



## G5A Legal Representation for Council Members

### Policy Objective

To provide for legal representation and cost indemnification to assist council members in specified situations.

### Scope

This policy applies to council members of the Shire of Ravensthorpe. This policy does not apply to legal services obtained by the Shire in relation to the day-to-day management of the Shire's affairs or to legal services that the CEO considers necessary to comply with a written law.

### Statement

#### Definitions

- **Approved lawyer** is to be:
  - an 'Australian legal practitioner' under the *Legal Profession Act 2008*;
  - from a law firm on the Western Australian Local Government Association's panel of preferred legal services providers, unless the council considers that this is not appropriate - for example where there is or may be a conflict of interest or insufficient expertise; and
  - approved in writing by the Council, the CEO or the Executive Manager Corporate Services, under delegated authority.
- **Council member** means a current or former council member or non-elected member of a council committee.
- **Legal proceedings** may be civil, criminal or investigative.
- **Legal representation** is the provision of legal services, to or on behalf of an employee, by an approved lawyer that are in respect of:
  - a matter or matters arising from the performance of the functions of employee; and
  - legal proceedings involving the 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** include advice, representation or documentation that is provided by an approved lawyer.
- **Payment** by the Shire of legal representation costs may be either by:
  - a direct payment to the approved lawyer (or the relevant firm); or
  - a reimbursement to the employee.
- **Written law** has the meaning given in section 5 of the *Interpretation Act 1984*(WA).



### 1. Payment Criteria

There are four major criteria for determining whether the Shire will pay the legal representation costs of a council member.

These are:

- (a) the legal representation costs must relate to a matter that arises from the performance, by the council member, 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 council member 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 Shire may approve the payment of legal representation costs where proceedings are brought against a council member 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.

2.2 The Shire will not approve, unless under exceptional circumstances:

- (a) the payment of legal representation costs for claims against the Shire; or
- (b) the reimbursement of any award of legal costs made against a council member if those costs were unreasonably or unnecessarily incurred.

### 3. Application for payment

3.1 A council member who seeks assistance under this policy is to make an application(s), in writing, to the CEO.

3.2 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 council member 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 and the preparation of a document);
- (e) an estimated cost of the legal representation; and
- (f) why it is in the interests of the Shire for payment to be made.

3.3 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.

3.4 As far as possible, the application is to be made before commencement of the legal representation to which the application relates.

3.5 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 6 and any other conditions to which the approval is subject;



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(c) undertakes to repay to the Shire any legal representation costs in accordance with the provisions of clause 6.

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 those monies to the local government as may be required by the local government and the terms of the policy.

3.7 An application is to be accompanied by a report prepared by the CEO for consideration by the Council.

**4. Legal Representation Costs – Limit**

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 may make a further application to the council in respect of the same matter.

**5. Council Powers**

5.1 The council 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 may have regard to any insurance benefits that may be available to the applicant under the Shire's council members insurance policy or its equivalent.

5.4 The council may at any time:

- (a) require the provision of a report outlining the status of the legal representation and the likely outcome; and
- (b) 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 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.

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 Shire are to be repaid by the council member in accordance with clause 6.



6. Repayment of Legal Representation Costs

6.1 A council member 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 5.7;
- (b) as much of those costs as are available to be paid by way of set-off – where the council member receives monies paid for costs, damages, or settlement, in respect of the matter for which the Shire paid the legal representation costs.

6.2 The Shire may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

<b>DOCUMENT CONTROL BOX</b>		
<b>Custodian:</b> Chief Executive Officer		<b>Decision Maker:</b> Council
<b>Compliance Requirements:</b>		
<b>Legislation:</b> s9.56 [Certain persons protected from liability for wrongdoing] of the Local Government Act 1995 Occupational Safety and Health Act 1984 (WA), Part III, Division 2 Work Health and Safety Act 2020 (WA) [once Proclaimed]		
<b>Industry:</b>		
<b>Organisational:</b>		
<b>Document Management:</b>		
<b>Risk Rating:</b> Medium	<b>Review Frequency:</b> 4 Years	<b>Next Due:</b>
<b>Version #</b>	<b>Decision Reference:</b>	<b>Description:</b>
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