

Legal Representation for Council Members and Employees Policy



Legislation / local law requirements	<i>Local Government Act 1995</i> <i>Legal Practice Act 2003</i>
Relevant delegations	Nil.
Related policies, procedures and supporting documentation	Local Government Operational Guideline - Legal Representation for Council Members and Employees

PRELIMINARY

INTRODUCTION

Section 9.56 of the *Local Government Act 1995* (the Act) provides protection from actions of tort for anything a Council Member or employee has, in good faith, done in the performance or purported performance of a function under the Act or under any other written law. However, the legislation does not preclude people taking action against individual Council Members or employees if they believe that the Council Member or employee has not acted in good faith.

Section 3.1 of the Act provides that the general function of a local government is to provide for the good government of persons in its district. Section 6.7(2) provides that money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law. Under these provisions, Council can expend funds to provide legal representation for its members and employees, as long as it believes that the expenditure falls within the scope of the local government's function.

PURPOSE

To set out the circumstances under which the City will contribute to legal fees for council members and employees.

OBJECTIVE

To:

- protect the interests of council members and employees (including past members and former employees) where they become involved in legal proceedings as a result of their official functions; and
- ensure security, equity and consistency for council members and employees to work for the good government of the district.

SCOPE

This policy applies to the contribution of legal fees for council members and employees (including past members and former employees) where they become involved in civil legal proceedings in the course of their official functions.

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DEFINITIONS

approved lawyer is to be

- a. a 'certified practitioner' under the *Legal Practice Act 2003*;
- b. from a law firm on the City's panel of legal service providers, if relevant, unless the Council or CEO 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 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 City.

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 includes advice, representation or documentation that is provided by an approved lawyer. payment by the City 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.

to act in good faith

To act 'in good faith' is to act honestly or sincerely, without an intention to deceive. This is also known as **acting bona fide**. A decision made in good faith is one where you genuinely believe it to be for the benefit of the company as a whole and not merely for your self interest.

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POLICY

In each case, the Council Member or Employee must refer the matter to the Local Government Insurance Scheme for assessment under the management liability insurance (elected members and employees liability) cover in respect of claims against them personally for any alleged wrongful acts arising out of their official duties. Should the cover not provide the representation, the conditions of this policy apply.

1. Payment Criteria

There are four major criteria for determining whether the City 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

- 2.1 If the criteria in clause 1 of this policy are satisfied, the City 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.
- 2.2 The City 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

- 3.1 All applications are to be submitted, in writing, to the CEO or where the CEO is the applicant to the Mayor
- 3.2 The written application for payment of legal representation costs is to give details of:

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- 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 - if known) 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 City for payment to be made

3.3 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.

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

3.5 An application made by a Council Member or the CEO is to be accompanied by a report to Council prepared by the CEO or where the CEO is the applicant by an appropriate Senior Employee. The report will contain an assessment of the request, together with a recommendation.

4. Legal representation costs – Limit

4.1 The Council or CEO, 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.

4.2 A Council Member or Employee may make a further application to the council in respect of the same matter.

5. Determination

5.1 The Council may:

- a. refuse;
- b. grant; or
- c. grant subject to conditions, an application for payment of legal representation costs made by Council Members or the CEO.

5.2 The CEO may:

- a. refuse;
- b. grant; or
- c. grant subject to conditions, an application for payment of legal representation costs made by Employees.

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- 5.3 Conditions under clause 5.1 and 5.2 will include, but are not restricted to:
- a. a financial limit; and
 - b. a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.
- 5.4 In assessing an application, regard to any insurance benefits that may be available to the applicant under the City's Council Members or Employees insurance policy or its equivalent, shall be applied.
- 5.5 The Council or CEO may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 5.6 The Council or CEO may, subject to clause 5.7, 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 reasonably or 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.
- 5.7 A determination under clause 5.6 may be made only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- 5.8 Where determination is made under clause 5.6;
- a. assistance will be immediately withdrawn; and
 - b. the legal representation costs paid by the City are to be repaid by the Council Member or Employee in accordance with the conditions of approval.

6. 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 or may result in increased risk exposure to the City, the CEO may exercise, on behalf of the Council, any of the powers of the Council under clause 5.1 in accordance with the City's Risk Management Policy.
- 6.2 An application approved by the CEO under clause 6.1, is to be submitted to the next Ordinary Meeting of the Council. Council may exercise any of its powers under this Policy, including its powers under clause 5.5.

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7. Repayment of legal representation costs

- 7.1 A Council Member or Employee whose legal representation costs have been paid by the City is to repay the City:
- a. all or part of those costs – in accordance with any formal agreement conditioning the application;
 - 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 City paid the legal representation costs.
- 7.2 The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

OFFICE USE ONLY	
Responsible Officer	Executive Manager Corporate Strategy and Governance
Initial Council Adoption	23/07/2002
Previous Title	N/A
Reviewed / Amended	Amended 07/11/2006 Reviewed 04/04/2018 (no amendments made) Reviewed and amended 20/06/2023
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