

## Council Policy – Legal Representation for Elected Members and Employees

<b>Responsible Directorate</b>	Corporate Services
<b>Responsible Business Unit/s</b>	Governance
<b>Responsible Officer</b>	Manager Governance
<b>Affected Business Unit/s</b>	All

### Objective

The objective of this policy is to:

- establish the principles under which funding for legal representation may be provided, the level of funding that may be provided and the processes to be followed by the applicant when making a request.
- facilitate full, frank, and impartial decision-making and actions by relevant persons (meaning current and former serving elected members, committee members and employees) in the performance of their roles and responsibilities in pursuit of good government of the Shire of Ashburton (the Shire).

### Scope

Applies to all elected members and employees of the Shire.

### Policy Statement

#### Legal representation criteria

There are four major criteria for determining whether the Shire will pay the legal representation costs of an elected member or employee:

- The legal representation costs must relate to a matter that arises from the performance, by the elected member or employee, in fulfilling his or her functions for the Shire,
- The legal representation cost must be in respect of legal proceedings that have been, or may be, commenced,
- In performing his or her functions, to which the legal representation relates, the elected member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct, and
- The legal representation costs do not relate to a matter that is of a personal or private nature.

## Examples of legal representation costs that may be approved

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

- Where proceedings are brought against an elected 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 elected member or employee,
- To enable proceedings to be commenced and/or maintained by an elected member or employee to permit him or her to carry out his or her functions – for example where an elected member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the elected member or employee, or
- 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 an elected member or employee.

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 an elected member or employee.

## Application for payment

An elected member or employee who seeks assistance under this policy is to make an application, in writing, to the Chief Executive Officer (CEO).

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 applicant,
- 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 Shire for payment to be made.

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 declaration by the applicant that he or she:

- has read, and understands, the terms of this policy,

- acknowledges that any approval of legal representation costs is conditional on the repayment provisions of this policy and any other conditions to which the approval is subject,
- undertakes to repay to the Shire any legal representation costs in accordance with the provisions of this policy, and
- 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.

An application is also to be accompanied by a Council report, prepared by the CEO or where the CEO is the applicant by an appropriate employee, such as the Director Corporate Services.

### **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.

An elected member or employee may make a further application to the Council in respect of the same matter.

### **Council's powers**

The Council may:

- refuse,
  - grant, or
  - grant subject to conditions,
- an application for payment of legal representation costs.

Conditions under the above 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, the Council may have regard to any insurance benefits that may be available to the applicant under the Shire's insurance policy or its equivalent.

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

The Council may, subject to this policy, determine that an elected 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:

- 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 the Council only based on, and consistent with, the findings of a Court, tribunal, or inquiry.

Where the Council determines the legal representation costs are to be repaid by the elected member or employee, it is to be done so, in accordance with this policy.

### Authorisation 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 this policy, to a maximum of \$5,000 in respect of each application.

An application approved by the CEO, is to be submitted to the next Ordinary Council Meeting of the Council or if deemed necessary by the Shire President, a Special Council Meeting. Council may exercise any of its powers under this Policy.

### Repayment of legal representation costs

An elected member or employee whose legal representation costs have been paid by the Shire, is to repay the Shire:

- all or part of those costs – in accordance with a determination by the Council,
- as much of those costs as are available to be paid by way of set-off – where the elected 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 act in a Court of competent jurisdiction to recover any monies due to it under this policy.

## Definitions

**Approved lawyer** means:

- a 'certified practitioner' under the *Legal Practice Act 2003* and from a law firm on the Shire's panel of legal service providers, or as otherwise determined by Council based on need for a specific skill and/or expertise, or
- a person or firm approved in writing by the Council or the CEO under delegated authority.

**Elected member or employee** means a current or former commissioner, elected member, non-elected member of a Council committee or employee of the Shire.

**Legal proceedings** mean civil, criminal, or investigative.

**Legal representation** means the provision of legal services to or on behalf of an elected member or employee, by an approved lawyer that is in respect of:

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

**Legal representation costs** mean costs, including fees and disbursements, properly incurred in providing legal representation.

**Legal services** mean advice, representation or documentation that is provided by an approved lawyer.

**Payment** means payment by the Shire of legal representation costs either by:

- a direct payment to the approved lawyer (or the relevant firm), or
- a reimbursement to the elected member or employee.

## Relevant policies/documents

Application for Assistance – Legal Representation Costs

## Relevant legislation/local laws

*Local Government Act 1995*

Office use only				
<b>Relevant delegations</b>	Nil			
<b>Council adoption</b>	<b>Date</b>	14 March 2023	<b>Resolution #</b>	039/2023
<b>Reviewed/modified</b>	<b>Date</b>		<b>Resolution #</b>	
<b>Next review due</b>	<b>Date</b>	2025		