



Council Policy Manual

CP10.16 Legal Representation for Members and Employees

POLICY OBJECTIVE

The objective of this policy is to provide a framework and guidelines to assist the Council in determining when the City should provide financial assistance to members and employees for legal representation.

POLICY STATEMENT

Under the *Local Government Act 1995*, the City of Perth is empowered to protect the interests of individual members and employees (including past members and former employees) where they become involved in civil legal proceedings because of their official functions. In these situations the City may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to those proceedings.

In this policy:-

“approved solicitor” is to be:-

- a) An Australian legal practitioner under the *Legal Profession Act 2008*; and
- b) approved in writing by the Chief Executive Officer;

“member or employee” means a current or former, Elected Member, a commissioner, a member of a Committee of Council or an employee of the City;

“legal proceedings” may be civil, criminal or investigative (including an inquiry under any written law);

“legal representation” is the provision of legal services, to or on behalf of a member or employee, by an approved solicitor that are in respect of:-

- a) a matter or matters arising from the performance of the functions of the member or employee; and
- b) legal proceedings involving the member or employee that have been, or may be, commenced;



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“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 solicitor;

“payment” by the City of legal representation costs may be either by:-

- a) a direct payment to the approved solicitor (or the relevant firm); or
- b) a reimbursement to the member or employee.

1. FINANCIAL ASSISTANCE CRITERIA

1.1 The City may provide financial assistance for legal representation of a member or employee based on the following criteria:-

- (a) the legal representation costs must relate to a matter that arises from the performance, by the member or employee, of his or her functions as a member or employee;
- (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 function, to which the legal representation relates, the member or employee, in the opinion of the Chief Executive Officer (or where the employee is the Chief Executive Officer, in the opinion of the Council) must have acted reasonably, in good faith, and consistently with the City’s Code of Conduct, *Local Government (Rules of Conduct) Regulations 2007* (in the case of an Elected Member) and other written laws; and
- (d) the legal representation costs do not relate to a matter or dispute in respect of a local government election.

2. EXAMPLES OF LEGAL PROCEEDINGS

2.1 If the criteria in clause 1 are satisfied, the Council may approve the payment of legal representation costs:-



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- (a) where proceedings are brought against a 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 member or employee;
- (b) where proceedings are commenced by a member or employee to enable them to carry out their local government functions - for example, where a member or employee seeks a restraining order against a person using threatening behaviour to the member or employee; or
- (c) for involvement in a statutory or other inquiry that requires information to be given, or to which information is given, by a member or employee in connection with his or her functions.

2.2 The City will not make payment for legal representation costs to a member or employee for a defamation or negligence action, instituted by the member or employee.

3. Application For Payment

3.1 A member or employee who seeks payment under this policy:-

- (a) must make an application in writing, to the CEO (unless the CEO is the applicant, in which case the application is to be submitted to the Director Corporate Services) with the following details:-
 - (i) the matter for which legal representation is sought;
 - (ii) how that matter relates to the functions of the member or employee making the application;
 - (iii) the solicitor (or firm) who is to be asked to provide legal representation;
 - (iv) the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);
 - (v) the estimated cost (if known) of the legal representation; and
 - (vi) why it is in the interests of the City for payment to be made; and



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- (b) so far as possible, to make the application in paragraph (a) before seeking the legal representation to which the application relates.

3.2 The application must be accompanied by a signed declaration by the relevant member or employee that he or she:-

- (a) has read, and understands, the terms of this Policy;
- (b) has acted reasonably and 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;
- (c) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clauses 5.7 and 7 and any other conditions to which the approval is subject; and
- (d) undertakes to repay to the City any legal representation costs in accordance with the provisions of clauses 5.7 and 7, as may be required by the City and the terms of this Policy.

3.3 Once an application is received in accordance with this Policy a report is to be prepared by the CEO (or, where the CEO is the applicant, the Director Corporate Services) containing details of the application, an assessment of the request, an estimate of costs and a recommendation for consideration by the Council.

4. Legal Representation Costs – Limit

4.1 Unless otherwise determined by the Council, payment of legal representation costs in respect of a single application is not to exceed \$10,000.

4.2 A member or employee may make one or more additional applications to the Council in respect of the same matter.

5. Council's Powers

5.1 The Council, in respect of an application for payment of legal representation costs, may:-

- (a) refuse the application;
- (b) approve payment; or



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- (c) approve payment subject to conditions.
- 5.2 Conditions under clause 5.1 may include, but are not limited to:-
 - (a) a financial limit; and
 - (b) a requirement to enter into a security deed in accordance with clause 5.3.
- 5.3 A member or employee in respect of whom payment of legal representation that exceed or may exceed \$5,000 has been approved must execute a security deed, prepared by the City, which sets out the terms and conditions on which the assistance is offered, including any repayment requirements under clauses 5.7 and 7.
- 5.4 In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant or to the City under the City's member or employee insurance policy (or its equivalent).
- 5.5 The Council may, cancel or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 5.6 The Council may determine that a member or employee in respect of whom payment of 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
 - (b) given false or misleading information in respect of the application.
- 5.7 Where the Council makes a determination under clause 5.6 or where a court, tribunal, inquiry or other body finds that a member or employee has acted unlawfully or in a way that constitutes misconduct:-
 - (a) no further payments of legal representation costs are to be made; and
 - (b) the legal representation costs paid by the City must be repaid by the member or employee in accordance with clause 7.
- 5.8 Where the Council resolves to cancel or vary an approval under clause 5.5, but no determination has been made under clause 5.6: -



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- (a) the member or employee is to be notified as soon as possible of the decision; and
- (b) subject to clauses 5.7 and 7, the member or employee is not required to bear the cost of or to refund, any legal representation costs incurred prior to notification as long as those costs were incurred in accordance with the prior approval.

5.9 Nothing in clause 5.8 prevents a later determination being made under clause 5.6 that requires repayment under clause 5.7 or clause 7.

6. Chief Executive Officer's Powers

- 6.1 Where a delay in the approval of an application would be detrimental to the applicant, the CEO, subject to clause 6.2, may exercise, on behalf of the Council, any of the powers of the Council under clause 5.1 and 5.2, below \$5,000 in respect of each application.
- 6.2 For the purposes of clause 6.1, an application from the CEO is to be dealt with by the Director Corporate Services.
- 6.3 An application approved by the CEO under clause 6.1, or by the Director Corporate Services under clause 6.2 is to be submitted to the next Ordinary Meeting of the Council which may exercise any of its powers under this Policy, including its powers under clause 5.5.

7. Repayment of Legal Representation Costs

- 7.1 A member or employee whose legal representation costs have been paid by the City must repay the City:-
 - (a) all or part of those costs – in accordance with any determination by the Council under clause 5.6; or
 - (b) as much of those costs as are available to be paid by way of set-off – where the member or employee receives, or is entitled to receive, money paid by way of costs, damages, or settlement, in respect of the matter for which the City paid the legal representation costs.



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7.2 The City may take action in a court of competent jurisdiction to recover any money due to it under this Policy.

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