



STRATEGIC POLICY
MOUNT ISA CITY COUNCIL
Provision of Legal Assistance for Employees

RESOLUTION NO. **OM09/09/19** VERSION **V1**

APPLIES TO STRATEGIC POLICIES ONLY

This an official copy of the **Provision of Legal Assistance for Employees Policy**, made in accordance with the provisions of *Local Government Act 2009* and *Local Government Regulation 2012*.

Strategic policies are adopted by Council due to its desire to influence the direction of an issue or assist in the delegated decision making of Council officers. Strategic policies should follow the jurisdiction provided to Council through its Corporate Plan; the **Provision of Legal Assistance for Employees Policy** is approved by the Mount Isa City Council for the operations and procedures of Council.

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 Sharon Ibardolaza
Chief Executive Officer

DOCUMENT VERSION CONTROL			
Governance/Policies/Strategic Folder # 14992		POLICY TYPE	Strategic (Council)
VERSION	DATE	RESOLUTION NO.	DETAILS
V1	11.09.2019	OM09/09/2019	Responsible Officer – Corporate Governance Coordinator
		REVIEW DUE	09.2021

DISTRIBUTION AND DISSEMINATION			
Internal email to all employees	X	Section meetings / Toolbox talks	X
Internal email to all Councillors		Included in employee inductions	
Staff noticeboards		Uploaded to Council website	
Internal training to be provided		External training to be provided	
Registered in Magiq	X		



1. PURPOSE

The purpose of this policy is to address and establish a transparent and reasonable process for providing legal assistance and associated costs for local government administrators (“Council officers”) when, as a result of their role, functions or duties with Mount Isa City Council (“Council”) may require legal representation.

This policy is also to ensure that the community maintains confidence that public funds are being expended in an appropriate way.

This policy is designed to ensure compliance with Council’s obligation under the *Local Government Act 2009*, and the *Local Government Regulation 2012*.

2. COMMENCEMENT

This Policy will commence on and from 11 September 2019. It replaces all other policies or arrangements governing legal assistance for Council officers (whether written or not).

3. INTRODUCTION

3.1 Council recognises that Council officers, as a result of their roles, functions and duties at Council may at times require legal representation. Where there is a relevant and reasonable connection between their role at Council and a legal proceeding against them, in some instances it may be appropriate to provide financial assistance to meet the costs of obtaining legal representation.

An example may include where a Council officer is personally threatened with a legal action by an aggrieved party that believes the Council officer will not, or has not, carried out their legislative or administrative role, functions or responsibilities in a correct and reasonable manner.

3.2 Section 235 of the *Local Government Act 2009* (Qld) (“LG Act”) provides that a local government administrator is not civilly liable for an act done under the LG Act or the *Local Government Electoral Act 2011*(Qld) (“LGE Act”), or an omission made under the LG Act or LGE Act, honestly and without negligence.

The liability for actions performed in good faith by a Council officer whilst performing their duties of their role lies with the Local Government. As a result, Council has implemented this policy to outline when Council will fund or partly fund the cost of providing the appropriate legal representation to Council officers.

4. ROLES AND RESPONSIBILITIES

4.1 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 Council under this policy.

4.2 CEO

The CEO is to receive, assess and decide on any requests for legal assistance from all other Council officers. The CEO is to also make any other relevant decisions on behalf of Council regarding this policy for all other Council officers.

4.3 Delegation of Roles and Responsibilities

The CEO or Mayor may delegate their 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.

5. APPLICATION ASSESSMENT CRITERIA

5.1 There are four criteria that must be met when deciding whether or not Council will offer assistance under this policy.



- a) The legal representation costs must relate to the legal matter which arises from the performance by the Council officer while carrying out their Council role, functions or duties; and
- b) The relevant actions of the Council officer must have been made in good faith; and
- c) The legal representation costs must be in respect of legal proceedings that have been threatened or commenced against a Council officer in their personal capacity, or which, in exceptional circumstances, may need to be commenced to properly protect the interests of a Council officer or the reputation of Council; and
- d) The legal representation costs must not relate to a matter that is purely of an individual or private nature in the sense that it must arise from the performance of the Council officer of their council functions or duties.

6. EXAMPLES OF COSTS THAT MAY BE APPROVED

- 6.1 Where the four criteria above have been satisfied, the CEO or Mayor in their respective roles may approve the payment of legal representation costs. Examples may include;
- a) Where a Council officer is threatened by legal proceedings personally and the claim in the legal proceedings has a direct link to their functions and/or duties performed in their Council role. An example of this is an action against a Council officer for defamation, a claim in damages or compensation and the proceedings arise from a decision made or action taken by the Council officer in the discharge of their Council role, functions or duties.
 - b) Reasonable legal representation costs that may lead to legal proceedings to protect a Council officer 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 a Council officer obtaining a restraining order against a person who makes continual personal threats against that person in their capacity as a Council officer.
 - c) Reasonable legal representation costs for a Council officer who is subjected to a statutory or administrative investigation by a regulatory authority when acting in their Council role.
 - d) Where the actions of a third party against a Council officer are causing continued personal distress or is having a significant detrimental effect on the public reputation and confidence in the Council as a public body. For example, if a person or organisation unreasonably continues to make untrue and unwarranted adverse public statements (included on social media) against a Council officer.
- 6.2 Only in exceptional circumstances will the Council consider the payment of legal representation costs for a Council officer to commence or consider commencing legal proceedings regarding actions in defamation of 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.
- 6.3 Council will not approve the payment of legal costs for a Council officer to commence or consider commencing proceedings against the lawful act of another Council officer.

7. APPLICATION PROCESS

- 7.1 A Council officer who requires assistance with the costs associated with legal representation under this policy must make an application in writing in the form set out in Schedule 1. Where the application is made by the CEO, it must be addressed to the Mayor. Where the application is made by all other Council officers, it must be addressed to the CEO.
- 7.2 The following information must be included in the application;
- a) Facts surrounding the matter for which assistance with legal representation is sought;
 - b) How the matter is directly related to the Council role, functions and duties of the Council officer making the application;
 - c) The lawyer or law firm who is to be asked to provide the legal representation;



- d) The nature of the representation that is likely to be required (eg written advice, legal representation in Court, preparing and lodging legal proceedings);
 - e) An estimation as to the relevant legal costs; and
 - f) Reasons as to why the Council should provide the relevant assistance.
- 7.3 Such an application must be made before the incurring of any legal costs to which the application relates.
- 7.4 The application is to be accompanied by a signed written statement by the applicant that he or she;
- a) has read and understands the terms outlined in this policy;
 - b) acknowledges that any approval of the legal representation costs is conditional upon the repayment provisions set out in clause 11 'Repayment of Legal Costs' of this policy as well as any further conditions agreed upon between both parties; and
 - c) agrees to undertake to repay the legal representation costs to Council in accordance with clause 11 'Repayment of Legal Costs' of this policy.
- 7.5 The applicant may also be required to sign a more formalised contractual document regarding the repayment of monies to the Council in return for the provision of assistance under the terms of this policy.
- 7.6 Any application made under this policy will be kept confidential and in alignment with the relevant privacy provisions of the *Local Government Act 2009* and the *Local Government Regulation 2012*.

8. LIMITATIONS

- 8.1 The CEO or the Mayor may, in approving an application under this policy, set a maximum limit on the legal costs that will be paid.
- 8.2 A Council officer may make a further or subsequent application to the Council under this policy in respect of the same proceeding.

9. POSSIBLE OUTCOMES

- 9.1 The CEO or Mayor may refuse, grant or grant subject to conditions, and application for the payment of legal representation costs made under this policy.

In coming to their respective decision regarding an application under this policy, the CEO or Mayor may consult with Council's legal team or other Council employees to provide relevant assistance, advice or representation.

- 9.2 When a decision is made regarding the application, the decision can be subject to clauses such as a financial limit, requirement to enter into a formal agreement (eg security relating to the repayment) as well as the requirement for the repayment of the legal representation costs paid for by Council under this policy.

The CEO or Mayor may have regard to any insurance benefits that may be available to the applicant under the Council's insurance policies or other similar arrangement.

- 9.3 If at any point (before or after the application has been approved) the CEO or Mayor identify through a finding of a Court, tribunal inquiry, regulatory investigation or other similar independent body, the Council officer whose application for legal representation costs has been approved;

- a) Did not act in good faith; or
- b) Provided false or misleading information regarding their application for assistance under this policy, the legal representation costs paid by the Council are to be repaid by the Council officer in accordance with clause 11 'Repayment of Legal Costs'.

10. REPORTING

- 10.1 Any approved expenses incurred under this policy will be reported through the audit process;



however the name of the Council officer may be redacted for privacy reasons.

11. REPAYMENT OF LEGAL COSTS

11.1 A Council officer whose legal representation costs have been paid by the Council is to repay the Council either;

- a) All or part of the legal costs, as determined by the assessor of the application;
- b) 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 Council officer 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.

11.2 Council may take the required action to recover any monies dues and owing to it by a Council officer under this policy.

12. VARIATIONS

12.1 Council reserves the right to vary, replace or terminate this policy from time to time.

13. BREACH OF POLICY

13.1 Where Council reasonably believes a Council officer has breached this policy, the matter will be dealt with under the Performance and Misconduct Policy.

14. COMMUNICATION AND DISTRIBUTION

14.1 Supervisors will ensure the policy is distributed as per the Distribution and Dissemination table on this policy.

DEFINITIONS

- a) **Legal proceedings** – may refer to a civil action, criminal action or investigation such as an inquiry or statutory administration or regulatory investigation.
- b) **Council Officer** – includes local government employees, an authorised person and an interim administrator.
- c) **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.



Schedule 1. Application Template

To: *Name of Decision Maker*
 Position of Decision Maker

From: *Name of Council Officer*
 Position of Council Officer
 Section and Department of Council Officer
 Council Officer Address
 Council Officer Phone Number

Details of matter

I am applying for Legal Assistance in relation to the following matter/s:

Outline details

Undertaking by Council Officer:

1. I have diligently and conscientiously endeavoured to carry out my Council functions and duties in good faith.
2. I have not been convicted of a criminal offence nor had a finding of official misconduct against me in relation to this matter.
3. I am / am not aware of any criminal, official misconduct or disciplinary proceedings being brought against me in relation to this matter.
4. I have attached a statement of support of my application setting out all relevant facts and demonstrating that my conduct as a Council officer meets the requirements of this policy.
5. I have attached a copy of any relevant documents (eg claim, application, subpoena, notice or other legal documentation).
6. I agree to provide any further information requested by the decision maker and to keep the decision maker informed of any change in circumstances which may affect my application.

I agree that any grant that I received of legal assistance under this policy will be subject to any terms and conditions placed on the grant by the relevant decision maker as well as the terms and conditions of the Provision of Legal Assistance for Employees Policy.

Signature of applicant: _____

Date: _____