



## Policy

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### CLAIMS MANAGEMENT POLICY

Strategic Outcome:	Good government	
Policy type	Administrative	
Date of Adoption:	20 July 2022	Minute Number: 212
Date for Review:	15 July 2026	
Responsible Officer:	Enterprise and Risk Manager	
Document Control:	Replaces Gathering Information Policy adopted 19 April 2017	
Delivery Program Link:	2.1.3 Council operations and financial management support ethical, transparent and accountable corporate governance.	

#### 1. POLICY STATEMENT

When an incident occurs that exposes Council to litigation, or a claim against our insurance, it is vital that Council can investigate, gather information, retrieve documents, and establish responsibility. It is important to understand the processes around claims management in order to confirm when to reject and/or defend a claim or accept liability and settle.

#### 2. PURPOSE

The purpose of this policy is to provide direction to Council staff on reporting and investigating incidents, gathering information surrounding the incident, making decisions regarding Council's position in response to the information gathered, and ensuring any information collected is in a format that constitutes admissible evidence when defending claims against Council.

#### 3. SCOPE

This policy applies to all staff involved in reporting and investigating incidents.

#### 4. OBJECTIVE

This policy is developed to assist the Council with the Delivery Program Objective:

*2.1.3 Council operations and financial management support ethical, transparent and accountable corporate governance.*



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### 5. DEFINITIONS

<b>Environmental incident</b>	Any incident involving an environmental spill at a Council controlled facility or workplace, or damage caused by Council to the landscape constituting an environmental breach.
<b>Financial incident</b>	Any occurrence in fraud, misappropriation, major cost over-run, or failure in debtor, creditor and investment control systems.
<b>Governance incident</b>	Any occurrence of failure in Code of Conduct, fraud or misappropriation; significant reputational loss; project management failure; or privacy principles failure.
<b>Incident investigation</b>	Formal internal investigation involving gathering of information and completion of investigation report.
<b>Incident review</b>	This is an informal discussion with relevant parties about the incident which may or may not lead to a formal internal investigation.
<b>Legislative compliance incidents</b>	Any failure against legislation to which Council should be complying with.
<b>Professional indemnity incidents</b>	Loss or damage suffered by a member of the public as a result of a determination, certificate issue, design or advice supplied by Council.
<b>Property incidents</b>	Any loss or damage to fleet, equipment or property asset from actions of staff, volunteers, contractors, visitors or members of the public.
<b>Public liability incidents</b>	Injury, illness, loss or damage suffered by a member of the public as a result of actions or activities of Council staff, volunteers or contractors, or at Council controlled facilities or infrastructure.
<b>Work health and safety incidents</b>	Work related injury or illness to Council workers.
<b>Workers</b>	As per the <i>Work Health and Safety Act 2011</i> , the term workers includes paid employees, volunteers, contractors, work experience students.



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### 6. POLICY IMPLEMENTATION

#### 6.1 Council responsibility

There is an expectation that Council will act honestly and fairly when handling claims and litigation. This is achieved by:

- dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation;
- 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;
- acting consistently in the handling of claims and litigation;
- endeavouring to avoid litigation wherever possible;
- where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:
  - not requiring the other party to prove a matter which the Council knows to be true, and
  - not contesting liability where the Council knows that the dispute is really about quantum;
- not taking advantage of a claimant who lacks the resources to litigate a legitimate claim; and
- apologising where the Council is aware that it has acted wrongfully or improperly.

In pursuing litigation or to test or defend claims, Council will act firmly and properly to protect its interests. In particular and where required, Council will:

- enforce costs orders or seek to recover costs;
- rely on claims of legal professional privilege or other forms of privilege and claims for public interest immunity;
- plead limitation periods;
- seek security for costs;
- oppose unreasonable or oppressive claims or processes;
- require opposing litigants to comply with procedural obligations, and
- move to strike out or otherwise oppose untenable claims or claims which are an abuse of process.

#### 6.2 Incident investigation

Incidents can occur through a variety of scenarios and will ultimately fall into different categories including environmental, financial, governance, property, public liability and work health and safety. They may be reported to Council using a variety of mechanisms. These may be through Council's



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Customer Request System, verbally received or formally reported through correspondence, or in the case of workplace incidents through workplace incident notification procedures.

All incidents will be investigated. Staff responsible for the investigation will vary according to the incident, however all incidents and investigations will be reported to the Enterprise Risk Manager for review and recording.

### **6.3 Gathering information**

During the investigation, information will be collated in order to determine the cause, liability and a course of action. It is imperative that information gathered is presented in a format that constitutes admissible evidence when defending claims in court.

Information may include data, emails, phone records and external information such as weather reports in order to create a complete picture of the incident and the circumstances surrounding it. Investigations will require evidence and records to be retrieved as soon as reasonably practicable. It is therefore vital that Internal records are stored in accordance with Council procedures to ensure records retrieval can be performed efficiently.

### **6.4 Claims management**

Following the investigation and the retrieval of records, the Enterprise Risk Manager will review the information and form an opinion around a claim, in accordance with the responsibilities outlined in this policy, and advise the CEO and relevant Director. The ultimate decision to accept or not accept liability will be with the CEO.

Claims involving workers and work health and safety incidents will also be managed by the Enterprise Risk Manager, and where required reported to the regulator. Where an incident involves a member of staff and results in a lost time injury or a workers compensation claim, claims will be managed by the Human Resource Services Officer in accordance with Council's workers compensation insurer's procedures.

#### **6.4.1 Claim acceptance**

Where a claim (other than a claim for workers compensation) is to be accepted, the Enterprise Risk Manager will review Council's insurance coverage and make a decision whether to lodge a claim with Council's insurers. This will be influenced by the type of claim, and where applicable, the cost of repair/replacement against Council's deductible. Insurance claims will be lodged in accordance with Council's Claims Management procedures.

If a claim is accepted and an insurance claim is not lodged, the Enterprise Risk Manager will liaise with the claimant and make arrangements for repair/replacement, in accordance with Council's Claims Management procedures.



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### 6.4.2 Claim denial

Where a claim is to be denied, Council will compose a formal letter or email to the claimant explaining the reasons why the claim is to be denied. Claimants are advised to seek their own legal advice following denial. Any further action by the claimant following denial will be forwarded to Council's insurers.

### 6.5 Reporting and recording

All claims will be recorded and included in Council's records management system. Not all claims will be reported to Council's insurers. The Enterprise Risk Manager will review the circumstances around claims and where there exists a possibility of further action against Council, or where the Council determines that there is liability on their part, or the claim exceeds Council's deductible, Council's insurers will be notified.

## 7. RELATED LEGISLATION, POLICIES AND STRATEGIES

### 7.1 Legislation

- *Civil Liability Act 2002*
- *Work Health and Safety Act 2011*
- *Work Health and Safety Regulations 2017*
- AS ISO 31000:2018 Risk management - Guidelines

### 7.2 Council policies and guidelines

- Governance Policy
- Records management Policy
- Risk Management Framework
- Work Health and Safety Policy
- Code of Conduct
- Claims Management Procedures
- Incident Investigation Procedures

## 8. RECORDS MANAGEMENT

All Records must be kept in accordance with Council's Records Management Policy (currently under development) and destroyed as per the General Retention and Disposal Authority: Local Government Records (GA39).

## 9. REVIEW AND EVALUATION

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This policy (procedure) will be evaluated and reviewed at least once every four (4) years as per Council's Governance Policy (currently under development) or as required.

### 10. DOCUMENT AVAILABILITY

A number of legislative instruments require Councils to have the policy available for inspection at Council's principal office (i.e. Policies made under Part 3, of the Local Government Act 1993). Each document should therefore state the ways in which the policy is available including any relevant fees and charges for access to such policy. An example of the required statement is provided below:

This policy will be available for inspection at Council's principal office during ordinary business hours as per the requirements of section 18 (c) of the *Government Information (Public Access) Act 2009* and section 167 of the *Local Government Act 1993*.

Access to the policy in digital format is free and is available on Council's website <https://www.berriganshire.nsw.gov.au/>

Printed copies of the document are available at Council's principal office (address noted below) and are subject to Council's Fees and Charges.

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### 11. VERSION CONTROL

Version Number	Date	Summary	Responsible Officer
1.0	20.07.2022	New Policy document	Enterprise Risk Manager

### APPENDICES

Nil