

# Policy

## **Legal Representation for Elected Members and Officers – Costs Indemnification and Liability**



## Legal Representation for Elected Members and Officers – Costs Indemnification and Liability

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Legal Authority:	Local Government Act Section 2.7 – The Role of Council
Directorate:	City Legal
Department:	Governance and Civic Services
Related documents:	Acts/Regulations Local Government Act 1995 Plans/Strategies Corporate Business Plan 2017 – 2022 Policies Nil Work Instructions Nil Other documents Nil

*Note: Changes to References may be made without the need to take the Policy to Council for review.*

# Policy:

## 1. Title

Legal Representation for Elected Members and Officers – Costs Indemnification and Liability.

## 2. Purpose

To provide Elected Member and staff with the confidence to undertake their role in an impartial manner with the assurance they have appropriate legal representation if any legal action is taken against them.

## 3. Scope

### 3.1. Payment Criteria

- 3.1.1 In each case it is necessary to determine whether assistance with legal costs and other liabilities is justified for the good governance of the City.
- 3.1.2 There are four major criteria for determining whether the City is to pay the legal representation costs of an Elected Member or employee. These are -
  - (a) the legal representation costs are to relate to a matter that arises from the performance by the Elected Member or employee of his or her functions;
  - (b) the legal representation cost is in respect of legal proceedings that have been, or may be, commenced;
  - (c) in performing his or her functions, to which the legal representation relates, the Elected Member or employee is to have acted in good faith, and not have acted unlawfully or in a way that constitutes improper conduct; and
  - (d) the legal representation costs do not relate to a matter that is of a personal or private nature.

## 4. Definitions

**Legal practitioner** means;

- (a) an Australian legal practitioner is an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate; and
- (b) a local legal practitioner is an Australian lawyer who holds a current local practising certificate; and
- (c) an interstate legal practitioner is an Australian lawyer who holds a current interstate practising certificate, but not a local practising certificate.

**Approved lawyer** is to be –

- (a) from a law firm listed as a WALGA preferred supplier; and

- (b) approved in writing by the Council or the Chief Executive Officer under delegated authority;

**committee member** means a non-elected member or former non-elected member of a committee of Council;

**Elected Member** means a current or former Commissioner, Elected Member or a committee member of the City of Kwinana.

**employee** means a current or former employee of the City of Kwinana;

**legal proceedings** may be civil, criminal or investigative;

**legal representation** is the provision of legal services, on behalf of an Elected Member or employee, by an approved lawyer / legal practitioner in respect of –

- (a) a matter arising from the performance of the functions of the Elected Member or employee; and
- (b) legal proceedings involving the Elected Member or employee that have been, or may be, commenced.

**legal representation costs** are the costs, including fees and disbursements, properly incurred in providing legal representation.

**legal services** includes advice, representation or documentation that is provided by an approved lawyer / legal practitioner.

## 5. Policy Statement

### 5.1. Examples of Legal Representation Costs that may be Approved

5.1.1 If the criteria in clause 3 of this policy are satisfied, the City may approve the payment of legal representation costs –

- (a) where proceedings are brought against an Elected Member or employee in connection with his or her functions – for example, an action for negligence arising out of a decision made or action taken by the Elected Member or employee; or
- (b) to enable proceedings to be commenced and/or maintained by an Elected Member or employee to permit him or her to carry out his or her functions – for example where an Elected Member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Elected Member or employee; or
- (c) where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community by publicly making adverse personal comments about an Elected Member or employees.

5.1.2 The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by an Elected Member or employee.

## 5.2. Application for Payment

- 5.2.1 An Elected Member or employee who seeks assistance under this policy is to make an application(s), in writing, to the Council or the Chief Executive Officer.
- 5.2.2 The written application for payment of legal representation costs is to provide details of –
- (a) the matter for which legal representation is sought;
  - (b) how that matter relates to the functions of the Elected Member or employee making the application;
  - (c) the legal practitioner / lawyer (or law firm) who is to be asked to provide the legal representation;
  - (d) the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);
  - (e) an estimated cost of the legal representation; and
  - (f) why it is in the interests of the City for payment to be made.
- 5.2.3 The application is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates.
- 5.2.4 As far as possible the application is to be made before commencement of the legal representation to which the application relates.
- 5.2.5 The application is to be accompanied by a written statement signed by the applicant confirming that he or she –
- (a) has read, and understands, the terms of this policy;
  - (b) acknowledges that there may be conditions to which the approval is subject to; and
  - (c) undertakes to repay the City any legal representation costs in accordance with the provisions of clause 5.7 of this policy.
- 5.2.6 An application is also to be accompanied by a report prepared by the Chief Executive Officer or where the Chief Executive Officer is the applicant by the City's Lawyer.

## 5.3. Council's Powers

- 5.3.1 The Council may –
- (a) refuse;
  - (b) grant; or
  - (c) grant subject to conditions

an application for payment of legal representation costs.

- 5.3.2 Conditions under part 5.3.1 of this policy may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement,

including a security agreement, relating to the payment, and repayment, of legal representation costs.

5.3.3 In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant under the City's Elected Member or employees insurance policy or its equivalent.

#### 5.4. Delegation to Chief Executive Officer

5.4.1 In cases where a delay in the approval of an application would be detrimental to the legal rights of the applicant, the Chief Executive Officer may exercise, on behalf of the Council, any of the powers of the Council under clauses 3.1 and 5.1 of this policy, to a maximum of \$10,000 in respect of each application, unless the applicant is the Chief Executive Officer, in which case approval must be by Council (refer to Delegation 1.3).

5.4.2 An application approved by the Chief Executive Officer under part 5.4.1 of this policy, is to be submitted to the next ordinary meeting of the Council for noting.

#### 5.5. Repayment of Legal Representation Costs

5.5.1 An Elected Member or employee whose legal representation costs have been paid by the City is to repay the City as much of those costs as are available to be paid by way of set-off – where an Elected Member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City has paid the legal representation costs.

5.5.2 The City may take action in a court of competent jurisdiction to recover any monies due to it under clause 5.5 of this policy.

### **6. Financial/Budget Implications**

#### 6.1. Legal Representation Costs - Limit

6.1.1 The Council in approving an application in accordance with this policy is to set a limit on the costs to be paid based on the estimated costs in the application.

6.1.2 An Elected Member or employee may make a further application to Council in respect of the same matter.

#### 6.2 Payment of legal representation

Payment by the City of Kwinana of legal representation costs may be either by –

- (a) a direct payment to the approved lawyer / legal practitioner (or the relevant firm); or
- (b) a reimbursement to the Elected Member or employee.

## **7. Asset Management Implications**

There are no specific asset management implications associated with this policy.

## **8. Environmental Implications**

There are no specific environmental implications associated with this policy.

## **9. Strategic/Social Implications**

Corporate Business Plan 2016 - 2021

Objective 5.1      An active and engaged Local Government, focused on achieving the community's vision

Strategy 5.1.1    Ensure that the City's strategic direction, policies, plans, services and programs are aligned with the community's vision

## **10. Occupational Safety and Health (OSH) Implications**

There are no specific OSH implications associated with this policy.

## **11. Risk Assessment**

A risk assessment conducted as part of the Policy review has indicated that the risk to the City by not providing an adequate policy to address the circumstances for which legal representation costs will be paid would result in a risk rating of moderate.

It is assessed that the risk rating following the implementation of this policy would result in a risk rating of low.