



LEGAL REPRESENTATION FOR COUNCIL MEMBERS AND EMPLOYEES

Purpose

This policy establishes the principles applied to the payment of legal representation costs for Council Members and employees, where they become involved in legal proceedings in the performance of their functions. It determines what costs may be met by the City, the limitations and the required processes.

Definitions

The **Act** means the *Local Government Act 1995*.

Approved lawyer means:

- a 'certified practitioner' under the *Professions Act 2008*;
- from a law firm on the Western Australian Local Government Association's Legal & Debt Management Services (PSP004-008) preferred supplier panel, 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
- approved in writing by the Council or the Chief Executive Officer (CEO) under delegated authority.

City means the City of Karratha.

Council Member or employee means a current or former commissioner, Council Member, non-elected member of a Council committee or employee of the City.

Legal proceedings may be civil, criminal or investigative.

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 matter or matters arising from the performance of the functions of the Council Member or employee; and
- legal proceedings involving the Council Member or employee that have been, or may be, commenced.

Legal representation costs are 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.

Liability has the meaning given to it under section 6.14A(1) of the *Local Government Act 1995*.

Non-elected member of a Council committee means a person who is appointed under section 5.10 or 7.1B of the Act to a Council committee established under section 5.8 or 7.1A of the Act.

Payment means payment of legal representation costs by the City either by:

- a direct payment to the approved lawyer (or the relevant firm); or
- a reimbursement to the Council Member or employee.

Policy Principles

1. Criteria

The City will pay the legal representation costs of a Council Member or employee when:

- a) the legal representation costs relate to a matter that arises from the performance of their functions;
- b) the legal representation cost is in respect of legal proceedings that have been, or may be, commenced;
- c) for the situation in question, 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 or a breach of the relevant Code of Conduct; and
- d) it does not relate to a matter that is of a personal or private nature.

2. Examples of legal representation costs not to be approved

The City will not approve the payment of legal representation costs for a defamation action, or a negligence action, commenced by a Council Member or employee, unless approved by Council.

The City must not pay or reimburse any liability incurred by a Council Member, as prescribed in regulation 19D of the *Local Government (Financial Management) Regulations 1996*, including:

- a) amounts ordered to be paid under misconduct or oversight provisions;
- b) a penalty or infringement notice issued to the Council Member;
- c) a fine imposed under the Local Government Act;
- d) an amount the Council Member is ordered to pay under the State Administrative Tribunal Act; or
- e) exemplary or punitive damages awarded against the Council Member in civil proceedings.

3. Examples of legal representation costs that may be approved

The City may approve the payment of legal representation costs:

- a) From the performance of their functions – for example, 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 to permit them to carry out their 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 lessening the confidence of the community in the local government by publicly making adverse personal comments about Council Members or employees.

4. Application for payment

A Council Member or employee who seeks assistance under this policy is to make an application, in writing, to the Council. As far as possible, the application is to be made before commencement of the legal representation to which the application relates.

The written application for payment of legal representation costs is to give details of:

- the matter for which legal representation is sought;
- how that matter relates to the functions of the Council Member or employee making the application;
- the lawyer (or law firm) who is to be asked to provide the legal representation;
- the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);
- an estimated cost of the legal representation; and
- why it is in the interests of the City for payment to be made.

The application is to contain a declaration by the applicant that they:

- have acted in good faith and have not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates;
- have read, and understand, the terms of this policy;
- acknowledge that any approval of legal representation costs is conditional on the repayment provisions of section 8 and any other conditions to which the approval is subject; and
- undertake to repay to the City any legal representation costs in accordance with the provisions of section 8.

An application is to be accompanied by a report prepared by the CEO or their delegate. Where the CEO is the applicant, the report is prepared by the Director Corporate Services.

5. Legal representation costs – limit

The Council shall set a limit on the costs to be paid based on the estimated costs in the application.

The applicant may make a further application to the Council in respect of the same matter.

6. Council's powers

Decisions as to financial assistance under this policy are to be made by Council.

Council may:

- refuse;
- grant; or
- grant subject to conditions,

an application for payment of legal representation costs.

Conditions may include, but are not restricted to, 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.

In assessing an application, Council may have regard to any insurance benefits that may be available to the applicant under the City's insurance policies.

Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.

Council may determine that a Council Member or employee whose application for legal representation costs has been approved has:

- not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
- given false or misleading information in respect of the application.

A determination may be made by Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry. Where Council makes such a determination, the legal representation costs are to be repaid by the Council Member or employee in accordance with section 8 of this policy.

7. Delegation to CEO

In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the Council, any of the powers of the Council under section 6 of this policy, to a maximum of \$10,000 in respect of each application.

An application approved by the CEO is to be submitted to the next ordinary meeting of Council.

8. Repayment of legal representation costs

A Council Member or employee whose legal representation costs have been paid by the City must repay all or part of those costs to the extent that they can be recovered against any amount received for costs, damages or settlement in relation to the same matter.

The City may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

Related Documents

Legislation & Local Laws	<i>Local Government Act 1995</i> <i>Local Government (Financial Management) Regulations 1996, regulation 19D</i>
Relevant Delegations	
Strategies & Plans	
Related Council Policies	
Procedures, Documents & Forms	Department of Local Government, Industry Regulation and Safety Local Government Operational Guidelines: Legal Representation for Council Members and Employees

Policy Owner

Directorate	Corporate Services
Department	Governance

Review Management

Next review due: October 2031

Version Management

Version	Date	Council Resolution #	Description
1	Dec 2001	12250 & 12251	Original adoption
2	Sept 2002	12738	Policy review
3	Oct 2004	13497	Policy review
4	Oct 2007	14223	Policy review
5	Jun 2012	152174	Policy review
6	April 2015	153109	Policy review
7	April 2017	153772	Policy review
8	July 2019	154387	Policy review
9	Aug 2023	155233	Policy review
10	Oct 2026		Policy review