

Legal Assistance for Councillors and Employees Policy

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Approved by:	General Meeting
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Head of Power

This policy is designed to ensure compliance with Council's obligation under the *Local Government Act 2009* (Qld) as well as the *Local Government Regulation 2012* (Qld).

Policy Objective

To ensure transparent and accountable processes and requirements are established for providing legal assistance from Council for Councillors and/or Employees, as a result of their role or function at Council while ensuring the community maintains confidence that public funds are being expended in an appropriate way.

Policy Statement

Redland City Council, through its Corporate Plan, is committed to enriching community lifestyles and making a positive difference in our customers' lives through the services we provide. We are forward thinking, engaged and strive to maintain the highest standards of service to ensure we are delivering real value.

Council is committed to:

- Recognising employees and Councillors may at times require legal representation, as a result of their roles, functions and duties at Council.
- Acknowledging 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.
- Delegating roles and responsibilities in the assessment of requests for legal assistance, advice and representation as follows:
 - 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.
 - 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 Council regarding this policy.
 - The CEO or Mayor may delegate its roles and responsibilities to a representative employee of Council 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 Council in accordance with this policy.

When all four criterion above is satisfied, the CEO or the Mayor, in their respective roles, may approve the payment of legal representation costs. Examples could include:

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- Where a council 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 Council role. An example of this is an action against a Council 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 Council 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 Council 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 Council 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 Council role.
- Only in exceptional circumstances will the Council 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.
- Only in exceptional circumstances will the Council consider the payment of legal representation costs for a councillor that arise from, or are associated with, election issues or conduct associated with an election campaign, as Council acknowledges the implied right to political communication as recognised in Australia.
- Notably, the Council 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 Council employee or councillor.
- Assessing any applications for legal representation based on the following criteria:
 - The relevant actions of the employee or councillor must have been made in good faith.
 - Costs must relate to the legal matter which arises from the performance, by either the councillor or employee, acting in his or her Council role, function and duties.
 - The legal costs associated with the threatened or commenced legal proceedings against an employee or councillor in their personal capacity, or in exceptional circumstances, may be associated with legal proceedings which are proactively commenced to properly protect the interests of an employee, councillor or the reputation of Council.
 - The legal representation costs must relate to the legal matter which arises from the performance, by either the councillor or employee, acting in his or her council role, functions and duties.
 - 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 of their Council functions and duties.
 - The legal assistance, advice or representation should not compromise the Council's legal position or insurance.

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Application for Legal Assistance

An employee or councillor who requires assistance with the costs associated with legal representation under this policy must make an application in writing using the [Application for Legal Assistance form attached to this document](#).

The following applies to all applications:

- The CEO or the Mayor of the Council may, in approving an application under this policy, set a maximum limit on the legal costs that will be paid.
- An employee or councillor may make a further or subsequent application to the Council under this policy in respect of the same proceeding.
- Any approved expenses incurred under this policy will be reported through the audit process; however the name of the employee or Councillor may be redacted for privacy reasons.
- An employee or councillor whose legal representation costs have been paid by the Council is to repay the Council either:
 - All or part of the legal costs, as determined by the assessor of the application.
 - If 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, the employee or councillor is to repay such sum to the Council up to the amount of legal representation costs that were incurred by the Council under this policy
- The Council may take the required action to recover any monies due and owing to it by an employee or councillor under this policy.

Definitions

Term	Definition
Council	Redland City Council
Employee or councillor	Is an employee of the Council or a current or former councillor or non-elected member of a council committee.
Legal proceedings	May refer to a civil action, criminal action or investigation such as an inquiry or statutory administration or regulatory investigation.
Legal representation costs	All costs including professional fees and disbursements that are reasonable, and incurred in providing legal representation that was approved under this policy
Local government administrator	Includes a councillor, the chief executive officer, an authorised person, another local government employee or an interim administrator.

Associated Documents

- *Local Government Act 2009* (Qld)
- *Local Government Regulation 2012* (Qld)
- Expenses Reimbursement and Provision of Facilities for Councillors ([A196648](#))
- Employee Code of Conduct ([A196608](#))

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Document Control

Only Council can approve amendments to this document by resolution of a General Meeting, with the exception of administrative amendments which can be approved by the relevant ELT member. Refer to *Policy Instrument Development Manual* for an explanation on administrative amendments ([A4063988](#)).

Any requests to change the content of this document must be forwarded to relevant Service Manager(s).

Approved documents must be submitted to the Corporate Meetings and Registers Team for registration.

Version Information

Version number	Date	Key Changes
1	June 2017	<ul style="list-style-type: none"> New policy
2	January 2020	<ul style="list-style-type: none"> Added heading 'Head of Power'. Restructured information under 'Policy Objective'. Removed heading 'Overview' and replace with heading 'Policy Statement' and retained information under. Added words 'Council is committed to:' and reorganise wording under Policy Statement section. Moved wording 'section 235 of LGA.....' to Head of Power section. Removed some of the headings and information that was doubled up under 'Policy Statement' and reworded. Renamed section 'Related Policies/Legislation/Documents' to 'Associated Documents'. Inserted 'Document Control' section. Updated Group name.