

# LEGAL REPRESENTATION - COUNCILLORS AND EMPLOYEES

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Previous policy number: 4.1.13

## Policy Statement

To provide guidelines for determining when it is appropriate for the Town to pay legal representation costs for Councillors and employees.

This Policy does not apply to legal advice and representation that is obtained by the Town in the normal course of fulfilling the functions and exercising the powers of a local government.

## Policy Details

### 1. Payment Criteria

There are four major criteria for determining whether the Town will pay the legal representation costs of a Councillor or employee. These are –

- a) The legal representation costs must relate to a matter that arises from the performance, by the Councillor or employee, of his or her functions;
- b) The legal representation costs must be in respect of the legal proceedings that have been, or may be commenced;
- c) In performing his or her functions, to which the legal representation relates, the Councillor 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. Legal Representation costs that may be approved

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

- a) Where proceedings are brought against a Councillor 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 Councillor or employee; or
- b) To enable proceedings to be commenced and/or maintained by a Councillor or employee to permit him or her to carry out his or her functions, for example where a Councillor or employee seeks to take action to obtain a restraining order against a person using threatening behaviour toward the Councillor 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 Councillors or employees.

The Town will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instigated by a Councillor or employee.

### 3. Application for Payment

- 3.1 A Councillor or employee who seeks assistance under this policy is to make application in writing to the Council through the CEO.
- 3.2 The written application for payment of legal representation costs is to give details of –
  - a. The matter for which the legal representation is sought;
  - b. How that matter relates to the functions of the Councillor or employee;
  - c. The lawyer, or law firm, who is to be asked to provide the legal representation;
  - d. The nature of the legal representation to be sought (such as advice, representation in court, preparation of documentation);
  - e. An estimate of the cost of the legal representation; and
  - f. Why it is in the interest of the Town 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 matter relates.
- 3.4 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 6 of this policy and any other conditions to which the approval is subject.
- 3.5 An application is to be presented to Council, accompanied by a report prepared by the CEO, or where the CEO is the applicant, by the Governance Officer.

### 4. Legal Representation Costs

Council shall set a limit on the costs to be paid based on the estimated costs in the application or as otherwise determined. A Councillor or employee may make a further application to the Council in respect of the same matter.

### 5. Determining an Application

- 5.1 The Council may –
  - a) Refuse;
  - b) Grant approval; or
  - c) Grant approval subject to conditions,
  - d) on an application for payment of legal representation costs.
- 5.2 Conditions under clause 5.1 of this policy may include:
  - a) Financial limit;
  - b) Requirement to enter into a formal agreement with the Town, which includes requirements for repayment should this be required in accordance with clause 8 of this policy.
- 5.3 In assessing an application, Council may have regard to any insurance benefits that may be available to the applicant under the Town's indemnity insurance policy.

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

5.5 The Council may, subject to clause 5.6 of this policy, determine that a Councillor or employee whose application for legal representation costs has been approved has, in respect of the matter for which the 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

5.6 A determination under clause 5.5 of this policy may be made by Council on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

5.7 Where the Council makes a determination under clause 5.5 of this policy, legal representation costs paid by the Town are to be repaid by the Councillor or employee.

## 6. Repayment of legal representation costs

6.1 A Councillor or employee whose legal representation costs have been paid by the Town is to repay the Town:

- a) All or part of those costs, in accordance with a determination by the Council under this policy.
- b) As much of those costs as are available to be paid by way of set-off, where the Councillors or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the Town paid the legal representation costs.

6.2 The Town may take action in a court of competent jurisdiction to receive any monies due to it under this policy.

## Definitions

*Approved lawyer is to be –*

- a) An Australian legal practitioner under the Legal Profession Act 2008;
- b) From a law firm on the Town's panel of legal service providers, unless the Council considers that this is not appropriate for example in circumstances where a conflict of interest exists or insufficient expertise; and
- c) Approved in writing by Council.

**good faith** means a sincere belief or motive without any malice or desire to defraud others

**Councillor or employee** means a current or former Councillor, employee or non-elected member of a council committee of the Town.

**legal proceedings** may be civil, criminal or investigative.

**legal representation** is the provision of legal services, to or on behalf of a Councillor 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 Councillor or employee; and

- b) Legal proceedings involving the Councillor 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 Town of legal representation costs may be either by –

- a) A direct payment to the approved lawyer; or
- b) A reimbursement to the Councillor or employee.

### Governance References

Statutory Compliance	<i>Local Government Act 1995</i>
Organisational Compliance	Nil.

### Policy Administration

Directorate:		Officer title:
Executive Services		Chief Executive Officer
Next Review		Review Cycle
April 2023		
Version	Date	Ref
1	23 March 2010	OCM-072-2010
2	27 August 2019	OCM-118-2019
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