

POS	LEGAL PROCEEDINGS BETWEEN COUNCIL AND OTHER PARTIES	PSES13
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POSITION STATEMENT CODE:	PSES13
DIRECTORATE:	Executive Support Department
BUSINESS UNIT:	Executive Support Department
SERVICE UNIT:	Executive Support Services
RESPONSIBLE OFFICER:	Chief Executive Officer
FILE NO.:	182/002
DATE FIRST ADOPTED:	14 February 2013
DATE LAST REVIEWED:	10 March 2016
ATTACHMENTS:	N/A
VERSION NO.	3

Dates of Amendments / Reviews:	
DAPPS Meeting:	31 January 2013 27 February 2014 25 February 2016
OCM:	14 February 2013 13 March 2014

BACKGROUND:

The City of Cockburn is frequently a party to legal proceedings, either as a result of initiating actions, or as a result of responding to actions.

PURPOSE:

To create a system enabling advice and the ongoing status of such actions to be provided to Elected Members on a regular basis.

POSITION:

(1) Application

This Position Statement applies in relation to legal proceedings commenced or responded to by the City of Cockburn, or any person acting in their capacity as a representative of the City of Cockburn and for whom the City of Cockburn is vicariously liable.

(2) Commencing Legal Proceedings

1. This section applies to any legal proceedings initiated as a result of a resolution of Council.

POS	LEGAL PROCEEDINGS BETWEEN COUNCIL AND OTHER PARTIES	PSES13
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2. A Council decision to initiate a legal proceeding may include instructions to be issued on behalf of the City and which legal practitioners are to be engaged.
3. In addition, a Council decision may authorise the Chief Executive Officer (CEO) to negotiate an outcome on its behalf and settle proceedings, if considered appropriate to do so, and in doing so the Council will consider any legal constraints applicable to the CEO which may compromise that officer's capacity to achieve any outcome desired by Council.
4. In the absence of any clear direction to the CEO in this regard, settlement outcomes must be considered and decided by Council.
5. This Position Statement does not apply to actions commenced by officers of the City who are authorised to commence proceedings on behalf of the City by authority vested in them through legislation, (including delegated legislation) or other delegated authority of Council.
6. Notwithstanding (5) above, the CEO, or any officer, through the CEO, may inform the Elected Members of the commencement and ongoing status of any action commenced by an officer of the City.
7. The CEO shall establish and maintain a procedure which enables those matters which are subject to the terms of this section to be centrally recorded and updated.
8. A record of the procedure mentioned in (7) above shall be presented to the Audit and Strategic Finance Committee at least annually, or as often as considered appropriate by the CEO or as requested by the Audit and Strategic Finance Committee.

(3) Responding to Legal Proceedings

1. This section applies to any legal proceedings to which the City is required to formally respond.
2. The Elected Members must be advised that a legal proceeding has been commenced against the City as soon as practicable after the City has been given notice of the proceeding.
3. The CEO shall establish and maintain a procedure which enables those matters which are subject to the terms of this section to be centrally recorded and updated, as appropriate.

POS	LEGAL PROCEEDINGS BETWEEN COUNCIL AND OTHER PARTIES	PSES13
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4. A record of the procedure mentioned in (3) above shall be presented to the Audit and Strategic Finance Committee at least annually, or as often as considered appropriate by the CEO, or as requested the Audit and Strategic Finance Committee.