



## Legal Representation for Council Members and Employees Policy

Responsible Officer

Chief Executive Officer

### Objective

This policy provides guidance in determining when it is appropriate for the Shire to pay cost of legal representation.

### Scope

This policy demonstrates the Shire's commitment in protecting the interests of Council Members and employees (including past members and former employees) in seeking legal advice or where they become involved in civil legal proceedings in the course of their official functions.

### Policy

#### 1.0 General Principles:

1.1 The Shire may approve the legal representation costs of a Council 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 Council Member or employee in the course 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 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 Council 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 Council Member or employee; or

- b) To enable proceedings to be commenced and/or maintained by a Council Member or employee to permit him or her to carry out his or her functions - for example where a Council Member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Council 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 a Council 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 a Council Member or employee.

### **3.0 Application for payment**

3.1 A Council Member or employee seeking assistance under this policy is required to make an application, in writing, to the Chief Executive Officer. If the Chief Executive Officer is seeking assistance under this policy, he/she is required to make

an application, in writing, to the Shire Council.

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 sought;
- b) How the matter relates to the functions of the Council Member or employee;
- c) The lawyer or 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 understands, 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 A Council 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.

an application for payment of legal representation costs.

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 Council 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 a Council 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 \$5,000 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 Deputy Chief Executive Officer.

6.3 An application approved by the Chief Executive Officer under clause 6.1, or by the Director Corporate Services 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 Council 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 Shire’s panel of legal service providers, 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, Council 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 a Council 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 a Council Member or employee; and
- b) Legal proceedings involving a council Member or employee that have been, or is to be 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** by the Shire 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 a Council Member or employee.

Relevant Legislation/Local Law	
Local Government Act 1995	
Legal Practice Act 2003	

Office Use Only				
Relevant Delegations				
Council Adoption	Date	30/8/2017	Resolution #	3008/05
Reviewed/Modified	Date		Resolution #	
Reviewed/Modified	Date		Resolution #	