

LEGAL PROCEEDINGS – COMMENCEMENT, CESSATION AND OTHER MATTERS POLICY (ADMINISTRATIVE POLICY)

1. Scope:

This Policy is applicable to all Rockhampton Regional Council (RRC) employees and relates to the approval of commencement and cessation of legal proceedings in a judicial court whereby Council is the body prosecuting the legal action.

This Policy does not apply to legal processes and matters dealt with by Queensland Civil and Administrative Tribunal (QCAT) or legal defences. Commissions such as the Queensland Industrial Relations Commission, Anti-discrimination Commission and quasi-judicial enquiries, are excluded from the scope of this policy.

2. Purpose:

The purpose of this Policy is to:

- provide the ethical framework for dealing with legal matters including model litigant principles; and
- guide Council and employees commencing or ceasing judicial legal matters whereby Council is the body prosecuting the action.

3. Related Documents:

Primary

Nil

Secondary

Local Government Act 2009

Queensland Civil and Administrative Tribunal Act 2009

Butterworths Australian Legal Dictionary

4. Definitions:

To assist in interpretation, the following definitions shall apply:

Action	Any proceeding in a court (Butterworths Australian Legal Dictionary)
CEO	Chief Executive Officer of Rockhampton Regional Council
Council	Rockhampton Regional Council
Employee	Means local government employee: (a) the chief executive officer; or (b) a person holding an appointment under section 196 of the <i>Local Government Act 2009</i> .
Litigation	Litigation involves a series of steps that may lead to a court trial and

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	ultimately a resolution of the matter. Litigation covers the process of bringing and pursuing a lawsuit, and encompasses the entire procedure. A lawsuit is a case or controversy authorised by law, to be decided in a court of justice, brought by one person or entity against another person or entity for the purpose of enforcing a right or redressing a grievance. The term litigation is sometimes used to be distinguishable from alternative dispute resolution (ADR) methods, such as mediation or arbitration.
Proceeding	An action commenced in a court, whether between parties or not, including an appeal (Butterworths Australian Legal Dictionary).
QCAT	Queensland Civil and Administrative Tribunal. Legislation precludes any administrative prosecution or defence action from the judicial environment and is therefore not captured.
Quasi Judicial	The action taken and discretion exercised by public administrative agencies or bodies that are obliged to investigate or ascertain facts and draw conclusions from them as the foundation for official actions.
Spurious	Not genuine or true.

5. Policy Statement:

Council continually considers whether a dispute is susceptible to alternative dispute resolution (eg. mediation or arbitration) and promotes or agrees to alternative dispute resolutions wherever appropriate.

5.1 Excluded from the scope of this Policy

Legal processes able to be engaged without reference to Council

5.1.1 Alternative Legal Process Adjudication

QCAT is empowered under the *Queensland Civil and Administrative Tribunal Act 2009* to review decisions and disputes as identified below. These matters are no longer determined by a judicial court and are therefore excluded from the scope of this policy:

1. Administrative decisions
 - Animal care and regulation;
 - Blue card applications; and
 - Right to information requests
2. Building disputes
 - Building activities
 - a. Domestic and commercial building work; and
 - b. Disciplinary procedures against building certifiers and contractors
 - Review of decisions of the Building Services Authority
3. Dividing fence disputes
4. Minor civil disputes
 - Residential tenancy disputes;
 - Debt disputes;
 - Property damage disputes – motor vehicles; and
5. Tree disputes

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5.1.2 Commissions

Commissions such as the Queensland Industrial Relations Commission, Anti-discrimination commission and quasi-judicial enquiries such as a Flood Inquiry are excluded from the scope of this policy.

5.1.3 Legal Action Commenced to Defend

Often Council does not prosecute an action but is required to defend a decision taken by Council. All legal actions to defend are excluded from the scope of this policy.

5.2 Included in the scope of this policy

5.2.1 Legal Administrative Actions

These administrative actions can be engaged by delegated Council officers without reference to Council for resolution. However, should such administrative actions progress to the point whereby prosecution in a judicial court is likely, the commencement of such action cannot be engaged upon without resolution of Council.

A number of administrative actions are performed prior to a matter being placed before a judicial court, namely the power to:

- Direct
- Determine
- Notify
- Order
- Instruct
- Declare
- Issue
- Publish

5.2.2 Legal Matters requiring Council Resolution

5.2.2.1 Commencing Prosecution Action

The action of authorising the commencement of prosecuting legal action in a judicial court cannot be engaged upon without resolution of Council, except in the following matters:

- The CEO is authorised to undertake appropriate legal action when there is a potential of risk to the health and safety to the public and environment. The action is to be reported to the next available Council or Performance and Service Committee meeting.

5.2.2.2 Cessation of Action

Any instances requiring the possible cessation of a legal action commenced within a judicial environment is to be referred to Council for decision.

5.3 Model Litigant Principles

These principles do not override any legislation requirements; they provide the ethical framework on how all legal matters are dealt with by Council and relevant Council employees.

5.3.1 The Council, through its suitably qualified Council employees, acts fairly in the management of all claims or actions against the Council (but is not precluded from acting firmly in pursuit of its rights), including:

- (a) acting consistently;

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- (b) not taking purely technical points when no prejudice has been suffered;
- (c) avoiding undue delay;
- (d) not requiring the other party to prove facts which the Council knows to be true (nevertheless, properly testing claims against it);
- (e) not concede to spurious demands;
- (f) generally pursuing costs awarded in the Council's favour;
- (g) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid;
- (h) endeavouring to avoid litigation, wherever possible;
- (i) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum;
- (j) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim;
- (k) not undertaking and pursuing appeals unless the Council believes that it has reasonable prospects for success or the appeal is otherwise justified in the Council's interest;
- (l) appropriately test all claims;
- (m) claim legal professional privilege where appropriate.

5.3.2 The fundamental criterion for settling a claim against the Council is that the settlement be in accordance with legal principle and practice.

In particular:

- (a) there must be at least a meaningful prospect of Council liability (i.e. clearly spurious claims should not be settled merely to avoid the cost of defending them); and
- (b) the amount of the settlement should reflect the prospects of the claim succeeding in Court, and the prejudice to the Council (by way of costs or otherwise) of continuing to defend the claim.

6. Review Timelines:

This Policy is reviewed when any of the following occur:

1. The related information is amended or replaced; or
2. Other circumstances as determined from time to time by the Council.

7. Responsibilities:

Sponsor	Chief Executive Officer
Business Owner	General Manager Corporate Services
Policy Owner	Manager Workforce and Strategy
Policy Quality Control	Corporate Improvement and Strategy

EVAN PARDON
CHIEF EXECUTIVE OFFICER

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