

LEGAL ASSISTANCE POLICY & GUIDELINES (November 2015)

POLICY AND GUIDELINES - REQUESTS FOR ASSISTANCE WITH LEGAL COSTS

A council may apply for the support of the Association in seeking contributions from all councils to assist with its legal costs where that council is involved in litigation and the principle in question in the matter;

- involves a major local government principle which may be eroded but for pursuing the matter; and
- is one which should not be eroded merely because the council involved is not itself, so seriously affected by the outcome of the case that the legal costs associated with pursuing the principle outweigh any other consequences. That is, just because the council involved itself, has decided in all the circumstances not to further pursue the matter, legal assistance can be provided where the matter is of such significance and broader concern to the whole of local government to warrant pursuing the principle.

Councils' applications are to be considered and dealt with on the following basis;

1. The question of whether or not an application for legal assistance will be supported is entirely for the Association to decide and the decision will be based on the general application of the principle involved in the case to all councils.
2. Assistance under these guidelines will only be granted in respect of appeal matters to the New South Wales 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 Association is satisfied that there exists special and exceptional reasons for doing so. This may include a 'test case' where the matter will affect all councils. The Association may at its discretion provide assistance for a matter in any jurisdiction or Court.

Assistance is not available for matters not involving court action (for examples, matters involving mediation or for 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 concerned in the matter.

Assistance will not normally be in appeals against penalties imposed on a council in a prosecution action by another authority unless there are exceptional grounds for granting it, such as the imposition of a penalty which is significantly inconsistent with penalties imposed in other matters having essentially similar facts and the matter has significance for the whole of local government.

3. Requests for assistance will only be considered if submitted to the Association prior to the commencement of the proceedings in the Court of Appeal or other court, unless the council is involved as the respondent to the appeal. In that event, the request should be submitted as soon as possible after the council becomes aware that the appeal has been or is to be lodged.
4. Support will not be available where the estimated legal costs are less than \$50,000.
5. All applications should include the following details;
 - 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.
6. Where the Association agrees to support a request for assistance, contributions will be sought from councils calculated on a pro rata basis according to the proportion of the basic membership subscription assessed against each council and based upon the estimate of costs submitted with the initial request (unless an updated figure has been submitted in the meantime). Requests for contributions will be circulated as soon as possible after the Board meetings at which approval is given to seek contributions in the matter.
 7. Contributions are entirely voluntary and no council is under any obligation to make a contribution in any instance.
 8. The Association may, if it is considered appropriate, seek contributions for an amount which is less than the estimated costs involved in the matter.
 9. The Association will pay to the council involved in the matter, the lower of;
 - the total amount collected by the Association 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.
The Association may at its discretion waive this cost.
 10. Where the council to which support has been given recovers costs from another party after the Association has paid contributions to it, it shall account and repay to the Association these amounts not previously taken into consideration. That is, no council shall be entitled to make a profit from receiving assistance.
 11. Where a council 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, for example to have an adverse verdict of the Court of Appeal tested in the High 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.
 12. 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 fact should be stated and an indication given as to when it will be available.
 13. Any funds received by the Association over and above those requested by the applicant council are to be reimbursed to the council that provided the funds.
 14. Notwithstanding the above, the Association may by resolution of the Board commence, support and/or seek to intervene in any legal proceedings that fall within the objects of the Association and nothing in this policy shall limit the Association's ability to seek voluntary contributions from all councils to assist the Association with its legal costs.
 15. The Association will provide information and updates to all councils on matters that have been approved under this policy.