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Scope

This Policy applies to the Councillors and employees of Mackay Regional Council ("**MRC**").

This Policy does not apply to standard legal services and advice required as part of normal MRC functions.

Objective

This Policy sets out a framework in which MRC will provide legal assistance to Councillors and employees who may require personal legal representation as a direct result of their official roles with MRC.

Policy Statement

The *Local Government Act 2009* ("**LGA**") provides that a local government administrator is not civilly liable for an act done under the LGA or the *Local Government Electoral Act 2011* ("**LGEA**"), or an omission made under the LGA or LGEA, honestly and without negligence. Instead, such a liability will attach to the local government.

The liability for actions performed in good faith by a council representative whilst performing their duties of their role therefore lies with the local government. As a result, MRC has adopted this Policy to explain when MRC will fund or partly fund the cost of providing the appropriate legal representation to Councillors and employees.

This Policy sets out the process which must be followed in dealing with requests for MRC to contribute towards costs regarding legal representation that are received from Councillors and employees.

Council considers that to the extent this Policy engages and limits, or potentially limits, any human rights, that limitation is reasonable in that it is proportionate and justified.

This process to remain in force until otherwise determined
by Mackay Regional Council

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1.0 Principles

1.1 Roles & Responsibilities

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 MRC under this Policy.

Chief Executive Officer ("CEO") - The CEO is to receive, assess and decide any requests for legal assistance from a Councillor or employee. The CEO is to also make any other relevant decisions on behalf of MRC regarding this Policy.

1.2 Delegation of Roles and Responsibilities

The CEO or Mayor may delegate their roles and responsibilities to a representative employee of MRC to assess an application made under this Policy.

The CEO and the Mayor have delegation to incur the relevant liabilities and to approve the associated expenditure on behalf of MRC in accordance with this Policy.

1.3 Assessment Criteria

An application for legal representation, must be assessed in accordance with **all** of the below criteria before approval:

- The legal representation costs must relate to a legal matter which arises from the actions of the Councillor or employee acting in their role, functions or duties as a Councillor or employee.
- The relevant actions of the Councillor or employee must have been made in good faith and they must not have acted unlawfully or in a way that constitutes improper conduct or misconduct in relation to the matter to which the application relates.

The legal costs are associated with the threatened or commenced legal proceedings against a Councillor or employee in their personal capacity, or, in exceptional circumstances, may be associated with legal proceedings which are proactively commenced to properly protect the interests of a Councillor, employee.

- The legal representation costs must not relate to a matter that is purely of an individual or private nature. The cost must arise from the performance by the Councillor or employee of their normal role, functions or duties .
- The legal assistance, advice or representation should not compromise MRC's legal position or insurance.
- In coming to their respective decision regarding an application under this Policy, the CEO or the Mayor, may consult MRC's Legal Services unit or other employees to provide relevant assistance, advice or representation.
- In assessing an application, the CEO or the Mayor may have regard to any insurance benefits that may be available to the applicant under MRC's insurance policies or other similar arrangement.

1.4 Examples of costs that may be approved

If satisfied, the CEO or the Mayor in their respective roles may approve the payment of legal representation costs. Examples could include but are not limited to:

- Where a Councillor or employee is threatened by legal proceedings personally and the claim in the legal proceedings relates to their role, functions or duties as a Councillor or employee. An example of this is an action against a Councillor or employee for defamation, a claim in damages or compensation, and the proceedings arise from a decision made or action taken by the Councillor or employee in the discharge of their local government role, functions or duties.
- Reasonable legal representation costs that may lead to legal proceedings to protect a Councillor or employee in a personal or physical sense in order to allow them to carry out their local government role, functions or duties safely. An example of this is a Councillor or employee obtaining a restraining order against a person who makes continual personal threats against that person in their capacity as a local government Councillor or employee.
- Reasonable legal representation costs for a Councillor or employee who is subjected to a statutory or administrative investigation by a regulatory authority when acting in their local government role, function or duty.

Exceptional Circumstances

Only in exceptional circumstances will MRC consider the payment of legal representation costs for:

- A Councillor or employee to commence or consider commencing legal proceedings regarding actions in defamation or other personal proceedings against a person that pursues damages or compensation. Consideration, in such circumstances, will be given to the extent, frequency and impact of the actions that give rise to the request.
- Only in exceptional circumstances will MRC consider the payment of legal representation costs for a Councillor that arise from, or are associated with, election issues or conduct associated with an election campaign, as MRC acknowledges the implied right to political communication as recognised in Australia.

MRC **will not** approve the payment of legal costs for a Councillor or employee to commence or consider commencing proceedings against the lawful act of another Councillor or employee.

1.5 Application Process

A Councillor or employee who seeks assistance under this Policy must make an application in writing to the CEO. In the instance the applicant is the CEO, the application must be addressed to the Mayor.

NOTE: Such an application must be made before the incurring of any legal costs to which the application relates.

The following details should be provided as part of the written application:

1. The facts surrounding the matter for which legal representation is sought; and
2. How that matter relates to their official local government role, function or duty as a Councillor or employee; and
3. The nature of legal representation to be sought (e.g. written advice, legal representation in Court, preparing and lodging legal proceedings); and
4. In relation to any action commenced by a Councillor or employee, the steps that the Councillor or employee have taken in respect of the matter (e.g. whether any notice has been served and/or whether an offer to make amends has been received); and
5. An estimate of the costs of the relevant legal representation; and
6. Reasons as to why MRC should provide the relevant assistance; and
7. The applicant must also sign and date a written statement with the following:

- a) That they have acted in good faith and have not acted unlawfully or in a way that constitutes improper conduct or misconduct in relation to the matter to which the application relates;
- b) That they have read and understand the terms of Legal Assistance for Councillors and Employees Policy;
- c) That they acknowledge that any approval of the legal representation costs is conditional upon the repayment provisions set out in Repayment of Legal Costs section of the Policy as well as any further conditions agreed upon between the Councillor or employee and MRC;
- d) That they undertake to repay the legal representation costs in accordance with Repayment of Legal Costs section of the Policy.

Notably the applicant may also be required to sign a more formalised contractual document regarding the repayment of monies to MRC in return for the provision of assistance under the terms of this Policy.

Any application made under this Policy will be kept confidential and in alignment with the relevant privacy provisions of the LGA as well as the *Local Government Regulation 2012*.

1.6 Limitations

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.

In all instances where legal representation costs are paid by MRC, these costs must be repaid to MRC by the Councillor or employee in accordance with the Repayment of Legal Costs section of this Policy (where applicable).

An employee or Councillor may make a further or subsequent application to MRC under this Policy in respect of the same proceeding.

1.7 Possible Outcomes

1. After assessing the application in accordance with the Assessment Criteria detailed in this Policy, the CEO or the Mayor may:
 - a) refuse; or
 - b) grant; or
 - c) grant subject to conditions,

- an application for the payment of legal representation costs.
2. If the application is granted subject to conditions, the conditions that may be imposed may include, but are not restricted to:
 - a) setting a financial limit; and/or
 - b) entry into a formal agreement, including a security agreement, relating to the payment, and repayment of the legal representation costs paid for by MRC under this Policy.
 3. MRC may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.

1.8 Repayment of Legal Costs

An employee or Councillor whose legal representation costs have been paid by MRC, is required to repay MRC:

- a) All or part of those legal costs, and any insurance deductible, if at any point the Mayor or CEO identify through a finding of a Court, tribunal, inquiry, regulatory investigation or other similar independent body that :
 - i) the Councillor or employee did not act in good faith, or has acted unlawfully or in a way that constitutes improper conduct or misconduct;
 - ii) the Councillor or employee provided false or misleading information in respect of their application for assistance under this Policy;
 - iii) where MRC has paid legal representation costs to commence or consider commencing legal proceedings against another MRC employee or Councillor, the act of the other MRC employee or Councillor was a lawful act; or
- b) If monies are awarded in the form of costs orders, damages or any commercial settlement is reached relating to the matter for which MRC originally paid legal representation costs, the Councillor or employee is to repay such sum to MRC up to the amount of legal representation costs that were incurred by MRC under this Policy

MRC reserves its right to take action to recover any monies due and owing to it by a Councillor or employee under this Policy as a debt.

1.9 Reporting

Any approved expenses incurred under this Policy will be reported in MRC's financial statements in such a way that they are clearly identifiable and subject to audit review.

2.0 Definitions

To assist in interpretation the following definitions shall apply:

CEO shall mean the Chief Executive Officer of Mackay Regional Council. A person who holds an appointment under section 194 of the *Local Government Act 2009*. This includes a person acting in this position.

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

Councillor shall mean an elected representative, including the Mayor of Mackay Regional Council.

Defamation shall mean where a person's reputation is harmed by the publication of defamatory matter.

Employee shall mean all persons directly employed by Mackay Regional Council on a permanent, temporary, or casual basis.

Good faith shall mean that a person acts honestly, fairly and reasonably with a sincere belief or motive without any malice or desire to defraud others.

Improper Conduct shall mean conduct as defined in section 199 of the *Local Government Act 2009*.

Legal proceedings may refer to a civil action, criminal action or investigation such as an inquiry or statutory administration or regulatory investigation.

Legal Representation shall mean the provision of legal services, to or on behalf of a Councillor or employee, by an approved lawyer that are in respect of:

- a) a matter or matters arising from the performance of the functions of the Councillor or employee; and
- b) legal proceedings involving the Councillor or employee that have been or may be commenced.

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.

Legal Services includes advice, representation or preparation of documentation that is provided by an approved Lawyer.

LGA shall mean the *Local Government Act 2009*

Local government administrator includes a Councillor, the chief executive officer, an authorised person, another local government employee or an interim administrator.

LGEA shall mean the *Local Government Electoral Act 2011*.

LGR shall mean the *Local Government Regulation 2012*.

Mayor shall mean an elected member of Council, also referred to as a Councillor, with additional responsibilities as outlined in section 12(4) of the *Local Government Act 2009*.

MRC shall mean Mackay Regional Council.

3.0 Review of Policy

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

- The related documents are amended or replaced.
- 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 (3) years.

4.0 Reference

- *Local Government Act 2009* ("LGA")
- *Local Government Regulation 2012* ("LGR")
- *Local Government Electoral Act 2011* ("LGEA")
- MRC Policy No. 002 - Reimbursement of Expenses and Provision of Facilities for Councillors

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
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2	Review of Policy	Amended as part of Review	Council	13.05.2020
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