

LEGAL ASSISTANCE FOR COUNCILLORS AND EMPLOYEES

- Intent** This Policy establishes the requirement for the provision of legal assistance to Councillors and employees who may require personal legal representation as a direct result of their official roles with Cairns Regional Council.
- Scope** This policy applies to the Councillors and employees of Cairns Regional Council (CRC). This policy does not apply to standard legal services and advices required as part of normal Council functions.

1. Background

CRC recognises that employees and Councillors, as a result of their roles, functions and duties of the local government may at times require personal legal representation. This applies where there is a clear nexus between their role at the local government and a legal proceeding against them. In some instances, it may be appropriate to provide financial assistance to meet the cost in obtaining legal representation.

An example is where an employee or Councillor is personally threatened with a legal action by an aggrieved party that believes the employee or Councillor will not, or has not, carried out their legislative or administrative role, functions or responsibilities in an appropriate manner.

2. Policy Statement

Section 235 of the *Local Government Act 2009* (LGA) provides that a local government administrator is not civilly liable for an act done under the LGA or the *Local Government Electoral Act 2011* (LGEA), or an omission made under the LGA or LGEA, honestly and without negligence. Instead, such a liability will attach to the local government.

The liability for actions performed in good faith by a council representative whilst performing their duties of their role therefore lies with the local government. As a result, CRC has adopted this policy to explain when CRC will fund or partly fund the cost of providing the appropriate legal representation to employees and Councillors.

This policy sets out the process which must be followed in dealing with requests for CRC to contribute towards costs regarding legal representation that are received from either employees or Councillors.

3. Roles and Responsibilities

Mayor - In the instance the Chief Executive Officer (CEO) is the applicant for legal representation, the Mayor is to receive, assess and decide the request for legal assistance. The Mayor is then to make any other related decisions on behalf of the Council under this policy.

Chief Executive Officer - The CEO is to receive, assess and decide any requests for legal assistance from an employee or Councillor. The CEO is to also make any other relevant decisions on behalf of CRC regarding this policy.

The CEO or Mayor may delegate its roles and responsibilities to a representative employee of CRC to assess an application made under this policy.

The CEO and the Mayor have the requisite delegation by the Council to incur the relevant liabilities and to approve the associated expenditure on behalf of the CRC in accordance with this policy.

4. Assessment Criteria

In assessing an application for legal representation, the assessor must consider all four of the below criteria equally in coming to a decision.

The Criteria are:

- a) Relevance
The legal representation costs must relate to a legal matter which arises from the performance, by either the Councillor or employee, acting in his or her role, functions and duties of the local government.
- b) Made in good faith
The relevant actions of the employee or Councillor must have been made in good faith.
- c) Requisite nexus to role of the Local Government
The legal costs are associated with the threatened or commenced legal proceedings against an employee or Councillor in their personally capacity, or, in exceptional circumstances, may be associated with legal proceedings which are proactively commenced to properly protect the interests of a Councillor, employee or the reputation of the local government.
- d) Not personal in nature
The legal representation costs must not relate to a matter that is purely of an individual or private nature. The cost must arise from the performance by the employee or Councillor in their normal functions and duties of the local government.

5. Examples of costs that may be approved

If the four criteria above have been satisfied, the CEO or the Mayor in their respective roles may approve the payment of legal representation costs. Examples could include:

- Where an employee or Councillor is threatened by legal proceedings personally and the claim in the legal proceedings has the requisite nexus to their functions and duties performed in their local government role. An example of this is an action against an employee or Councillor for defamation, a claim in damages or compensation, and the proceedings arise from a decision made or action taken by the employee or Councillor in the discharge of their local government role, functions or duties.
- Reasonable legal representation costs that may lead to legal proceedings to protect an employee or Councillor in a personal or physical sense in order to allow them to carry out their local government functions or duties safely. An example of this is an employee or Councillor obtaining a restraining order against a person who makes continual personal threats against that person in their capacity as a local government employee or Councillor.
- Reasonable legal representation costs for an employee or Councillor who is subjected to a statutory or administrative investigation by a regulatory authority when acting in their local government role.

Only in exceptional circumstances will CRC consider the payment of legal representation costs for an employee or Councillor to commence or consider commencing legal proceedings regarding actions in defamation or other personal proceedings against a person that pursues damages or compensation. Consideration of such circumstances will be given to the extent, frequency and impact of the actions that give rise to the request.

CRC will not approve the payment of legal costs for an employee or Councillor to commence or consider commencing proceedings against the lawful act of another employee or Councillor.

6. Application Process

An employee or Councillor who requires assistance with the costs associated with legal representation under this policy must make an application in writing. This application must be addressed to the CEO of CRC. In the instance the applicant is the CEO the application must be addressed to the Mayor of CRC. The following details should be provided as part of the written application:

- a) The facts surrounding the matter for which legal representation is sought; and
- b) How that matter has the requisite nexus to the local government role, functions and duties of the employee or Councillor making the application; and
- c) The nature of the representation that is likely to be required (e.g. written advice, legal representation in Court, preparing and lodging legal proceedings); and
- d) An estimation as to the relevant legal costs; and
- e) Reasons as to why CRC should provide the relevant assistance.

NOTE: Such an application must be made before the incurring of any legal costs to which the application relates. The applicant must declare that they have acted in good faith.

The applicant must also sign and date a written statement with the following;

- a) That they understand the terms of Legal Assistance for Councillors and Employees Policy
- b) That they acknowledge that any approval of the legal representation costs is conditional upon the repayment provisions set out in Repayment of Legal Costs section of the policy as well as any further conditions agreed upon between both parties.
- c) That they undertake to repay the legal representation costs to Council in accordance with Councils 'Councillors & Officers Liability / Employment Practices Liability' Policy.

Notably the applicant may also be required to sign a more formalised contractual document regarding the repayment of monies to CRC in return for the provision of assistance under the terms of this policy.

Any application made under this policy will be kept confidential and in alignment with the relevant privacy provisions of the LGA as well as the *Local Government Regulation 2012* (LGR).



This policy is to remain in force until otherwise determined by Council.

General Manager responsible for Review:

General Manager Human Resources & Organisational Change

ORIGINALLY ADOPTED: 08/12/2021
CURRENT ADOPTION: 08/12/2021
DUE FOR REVISION: 08/12/2025
REVOKED/SUPERSEDED:

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Mica Martin
CHIEF EXECUTIVE OFFICER