

HEAD OF POWER

- *Local Government Act 2009*

INTENT

The purpose of this policy is to set guidelines about the provision of financial assistance by Council to fund, or contribute to funding, Councillors and employees who become involved in legal proceedings as a direct result of actions or decisions made by them while exercising their functions or duties in their official roles on behalf of Council.

SCOPE

This policy applies to all Councillors and employees.

DEFINITIONS

Approved lawyer means a lawyer who:

- (a) is an 'Australian legal practitioner' under the *Legal Profession Act 2007 (Qld)*; and
- (b) is from a law firm that is either:
 - (i) on Council's panel of legal service providers or a panel of legal service providers maintained by Council's insurer, unless Council or Council's Insurer considers that this is not appropriate in the circumstances; or
 - (ii) otherwise approved in writing by Council or the Chief Executive Officer under delegated authority.

Council's insurer means LGM.

Employee means a local government employee as defined pursuant to the *Local Government Act 2009*.

Legal proceeding means a legal proceeding conducted before a commission, tribunal or court, whether civil, criminal, or investigative (such as an inquiry; or a statutory, administration, or regulatory, investigation).

Legal representation means the provision of legal services, to a Councillor or employee, by an approved lawyer that acts in respect of:

- (a) a matter or matters arising from or directly connected with the Councillor or employee performing their Council roles, functions and duties; and
- (b) a legal proceeding involving the Councillor or employee that has been, or may be, commenced.

Legal representation costs means the legal costs, including reasonable professional fees and disbursements, that are properly incurred in provision of the legal representation.

LGM means the Queensland Government Mutual Liability Pool, a trust established by the Local Government Association of Queensland (**LGAQ**), to provide a pooled fund and a mutual scheme for managing and meeting public liability risks affecting LGAQ members (including Council) and arising in connection with the exercise of the duties, powers and functions of those members.

POLICY STATEMENT

1. By section 235 of the *Local Government Act 2009* (the Act), Councillors and employees are not civilly liable for an act done, or an omission made, honestly and without negligence, under the Act or the *Local Government Electoral Act 2011*. Instead, civil liability will attach to the local government.
2. In some circumstances, it may be appropriate for Council to provide financial assistance to fund, or partly fund, legal representation costs incurred by employees and Councillors where there is a sufficiently clear nexus between their Council role and the legal proceeding involving them.
3. Applications for assistance under this policy are to be made to the Chief Executive Officer, unless the Chief Executive Officer is the party making the application in which case the application must be made to the Mayor.
4. The Chief Executive Officer or (if applicable) the Mayor (the **assessor**) will assess the application and make a recommendation to Council for Council to approve (with or without conditions) or reject the application. The conditions that may be imposed on an approval may include, but are not restricted to:
 - (a) setting a financial limit on the payment to be made by Council under this policy in respect of legal representation costs;
 - (b) limiting the payment to only those legal representation costs incurred after the approval was granted under this policy; and/or
 - (c) setting a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of the legal representation costs paid for by Council under this policy.
5. A Councillor or employee is not eligible to apply for assistance under this policy concerning a legal proceeding initiated by Council, or Council's insurer, against the Councillor or employee.
6. An employee or Councillor is not eligible to apply for assistance under the policy to commence or consider commencing a legal proceeding against the lawful act of another employee or Councillor.
7. In assessing the application for assistance with legal representation costs, the assessor must consider all of the following criteria:
 - (a) The relevant actions of the employee or Councillor must have been made in good faith, and made, or done, honestly and without negligence.

- (b) The legal costs must be for a matter that arises from the performance by the person acting in their role, function and duties for Council, or directly connected to the person holding their position at Council.
 - (c) The application for assistance with legal representation costs is made by the Councillor or employee *before* incurring legal representation costs, unless exceptional circumstances apply. Unless exceptional circumstances exist, a failure to make an application before incurring legal representation costs, particularly where the employee or Councillor has engaged legal representation that is not a panel representative of Council or Council's insurer, may be a ground for rejecting the application or limiting the approval to only those legal representation costs incurred after the approval is granted.
 - (d) The legal costs must be in respect of:
 - (i) a threatened or commenced legal proceeding against an employee or Councillor in their personal capacity; or
 - (ii) in exceptional circumstances, a legal proceeding that needs to be proactively commenced to properly protect the health (including mental health) and safety of the employee or Councillor, or the ability of the employee or Councillor to perform their Council roles, functions or duties, or the reputation of Council.
 - (e) The legal proceeding must not relate to a matter that is purely of an individual or private nature. The legal proceeding must arise from the performance by the employee or Councillor of their Council roles, functions or duties.
 - (f) Where consideration is being given to funding legal representation costs for the Councillor or employee to commence a legal proceeding, the circumstances of the matter the subject of the legal proceeding must be sufficiently significant or exceptional to justify the expenditure of public funds.
 - (g) The legal representation should not compromise Council's legal position or insurance.
 - (h) An additional criteria for an application made by a Councillor under this policy is that the application must be rejected if the legal representation costs relate to a matter that arises from, or is associated with, election issues or the conduct of an election campaign, especially having regard to the implied freedom of political communication that has been recognised by the Australian courts, unless there are exceptional circumstances.
 - (i) Whether or not, and to what extent, Council's insurer will respond to a claim for indemnity cover of the employee's or Councillor's legal representation costs.
8. The assessor of the application may recommend to Council a maximum limit on the legal representation costs that Council will fund, if approved.
9. An employee or Councillor whose legal representation costs have been paid (in whole or in part) by Council, must repay Council either:
- (a) All of the legal representation costs paid by Council, in the following circumstances:
 - (i) the employee or Councillor did not act in good faith, honestly and without negligence; or
 - (ii) the employee or Councillor provided false or misleading information in respect of their application for assistance under this policy; or
 - (iii) the employee or Councillor is convicted by any Australian court or tribunal, of any criminal offence against any State or Commonwealth law associated with the matter for which legal representation costs were agreed to be provided; or

- (iv) for a Councillor, where the Councillor is subject to any finding of misconduct or inappropriate conduct, against the Councillor by the Councillor Conduct Tribunal (as defined in the Act) associated with the matter for which legal representation costs were agreed to be provided.
 - (b) Where monies are awarded in the form of costs, orders, damages or any settlement relating to the matter for which Council originally paid legal representation costs, a sum up to the amount of legal representation costs that were paid by Council under this policy.
10. Council may take the required action to recover any monies due and owing to it by an employee or Councillor under this policy.
 11. All approved expenses incurred under this policy will be reported to the Audit and Risk Committee, however the name of the employee or Councillor will be redacted for privacy reasons.
 12. Where an application is made and the assessor is inclined to recommend the application for approval by Council, Council will notify it's insurer of a possible action that may be supported by Council and confirm the insurer's support or otherwise for such a decision. Despite the content of this policy, where a claim for cover is approved under any insurance policies held by Council or under its membership of LGM, the approval of the application for legal representation costs will be subject to any terms and conditions required by the insurance policy or the terms and conditions applying to Council's membership of LGM. This may include only utilising the legal practitioner/s on the panel of representatives of Council's Insurer or those representatives approved or nominated by Council's Insurer.

ASSOCIATED DOCUMENTS

- Councillor Expenses Reimbursement and Provision of Facilities Policy
- Legal Assistance for Councillors and Employees Application Form
- *Local Government Electoral Act 2011*
- *Local Government Regulation 2012*

DOCUMENTS CONTROLS

Council will review this policy biennially or in response to changes in legislation or best practice.

POLICY OWNER

Chief Legal Officer.