



# Council Policy 1.1.2 – Legal Representation and Cost Indemnification

- Objectives:** Progressive
- Outcome:** 4.2 - A strategically focussed Council.
- Strategy:** 4.2.3 - Provide clear strategic direction to the administration.

## Purpose

1. This policy is designed to protect the interests of Councillors and employees (including past members and former employees) where they become involved in civil legal proceedings because of their official functions. In most situations the local government may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to those proceedings.
2. Section 9.56 of the *Local Government Act 1995* (the Act) provides protection from actions of tort for anything a Councillor or employee has, in good faith, done in the performance or purported performance of a function under the Act or any other written law.
3. Section 3.1 of the Act, provides that the general function of the local government is to provide for the good governance of person in its district. Section 6.7 (2) provides that money held in the Municipal Fund may be applied towards the performance of the functions of the local government.
4. Therefore, the Shire's approval to pay legal representation costs incurred by an individual Councillor or employee will rely on the determination that it is reasonably concluded that the expenditure provides for the good governance of the district.
5. This policy does not apply to legal advice and representation that is obtained by the Shire in the normal course of fulfilling the functions and exercising the powers of a local government.

## Definitions

**Approved lawyer** is to be:

- a) A 'person who is admitted to the legal profession' under the *Legal Profession Act 2008*;
- b) From a law firm listed as a WALGA preferred supplier, if relevant, unless the Council considers that this is not the 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.

**Good faith** means a sincere belief or motive without any malice or desire to defraud others.

**Councillor or employee** means a current or former Councillor, employee or member of a council committee of the Shire.



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**Legal proceedings** may be civil, criminal or investigative.

**Legal representation** is the provision of legal services, to or on behalf of a Councillor or employee, by an approved lawyer that are in respect of;

- a) A matter or matters arising from the performance of the functions of the Councillor or employee; and
- b) Legal proceedings involving the Councillor 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.

**Payment** by the Shire of legal representation costs may be either by:

- a) A direct payment to the approved lawyer; or
- b) A reimbursement to the councillor or employee.

## Policy

### 1. Payment Criteria

There are four major criteria for determining whether the Shire will pay the legal representation costs of a Councillor or employee. These are:

- a) the legal representation costs must relate to a matter that arises from the performance by the relevant person, or his or her functions;
- b) the legal representation cost must be 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 relevant person must have acted in good faith, and must 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.

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

2.1 If the criteria in clause 1 of this policy are satisfied, the Shire may approve the payment of legal representation costs:

- a) where proceedings are brought against a relevant person in connection with his or her functions an action for defamation or negligence arising out of a decision made or action taken by the relevant person;



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- b) to enable proceedings to be commenced and/or maintained by a relevant person to permit his or her functions (eg. where a relevant person seeks to take action to obtain a restraining order against a person using threatening behavior to the relevant person; or
- c) where exceptional circumstances are involved (eg. where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about a relevant person.)

### 3. Applications for Payment

- 3.1 A relevant person who seeks assistance under this policy is to make an application(s), in writing, to the CEO, or the Council if the relevant person is the CEO.
- 3.2 The written application for payment of legal representation costs is to give details of:
  - a) the matter for which legal representation is sought;
  - b) how the matter relates to the functions of the relevant person making the application;
  - c) the proposed 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 documents etc);
  - e) an estimated cost of the legal representation; and
  - f) why it is in the interest of the Shire for payment to be made.
- 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.
- 3.4 As far as possible the application is to be made before commencement of the legal representation to which the application relates.
- 3.5 The application is to be accompanied by a signed written statement by the applicant that he or she:
  - a) has read and understands, the terms of this policy;
  - b) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 7 and any other conditions to which the approval is subject; and
  - c) undertakes to repay the Shire any legal representation costs in accordance with the provisions of clause 7.
- 3.6 In relation to clause 3.5 (c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of that money to the local government as may be required by the local government and the terms of the Policy.



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- 3.7 An application is also to be accompanied by a report prepared by the CEO or where the CEO is the applicant, by an appropriate employee.

### 4. Legal representation costs – Limit

- 4.1 Unless otherwise determined by Council, the payment of legal representation costs in respect of a particular matter is not to exceed \$10,000.

- 4.2 A Councillor or employee may make a further application to the Council in respect of the same matter.

### 5. Council's Powers

- 5.1 The Council may:

- a) refuse;
- b) grant; or
- c) grant subjects to conditions,

an application for payment of legal representation costs.

- 5.2 Conditions under clause 5.1 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 In assessing an application, Council may have regard to any insurance benefits that may be available to the applicant under the Shire's Council members 'or employees' insurance policy or its equivalent.

- 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.

- 5.5 The Council may, subject to clause 5.6, determine that a Council 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:

- a) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
- b) given false or misleading information in respect of the application.

- 5.6 A determination under clause 5.5 may be made by the Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

- 5.7 Where the Council makes a determination under clause 5.5, the legal representation costs paid by the Shire are to be repaid by the Council member or employee in accordance with clause 7.



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### 6. Delegation to the Chief Executive Officer

- 6.1 In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the Council, any of the powers of the Council under clause 5.1 and 5.2, to a maximum of \$10,000 in respect of each application.
- 6.2 An application approved by the CEO under clause 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 5.4.
- 6.3 This clause shall not apply where the applicant is the CEO. The matter will instead be referred to Council at the earliest opportunity, including a special meeting.

### 7. Repayment of Legal Representation Costs

- 7.1 A relevant person whose legal representation costs have been paid by the City is to repay the Shire:
  - a) all or part of those costs – in accordance with a determination by Council under clause 5.7;
  - b) as much of those costs as are available to be paid by way of set-off.
- 7.2 The Shire may take action in a court of competent jurisdiction to recover any monies due to it under Policy.



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### References

<b>Name of Policy</b>	1.1.2 Legal Representation and Cost Indemnification			
<b>Previous Policy</b>	G807 Legal Representation and Cost Indemnification (E15/5096)			
<b>Date of Adoption and Resolution Number</b>	Adopted	C087/11/00	27/11/2000	
<b>Review dates and Resolution Numbers</b>	Reviewed	SM047/05/04	24/05/2004	
	Modified	CGAM050/12/08	15/12/2008	Ordinary Council Meeting
	Reviewed	OCM187/09/15	29/09/2015	Ordinary Council Meeting
	Modified	OCM179/12/17	18/12/2017	Ordinary Council Meeting
<b>Next review date</b>				
<b>Related documents</b>	<p><b>Acts/Regulations</b> <i>Local Government Act 1995, S3.1, s9.56</i></p> <p><b>Plans/Strategies</b> Strategic Community Plan 2017 - 2027</p> <p><b>Policies/References</b> Department of Local Government, Sport &amp; Cultural Industries Operational Guideline No 14 Legal Representation for Council Members and Employees</p> <p><b>Delegations</b> C008D Legal Representation and Cost Indemnification Check Process 7 &amp; 251 Form to be created</p> <p><b>Work Procedures</b> Nil</p>			

Note: changes to references may be made without the need to take the Policy to Council for review.