

 <p>Mackay REGIONAL COUNCIL</p>	COUNCIL POLICY	
	Liability Claims	Against Mackay Regional Council
	POLICY NO	098
	DEPARTMENT	Organisational Services
	PROGRAM	Governance & Safety
ENDORSED BY COUNCIL 12 August 2020		Resolution: ORD-2020-205

1.0 Scope

This policy relates to liability claims made against MRC Mackay Regional Council (MRC) including claims for personal injury and property damage.

2.0 Purpose

The purpose of this policy is to outline MRC's approach to dealing with liability claims in order to inform potential claimants and to provide direction to MRC staff.

This policy should be read in conjunction with any related legislation, codes of practice, relevant internal policies and procedures.

3.0 Reference

- *Local Government Act 2009*
- *Local Government Regulations 2012*
- *Civil Liabilities Act 2003*
- *Mackay Regional Council Administrative Actions Complaint Policy*
- *Local Government Mutual Terms and Conditions*
- *Insurance Requirements for Hire of Council Facilities Internal Operating Guideline*

4.0 Definitions

To assist in interpretation the following definitions shall apply:

Claim shall mean any writ, summons, application, third party proceeding or other originating legal or similar process including any written demand communicated to MRC.

Council shall mean the Mayor and Councillors of Mackay Regional Council.

Duty of Care shall mean the responsibility or legal obligation of a person or organisation to take reasonable care to avoid foreseeable acts or omissions to be likely to cause harm to others. It is the first element that must be established to proceed with an action in negligence.

MRC shall mean Mackay Regional Council.

Personal Injuries shall mean bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury.

Property Damage shall mean damage, loss or loss of use of tangible property caused by MRC.

Public Liability shall mean claims alleging negligent acts or omissions or nuisances created or allowed to occur by MRC, which have resulted in injury to the claimant or damage to his or her property.

- (i) Personal Injury (as defined herein)
- (ii) Damage to Property (as defined herein)
- (iii) Public Liability Plant (as defined herein)

Public Liability Plant Claims shall mean claims that result when a MRC operated plant such as a mower, whipper-snipper, or slasher has caused damage to third party property.

Service Providers/Suppliers shall mean any business, sporting or fitness groups, event organisers, stall holders or any other service provider/stakeholders that wish to undertake business or hire/use council facilities.

5.0 Background

Prompt and efficient claims management will ensure that claims are processed quickly and accurately ensuring that MRC meets its obligations to claimants and protect the interests of ratepayers.

MRC's Public Liability Insurance covers MRC activities and does not cover third parties (i.e. members of the community, community organisations, sporting groups and community events etc.). The only exception is individuals that qualify and registered in advance under the limited provisions of MRC's Performers and Stall-holders insurance policy.

6.0 Policy Statement

6.1 Claim Management

Liability claims received by MRC will be considered on a "Without Prejudice" basis, investigated and a decision made on those findings within a reasonable timeframe.

Whilst all liability claims will be properly considered, the following claims are unlikely to be approved:

- Damage to tyres and rims which result from wear and tear;
- Damage due to debris (if it occurs in the normal course of driving);
- Damage resulting from criminal actions;
- Damage resulting from extreme weather events;

- Matters already the subject of an insurance claim;
- Damage resulting from the actions of a third party;
- Damage resulting in property damage i.e. panel damage, windscreen damage from MRC plant, unless MRC has been found to be negligent.

Payment of compensation may be considered for an injury, loss or damage suffered, if it is established that the injury, loss or damage was a result of MRC's negligence.

In order to establish whether MRC is negligent an investigation will be conducted taking into account various factors including, but not limited to:

- Circumstances around the injury, loss or damage;
- Claimants' statements;
- MRC records;
- Statements by employees.

MRC will assess most claims internally, however in some instances, such as personal injury claims, complex property damage claims, and high value claims, MRC is required to refer these to its insurers.

6.2 Public Liability Plant Claims

Public Liability Plant claims will only be accepted if a Third Party Liability Claim form has been signed and fully completed by the claimant and relevant MRC officer acknowledging the damage sustained to the third party's vehicle and submitted to MRC with all supporting documentation within 10 business days of the alleged incident. An exception to this timeframe may be granted only in exceptional circumstances as assessed and approved by the Manager Governance & Safety.

Further, claims will only be approved if it is proven that MRC has been negligent in its operations (for example: insufficient signage, substandard equipment, operator's non-adherence to procedures etc.).

6.3 Public Liability Claims

All claims are required to be lodged to MRC in writing and will be considered on a "without prejudice" basis.

To assist MRC in assessing and investigating a claim, photographs of the damage, location map, medical reports, two quotations for repairs or other appropriate documents to support the claim will be required.

The acceptance of the written claim and supporting documentation by MRC in no way infers negligence on the part of MRC or binds MRC to provide compensation.

6.3.1 Personal Injury claims

These claims are notifiable under the terms and conditions of MRC's liability insurance cover. These claims are referred to MRC's insurers for claim management.

6.3.2 Property Damage

These claims need to be lodged with MRC in writing and will be considered on individual circumstances.

These claims may be dealt either by:

- Internal investigation;
- MRC's Insurer;
- As per Public Liability Plant claim requirements (6.2 above)

7.0 Review of Policy

This policy will be reviewed when any of the following occur:

1. The related documents are amended or replaced.
2. Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than three years.

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
2	Review of Policy	Amendments to Policy and consideration to make Council Policy.		14.12.16
3	Review of Policy	Amendments	Council endorsed	12.08.20