

Legal Representation Policy

CEO



11 May 2022

This policy was adopted by Council to set governing principles in place that align with the Strategic Community Plan 2040: Focus Area Performance: Outcome PF.1: Responsible planning and ownership of outcomes.

Objectives

This policy establishes the guidelines for determining when it is appropriate for the Shire of Augusta Margaret River to pay legal representation costs to protect the interests of Councillors and employees who become subject to legal proceedings through their performance of official functions.

Application

This policy applies to Councillors and Shire of Augusta Margaret River employees.

This Policy does not apply to legal representation obtained by the Shire in relation to the day-to-day management of the Shire's affairs.

Definitions

Approved Lawyer means:

- a. a 'certified practitioner' as defined under the *Legal Practice Act 2008*; and
- b. who is approved in writing by the Council or the CEO acting under delegated authority.

Councillor or Employee means a current or former commissioner, council member, non-elected member of a council committee or employee of the Shire.

Good Faith means a sincere belief or motive without any malice or desire to defraud others.

Legal Proceedings may be civil, criminal or investigative (including the conduct of an inquiry under any written law).

Legal Representation means the provision of legal services, to or on behalf of a Councillor or Employee, by an approved lawyer 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 costs, including fees and disbursements, properly incurred in providing legal representation.

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Legal Services includes advice, representation or documentation that is provided by an approved lawyer.

Payment of Legal Representation Costs by the Shire may be either by:

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

Policy

1. Scope

Section 9.56 of the *Local Government Act 1995* (the Act) provides protection from actions of tort for anything a council member or employee has, in good faith, done in the performance or purported performance of a function under the Act or under any other written law. However, the legislation does not preclude people taking action against individual council members or employees if they believe that the council member or employee has not acted in good faith.

Section 3.1 of the Act provides that the general function of a local government is to provide for the good government of persons in its district. Section 6.7(2) provides that money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law. Under these provisions, a council can expend funds to provide legal representation for council members and employees, as long as it believes that the expenditure falls within the scope of the local government's function.

This Policy sets out guidelines to assist the Council in determining when it is appropriate to pay legal representation costs for council members and employees facing civil, criminal or investigative action including an inquiry under any written law.

2. Payment Criteria

2.1 Criteria

The four major criteria for determining whether the Shire will pay the legal representation costs of a Councillor or employee are:

- (a) the legal representation costs must relate to a matter that arises from the performance, by the council member or employee, of his or her Council or Shire functions;
- (b) the legal representation costs must be in respect of Legal Proceedings that have been, or may be, commenced;
- (c) in performing his or her functions, 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 against the interests of the Shire; and
- (d) the legal representation costs do not relate to a matter that is of a personal or private nature.

2.2 Legal Representation Costs that may be Approved

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

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- (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 council member or employee; or
- (b) to enable proceedings to be commenced and/or maintained by a council member or employee to permit him or her to carry out his or her functions – for example, an action to obtain a restraining order against a person engaged in threatening behaviour towards a council member or employee; or
- (c) for involvement in legal proceedings that require or enable evidence or information to be given by a council member or employee in connection with his or her functions; or
- (d) where exceptional circumstances are involved, as determined by Council- for example, where a person is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees.

The Shire will not approve, unless under exceptional circumstances, the payment of legal representation costs to a council member or employee for a defamation action, or a negligence action, instituted by the council member or employee.

Council members or employees are not precluded from taking their own private action. The Shire may seek its own advice on any aspect relating to such comments and criticisms of relevance to it.

3. Application for Payment

A council member or employee who seeks assistance under this policy is to make a written application to the Council or CEO for payment of legal representation costs.

3.1 Application

So far as possible, the application is to be made before seeking the legal representation to which the application relates. The application is to be made in writing and give details of:

- (a) the matter for which legal representation is sought;
- (b) how that matter relates to the functions of the relevant council member or employee;
- (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 etc);
- (e) the estimated cost (if known) of the legal representation;
- (f) why it is in the interest of the Shire for payment to be made.

The application is to be accompanied by a signed written statement by the applicant that:

- (a) he or she has read and understands the terms of this policy;
- (b) contains 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;
- (c) contains an acknowledgement that any approval of legal representation costs may be conditional on repayment being required if it is found that the person has not acted in

- good faith or that false and misleading information has been given in the application process;
- (d) contains an undertaking to repay to the Shire any legal representation costs as determined by Council.

The application is to be presented to Council, accompanied by a report prepared by or on behalf of the CEO or, where the CEO is the applicant, by the Director Corporate and Community Services.

4. Legal Representation Costs- Limit

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

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

4.1 Determining an application- Council Powers

In relation to an application for payment of legal representation costs, Council may:

- (a) refuse;
 - (b) grant approval; or
 - (c) grant approval subject to conditions, including a financial limit,
- an application for payment of legal representation costs.

Council may also require that a formal agreement including security agreement, be entered into relating to the payment and/or repayment of legal representation costs.

In assessing an application, the Council should have regard to any insurance benefits that may be available to the applicant under the Shire's councillors and officers' insurance policy (or its equivalent).

4.2 Revoking or Varying an Approval

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

An approval is to be revoked if Council subsequently determines that a council member or employee 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.

A determination to revoke the payment of legal expenses would be made on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

Where the Council makes a determination to revoke the payment of legal expenses it may also determine that all or part of the legal representation costs paid by the Shire are to be repaid by the council member or employee in accordance with clause 6.

Where assistance is so withdrawn, the person who obtained financial support is to repay any monies already provided.

5. Urgent Access to Legal Representation

In cases where a delay in the approval of an application would likely be detrimental to the legal rights of the applicant, the CEO may exercise on behalf of Council, any of the powers provided in clause 4.1 and 4.2 of this policy to a maximum of \$10,000 in a respect of each application.

Where the CEO is the applicant, the Director Corporate and Community Services may exercise the powers provided in clause 4.1 and 4.2 of this policy to a maximum of \$10,000 in respect of a matter.

An application approved in accordance with clause 5 of this policy 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 4.2 of this policy.

6. Repayment of Legal Representation Costs

A Councillor 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 the Council under clause 4.2 of this policy;
- (b) as much of those costs as are available to be paid by way of set-off, where the Councillor 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 may take action to recover any such monies due under this policy in a court of competent jurisdiction.

Relevant legislation

Local Government Act 1995

Document and version control table

Responsible Directorate	Office of the CEO
Contact officer	Senior Legal Officer
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1.0	27 August 2009		Initial Issue
2.0	23 January 2013	OM1301/6	Full Review
3.0	24 May 2017	OM201718	Full Review
4.0	11 May 2022	OM2022/7 4	Full Review <i>Additional clauses added to part 5 and 6</i>

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