

**M20/5759 LATE ITEM - STANDARDS PANEL REPRESENTATION LEGAL ASSISTANCE  
– LEGAL REPRESENTATION POLICY (REC) (ATTACHMENT)**

Ward : All  
 Category : Operational  
 Subject Index : Legal Matters  
 Customer Index : City of Melville  
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.  
 Previous Items : Not applicable  
 Works Programme : Not Applicable  
 Funding : Not Applicable  
 Responsible Officer : Marten Tieleman  
 Chief Executive Officer

**AUTHORITY / DISCRETION**

**DEFINITION**

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input checked="" type="checkbox"/>	Legislative	<b><i>Includes adopting local laws, town planning schemes &amp; policies.</i></b>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

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– LEGAL REPRESENTATION POLICY (REC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- A total of ten of Minor Breach Complaints have been received against a number of Elected Members.
- An Elected Member has enquired what administration and legal support is available and a second elected member has made formal application for assistance under Council Policy CP-017 Legal Representation Policy Elected Members and Employees.
- The Elected Member has asked that the CEO give consideration to giving his authorisation under the Policy that provides where there is a need for the provision of urgent legal services before an application can be considered by the Council, the CEO may give an authorisation to the value of \$3,000.
- Such authorisation shall be followed up by a report from the CEO to the next available Council meeting, outlining the circumstances behind the urgency of the matter.
- The CEO has not exercised the authorisation and has prepared this late item report for direct consideration and decision by the Council at the 21 July 2020 Council Meeting.

**BACKGROUND**

The City has recently received ten minor misconduct complaints against a number of Elected Members relating to allegations that disclosures of interest.

In accordance with the Local Government Act, the Minor Breach Complaints were submitted to the Local Government Standards Panel. The panel has been in contact with Elected Members requesting their response to the allegations. One Elected Member has enquired if administration and legal support is available and a second elected member has made formal application for assistance under Council Policy CP-017 Legal Representation Policy Elected Members and Employees. The Member has advised that without the representation they are “otherwise prejudiced in defending my reputation and by implication, the reputation of Melville Council.”

The complaints are confidential and with only any adverse findings being published once the relevant appeal period to the State Administrative Tribunal has expired.

In response to the enquiry regarding assistance, the City does not provide administrative support to Elected Members in responding to conduct complaints received. It is the City’s understanding, from discussions with the Department of Local Government, Sport and Cultural Industries, and the West Australian Local Government Association, that the Standards Panel views the information that it receives from Elected Members as axiomatic.

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The Standards Panel is a non attendance and non representative body that makes decisions only on written submissions. One of the possible sanctions is to undergo training. The nature and content of the submissions are also assessed and viewed in this regard. The City is not aware of any previous request for such assistance nor that such assistance has been given.

In relation to providing legal assistance Clause 1 b)(iv) of the Policy provides that the City may provide such assistance in legal proceedings that are;

- (iv) *statutory or other inquiries where representation of Elected Members or employees is justified.*

The Standards Panel does not have investigative powers; findings and decisions of the panel are made on the basis of the information it receives. Proceedings are normally held in private, with neither the parties to a complaint or members of the public being in attendance. It is usually only in the event of an appeal to the State Administrative Tribunal against the decision of the Standards Panel that Elected Members may be represented.

The Policy defines legal service and legal representation as;

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

**legal representation** is the provision of legal services, to or on behalf of an Elected Member 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.

Elected Members have not previously received legal assistance in preparing their response to the complaints. Should the Council wish to cover the full or part of the cost of obtaining legal advice or services, in this instance, then the matter of setting a precedent would need to be considered to provide legal representation to members for all current and future complaints received.

Should the Council wish to provide legal assistance in a all cases where conduct complaints are received then the matter of declarations of interest needs to be considered and the ability for the Council to vote on a matter that:

- a) provides financial assistance to elected members that is not permitted by the Act or Regulation and
- b) where all Members would need to declare an interest in the matter.

With the exception of situations prescribed in the Policy decisions as to financial assistance under this policy are to be made by the Council.

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The Local Government Standards Panel was established in 2007 to:

- Administer justice and resolve complaints relatively quickly.
- Provide the local government sector with guidance and benchmarks about acceptable standards of behaviour.

The Standards Panel has the authority to make binding decisions to resolve allegations of minor misconduct submitted by a local government. It deals with complaints about council members who it is alleged have committed a breach of one or more of the provisions of the Rules of Conduct Regulations. The panel is independent of the Minister for Local Government and the department.

If the Standards Panel finds that a breach has occurred, it may deal with the complaint by dismissing it or ordering that the council member:

- publically apologises;
- is publically censured; or
- undertakes training.

The Standards Panel may issue an order that imposes two or more of these sanctions and can order a council member found to have breached, to reimburse the costs incurred by the local government for the standards panel proceeding.

Enquiries have been made with the Local Government Insurance Service (LGIS) to determine if legal assistance in responding to Minor Conduct Complaints comes within the wording and coverage of the City's Management Liability Policy. At the time of writing the report a response has not been received from LGIS. LGIS did advise that, if the Standards Panel makes an adverse finding against the Elected Member, the insurer would seek to recover from the member the legal costs paid. An excess of \$5,000 applies to any claim.

Relevant Clauses of the Policy are listed below

Clause 1. General Principles

- a) *The City may provide financial assistance for legal services by an approved lawyer to Elected Members and employees in connection with certain legal proceedings as a consequence of the performance of their duties, provided that the Elected Member or employee has acted reasonably and in good faith and has not acted illegally, dishonestly or against the interests of the City.*
- b) *The City may provide such assistance in the following types of legal proceedings:*
- (iv) **statutory or other inquiries** where representation of Elected Members or employees is justified.

Should the Council wish to provide legal assistance with all future complaints there could be instances where an elected member has not acted in good faith and the provision of legal assistance is not justified as required by Clause 1 b) (iv). The administration would not be in a position to assess if the assistance is justified as it would be the outcome of the inquiry that would determine that.

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If access to legal support is approved by the Council then Clause 1 e) would apply;

- e) *The legal services which are the subject of financial assistance under this policy shall be provided by a member of the WALGA panel of legal services providers. Where this is not appropriate, because of a conflict of interest or insufficient expertise, then the advice may be sought from other suitably qualified and experienced legal services.*

**Clause 2. Applications for Financial Assistance**

- (a) *Subject to item 1(c) and 2(e), decisions as to financial assistance under this policy are to be made by the Council.*
- (b) *An Elected Member or employee requesting financial support for legal services under this policy is to make an application in writing, where possible in advance, to the Chief Executive Officer providing full details of the circumstances of the matter, a declaration that he/she has acted in good faith and has not acted unlawfully and the legal services required.*
- (c) *The Chief Executive Officer will prepare, or have prepared an assessment of the request for financial support for legal services and the assessment will be included in the report to the Council.*
- (d) *An Elected Member or employee requesting financial support for legal services, or any other person who might have a financial interest in the matter, should take care to ensure compliance with the financial interest provisions of the Local Government Act 1995.*

**STAKEHOLDER ENGAGEMENT****I. COMMUNITY**

No community engagement has or will occur in relation to this matter

**II. OTHER AGENCIES / CONSULTANTS**

The City's external legal advisor has been consulted with regard to the application of the Policy and provided advice that many Local Governments had not provided access to legal services to respond to minor complaints due to setting a precedent.

It is the City's understanding, from discussions with both the Department of Local Government, Sport and Cultural Industries, and the West Australian Local Government Local Government Association that the Standards Panel views the information that it receives from elected members as axiomatic. The Standards Panel is a non attendance and non representative body that makes decisions only on written submissions. One of the possible sanctions is to undergo training. The nature and content of the submissions are also assessed and viewed in this regard. The City is not aware of any previous request for such assistance nor, that such assistance has been given.

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Elected Members that would like to utilise the legal representation service would need to consider their need to declare a financial interest in this Item, prior to the item being considered by the Council.

Section 5.60A of the Act describes a direct financial interest.

A person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person.

**FINANCIAL IMPLICATIONS**

No specific budget allocation has been provided in the 2020-2021 budget to provide legal services to Elected Members to respond to Rules of Conduct complaints.

The Standards Panel charge the City for costs incurred to consider each complaint irrespective of the finding. On average the cost per complaint to cover the administrative functions etc. is \$1,000 for each complaint.

In 2018/2019 there were 35 Standards Panel Complaints lodged against City of Melville Elected Members and the costs paid to the Standards Panel totalled \$23,189.07, with some costs apportioned between local governments that had matters heard at the same sitting. Had financial support of up to \$3,000 had been provided this would have resulted in the further payment of legal expenses of \$105,000.00.

In 2019-2020 there was one Standards Panel Complaint lodged and the City is yet to receive the invoice for 2019-2020 for any Complaints determined during that financial year.

Clause 4 of the Policy provides that where assistance is withdrawn, that the person who obtained the financial support is to repay the monies already provided. It is not unreasonable for the City to require that any costs be reimbursed should there be an adverse finding against an Elected Member.

The Council may wish to consider the payment of legal fees in full, in part or limit the maximum expense to be incurred in each instance.

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**STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS**

<b>Risk Statement</b>	<b>Level of Risk</b>	<b>Risk Mitigation Strategy</b>
An incorrect adverse finding against an Elected Member due to a deficient submission being presented by them or on their behalf.	Minor consequences which are possible, resulting in a <b>Medium</b> level of risk.	Council pays for legal services to provide advice and assistance to Elected Members when responding to Minor Conduct Breach Complaints.  Training for Elected Members on Rules of Conduct and declarations of interest.

**POLICY IMPLICATIONS**

Council Policy CP-017 Legal Representation applies. [CP-017 Legal Representation](#)

**ALTERNATE OPTIONS AND THEIR IMPLICATIONS**

The options available to the Council are to pay for legal services to provide advice and assistance to Elected Members when responding to Minor Conduct Breach Complaints or to not pay for the legal services.

Should Council believe it is appropriate to pay for access to legal services they should be in accordance with the policy in that;

- The approved lawyer by appointed from the City’s panel of legal advisors; and
- The Elected Member reimburses any costs incurred, should there be an adverse finding.

The Council may wish to limit the amount to be paid in providing assistance to each claim.

**CONCLUSION**

This report presents to the Council a formal request from an Elected Member to access legal services for advice and assistance in drafting a response to allegations of minor breach complaints. It is for the Council to determine if this elected member and other elected members that have had recent complaints lodged against them may consider if they would like legal assistance. These members would need to and advice the Council thereof prior to discussion on this matter at the meeting. A decision in relation to this matter will set the precedent to provide legal services to all Elected Members where allegations of minor conduct breach complaints are received.

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- 1 considers the provision of financial assistance for legal services in terms of the Legal Representation Policy Elected Members and Employees CP-017, and the extent thereof for assistance to Elected Members to respond to Rules of Conduct Minor Breach Complaints,**
- 2 determines that such assistance should/should not be given to the extent provided for in the policy;**

**“Directs that any application for such assistance, should Council determine that such assistance be given to an Elected Member, be determined by the Council on each such request and supported by an application made by the Elected Member strictly in terms of the provisions of the Legal Representation Policy Elected Members and Employees CP-017. “**