



POLICY NO. CP 5.4.4

LEGAL REPRESENTATION – COUNCILLORS AND EMPLOYEES

PURPOSE

This policy establishes the guidelines for determining when it is appropriate for the City 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.

POLICY STATEMENT

1. SCOPE

Section 9.56 of the *Local Government Act 1995* (the Act) provides protection from actions of tort for anything a Councillor or employee has, in good faith, done in the performance or purported performance of a function under the Act or any other written law.

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 of the local government.

Therefore, the City's approval to pay legal representation costs incurred by an individual Councillor or employee will rely on the determination that it is reasonably concluded that the expenditure provides for the good governance of the district.

This policy does not apply to legal advice and representation that is obtained by the City in the normal course of fulfilling the functions and exercising the powers of a local government.

2. EXPLANATION OF KEY TERMS

approved lawyer is to be:

- (a) An Australian legal practitioner under the Legal Profession Act 2008; and
- (b) Approved in writing by Council or, where this policy allows, by the Chief Executive Officer.

good faith means a sincere belief or motive without any malice or desire to defraud others.

Councillor or employee means a current or former Councillor, employee or member of a council committee of the City.



legal proceedings may be civil, criminal or investigative.

legal representation is the provision of legal services, to or on behalf of a Councillor 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 Councillor or employee; and
- (b) Legal proceedings involving the Councillor 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.

payment by the City of legal representation costs means either by –

- (a) A direct payment to the approved lawyer; or
- (b) A reimbursement to the councillor or employee.

3. PAYMENT CRITERIA

There are three major criteria for determining whether the City will pay the legal representation costs of a Councillor or employee. These are:

- (a) The legal representation costs must relate to a matter that arises from the performance, by the Councillor or employee, of his or her functions;
- (b) In performing his or her functions, to which the legal representation relates, the Councillor or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
- (c) The legal representation costs do not relate to a matter that is of a personal or private nature.

4. LEGAL REPRESENTATION COSTS THAT MAY BE APPROVED

4.1 If the criteria in clause 3 of this policy are satisfied, the City may approve the payment of legal representation costs:

- (a) Where proceedings are brought against a Councillor or employee in connection with his or her functions.



- (b) To enable proceedings to be commenced and / or maintained by a Councillor or employee to permit him or her to carry out his or her functions.
 - (c) In exceptional circumstances as determined by Council.
- 4.2 The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, instigated by a Councillor or employee against another Councillor or employee of the City.

5. APPLICATION FOR PAYMENT

- 5.1** A Councillor or employee who seeks assistance under this policy is to make application in writing to the Chief Executive Officer.
- 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 Councillor or employee;
 - (c) The lawyer, or law firm, who is to be asked to provide the legal representation;
 - (d) The nature of the legal representation to be sought (such as but not limited to advice, representation in court, preparation of documentation);
 - (e) An estimate of the cost of the legal representation; and
 - (f) Why it is the interest of the City for payment to be made.
- 5.3** 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 9 of this policy 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 9 of this policy.
- 5.4** An application is to be presented to Council, accompanied by a report prepared by the Chief Executive Officer or where the Chief Executive Officer is the applicant, by a senior employee.



6. LEGAL REPRESENTATION COSTS – LIMIT

- 6.1 Unless otherwise determined by Council, the payment of legal representation costs in respect of a particular matter is not to exceed \$15,000.
- 6.2 A Councillor or employee may make a further application to the Council in respect of the same matter.

7. DETERMINING AN APPLICATION

- 7.1 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.
- 7.2 In assessing an application, Council may have regard to any insurance benefits that may be available to the applicant under the City's Councillor or employee indemnity insurance policy.
- 7.3 Council may, at any time, revoke or vary an approval or any condition of approval, for the payment of legal representation costs.
- 7.4 Council may, subject to clause 7.5 of this policy, determine that a Councillor or employee whose application for legal representation costs has been approved has, in respect of the matter for which the 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.
- 7.5 A determination under clause 7.4 of this policy may only be made by Council on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- 7.6 Where the Council makes a determination under clause 7.4 of this policy, legal representation costs paid by the City are to be repaid by the Councillor or employee in accordance with clause 9 of this policy.

8. URGENT ACCESS TO LEGAL REPRESENTATION

- 8.1 In cases where a delay in the approval of an application would likely be detrimental to the legal rights of the applicant, the Chief Executive Officer may exercise, on behalf of Council, any of the powers provided in clauses 7.1 and 7.2 of this policy to a maximum of \$5,000, in respect of a matter.



- 8.2 Where for the purposes of clause 8.1 of this policy, the Chief Executive Officer is the applicant, the Mayor may exercise the powers provided in clauses 7.1 and 7.2 of this policy to a maximum of \$5,000, in respect of a matter.
- 8.3 An application approved in accordance with clauses 8.1 or 8.2 of this policy is to be submitted to the next ordinary meeting of the Council. Council may exercise any of its powers under this Policy, including its powers under clause 7.3 of this policy.

9. REPAYMENT OF LEGAL REPRESENTATION COSTS

- 9.1 A Councillor 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 7.6 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 City paid the legal representation costs.

GOVERNANCE REFERENCES

Statutory Compliance	Local Government Act 1995, s.3.1, s.9.56
Industry Compliance	Department of Local Government; Sport and Cultural Industries Operational Guideline No.14 Legal Representation for Council Members and Employees
Organisational Compliance	Nil.
Process Links	Nil.

POLICY ADMINISTRATION

Directorate		Officer Title		Contact:	
Chief Executive Officer		Chief Executive Officer		9397 3000	
Risk Rating	Low	Review Cycle	Triennial	Next Due:	2023
Version	Decision Reference	Synopsis			
1.	OCM 118:27/02/2001	Former policy revoked and new policy adopted.			
2.	OCM 412/25/08/2009	Former policy revoked and new policy adopted to align with the Departmental Operational Guideline and Model Policy			
3.	OCM 375/23/08/2011	Reviewed and amended.			
4.	OCM 385/23/09/2014	Reviewed with no amendment.			
5.	OCM 320/26/09/2017	Reviewed with no amendment.			
6.	Exec Team Meeting 02/10/2017	Administrative changes - name changes to Act and Gov't Department			
7.	OCM 251/08/09/2020	Reviewed and amended.			