

Council Policy 1.7

Legal Representation Costs Indemnification

Strategic Plan Objective

3.3 To provide responsible and accountable governance and management of the EMRC.

Purpose

To protect the interests of Council members and employees (including past members and former employees) where they become involved in civil legal proceedings because of their official functions. In most situations the EMRC may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to those proceedings.

In each case it will be necessary to determine whether assistance with legal costs and other liabilities is justified for the good government of the region.

Legislation

Local Government Act 1995 s9.56 – 9.57

Local Government (Functions and General) Regulations 1996 r35

Policy Statement

1 General Principles

- a) The EMRC may provide financial assistance to members and employees in connection with the performance of their duties provided that the member or employee has acted reasonably and has not acted illegally, dishonestly, against the interests of the EMRC or otherwise in bad faith.
- b) The EMRC may provide such assistance in the following types of legal proceedings:
 - i) Those brought by members and employees to enable them to carry out their EMRC functions (eg where a member or employee seeks a restraining order against a person using threatening behaviour);
 - ii) Those brought against members or employees this could be in relation to a decision of Council or an employee which aggrieves another person or where the conduct of a member or employee in carrying out his or her functions is considered detrimental to the person (eg defending defamation actions); and
 - iii) Statutory or other inquiries where representation of members or employees is justified.
- c) The EMRC will not support any defamation actions seeking the payment of damages for individual members or employees in regard to comments or criticisms levelled at their conduct in their respective roles. Members or employees are not precluded, however, from taking their own private action. Further, the EMRC may seek its own advice on any aspect relating to such comments and criticisms of relevance to it.
- d) The legal services the subject of assistance under this policy will usually be provided by the EMRC's solicitors. Where this is not appropriate for practical reasons or because of a conflict of interest then the service may be provided by other solicitors approved by the EMRC.

2 Applications for Financial Assistance

- a) Subject to item (f), decisions as to financial assistance under this policy are to be made by Council.
- b) A member or employee requesting financial support for legal services under this policy is to make an application in writing, where possible in advance, to the Council providing full details of the circumstances of the matter and the legal services required. Such a request is to contain a declaration that the applicant has acted in good faith, and has not acted unlawfully or in any way that constitutes improper conduct in relation to the matter to which the application relates.
- c) The application is to be accompanied by a written statement by the applicant that he or she:
 - i) has read, and understands, the terms of this policy;
 - ii) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 3 and any other conditions to which the approval is subject; and
 - iii) undertakes to repay to the EMRC any legal representation costs in accordance with the provisions of clause 3.
- d) An application to the Council is to be accompanied by an assessment of the request and with a recommendation, which has been prepared by, or on behalf of, the Chief Executive Officer (CEO) or where the CEO is the applicant by the Chief Financial Officer.
- e) A member or employee requesting financial support for legal services, or any other person who might have a financial interest in the matter, should take care to ensure compliance with the financial interest provisions of the *Local Government Act 1995*.
- f) Where there is a need for the provision of urgent legal services before an application can be considered by Council, the CEO may give an authorisation to the value of \$5,000 provided that the power to make such an authorisation has been delegated to the CEO in writing under section 5.42 of the *Local Government Act 1995*. Council has delegated the authority to the CEO, up to \$5,000 per application, where the need arises for urgent legal services. (Delegation reference C7/2001).
- g) Where it is the CEO who is seeking urgent financial support for legal services the Chief Financial Officer in consultation with the Chairman shall deal with the application.

3 Repayment of Assistance

- a) Any amount recovered by a member or employee in proceedings, whether for costs or damages, will be off set against any monies paid or payable by the EMRC.
- b) Assistance will be withdrawn where the Council determines, upon legal advice, that a person has acted unreasonably, illegally, dishonestly, against the interests of the EMRC or otherwise in bad faith; or where information from the person is shown to have been false or misleading.
- c) Where assistance is so withdrawn, the person who obtained financial support is to repay any moneys already provided. The EMRC may take action to recover any such moneys in a court of competent jurisdiction.

Financial Considerations

A contingent item that could materialise at any time and therefore requires a budget allocation.

Adopted/Reviewed

20 October 2000
14 December 2000
02 May 2002
20 May 2004
23 February 2006
18 September 2008
23 September 2010
18 September 2014
06 December 2018
23 June 2022

Next Review

Following the Ordinary Elections in 2023

Responsible Unit

Business Support Team