

## LEGAL REPRESENTATION FOR ELECTED MEMBERS AND EMPLOYEES POLICY

<b>CATEGORY:</b>	<p>City Policy – <del>A policy that is developed for administrative and operational imperatives and has an internal focus.</del></p> <p><del>Developed by the Policy Committee and/or the administration and adopted by Council.</del></p>
<b>RESPONSIBLE DIRECTORATE:</b>	Office of the CEO
<b>OBJECTIVE:</b>	<p><del>Under the Local government Act 1995, the City's 'good government' powers allow it, in appropriate circumstances, to pay for the Legal Representation Costs of an individual Elected Member or Employee.</del></p> <p>This Policy <b>To</b> sets out guidelines to assist Council in determining when it is appropriate to pay legal representation costs.</p> <p><del>This Policy does not cover legal representation provided to, or on behalf of, the City.</del></p>

Amended to simplify objective, as per new policy template.

### 1. APPLICATION

This Policy does not apply to legal representation obtained by the City in relation to the day-to-day management of the City's affairs.

Inserted as per new policy template.

### 2. DEFINITIONS

“Approved Lawyer” means:

(a) a ‘certified practitioner’ as defined under the *Legal Practice Act 2003*;

(b) from a law firm on the City's panel of legal service providers, if relevant, 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

Inserted as per Department of Local Government and Communities' Model Policy.

(b)c) who is approved in writing by the Council or the CEO acting under delegated authority.

Amended as per Department of Local Government and Communities' Model Policy.

“**Elected Member**” or “**Employee**” means a current or former Commissioner, Elected Member, non-elected members of a Council Committee or Employee of the City.

Amended as per Department of Local Government and Communities’ Model Policy to include non-elected members.

“**Legal Proceedings**” may be civil, criminal or investigative (including the conduct of an inquiry under any written law).

“**Legal Representation**” means the provision to or on behalf of an Elected Member or Employee by an approved lawyer of legal services in respect of:

- (a) a matter or matters 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**” means 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 City of legal representation costs may be either:

- (a) a direct payment to the Approved Lawyer (or the relevant law firm); or
- (b) a reimbursement to the Elected Member or Employee.

### **3. STATEMENT**

Under the Local Government Act 1995, the general function of a local government is to provide for the good government of the persons in its district. Money held by the local government may be applied towards the performance of this function including the expenditure of funds to provide legal representation for Elected Members and Employees, as long as the local government believes on reasonable grounds that the expenditure falls within the scope of the general function.

This policy provides for criteria and circumstances for assessing the appropriateness of expending City funds on the legal representation of Elected Members and Employees.

New Statement inserted to align with new policy template, taking some references from current objective within the Policy.

## **4. DETAILS**

### **4.1 Payment Criteria**

There are ~~three~~ four major criteria for determining whether the City will pay the legal representation costs of an Elected Member or Employee. These are:

- (a) the legal representation costs must relate to a matter that arises from the performance, by the Elected Member or Employee, of his or her functions;
- (b) the legal representation costs must be in respect of legal proceedings that have been, or may be, commenced;
- (c) in performing the functions, to which the legal representation relates, the Elected Member or Employee 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.

4.1(d) Inserted as per Department of Local Government and Communities' Model Policy.

### **4.2 Examples of Legal Representation Costs That May be Approved**

4.2.1 If the criteria in clause 4.1 are satisfied, the City may approve the payment of legal representation costs:

- (a) where proceedings are brought against an Elected Member or Employee 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 Elected Member or Employee; or
- (b) for involvement in a statutory or other inquiry that requires information to be given, or to which information is given, by an Elected Member or Employee in connection with his or her functions; or
- (c) to enable proceedings to be commenced and/or maintained by an Elected Member or Employee to permit them to carry out their 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
- (d) 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 Elected Members or Employees.

~~2.2 This policy does not relate to situations where legal proceedings are commenced by an Elected Member or Employee and there is a presumption that the City will not pay for legal representation costs in these circumstances. However this policy does not preclude such a request being submitted and considered by the Council for extenuating circumstances where the Elected Member or Employee is the subject of threatening behaviour by another person.~~

4.2.23. The City will not approve the payment of legal representation costs to an Elected Member or Employee for a defamation action, or a negligence action, instituted by the Elected Member or Employee.

4.2.1(c) and 4.2.1(d) inserted as per Department of Local Government and Communities' Model Policy. Clause 2.2 from current Policy removed due to duplication of new clause 4.2.1(c).

### 4.3 Application for payment

4.3.1 An Elected Member or Employee who seeks assistance under this Policy is to make an application(s) for payment of legal representation costs.

4.3.2 The application:

- (a) is to be made in writing to the Council;
- (b) is to give details of:
  - (a) the matter for which legal representation is sought;
  - (b) how the matter relates to the functions of the Elected Member or Employee;
  - (c) the 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 a document etc);
  - (e) the estimated cost of the legal representation (if known); and

(vi) why it is in the interests of the City for payment to be made.

(a) 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; and

(b) so far as possible, is to be made before seeking the legal representation to which the application relates.

4.3.3 The application is to be accompanied by a 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 4.7 and any other conditions to which the approval is subject; and

(c) undertakes to repay to the City any legal representation costs in accordance with the provisions of clause 4.7.

4.3.4 In relation to clause 4.3.3(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.

4.3.5 An application is to be accompanied by a report prepared by or on behalf of the CEO or, where the CEO is the applicant, by the Director Corporate Services and Resource Management.

4.3.2(b)(vi) and 4.3.4 inserted as per Department of Local Government and Communities' Model Policy.

#### **4.4 Legal Representation Costs - Limit**

4.4.1 Unless otherwise determined by Council, payment of legal representation costs in respect of a particular application is not to exceed \$6,000.

4.4.2 An Elected Member or Employee may make a further application in respect of the same matter.

#### **4.5 Council's Powers**

4.5.1 Council may:

(a) refuse;

(b) grant; or

(c) grant subject to conditions, ~~including a financial limit,~~

an application for payment of legal representation costs.

- 4.5.2 A condition under clause 4.5.1 may include 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.
- 4.5.3 In assessing an application, regard may be had to any insurance benefits that may be available to the applicant under the City's ~~Councillors and Officers~~ existing insurance policy ~~(or its equivalent)~~.
- 4.5.4 Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 4.5.5 Council may, subject to clause 4.5.6, determine that an Elected Member or Employee whose application for legal representation costs has been approved:
- (a) has, in respect of the matter for which ~~legal representation costs were approved~~ approval was given, not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
  - (b) has given false or misleading information in respect of the application.
- 4.5.6 A determination under clause 4.5.5 may be made by Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- 4.5.7 Where Council makes a determination under clause 4.5.5, it may also determine that all or part of the legal representation costs paid by the City, are to be repaid by the Elected Member or Employee in accordance with clause 4.8.

Minor administrative amendments to improve wording.

#### 4.6 **CEO's Powers Authorisation**

- 4.6.1 In cases of urgency, the CEO, subject to clause 4.6.2, may exercise, on behalf of the Council, any of the powers of the Council under clauses 5.1 and 5.2, to a limit of \$6,000, where a delay in approving an application would be detrimental to the legal rights of an Elected Member or Employee.
- 4.6.2 Where the CEO is the applicant, the powers in clause 4.6.1 are to be exercised by the Director Corporate Services ~~and Resource Management~~.

- 4.6.3 An application approved by the CEO under clause 4.6.1, or by the Director Corporate Services and Resource Management under clause 4.6.2, is to be submitted to the next meeting of Council which may exercise any of its powers under this Policy, ~~including its powers under clause 5.4.~~

Minor administrative amendments to improve wording and update references.

#### 4.7 Repayment of Legal Representation Costs

- 4.7.1 An Elected Member or Employee, 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 4.5.5; or
  - (b) 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 paid the legal representation costs.
- 4.7.2 The City may take action in a court of competent jurisdiction to recover any monies due it under this Policy.

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Creation Date:	June 1999
Amendments:	CJ001-02/01, CJ136-06/04, CJ199-09/08, <u>CJXXX</u>
Related Documentation:	<ul style="list-style-type: none"><li>• <i>Local Government Operational Guidelines No. 14 – Legal Representation for Council Members and Employees</i> – Department of Local Government 2006</li></ul>