



Policy

Legal Costs – Assistance to Council Officials

2020

Information about this document

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Document History

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DM602369		Adopted 13/6/1995
DM779672	28/8/08	Res No. 08-525
DM805638	27/11/08	Reported to Council #805571
DM815079	27/11/08	Res No. 08-727
E2020/70331	21/10/2020	Minor amendments with no change to policy intent. Amendments: more appropriate wording to align with Code of Conduct; Policy; title amended from " <i>Legal Costs – Assistance to Committee Members, Officers and Council Employees</i> "

Further Document Information and Relationships

Related Legislation	Local Government Act 1993
Related Policies	
Related Standards, Procedures, Statements, documents	

Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.



1. Objectives

To provide appropriate indemnity or financial assistance to Council officials in the event of any legal action taken against them in relation to the performance of their authorised duties for and on behalf of Byron Shire Council.

2. Policy Statement

2.1. Council will indemnify or reimburse the reasonable legal expenses of Council officials (including their estates, heirs, or assigns of any deceased) in relation to:

- a) Defence of an action arising from the performance, in good faith, of an authorised function under the Local Government Act 1993, and other relevant Acts and Regulations.
- b) Defence of an action in defamation provided the statements complained of were made in good faith in the course of exercising an authorised function under a relevant Act or Regulation.
- c) Proceedings before the Local Government Pecuniary Interest and Disciplinary Tribunal or an investigative body provided the subject of the proceedings arises from the performance, in good faith, of a function under a relevant Act or Regulation, and any tribunal or investigative body makes a finding substantially favourable to the Council official.
- d) Common law claims.
- e) Defence costs relating to common law claims.
- f) Defence costs relating to any other actual or alleged breach of trust, breach of duty, breach of contract, neglect, error, mis-statement, misleading statement, omission or other act done or wrongfully attempted.
- g) Liability incurred whilst acting on behalf of Council arising out of Council's activities in partnership/joint ventures.

2.2 Council will not indemnify or reimburse claims or expenses of Council officials (including their estates, heirs, legal representatives or assigns of any deceased) in relation to:

- a) Actual fines or penalties incurred.
- b) Standard nuclear exclusions.
- c) Standard war, etc, exclusions.
- d) Any person who gained a profit or advantage to which they were not entitled.
- e) Any action brought about by the active and deliberate dishonesty of any person.
- f) Asbestos related claims.
- g) Pollution and contamination other than from fortuitous, sudden and accidental means.



- h) Any action arising from an act by a Council official which did not relate to the performance of a function under a relevant Act or Regulation but merely occurred during the Council officials' term of office or employment.
- i) Any action in defamation taken by a Council official as plaintiff in any circumstances.

3. Recovery of Costs

- 3.1. It is a condition of indemnification or reimbursement that whenever it becomes available an application will be made to the Court/Tribunal for recovery of costs.
- 3.2 Any costs recovered are to be repaid to Council.

4. Definitions

Policy acronym	Definition
Council official	includes councillors, members of staff of a council, administrators, council committee members, delegates of council and council advisers
Legal expenses	Professional legal costs reasonably incurred on a solicitor/client basis