

LGNSW Submission to the Office of Local Government on Joint Organisations: Towards a new model for regional collaboration

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1. Introduction

Local Government NSW (LGNSW) is the peak body for councils in NSW, representing NSW general-purpose councils and associate members including special-purpose county councils and the NSW Aboriginal Land Council. In essence, LGNSW is the organisation for all things local government in NSW. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW is pleased to have an opportunity to make a submission to the Office of Local Government (OLG) on *Joint Organisations: Towards a new model for regional collaboration* (proposed model). LGNSW acknowledges the value of the Joint Organisation (JO) pilot process which has resulted in the proposed model.

LGNSW has been contributing to the development of the JO model actively through workshop participation, written submissions and as a member of the Ministerial Advisory Group (MAG). LGNSW has also supported the pilot process by hosting workshops for councils to share and discuss their collaboration experiences¹.

LGNSW notes that the Kathy Jones and Associates (KJA) evaluation of the Pilot program² confirms previous feedback that the participating councils support the JO concept and on the whole, have been satisfied with the Pilot program. The participating councils consider that the Pilot JOs have already made real progress, achieved positive outcomes and councils report that collaboration with state agencies has already improved significantly.

It is particularly pleasing to see that previously unresolved aspects relating to governance and accountability, including voting, decision making and resourcing of JOs, have been revised to reflect the majority of views.

This submission addresses the series of questions raised in the Background Paper about the new JO model. This submission remains in draft form until endorsed by LGNSW Board.

2. General Comments

The proposed JO model appears to faithfully reflect the outcomes and majority views of the councils involved in the five JO pilots, and according to feedback from the previous consultation, most elements of the framework have a level of support.

LGNSW notes that the principles, core functions, optional functions, governance, accountability and proposed entity model remain basically as presented in the *Emerging Directions* paper but importantly, they have been refined, confirmed and clarified in accordance with council feedback.

As the JOs will be implemented across all of non-metropolitan NSW, it is pleasing to see that the proposed model retains flexibility to suit the needs of each JO, rather than being too prescriptive. LGNSW also acknowledges the OLG's intention to develop guidance materials and tools to support councils on various aspects. The NSW Government must ensure sufficient resources are allocated within the OLG to develop these guidance tools within an adequate timeframe and in consultation with the sector.

¹ 'Regional Collaboration & Shared Services: What Works?' (April 2015) and 'Joint Organisations: Emerging Directions for Regional Collaboration' (September 2015).

² KJA, *Joint Organisation Pilot - End Pilot Evaluation Report*, March 2016

Guidance and support will be crucial in areas which do not necessarily have a strong history of effective collaboration and that may struggle to form an effective JO. As the pilot JOs were all based in areas with a strong history of collaboration, the potential issues for councils in the non-Pilot regions may not have been tested through the Pilot JO process. It will be important to give particular consideration to any issues raised in submissions from non-pilot councils in regions which have not traditionally had a strong history of strategic collaboration.

3. Purpose, Principles and Functions

3.1 Integrating regional strategic planning

The Background Paper for the proposed JO model heralds JOs as providing “a new opportunity to establish a shared regional governance and planning framework effectively joining up state and local government priorities”³. The potential for the JO framework to offer better integration of state and local priorities is certainly a positive step forward for more effective regional outcomes. Based on feedback from the Pilot process, JOs show promise in improving State and local government relations. LGNSW has welcomed feedback from the Pilot JOs that NSW Government agencies have been willing participants and are proactively engaging with JOs in their planning activities.

The shared regional governance and planning framework proposed in the Background Paper⁴ is a solid starting point to fundamentally transform the way all spheres of government work together, but success will also depend on changes to the processes and culture within state agencies, a shift away from patronising “direction giving” to co-operation and collaboration with their local government partners. This cannot be achieved without strong leadership, and the proposed Department of Premier and Cabinet Regional Coordinators and Regional Leadership Groups (RLGs) will have a key part to play. However, the Background Paper does not provide any detail about how these roles influence the priority-setting of individual state agencies and it is unclear what authority if any the RLGs will have in the actual establishment of the regional priority work program. This needs to be clarified. For example, what influence would the RLG have in aligning the decision making, expenditure and/or activities of individual agencies’ with the regional priority work program?

LGNSW supports the concept of the proposed over-arching Regional Strategic Planning Agreement “jointly signed by a senior representative of the State Government and the Chair of the JO”⁵. However, there are practical questions not answered in the Background Paper, such as which “senior representative” should sign such an agreement on behalf of the State Government and what delegation, if any, that individual would have to compel separate state agencies to collaborate and cooperate with the JO. Such an agreement could provide an overarching in-principle commitment to recognise local government as a legitimate sphere of government but it would need to also foreshadow the development of other more practical tools such as detailed MOUs for joint state and local initiatives, and other tools similar to those discussed on page 16 of the Background Paper. LGNSW believes these will be particularly important for JOs in areas which do not have a history of strong collaboration, because they may not currently benefit from successful relationships and will be seeking to ensure a consistent level of commitment from state agencies.

³ OLG, *Joint Organisations: Towards a new model for regional collaboration*, June 2016, p.7

⁴ *Ibid.* pp.7-8

⁵ *Ibid.* p.7

3.2 Core principles

LGNSW supports the core principles, and noting that these have wide support and have been refined to clarify some matters raised during the consultation on *Emerging Directions*. In particular, LGNSW agrees with proposals in the Background Paper 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 engaged effectively.
- Joint Organisations should not become a fourth tier of government.
- Joint Organisations 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 that of the current collaborative and regional advocacy arrangements.
- Local government should be the main driver and principal leader of the JO, with each JO owned and controlled by its member councils. This is important to ensure that JOs do not become merely a delivery mechanism for NSW Government determined priorities and plans. They need to be a collaborative and consultative mechanism, not a device for bringing councils into line. Efforts will need to be made to instil this principle within some state agencies.

One concept that is not reflected in the principles currently is that JOs should not be used by other councils or state agencies as a way to usurp or bypass individual council decisions if the matter is more appropriately dealt with locally. LGNSW raised this in its previous submission and suggests that an additional principle could be included along the lines of:

“JOs should leave matters which are best addressed by individual councils to continue to be dealt with at the local level.”

3.3 Core Functions

The three proposed core functions are consistent with those put forward in the *Emerging Directions* paper and have been well-tested through the JO Pilot process. LGNSW supports the proposal to embed the core functions in the Local Government Act. However, legislation alone is not enough. As noted in our submission to the *Emerging Directions* paper, consistency of performance and the ultimate delivery and outcomes of each JO will be shaped by numerous variables, in particular:

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

Protocols, tools and the right culture will be the key to the ultimate success of the JOs in delivering priorities for their region. Comments on each of the core functions are offered below.

Regional strategic planning and priority setting

The principles clearly state the JOs are not to be a fourth tier of government, so LGNSW is pleased to see that the core function of regional strategic planning and priority setting is intended to “support member councils’ planning and help connect local plans with those undertaken by other levels of government”⁶. LGNSW agrees that JOs need to focus on issues of the highest strategic importance for their region. They are not set up nor equipped to

⁶ OLG, *Joint Organisations: Towards a new model for regional collaboration*, June 2016, p.12

undertake more specific functions such as a land use planning or planning assessment role, as has been suggested by some in the development industry⁷.

It should be made absolutely clear that regional strategic planning in the JO context is not restricted to regional land use planning. It also includes regional strategic planning for a whole range of social, economic and environmental priorities. For example: regional strategic planning for transport, health, tourism, economic development and biodiversity. JOs are not specifically a land use planning authority like the Greater Sydney Commission.

The Pilot process has been beneficial to initial trialling of some strategic planning tools and these and others should be further developed to be able to support JOs to carry out this core function effectively. LGNSW is pleased to see that the strategic planning and regional priorities will be integrated with existing council IP&R processes and that documentation requirements will be kept to a minimum. However, the JOs alone will not be responsible for delivering these regional priorities, and the other two core functions will be critical to translating these priorities into real delivery of outcomes.

Intergovernmental collaboration

As mentioned in section 3.1 of this submission, JOs provide the opportunity to not only change the way councils collaborate regionally, but to reform the way the state government interacts with local government. It will be critical that benefits flow to local government and communities, not just to the state government. Minimum participation guidelines and expectations should be developed. The protocols and tools such as those suggested in the Background Paper⁸ are a good starting point to support effective and consistent engagement. Adequate resources must be assigned by the NSW Government to develop these guidance materials.

Regional leadership and advocacy

Some councils have indicated that it may be a challenge to have all stakeholders working together on a regional scale as there may be potentially conflicting advocacy priorities at the local and regional level. To this end, 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 must be afforded to all new JOs when they are implemented.

3.4 Regionally defined (or optional) functions

LGNSW endorses the proposal for the JO model to allow for optional or regionally defined functions (RDFs). In some areas JOs may replace current regional collaboration arrangements such as regional organisations of councils (ROCs) and alliances, so it is important that those functions can be transferred to JOs should the member councils agree. LGNSW is also pleased to see that associate membership of JOs will be available, as this will provide flexibility for any optional functions to operate beyond the boundaries of the JO.

4. 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 was favoured by the pilot councils. As mentioned above, LGNSW supports the legislation enabling associate

⁷ Urban Taskforce Australia, Submission to Joint Organisations - Emerging Directions Paper, 16 October 2015

⁸ OLG, *Joint Organisations: Towards a new model for regional collaboration*, June 2016, p.16

memberships, advisory groups and/or joint establishment of JO-formed entities, which will accommodate important cross-border relationships and partnerships. Associate membership will be also appropriate for councils on the border of two regions or for County Councils and other local government entities which overlap JO boundaries.

LGNSW also acknowledges the objective to minimise red tape and documentation/reporting requirements. Over time, this may need to be monitored to ensure that onerous or unnecessary reporting or documentation requirements are not allowed to creep in over time.

5. Governance and Accountability

On matters of governance and accountability, including voting, decision making and resourcing of JOs, LGNSW has generally held the view to date that these are best determined within individual JOs, and prescription should be kept to a minimum. While the core framework model proposed in the Background Paper will be beneficial because it provides for a degree of consistency across all JOs and has been derived from the JO pilot process, there may need to be future amendments based on the experience of the JO roll out to all non-metropolitan councils.

LGNSW agrees that the Mayor is the appropriate representative on the JO, with the Deputy Mayor or another councillor being appointed as an alternative if circumstances are justified. LGNSW also acknowledges the flexibility that has been built in by allowing for proxy or online voting where attendance is not possible.

During the previous rounds of consultation on the JO model, councils expressed mixed views about sitting fees for council representatives on JOs, but the proposal that there is to be no sitting fee appears to have been based on a majority view, and is therefore not opposed by LGNSW.

As stated previously in this submission, LGNSW supports the intention to minimise planning and reporting requirements and to align the planning process with integrated planning and reporting (IP&R). It will be important when developing planning and reporting guidelines not to introduce 'red tape' in the form of superfluous reporting requirements, which could place unnecessary burdens on already tight resources within each JO. With regard to financial reporting, 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. However, guidelines for reporting requirements should make clear that JOs are primarily accountable to their member councils; they should not be accountable to state agencies or other stakeholders.

It is essential that the preparation of all guidance materials by the OLG, referred to throughout the Background Paper, involves extensive consultation with local government.

6. Resourcing

LGNSW welcomes the NSW Government's commitment to provide seed funding of \$300,000 to help with establishment costs of each JO. However, there needs to be an assurance that this or any other state funding will not be used to direct the priorities of the JO.

Beyond this initial seed funding, a number of JOs will seek financial independence by being self-funding. LGNSW endorses the proposal for councils to have access to a range of funding options including negotiating their own formula for member contributions. However, some JOs may require additional financial assistance (for example, where their member councils have financial sustainability issues). To safeguard the long term success of the JO program state-wide, LGNSW recommends that the NSW Government makes provision for future additional funding where required.

LGNSW and councils have always maintained that JOs are best placed to decide on the level and skills of their JO Executive Officers (EOs). It is therefore pleasing to see that government has responded to feedback regarding the level of appointment of the EO, and has provided for this to be kept flexible by allowing JOs to determine and set resourcing requirements beyond a 'core standard' contract. LGNSW also agrees with the provision that JO staff will be employed under the Local Government State Award.

7. Corporations and other JO-formed entities

The proposal to enable JOs to form corporations or other entities to carry out optional functions is supported by LGNSW. JO-formed entities should have flexibility to adopt the regional service delivery models appropriate to their circumstances and needs and reduced red tape, without unnecessary prescription.

There are a range of models performing various functions that can be used for regional service delivery, many of which are currently operated by councils, groups of councils and ROCs. These models include corporate entities such as companies limited by guarantee, entities based on Section 355 committees, in-house business units, partnerships and loose cooperative arrangements.

It will be important to ensure that the introduction of JOs and JO-formed entities should not preclude the ongoing operation or creation of council formed entities and in the future, councils should have the choice to determine whether these entities operate under the umbrella of the JO or independently.

While the emerging direction for corporations and JO-formed entities set out in the Background Paper⁹ is a good starting point, LGNSW agrees that further consultation will be required to firm up a workable framework. Input from councils will be critical. If this framework is delayed until sometime after the core JO model is established, it will be important not to lose momentum in fleshing out the details.

8. Other Considerations

8.1 Boundaries

In the same way that councils looking to form the JO pilots were invited to submit their proposed JO groupings, councils in other regions in the state should also have the opportunity to submit their preferred JO boundaries. Clearly, it is likely there will be some changes required as a result of council amalgamations.

⁹ OLG, *Joint Organisations: Towards a new model for regional collaboration*, June 2016, Table 2, p.34

8.2 Regional service delivery and county councils

As stated in our submission to the *Emerging Directions* paper, existing County Councils and Local Water Utilities (LWUs) must be able to continue to serve the needs of their local communities. County Councils may be able to be operate under the JO model of regionally defined functions if desired, or alternately, to continue running in their current form. Also, as JO boundaries will not always match with the current boundaries 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.

8.3 Regulatory functions under other legislation

The preliminary discussion in the Background Paper about JOs undertaking regulatory functions on behalf of member councils¹⁰ raises a key question around delegations. The issue of delegation remains unclear, and needs to be better understood before new opportunities are opened up for JOs to take on other regulatory functions. JOs should not be yet more entities for government costs and/or responsibilities to be shifted to.

There is 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 on JOs should have the delegation of their councils to speak and vote on their behalf. However, there is a wide range of opinions and considerable confusion about 'delegation' to JO representatives and JOs as entities. As stated in our previous submission, that this is an area that requires more work and that the subject of 'delegation' should be further workshopped with pilot and non-pilot councils.

8.4 Liability and oversight

Liability and risk matters are a critical aspect of JO operations which will require appropriate legal frameworks to protect individual JO Board members, staff and JO-formed entities. LGNSW welcomes the inclusion of this aspect in the Background Paper, though more detail is necessary.

9. Further Points

9.1 Local Aboriginal Land Councils

Local Aboriginal Land Councils (LALCs) are a significant landholder in regional NSW and therefore must be recognised as key stakeholders in the JO processes and activities around its three core functions. The geographic area of the LALCs will not necessarily align with the proposed JO boundaries and therefore LALCs may find themselves needing to engage with more than one JO. LGNSW recommends that appropriate tools are developed to assist engagement between JOs and LALCs.

¹⁰ OLG, *Joint Organisations: Towards a new model for regional collaboration*, June 2016, p.37

9.2 Joint Organisations in Sydney

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.

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.

10. Conclusion and Recommendations

LGNSW welcomes the model and proposals contained in *Joint Organisations: Towards a new model for regional collaboration*. These are consistent with the overall approach put forward in the *Emerging Directions* paper in 2015. The model put forward in the Background Paper is also broadly consistent with recommendations contained in our previous submission. We acknowledge what appears to be a genuine effort by the Government to consult widely and to incorporate the outcomes of this consultation process in the development of the JO model.

The relative flexibility of the framework is one of its key features. This has the advantage of allowing JOs to make key decisions to suit the needs of their particular member councils, while at the same time providing a degree of consistency in approach and structure across all JOs. The underlying commitment to minimising red tape, is also welcomed, however, this will need to be monitored to ensure that additional red tape requirements do not creep in over time.

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. Done well, JOs offer a positive collaborative model that will assist councils to achieve strategic capacity, improve relations between state and local government and increase planning and advocacy for issues which cross council boundaries.

The Background Paper proposes that the OLG will develop guidance materials and tools to support councils on a wide range of aspects. LGNSW would like a commitment from the Government that sufficient resources are allocated within the OLG to develop these tools within an adequate timeframe. It is also essential that local government is consulted during preparation of all guidance materials.

LGNSW would welcome the opportunity to provide further assistance to the OLG with the development of a JO model. We are available to provide further comment and analysis where appropriate. Please contact Shaun McBride on 02 9242 4072 or shaun.mcbride@lgnsw.org.au.