

Council Policy

Legal Representation for Elected Members and Employees



Legislation/local law requirements	Local Government Act 1995 s2.7 – The Role of Council
Relevant Delegation	N/A
Related policy procedures and documents	

Introduction

In today's society there is an increased risk of legal action being taken or threatened against individual Elected Members and employees. For example, Elected Members or employees may be threatened with legal action when an aggrieved party believes that they will not, or have not, carried out their legislative functions or responsibilities in the correct and appropriate manner. Legal action may also be threatened where it is anticipated that such action will influence a vote or a recommendation.

Elected Members and employees may feel inhibited in undertaking their roles in a full, frank, and impartial manner if they do not have an assurance that they are protected from threats and will be given proper legal representation if any legal action is taken against them. Local Governments have a legislative duty of care to their employees to provide a safe working environment and morally have the same duty to Elected Members. Accordingly, it is appropriate and prudent for the City to assist Elected Members and employees by adopting a policy to fund or partly fund the cost of providing legal representation in appropriate circumstances.

Purpose

The purpose of this policy is 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.

Policy Provisions

Definitions

Approved lawyer is to be –

- (a) a 'certified practitioner' under the Legal Profession Uniform Law;
- (b) from a law firm listed as a WALGA preferred supplier, unless the council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise; and
- (c) approved in writing by the Council or the Chief Executive Officer under delegated authority;

Elected Member means a current or former Elected Member or a committee member of the City.

employee means a current or former employee of the City;

legal proceedings may be civil, criminal or investigative;

legal representation is the provision of legal services, to or on behalf of an Elected Member or employee, by an approved lawyer 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.

Policy

1.1. Payment Criteria

1.1.1 There are four major criteria for determining whether the city/town/shire will pay the legal representation costs of a council member or employee.

These are:

1. the legal representation costs must relate to a matter that arises from the performance, by the council member or employee, of his or her functions;
2. the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
3. in performing his or her functions, to which the legal representation relates, the council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
4. the legal representation costs do not relate to a matter that is of a personal or private nature.

1.2. Examples of Legal Representation Costs that may be Approved.

1.2.1 If the criteria in clause 1.1 of this policy are satisfied, the City may approve the payment of legal representation costs –

1. 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
2. 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
3. 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.

1.2.2 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.

1.3. Application for Payment

- 1.3.1 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.
- 1.3.2 The written application for payment of legal representation costs is to provide details of:
 1. the matter for which legal representation is sought; how that matter relates to the functions of the Elected Member or employee making the application;
 2. the lawyer (or law firm) who is to be asked to provide the legal representation;
 3. the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc.);
 4. an estimated cost of the legal representation; and
 5. why it is in the interests of the City for payment to be made.
- 1.3.3 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.
- 1.3.4 As far as possible, the application is to be made before commencement of the legal representation to which the application relates.
- 1.3.5 The application is to be accompanied by a signed written statement by the applicant confirming that he or she:
 1. has read, and understands, the terms of this policy;
 2. acknowledges that any approval of the legal representation costs is conditional on the repayment provisions of clause 1.7 and any other conditions to which the approval is subject to; and
 3. undertakes to repay the City any legal representation costs in accordance with the provisions of clause 1.7.
- 1.3.6 In relation to clause 1.3.5(3), when a person is to be in receipt of such monies the person should sign a document which requires repayment of those monies to the local government as may be required by the local government and the terms of the policy.
- 1.3.7 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 an appropriate employee.

1.4. Legal representation costs – limit

- 1.4.1 The Council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application.
- 1.4.2 A council member or employee may make a further application to the council in respect of the same matter.

1.5. Council's Powers

- 1.5.1 The Council may –
 - 1. refuse;
 - 2. grant; or
 - 3. grant subject to conditionsan application for payment of legal representation costs.
- 1.5.2 Conditions under part 1.3.1 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.
- 1.5.3 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 employee's insurance policy or its equivalent.
- 1.5.4 The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 1.5.5 The Council may, subject to clause 1.5.6, determine that an Elected Member or employee whose application for legal representation costs has been approved has, in respect of the matter for which legal representation costs were approved:
 - 1. not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
 - 2. given false or misleading information in respect of the application.
- 1.5.6 A determination under clause 1.5.5 may be made by the Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- 1.5.7 Where the Council makes a determination under clause 1.5.5, the legal representation costs paid by the City are to be repaid by the Elected Member or employee in accordance with clause 1.7.

1.6. Delegation to Chief Executive Officer

- 1.6.1 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 1.5.1 and 1.5.2 of this policy, to a maximum of \$10,000 in respect of each application.
- 1.6.2 An application approved by the Chief Executive Officer under clause 1.6.1 is to be submitted to the next ordinary meeting of the Council. Council may exercise any of its powers under this policy, including its powers under clause 1.5.4.

1.7. Repayment of Legal Representation Costs

- 1.7.1 An Elected Member or employee whose legal representation costs have been paid by the City is to repay the City:
 - 1. all or part of those costs – in accordance with a determination by the council under clause 1.5.7;
 - 2. as much of those costs as are available to be paid by way of set-off – where the 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.
- 1.7.2 The City may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

OFFICER USE ONLY

Officers may amend this section without council approval.

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