

CP.4 Legal Representation for Council Members and Employees

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| <i>Responsible Department</i> | Chief Executive Officer Office |
| <i>Resolution Number</i> | C.5384 |
| <i>Resolution Date</i> | 26 August 2025 |
| <i>Next Scheduled Review</i> | 2027/28 |
| <i>Related Shire Documents</i> | CP.3 Code of Conduct for Councillors, Committee Members and Candidates MP.1 Code of Conduct – Employees, Volunteers, Contractors and Agency Staff Process - Manage Procurement Process - Manage Legal Representation Assistance Applications |
| <i>Related Legislation</i> | Local Government Act 1995, section 9.56 Corruption, Crime and Misconduct Act 2003 Work Health and Safety Act 2020 |

OBJECTIVE

To provide a clear framework under which financial assistance will be provided to Council Members and employees for legal representation in connection with their official duties and functions of their role.

SCOPE

Applies to all Council Members and employees (including past members and former employees) in seeking legal representation or where they become involved in civil legal proceedings in the course of their official duties and functions of their role.

POLICY

In all circumstances, the applicant must refer the matter to the Local Government Insurance Scheme for assessment in respect of claims against them personally. Should the cover not provide legal representation, the conditions of this policy apply.

1. Definitions

Approved lawyer is to be –

- (a) An Australian legal practitioner as defined under the *Legal Profession Uniform Law Application Act 2022*;
- (b) from a law firm on the Western Australian Local Government Association (WALGA) preferred supplier panel for legal service providers, relevant,

unless Council considers that this is not appropriate –for example, where there is or may be a conflict of interest or insufficient expertise;

- (c) Appointed in accordance with the Shire's Procurement Policy; and
- (d) Approved in writing by Council or the Chief Executive Officer under delegated authority.

Council Member or employee means a current or former Commissioner, Council Member, non-Council 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 a 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 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.

2. Payment Criteria

The Shire of Northam may approve the legal representation costs of a Council Member or employee if the following criteria is satisfied:

- (a) The legal representation costs must relate to a matter that arises from the performance, by the Council Member or employee, of their official duties or functions of their role;
- (b) The legal representation cost must be in respect of legal proceedings that have been, or may be commenced;
- (c) In performing their functions of their role or undertaking their official duties, 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.

3. Examples of Legal Representation Costs that May be Approved

3.1 If the criteria in clause 2 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 their 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 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.

3.2 The Shire will not approve, unless under exceptional circumstances, the payment of legal representation costs:

- (a) For a defamation action, or a negligence action, instituted by a Council Member or employee;
 - (b) In circumstances where a Council Member or employee is seeking to initiate legal action against another Council Member; or
- In circumstances where a Council Member or the CEO is defending legal action initiated by another Council Member.

Exceptional circumstances are defined as including but not limited to:

- Where a person or organisation in the opinion of the council, is lessening the confidence of the community and the local government by adverse personal comments about council members or the CEO; and/or
- Where adverse personal comments about a member or the CEO may have the potential to cause psychosocial risks to the health of the Council Member or the employee.

1. Application For Payment

4.1 A Council Member or employee who seeks assistance under this policy is to make an application(s), in writing to the Chief Executive Officer.

- 4.2 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);
 - (e) An estimated cost of the legal representation; and
 - (f) Why it is in the interests of the Shire for payment to be made.
- 4.3 The application is to contain a declaration by the applicant that they have:
- (a) Acted in good faith in undertaking the functions of their role or their official duties;
 - (b) Have not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates; and
 - (c) That there are no circumstances known to the applicant which would render those representations untrue.
- 4.4 As far as possible the application is to be made before commencement of the legal representation to which the application relates.
- 4.5 The application is to be accompanied by a signed written statement by the applicant that they –
- (a) have read, and understands, the terms of this Policy;
 - (b) acknowledge that any approval of legal representation costs is conditional on the repayment provisions of Clause 8 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 8.
- 4.6 In relation to clause 4.5(c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of that money to the local government as may be required by the Shire and the terms of the Policy.

- 4.7 An application is also to be accompanied by a report prepared by the Chief Executive Officer or where the Chief Executive Officer is the applicant by the Executive Manager Corporate Services.

2. Legal Representation Costs – Limit

- 5.1 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.
- 5.2 A Council Member or employee may make a further application to Council in respect of the same matter.

3. Council's Powers

- 6.1 Council may –
- (a) refuse;
 - (b) grant; or
 - (c) grant subject to conditions,
- an application for payment of legal representation costs.
- 6.2 Conditions under clause 6.1 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.
- 6.3 In assessing an application, Council may have regard to any insurance benefits that may be available to the applicant under the Local Government Insurance Scheme.
- 6.4 Council may at any time revoke or vary an approval or any conditions of approval, for the payment of legal representation costs.
- 6.5 Council may, subject to clause 6.6, 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.

- 6.6 A determination under clause 6.5 may be made by Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- 6.7 Where Council makes a determination under clause 6.5, the legal representation costs paid by the Shire are to be repaid by the Council Member or employee in accordance with section 8.

4. Authorisation to Chief Executive Officer

- 7.1 In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant the Chief Executive Officer may exercise, on behalf of Council, any of the powers of Council under clause 6.1 and 6.2, to a maximum of \$10,000 in respect of each application.
- 7.2 An application approved by the Chief Executive Officer under clause 6.1, is to be submitted to the next ordinary meeting of Council. Council may exercise any of its powers under this policy, including its powers under clause 6.4.

5. Repayment of Legal Representation Costs

- 8.1 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 6.7;
 - (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.
- 8.2 The Shire may take action in a court of competent jurisdiction to recover any monies due to it under this policy.