

Legal Representation for Elected Members, Employees and Volunteers

Shire of Donnybrook Balingup Council Policy EM/CP-3



Strategic Outcome Supported: 10.1 – Provide strategically focused, open and accountable governance.

OBJECTIVE

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

SCOPE

2. 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.

DEFINITIONS

3. **Approved lawyer** means:
 - a. A 'certified practitioner' under the *Legal Professions Uniform Law Application Act 2022* (WA); 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.
4. **CEO** means Chief Executive Officer, Shire of Donnybrook Balingup.
5. **Shire** means the Shire of Donnybrook Balingup.
6. **Legal proceedings** may be civil, criminal or investigative.
7. **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.
8. **Legal representation costs** are the costs, including fees and disbursements, properly incurred in providing legal representation.
9. **Legal services** include advice, representation or documentation that is provided by an approved lawyer.
10. **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.
11. **Relevant person** means a current or former elected member, non-elected members of a committee, employee or volunteer.

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12. **Volunteer** means a person formally engaged, authorised or recognised by the Shire to undertake unpaid duties on behalf of the Shire and does not include contractors, consultants or service providers engaged under a commercial arrangement.

POLICY STATEMENTS

13. Under the *Local Government Act 1995*, a local government may expend funds on legal representation for elected members, employees and volunteers where it reasonably considers the expenditure supports the good government of the district and falls within its functions.
14. Any elected member who is the applicant or who has a financial or impartiality interest in an application under this policy must disclose the interest and comply with the requirements of the *Local Government Act 1995* and *Local Government (Model Code of Conduct) Regulations 2021*.

Payment Criteria

15. There are three major criteria for determining whether the Shire will pay the legal representation costs of a relevant person. These are:
- The legal representation costs must relate to a matter that arises from the performance, by the relevant person, of their functions;
 - In performing their 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
 - 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

16. If the criteria in clause 15 are satisfied, the Shire may approve the payment of legal representation costs:
- Where proceedings are brought against a relevant person in connection with their functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the relevant person;
 - To enable proceedings to be commenced and/or maintained by a relevant person to permit him or her to carry out their 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
 - 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.
17. Subject to clause 15, 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

18. 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).
19. 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.
20. 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

21. Council may refuse, grant or grant subject to conditions, including a financial limit, an application for payment of legal representation costs.
22. Before approving financial assistance under this policy, the applicant must disclose any insurance entitlement or indemnity available in respect of the matter, and Council may require such avenues to be exhausted before assistance is provided.
23. Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
24. 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.
25. A determination under cl24 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.

When an imposed limit on payment of legal representation costs is reached

26. Where Council imposes a condition on an approval to pay legal representation costs that is a financial limit on the amount to be paid and that limit is reached, the relevant person may submit a further application for consideration by Council.

Repayment of Legal Representation Costs if monies received by relevant person

27. 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.

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28. The Shire may act in a court of competent jurisdiction to recover any monies due it under this policy.

DELEGATION AND AUTHORISATION

29. The CEO is authorised to approve financial assistance for legal representation costs where, in the CEO's opinion, a delay in obtaining Council approval would materially prejudice the legal rights or interests of the applicant. Any approval made under this clause is limited to \$3,000 and must be reported to the next ordinary meeting of Council, which may confirm, vary or revoke the approval and exercise any of its powers under this policy.

LEGISLATION

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

APPENDIX

30. Nil.

GOVERNANCE

Related Policy(s):

- Nil.

Related Procedure(s):

- EM/OP-1 Application for Payment of Legal Representation for Elected Members and Employees.

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Revision Requirements and Version Control:

Responsible Department(s):		Executive		
Review to be conducted by:		Governance Coordinator		
Revision Frequency:		☐ Annual (1yr)	☐ Triennial (3yr)	☒ Quinquennially (5yr)
Current Version Date:		26/08/2026	Next Due:	08/2031
Policy Version Details and Information:				
#:	Synopsis:	Date:	Ref.:	Record:
1	Initial adoption of procedure	24/01/2001	-	-
2	– Removed policy number 1.8 and added new policy ID; and – Added objective, scope, definitions, and delegation; and – Updated legislation and legal representation costs that may be approved; and	21/12/2021	213/21	NPP7987
	– Added information on to ensure the policy aligns with the LG Guidelines: - Payment Criteria - Application for payment - Councils Powers - Repayment of Legal Representation costs			
3	Transferred to new Council Policy template and reformatted with following amendments: – Added volunteers to policy coverage. – Updated legislative references. – Added conflict of interest and insurance disclosure requirements. – Added process for additional funding applications where limits are reached. – Clarified CEO approval delegation and Council reporting requirements. – Updated policy template, formatting and governance information.	26/08/2026	170/09-26	NPP11853 MONARCH-1594159990-136