

Governance 4: Legal Representation for Elected Members, Committee Members and Employees

1. Purpose

The purpose of this policy is to support the smooth administration of the local government by protecting the interests of Elected Members, Committee Members and Employees where they have become involved in legal proceedings as a result of their official function or duties.

2. Policy Statement

- (a) Under the Local Government Act 1995, the general function of a local government is to provide for the good government of the persons in its district.
- (b) Money held by the local government may be applied towards this purpose, within the strategic and policy frameworks approved by Council, the CEO and the Act.
- (c) Where the City believes it is reasonable to do so, and the scope of the matter reflects the function of local government, the City may approve the expenditure of funds to provide legal advice and representation for Elected Members and/ or Employees.
- (d) This policy document sets the criteria for assessing the appropriateness of City funds being expended for this purpose.

3. Definitions

Application for Payment of Legal Representation	Also referred to in this Policy as an 'Application', means a written application in the Approved Form by a Relevant Person to the City pursuant to clause # of this Policy for payment by the City of Legal Representation Costs.
Approved Form	Means the application form annexed to this Policy and marked ' <i>Application for Payment of Legal Representation</i> '.
Lawyer	Means: <ol style="list-style-type: none"> (a) a 'an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate' under the Legal Profession Act 2008 (WA); and (b) from a law firm on the Western Australian Local Government Association's panel of preferred legal service providers, unless otherwise approved by Council.
Committee Member	Means a person who is a member of a committee appointed by Council who is not an Elected Member.

Legal Proceedings	Means civil, criminal or investigative legal matters.
Approved Legal Representation	Is the provision of legal services, the scope of which is expressly approved by the Council or the CEO under delegation, to or on behalf of an Elected Member or Employee, by an Approved Lawyer in respect of: <ul style="list-style-type: none"> (a) a matter or matters arising directly or indirectly, from the performance of the functions of the Relevant Person as an Elected Member or Employee of the City of Kalamunda, but excluding any matter that is, or may be construed as being, against the City of Kalamunda, any of its Elected Members, or any Employee; and (b) legal proceedings involving the Relevant Person that have been, or may be, commenced.
Legal Representation Costs	Means the costs, including fees and disbursements, reasonably incurred by the Relevant Person from the Approved Lawyer, in the provision of the Approved Legal Representation.
Legal Services	Means any aspect of the Approved Legal Representation provided to the Relevant Person by the Approved Lawyer.
Payments	Means payment by the City of Legal Representation Costs, that may be either by: <ul style="list-style-type: none"> (a) a direct payment to the Approved Lawyer (or the relevant firm); or (b) a reimbursement to the Relevant Person.
Relevant person	Means an Elected Member, Committee Member or Employee.

4. Payment Criteria

(a) Five Criteria

There are five major criteria that apply as the basis for approval of whether the City will pay the Legal Representation Costs of a Relevant Person. These are:

- (i) the Legal Representation Costs relate to a matter that arises directly or indirectly, from the performance, by the Relevant Person, of his or her functions with the City of Kalamunda;
- (ii) the Legal Representation Costs are in respect of Legal Proceedings that have been, or may be, commenced;
- (iii) in performing his or her functions, to which the Legal Representation relates, the Relevant Person has acted in good faith and has not acted unlawfully or in a way that constitutes improper conduct;
- (iv) the Legal Representation Costs do not relate to a matter that is of a personal or private nature where that matter is not related to the Relevant Person's functions with the City of Kalamunda;

- (v) notwithstanding any approval by the City to pay the Relevant Person's Legal Representation Costs, or any part thereof, the Relevant Person acknowledges and agrees that he or she will at all times remain personally liable for any and all Legal Representation Costs and by making the Application, irrevocably indemnifies the City against all claims for any such costs, and/ or any claims by the Relevant Person or any third party, including the Relevant Person's Lawyer, for any matter whatsoever in regard to, or arising out of the City's approval of the Application.
- (b) If the five criteria in clause 1.4 of this Policy are satisfied, the City may approve the payment of the Relevant Person's Legal Representation Costs to the extent permitted by this Policy.
- (c) The City will not approve, unless under exceptional circumstances and at the sole discretion of the Council, or CEO under delegation, the payment of Legal Representation Costs for a defamation action, or a negligence action, instituted by a Relevant Person.
- (d) The City will not approve, unless under exceptional circumstances, the payment of Legal Representation Costs for any matter being considered before a Local Government Standards Panel for an alleged breach of the Local Government Act 1995 (WA) or regulations.

5. Application for payment of Legal Representation

- (a) If a Relevant Person wishes to seek payment of Legal Representation under this Policy, they must make an Application in the Approved Form and submit their Application to the CEO, or the Council if the Relevant Person is the CEO.
- (b) The Application must include details of:
 - (i) the matter for which Legal Representation is sought, including particulars of all party names;
 - (ii) how the matter relates to the functions of the Relevant Person in performing their role for the City of Kalamunda;
 - (iii) the proposed Lawyer (or law firm) to be asked to provide the Legal Representation;
 - (iv) the scope of Legal Representation to be sought;
 - (v) an estimated cost of the Legal Representation as provided by the Lawyer in writing to the Relevant Person; and
 - (vi) why it is in the interest of the City for the Relevant Person's Legal Representation Costs to be paid by the City.
- (c) 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.
- (d) As far as possible, the Application is to be made before commencement of the Legal Representation to which the Application relates, or if not, the Application must include an explanation as to why the Relevant Person considers the City should consider any retrospective Legal Representative Payment that may be sought and explanation of the reason for delay in the Application.

- (e) The Relevant Person must sign on the Approved Form that he or she:
- (i) has read and understands the terms of this Policy;
 - (ii) acknowledges that any approval of Legal Representation Costs is conditional on the repayment provisions of clause 8 of this Policy and any other conditions to which the approval is subject; and
 - (iii) undertakes to:
 - (A) inform the Lawyer acting for the Relevant Person that pursuant to this Policy and any approval by the City to pay the Relevant Person's Legal Representation Costs, the City agrees to be and is to be considered as a Non-Associated Third-Party Payer only, as per the definition of that term in section 253(1)(c) of the Legal Profession Act 2008 (WA);
 - (B) provide the City with all cost estimates and updates, together with all invoices and receipts from the Relevant Person's Lawyer at least 14 days prior to any payment being due by the Relevant Person;
 - (C) execute all documentation reasonably requested by the City in respect of the Application as may be required by the City;
 - (D) repay the City any Legal Representation Costs in accordance with the provisions of clause 8 of this Policy.
- (f) An Application must be accompanied by a report to Council for either noting if the Application is approved by the CEO under delegated authority, or approval of the Application by the Council, or where the CEO is the applicant, by the City's Director of Corporate Services and the City's General Counsel.

6. Legal Representation Costs – Limit

- (a) Council, or the CEO under delegated authority, as the case may be, in approving an Application shall set a limit on the costs to be paid based on the estimated costs in the Application.
- (b) A Relevant Person may make a further Application to Council, or to the CEO as the case may be, in respect of the same matter.

7. Matters to be determined by the Council or CEO under delegation

- (a) In considering an Application, Council, or the CEO as the case may be, may–
 - (i) refuse the Application;
 - (ii) grant the Application; or
 - (iii) grant the Application subject to conditions.
- (b) Conditions under clause 7(a) 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.

- (c) In assessing an Application, Council may have regard to any insurance benefits that may be available to the Applicant under the City's Councillors and Officers liability policy or its equivalent.
- (d) Council may at any time vary an approval, or any conditions of approval, for the payment of Legal Representation Costs and may revoke approval in the event that the Relevant Person breaches their obligations or undertakings as required by this Policy or any conditions of the Council's approval.
- (e) Council may determine that a Relevant Person whose application for Legal Representation Costs has been approved has, in respect of the matter for which Legal Representation Costs were approved:
 - (i) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
 - (ii) given false or misleading information in respect of the application.
- (f) A determination under clause 7(e), may be made by Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- (g) Where Council makes a determination under clause 7(e), the Legal Representation Costs paid by the City are to be repaid by the Relevant Person in accordance with clause 8, of this policy.

8. Repayment of Legal Representation Costs

- (a) If a determination under clause 7(e) above is made by the Council, the Relevant Person whose Legal Representation Costs have been paid by the City is to repay the City all or part of those costs, as determined by the Council.
- (b) Repayment by the Relevant Person, if required under this clause, may be made by way of set-off, where the Relevant Person receives monies paid for costs, damages or settlement, in respect of the matter for which the City paid the Legal Representation Costs.
- (c) The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

9. In-house legal advice and confidentiality

- (a) All in-house legal advice from the City's General Counsel in whatever form, and any and all correspondence to and from the City's General Counsel, provided to Elected Members and Committee Members, is to be considered as marked confidential by the CEO, and as such shall be considered a confidential document for the purposes of Regulation 6 of the *Local Government (Rules of Conduct) Regulations 2007*.
- (b) Elected Members and Committee Members shall not disclose in-house legal advice without the prior written permission of the CEO.

Status	Council Requirement		
Related Local Law	N/A		
Related Council Policies	N/A		
Relevant Delegation	N/A		
Related Internal Procedures	N/A		
Related Budget Schedule	N/A		
Legislation	<i>Local Government (Rules of Conduct) Regulations 2007</i> <i>Legal Profession Act 2008</i> <i>Local Government Act 1995 WA</i>		
Notes and Conditions	N/A		
Authority	Council		
Adopted	27 August 2019	Next Review Date	27 August 2021