

**E17 LEGAL REPRESENTATION****PURPOSE**

To set out guidelines to assist Council in determining when it is appropriate to pay legal representation costs.

**POLICY****1.0 General Principles:**

1.1 The Shire may approve the legal representation costs of an Elected Member or employee if the following criteria are satisfied:

a) The legal representation costs must relate to a matter that arises from the performance, by the Elected Member or employee in the course of their duties;

b) The legal representation costs 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 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

d) The legal representation costs must not relate to a matter that is of a personal or private nature.

1.2 In each case it will be necessary to determine whether assistance with legal representation costs is justified through the provision for the good government of the Shire's people and its district.

**2.0 Application for financial assistance:**

2.1 If the criteria in item 1.1 of this policy are satisfied, the Shire may approve the payment of legal representation costs as follows:

a) Where proceedings are brought against a 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) To enable proceedings to be commenced and/or maintained by an Elected Member or employee to permit him or her to carry out his or her 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

c) Where exceptional circumstances are involved – for example, where a person or organisation is compromising the confidence within the community by publicly making adverse personal comments in relation to an Elected Member or employee.

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

**3.0 Application for payment**

3.1 An Elected Member or employee seeking assistance under this policy is required to make an application, in writing, to the Chief Executive Officer. Where the applicant is the Chief Executive Officer, the application is to be made to the Shire President who is

to refer the application to the Director Corporate and Community for processing.

- 3.2 The written application for payment of legal representation costs is to give details of the following:
- a) The matter for which legal representation is requested;
  - b) How the matter relates to the functions of the Elected Member or employee;
  - c) The legal firm nominated 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) An estimated cost of the legal representation; and
  - f) Why it is in the interests of the Shire for payment to be made.
- 3.3 As far as possible, the application is to be made before commencement of the legal representation to which the application relates.
- 3.4 The application is to be accompanied by a signed written statement by the applicant that:
- a) They have read, and understand, the terms of the 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;
  - c) Undertakes to repay to the Shire any legal representation costs in accordance with the provisions of clause 7; and
  - d) 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 An application is also to be accompanied by a report prepared by the Chief Executive Officer or, where the Chief Executive Officer is the applicant, by an appropriate employee.

#### **4.0 Legal representation costs – Limit**

- 4.1 The Council in approving an application in accordance with this policy shall set a limit on the legal representation costs to be paid based on the estimated costs in the application.
- 4.2 An Elected Member or employee may make a further application to the Council in respect of the same matter.

#### **5.0 Council's powers**

- 5.1 The Council may:
- a) Refuse;
  - b) Grant; or
  - c) Grant subject to conditions.
- 5.2 In addition to the limit on legal representation costs set under clause 4.1, conditions

under clause 5.1 may include, but are not restricted to, 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, the Council may have regard to any insurance benefits that may be available to the applicant under the Shire's Elected 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 an Elected 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 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, it may also determine that all or part of the legal representation costs paid by the Shire, are to be repaid by the Elected Member or employee in accordance with clause 7.

## **6.0 Delegation to 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 Chief Executive Officer 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 Where the Chief Executive Officer is the applicant, the powers in clause 6.1 are to be exercised by the Director Corporate and Community.
- 6.3 An application approved by the Chief Executive Officer under clause 6.1, or by the Director Corporate and Community under clause 6.2, is to be submitted to the next ordinary meeting of the Council. The Council may exercise any of its powers under this policy, including its powers under clause 5.4.

## **7.0 Repayment of legal representation costs**

- 7.1 A Council Member or employee whose legal representation costs have been paid by the Shire is to repay the Shire –
- a) All or part of those costs – in accordance with a determination by the Council under clause 5.7; or
  - b) As much of those costs as are available to be paid by way of off-set – where the Elected Member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the Shire paid the legal representation costs.
- 7.2 The Shire may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

### Definitions

**Approved Lawyer** means:

- (a) A 'certified practitioner' under the *Legal Practice Act 2003*;

(b) From a law firm on the WALGA Preferred Suppliers, the Shire's panel of legal service providers (if applicable) or where the requirements of the Shire's Purchasing Policies have been met, 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

(c) Approved in writing by the Council or the Chief Executive Officer under delegated authority.

**Elected Member or employee** means a person who is, or was, a commissioner, Elected Member, an external committee member or employee of the Shire.

**Legal Proceedings** means civil, criminal or investigative proceedings.

**Legal Representation** means 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 an Elected Member or employee; and

b) Legal proceedings involving an Elected Member or employee that have been, or is to commenced.

**Legal Representation Costs** mean the costs, including fees and disbursements, properly incurred in providing legal representation.

**Legal Services** means advice, representation or documentation that is provided by an approved lawyer.

**Payment** means Shire of legal representation costs by either:

a) A direct payment to the approved lawyer (or the relevant firm); or

b) A reimbursement to an Elected Member or employee.

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