

# COUNCIL POLICY EM/CP-3 LEGAL REPRESENTATION FOR ELECTED MEMBERS AND EMPLOYEES



**STRATEGIC OUTCOME SUPPORTED: 12 - A well respected, professionally run organisation.**

## 1. OBJECTIVE

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

## 2. SCOPE

- 2.1. The policy applies to any current or former Elected Member or employee of the Shire, subject to meeting the criteria set out in the policy.

## 3. DEFINITIONS

- 3.1. **Approved lawyer** means:
  - a. a 'certified practitioner' under the Legal Practices Act 2003; or
  - b. 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, approved in writing by the Council or the CEO.
- 3.2. **CEO** means Chief Executive Officer, Shire of Donnybrook Balingup
- 3.3. **Shire** means the Shire of Donnybrook Balingup.
- 3.4. **Legal proceedings** may be civil, criminal or investigative.
- 3.5. **Legal representation** is the provision of legal services, to or on behalf of a relevant person, by an approved lawyer that is in respect of a matter or matters arising from the performance of the functions of the relevant person; and legal proceedings involving the relevant person that have been, or may be, commenced.
- 3.6. **Legal representation costs** are the costs, including fees and disbursements, properly incurred in providing legal representation.
- 3.7. **Legal services** include advice, representation or documentation that is provided by an approved lawyer.
- 3.8. **Payment** by the Shire of legal representation costs may be either by:
  - a. a direct payment to the approved lawyer (or firm); or
  - b. a reimbursement to the relevant person.
- 3.9. **Relevant person** means a current or former elected member, non-elected members of a committee or employee.

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## **4. POLICY STATEMENT**

### **Payment Criteria**

4.1. There are three major criteria for determining whether the Shire will pay the legal representation costs of a relevant person. These are:

- a. the legal representation costs must relate to a matter that arises from the performance, by the relevant person, of his or her functions;
- b. in performing his or her functions, to which the legal representation relates, the relevant person must have acted in good faith, and must not have acted unlawfully or in any way that constitutes improper conduct; and
- c. the legal representation costs must not relate to a matter that is of a personal or private nature.

### **Legal Representation costs that may be approved**

4.2. If the criteria in clause 1 are satisfied, the Shire may approve the payment of legal representation costs:

- a. where proceedings are brought against a relevant person 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 relevant person;
- b. to enable proceedings to be commenced and/or maintained by a relevant person to permit him or her to carry out his or her functions – for example where a relevant person seeks to take action to obtain a restraining order against a person using threatening behaviour to the relevant person; or
- c. where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the Council by publicly making adverse personal comments about a relevant person.

4.3. Subject to clause 2, the Shire will not approve, other than in exceptional circumstances, the payment of legal representation costs in respect of legal proceedings instituted by a relevant person, such as a defamation action or negligence action.

### **Application for payment**

4.4. A relevant person who seeks assistance under this policy is to make written application to the Council as per the Operational Procedure (EM/OP – 1 – Application for Payment of Legal Representation for Elected Members and Employees).

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- 4.5. 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.
- 4.6. An application is also to be accompanied by a report prepared by the CEO or, where the CEO is the applicant, by a Director.

## **Council's Powers**

- 4.7. Council may refuse, grant or grant subject to conditions, including a financial limit, an application for payment of legal representation costs.
- 4.8. In assessing an application, regard may be had to any insurance benefits that may be available to the applicant under the Shire's existing insurance policy.
- 4.9. Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 4.10. Council may determine that a relevant person 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.
- 4.11. A determination may be made by the Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry. Where the Council makes a determination, the legal representation costs paid by the Shire are to be repaid by the relevant person.

## **Repayment of Legal Representation Costs**

- 4.12. A relevant person 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; or as much of those costs as are available to be paid by way of set-off – where the relevant person receives monies paid for costs, damages or settlement, in respect of the matter for which the Shire paid all or part of the legal representation costs.
- 4.13. The Shire may act in a court of competent jurisdiction to recover any monies due it under this policy.

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## 5. DELEGATIONS AND AUTHORISATIONS

5.1. In cases where a delay in the approval of an application would be detrimental to the legal rights of the applicant, the CEO may authorise financial assistance for legal representation costs. The application is to be submitted to the next meeting of the Council which may exercise any of its powers under this policy.

## 6. LEGISLATION

- 6.1. *Local Government Act 1995*
- 6.2. Local Government Operational Guidelines No.14 – legal Representation for Council Members and Employees

## 7. POLICY VERSION

<b>Related Policies:</b>	N/A		
<b>Related Procedure:</b>	EM/OP-1 - Application for Payment of Legal Representation for Elected Members and Employees		
<b>Responsible Department:</b>	Executive Services		
<b>Reviewer:</b>	Corporate Planning and Governance Officer		
<b>Review Frequency:</b>	Biennial	<b>Next Due:</b>	February 2022
<b>Version Date:</b>	14/02/2021	<b>Synergy #:</b>	NPP7987
<b>Policy Version Details</b>			
<b>Initial Adoption Date:</b>	24/01/2001	<b>Decision Reference:</b>	N/A
<b>Version Decision Date:</b>	21/12/2021	<b>Decision Reference:</b>	213/21
<b>Version Synopsis:</b>	<ul style="list-style-type: none"> <li>• Removed policy number 1.8 and added new policy ID; and</li> <li>• Added objective, scope, definitions, and delegation; and</li> <li>• Updated legislation and legal representation costs that may be approved; and</li> <li>• Added information on to ensure the policy aligns with the LG Guidelines: <ul style="list-style-type: none"> <li>- Payment Criteria</li> <li>- Application for payment</li> <li>- Councils Powers</li> <li>- Repayment of Legal Representation costs</li> </ul> </li> </ul>		