

Governance and Corporate Leadership

GL13 Legal Representation



24 May 2017

This policy was adopted by Council to set governing principles in place that align the strategic direction of the organisation with Goal 5 – Effective Leadership and Governance

Objectives

To provide clear guidelines for Council decision making when present and past Councillors and employees become respondents in legal proceedings because of their official functions.

Policy

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. This Policy does not cover legal representation provided to, or on behalf of, the Shire, but for legal representation in certain circumstances for elected members and employees facing civil, criminal or investigative action including an inquiry under any written law.

Payment Criteria

There are three major criteria for determining whether the Shire should pay the legal representation costs of an elected member or employee or a past elected member or employee. These are:

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

The Shire of Augusta Margaret River will not support any defamation actions seeking the payment of damages for individual members or employees in regard to comments or criticisms levelled at their conduct in their respective roles. Members or employees are not precluded, however, from taking their own private action. Further, the Shire of Augusta Margaret River may seek its own advice on any aspect relating to such comments and criticisms of relevance to it.

Examples of Legal Representation Costs that may be approved

The Shire may approve the payment of legal representation costs:

- (a) 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; or
- (b) 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, an action to obtain a restraining order against a person engaged in threatening behaviour towards an elected member or employee; or
- (c) for involvement in legal proceedings that require or enable evidence or information to be given by an elected member or employee in connection with his or her functions.

Application for Assistance

An elected member or employee who seeks assistance under this policy is to make a written application to the Council for payment of legal representation costs. So far as possible, the application is to be made before seeking the legal representation to which the application relates. The application is to give details of:

- (a) the matter for which legal representation is sought;
- (b) how that matter relates to the functions of the relevant elected member or employee;
- (c) the lawyer (or law firm) who is to be asked to provide the legal representation. The legal services the subject of assistance under this policy will usually be provided by the Shire of Augusta Margaret River's solicitors. Where this is not appropriate for practical reasons or because of a conflict of interest, then the service may be provided by other solicitors approved by the Shire of Augusta Margaret River.
- (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) a statement 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) acknowledges 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, and
- (d) an undertaking to repay to the Shire any legal representation costs as determined by Council.

An application is also to be 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.

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

The Council may refuse, grant; or grant subject to conditions, including a financial limit, an application for payment of legal representation costs. Council may also require that a formal agreement be entered into relating to the payment and/or repayment of legal 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).

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 an elected 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 consistently 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 elected member or employee. Where assistance is so withdrawn, the person who obtained financial support is to repay any monies already provided. The Shire of Augusta Margaret River may take action to recover any such monies in a court of competent jurisdiction.

Application

The application of this policy is the role of Council and the CEO. This policy is to be reviewed every three years.

Document and version control table

Strategic outcome	Corporate Plan 2014-2018 Goal 5 – Effective Leadership and Governance	
Responsible Directorate	CEO	
Authority of original issue	Council	
Date of original issue	Council meeting date 27 August 2009	
Contact officer	CEO EA	
Date of next review	May 2020	
Document No.	N129868	
Version	Date issued	Brief description
1.0	27/8/2009	Initial Issue
2.0	23/1/2013	Full review
3.0	24/5/2017	Full review