



# Legal Assistance to Councillors and Staff Policy

September 2016

POL004

Prepared by:

Corporate Governance Unit

## DOCUMENT REVIEW AND APPROVAL

This document has been approved by:

Approved by	Minute No.	Date Approved
1. Council CCL103-97	1158	5 May 1997
2. Council CCL007-98	145	4 August 1997
3. Finance, Resources and Management Committee - FIN216-05	1121	9 May 2005
4. Finance and Management Committee - FIN130-13	787	6 May 2013
5. Council - CCL022-17	86	26 September 2016

### Revision history:

Version	Author	Date	Revision
1.	General Manager	5 May 1997	Original Version
2.	General Manager	2 May 2005	Introduction of Conduct Committees and enhanced standards of behaviour under the Local Government Amendment (Discipline) Act 2004
3.	Director - Corporate Services	11 April 2012	Policy reviewed as part of annual review process, no amendments necessary
4.	Governance Manager	15 April 2013	Policy updated to reflect changes to agency names and to add the following matters for assistance: <ul style="list-style-type: none"><li>• Administrative Decisions Tribunal of NSW</li><li>• Information and Privacy Commission</li></ul>
5.	Director – Corporate Services	15 April, 2014	Policy reviewed as part of annual review process, no amendments necessary
6.	Director – Corporate Services	24 March, 2015	Policy reviewed as part of annual review process, no amendments necessary
7.	Manager Governance & Customer Service	14 September, 2016	Policy updated to Corporate Template. Established criteria for when assistance will be provided for legal action brought by Councillors or Staff.

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## **1. PURPOSE**

To define the circumstances in which legal assistance will be provided by Council to Councillors and/or staff.

## **2. APPLICATION**

The policy will be applied to Councillors and staff, both current and former, of Sutherland Shire Council, where legal assistance is requested in the event of an inquiry, investigation, hearing or legal proceedings taken against them in connection with their performance in good faith of a function under the Local Government Act or any other statutory instrument.

## **3. DEFINITIONS**

Councillor - current or former Councillor of Sutherland Shire Council.

Staff - current or former employee of Sutherland Shire Council.

## **4. PRINCIPLES**

Legal Assistance will be provided for Councillors and / or Staff in the event of any of the following occurring:

- (a) Any inquiry, investigation or hearing by any of:
- The Independent Commission against Corruption
  - Ombudsman of New South Wales
  - The Office of Local Government
  - Information and Privacy Commission of New South Wales
  - NSW or Federal Police
  - Office of the Director of Public Prosecutions
  - The Local Government Pecuniary Interests Tribunal
  - State Coroners Court
  - Administrative Decisions Tribunal, including but not limited to Privacy and GIPA Act matters
  - A Committee of State or Federal Parliament
  - A Royal Commission
  - Pecuniary Interest Tribunal
  - Conduct Committee, including any investigation prior to consideration by or as a result of decisions of the Conduct Committee
  - Such other bodies that may be established under the statute or by Royal warrant to investigate the conduct of the Council, a Councillor or staff member.

- (b) Legal proceedings taken against a Councillor, former Councillor, employee or former employee, arising out of or in connection with the Councillor's/employee's performance in good faith of a function under the Local Government Act, or a Councillor defending an action in defamation provided the statements complained of were made in good faith in the course of exercising a function under the Act, or

Subject to Council resolution, Council shall reimburse such Councillor/employee during or after the conclusion of the inquiry, investigation, hearing or proceedings for part or all legal expenses properly and reasonably incurred given the nature of the inquiry, investigation, hearing or proceeding on a solicitor/client basis, provided that:

- (i) The amount of the reimbursement shall be reduced by the amount of any monies that may be or are recouped by the Councillor/employee on any basis;
  - (ii) The Councillor's/employee's performance or exercise of the statutory function or power was done in good faith for the purpose of executing that statutory function;
  - (iii) The amount of such reimbursement is limited to an amount considered reasonable by the Council but not to include expenses incurred beyond the level of representation agreed by the Mayor, a Councillor appointed by the Council and the General Manager under iv as being appropriate;
  - (iv) Upon becoming aware that a Councillor/employee may be required to attend any inquiry, investigation or hearing as set out in (a) that Councillor/employee must give immediate notice to the General Manager and must advise the Mayor, a Councillor appointed by the Council and the General Manager of the level of representation intended and the details of the cost agreement entered into with legal representatives.
- (c) Legal proceedings commenced by a Councillor, former Councillor, employee or former employee, as a consequence of related action first being taken against them. Subject to the initial proceedings meeting the criteria in section 4 (b) of this policy.

## **5. RELEVANT LEGISLATION**

- Local Government Act 1993

## **6. RELATED AND ASSOCIATED COUNCIL POLICY AND PROCEDURES**

- Sutherland Shire Council Code of Conduct
- Sutherland Shire Council Privacy Management Plan

**7. RESPONSIBLE OFFICER**

The Corporate Governance Manager is responsible for keeping the policy current.

**8. RESPONSIBILITIES**

The General Manager and General Counsel shall have the responsibility of ensuring that any legal proceedings are undertaken in accordance with the policy.

**9. MONITORING**

All applications will be actively monitored to ensure the expectations of Council and the community are being met.

**10. REVIEW DATE**

This Policy will be reviewed on a biennial basis from the date of adoption by Council, or in response to legislative and statutory requirements.

**11. RECORD KEEPING, CONFIDENTIALITY AND PRIVACY**

- Information and records relating to requests for legal assistance will be stored in council's Electronic Document Management System.
- Access to information relating to applicants will be considered in accordance with the Government Information (Public Access) Act and council's Privacy Management Plan.
- A copy of the Policy will be available for inspection at Council's Administration office during ordinary business hours and on Council's website.

**12. BREACHES AND SANCTIONS**

Council is committed to the standards contained in this Policy. All staff must adhere to this policy. Any staff member acting outside this Policy will be subject to the process as outlined in Council's Staff Disciplinary Policy.