

Submission to the Office of Local Government on the Development of a Regulation for Councillor Induction and Professional Development

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Introduction

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils, associate members including special-purpose county councils, and the NSW Aboriginal Land Council. 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 thanks the Office of Local Government (OLG) for the opportunity to provide a submission on the development of regulations about induction and ongoing professional development for mayors and councillors. The extension of time to make a submission is also appreciated.

Purpose

This submission responds to consultation initiated through OLG's Circular No.16-52 regarding induction and ongoing professional development for mayors and councillors.

Feedback was requested on:

- the proposals outlined in the circular for how the regulations might work;
- whether there are any impediments impacting councils' capacity to comply with the proposed regulations; and
- what support would be required for councils to overcome any such impediments.

Background

Amendments made in 2016 to the *Local Government Act 1993* (the Act) included a new role for councillors, being "*to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor*". A regulation-making power was also created for induction and other professional development for mayors and councillors.

OLG is now preparing regulations and has put forward a number of proposals about what the regulations might contain.

LGNSW has consulted with the sector about the proposals and their implementation in preparing this submission, and included the feedback provided. Also attached to the submission is a submission from Penrith City Council, for OLG consideration.

Importance of Professional Development

Councillors and mayors represent the communities in which they live, and are democratically drawn from a wide range of backgrounds. While in office they are required to deal with highly complex issues, within organisations that are increasingly large, and in some cases multi-million dollar enterprises. Councillors and mayors are also asked to make critical decisions on matters such as infrastructure projects, budgets and important land use planning issues.

Few people enter the role with all the required skills, knowledge and competencies.

Induction to the role, on-the-job training, and ongoing professional development are therefore important to supplement the skills, knowledge and experience that councillors and mayors bring with them. It is also important for mayors and councillors because:

- It enhances their credibility and reputation
- It gives them the confidence and ability to fulfil their roles
- It gives them the knowledge to comply with legislation
- It helps them to find new solutions to local problems

- It prevents issues arising which might otherwise damage the reputation of the council and the sector
- If it is done together then it helps to build a team approach
- It gives them a greater understanding of the bigger picture

Despite the obvious benefits of induction and professional development, concern has been expressed from across the sector that generally the councillors who undertake courses and improve their knowledge are those who are already committed and open to self-improvement. There is a need to encourage and facilitate training for those who do not have these skills or who are less keen to participate.

PD-in-a-Box and Capability Framework

LGNSW has two major projects underway that will support the local government community in determining what skills are required by councillors and mayors to perform their roles, assessing individuals, and preparing professional development programs. These are the capability framework and PD-in-a-Box.

The **capability framework** is a broad project applicable to staff and elected officials that will provide a foundation for councillor professional development.

It will outline a set of core knowledge, skills and abilities that people in different roles in local government need to be effective in their position. The capabilities will vary at different levels of responsibility and will be expressed as behaviours - the things colleagues/co-workers can see the person doing and saying as they go about their responsibilities.

LGNSW is aiming to have the capability framework completed in 2017. When finished, it will (among other things):

- Provide a common framework based on local government aims and values
- Provide elected members with practical information about expectations for their role and a framework for their professional development

Professional-Development-in-a-Box (**PD-in-a-Box**) will tie in with and support the capability framework, aimed specifically at councillor professional development. It will be a practical package that will:

- provide for training needs self-assessment via a range of methodologies including interview support (and potentially 360 degree feedback)
- match training opportunities with identified need, as well as allowing for alternative program content
- enable results to be downloaded by individuals on completion, as well as being available in aggregated format for councils
- create a continuing professional development (CPD) points system to support development planning, tracking and reporting

Overview of LGNSW Position

In principle, LGNSW supports councillors and mayors undertaking induction and ongoing professional development. LGNSW does not support the training being mandatory, however, and has also identified a number of practical issues that need to be addressed through the regulation.

While this submission should be considered in detail, key issues identified by the sector include:

- Induction and professional development should not be made mandatory, and to do so would be *ultra vires*
- Councils should tailor programs to their circumstances, needs and budget, and to the needs of councillors and mayors
- The purpose of induction and professional development should be made clear in the regulation
- The needs assessment and program development should be supported or facilitated by an independent person
- Councils should be able to access induction and training offered or developed by various providers
- Reporting about training opportunities offered and taken up must avoid naming and shaming, and should operate within a framework that minimises the number of times an exemption from reporting would need to be sought
- Pre-election materials should contain information about induction, including the proposed schedule of dates to maximise candidate availability
- Cost and access to training are real issues for many councils. OLG should provide direct financial assistance for professional development

Conduct of Consultation

LGNSW and the sector were frustrated and disappointed with the timing of the consultation.

The OLG Circular was released on Thursday 22 December, which was the day before the Christmas break commenced, and comments were due by Friday 3 February. Many councils struggled to respond due to the short time period for consideration, the number of staff on leave, and the fact that the majority of councils had not met for the first time in the new year before the submission was due.

The sector was also responding to over 20 significant policy and legislative proposals from across Government in parallel, as well as dealing with the broader reform occurring through council amalgamations and the creation of joint organisations.

This made it extremely difficult for councils to devote the time required to develop their responses, and for their submissions to be properly considered by the governing body.

LGNSW strongly requests that consultation not occur over the holiday period in future, and that OLG release the proposed Regulations for sector-wide consultation once they are drafted. The proposed requirements have the potential to significantly impact many councils, and they deserve a proper opportunity to make a considered response.

Response to Proposals for Regulations

Induction Program Development

Proposal 1: Councils are to develop an induction program for newly elected and returning councillors and a specialised supplementary program for the Mayor to assist them in the performance of their functions to be delivered within six months of their election.

LGNSW Response:

LGNSW **supports** this proposal.

Some concern was expressed from within the sector about the ability of councils to deliver the induction program within six months. However, suggestions from elsewhere in the sector identified ways to ensure delivery, including publishing the dates required for induction prior to the election (to maximise candidate availability), and obtaining assistance through LGNSW.

Recommendation 1: That councils are required to provide an induction program as described, and that the period for delivery of the induction program remain at six months as proposed. The scope of the induction program should be tailored for each council and remain at the discretion of each council (ie should not be prescribed in the regulation).

Professional Development Program

Proposal 2: Each year, councils are to develop an ongoing professional development program for the Mayor and each Councillor.

LGNSW Response:

LGNSW **supports** this proposal.

Most councils already have professional development programs in place for staff, and it is expected that programs could be prepared for councillors using a similar approach. There are some significant practical issues in determining the content of the plans, however, which are outlined in the next section.

It is critical that everyone involved is aware of the purpose of the development plans. For example, is the purpose of the plans to bring all councillors up to the same level (probably unrealistic), or to ensure that all councillors have their knowledge and skills developed progressively?

It is suggested that the purpose should be to ensure, over time, that all councillors are able to fulfil the role statement contained in section 232 of the Act, as well as collectively meeting the role statements in section 223 (for the governing body) and section 226 (in the case of the mayor).

Recommendation 2: That councils are required to develop an ongoing professional development program for mayors and councillors. The purpose of the professional development plans should be made clear in the regulation by explicitly referencing the role of the councillor (or section 232), and the council's strategic directions under IP&R.

Determination of Content and Needs Assessment

Proposal 3: Councils are to determine the content of the induction and ongoing professional development programs in consultation with the Mayor and each Councillor and with the governing body as a whole.

Proposal 4: In determining the content of induction and ongoing professional development programs, councils are to have regard to the specific needs of the Mayor, each individual Councillor and the governing body as a whole.

LGNSW Response:

LGNSW **supports** councils determining the content of the induction and professional development programs for themselves; the content should not be prescribed.

Tailoring the professional development program to the individual needs of mayors and councillors, and to the circumstances of the council, is fundamental to the success of the program. The program should also allow for concurrent purposes of training. For example, if a councillor is undertaking training for other purposes (such as another board, or their workplace) then this should be able to be recognised as forming part of the councillor's plan (subject to it being relevant to their role as a councillor and needs assessment, and of an appropriate standard or equivalence).

An annual review of development needs and the future training plan is appropriate and supported.

The induction program would logically be developed by council staff.

However, the OLG proposal for how the professional development programs would be developed is **problematic from a practical perspective**. It is unclear exactly who it is expected would undertake the needs assessment and determine the programs. The circular implies that the staff of the council would do so, as it mentions consultation with the mayor, each councillor and the governing body as a whole. However it seems unlikely that this was the intention. Yet how would it actually work?

Is it expected that the staff would have to interview the mayor and councillors on what could be a very sensitive issue? It would seem inappropriate for staff to be placed in the position of having to assess the councillors and mayor.

Is it expected that councillors and mayors would undertake a self-assessment? Some might be resistant to undertaking training or believe they have nothing to learn.

Is it expected that the governing body would make the decision? Would it be possible for the governing body to change the training requirements for individual councillors for political purposes? Will there be a conflict resolution mechanism in place?

In all the scenarios above there is either a potential conflict of interest between the parties or an inappropriate imbalance of power.

LGNSW proposes an alternative process for undertaking the needs assessment and preparing the professional development plans. LGNSW proposes to provide supports to council through the capability framework and PD-in-a-Box, in a way that will enable:

- training needs self-assessment undertaken via a range of methodologies including interview support (and potentially 360 degree feedback)

- an independent facilitator to assist councillors with their needs assessment
- match training opportunities with identified need, as well as allowing for alternative program content
- results that can be downloaded by individuals on completion, as well as being available in aggregated format for councils
- a continuing professional development (CPD) points system to support development planning, tracking and reporting

Use of the capability framework and PD-in-a-Box will also provide consistency between councils and a shared understanding across the sector.

Mayors, with the support of the general manager, should take a lead role in ensuring that councillors embrace the objectives of the program, and in balancing individual councillor needs against the needs of the governing body as a whole and the capacity of the council to fund desired or required training.

A number of councils suggested that allowance should be made for recognition of prior learning (RPL). Prior learning will be captured through the needs assessment that will inform the development program. The assessment will identify the existing skills, knowledge and experience of the councillor or mayor, and identify any gaps. It is possible that professional development for extremely experienced councillors might be limited to updates on legislative changes. This assessment will also assist the council in determining where best to put their resources in the overall professional development plan for the governing body.

Again, each council's circumstances, needs and financial capacity will be different.

Recommendation 3: That OLG articulate a framework in the regulation that facilitates the type of process suggested by LGNSW above for conducting the individual needs assessment and developing the content of development programs.

Participation in Training

Proposal 5: Councillors and Mayors must participate in the induction and ongoing professional development training offered to them.

LGNSW Response:

LGNSW **opposes** the induction and professional development requirements being made mandatory for councillors.

LGNSW believes that requiring mandatory professional development through the Regulation would be *ultra vires*, because to do so conflicts with and is not supported by s232(g) of the Act. This section only makes reference to councillors making "all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor". There is no reason why councillors could not attend seminars and receive training other than that developed by the council in order to satisfy the requirement of s232(1)(g) of the Act.

Section 748 also provides that the Governor may make regulations "*not inconsistent with this Act*". LGNSW believes that the development of "*Induction courses and other professional development for mayors and councillors*" by councils can be mandated by regulation (because of the head of power provided in Schedule 6 of the Act), but attendance at those courses

cannot be mandated because the head of power does not extend to attendance. To mandate attendance would be inconsistent with s232(1)(g), and therefore a breach of s748.

Mandating professional development would also be simply inappropriate from a regulatory impact assessment perspective, as proper consultation has not been undertaken with the sector. The explanatory paper accompanying the phase 1 amendments to the Act implied that professional development would not be mandatory, and as mentioned above, the current consultation on the regulation was carried out at a time of year and over such a short period as to be tokenistic. The local government sector has therefore not had the opportunity to properly consider the question of whether training should be mandatory, and what implications that might have for their councils.

Genuine engagement with professional development cannot be forced. The State Government mandating attendance could have a perverse outcome, as opposed to encouraging and offering incentives for participation.

The final reason for providing professional development on a voluntary basis is that while some councils have indicated support for mandatory training, there is no doubt that many councils will have significant challenges in implementing ongoing professional development due to factors such as financial constraints, remoteness, distance and availability of trainers.

Recommendation 4: That the regulation not require that induction and professional development is mandatory.

Annual Reporting

Proposal 6: Councils are to annually report details of the content of the induction and ongoing professional development training offered to the Mayor and each Councillor and whether or not they participated in it to a council meeting and publish these details in the council's annual report and on its website unless exempted by the Chief Executive of the Office of Local Government.

LGNSW Response:

LGNSW **supports** the annual reporting of professional development activity in principle, but **opposes** reporting to a fine level of detail, **opposes** "naming and shaming" and **opposes** reporting what was offered compared to what was attended.

Reporting to a fine level of detail is opposed for two reasons.

Firstly, there will be circumstances where the particular course undertaken by a councillor is of a sensitive nature and it would be inappropriate for the details to be made public. LGNSW acknowledges the exemption from reporting provision proposed by OLG but considers this to be a time-consuming and unwieldy mechanism for dealing with this issue (as further detailed in the next section).

Secondly, providing details of the content of each course would make the annual report overly large, particularly if professional development for each individual councillor is different.

For these two reasons it is proposed that a simple table could achieve the desired result in terms of providing transparency and accountability to the community, without embarrassing councillors or invading their privacy.

For example, the table could outline the category of training provided, expressed in terms of the relevant capability identified in the capability framework and/or PD-in-a-Box.

“Naming and shaming”, which would partly be achieved by reporting on what was offered versus what was attended by individual councillors, is opposed because the approach is draconian. The tone of the OLG circular is intrusive and patronising, particularly when there may be councillors who cannot attend training because of genuine resourcing, literacy or access issues. LGNSW is unaware of any workplace or group of elected representatives (including boards and other politicians) where an individual’s development needs are made public, let alone the details of courses they have been offered and undertaken. The approach is unnecessarily punitive and appears designed to embarrass councillors and mayors. As indicated above, it would be far more constructive to publish aggregated information about the council’s development needs as a whole, along with broad categories of training undertaken by individual councillors. That would enable communities to see how the overall capacity of the council was being improved over time.

Recommendation 5: That the requirement for annual reporting provide for aggregated reporting of the council development needs as a whole, and summary reporting of individual councillors’ training undertaken, categorised according to the capability framework.

Exemptions from Reporting

Proposal 7: The Chief Executive of the Office of Local Government may, on an application by a council, exempt the council from the requirement to publish details of training provided to an individual councillor where he or she is satisfied that there are exceptional circumstances.

LGNSW Response:

LGNSW **supports** this proposal, but as indicated above, considers that the reporting framework should be established in such a way that there would rarely be a need for this provision to be used.

It is suggested that length of service should not be a factor in granting an exemption from reporting.

Recommendation 6: That a mechanism be included in the regulation to enable an exemption to be granted from the reporting requirement, but that the reporting framework be established in such a way that the exemption power would only need to be used in truly exceptional circumstances.

Impediments to Compliance and Support Required

As well as addressing the compliance and support-related issues requested by OLG, this section addresses issues that could be impediments to the effectiveness of the professional development program.

Access to Training

Access to training is a very real issue for rural and regional councils.

It is not feasible for rural and regional councils to send all councillors away to multiple training courses, and the proposed individual nature of the professional development plans means that training delivered in-house to a council may not be possible either.

Attendance at such courses is also not necessarily feasible for councillors who work full time, or who have carer's responsibilities.

LGNSW supports diversity within the local government sector, and diversity will not increase if professional development is only offered or required to be undertaken through full day courses at specific locations.

Councils from across the sector have requested that more training be available online, and that alternative mechanisms for professional development be identified. LGNSW has included a range of professional development options in PD-in-a-Box, including identified readings, briefings by council staff, and peer support and mentor programs.

Councils have also raised the difficulty of coordinating the attendance of all councillors at induction and any subsequent professional development courses. This is particularly so in the early months post-election when candidates may have pre-existing forward commitments. To address this it is suggested that the pre-election candidate briefings and materials should highlight the need to be available to attend induction, should the candidate be elected. The proposed schedule should be published at the same time.

Recommendation 7: That the pre-election materials should include information about and a published schedule of the induction dates for successful candidates, and that a focus be given to the development of alternative and online training methods.

Cost

Numerous councils raised the issue of the cost of professional development. It is a potential issue for all councils, but of more concern for regional and rural councils that face potential travel and accommodation costs, and most immediate for small rural councils with a limited rate base.

One small rural and remote council indicated to LGNSW that the entire training budget for the council (including staff) was only \$5,000. The feasibility of providing even a basic professional development program to the councillors from that council is very limited.

The cost of professional development will be potentially magnified by the tailored nature of the development, meaning that economies of scale cannot necessarily be achieved by training all councillors on the same topic at once.

It is also important to recognise the context within which the induction and professional development programs are occurring; the NSW Government has placed significant pressure

on councils to reduce their costs and demonstrate better financial management. While professional development may assist councils in achieving this in the longer term, it will create an immediate issue for council budgets.

These issues could be partly addressed by the assistance provided by LGNSW through the capability framework and PD-in-a-Box, but this will only go some way to fixing the problem, and it is still likely that many councils will need financial assistance.

Recommendation 8: That OLG should create a fund to provide financial assistance for councils to fund professional development.

It is estimated that \$300,000 per year would be the minimum amount required, and it is expected that without this type of assistance, councils will be unable to comply with the legislation, even in spirit.

Conclusion and Next Steps

LGNSW supports induction and professional development for mayors and councillors, and believes that programs of this type have the capacity to enhance the sector and deliver better outcomes for communities.

However, there are some real practical issues in the process of determining what should be delivered and then funding it. LGNSW encourages OLG to consider and act upon the recommendations made in this submission.

LGNSW will continue to progress the capability framework and PD-in-a-Box, as well as supporting the sector through learning opportunities. LGNSW reiterates that it would welcome the opportunity to work in collaboration with OLG to progress the induction and professional development regulation and any supporting materials.

In finalising the regulation it is critical that the sector has the opportunity to review what is proposed in a considered way and make a proper response. LGNSW therefore strongly requests that OLG release an exposure draft of the regulation before finalising it, as well as confirming the provision of financial assistance so that councils can respond with all relevant information at hand.

Thank you for the opportunity to make a submission. LGNSW looks forward to working together in the future.