

Submission Councillor Conduct Framework Review November 2024



**CENTRAL NSW
JOINT ORGANISATION**

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

25 November 2024

To Whom it May Concern

Via email: councillorconduct@olg.nsw.gov.au

Re: “Councillor Conduct Framework Review”

Central NSW Joint Organisation speaks with a unified voice for its collective priorities. This region has a proud history of working collaboratively, representing over 180,000 people covering an area of more than 53,000sq kms comprising the local government areas of its membership - Bathurst, Blayney, Cabonne, Cowra, Forbes, Lachlan, Lithgow, Oberon, Orange, Parkes, Weddin.

Tasked with intergovernmental cooperation, leadership and prioritisation, CNSWJO has consulted with its stakeholders to identify key strategic regional priorities. The CNSWJO Strategic Plan can be found here - www.centraljo.nsw.gov.au.

Thankyou for the opportunity to provide feedback to the “Councillor Conduct Framework Review.”

CNSWJO understands that the intention of this discussion paper is to seek feedback on options for change to legislation and regulation regarding Councillor conduct. The proposals are to:

- Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body,
- Refer behavioural based concerns about councillor conduct to a State-wide panel of experienced councillors to judge their peers,
- Reset the code of conduct to be similar to Parliamentary Codes, making it clear the expected patterns of councillor behaviour,
- Ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber.

In the first instance, the locus of the problem needs to be recognised. There are comparatively few councillors in NSW that tarnish the reputation of the industry where the regulatory framework is not fit for purpose and social media is exacerbating the situation. Given question time at NSW Parliament House is a daily opportunity to witness poor behaviour, the extent to which State Parliamentarians set the standard is questionable. Indeed, some leadership here would be welcomed where rogue councillors have been known to say that they are only modelling state representatives.

Further, council meetings are not the heart of the problem for local government conduct. As has been demonstrated in the recent election, it is the use of social media by councillors and others that is having a greater impact than behaviour at council meetings. Again, this is only a few councillors.

It is noteworthy that the “geography” of a council meeting room is very different to that of the NSW Parliament. Councillors are in close proximity to each other and may be seated beside a rogue councillor where this could be problematic. This is especially the case when the speaking councillor is standing and could potentially be threatening. Further, councillors are typically older with associated muscular skeletal and other health problems where remaining seated may be preferable.

Work undertaken in this region suggests that special effort needs to be given to social media. While this region is collaborating in building capacity and welcomes the OLG’s efforts with [Model-Social-Media-Policy.docx \(live.com\)](#), it is of a view that given the extent to which reputations can be damaged, elections can be affected and morale on council staff can be impacted, special effort should be taken regarding the misuse of social media.

Then, greater investment needs to be made building capacity in both incoming councillors and the community in the role of council and councillors.

In summary, CNSWJO agrees that the current process is not working. Open to interpretation, it readily creates conflict and confusion while compromising General Managers and wasting resource. For change to be effected, it will need to be designed well and sufficiently resourced.

Regarding the questions asked in the discussion paper; CNSWJO makes the following commentary:

Question	CNSWJO response
<p>Are we missing anything in the principles of change?</p>	<p>Build confidence in Local Government Greater effort needs to be undertaken in building confidence in local government. An antidote needs to be found for the reputation bashing councils are enduring.</p> <p>Supporting democracy This region has welcomed the commentary by the Minister empowering councils in determining their own destiny. Given the challenges for democracy internationally and the roll out of red tape and unfunded mandates in the context of rate capping, supporting democracy should be included.</p> <p>Re Council leadership and decision making is paramount Decision making by Councils is in a very constrained environment. While there have been some recent improvements, as an industry: rate capping, Special Rate Variations, cost shifting, red tape and a challenging funding framework have led to deteriorating financial sustainability in local government.</p> <p>Income stream opportunities are limited. Councils may not incorporate without Ministerial permissions and this is rare.</p> <p>Various legislation councils must administer, plus in this region, the added necessity being service providers for water, airports, health, childcare and aged services, the visitor economy, housing etc leaves little room for decisions of significance that do not prejudice a council’s financial position. General Managers across the region have expressed the view that despite the aspirations of incoming councils, in reality, there is little more they can do besides maintenance and a significant part of their role in induction is explaining the financial situation to them. In the multi-million-dollar budgets of councils there is very little discretion where in this region rates often make up a small percentage of total income and is significantly consumed by</p>

	<p>the costs of elections, resourcing audit requirements, administering ARICs, Emergency Services Levies and the like.</p> <p>Good asset management as contemplated by IP&R, informed by community priority, provides direction on the priority for what is in fact maintenance budgets for councils in regional NSW.</p> <p>Re Transparency and Accountability – this should include commentary about keeping the community informed which will have implications on how breaches are reported.</p> <p>Re Freedom of speech – it is noted that Councillors do not enjoy the same privilege as state representatives and this should be clear in any change.</p>
What are the key elements of an aspirational Code of Conduct that should be enshrined?	Alignment with leading practice and functionality.
What are your views about aligning the Oath of Office to the revamped Code of Conduct?	Neutral
Is the proposed pecuniary interest framework appropriate? Is anything missing?	The extent to which election support should be included. It is a reasonable perception of the community that a significant political donor constitutes a conflict of interest in decision making.
Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?	Yes
Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?	Neutral
Is this the appropriate threshold to face a Privileges Committee?	<p>That the examples provided are from the sporting sector are intriguing – the extent to which someone moving a golf ball is comparable breaches of councillor behaviour is questionable and seems somewhat trivialising. Further, this is case law which opens the door to litigation where those with lots of money will be more able to drag councils through the courts.</p> <p>Having said that, the use of a Privileges Committee as described in the guidelines where breaches would be assessed by peers is very sound.</p>

How else can complaints be minimised?	Effective and timely management of complaints with an escalation of impacts for those in breach should be the first step.
What key features should be included in lobbying guidelines and a model policy?	Councillors should make informed decisions based on merit.

Regarding the suggested options CNSWJO makes the following commentary.

Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body.

CNSWJO welcomes making the OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body.

Refer behavioural based concerns about councillor conduct to a State-wide panel of experienced councillors to judge their peers

CNSWJO welcomes the use of a State-wide panel of experienced councillors to judge their peers. The design of this panel should include considerations of cost effectiveness and efficiency. Members have raised concerns on potential unfettered cost implications and seeks further consultation in this regard.

Reset the code of conduct to be similar to Parliamentary Codes, making it clear the expected patterns of councillor behaviour

While CNSWJO supports this approach, it is imperative that any Code provide sufficient clarity for sanctions to occur.

Ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber.

The CNSWJO is particularly concerned about this potential inclusion.

Councillors across NSW are currently being briefed on their role, which takes many hours – all of which spares the public. The extent to which any changes will limit the use of workshops and other closed-to-the-public gatherings that include councillors is also concerning. Questions have been asked such as “would this be live streamed too?” Feedback from members includes concerns raised for the discomfort some councillors may have for this constant public exposure.

There is a difference between a briefing session and a meeting to make informed decisions. The briefing session provides an opportunity for elected representatives to ask questions particularly for complex matters. For example, the transition of strategy for water utility management from Integrated Water

Cycle Management to Integrated Planning and reporting or the purchase of renewable energy using Large Generation Certificates through a power purchase agreement.

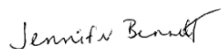
This enables good decision making on the floor of Council. A good briefing session is NOT decision making behind closed doors and ought to be retained. **The NSW government could provide guidance of the difference between a briefing session and decision making.**

It is noted that Ministers and other State representatives are regularly briefed by their bureaucracy.

Conclusion

Thank you for the opportunity to provide feedback to this discussion paper. If you require further information or clarification on comments in this submission, please do not hesitate to contact Ms Jenny Bennett on 0428 690 935.

Yours sincerely,



Jenny Bennett
Executive Officer
Central NSW Joint Organisation (CNSWJO)