

Submission to review the inquiry into the ability of local government to fund infrastructure and services



**CENTRAL NSW
JOINT ORGANISATION**

- Bathurst
- Blayney
- Cabonne
- Cowra
- Forbes
- Lachlan
- Lithgow
- Oberon
- Orange
- Parkes
- Weddin

[Ability of local governments to fund infrastructure and services \(nsw.gov.au\)](https://www.nsw.gov.au)

NSW Legislative Council's Standing Committee on State Development

To whom it may concern,

Re: Submission to review the inquiry into the ability of local government to fund infrastructure and services

Joint Organisations (JOs) were proclaimed in May 2018 under the NSW Local Government Act 1993. The Central NSW Joint Organisation (CNSWJO) represents over 177,000 people covering an area of more than 51,000sq kms comprising the eleven Local Government Areas of Bathurst, Blayney, Cabonne, Cowra, Forbes, Lachlan, Lithgow, Oberon, Orange, Parkes and Weddin.

Tasked with intergovernmental cooperation, leadership and prioritisation, JOs have consulted with their stakeholders to identify key strategic regional priorities. The CNSWJO Strategic Plan can be found here: [Strategic Plan & Regional Priorities - Central Joint Organisation \(nsw.gov.au\)](https://www.nsw.gov.au)

Thank you for the opportunity to provide feedback into a revision of the inquiry into the ability of local government to fund infrastructure and services from the NSW Legislative Council's Standing Committee on State Development. This response has been informed by policy developed in region.

The CNSWJO also previously provided a [submission to review the council financial model in NSW](#) Terms of Reference.

It is understood this process supersedes that by IPART and that the Terms of Reference are as follows. It is CNSWJO policy to request input into terms of Reference and notes that this did not occur on this occasion.

- (a) the level of income councils require to adequately meet the needs of their communities*
- (b) examine if past rate pegs have matched increases in costs borne by local governments*
- (c) current levels of service delivery and financial sustainability in local government, including the impact of cost shifting on service delivery and financial sustainability, and whether this has changed over time*
- (d) assess the social and economic impacts of the rate peg in New South Wales for ratepayers, councils, and council staff over the last 20 years and compare with other jurisdictions*
- (e) compare the rate peg as it currently exists to alternative approaches with regards to the outcomes for ratepayers, councils, and council staff*
- (f) review the operation of the special rate variation process and its effectiveness in providing the level of income Councils require to adequately meet the needs of their communities*
- (g) any other related matters.*

In the first instance, it is suggested that there be an agreed definition of financial sustainability for councils. An example of a potential definition is;

“A local government will be financially sustainable over the long term when it is able to generate sufficient funds to provide the levels of service and infrastructure agreed with its community.”¹

The level of income councils require to adequately meet the needs of their communities

Firstly, every community in this region has differing needs as identified in their Community Strategic Plans. The more remote the Council the greater likelihood they are offering services as the “provider of last resort.” In this region services include airports, water and sewer, childcare, housing and aged services. Added to this in the substantial and variable impacts of climate change on service level needs through drought and severe weather events.

Further, Councils need income to provide various services as regulated under various pieces of legislation that have corollary costs imposed on them over which they have no control. Local Government NSW has documented this growing challenge and its costs.² On top of this is the need to reserve or plan for income for those activities that the State may impose on Local Government, recent examples are Disaster Adaptation Plans that may be called for under the Reconstruction Act and the mandatory Audit Risk and Improvement Framework under the Local Government Act.

A hot topic in this region is the costs of audits where these have increased substantially since being imposed by the Auditor General. Interestingly, given examples such as Central Coast, the extent to which this added level of scrutiny with its corollary costs and time blow-outs is making much of a difference is questionable.

Case Study – Modern Slavery Legislation – how an under resourced State entity drives costs up for Local Government and their suppliers

Everyone supports the idea of fighting modern slavery through better supply chains. How should this be implemented?

As it stands, councils must manage the modern slavery risks of their supply chains including international businesses. Every council, every supply chain. Councils must report their compliance in a Formal Annual Report to the Auditor General, annually online with the Anti-Slavery Commission and as from 1 July, 2024 Online Reporting to the Anti-Slavery Commission for all contracts arising from any high risk procurement with a value of \$150K within 45 days from the date of contract.

Suppliers deemed high risk must be surveyed. Surveys alone are not enough, councils must also demonstrate due diligence and show what they are doing to reduce the risks including following up non respondents and offering them support in lowering their risks. All suppliers must be informed of their ratings. The total list of suppliers for Bathurst Regional Council is approximately 4,000, with over 100 currently rated as high risk. The estimate for the CNSWJO region’s members is 14,600, with a lot of overlap.

Meanwhile the advice on the Federal Attorney General’s website is that though they have a Register for Modern Slavery they do not check the veracity of the advice therein. Checking become councils’ job. The Commissioner suggests that this could include contacting business directly – hopefully councils have staff fluent in the languages of those countries viewed as high risk.

To be compliant there are 14 questions on Modern Slavery in every procurement activity the CNSWJO undertakes. Every supplier responding to Requests for Quotation and Tender must respond to these questions. The Commissioner’s guidance is suggesting these questions should be weighted between 5-10%. This competes with other criteria like safety, capability, quality, environmental, pricing and supporting local providers.

CNSWJO is undertaking this work collaboratively to try and reduce duplication both for suppliers and councils and can report that suppliers are furious.

Figure 1 Case Study: Modern Slavery Legislation

¹ TCORP Financial Sustainability of the New South Wales Local Government Sector Findings, Recommendations & Analysis” 2013 found [Eurobodalla Shire Council - Attachment 4 - TCorp Financial Assessment.PDF \(nsw.gov.au\)](#)

² [Cost Shifting Summary 2018.pdf \(lgnsw.org.au\)](#)

Councils also have to resource their side of State regulation and assurance. If the State is not adequately resourced to regulate to the extent its bureaucrats aspire to, then it sets up resource intensive processes for councils to demonstrate their compliance. Water management frameworks are a case in point. Another is Modern Slavery Legislation. Please see the Case Study on previous page.

Not appreciating that Local Government is regulated under the Local Government Act, agencies such as the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) seek to double regulate under their frameworks such as its Regulatory and Assurance Framework which duplicates the mandatory Integrated Planning and Reporting Framework (IP&R) under the Local Government Act. If NSW Government agencies supported the existing Local Government regulatory framework seeking to embed their aspirations into IP&R they will both get better outcomes and save everyone time, confusion, effort and money.

Then there is the cost of administering the state and federal government funding frameworks. Take for example disaster declarations double auditing where both the NSW and Australian Governments have separate concurrent audit processes councils must respond to while there is still no common sense on betterment.

Then there is the sovereign risk of the NSW government withdrawing funding streams such as Resources for Regions which, when withdrawn, add to the level of income Councils must derive from elsewhere if existing service levels are to remain. This region is extremely concerned about the extent to which our communities that experience the shocks of massive industrial change such as decarbonisation, see Figure 2 which from a CNSWJO response to the review of the Energy Framework by what was the Department of Planning Industry and Environment at the time. As it stands, renewable energy generators are enjoying substantial income streams as part of its incentivisation while impacted communities are not being compensated. This is simply not fair and results in communities and their council representatives having to advocate with the resourcing impacts of being in a polity of growing anger.

Finally, Councils resource an inordinate amount of time on time wasting processes generated by the NSW government. Whether it be responding to the IPART Terms of Reference for Council sustainability then the process ceases, over five years of inputting into draft regional transport plans which are then dumped or five years on regional water strategies. Exploring the example of the transport plan for this region. This plan had several repetitive approaches as staff turned over at Transport for (TfNSW) all calling for workshops and engagement with Councils. In its first iteration, the transport plan for the region undertook

Case Study: Compensation for communities impacted by the rewiring of NSW

At the time of writing the NSW Government is giving consideration to a revised energy policy framework. Included in this framework is guidance for voluntary compensation for affected communities. This includes a \$1050 per megawatt hour voluntary benefit sharing arrangement.

Assuming

- A 40% capacity factor for wind renewable energy generation
- The current price for Large Generation Certificate (LGC) is \$46; and
- All LGCs will be realised and they are realised annually as is the case at present.

\$1050 pa equates to just 0.7% of the annual income from only LGCs. The generator then sells its electricity at profit on top of that.

As it stands, renewable energy generation is being significantly incentivised and impacted communities are not being compensated. This is simply not fair.

Figure 2 Case Study: Compensating Communities for the Rewiring of NSW – part of a response to the review of the Energy Framework being undertaken by the NSW Government.

substantial cross agency engagement see for example Figure 3 which had senior bureaucrats from agencies across the region working with senior TfNSW bureaucrats in a two day “Benefits Realisation” workshop. This approach to the transport plan was superseded by version two and this work was lost. The region is about to embark on version three as version two was axed with the change of government. Members hope to have a Minister sign off on a quality plan sometime in the next twelve months.

Another salient example is the extent to which these plans developed at the NSW Government level are ever implemented as well as their accountability. It is the CNSWJO Board’s view that for plans for a region, such as transport, land use planning and water should have place-based implementation plans with associated governance and transparent accountability frameworks. **These do not exist for any agency that CNSWJO is aware of.** This means that all the resourcing applied by both the State and community ultimately informs internal facing documents or becomes shelfware.

All of the above suggests that Councils and communities need to be in control of their own financial destiny as much as possible to be able to weather the constant economic shocks of their business-as-usual operating environment.

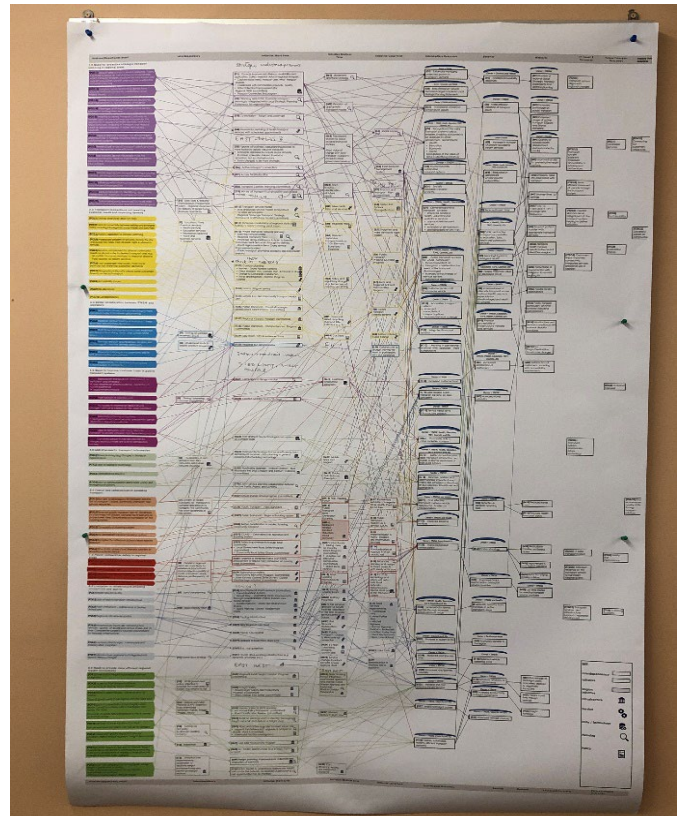


Figure 3 Table cloth sized output of a 2 day workshop of key senior staff in TfNSW and other agencies. The font is 9pt. This approach was ultimately superseded. The work was lost.

Examine if past rate pegs have matched increases in costs borne by local governments

It will be important in this examination to go back in time by at least a decade and include all of the imposts on local government in regional areas. This includes but is not limited to:

- Costs of feedstocks to road building including quarrying, bitumen and fuel
- the Emergency Service Levy
- Costs of audit risk and improvement including the Auditor General
- Costs of electricity including the AER determination for street lighting
- The Local Government Award
- The costs of local government elections
- A review of the costs imposed by the NSW government through cost shifting
- The costs of COVID-19
- The costs of disasters

It is understood that LGNSW has significant back data regarding much of the above.³

³ An example - [Cost Shifting Summary 2018.pdf \(lgnsw.org.au\)](https://www.lgnsw.org.au/cost-shifting-summary-2018)

It is understood that Local Government Solutions [Home - LGSolutions](#) has been tracking council financial sustainability for some years and it would be worth approaching them for their advice where it is clear that as an industry local government in NSW has been on a downward trending financial position.

Current levels of service delivery and financial sustainability in local government, including the impact of cost shifting on service delivery and financial sustainability, and whether this has changed over time

In the first instance, it is suggested that there be an agreed definition of financial sustainability. An example of a potential definition is;

“A local government will be financially sustainable over the long term when it is able to generate sufficient funds to provide the levels of service and infrastructure agreed with its community.”⁴

This definition aligns with the Local Government Act where IP&R defines how Councils do their business and is based on ISO 55000. When introduced, councils in NSW were told that IP&R would mean that rate capping would no longer be requested as the community would work with its council on the service levels required with their associated costs imposed through rating.

Please see advice above on cost shifting.

Assess the social and economic impacts of the rate peg in New South Wales for ratepayers, councils, and council staff over the last 20 years and compare with other jurisdictions

Our members question whether we have reached a point where the purpose of the rate peg is to strip communities and particularly rural and regional communities, of the services and infrastructure they need. There is no question that the rate peg will force councils to either cut services and the maintenance of core infrastructure such as roads, drainage and public buildings or drive them into debt. There has been some hope with the new methodology IPART has developed however history shows that it will not keep pace with rising costs.

Some councils have greater financial sustainability as they get a sizeable amount of Federal Assistance Grants or have access to own source income such as from parking meters.

As advised above, rural councils provide services as the “provider of last resort” where the more remote the greater the number of services.

Rate pegging disempowers communities and their councils and flies in the face of IP&R. Councils and Joint Organisations spend time and effort trying to get a better result from IPART and advocating for financial sustainability.

As councils struggle with their financial positions, staff experience pressure and uncertainty as with income capped, the only solution to manage resourcing pressure is to cut services including staff. Councils across this region report that their staffing structures for this terms are not at 100% where

⁴ TCORP Financial Sustainability of the New South Wales Local Government Sector Findings, Recommendations & Analysis” 2013 found [Eurobodalla Shire Council - Attachment 4 - TCorp Financial Assessment.PDF \(nsw.gov.au\)](#)

vacancies across the region range from 5% to 18%. Staff turnover rates for this term vary across the region, where the median is 16% showing that staff are willing to move on rather than stay in overworked situations. While assisting with sustainability, lower staffing numbers impacts the workloads of other staff.

Special Rate Variation processes take up staff time and are not always successfully navigated through council. General Managers are particularly at risk as elected representatives form views on their capacity to deliver financial sustainability. At its most toxic council sustainability becomes fodder of social media with council staff having to experience the stresses associated with online pile-ons. This has knock on effects of broader community confidence with the council, pressure on elected representatives and at council election time. The more toxic the environment the greater likelihood of poor governance and corollary poor fiscal management.

Looking to the UK – where councils can set their own rates, they still experience financial challenges [Why do councils go bust and what happens when they do? \(bbc.com\)](https://www.bbc.com/news/uk-politics-56844444). While there are a variety of reasons for councils in the UK getting into financial trouble, *there's also been a systemic problem with local government financing. Over the last 13 years, we've seen the amount of money that central government gives to local government reduced by more than 40%*. Having said that, the rate rises being cited in the UK are between 10% and 21% well below some of the more astonishing 73.1% approved by IPART for Strathfield for the 23/24 financial year.

Compare the rate peg as it currently exists to alternative approaches with regards to the outcomes for ratepayers, councils, and council staff

Local Water Utilities set their own rates typically at cost recovery, because as much as anything else returning a profit to the General Fund incurs a greater level of regulation by DCCEEW and CNSWJO members report it is just too hard. For smaller general-purpose councils with water utilities water rates cost recovery is ideal but not always achievable and support from other levels of government and or General Fund is needed.

The point is that if councils can set their own rates for potable water surely they are able to do the same for General Fund?

Under current arrangements, councils in NSW will ultimately have to seek a Special Rate Variation and it may well have significant financial impacts for rate payers. Why not just let councils and their communities work it out themselves through IP&R, building community trust and power instead of this disabling, paternalistic and resource intensive system as it currently stands.

Good consultation with community will see a growing understanding of levels of service and their financial including rating consequences. Take for example waste services. Councils are more than capable of consulting with community and setting levels of service and fees for waste services. If the approach was to leverage and strengthen IP&R it would communities would invest more in their engagement. As it stands they must pay rates as determined by the State, cut to cloth with levels of service and the confuse matters by SRV processes.

Ultimately, if communities are unhappy with their rates and/or levels of service they can say so at the ballot box.

Review the operation of the special rate variation process and its effectiveness in providing the level of income Councils require to adequately meet the needs of their communities

Councils should not be driven into debt because the rate peg does not meet the rising costs of core services, nor should councils be required to apply for a Special Rate Variation to cover core operating costs.

The implication of a *Special* Rate Variation is that is required for a special purpose – not for BAU. The need to resort to Special Rate Variations to cover core operating costs was a clarion call to act on the failure of IPART's rate peg methodology. It will be interesting to see whether the new IPART methodology will do any better than the last. Given that the State continues with its resourcing impacts on Councils in an unfettered way and this is yet to be adequately recognised in any rate peg, it is unlikely any rate peg will keep up with mounting imposed costs.

7/9 SRVs in the IPART website [Special Variations | IPART \(nsw.gov.au\)](https://www.ipart.nsw.gov.au/special-variations) for this year cite financial sustainability for the delivery of BAU services or the equivalent as the reason for their application.

This is a comparatively smaller number of councils than previous years with smaller requests for variations. For example, 2014/2015 there were 32 applications. The ten highest requests for rate increases are from 47.09% to 73.1%.

Councils report the process is torturous, politically fraught and uncertain of delivering an outcome. Again, they are out of control of their destiny.

Councils are having to repeat the process to continue to be sustainable as they only ask for what they need and then costs go up again, so they need to reapply. In this instance at least communities are becoming more adept at understanding the issues.

Any other related matters

There is a significant opportunity cost in NSW of consistently not doing business better. The costs are ongoing and endemic and have never been effectively tackled. In 2018 this region wrote to the Premier

Councils across Central NSW are hurting as the Emergency Services Levy comes in. Year after year the price increases are well above CPI and often in double digits. Councils in Central NSW are reporting increases in the levy of up to 25% and costs rising over \$100,000 for some members.

In 2021 this region wrote:

While we have been provided assurances that this type of increase is abnormal, this region can report that for the past 15 years we have been advocating for a more transparent, accountable and affordable ESL.⁵

While the ESL issue is well known the pervasive miasma of poor bureaucratic processes including planning and regulation create significant burdens on development and service delivery. Case studies and examples are provided above.

One final comment is on the legislation and regulation for Joint Organisations (JO). This JO delivers a conservative return on investment of 9.4:1 to its members for every dollar they spend on membership and programs. Working with other Joint Organisations it is identifying opportunities to do business better with the NSW Government. Current collaborations with the NSW

⁵ 3 March 2021 Correspondence to Local Government NSW

government are around one source of truth for data, reducing emissions, water loss management or disaster preparedness are showing an effective and efficient way for NSW Government aspirations to be realised at the local level through a regional lens.

More mature regions with sound own source income have been able to transition into Joint Organisations and manage the regulatory burden. Others are finding it more than challenging and are stepping away from the model, undermining the overall value to the communities of NSW.

The regulatory framework for JOs is the broadly same as for general purpose councils. As an example, at the time of writing JOs are seeking a better outcome from the Office of Local Government of the Audit Risk and Improvement framework (the framework) as described by the Office of Local Government Guidelines-for-Risk-Management and Internal Audit Framework for Local Councils in NSW (the Guidelines).

Throughout the development of the regulation and guidance for the framework JOs have consistently provided feedback that the business of JOs and the business of councils differ markedly. Where the framework is designed for the complex business of councils including the management of a substantial asset base, JOs are comparatively simple businesses with a completely different risk profile. JOs have few staff, few if any assets and no rate payers.

It is noted that JOs have a robust compliance framework and are audited by NSW Auditor General including having to provide advice on the management of fraud. It is noteworthy that the compliance burden on JOs is significantly higher than on what was once a regional organisation of councils (ROC)

Estimates of the costs of the framework to JOs vary from additional direct funding \$20K to \$150K depending on a variety of factors including number of members, fees and other costs of internal auditors as well as the extent of the internal audit program.

Add to these direct costs the indirect costs to manage the program of having to comply with the following advice in the Guidelines where JOs are to be treated the same as councils:

Commencing 1 July 2024, councils' general managers must appoint a member of staff of the council (the internal audit coordinator) to direct and coordinate internal audit activities for the council (section 216P).

→ Councils are not required to appoint a member of staff to direct and coordinate their internal audit activities if the council has entered into an agreement with other councils to share the internal audit function and one of the participating councils has appointed a member of staff to direct and coordinate internal audit activities on behalf of all the participating councils (section 216P).

→ A council's internal audit activities are to be undertaken under the oversight and direction of the council's audit, risk and improvement committee (sections 216M, 216P and 216R).

→ The member of staff appointed by the general manager to direct and coordinate internal audit activities is to report to the audit, risk and improvement committee on those activities (section 216P).

→ The member of staff of a council appointed to direct and coordinate internal audit activities is not to be subject to direction in the performance of internal audit activities by anyone other than the audit, risk and improvement committee (section 216P). Guidelines for Risk Management and Internal Audit for Local Government in NSW 12

→ All internal audit personnel must have direct and unrestricted access to council staff, the audit, risk and improvement committee and council information and resources necessary to undertake their role and responsibilities (section 216Q).

→ The general manager must consult with the chairperson of the council's audit, risk and improvement committee on any decision affecting the employment of the staff member appointed to direct and coordinate the council's internal audit activities and must consider the chairperson's views before making the decision (section 216P).

The ARIC has the unfettered capacity to direct a resource of the JO. Given that for most JOs there are few if any staff beyond the Executive Officer (EO) engaged that are not part of grant funded programs – it must become the EOs role to do this work if that is permitted under the Act where the independence of the EO must be questionable, unless another staff member is engaged to do this work specifically. It is difficult to imagine additional staff costing less than \$50Kpa without on costs.

This direct and indirect resourcing of a minimum of \$70K per JO is neither practical nor proportionate where membership fees to JOs vary from zero for those “in hiatus” through to under \$600Kpa. It should be noted that membership fees vary due to a variety of factors including the number of members and other income streams. It is inconceivable that there would be any acceptable ROI of a minimum of 20% of a JO’s membership fee income being spent on one compliance function. One JO has reported that the cost of audit and ARIC is conservatively 43% of membership fees.

Typically, the greater proportion of funding coming into JOs is from state and federal funding where this is a good fit with the purpose of JOs in delivering intergovernmental cooperation. State and federal funding is typically highly administered and audited where any number of examples can be provided.

In a nutshell – JOs are primarily funded from local, state and federal government all of which operate in highly regulated, audited and administered environments. The extent to which requiring another significant level of assurance is questionable. In reality, this cost burden is a significant disincentive to the overall JO model and has a high likelihood of leading to some JOs seeking to de-proclaim – if they haven’t already.

Having said that, improvement in practice and risk management ought to be the core business of any publicly funded entity. Indeed, JOs have been collaborating for some time in this area, for example the Best Practice in Aggregated Procurement Program developed across four JOs in 2019/2020. There is scope for an alternative model based on leading practice. Accordingly, JOs have consistently sought to codesign an appropriate ARI framework with the OLG.

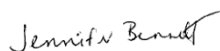
The ARI framework is just one of a number of time intensive regulatory obligations for JOs including Public Interest Disclosure, Code of Conduct, Privacy Legislation, Modern Slavery, Related Parties reporting and mandatory reporting on JO operations.

Conclusion

This region hopes the work undertaken in this review will lead to genuine change and commends NSW Legislative Council’s Standing Committee on State Development and the NSW government for taking on the challenge.

Please contact Ms Jenny Bennett on 0428 690 935 or send an email to jenny.bennett@centraljo.nsw.gov.au

Yours sincerely



Ms Jenny Bennett
Executive Officer
Central NSW Joint Organisation