ensure effective and consistent engagement. With the implementation of JOs it will be critical that benefits flow to Local Government and communities, not just to the State Government.

Joint Organisations and other collaborative arrangements *can* contribute to the strategic capacity of councils and the opportunity to form JOs should be extended to all councils, including those in metropolitan Sydney.

Part A: Purpose, Principles and Functions

2.1 Principles

LGNSW generally supports the principles set out in the *Emerging Directions* paper however some aspects need to be clarified. LGNSW endorses views from the sector that JOs should be minimally prescribed.

LGNSW agrees that Joint Organisations should be enabled through the *Local Government Act* and recognised in other relevant legislation. Among other things, the latter will be important in ensuring state agencies are effectively engaged.

LGNSW strongly supports the principle that JOs should not become a fourth tier of government. Any tendencies towards that direction need to be strenuously resisted. LGNSW would also add the principle that JOs should not become merely a delivery mechanism for State Government determined priorities and plans. They need to be a collaborative and consultative mechanism, not a device for bringing councils into line. Efforts may need to be made to instil this principle with some state agencies.

⁴ OLG, *Joint Organisations: Emerging Directions*, September 2015, p.6

⁵ OLG, *Joint Organisations: Emerging Directions*, September 2015, p.7

LGNSW agrees with the principle that JOs should not impose red tape on members and not only should the benefits of the JO outweigh any costs, but the benefits should also be greater than the current collaborative and regional advocacy arrangements. For example, members do not want to be paying significantly more than what they are paying for a functioning Regional Organisation of Councils (ROC), especially if the costs of administering the JO lead the regional body to move away from its current operational/resource sharing activities.

Although the Principles state that JOs are “accountable to member councils”⁶, this needs to be made clearer to better define the scope of such accountability. Local Government should be the main driver and principal leader of the JO, with each JO to be owned and controlled by its member councils. Each council representative should have the responsibility of communicating the work of the JO back to councillors and the local community.

Matters which are best addressed by individual councils should continue to be dealt with at the local level. JOs should not be used by other councils or state agencies as a way to usurp or bypass individual council decisions if that matter is more appropriately dealt with locally.

2.2 Core Functions

LGNSW agrees with the proposed core functions of:

- Regional strategic planning and priority setting;
- Intergovernmental collaboration; and
- Regional leadership and advocacy.

However, it should be recognised that while these functions can be undertaken, the performance across JOs is not likely to be consistent. There are numerous variables that will influence the outcomes. These include:

- The strength and past experience of regional collaboration between member councils;
- The skills, resources and capacity available to the JO;
- Potential divisiveness and competitiveness on key regional issues and projects; and
- Effectiveness of engagement with and by state agencies and other stake holders.

In terms of ‘Inter-Governmental Collaboration’, as previously stated, minimum participation guidelines and expectations should be developed, for example in the form of a memorandum of understanding (MOU). Consideration would need to be given to whether these are developed at the regional level or whether there should be a state-wide template allowing only for minor regionally specific variances.

Although ‘Regional Leadership and Advocacy’ is a fundamental pillar of JOs, some councils have indicated that it may be a challenge to have all stakeholders working together on a regional scale. Councils in the pilot JOs were invited to initial workshops hosted by the OLG with an independent facilitator to work through draft action plans and priorities for their JO prior to it commencing. Similar opportunities and support should be afforded to all new JOs.

⁶ OLG, *Joint Organisations: Emerging Directions*, September 2015, p.7

2.3 Regionally Defined Functions

LGNSW endorses the proposal for the JO model to allow for Regionally Defined Functions (RDFs). In some areas JOs may replace current regional collaboration arrangements such as ROCs and alliances, so it is important that those functions can be transferred to JOs should the member councils agree.

Many councils have based their FFTF council improvement and Rural Council proposals on the expectation that JOs will assist in providing the scale and capacity they require to stand alone. This includes expectations of shared services, staffing and procurement as well as numerous other capacity building functions.

As the boundaries of current collaborative relationships do not necessarily match those of the JOs, RDFs need to have the option to operate beyond the boundaries of the JO. Councils should be able to opt-in and opt-out of the RDFs provided there are no long term contractual commitments involved. For example, a service delivery function may only be suitable for a smaller number of councils as a subset of the wider JO.

3. Part B: Entity and Powers

LGNSW endorses a flexible legislative model for Joint Organisations and supports “the body corporate in the Local Government Act (Enabling)” model that has been favoured by the pilot councils.

The structure of JOs should also be flexible and with minimal prescription. While there is broad agreement that the three core functions should be prescribed in the Act, there is no real consensus beyond that. At most, each JO should be required to have a Joint Organisation Board and an Executive Officer. The Executive Officer position should not be prescribed in legislation – the role, employment arrangements and appointment should be determined in accordance with the JO’s specific requirements and functions.

4. Part C: Governance and Accountability

The governance and accountability aspects including voting, decision making and resourcing of JOs are subject to debate in the broader Local Government community. Each JO will have its own unique variations therefore flexibility should be built in. LGNSW understands that the OLG would like certain elements to “form part of the Joint Organisation model ‘consistent core’”⁷ yet, as the JO model is currently proposed, these elements are too prescriptive.

As noted in the *Emerging Directions* paper, the JO Pilots are trialling various governance models. Variances include:

- 1 vs. 2 representatives from each member council;
- Equal Vs. Unequal voting of all member councils;
- Mayor as representative Vs. nominated elected representatives; and
- Voting Chair vs. Independent non-voting Chair.

⁷ OLG, *Joint Organisations: Emerging Directions*, September 2015, p.11

It was evident at the October Workshop that there was not a broad consensus on a preferred model. The question of whether there should be 1, 2 or even more representatives is probably inconsequential providing it is consistent within a JO and is conducive to effective decision making.

While most pilot councils support equal voting rights, there is at least one dissenter in the pilot group and there are several non-pilot councils that also object to equal voting rights and favour some degree of proportional representation. There is some validity in the proportional representation and despite the potential divisiveness, it should not be dismissed. LGNSW is of the view that this question should be determined within each JO.

Most would agree that the Mayor should be the council representative on the JO, or at least one of a council's representatives. However, there are councils who favour the full council deciding on the representative(s) and this may not be the Mayor. This could be the case where circumstances prevent the Mayor from participating or when a popularly elected Mayor fails to have the majority support of council. While LGNSW agrees that the Mayor is the appropriate representative, it is accepted that there are circumstances where an alternative is justified. This is another matter that should be determined within individual JOs.

The question of whether a JO has a voting or non-voting Chair is also subject to mixed views however there is a broad opposition to the Chair having a casting vote. This is probably based on the view that JO board decisions should not come down to a tied vote.

When it comes to decision making, consensus is the preferred option and as unlikely as it might seem, some ROC's have been operating successfully on this basis for many years. Hunter ROC/Inc is an exemplary example. Some of the JO pilots have also managed to achieve this result in their relatively short history. However, it is inevitable that consensus will not be achieved on every issue in every JO. Mixed views on voting have been expressed by councils, some prefer a simple majority and others favour a 75% majority to ensure JO decisions are strongly supported by members. LGNSW can see no need to prescribe voting rules beyond a simple majority. Again, this is an element that is best determined within individual JOs.

A set of broad minimum guidelines would be more appropriate to accommodate variations in JO requirements. For example, rather than stipulating that a JO is composed of "one representative" from each member council, the minimum guideline could state "at least one representative" and it should also allow for non-voting advisory representatives (e.g. General Managers and other staff). Similarly, rather than stipulating that a simple majority vote is sufficient for decision making, JOs should have the option of applying a higher requirement such as 75% or consensus. A simple majority would be the minimum requirement.

The issue of delegation remains contentious. There appears to be broad agreement that the delegations to perform the three core functions of regional planning, advocacy and collaboration be sourced in the legislation. There is also recognition that council representatives should have the delegation of their councils to speak and vote on their behalf. However, it was apparent at the October JO workshop that there is a wide range of opinions and considerable confusion about 'delegation' to JO representatives and JOs as entities. This is an area that requires much more work and LGNSW recommend that subject of 'delegation' be further work-shopped with pilot and non-pilot councils.

Councils generally agree that the JOs should have KPIs and minimum financial reporting requirements. Although, as already mentioned in this submission, it needs to be made clear that JOs are primarily accountable to their member councils, they should not be accountable to state agencies or other stakeholders. However, it is accepted that JOs, as Local Government entities, should be subject to the minimum financial reporting requirements of the Local Government Act. It would also be expected that JOs operate in a transparent manner reporting on performance and activities to the public and stakeholders. It will be important not to introduce 'red tape' in the form superfluous reporting requirements, which could place unnecessary burdens on already tight resources within each JO.

In terms of resourcing, LGNSW maintains that as part of the Fit for the Future package, the NSW Government should provide adequate funding and other support to JOs. The \$300,000 funding provided to each pilot JO by the State Government should also be provided to all other JOs to help with establishment costs. However, this funding should not presuppose any influence by State agencies over the work plans of JOs. There needs to be an assurance that State funding will not be used to affect the outcomes of the JO. Councils should also be able to decide about on-going funding and member contributions of JOs.

LGNSW also agrees that JO staff be employed under the Local Government State Award.

LGNSW acknowledges that the core model rightly abstains from stipulating the number of council meetings required of the JO each year, with this to be decided by each JO. Further flexibility should be created by allowing for proxy or online voting where attendance is not possible. In addition, the legislation needs to make provision for web conferencing for JO meetings.

Councils have expressed mixed views about sitting fees for council representatives on JOs. This too should be a matter to be determined by individual JOs. While sitting fees are justifiable, they do not appear necessary for the effective operation of a JO.

While accepting the need for an Executive Officer (EO), many councils have expressed opposition to the proposal that the EO be employed at the equivalent level as a General Manager or a Department of Premier and Cabinet Regional Coordinator. This would introduce a significant new or increased cost to councils.

5. Part D: Other Considerations

5.1 Boundaries

In the same way that councils looking to form the JO pilots were invited to submit their proposed JO groupings⁸, councils in other regions in the State should also have the opportunity to submit their preferred JO boundaries.

LGNSW understands that currently the proposed JO boundaries are based around the State's strategic planning boundaries⁹. In light of the above, the JO framework will need to

⁸ OLG, *Joint Organisations: A roadmap for intergovernmental collaboration in NSW*, September 2014, p.13

incorporate a process for JOs to engage with State agencies that continue to operate through different regional groupings of Local Government areas (LGAs). In the absence of compatible regions across all NSW State agencies, at a minimum there needs to be an appropriate contact person within State agencies to act as a conduit between the JO and the other regions.

5.2 County Councils and Local Water Utilities

It is imperative that existing county councils and Local Water Utilities (LWUs) can continue to serve the needs of their local communities. County Councils may be able to be incorporated under the JO model of RDFs if desired or, alternately, to continue running in their current form. Also, as JO boundaries will not match with the current areas of County Councils the JO model needs to allow for County Councils to have engagement with multiple JOs which may range from full to associate membership or other forms of engagement as decided by each JO and County Council. LGNSW acknowledges and supports the inclusion of Goldenfields Water County Council and Riverina Water County Council as members of the Riverina pilot JO and Central Tablelands Water as a member of the Central West pilot JO.

5.3 JO Formed Entities

LGNSW welcomes the opportunity for JOs to undertake regionally defined functions, either through the 'core' JO or through a Joint-Organisation formed entity.

JO Formed Entities (JFEs) also need to be free of prescription. It was evident at the October JO Policy Workshop that there are a wide range of models performing various functions that can be used for service delivery at the regional level, many of which are currently operated by councils, groups of councils and ROC's. These range from corporate entities such as companies limited by guarantee, entities based on Section 355 committees, in-house business units, partnerships, through to loose cooperative arrangements. JOs should be free to determine which model best suits their requirements.

In addition, the introduction of JOs and JFEs should not preclude the on-going operation or creation of council formed entities. Councils should have the choice to determine whether these entities operate under the umbrella of the JO or independently.

6. Further Points

6.1 Local Aboriginal Land Councils

Local Aboriginal Land Councils (LALCs) have expressed interest in contributing to the development of the JO model and to be involved in JO decisions which affect them. As previously mentioned, the area of the Local Aboriginal Land Councils will not necessarily align with the proposed JO boundaries and therefore LALCs may need access to more than one JO. LGNSW is disappointed that LALCs do not appear to have been considered in JO discussions to date. It is recommended that JOs consider appropriate engagement mechanisms.

⁹ OLG, *Joint Organisations: A roadmap for intergovernmental collaboration in NSW*, September 2014, p.9

6.2 Collaboration and State agency participation

LGNSW has welcomed feedback to date from the pilot JOs that State agencies have been willing participants and are proactively engaging with JOs in their planning activities (for example in the development of Regional Growth Plans). The *Emerging Directions* paper needs to make a step-change to ensure engagement of relevant State Government agencies and to set minimum expectations.

The JO model has much greater potential than being simply focused on Local Government reform. As feedback from the pilot JOs has already shown, JOs show promise in improving State and Local Government relations, as recommended by the Independent Local Government Review Panel.¹⁰ But the success of the JO model will require changes in State agencies' culture of co-operation with Local Government, strengthening the recognition of Local Government as a legitimate and equal level of government and the agreement of detailed MOUs for joint State and Local initiatives¹¹. It is a positive step that representatives from the pilot JOs are members of the DPC's regional leadership groups in each area and this should continue once JOs are widely implemented.

6.3 Associate membership

LGNSW recognises that the current Central West JO pilot includes three associate non-voting member councils. Associate membership should be included in the final JO model, particularly for councils on the border of two regions or for County Councils and other Local Government entities which overlap JO boundaries.

6.4 Joint Organisations in Sydney

LGNSW reiterates its previously stated position in relation to councils in metropolitan Sydney that JOs are a valid option and that these councils have been disadvantaged by their formal exclusion from the JO model. The NSW Government has placed a great deal of emphasis on the ILGRP recommendations for other elements of its FFTF package, and JOs were presented as an option in this report for Sydney metropolitan councils. JOs are a legitimate collaborative arrangement which can cement the progress made so far by ROCs in Sydney. Councils in Sydney should be therefore afforded the same positive benefits which are already being reported by the JO pilots.

7. Conclusion and Recommendations

LGNSW sees JOs as a positive collaborative model to assist councils to achieve strategic capacity, to improve relations between State and Local Government and to increase planning and advocacy for issues which cross council boundaries. The JO model recognises that councils have an integral role to play in addressing regional priorities and in partnering with other councils and State agencies. In saying this, the JO model needs to take into consideration the successful collaborative arrangements that are already occurring across NSW and acknowledge existing State regional boundaries.

¹⁰ ILGRP, *Revitalising Local Government*, October 2013, p. 124

¹¹ ILGRP, *Revitalising Local Government*, October 2013, p. 124

This submission has recommended, among other things, that the JO model needs to be based on sound and clear principles and functions while maintaining a flexible governance structure. LGNSW accepts mandating of the three core functions, Local Government participation and State Government engagement. Beyond that, each JO should be empowered to set its own parameters to benefit its member councils and the region.

LGNSW has made a number of recommendations for OLG consideration which are as follows:

Issue	Recommendation/ Key Point
Principles	<ul style="list-style-type: none"> • The collaboration between councils (through JOs) and the State Government should be a legitimate partnership. • JOs should be legislated in such a way as to ensure State Government engagement. The new JO model should not place extra burden and costs on councils if the benefits do not outweigh current collaborative relationships. • A JO should be owned and controlled by its member councils. • Issues which are best addressed by individual councils should continue at this level.
Core Functions	<ul style="list-style-type: none"> • Clarity should be provided about the processes for how regional strategic planning and priority setting will occur. • Mandates, such as an MOU, should be in place so the roles and responsibilities of member councils and State agencies are understood. • Facilitated workshops should be provided for councils at the establishment phase of a new JO to assist regional thinking and planning.
Regionally Defined Functions	<ul style="list-style-type: none"> • The ability for JOs to adopt regionally defined functions is integral to the JO model but member councils should be able to opt-in and opt-out of the optional functions of the JO.
Entity and Powers	<ul style="list-style-type: none"> • LGNSW endorses a flexible legislative model for JOs which avoids unnecessary prescription. • JO Formed Entities (JFEs) also need to be free of prescription. • The introduction of JOs and JFEs should not preclude the on- going operation or creation of council formed entities.
Governance and Accountability	<ul style="list-style-type: none"> • As the JO model is currently proposed, these elements are too prescriptive and should instead be set out as broad minimum guidelines with appropriate supporting tools and examples. • Flexibility should apply to the number of representatives, the voting rights of councils, decision making, employment of an Executive Officer and other meeting requirements including proxy voting and sitting fees. • JOs should have KPIs and minimum financial reporting requirements but JOs should not be burdened by superfluous reporting requirements. • Adequate resourcing should be provided to JOs by the State Government during at least the establishment phase. • There are diverse views and considerable confusion about 'delegation' to JO representatives and JOs as entities. This is an area that requires much more work and LGNSW recommend that

	subject of 'delegation' be further workshopped with pilot and non-pilot councils.
Boundaries	<ul style="list-style-type: none"> • Councils should be able to propose JO boundaries. • State Agencies which currently operate with different regions to the proposed JO boundaries need to have a process to engage with the JOs.
County Councils and Local Water Utilities	<ul style="list-style-type: none"> • County Councils should be able to exist in their current form or as part of a JOs regionally defined functions or as JO formed entities. • County Councils should be able to engage across multiple JOs in their area as required.
Local Aboriginal Land Councils	<ul style="list-style-type: none"> • JOs should establish mechanisms for engaging relevant LALCs.
Collaboration and State agency participation	<ul style="list-style-type: none"> • The JO model needs to be clear about State Agency participation requirements and set minimum expectations of collaboration. • JO representatives should continue to be members of the DPC's regional leadership groups.
Associate membership	<ul style="list-style-type: none"> • Allowance for associate membership should be included in the final JO model.
JOs in Sydney	<ul style="list-style-type: none"> • Councils in Sydney should be able to form JOs.

LGNSW would welcome the opportunity to provide further assistance to the OLG with the development of a JO model. We stand available to provide further comment and analysis where appropriate. Please contact Shaun McBride on: Ph: 9242 4072, Email: shaun.mcbride@lgnsw.org.au