



RESERVE BANK OF AUSTRALIA

Assistance to Staff for Legal Proceedings

March 2025

Contents

1.	Purpose	1
1.1	Who does this policy apply to?	1
1.2	What this policy does not cover	1
2.	Legal assistance to staff	1
2.1	Criteria for assistance	1
2.2	When the law prohibits assistance	2
2.3	Requirement that staff member has acted reasonably and responsibly	2
2.4	Basis for providing assistance for costs or damages	2
2.5	Level of assistance	3
2.6	Inquiries and commissions	4
2.7	Subpoenas	4
2.8	Assistance to staff members as plaintiffs	5
3.	Who makes the decision to assist?	5
4.	Legal representation	5
5.	Policy management	5
5.1	Administration	5
5.2	Monitoring and review	6
5.3	Communication	6

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1. Purpose

This policy concerns the handling of requests for assistance in relation to legal proceedings (including potential or threatened legal proceedings) as well as subpoenas and parliamentary and other formal inquiries and commissions. It sets out the circumstances in which, and the terms on which, the Bank will provide assistance to staff in relation to legal proceedings.

It is the Bank's policy to support staff who have acted reasonably and responsibly, including in supporting a staff member to appropriately limit the circumstances where he or she may be liable to a third party.

1.1 Who does this policy apply to?

This policy applies to you if you:

- (a) are an employee of the Bank, the Governor or the Deputy Governor; or
- (b) occupy a position (as a contractor, consultant, agency employee or otherwise) within the organisational structure of the Bank.

References to 'staff' in this Policy include people in both of the categories above.

1.2 What this policy does not cover

This policy does not cover:

- (a) administrative law challenges that do not include damages claims. The costs of defending administrative law challenges are paid by the Bank. However, where an administrative law challenge is coupled with a damages claim against an individual, this Policy applies to the defence of the damages claim;
- (b) disciplinary proceedings taken against a staff member by the Bank;
- (c) proceedings against a person relating to their acts or omissions in their capacity as:
 - (i) a member or former member of any Board of the Bank; or
 - (ii) a director or former director of a subsidiary of the Bank or other corporation in which the Bank is or was a shareholder; or
- (d) proceedings arising out of a motor vehicle incident where the staff member's liability is insured or where the Bank considers that the staff member's liability should reasonably have been insured (in particular, where the staff member received an allowance that includes an insurance component).

2. Legal assistance to staff

2.1 Criteria for assistance

Expenditure will normally be approved to assist a staff member who is a defendant in civil or criminal proceedings if that expenditure is not for a liability or cost of a type prohibited by section 22B of the *Public Governance, Performance and Accountability Rule 2014* (see section 2.2) and:

- (a) the proceedings arose out of an incident that relates to their employment or engagement by the Bank; and
- (b) the staff member acted reasonably and responsibly (see section 2.3).

2.2 When the law prohibits assistance

Section 22B of the *Public Governance, Performance and Accountability Rule 2014* prevents the Bank from paying, or agreeing to pay, for any of the following liabilities or costs incurred by an employee and, notwithstanding anything else in this policy, expenditure will not be approved for any staff member (whether or not an employee) for any of these liabilities or costs:

- (a) a liability (other than a liability for legal costs):
 - (i) to pay a pecuniary penalty for the contravention of, or an offence against, a law of the Commonwealth, a State or a Territory;
 - (ii) to the Bank or Note Printing Australia Limited (NPA); or
 - (iii) to someone (other than the Bank or NPA) where the liability arose of conduct that was not in good faith;
- (b) legal costs incurred in defending an action for a liability if the legal costs are incurred:
 - (i) in defending or resisting proceedings in which an outcome is that the staff member is found to be liable and the liability is one referred to in paragraph (a); or
 - (ii) in defending or resisting criminal proceedings in which an outcome is that the staff member is found guilty.

The outcome of proceedings is the outcome of the proceedings including any appeal in relation to the proceedings (but see section 2.5(b) in relation to appeals).

2.3 Requirement that staff member has acted reasonably and responsibly

- (a) In relation to civil proceedings the requirement that a staff member has acted reasonably and responsibly does not of itself preclude the provision of assistance to a staff member who has acted, or is alleged to have acted, negligently (that is, failed to exercise the legal standard of 'reasonable care' owed in the circumstances). Rather, the requirement that a staff member has acted reasonably and responsibly is intended to preclude, at a minimum, the provision of assistance in circumstances where the Bank would be likely to seek contribution or indemnity from the staff member if the Bank were itself sued in relation to the same matter. A decision to seek contribution or indemnity will normally be appropriate only where the staff member's conduct involved serious or wilful misconduct or culpable negligence.
- (b) If it is not clear whether the staff member has acted reasonably and responsibly, the Bank may defer a decision on assistance until the conclusion of the proceedings, or agree to fund the staff member's defence but defer a decision on whether to fund any costs or damages payable to another party by the staff member until after the facts are ascertained, for example, by a court.

2.4 Basis for providing assistance for costs or damages

Assistance to a staff member:

- (a) in relation to costs or damages payable to another party by the staff member (including as a result of agreeing to a reasonable settlement) in **civil** proceedings will normally only be available on condition that the staff member has agreed that the staff member's defence (which for the purposes of this Policy includes any cross claim or counterclaim and any negotiation of, or seeking, a settlement) will be controlled by the Bank and that the staff member will provide all assistance required by the Bank in the conduct of the defence;

- (b) in relation to costs incurred in **criminal** proceedings against the staff member and any penalty payable by the staff member as a result of those criminal proceedings will not be conditional upon that employee agreeing that the staff member's defence will be controlled by the Bank. However, assistance in the form of payment is subject to:
 - (i) the condition that only costs and expenses of the staff member to which the Bank has given its approval will be paid (and these may be paid before a verdict on the relevant charges); and
 - (ii) the terms of subparagraph 1.1.11(e)(ii) apply to any fine or penalty or any order to pay the costs of another party.
- (c) for payment of costs or damages may be refused if a staff member has failed to notify the Bank of the relevant proceedings, or of the circumstances that gave rise to the relevant proceedings, within a reasonable time of becoming aware of them and the delay may prejudice the Bank's position;
- (d) for payment of costs or damages in civil proceedings may be refused if assistance is not provided by the staff member as required by paragraph (a); and
- (e) for legal and associated costs will be by way of advance, which will be repayable to the Bank by the staff member:
 - (i) in criminal cases, if the staff member is found guilty; or
 - (ii) in other cases, in the circumstances, if any, specified by the Bank at the time of the advance.

2.5 Level of assistance

- (a) Subject to the other provisions of this Policy, assistance to a staff member may involve approval to pay:
 - (i) the costs of the staff member's legal representation or related costs of the staff member's involvement in the proceedings (for example, to travel to attend the proceedings);
 - (ii) any damages and legal costs awarded against the staff member;
 - (iii) a reasonable amount payable by the staff member in settlement of the proceedings; and
 - (iv) a fine or penalty imposed on the staff member (unless it is one referred to in section 2.2(a)(i)).
- (b) Unless the approval expressly applies to an appeal or consideration of a possible appeal, an approval to give assistance is not to be taken as applying to an appeal or consideration of a possible appeal. Where an approval extends to an appeal, that approval may be revoked by notice given to the staff member at any time.
- (c) Approval of expenditure for a staff member's legal representation, for related costs or for legal costs payable by the staff member to another party:
 - (i) is to be given only for an amount that is reasonable, having regard to the nature of the matter; and
 - (ii) in the case of criminal proceedings, is subject to paragraph (e).

- (d) Without limiting paragraph (c), payments for counsel are to be made in accordance with the directions on Engagement of Counsel, at Appendix D to the *Legal Services Directions 2017*, as qualified or amended by any exemption the Bank holds at the relevant time relating to fees payable to counsel. The Bank will monitor the conduct of the proceedings to ensure that the staff member's costs of legal representation and other related costs and the Bank's possible ultimate exposure to liability are within reasonable limits. In addition, the Bank will take appropriate steps to satisfy itself that any legal costs or damages payable by the staff member to another party are reasonable.
- (e) In relation to criminal proceedings:
 - (i) assistance in relation to the defence of an indictable offence is to be limited initially to the preparation and conduct of committal proceedings; and
 - (ii) a decision about assistance in the form of payment of a fine or penalty imposed on, or costs of another party awarded against, a staff member (including an assessment of whether the criteria for assistance in section 2.1 have been met) will be made after, and taking into account, the decision of the relevant court.

2.6 Inquiries and commissions

Expenditure may be approved for a staff member to be legally represented in connection with a parliamentary or other formal inquiry or commission (including an inquest) and for other costs (such as travel) related to an inquiry or commission if:

- (a) it is in the interests of the Bank and relates to the staff member's employment or engagement with the Bank; and
- (b) the expenditure does not relate to a challenge to the validity, or conduct, of an inquiry or commission.

Approval of expenditure is only to be given for an amount that is reasonable, having regard to the nature of the inquiry or commission.

2.7 Subpoenas

- (a) Expenditure may be approved for the costs of legal representation and other related costs of a staff member in responding to a subpoena issued to them in their own name that relates to their employment or engagement with the Bank or facts or circumstances arising in the course of that employment or engagement. The approval is to be given only for an amount that is reasonable, having regard to the nature of the subpoena.
- (b) It is a condition of assistance under paragraph (a) that the Bank is to be consulted in relation to disclosure or non-disclosure of Bank documents and information to ensure that an appropriate position can be taken.

2.8 Assistance to staff members as plaintiffs

- (a) Expenditure will not be approved to assist a staff member to institute proceedings for defamation arising in the course of the performance of their duties (either for representation or the payment of legal costs). Similarly, assistance will not be provided for any other action relating to alleged defamation, such as assistance to uphold a person's reputation, legally challenge comments damaging to a person's reputation, or in obtaining an apology (as distinct from a letter merely seeking to correct the record). The policy is the same even if the staff member offers to pay to the Bank any damages that they may receive. The Bank has this policy

because funding defamation proceedings could give rise to a public perception that the Bank was seeking to prevent legitimate criticism.

- (b) The Bank retains the discretion to consider on a case-by-case basis whether to fund legal costs for any type of legal proceedings by a staff member relating to a matter arising from their employment or engagement that are not defamation proceedings or proceedings of a type referred to in paragraph (a). However, the Bank would do so only where this was in the interests of the Bank, and such circumstances are likely to be exceptional.

3. Who makes the decision to assist?

- (a) Subject to paragraph (b), a decision whether to provide assistance to a staff member for legal proceedings under this Policy is a matter for the Governor. However, if the request for assistance is made by the Governor, the Deputy Governor will refer the matter to the Governance Board for decision.
- (b) A decision to provide assistance under section 2.7 dealing with subpoenas may be made by a Head of Department or Assistant Governor after consultation with the General Counsel.

4. Legal representation

- (a) If a staff member is to be provided with assistance in the form of payment of any costs or damages payable in civil proceedings, and the Bank is also a defendant in the proceedings, the solicitors engaged to represent the Bank are also to be engaged to represent the staff member. This will save on legal costs and assist in the proper conduct of the proceedings, while the agreement contemplated under paragraph 2.4(a) will avoid a conflict of interest arising.
- (b) If a decision on assistance has been partially or totally deferred, the staff member and the Bank are to have separate legal representation. If the Bank has agreed to pay the cost of the staff member's legal representation, the directions on Engagement of Counsel, at Appendix D to the *Legal Services Directions 2017*, as qualified or amended by any exemption the Bank holds at the relevant time relating to fees payable to counsel, apply.
- (c) If the Bank is funding, or controlling, a staff member's defence in civil proceedings then the defence will be conducted in accordance with Appendix B to the *Legal Services Directions 2017*, which sets out obligations to act as a model litigant.

5. Policy management

5.1 Administration

This policy is administered by Legal Section.

5.2 Monitoring and review

This Policy will be reviewed bi-annually and if there are any relevant changes to the *Legal Services Directions 2017* or the *Public Governance, Performance and Accountability Rule 2014*. Changes to this Policy must be approved by the Governance Board.

5.3 Communication

This Policy will be published on the Bank's intranet.