

LEGAL REPRESENTATION AND COST INDEMNIFICATION

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1. OBJECTIVE

This policy is designed 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 Council 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 district. This policy applies in that respect.

2. PRINCIPLES

Council 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 interest of the local government or otherwise in bad faith.

Council may provide such assistance in the following types of legal proceedings:

- Proceedings brought by members and employees to enable them to carry out their local government functions (e.g. where a member of employee seeks a restraining order against a person using threatening behaviour);
- Proceedings brought by members and employees [this could be in relation to a decision of Council or an employee which aggrieves another person (e.g. refusing a development application) or where the conduct of a member or employee in carrying out his or her functions is considered detrimental to the person (e.g. defending defamation actions)]; and
- Statutory or other inquiries where representation of members or employees is justified.

Council 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, council may seek its own advice on any aspect relating to such comments and criticisms of relevance to it.

The legal services the subject of assistance under this policy will usually be provided by Council'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 Council.

2.1. Guidelines

Decisions as to financial assistance under this policy are to be made by Council.

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.

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).

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*.

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 s5.42 of the *Local Government Act 1995*.

2.2. Repayment of Assistance

Any amount recovered by a member or employee in proceedings, whether for costs or damages, will be offset against any moneys paid or payable by the City of Karratha.

Assistance will be withdrawn where the Council determines, upon legal advice, that a person has acted unreasonably, illegally, dishonestly, against the interest of the City of Karratha or otherwise in bad faith or where information from the person is shown to have been false and misleading.

Where assistance is so withdrawn the person who obtained financial support is to repay any moneys already provided. The City of Karratha may take action to recover any such moneys in a court of competent jurisdiction.

3. CONSEQUENCES

This policy represents the formal policy and expected standards of the City of Karratha. Appropriate approvals need to be obtained prior to any deviation from the policy. Elected Members and Employees are reminded of their obligations under the Council's Code of Conduct to give full effect to the lawful policies, decisions and practices of the City.

4. ROLES AND RESPONSIBILITIES

The Chief Executive Officer (CEO) shall prepare a report to Council after undertaking due diligence and provide a recommendation for Council to consider.

When it is the CEO who is seeking urgent financial support for legal services the Council shall deal with the application.

5. REFERENCES TO RELATED DOCUMENTS

- Delegations Register

Policy Number:	CE2 <u>CG04</u>
Previous Policy Number:	EXE06
Resolution Numbers:	12250 & 12251-Dec 2001; 12738-Sep 2002; 13497-Oct 2004; 14223-Oct 2007; 152174-Jun 2012; 152174-Aug 2012
Last Review:	August 2012
Next Review:	June 2014 <u>March/April 2017</u>
Responsible Officer:	Chief Executive Officer <u>Manager Governance and Organisational Strategy</u>

This Policy takes effect from the date of adoption by Council and shall remain valid until it is amended or deleted.