



Legal Representation Policy Elected Members and Employees

Policy Type: Council Policy

**Policy Owner: Executive Manager
Governance and Legal Services**

Policy No. CP- 017

Last Review Date: XX Month XXXX

Policy Objectives

The Council is committed to protecting the interests of Elected Members and employees in seeking legal advice or where they become involved in civil legal proceedings in the course of their official duties.

The Council will in certain circumstances provide financial assistance to Elected Members and employees who are required to engage the legal services of an approved lawyer as a result of lawful actions they have undertaken in the fulfilment of their official duties.

Policy Scope

This policy provides guidance in determining the circumstances, manner and extent of assistance for legal representation of Elected Members and employees of the City.

There are four major criteria for determining whether the City 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.**

Policy Statement

In each case it will be necessary to determine whether assistance with legal costs is justified for the good government of the City.

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) **All applications for legal assistance by Elected Members to be funded by the City must first be approved by the Council.**
- c) **All applications for the City to fund the commencement of legal proceedings by an Employee must first be approved by the Council.**
- b) The City may provide such assistance in the following types of legal proceedings:
 - (i) proceedings brought by Elected Members and employees to enable them to carry out their local government function (eg where an Elected Member or employee seeks a Violence Restraining Order or Misconduct Restraining Order against a person using threatening or inappropriate behaviour);
 - (ii) proceedings brought against Elected Members or employees. This could be in relation to a decision of the Council or an employee which aggrieves another person (eg refusing a development application);
 - (iii) proceedings brought against Elected Members or employees where their conduct in carrying out their functions is considered detrimental to the person (eg defending defamation actions); and
 - (iv) statutory or other inquiries where representation of Elected Members or employees is justified.
- c) The City, **except in exceptional circumstances**, will not support access to legal services for any defamation actions seeking the payment of damages to individual Elected Members or employees in regard to comments or criticisms levelled at their conduct in their respective roles. Elected Members or employees are not precluded, however, from taking their own private action.

~~The City, at the discretion of the Chief Executive Officer, may seek preliminary advice on any aspect relating to such comments and criticisms of relevance to it and may support action where exceptional circumstances are involved – for example, where a person or organisation is potentially lessening the confidence of the community in the local government by publically making adverse personal comments about Elected Members or employees. The value of the preliminary advice is not to exceed \$5,000.~~
- d) The City may provide assistance to Elected Members and employees in any case, except where indemnity for legal costs is provided for under a policy of insurance taken out by or on behalf of the Elected Member or employee or by the City or to the extent that cover is provided for under a policy of insurance.
- 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.

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*.
- (e) Where there is a need for the provision of urgent legal services, to defend an elected member or an employee against a current or prospective legal action, then before an application for funding assistance can be considered by the Council, the Chief Executive Officer may give an authorisation to the value of \$3,000. Such authorisation shall be followed up by a report from the Chief Executive Officer to the next available Council meeting, outlining the circumstances behind the urgency of the matter.
- (f) Where it is the Chief Executive Officer who is seeking urgent financial support for legal services **then the Mayor, with the assistance of the** Director Corporate Services, **with the assistance of the Executive Management Team,** shall deal with the application. ~~Otherwise, if the Chief Executive Officer is seeking non-urgent financial support for legal services the Council shall deal with the application.~~

3. Legal Representation Costs - Limit

- a) Unless otherwise determined by the Council, the payment of legal representation costs in respect of a particular matter is not to exceed \$10,000.
- b) An Elected Member or employee may make further application to the Council in respect of the same matter.

4. Repayment of Assistance

- (a) Any amount recovered by an Elected Member or employee in proceedings, whether for costs or damages, will be offset against any monies paid or payable by the City.
- (b) Assistance will be withdrawn where the Council or the City determines, upon advice, that a person has acted unreasonably, illegally, dishonestly, against the interests of the City or otherwise in bad faith, or where information from the person is shown to have been false or misleading.
- (c) Where assistance is so withdrawn, the person who obtained financial support is to repay any monies already provided. The City may take action to recover any such monies in a court of competent jurisdiction.

5. Acknowledgment

Prior to the submission of an application requesting financial support for legal services to the Council, or in the case of an urgent request to the Chief Executive Officer, the Elected Member or employee seeking assistance shall acknowledge in writing, that they fully comprehend the intent of this policy, and where appropriate undertake to reimburse the City in accordance with the provisions of Part 4 above.

DEFINITIONS:

approved lawyer means

- (a) an Australian legal practitioner under the Legal Profession Act 2008;
- (b) from a law firm on the City's panel of legal service providers, unless the Council considers that this is not appropriate for example in circumstances where a conflict of interest exists or insufficient expertise; and
- (c) approved in writing by the Council or, or by the Chief Executive Officer under delegated authority

Elected Member or employee means a current or former Elected Member, employee, volunteer or member of a council committee 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 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 services includes advice, representation or documentation that is provided by an approved lawyer.

payment of financial assistance by the City for legal service costs may be either by –

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

References that may be applicable to this Policy

Legislative Requirements:

Procedure, Process Maps, Work Instructions:

Other Plans, Frameworks, Documents Applicable to Policy:

Local Government Operational Guidelines No. 14 – Legal Representation for Council Members and Employees

Delegated Authority No:

ORIGIN/AUTHORITY

Ordinary Meeting of Council

18/09/07

ITEM NO.

C07/003

REVIEWS

Ordinary Meeting of Council

15/12/2009

C09/5097

Ordinary Meeting of Council

21/02/2012

C12/5214

Ordinary Meeting of Council

18/02/2014

M14/5341

Ordinary Meeting of Council

18/10/2016

M16/5505

Ordinary Meeting of Council

17/04/2018

M18/5610

Ordinary Meeting of Council

XX/XX/XXXX

MXX/XXXX