

Title:	1.15 Legal Representation for Council Members and Employees
Previous No:	
File No:	
Statutory Environment:	Local Government Act 1995 s. 9.56; s. 3.1; s.6.7 (2)
Minute No:	
Last Updated:	September 2015
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Objective:

To provide guidance in the protection of the interests of elected members and employees (including past elected members and former employees) where they have become involved in legal proceedings as a result of their official functions.

Policy:

Definitions

- **approved lawyer** is to be:
 - a. a “certified practitioner” under the Legal Practice Act 2003;
 - b. from a law firm on WALGA’s panel of legal service providers; and
 - c. approved in writing by the council or the CEO under delegated authority.
- **council member or employee** means a current or former commissioner, council member, non-elected member of a council committee or employee of the Shire.
- **legal proceedings** may be civil, criminal or investigative.
- **legal representation** is 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 the council member or employee; and
 - b. 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** include 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 the council member or employee.

1. Payment Criteria

There are four major criteria for determining whether the Shire will pay the legal representation costs of a council member or employee. These are:

- a. The legal representation costs must relate to a matter that arises from the performance by the council member or employee of his or her functions;
- b. The legal representation cost 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 do not relate to a matter that is of a personal or private nature.

2. Examples of legal representation costs that may be approved

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

- 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 lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees.

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. Application for payment

A council member or employee who seeks assistance under this policy is to make an application in writing to the council or the Chief Executive Officer.

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

- a. the matter for which legal representation is sought;
- b. how that matter relates to the functions of the council member or employee making the application;
- c. the lawyer or law firm who is to be asked 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.

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.

As far as possible the application is to be made before commencement of the legal representation to which the application relates.

The application is to be accompanied by a signed written statement by the applicant that he or she:

- a. has read and understands the terms of this 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; and
- c. undertakes to repay to the Shire any legal representation costs in accordance with the provisions of clause 7.

4. Legal representation costs – Limit

The council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application.

A council member or employee may make a further application to the council in respect of the same matter.

5. Council's powers

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 Shire's Council members or employees insurance policy or its equivalent.

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, 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.

Such determination may be made by Council only on the basis of and consistent with the findings of a court, tribunal or enquiry.

Where Council makes such determination the legal representation costs paid by the Shire are to be repaid by the council member or employee in accordance with clause 7.

6. Delegation to Chief Executive Officer

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 Council any of the powers of Council to a maximum of \$2,000 in respect of each application.

An application approved by the CEO is to be submitted to the next ordinary meeting of Council. Council may exercise any of its powers under this policy, including its power to revoke or vary the approval or any conditions of the approval.

7. Repayment of legal representation costs

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 Council under clause 5;
- b. as much of those costs as are available to be paid by way of set-off – 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.

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