

Policy P675 Legal Representation

Responsible Business Unit/s	Governance
Responsible Officer	Manager Governance, Chief Executive Officer
Affected Business Unit/s	All business units

Policy Objectives

Elected Members and employees of the City performing their statutory roles and functions, may occasionally in the course of their duties, be exposed to legal action initiated by third parties.

In these circumstances Members and employees may require legal advice and/or representation and should be able to expect that their local government will provide financial assistance to meet the cost of the advice or representation. Accordingly, it is appropriate and prudent for the City to be in a position to assist members and employees by adopting a policy to fund or partly fund the cost of providing legal services in appropriate circumstances.

Policy Scope

This Policy is relevant to Elected Members and officers that may be involved in legal matters needing legal representation.

Policy Statement

Legislative Framework

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 local government 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.

1. Payment Criteria

There are four major criteria for determining whether an application for the payment of the legal representation costs of a council member or employee will be approved:

- (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 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 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 are satisfied, the City may approve for the payment of legal representation costs-

- (a) where proceedings are brought against a council 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 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 where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the council 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 council members or employees.

3. Application for payment

- 3.1 A council member or employee who seeks assistance under this policy is to make an application(s), in writing, to the council or the CEO.
- 3.2 The written application for payment of legal representation costs is to give details of -
 - (i) the matter for which legal representation is sought;
 - (ii) how that matter relates to the functions of the council member or employee making the application;
 - (iii) the nature of the legal representation being sought (such as advice, representation in court, preparation of documents etc);
 - (iv) the lawyer (or law firm) who is to be requested to provide the legal representation;
 - (v) an estimate of the cost of the legal representation; and
 - (vi) why it is in the interests of the City for payment to be made.
- 3.3 The application must 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.
- 3.4 The application is to be made before commencement of the legal representation to which the application relates.
- 3.5 The application must be accompanied by a signed written statement signed 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 provision of clause 7.
- 3.6 In relation to clause 3.5(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 City under the terms of this Policy.

3.7 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.

4. Limit on Legal representation costs

4.1 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.

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

5. Assessing Application

5.1 The Council or CEO may –

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

5.2 Conditions under clause 5.1 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.

5.3 In assessing an application, the Council or CEO may have regard to any insurance benefits that may be available to the applicant under the City’s council members or employees insurance policy or its equivalent.

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

5.5 The Council may, subject to Clause 5.6, determine that a council 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) has not acted in good faith, has acted unlawfully or has acted in a way that constitutes improper conduct; or
- (b) has given false or misleading information in respect of the application.

5.6 A determination under clause 5.5 may be made by the Council only 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, the legal representation costs paid by the City are to be repaid by the council member or employee in accordance with clause 7.

6. Delegation to 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 5.1 and 5.2, to a maximum of \$10,000 in respect of each application.

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

7. Repayment of legal representation costs

- 7.1 A council 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 5.7; or
 - (b) as much of those costs as are available to be paid by way of set-off – where the council 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.

Explanation of Key Terms

approved lawyer means a ‘certified practitioner’ (as defined in the *Legal Practice Act 2003*) who is from a law firm on the City’s panel of legal service providers, unless the Council or CEO considers that this is not appropriate – for example, where there is or may be a conflict of interest;

City means the City of South Perth;

Council Member means a current Council Member;

Employee means a current Employee of the City;

improper conduct means a breach of the standards of conduct that a reasonable person would expect of a person knowing their duties, powers and authority;

legal proceedings may be civil or criminal;

legal representation means the provision of legal services, to or on behalf of a council member or employee, by an approved lawyer that is in respect of –

- (a) a matter or matters arising from the performance of the functions of the council member or employee; and
- (b) legal proceedings involving the council member 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.

Legislation / Local Law Requirements

Local Government Act 1995

Department of Local Government Operational Guidelines No. 14 - *Legal Representation for Council Members and Employees*

Other Relevant Policies / Key Documents

City of South Perth Strategic Plan 2017-2027