

LEGAL REPRESENTATION FOR ELECTED MEMBERS AND EMPLOYEES COUNCIL POLICY

POLICY STATEMENT

To provide Elected Members and employees an undertaking that they are protected from threats and will be given proper legal representation if any legal action is taken against them in relation to their role of elected member or employee of the City of Bunbury.

POLICY SCOPE

This policy applies to: Elected Members and City of Bunbury staff

POLICY DETAILS

Subject to the parameters of the Policy being met, the Council will pay reasonable legal expenses incurred if an elected member or employee's work related actions results in legal action.

POLICY PROCEDURE

1. Payment Criteria

There are four (4) major criteria for determining whether the City will pay the legal representation costs of an elected member or employee. These 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 functions;
- (b) the legal representation cost 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 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
- (d) the legal representation costs do not relate to a matter that is of a personal or private nature.

2. Examples of Legal Representation Costs that may be approved

- 2.1 If the criteria in clause 1 of this Policy are satisfied, the City 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 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
 - (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 Elected members or employees.
 - 2.2 The City 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.
3. Legal representation costs – Limit
- 3.1 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.
 - 3.2 An elected member or employee may make a further application to the council in respect of the same matter.
4. Council's powers
- 4.1 The council may –
 - (a) refuse;
 - (b) grant; or
 - (c) grant subject to conditions, an application for payment of legal representation costs.
 - 4.2 Conditions under clause 4.1 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.
 - 4.3 In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant under the City's Elected members or employees insurance policy or its equivalent.
 - 4.4 The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
 - 4.5 The Council may, subject to clause 4.6, 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 –
 - (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.
 - 4.6 A determination under clause 4.5 may be made by the Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
 - 4.7 Where the Council makes a determination under clause 4.5, the legal representation costs paid by the City are to be repaid by the elected member or employee in accordance with clause 7.

PROCESS:

5. Application for Payment

- 5.1 An Elected member or employee who seeks assistance under this policy is to make an application(s), in writing, to the CEO for referral to Council.
- 5.2 The written application for payment of legal representation costs is to give details of –
 - (a) the matter for which legal representation is sought;
 - (b) how that matter relates to the functions of the Elected member or employee making the application;
 - (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) an estimated cost of the legal representation; and
 - (f) why it is in the interests of the City for payment to be made.
- 5.3 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 application relates.
- 5.4 As far as possible, the application is to be made before commencement of the legal representation to which the application relates.
- 5.5 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 7 and any other conditions to which the approval is subject; and
 - (c) undertakes to repay to the City any legal representation costs in accordance with the provisions of clause 7.
- 5.6 In relation to clause 5.5(c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of that money to the local government as may be required by the local government and the terms of the Policy.
- 5.7 An application is also to be accompanied by a report prepared by the CEO or where the CEO is the applicant by an appropriate employee.

6. Authorisation of the Chief Executive Officer

- 6.1 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 clause 4.1 and 4.2, to a maximum of \$10,000 in respect of each application.
- 6.2 An application approved by the CEO under clause 6.1, is to be submitted to the next ordinary meeting of the Council.

7. Repayment of legal representation costs

- 7.1 An Elected member or employee whose legal representation costs have been paid by the City is to repay the City –
 - (a) all or part of those costs – in accordance with a determination by the Council under clause 4.7;
 - (b) as much of those costs as are available to be paid by way of setoff – where the elected member or employee receives monies paid for costs, damages, or

settlement, in respect of the matter for which the City paid the legal representation costs.

- 7.2 The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

COMPLIANCE REQUIREMENTS

LEGISLATION

- *Local Government Act 1995*

INDUSTRY

ORGANISATIONAL

| Document Control | | | | | |
|-----------------------------------|---|--|--------------------|------------------|------|
| Document Responsibilities: | | | | | |
| Owner: | Chief Executive Officer | Owner Business Unit: | Manager Governance | | |
| Reviewer: | Manager Governance | Decision Maker: | Council | | |
| Document Management: | | | | | |
| Adoption Details | Res 121/10 29 June 2010 | Review Frequency: | biennial | Next Due: | 2023 |
| Review Version | Decision Reference: | Synopsis: | | | |
| DOC/441976[v2] | Council Decision 202/21 12 October 2021 | Reviewed with no changes | | | |
| DOC/441976[v2] | Council Decision 049/20 17 March 2020 | Consolidate policies and corporate guidelines in accordance with revised Policy Framework. | | | |
| DOC/441976[v1] | Council Decision 254/19 17/09/19 | Reviewed with no changes | | | |
| CP-011228 v 1.0 | Res 232/17 27/06/2017 | Reviewed | | | |
| CP-011228 | Res 322/15 15/09/2015 | Reviewed | | | |
| CP-011228 | Res 81/16 26/03/2016 | Reviewed | | | |
| Date Printed | 14 October 2021 | | | | |