
POLICY TITLE: **COUNCILLORS, EMPLOYEES AND VOLUNTEERS –
LEGAL ASSISTANCE AND INSURANCE PROTECTION**

FOLDER NUMBER: F2007/00307

POLICY OWNER / DIVISION: Office of the General Manager

POLICY OWNER / BRANCH: Risk and Audit Branch

FUNCTION: Councillors, staff and volunteers

RELEVANT LEGISLATION: Local Government Act 1993

POLICY ADOPTION/AMENDMENT DATE: 11 May 2022 **REPORT NUMBER:** CS4/22

REVIEW YEAR: 2025

AMENDMENT HISTORY: 8 November 2006 (Report CC86/06)
11 April 2007 (Report CC11/07)
8 April 2009 (Report CC12/09)
20 April 2011 (Report CC10/11)
17 April 2013 (Report GM2/13)
8 April 2015 (Report CS6/15)
8 August 2018 (Report CS33/18)

RELATED POLICIES: Policy – Councillors' Expenses and Facilities

POLICY PURPOSE / OBJECTIVES:

1. To clarify Council's interpretation of its obligations under the Local Government Act 1993 (the Act) relating to the funding of legal costs to Hornsby Shire Councillors, Council Employees and Volunteers.
2. To make provision for the funding of legal costs to Hornsby Shire Councillors, Council Employees and Volunteers in situations where existing insurance policies may not provide indemnity for these costs.
3. To ensure that Councillors, Officers and Council Volunteers are afforded indemnity against:
 - a) Loss occasioned by legal actions brought against the Councillor, Council Employee or Volunteer arising from the discharge of their respective duties;
 - b) Loss occasioned by sustaining an injury during the discharge of their respective duties or whilst travelling directly to and from such duties; and
 - c) Loss of or damage to personal property approved for use in the pursuit of Council business;

but always subject to the terms and conditions of the various insurance policies or indemnity fund memberships arranged by Council.

(N.B. Most of the contract indemnities contain excesses or deductibles: losses under the deductible amount are not considered in this Policy.)

POLICY STATEMENT:

Legal Assistance

1. Council shall disburse money only if the disbursement is authorised by the Act, either expressly or because it is supplemental or incidental to or consequential upon the exercise of its functions.
2. In the particular circumstances outlined below, Council shall advance the reasonable legal expenses of:
 - a) a Councillor, Employee or Volunteer defending an action arising from the performance in good faith of a function under the Local Government Act 1993 or any other Act (a statutory function) (as section 731 of the Act refers)
 - b) a Councillor, Employee or Volunteer defending an action in defamation provided the statements complained of were made in good faith in the course of exercising a statutory function
 - c) a Councillor, Employee or Volunteer for proceedings before the Local Government Pecuniary Interest Tribunal or an investigative body provided the subject of the proceedings arises from the performance in good faith of a statutory function
3. Legal expenses incurred in relation to proceedings arising out of the performance by a Councillor, Employee or Volunteer of his or her statutory functions shall be distinguished from expenses incurred in proceedings arising merely from something which a Councillor, Employee or Volunteer has done during his or her term in office or term of service, respectively. An example of the latter is expenses arising from an investigation as to whether a Councillor, Employee or Volunteer acted corruptly by using knowledge of a proposed rezoning for private gain.
4. For the purposes of this Policy, the limit of Council's obligation to advance funds shall be \$400,000. It should be noted, however, that Council's insurance policies may extend to a greater value, subject to the terms, conditions and limitations of the contract of insurance. Where Council's insurer provides indemnity directly to a Councillor, Employee or Volunteer, Council's financial obligations shall be correspondingly reduced.
5.
 - a) Where an application is made to the General Manager for an advance of funds under this Policy, the General Manager shall examine all the evidence readily available and where it is considered the claim could be made against an existing insurance policy held by Council, a claim shall be submitted to Council's insurer in the first instance. Where the claim is not covered or accepted by Council's insurer, the General Manager shall (i) determine whether, in the particular matter, there is any legal impediment to the operation of the Policy and (ii) confirm that, in his/her opinion, it is reasonable to believe the applicant will receive a finding

that the applicant has acted in good faith. Where the General Manager is the applicant, these duties fall to the Mayor.

- b) Where, after examining the relevant evidence, the General Manager forms the opinion that the applicant has a reasonable prospect of the legal proceedings producing a finding that the applicant has acted in good faith, he/she may authorise the release of Council monies for the funding of the applicant's legal defences until such times as the issue of good faith has been examined by a properly constituted external inquiry or court of competent jurisdiction with a finding handed down. If the finding is unfavourable to the applicant then Council's funding shall cease and Council may require the applicant to fully reimburse the advanced funds to Council.
 - c) In circumstances where the General Manager declines to release Council monies in terms of b) above, the applicant is entitled to a review by Council's elected body. Where such a review is requested by the applicant, the General Manager shall prepare a report for Council's consideration which shall include independent and relevant professional advice on the matter. A copy of the General Manager's report, including the independent advice, shall be made available to the applicant at the same time as it is provided to the Councillors.
 - d) Where the court or inquiry finding on good faith is favourable to the applicant, Council may authorise further funding of legal defence costs up to the limit specified in Point 4.
 - e) Whenever the applicant, in the course of defending the case, receives any monies through the court as costs or damages then such monies shall be passed immediately to Council until the funding advances have been repaid.
6. Council has resolved to maintain insurances which shall, to the extent to which cover is reasonably available, indemnify Council for its potential exposure under this Policy. The insurance cover may also further indemnify Councillors, Employees and Volunteers subject to the terms, conditions and limitations of the contract of insurance. No application may be considered under this Policy until the question of indemnification of the applicant by the insurer has been resolved. All parties shall give close consideration to the requirements of the insurers and no action shall be taken which may prejudice any party's rights to indemnification by the insurer. Where the insurer provides indemnity directly to a Councillor, Employee or Volunteer, Council's obligations under this Policy shall be correspondingly reduced.
7. Council shall not advance the costs of an action in defamation taken by a Councillor, Employee or Volunteer as "plaintiff".
8. Council shall not advance the costs of a Councillor, Employee or Volunteer seeking advice in respect of possible defamation, or in seeking a non-litigious remedy for possible defamation.
9. This Policy shall not be revoked by Council in such a way as to disadvantage a Councillor, Employee or Volunteer who has previously reported in writing to the General Manager (or, in the case of the General Manager as applicant, to the Mayor) a circumstance which may lead to proceedings against that Councillor, Employee or Volunteer.

Insurance Protection

1. Council arranges various insurances and indemnity funds which indemnify, variously, Council as an entity and Councillors, Employees and Volunteers as individuals. This Policy deals with those insurance and indemnity arrangements which cover or include cover for Councillors, Employees and Volunteers as individuals.
2. Council will take out and maintain in force the underlisted insurance or indemnity policies, ensuring that all policies contain the most favourable terms and conditions reasonably available in the insurance market which extend insurance cover or indemnity protection to Councillors, Employees and Volunteers (where practicable).

a) Public and Products Liability and Professional Indemnity

This policy extends cover for circumstances which Council shall become legally liable to pay by way of compensation in respect of death or personal injury, or loss or damage to property caused by an occurrence in connection with the Council's business from Public Liability or Products Liability (as defined by the contract wording), or any Professional Indemnity claim (as defined by the contract wording) arising out of any negligent act, error or omission actually committed or alleged to have been committed in the conduct of Council's business.

b) Councillors and Officers Liability

This policy extends cover for circumstances where a claim arises out of a wrongful act or wrongful breach, committed, attempted or alleged to have been committed or attempted. This policy wording does not extend to Volunteers.

c) Local Government Personal Accident and Corporate Travel Insurance Policy

This policy extends limited cover for property losses, medical and general expenses incurred whilst acting within the scope of duties for and on behalf of Council, including travelling on Council business.

d) Property Protection

This policy extends limited cover for loss or damage to personal belongings of Councillors, Employees and Volunteers whilst on Council premises.