

# LEGAL REPRESENTATION FOR ELECTED MEMBERS, COMMITTEE MEMBERS AND EMPLOYEES

## POLICY

POL-GVN 02

### Objective:

This Policy demonstrates the Council's commitment to protecting the interests of the City of Mandurah and providing confidence to Elected Members, Committee Members and Employees to enable them to undertake their roles fully and with impartiality.

### Statement:

This Policy is applicable to current and former Elected Members, Committee Members and employees where they have become involved in legal proceedings as a result of their official functions or duties with the City of Mandurah (the City).

For the purpose of this Policy, the term 'applicant' means an Elected Member, Committee Member or employee who has made an application under this Policy.

### 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 on the WALGA's preferred supplier for legal services where there is no conflict of interest; and
- c) approved in writing by Council or the CEO.

**Elected Member** – means a current or former person elected to the Council of the City of Mandurah in a local government election.

**Committee Member** – means a current or former person who is a member of a committee appointed by Council who is not an Elected Member.

**Employee** – means a current or former person who at the relevant time is or was an employee of the City of Mandurah pursuant to section 5.41(g) of the *Local Government Act 1995*, or, if the Chief Executive Officer, under section 5.36(1)(a).

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

**Legal representation** – is the provision of legal services, to or on behalf of an applicant, by an approved lawyer that are in respect of:

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

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

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**Legal services** – include advice, representation or documentation that is provided by an approved lawyer.

**Payments** – by the City of legal representation costs may be either by –

- a) a direct payment to the approved lawyer (or the relevant firm); or
- b) a reimbursement to the applicant.

## 1. Payment Criteria

The City may approve legal representation costs of an applicant if the following criteria are satisfied:

- a) the legal representation costs must relate to a matter that arises from the performance, by the applicant, of 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 applicant 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.

The City must only approve the expenditure of funds if the expenditure provides for the good government of persons within its district.

## 2. Examples of legal representation costs that may be approved

2.1 If the criteria in clause 1 of this Policy are satisfied, the Council may approve the payment of legal representation costs –

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

2.2 The Council will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by an applicant.

## 3. Application for payment

3.1 An applicant who seeks assistance under this Policy is to make an application(s), in writing, to the CEO, or directly to Council if the applicant is the CEO.

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- 3.2 Before an application can be made under clause 3.1, the applicant must first contact the Local Government Insurance Scheme and seek assessment and advice in relation to any cover available under Personal Liability Insurance. The applicant must exhaust all remedies under any available insurance cover before making an application under this Policy.
- 3.3 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 applicant;
  - 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 City for payment to be made.
- 3.4 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.
- 3.5 As far as possible the application is to be made before commencement of the legal representation to which the application relates.
- 3.6 The application is to be accompanied by a signed written statement by the applicant that he or she –
  - a) has read and understood, 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 City any legal representation costs in accordance with the provisions of clause 7.
- 3.7 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.
- 3.8 If an application is made to the CEO under clause 3.1, the CEO is to prepare a report to accompany the application, before presenting the application to Council to decide on the application. If the CEO is the applicant, the report must be prepared instead by an appropriate employee and be presented to Council for a decision.

## 4. Legal representation costs – Limit

- 4.1 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.
- 4.2 An applicant may make a further application to Council in respect of the same matter.

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## 5. Deciding an application

- 5.1 Council may –
  - a) refuse;
  - b) grant; or
  - c) grant subject 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 Local Government Insurance Scheme.
- 5.4 Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 5.5 Council may, subject to clause 5.6, determine that an applicant 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 Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- 5.7 Where Council makes a determination under clause 5.5, the legal representation costs paid by the City are to be repaid by the applicant in accordance with clause 7.

## 6. When the Chief Executive Officer may decide

- 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 decide an application, in accordance with clause 5.1(a) or (c) and 5.2, to a maximum of \$10,000 in respect of each application.
- 6.2 Where the CEO has decided to approve the application, it can only be approved subject to the following conditions:
  - a) Council consider the application at the next Council Meeting and, if refused, reimbursement must be made by the applicant; and
  - b) Any other conditions that may be relevant to the application.
- 6.3 An application approved or rejected by the CEO under clause 6.1, is to be submitted to the next ordinary Council meeting. Council may exercise any of the functions under this Policy in relation to an application approved or rejected by the CEO, including those under clause 5.4.
- 6.4 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.

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## 7. Repayment of legal representation costs

- 7.1 An applicant whose legal representation costs have been paid by the City is to repay the City –
- 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 – where the applicant receives monies paid for costs, damages or settlement, in respect of the matter for which the City paid the legal representation costs.
- 7.2 The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

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<b>Responsible Directorate:</b>	Corporate Services
<b>Reviewer:</b>	Director Corporate Services
<b>Creation date:</b>	Minute G.31/08/04, 17 August 2004
<b>Amendments:</b>	Minute G.31/11/06, 21 November 2006 Minute G.43/12/09, 15 December 2009 Minute G.57/2/12, 28 February 2012 Minute G.35/2/15, 24 February 2015 Minute G.12/7/19, 23 July 2019 Minute G.20/6/20, 23 June 2020
<b>Related Documentation and/or Legislation:</b>	<i>Local Government Act 1995</i> DLGSCI Operational Guideline – 24 April 2019