

Local Government NSW

Legal Assistance Policy and Guidelines

Version 2.0

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1 Legal Assistance Policy

1.1 Introduction

A council may apply to Local Government NSW (LGNSW) for support in seeking contributions from LGNSW's member councils to assist the council with its legal costs, where the council is litigating a matter that involves a major local government principle.

1.2 Commencement

This policy commences on 18 June 2021.

1.3 Eligibility

This policy applies to councils in NSW that are financial members of LGNSW.

2 The Application

A member council may apply to LGNSW for its support to seek contributions from all councils to assist with its legal costs and the matter involves a major local government principle which may be eroded if the matter is not pursued.

The Board of LGNSW will decide whether or not the application for support is granted. The decision will be based on the general application of the principle involved in the case to all councils. What is a "major local government principle" will be determined by the Board.

2.1 Application criteria

Assistance under this policy will only be granted in respect of matters appealed to the NSW Court of Appeal or the High Court of Australia. Assistance will not be available to fund litigation in a court of initial jurisdiction (including the Land and Environment Court) unless the LGNSW Board is satisfied that there are special and exceptional reasons for doing so. What are "special and exceptional reasons" will be determined by the Board but it may include a "test case" where the matter will affect all councils.

Assistance is not available for matters not involving court action (for examples, matters involving mediation or the seeking of advice on any available courses of action).

Assistance is not available in relation to matters which arise as a consequence of any entrepreneurial activities which may have been initiated or undertaken by the council.

Assistance will not normally be provided in appeals against penalties imposed on a council prosecuted by another authority unless there are exceptional grounds for granting it. What are "exceptional grounds" will be determined by the Board but it may include:

- the imposition of a penalty that is significantly inconsistent with penalties imposed in other matters that have essentially similar facts; and
- the matter has significance for the local government sector.

2.2 Timing of application

Requests for assistance will only be considered if made to LGNSW prior to the commencement of the proceedings in the Court of Appeal or other court unless the council is the respondent to the appeal. If the council is the respondent, the request should be submitted as soon as possible after the council becomes aware that the appeal has been or is to be lodged.

2.3 Minimum legal cost

Support will not be available where the estimated legal costs are less than \$50,000.

3 The Procedures

3.1 The procedure to apply

When submitting a request for assistance, councils should ensure as far as possible that all necessary information is included in the initial application.

A request cannot be considered until all information has been supplied and failure to do so can lead to unnecessary correspondence and delays. If there is information which cannot be supplied when the request is submitted, that should be stated, and an indication given as to when it will be available.

All applications should include the following details:

- the stage the matter is at in the court process;
- a brief statement of the facts of the matter;
- a clear indication of the principle involved which makes the outcome of the case of relevance to all councils;
- an estimate of the costs involved; and
- advice from Counsel as to the prospects of success.

3.2 How the contributions are collected

Where LGNSW agrees to support a request for assistance, contributions will be sought from councils calculated on a pro rata basis according to the proportion of their basic membership subscription and the estimate of the costs provided by the council.

Requests for contributions will be circulated as soon as possible after the Board meeting at which the approval was given to seek contributions in the matter.

Contributions are entirely voluntary, and no council is under any obligation to contribute.

LGNSW will provide information and updates to all councils on matters that have been approved under this policy.

LGNSW may, if it is considered appropriate, seek contributions for an amount which is less than the estimated costs involved in the matter.

Any funds received by LGNSW over and above those requested by the applicant council will be reimbursed to the council or councils that provided the funds.

3.3 Allocation of the contributions to the council

LGNSW will pay to the council involved in the matter, the lower of:

- the total amount collected by LGNSW through the contribution process; or
- the residual amount of costs remaining liable upon the council involved in the matter, after any costs are recovered from or ordered by the court to be paid by the other parties to the action, subject to the fact that the council involved in the matter will bear the first \$20,000 of legal costs itself.

LGNSW may at its discretion pay to the council all or part of the first \$20,000.

Where the council recovers costs from another party after LGNSW has paid contributions to it, it shall account and repay to LGNSW these amounts not previously taken into consideration. That is, no council is entitled to make a profit from receiving assistance.

Any amounts repaid to LGNSW will be reimbursed to the councils that provided funds.

4 Further appeals and funding

4.1 Further appeals

Where a council that has received support in respect of an appeal to one court suffers an adverse verdict in that court and wishes to appeal to a higher court, a fresh application for assistance must be submitted.

Each application will be considered on its merits. The fact that assistance was given in the lower court should not be seen as guaranteeing that assistance will be available for a further appeal.

4.2 Other discretionary funding

Notwithstanding this policy, LGNSW may by resolution of the Board commence, support and/or seek to intervene in any legal proceedings that fall within the objects of the Rules of LGNSW and nothing in this policy shall limit LGNSW's ability to seek voluntary contributions from all councils to assist LGNSW with its legal costs

LGNSW may at its discretion provide financial assistance for a matter in any jurisdiction or Court.

5 Document Control

This document:

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